

Regarding the last risk, namely, that a person may commit another criminal offense or continue a criminal offense in which he is suspected, an accused lawyer should pay attention to the case on § 134 cases of Aleksandr Makarov v Russia: in a number of the detention orders the domestic courts cited the likelihood that the applicant would reoffend as an additional ground justifying his continued detention. In this connection, the Court observes that the judicial authorities did not mention any specific facts supporting their finding that there existed a risk of the applicant's reoffending. Furthermore, the Court does not share the national authorities' opinion that in a situation when all charges against the applicant, save for one, were brought against him in respect of his actions as the mayor of Tomsk and he was suspended from that position, there was a real danger of the applicant committing new offences.

In advocacy practice, when giving legal assistance during the selection of a preventive measure for the full and complete representation of client's lawyer's interests, it is necessary to refer to the practice of the European Court of Human Rights, since its decisions are taken into account by national courts.

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3. Case of Letellier v France, judgment of the European Court of Human Rights, 26.06.1991, Application no 12369/86 // <http://hudoc.echr.coe.int>.
4. Case of Kauczor v Poland, judgment of the European Court of Human Rights, 03.02.2009, Application no 45219/06 // <http://hudoc.echr.coe.int>.
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INDEPENDENCE OF JUDGES IN THE CONTEXT OF THE PRACTICE OF THE EUROPEAN COURT OF HUMAN RIGHTS

Key words: judges, justice, European Court of Human Rights, discussions, trial.

Rules relating to the independence of the judiciary – the method of appointing judges, the question of security during and outside of the activity, the way in which their wages are determined, and other conditions of service designed to guarantee the freedom of judges from external pressure and independent service the law.

It is also regulated that the rule of law is a part of the common heritage of the parties that signed the European Convention on Human Rights in the preamble. Thus, the independence of judges requires the rule of law and is inseparable from the very concept of justice.

It follows from the practice of the European Court of Human Rights that the criteria for assessing the independence of a judge are: the procedure for the selection and appointment of judges, the term of authority determined by the law; guarantees of external pressure, providing for the securing of internal and external independence of judges; external signs of independence; while the existence of safeguards against external pressures – including pressure on budget issues – and whether judiciary is shown as an independent and impartial.

An international court or national court that does not adhere to the principle of independence can not be legitimate and, as a result, without legitimacy, it can not be effective [1, c.49-51]. Legitimacy is a complex concept, but in the context of the issue under study, it can be described as the respect and support of the ECtHR by the parties concerned, which is the confidence in the Court in resolving the case, understanding the legal nature of the Convention (as a human rights document) and its provisions.

The practical application of the rules of procedural law must be implemented through proper protection of the rights and freedoms of the person who appealed to the court, as well as taking into account the defining principle – the adversarial parties.

Independence of the judicial system is intertwined with the impartiality of judges in the exercise of their powers of administration of justice. At the same time, independence is considered in international norms rather as the independence of the judicial branch of power in the system of distribution of power, and impartiality, in turn, finds its manifestation directly in the adoption of a fair and equitable solution.

The impartiality of judges is determined by the judgment of the European Court of Human Rights in the case of «Belukha v. Ukraine» (Statement 3949/02) on subjective and objective criteria. Thus, the subjective bias in this case is that the head of the court could be an interested person, since one of the parties (the construction company) provided free services for the repair of the courthouse. In turn, circumstances may be examples of objective bias, if the judge: in the same case, was an investigator, a prosecutor; carried out consideration of the case in the first instance, and then – in the appellate court. The subjective criterion involves taking into account the legal position and behavior of the judge, the objective – determines the provision of impartiality when taking a court decision [2, p. 101].

Regarding the immutability of judges, it is undoubtedly an important element of the principle of the independence of judges. The immutability (immutability) of judges, according to the conclusions of the ECHR, does not necessarily have to be directly enshrined in the norms of law. Provided that in fact the immutability is recognized, and if possible, it is possible to conclude that there are other guarantees that give reasons to consider the

judges unchangeable, the observance of such principle is considered to be realized.

The Institute of Immovability depends on the mechanism of formation of the judiciary corps. Today in the academic circles there are numerous discussions concerning the appointment of judges for a term of several years. For example, Israeli professor Shimon Sheetrit argues that this method does not ensure the implementation of the principle of independence while a judge is in office, since it provides the possibility of appointing a «desirable» judge, thus allowing the «undesirable» to lose a post without further upgrading [3, p.182].

Currently, the legislator has abandoned the five-year appointment as judge to the President of Ukraine for the first time and the subsequent re-election by the Verkhovna Rada of Ukraine. There was a clearly defined legislative regulation of the institute of immutability of judges, the positive point of which is the abolition of the so-called «trial term». The immutability of judges is also characterized by «establishing an exhaustive list of grounds according to which a judge may be dismissed. According to Art. 126 of the Constitution of Ukraine, the judge holds office indefinitely».

However, the issue of influence on judges for the adoption of an unlawful decision in favor of certain parties to the trial remains unresolved. This is evidenced by the significant number of appeals to the Council of Judges of Ukraine. The main factors of pressure are the most widespread actions by public organizations and associations, bodies of judicial self-government, separate groups of people, and also prosecutor's offices.

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