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APPLICATION TO THE EUROPEAN COURT OF HUMAN RIGHTS AS INTERNATIONAL LEGAL INSTRUMENT FOR PROTECTION OF UKRAINIAN STATE INTEREST

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This article is devoted to the characteristics of inter-State application to the European Court of Human Rights as a legal means of State's interest protection according to Article 33 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. This mechanism of protection of State's interest is applied to cases when one of the Member States violates its obligation under the named Convention. Particular attention in this article is paid to the recent inter-State applications submitted by Ukrainian Government to the European Court of Human Rights against the Russian Federation, namely, *Ukraine v. Russia*, *Ukraine v. Russia (II)*, *Ukraine v. Russia (III)*, *Ukraine v. Russia (IV)*. Brief factual background and main provisions of Convention that are claimed to be violated by the Russian Federation are outlined in this paper.

Keywords: inter-State application, European Court of Human Rights, legal measures of protection of State's interest, inter-State disputes, territorial integrity.

In terms of the conflict in the eastern part of Ukraine, the Government decided to defend interests of Ukraine and its people by available legal means, including inter-State applications to the European Court of Human Rights (hereinafter – the Court). This article is devoted to the study of international legal means of protection of States' interests in treaty bodies of the Council of Europe and to the characteristics of interstate applications filed by the Government of Ukraine to the Court concerning violation of certain provisions of the Convention by the Russian Federation. This paper mainly focused on disclosure of practical aspects of protection of Ukrainian national interests and rights of its population through existing legal mechanisms.

By ratifying European Convention on Human Rights and Fundamental Freedoms (hereinafter – the Convention) [1] Member States agreed to the compulsory jurisdiction of the European Commission of Human Rights to review inter-State applications filed against violators of the provisions of the Convention [2, p. 201]. Consequently, with the beginning of functioning of the Court, member States agreed on compulsory jurisdiction of this Court which operated to ensure compliance by Member States with the Convention and its Protocols.

Each Member State is part of the mechanism that guarantees collective human rights protection. Article 33 of the Convention prescribes the right of States to apply to the Court against violators of the provisions of the Convention with the aim of ensuring the implementation of the Convention and the general protection of public order in Europe. This right is not limited only to cases concerning protection of the rights of persons who are nationals of the State appealing to the Court. According to the Convention, State is entitled to apply concerning violations of the rights of a person who is not a citizen of any Member State, or even regarding violations of the rights of persons who are nationals of a defendant State. In fact, for the submission of inter-State application the presence of the threat that provisions of Convention

are likely to be affected by the State is enough. Hence, the presence of threat to any particular person is unnecessary [3, p. 64].

From theoretical analysis the right to inter-State application reminds *actio popularis*. The case of inter-State application does not require the presence of 'victims' status of the applicant State. If it is a case, the Court has broad *ratione personae* jurisdiction under article 33 of the Convention. When the Government complains against legislative or administrative practices of another State, assertion of the existence of a particular victim of Convention's violation is not necessary [4, p. 166-167]. In such circumstances there is sufficient probable violation of rights guaranteed by the Convention. The following example illustrates this position: in the case of *Ireland v. The United Kingdom* in 1978 the Court found that 'violation' is a result of the existence of the law which introduces, directs or permits measures that do not meet the requirements of the protection of rights and freedoms ..." [5]. In 2001, in the case of *Cyprus v. Turkey* the Court again applied and maintained this position [6].

Member States rare resort to inter-State applications due to political risks. Inter-State application to the Court is not a common practice and usually concerns the large-scale violations of the Convention that occur, for example, due to conflict between States or implementation by a particular State of policy that is clearly discriminatory against citizens of another State. That is why until 2014 only 16 inter-State applications were submitted to the Court.

Defending the interests of the State and its people, according to Article 33 of the Convention 'Inter-State Cases', the Government of Ukraine was lodged with the Court several inter-State applications: 'Ukraine v. Russia' (application N 20958/14), 'Ukraine v. Russia (II)' (application N 43800/14), 'Ukraine v. Russia (III)' (application N 49537/14) and 'Ukraine v. Russia (IV)' (application N 42410/15).

