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### **TO THE QUESTION OF RES JUDICATA FINALITY PRINCIPLE IN THE PRACTICE OF COURT JUDGEMENTS IN EUROPEAN COURT OF HUMAN RIGHTS PRACTICE**

**Key words:** *res judicata, legal certainty, finality of decisions, court.*

Principle *res judicata* – finality of court judgement is approved in the international level and guaranteed by clause 1 of the Article 44 of the Convention of human rights and principal liberties [1]. Principle of judgement finality is the basic part of the supremacy of law and legal certainty principle. On its essence principle *res judicata* is a solved case (*res judicata pro veritate habetur* – court judgement is to be considered as the truth) it means the finality of court judgement which is in force and it cannot be revised. *Res judicata* origin is even in ancient Roman judicial procedure, which history is determined by three periods: 1) *legis actions* (*legis actio* procedure), 2) *actiones per for mulas* (formulary procedure), 3) extraordinary procedure [2, p. 114].

According to Articles 129, 129-1 of the Constitution of Ukraine the judge administrating justice is independent and is ruled by supremacy of law. Court

renders judgement in the name of Ukraine, court judgements are obligatory to be fulfilled [3]. That's why guarantee of justice in the relationships between legal subjects is possible by the right to judicial protection and by tools which guarantee real force of court judgements. As far as only judicial act passing by which fact of breaking rights of a certain person is determined and the responsibility on fulfilling certain actions is put on the person who let this delinquency, it would be senseless if fulfillment of such act wasn't guaranteed by law enforcement procedure.

In accordance with Article 17 of Law of Ukraine «On fulfillment of decisions and use of European Court of human rights practice» courts of Ukraine on examination of a case use the Convention and practice of European Court of human rights (furthermore – ECHR) as the source of law. One of principle aspects of law supremacy in understanding clause 1 Article 6 of the Convention of human rights and principal liberties is the principle of legal certainty (assurance) which claims among other that final judgement by the court of a dispute will not be put in doubt (legal certainty principle as a basis of a fair judicial examination)» [4].

ECHR a number of times in its decisions including concerning Ukraine stated that the right on a fair judicial examination is guaranteed by clause 1 Article 6 of the Convention shall be determined in the light of the Preliminary statement of the Convention, certain part of which declares law supremacy by a joint inheritance of High Contractual Parties. One of principle law supremacy aspects is the legal certainty principle which stipulates pursuing *res judicata* principle, thus principle of finality of judgement according to which neither of the parties does not have right to claim the review of final and obligatory decision only with the aim of rehearing of a case and determination of a new decision. Avoiding of this principle is possible only when it is due to special and insuperable force circumstances. (clause 46 decision in Case «Ustymenko against Ukraine»), clauses 51, 52 decision on case «Ryabyh against Russia», clause 31 decision in case «Marushyn against Russia», clause 61 decision in case «Brumaresku against Romania»).

Defending legal certainty principle as in the case of review of judicial acts in the survey order: (Court decision in cases «Svitlana Naumenko against Ukraine», «Tregubenko against Ukraine», «Ryabyh against Russia»), and in cases of review of cases in connection with identifying new circumstances (decision in cases «Pravedna against Russia», «Zhetyakov against Ukraine», clauses 42-48), ECHR considers efficient to follow the same logics when this fundamental principle is undermined by the help of other procedural tools, such as extension of term of challenge.

Thus, ECHR stipulates violation of Article 6 of Convention of human rights and principle liberties in the case against Ukraine on that reason that term for challenge is extended on termination of substantial period of time not for removal of serious judicial mistakes but only in the aim of rehearing of examination and determination of a new decision in the case (case «Ponomariov against Ukraine», clauses 41- 42). Further more in clause 34 decision since 10.05.2012 in the case «Besrykovu against Russia», ECHR constituted that though extension of term of challenge is carried for

consideration by national judges, the latter, in ECHR opinion, shall determine if circumstances for such termination of interference in res judicata principle acquitted, especially when national legislation does not limit limits consideration of the court neither in duration, nor in circumstances for determination new temporary terms (clause 34, case «Bezrukovu against Russia»).

