

the ECHR Rules. For example, ECHR grants interim measure in new inter-State case brought by Ukraine against Russia concerning events in the *Kerch Strait*. 4 December 2018 the Court decided to indicate to the Russian Government by way of interim measure that, in the interests of the parties and the proper conduct of the proceedings before it, they should ensure that appropriate medical treatment be administered to those captive Ukrainian naval personnel who required it, including in particular any who might have been wounded in the naval incident that took place in the Kerch Strait on 25 November 2018.

Summarizing all above, it should be stated, that Rule 39 of the Rules of Court provides the applicants with an instrument of urgent reaction of the Court on the violation of rights covered under the Convention. This tool might be used by individual applicants for immediate cease of violation by any Member State. As well it is very valuable mechanism in the procedure of inter-state applications. The interim measures were used both by Ukraine and against Ukraine, with the main purpose to avoid the breach of Convention.

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THE PRACTICE OF THE EUROPEAN COURT OF HUMAN RIGHTS ON THE PROVISION OF A SUIT IN ADMINISTRATIVE PROCEEDINGS

The article is devoted to the study of the practice of applying the recommendations of the European Court of Human Rights in the process of resolving administrative courts the issue of securing a suit in administrative legal proceedings. The provisions of the Code of Administrative Proceedings regarding the provision of a suit, as well as the decision of the ECtHR court in this regard,

were analyzed, and recommendations were given for improving the mechanism for providing an administrative suit in order to effectively protect a person.

Key words: *administrative proceedings, provision of an administrative suit, effective means of legal protection, administrative suit, Code of Administrative Proceedings, European Court of Human Rights.*

The activities of public administration are carried out in numerous areas of social life and can have a significant impact on individual rights, freedoms and interests. Immediate and complete execution of administrative acts that have become or could be the subject of appeal, are capable in some circumstances to cause irreparable harm to the interests of individuals, and, therefore, the task of national legal proceedings is to try to prevent such consequences as far as possible. The expediency of guaranteeing a temporary protection for the individuals by the courts should be determined without disregarding the need for effective administrative action.

In accordance with Recommendation NR (89) 8 On Provisional Court Protection in Administrative Matters adopted by the Committee of Ministers of the Council of Europe on September 13, 1989 [1] when a court is seized of a challenge to an administrative act, and the court has not yet pronounced its decision, the applicant may request the same court or another competent court to take measures of provisional protection against the administrative act. The person concerned shall have the same right to request a competent court to take measures of provisional protection prior to his challenging the act, in case of urgency or when an administrative complaint, the making of which does not have in itself any suspensive effect, has been lodged against the administrative act and has not yet been decided.

In Ukraine, only a judicial procedure for the application of provisional protection measures in administrative cases is provided. However, there is a possibility of such a situation: when a person before filing a lawsuit lodge a corresponding administrative complaint, which itself does not foresee the suspension of an administrative act; the lack of authority or the ability of the administrative authorities to formally suspend the execution of an act creates the possibility that the person concerned, sometimes for a long time, may continuously be at risk of execution of the act.

Art. 150-158 of the Code of Administrative Proceedings of Ukraine [2] (hereinafter referred to as the CAP of Ukraine), the grounds and procedure for the provision of an administrative suit are settled. At first glance, there are a list of the concrete, clear grounds and a detailed procedure for the consideration of petitions for the provision of an administrative suit. However, in the Unified State Register of Judgments, the number of applications for the examination of petitions for administrative suit provision is insignificant, while the number of cases, where the suit is secured, is at an even lower rate. Therefore, there is a need to pay attention to the problematic moments of regulation of this legal mechanism and the reasons for which it is rarely used in practice.

Firstly, with the adoption of the new edition of the CAP of Ukraine in 2017, the institute of suit provision in administrative proceedings has undergone a transformation. Positive point can be noted in increased list of the means of

provision and a more detailed procedure for ensuring the suit compared with the previous edition of the Code. However, there is still no automatic suspension of the challenged act, even in certain categories of the cases.

It should be noted that the practice of the ECHR recognizes as an ineffective means of legal protection of rights by filing a lawsuit and separate petition for suit provision by suspending the action of the contested decision. Thus, in the case of «Baysakov and others v. Ukraine» (2010), the ECHR in p.75-78 gave the conclusions concerning the effectiveness of a legal remedy for the rights in court by filing a lawsuit and petitioning for a suit provision in the order of the CAP of Ukraine: «In this connection, the Court notes that appeals to administrative courts on the basis of Art. 2 CAP of Ukraine with the requirement to cancel the extradition decision does not automatically stop the action of the contested decision. In order to suspend the action of the challenged decision, the court shall issue a special ruling [on taking measures to secure an administrative suit]. The administrative court has discretionary powers to resolve such issues and may decide on the petition of the party or on its own initiative. Having regard to the foregoing, the Court concludes that the applicants have not had an effective and accessible remedy for their complaints ...» [3].