Along with lodging applications to the Court, Ukrainian Government referred for the purpose

to take all possible and available means of protection, also appealed to the Court under Rule 39 of the Rules of the Court to grant instructions to the Government of the Russian Federation to refrain from any actions that could violate the rights of Ukrainian citizens. According to the Rule 392 of the Rules of the Court, the Chamber or, where appropriate, the President of the Section or a duty judge appointed pursuant to paragraph 4 of this Rule may, at the request of a party or of any other person concerned, or of their own motion, indicate to the parties any interim measure which they consider should be adopted in the interests of the parties or of the proper conduct of the proceedings. From the cited above Rule, the interim measures are obligatory and shall be taken immediately by the State.

In inter-State applications lodged by the Government of Ukraine, the Court granted the Government of Ukraine and the Russian Federation privacy guidelines, so it is possible to outline only the summary and short key points of applications.

Referring to brief discussion of essential points of each inter-State application of Ukraine against the Russian Federation, it is necessary to point out that now there are only three inter-State applications from Ukraine in the Court, namely, 'Ukraine v. Russia' (application N 20958/14), 'Ukraine v. Russia (II)' (application N 43800/14) and 'Ukraine v. Russia (IV)' (application N 42410/15).

The application 'Ukraine v. Russia' is the first application lodged by the Government of Ukraine on the basis of Article 33 of the Convention for the purpose to protect its people from the aggression of the Russian Federation in view of the events that began in the Autonomous Republic of Crimea from late February 2014 and is continuing to this day. This inter-State application was filed March 13, 2014 to prevent and avoid violations by the Russian Federation of the rights of persons permanently residing and temporarily staying in the Crimea and in Ukraine as a whole. This application is the most voluminous by the number of complaints. The Court accepted the application and this case gained a status of priority pursuant to Article 41 of the Rules of the Court.

The request of the Government of Ukraine was granted by the Court and pursuant to Rule 39 of the Rules of the Court guidance to the Government of Russian Federation and Ukraine was granted, namely, to refrain from taking any measures, including military action, by which treaty rights of the civilian population could be affected, including the creation of risk to lives and health, and obliged both States to comply with obligations under the Convention, particularly Article 2 and Article 3.

Later, on June 12, 2014 and November 20, 2014 the Government of Ukraine has sent to the Court a supplement to the filed on March 13, 2014 inter-State application concerning human rights violations caused by terrorist activities of illegal armed groups in the Donetsk and Lugansk regions.

In filed on June 13, 2014 inter-State application 'Ukraine v. Russia' and amendments thereto, Ukraine claims violation by the Russian Federation of the rights guaranteed by Articles 2 ('right to life'). In this inter-State application it is mentioned, in particular, the mass deaths of Ukrainian mili-

tary and the civilian population as a result of illegal activity of special services of the Russian Federation on the Crimean peninsula, the separatists controlled by Russia and Russian military servants. Also it claims violation by the Russian Federation of the rights guaranteed by Articles 3 ('Prohibition of torture'), 5 ('right to liberty and security of person'), 6 ('right to a fair Court'), 8 ('Right to respect for private and family life'), 9 ('Freedom of thought, conscience and religion'), 10 ('Freedom of expression'), 11 ('Freedom of assembly and association') Convention Article 14 ('Prohibition of discrimination') of the Convention in conjunction with Articles 3, 8, 9, 10, 11 of the Convention and Article 1 ('Protection of property rights') of the First Protocol, Article 2 ('Freedom of movement') of the Fourth Protocol to the Convention.

On February, 26, 2014 when the Russian Federation started to take action aimed at establishing control over the entire territory of the Autonomous Republic of Crimea, which is an integral part of Ukraine, cases of grow massive violations of the rights of the civilian population of the Crimean peninsula, guaranteed by Article 3 ('Prohibition of Torture') have emerged. It was emphasized on the use of ill-treatment to people living in the Crimea and the Donetsk and Lugansk regions.

