Restrictions on creativity and dissemination of information are deemed legitimate where this dissemination of information adversely affects the interests of certain categories of society members, violates religious or moral principles.

Thus, in the case of Wingro ve v. the United Kingdom, the European Court of Human Rights did not find encroachment upon the principle of freedom of creativity in the fact of restriction on the controversial film display, since, in this case, the state's intervention pursued a legitimate aim (protection of the rights of others, especially the right to freedom of religion) and was necessary in a democratic society. The European Court reached a similar conclusion in another case, namely Otto-Preminger-Institut v. Austria. This case concerned a ban on the distribution of the film, which distorted the doctrine of the Roman Catholic Church. The court, in particular, stated that, in the context of religious beliefs and religion, the artist could legitimately be obliged to avoid, where possible, the expression of opinions that are unreasonably offensive to others and thus violate their rights [2].

Therefore, in determining the lawfulness of restrictions on the dissemination of particular works, the European Court of Human Rights proceeds from assessment of their possible negative impact on the interests of society and certain categories of citizens, violations of established norms of public morals, religion, etc.

References:

1. Gumerov L.A. Freedom of scientific and technical creativity in the system of human rights / L.A. Gumerov // Scientific notes of the Kazan University. – 2012. – T. 154, кн. 4. – P. 17.
2. Belkin M.L. Guarantees of freedom of creativity and the boundaries of restrictions thereon in the judgments of the European Court of Human Rights / M.L. Belkin // Law in the modern world. – 2012. – № 2. – P. 171.

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ON THE DECISIONS OF THE EUROPEAN COURT OF HUMAN RIGHTS, WHICH ARE MOST OFTEN USED IN THE PRACTICE OF ECONOMIC COURTS OF UKRAINE

Key words: *European Court of Human Rights, case-law, economic courts.*

1. Court enforcement action remains one of the most important problems in the field of economic activity in Ukraine. Therefore, in the practice of

economic courts, a number of decisions of the European Court of Human Rights concerning the enforcement of court decisions should be applied.

In particular, In the case of Rysovskyy v. Ukraine (appl 29979/04) in p. 67 ECHR h*eld*: As regards the first aspect, it is the Court's settled case-law that, as a general rule, failure of the State authorities to provide an applicant with a property awarded to him or her by a final court judgment constitutes an interference incompatible with the guarantees set out in the first sentence of the first paragraph of Article 1 of Protocol No. 1 (see, among other authorities, *Burdov v. Russia*, no. 59498/00, § 40, ECHR 2002-III; *Jasiūnienė v.Lithuania*, no. 41510/98, § 45, 6 March 2003; and *Voytenko v. Ukraine*, no. 18966/02, §§ 53-55, 29 June 2004). The Government have not provided any explanation which would justify the non-enforcement in the present case as "lawful" and warrant departure from the above principles.

As the same, in the Case of Voytenko v. Ukraine (Application no. 18966/02) ECHR held: 53. The Court recalls its case-law that the impossibility for an applicant to obtain the execution of a judgment in his or her favour constitutes an interference with the right to the peaceful enjoyment of possessions, as set out in the first sentence of the first paragraph of Article 1 of Protocol No. 1 (see, among other authorities, Burdov v. Russia, no. 59498/00, § 40, ECHR 2002-III; Jasiūnienė v. Lithuania, no. 41510/98, § 45, 6 March 2003). 54. In the instant case the Court is therefore of the opinion that the impossibility for the applicant to obtain execution of his judgement for a period of four years constituted an interference with his right to the peaceful enjoyment of his possessions, within the meaning of the first paragraph of Article 1 of Protocol No. 1. 55. By failing to comply with the judgment of the Donetsk Garrison Military Court, the national authorities prevented the applicant, for a considerable period of time, from receiving in full the money to which he was entitled. The Government have not advanced any justification for this interference, and the Court considers that a lack of budget funds cannot justify such an omission. Accordingly there has also been a violation of Article 1 of Protocol No. 1.

2. A major problem in economic disputes is the assessment of the actions of the state authorities in the field of management in terms of the principle of proportionality. The following ECHR decisions are important to address these issues.

In the case of Ukraine-Tyumen v. Ukraine *(Application no. 22603/02)* ECHR held: 55. The Court reiterates that an interference with the peaceful enjoyment of possessions must strike a "fair balance" between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights (see, among other authorities, *Sporrong and Lönnroth v. Sweden*, judgment of 23 September 1982, Series A no. 52, p. 26, § 69). The concern to achieve this balance is reflected in the structure of Article 1 of Protocol No. 1 as a whole, including therefore the second sentence, which is to be read in the light of the general principle enunciated in the first sentence. In particular, there must be a reasonable relationship of proportionality between the means employed and the aim sought to be realised by any measure depriving a person of his

possessions (see *Pressos Compania Naviera S.A. and Others v. Belgium*, judgment of 20 November 1995, Series A no. 332, p. 23, § 38). 56. In determining whether this requirement is met, the Court recognises that the State enjoys a wide margin of appreciation with regard both to choosing how the measures are to be implements and to ascertaining whether the consequences of implementation are justified in the general interest for the purpose of achieving the object of the law in question. Nevertheless, the Court cannot fail to exercise its power of review and must determine whether the requisite balance was maintained in a manner consonant with the applicant's right to "the peaceful enjoyment of [its] possessions", within the meaning of the first sentence of Article 1 of Protocol No. 1 (see *Zvolský and Zvolská v. the Czech Republic*, no. 46129/99, § 69, ECHR 2002-IX).