Namely, the ECHR considers that filing a suit should automatically stop the action of the contested decision, only in that case the right to an effective remedy of rights will be respected. The Court considers that such a situation is equivalent to a refusal to administer justice, which violates the very essence of the applicant's right to access to a court guaranteed by Article 6 § 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms [4].

Therefore, it would be advisable to foresee in the CAP of Ukraine cases where the challenged decision stops automatically when filing an administrative suit. Another option to improve this mechanism is to establish the possibility of an immediate solution to the problem of ensuring the suit without notifying the defendant and third parties in the case of justification and urgency. It is explained by the specifics of the Code of Administrative Proceedings of Ukraine, which is connected with the need to ensure the realization of the rights of the individual who challenges to the court to appeal decisions of the authorities, as the weaker party in such a dispute. It is needed to recall that the existing CAP of Ukraine provides a general procedure for reviewing the application for securing a suit within two days.

With regard to the practice of implementing the mechanism of administrative provision, based on the analysis of court decisions on this issue, the following should be noted. Firstly, administrative courts often refuse to secure a suit in favour of the fact that measures to implement the project are impossible, since in practice the decision is actually eliminated without considering the case that it does not meet the requirements of the legal institution of provision.

Secondly, courts often refuse to ensure a suit due to the gradual lack of substantiation of the need for security, neglecting their discretionary powers and the principle of the official collection of all case trials. On the one hand,

in accordance with the requirements of paragraph 17 of the Resolution of the Plenum of the Kyiv Administrative Court of Ukraine No. 2 of March 6, 2008, «On the Practice of the Application of Administrative Courts of Certain Provisions of the CAP of Ukraine during the Review of Administrative Cases» in the ruling about the administrative suit provision the court should give the causes that gave reasons to say there is a real danger for the rights and interests of the plaintiff prior to the adoption of a decision in an administrative case, or the protection of those rights, freedoms and interests will be impossible without such measures, or to restore them, the need will be ad hoc significant cost and expenses, as well as indicate the attribute, which testifies the fact of illegality of the decision, act or inactivity of the subject of authoritative powers [5]. In each case, the court must, on the basis of specific evidence, determine whether one of the circumstances is present, or assess whether it can ensure the fulfilment of the obligations that can be prevented. Also, in Recommendation NR (89) 8 On Provisional Court Protection in Administrative Matters it is said that measures of provisional protection may in particular be granted if the execution of the administrative act is liable to cause severe damage which could only be made good with difficulty and if there is a prima-facie case against the validity of the act.

However, neither these recommendations nor the provisions of Art. 152 CAP of Ukraine (regarding the content and form of statement of suit provision) do not contain provisions on the need to provide evidence by the applicant. However, the judicial practice shows the opposite – the courts, having considered the claim for suit provision, refuse to secure a suit on the grounds that the plaintiff did not provide evidence of the existence of an obvious danger of causing damage to his rights, freedoms and interests before taking a decision in an administrative case, without substantiating the reasons the impossibility of protecting (renewal) of the rights, freedoms and interests of the plaintiff after the entry into force of a decision in an administrative case without the use of such measures, did not reveal what is the need to apply the efforts and costs of restoring the rights of the plaintiff in the future, as well as the obvious evidence of the defendant's wrongful acts (for example, the Kyiv District Administrative Court's decision about refuse to enforce the measures of provisional protection adopted on September 25, 2018, 810/4451/18).

Taking into account the above, the problematic moments of the application of the mechanism for providing an administrative suit are advisable to resolve in two ways: 1) improvement of legal regulation – foreseeing the automatic suspension of appealed administrative decisions, at least in certain categories of cases, or the possibility of an immediate solution to the issue of securing a suit; 2) the change of the approach of administrative courts to resolving petitions to secure a claim from excessive formalities to the full use of the principle of official identification of all circumstances in a case and the practice of ECHR in order to effectively protect individuals from violations done by the public administration.

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THE PRACTICE OF THE EUROPEAN COURT OF HUMAN RIGHTS IN THE ESTABLISHMENT OF THE INSTITUTE OF PROCESSUAL RIGHTS ABUSE IN THE ADMINISTRATIVE PROCEEDINGS IN UKRAINE

The article is aimed at investigating the institution of abuse of rights in the practice of the European Court, as well as to carry out a comparative analysis of the theoretical aspects of the processual rights abuse and processual measures aimed at counteracting the abuse of processual rights in the fulfilment of justice in the European Court of Human Rights and the courts of administrative jurisdiction in Ukraine.

Key words: *abuse of processual rights, opposition to abuse of processual rights, administrative proceedings, measures of processual influence, Code of Administrative Proceedings of Ukraine, European Court of Human Rights.*

One of the shortcomings of the Code of Administrative Proceedings of Ukraine was the recent consolidation of the principle of inadmissibility of abuse of processual rights at the legislative level. The indicated negative phenomenon is characterized, above all, by the use by a person of rights granted to it by the processual law for a purpose other than that provided by the law, which leads to impediment to the proper adjudgement.