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WAYS OF USING THE LAWYERS OF THE PRACTICE OF THE EUROPEAN COURT OF HUMAN RIGHTS WHEN CHOOSING PREVENTIVE MEASURES

Key words: *preventive measures, European Court of Human Rights, criminal proceeding, offences, advocacy practice.*

In accordance with the current legislation, the purpose of a preventive measure in the criminal process is to ensure the execution of the suspect, the accused of the procedural duties entrusted to him. Part 1 of Article 177 of the Criminal Procedural Code of Ukraine defines a clear list of risks that may be committed by a suspect, accused, namely:

1) to abscond from the bodies of pre-trial investigation and / or court;
2) destroy, conceal or distort any of the things or documents that are essential for establishing the circumstances of the criminal offense;
3) illegally affect the victim, witness, other suspect, accused, expert, specialist in the same criminal proceeding;
4) impede criminal proceedings in another way;
5) commit another criminal offense or extend the criminal offense in which the suspect is accused. Each of these risks should be grounded on the prosecution side, which should pay attention to the lawyer.

When preparing a lawyer for a defense counsel for a trial, a lawyer should choose to apply for a preventive measure to the weight of the practice of the European Court of Human Rights.

Concerning the risk of hiding from pre-trial investigation bodies and / or courts, attention should be paid to the decisions of the European Court of Human case Rights Punzelt v Czech Republic, who is about, what as regards the risk of the applicant's absconding, the Czech courts noted, in particular, that the applicant had earlier absconded from the criminal proceedings in Germany, that he had numerous business contacts abroad and that he risked a relatively heavy penalty. In the Court's view, this reasoning is «sufficient» and «relevant» and it outweighs the arguments put forward by the applicant.

You should also pay attention to the decision Mamedova v Russia which states that the domestic courts gauged the applicant's potential to abscond by reference to the fact that her accomplice had gone into hiding. In the Court's view, the behaviour of a co-accused cannot be a decisive factor for the assessment of the risk of the detainee's absconding. Such assessment should be based on personal circumstances of the detainee. In the present case, the domestic courts did not point to any aspects of the applicant's character or behaviour that would justify their conclusion that she presented a persistent flight risk. The applicant, on the other hand, constantly invoked the facts mitigating the risk of her absconding. However, the domestic courts devoted no attention to discussion of the applicant's arguments that she had no criminal record, had a permanent place of residence and employment in Vladimir, a stable way of life, two minor children, and that her father had been seriously ill. They did not address the fact that the applicant had had an opportunity to flee after the search of her flat but she had remained at the investigator's disposal. In these circumstances, the Court finds that the existence of the risk of flight was not established in the present case.

Regarding the risks of illegally affecting the victim, witness, other suspect, accused, expert, specialist in the same criminal proceeding and preventing criminal proceedings in another way, the lawyer should use the following decisions of the European Court of Human Rights. First of all, this is the case Letellier v France who is about, what the Court accepts that a genuine risk of pressure being brought to bear on the witnesses may have existed initially, but takes the view that it diminished and indeed disappeared with the passing of time.

Secondly, this is a case of Kauczor v Poland in which it is said that according to the authorities, the likelihood of a severe sentence being imposed on the applicant created a presumption that the applicant would obstruct the proceedings. However, the Court would reiterate that, while the severity of the sentence faced is a relevant element in the assessment of the risk of absconding or reoffending, the gravity of the charges cannot by itself justify long periods of pre-trial detention. Furthermore, the Court observes that the risk that the applicant would tamper with the evidence was not sufficiently justified by the authorities when deciding to extend his pre-trial detention. The Court notes that the Government relied on a presumption that the applicant would obstruct the proceedings and tamper with evidence because he had not pleaded guilty to the offences charged. In so far as the domestic courts appear to have drawn adverse inferences from the fact that the applicant had not pleaded guilty, the Court considers that their reasoning showed a manifest disregard for the principle of the presumption of innocence and cannot, in any circumstances, be relied on as a legitimate ground for deprivation of the applicant's liberty. Having regard to the foregoing, the Court concludes that the grounds given by the domestic authorities could not justify the overall period of the applicant's detention. In these circumstances it is not necessary to examine whether the proceedings were conducted with special diligence.

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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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.