In cases concerning Ukraine ECHR number of times stipulated that avoidance from the legal certainty principle is acquitted only in cases of necessity on circumstances of substantial and insuperable character (cases: «Salov against Ukraine», clause 93, «Protchenko against Ukraine», clause 26, 2Kravchenko against Russia», clause 45). Specifically, avoidance from the legal certainty principle is admitted not only in the interests of legal purism, but in the aim of correction of «the mistake that has fundamental meaning for judicial system» (decision in the case «Sutyazhnyk against Russia», clause 38).

National legislation contains limitations for review of a court judgement. Thus, for example, in accordance with part 2 Article 261 Code of Commercial Procedure of Ukraine (furthermore – CCPU) stipulated that it is not depending on respectfulness of conditions of missing term for an appeal claim the court of appeal body rejects in opening of appeal proceedings, if an appeal claim is filed after expiration of one year from the day when a full text of the court decision is drawn up except occasions: 1) file of an appeal claim by a person who is not informed about examination of a case or who is not engaged in taking part in it, if the court passed judgement on his/her rights, interests and (or) duties; 2) missing of term for an appeal claim as a result of occurrence of circumstances of insuperable force. Therewith similar standards are stipulated in Article 293 CCPU Chapter 2 on cassational proceedings [5].

In general court practice attests that appropriate implication of ECHR practice with following finality of judgement principle, thus by resolution from the 3<sup>rd</sup> of May 2019 of East appeal commercial it is rejected in opening appeal proceedings and an appeal claim is returned on the case No.922/3016/17, by resolution from 3<sup>rd</sup> of May 2019 of the Supreme Court in the panel composition of judges of the Cassational commercial court it is rejected in the opening of cassational proceedings for a cassational claim in the case No. 906/451/18, by resolution from the 26<sup>th</sup> of April 2019 of the Supreme Court in the panel composition of judges of the Cassational commercial court it is rejected in the opening of the cassational proceedings on a cassational claim in the case No.914/1129/18 [6]. Specifically, courts in these decisions determine that ECHR a number of times specifies that one of principal aspects of supremacy of law is the principle of legal certainty of the decision in accordance with it neither of the parties does not have right to claim for review of the final and obligatory decision only with the aim of the rehearing of a case and issuing of a new decision. Avoidance from this principle is possible only when it is due to special and insuperable circumstances (see the decision in the case «Ryabyh against Russia», claim No.52854/99).

At the same time the situation is common when persons presuming on the claim of final and obligatory decision of a court, file claims on the decision at the expiration more than a year and without relevant rationale of the

grounds of interference in res judicata principle. Moreover, without having at that grounds of special and insuperable character which justify reversal of the decision which is in legal force after long time after its resolution. However, even then the possibility of updating will not be limited as far as parties at reasonable intervals of time have to take measures to know about the state of litigation proceedings.

In this way, in each case national courts have to check if the grounds for renewal of terms for claim justify interference in res judicata principle, whereas intervention with legal certainty principle which specifies following res judicata principle – finality of the decision can lead to the delinquency Article 6 part 1 of the Convention of human rights and principal liberties and cancelling of the final and obligatory decision.

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### **LIFE-IMPRISONMENT PENALTY IN THE EUROPEAN COURT OF HUMAN RIGHTS CASE-LAW: UKRAINE PERSPECTIVE**

The article is dedicated to the issue of the sentence of life imprisonment in Ukraine and the scope of Article 3 of the Convention on Human Rights and Fundamental Freedoms. The relevant case law of the European Court of Human Rights is analyzed where several principles could be articulated in this regard.

**Key words:** *a whole-life sentence, life imprisonment, right to review sentence, ECHR, inhuman treatment.*