Government of Ukraine in the inter-State application noted on numerous facts of illegal arbitrary arrests and subsequent detention of citizens of Ukraine and foreigners on the Crimean peninsula and the Donetsk and Lugansk regions with the participation of Russian military and illegal armed groups. Among those detained and illegally imprisoned were different categories of persons, namely the representatives of civilians, journalists, both domestic and foreign, Ukrainian military, who were interrogated and subjected to physical violence and psychological pressure. Everything mentioned above constitute breach of the rights guaranteed by Article 5 ('Right to liberty and security') of the Convention.

In inter-State application Government of Ukraine stressed attention on violations by the Russian Federation of Article 6 ('Right to a fair trial') of the Convention due to the fact that the activities of national law enforcement and judicial authorities in the occupied territory of Crimea have been temporarily stopped. There have been cases of massive on granting preventive measures in respect of persons suspected in committing crimes, sentencing and other decisions under the criminal procedural law of the Russian Federation. It was emphasized that the functioning of courts on the Crimean peninsula, which are led by material and procedural legislation of the Russian Federation, has no legal basis and that such activities are contrary to Ukrainian legislation that applies and shall be effective in the Autonomous Republic of Crimea as an integral part Ukraine.

As for violations by the Russian Federation of rights on the Crimean peninsula guaranteed by Article 8 ('The right to respect for private and family life') of the Convention, the forced change of Ukrainian citizenship have took place for persons living on the Crimean peninsula as well as unauthorized, illegal house search, including Crimean Tatar population.

The following facts evidence violation of Article 10 ('Freedom of expression') of Convention, namely: massive cases of attacks, kidnappings of journalists, seizure of their photo and video equipment by the military under the supervision of the Russia Federation that created obstacles and impossibility for journalists to exercise their professional activities, and suspension of broadcasting of the Ukrainian TV channels and replacement them by Russian TV channels. At the time of submission by the Government of Ukraine of supplements to inter-State application, as on June, 12, 2014, cases of violations of the rights of Crimean Tatars, guaranteed by Article 11 ('Freedom of assembly and association') of the Convention, took place.

After the Russian Federation occupied Crimean peninsula there has been massive appointment of representative of Crimean Tatar to prosecutors and police offices of the Autonomous Republic of Crimea for interrogation. Initiation of criminal proceedings took place against Crimean Tatar. Broadcast of the Crimean Tatar TV channels and programs with representatives of the Crimean Tatar people have been prohibited as well as any action, dates and events that are historically important for Crimean Tatar. After annexation of Crimean peninsula by the Russia Federation more than 7,000 thousand Crimean Tatars were forced to leave this territory because of persecution and pressure on them. In general, it is a violation by the Russian Federation of Article 14 ('Prohibition of discrimination') of the Convention in conjunction with Articles 3 ('Prohibition of torture'), 8 ('Right to respect for private and family life of the Convention'), 9 ('Freedom of thought, conscience and religion'), 10 ('Freedom of expression'), 11 ('Freedom of assembly and association') of the Convention.

Furthermore, in addition to statements from inter-State application date June, 12, 2014 Ukraine declared that violation of Article 1 of Protocol 1 had place due to the "nationalization" by the Russian Federation of Ukrainian State property, located in the Autonomous Republic of Crimea. Submitted supplement contains, among others, the list of more than four thousand of entities which property was "nationalized" by the authorities of the Russian Federation.

'Ukraine against Russia (II)' is another inter-State application submitted by the Government of Ukraine and relates to the facts of the abduction of children by illegal armed groups 'DNR' and 'LNR'. For the first time the Government of Ukraine informed the Court about these facts on June, 13, 2014, when it became known that on June 12, 2014 terrorist of self-proclaimed "DNR" kidnapped orphans whose teachers wanted to take them out from the zone of the antiterrorist operation.

June 13, 2014 **through collaboration** between the Ministry of Justice and Ministry of Foreign Affairs of Ukraine the Government filed under Rule 39 of the Rules of the Court application on interim measures addressed to the Government of the Russian Federation. This application asked to order to the Russian Federation to refrain from taking any measures that can violate rights of orphans, including risk to their life and health, namely Articles 2 and 3 of the Convention. It was also claimed in this application to provide access of represen-

tatives of Ukrainian state bodies to abducted children while they are in the Russian Federation, and immediately return them to Ukraine. The Court granted to the Russian Federation instructions to return immediately children to Ukraine on the basis of Rule 39 of the Rules of the Court.