3. Many cases in the area of economic analysis based on public interest grounds as recognition of the transaction null and legal grounds for intervention in economic activity.

The decisions of the European Court of Human Rights should be taken into consideration here.

In particular, in the case of Intersplav v. Ukraine (Application no. 803/02) ECHR held: 38. The Court reiterates that States have a wide margin of appreciation in determining what is in the public interest as the national legislature has a wide discretion in implementing social and economic policies. However, that margin of appreciation is not unlimited and its exercise is subject to review by the Convention institutions (see Lithgow and Others v. the United Kingdom, judgment of 8 July 1986, Series A no. 102, p. 50-51, §§ 121-22).

4. In the procedural activity of economic courts, there is often need to interpretate the laws. In this case, the judicial authorities can not, without justification of the reasons, change the established legal position. This is an element of predictability of laws.

That's why the decisions of the European Court of Human Rights concerning the stability of the interpretation of the law must be taken into account.

In particular, in the case of Serkov v. Ukraine (Application no. 39766/05) ECHR held: 36. The Court admits that it is primarily for the national authorities to interpret and apply domestic law. However, the Court is required to verify whether the way in which the domestic law is interpreted and applied produces consequences that are consistent with the principles of the Convention, as interpreted in the light of the Court's case-law (see Scordino v. Italy (no. 1) [GC], no. 36813/97, §§ 190 and 191, ECHR 2006-V). 39. The Court admits that there may indeed be cogent reasons why the guiding legal interpretations need to be revised. The Court itself, applying dynamic and evolutive approaches in interpreting the Convention, may depart, where necessary, from its previous interpretations, ensuring thereby the effectiveness and contemporariness of the Convention (see Vilho Eskelinen and Others v. Finland [GC], no. 63235/00, § 56, ECHR 2007-IV, and Scoppola v. Italy (no. 2) [GC], no. 10249/03, § 104, ECHR 2009-...). 40. However, the Court cannot discern any justification for the shift of legal interpretation the

applicant faced. In fact no reasons were given by the Supreme Court to explain the reinterpretation in question. Such a lack of transparency must have affected public confidence and trust in the law. In the circumstances of the present case the Court considers that the manner in which the domestic courts interpreted the relevant legal provisions undermined their foreseeability. 41. The Court further notes that the possibility of such divergent interpretations of the same legal provisions was essentially generated by the inappropriate state of domestic law on this issue. The rules contained in the Presidential Decree and the VAT Act gave unjustified leeway in interpreting the ways in which they could be correlated, as well as in understanding the exact scope and meaning of their requirements. 42. Accordingly, in the Court's opinion, the lack of the required foreseeability and clarity of the domestic law on such an important fiscal issue, producing opposing judicial interpretations, upset the requirement of "quality of law" under the Convention.

5. The practice of the ECtHR concerning the reasonable time-frame for dealing with cases is less relevant in the activity of economic courts of Ukraine. After all, the economic courts of Ukraine ensure the highest compliance with the terms of consideration of cases in comparison with other courts of Ukraine and other countries.

At the same time, issues of lengthy procedures for appealing and reviewing cases under newly discovered circumstances may be taken into account as cases of violation of reasonable time for review of cases and violation of the right to fair court.

In particular, it could be taken into account the case of ECHR Zheltyakov v. Ukraine (Application no. *4994/04*), where ECHR held: 62. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the complexity of the case and the conduct of the applicant and the relevant authorities (see, for instance, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII). 64. The Court considers that although the case might have been somewhat complicated by the examination of several claims, all of them having been eventually joined, that fact alone cannot explain the overall length of the proceedings. Nor does the conduct of the applicant, who somewhat delayed the proceedings (see paragraphs 19 and 33 above), explain such length. Indeed, the Court notes that the major delays were caused by the lengthy consideration of the cases by the first-instance courts and by their repeated adjournments of the hearings (see paragraphs 9, 10, 19, 25, 26, 29, 30, 32 and 33 above). It concludes that the responsibility for the protracted length of the proceedings rests with the State.

In practical terms, the application of ECHR rulings in the practice of economic courts of Ukraine is important for the provision of judicial acts of greater authority and predictability in the light of the prospects for economic development.