August 22, 2014 the Government of Ukraine submitted to the Court inter-State application against the Russian Federation 'Ukraine against Russia (II)' on cases as of June, 12, July, 26 and August, 8, 2014 of abduction orphans and children deprived parental care and adults who accompanied them in the Donetsk and Lugansk regions, and attempts of their illegal movement or actual movement them in the territory of Russian Federation. In inter-State application the Government of Ukraine stated violation by the Russian Federation of children and adults rights guaranteed by Articles 2 ('Right to life'), 3 ('Prohibition of torture'), 5 ('Right to liberty and security of person'), 6 ('Law to a fair trial'), 8 ('The right to respect for private and family life') of the Convention and Article 2 of the Fourth Protocol to the Convention, which guarantees the right to freedom of movement with the territory of the State.

November, 25, 2014 the Court communicated to the Russian Federation cases 'Ukraine against Ukraine' and 'Ukraine against Russia (II)' with the requirement to comment on the admissibility of the application prior March, 25, 2015. However, in March, 2015 the Government of the Russian Federation informed the Court about the need for additional time to prepare appropriate comments. Accordingly, the Court had set a new deadline for submission of comments on the admissibility of the case, namely the September, 25, 2015 based on the request of the Russia Federation dated March, 13, 2015. Later, on September, 10, 2015 the Court informed the Government of Ukraine about the request of the Russian Federation for additional time to prepare the comments on admissibility of inter-State application 'Ukraine against Russia (I)' and 'Ukraine against Russia (II)'. The Court agreed on this request of the Russian Federation and granted the deadline for submission on December, 31, 2015.

In addition the Government of Ukraine and **Ukrainian Helsinki Human Rights Union** simultaneously submitted to the Court under Rule 39 of the Rules of the Court application for the benefit of the son of the leader of the Crimean Tatars, social and political activist, Mustafa Dzhemilev, Haysera Dzhemilev, whose life and health is in danger.

The Court upon consideration of the application that was filed on July, 9, 2014, opened the proceedings 'Ukraine against Russia (III)' and July, 10, 2014 pursuant to Rule 39 of the Rules of the Court instructed the Government of Russia and Ukraine to ensure respect for the Convention rights of Haysera Dzhemileva, including respect for his safety and the right to legal aid.

Taking into account continuing violations by the Russian Federation of human rights of Haysera Dzhemileva guaranteed by Articles 2 ('Right to life'), 3 ('Prohibition of torture'), 5 ('Right to liberty and security of person') of the Convention, and taking a threat to its illegal export from Ukraine to the Russian Federation, September,

21, 2014 the Government of Ukraine repeatedly appealed to the Court requesting the application of Rule 39 of the Rules of the Court in the case 'Ukraine against Russia (III)'. In response, the Court informed that the Russian Federation was provided with guidance on the need for compliance with the Convention rights of Haysera Dzhemileva. Haysera Dzhemileva was illegally delivered to the Russian Federation, where he was illegally detained in jail.

In May 2015, in response to a letter from the Court, which reported that applications of the Government in 'Ukraine against Russia (III)' is identical to the application filed by defense in the interests Haysera Dzhemileva, the Government of Ukraine informed the Court that he wishes to act as a third party on the side Haysera Dzhemileva during the consideration by the Court of his individual application. This action does not mean that the Government refused the position to protect the interests of Mr. Haysera Dzhemilova, as the steps were designed to speed up its consideration of individual application by the Court, given that consideration of applications submitted under Article 33 of the Convention is longer.

On September, 24, 2015 at the official website of the Court the decision of the Court on application 'Ukraine against Russia (III)' N 49537/14 was published. In this decision it was stated that this case was removed from the Registry of the Court.

On August, 26, 2015 the Government of Ukraine prepared and submitted to the Court new inter-State application against the Russian Federation. New application relates to the claims of Ukrainian Government on violation by the Russian Federation of the rights of people living in the territory of Donetsk and Lugansk regions granted by the Convention, namely:

- Article 1 ('Obligation to respect Human Rights');
- Article 2 ('Right to life');
- Article 3 ('Prohibition of torture');
- Article 5 ('Right to liberty and security');

Article 6 ('Right to a fair trial');

Article 8 ('Right to respect for private and family life');

Article 9 ('Freedom of thought, conscience and religion');

Article 10 ('Freedom of expression');

Article 11 ('Freedom of assembly and association');

Article 18 ('Limitation on use of restrictions on rights');

Article 1 ('Protection of property') of the First Protocol to the Convention;

Article 2 ('Right to education') of the First Protocol to the Convention;

Article 3 ('Right to free elections') of the First Protocol to the Convention;

Article 14 ('Prohibition of discrimination') of the Convention in connection with Articles 3, 5, 6, 8, 9, 10, 11 of the Convention, Articles 1, 2, 3 of the First Protocol to the Convention and Article 1 ('General prohibition of discrimination') of the Twelfth Protocol to the Convention.

In this regard the Government of Ukraine highlights not only on the factual continuing violation of the relevant rights but also stresses attention on new methods of rights' violation, severity of violation and systematic character of human rights' violation by the state bodies of the Russian Federation on occupied territories of Donbas region.

To sum up, it is necessary to emphasize that the Government Ukraine continues further daily work to ensure protection of human rights in occupied by the Russian Federation territory of the Crimea, Donetsk and Lugansk regions. Ukraine was one of the few states that requested the conventional mechanism of inter-State application to the Court. The Government of Ukraine continues to achieve maximum efficiency in the work on collecting evidence on violations by the Russian Federation of citizens' rights to present its position in relevant inter-State applications to the European Court of Human Rights.

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ЗВЕРНЕННЯ ДО ЄВРОПЕЙСЬКОГО СУДУ З ПРАВ ЛЮДИНИ, ЯК МІЖНАРОДНО-ПРАВОВИЙ МЕХАНІЗМ ЗАХИСТУ ДЕРЖАВНИХ ІНТЕРЕСІВ УКРАЇНИ

Анотація

Дана стаття присвячена характеристиці міждержавних заяв до Європейського суду з прав людини, як правового засобу захисту державних інтересів відповідно до статті 33 Європейської конвенції з захисту прав людини та основоположних свобод. Цей механізм захисту державних інтересів застосовується до випадків порушення однією з держав-членів положень зазначеної Конвенції. Особливу увагу у цій статті приділено нещодавнім міждержавним заявам Уряду України до Європейського суду з прав людини, поданим проти Російської Федерації, а саме: Україна проти Росії, Україна проти Росії (II), Україна проти Росії (III), Україна проти Росії (IV). Короткий аналіз фактів справ та положень Конвенції, на порушення яких посилається у зазначених справах Уряд України, також викладено у даній роботі.

Ключові слова: міждержавні заяви, Європейський суд з прав людини, правові засоби захисту державних інтересів, міждержавні спори, територіальна цілісність.

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ОБРАЩЕНИЕ В ЕВРОПЕЙСКИЙ СУД ПО ПРАВАМ ЧЕЛОВЕКА, КАК МЕЖДУНАРОДНО-ПРАВОВОЙ МЕХАНИЗМ ЗАЩИТЫ ГОСУДАРСТВЕННЫХ ИНТЕРЕСОВ УКРАИНЫ

Аннотация

Данная статья посвящена характеристике межгосударственных заявлений в Европейский суд по правам человека, как правового средства защиты интересов государства в соответствии со статьей 33 Европейская конвенция по защите прав человека и основоположных свобод. Этот механизм защиты государственных интересов применяется в случаях нарушения одним из государств-участников положений указанной Конвенции. Особое внимание в данной работе уделено недавним межгосударственным заявлениям Правительства Украины в Европейский суд по правам человека, поданным против Российской Федерации, а именно: Украина против России, Украина против России (II), Украина против России (III), Украина против России (IV). Краткий анализ фактов дел и положений Конвенции, на нарушение которых ссылается Правительство Украины, также изложено в данной статье.

Ключевые слова: межгосударственные заявления, Европейский суд по правам человека, правовые средства защиты государственных интересов, межгосударственные споры, территориальная целостность.