

# **CRIMINAL LIABILITY FOR VIOLATIONS OF THE EUROPEAN COURT OF HUMAN RIGHTS DECISIONS**

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The statutory provision of Article 55 of the Constitution of Ukraine on the right of everyone "to apply for the protection of their rights and freedoms to the relevant international judicial institutions or to the relevant bodies of international organizations where Ukraine is a party" [5] is of urgent issue nowadays as Ukraine wants to meet the international and European standards in the field of human rights and freedoms.

The Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as the Convention) [2], ratified by Ukraine July, 17 in 1997, not only proclaimed fundamental rights and freedoms, but also developed a special legal mechanism for their protection: the European Court of Human Rights.

The binding nature of the European Court of Human Rights decisions in criminal law of Ukraine consists of the following: firstly, according to Article 1 of the Convention, Ukraine has undertaken the responsibility to ensure the rights and freedoms of every person under its jurisdiction, and secondly, according to Article 32 of the Convention, the decisions of the European Court of Human Rights contain an official interpretation of the conventions that are considered to be mandatory in criminal law.

The influence of the decisions of the European Court of Human Rights on Ukrainian criminal law is also testified by the fact that the state, against which a decision has been made of violating the provisions of the Convention, takes measures to eliminate such violations by amending the criminal legislation and law enforcement practice. The examples of such practice can be traced in the amendments of the penal legislations of England, Belgium, Italy, France, Switzerland and other European states in accordance with the decisions of the European Court of Human Rights.

The problems of criminal liability for non-compliance with decisions of the European Court have been studied by many scholars. The most significant works have been done by V.N. Bibilo, T.N. Dobrovolskaya, O.V. Constantnyi, V.N. Kudryavtsev, M.V. Kuchin, A.V. Naumov, A.O. Selivanov, N.S. Tagantsev, M.D. Shargorodsky and others.

The normative aspect of the principles of justice testifies that in the objective form they are the norms of law, the observance of which is obligatory and provided by the power of the state. In addition, these principles can be expressed in a separate norm, and "flow" from several legal norms, each of which formulates only a separate component of a specific principle. On this basis, T.N. Dobrovolskaya notes that the principles of justice can receive dual consolidation [3]. An example of such normative statement is precisely the principle of binding judgments enshrined in Article 124 of the Constitution of Ukraine, which declares that "judicial decisions ... are mandatory for execution throughout the territory of Ukraine" and Article 129 of the Constitution of Ukraine that makes the court decisions binding, according to the basic principles of the court proceedings.

According to Article 17 of the Law of Ukraine "On the implementation of decisions and application of the European Court of Human Rights practice" dated February 23, 2006 [10] while considering cases, courts are bound to apply the Convention and the European Court of Justice as a source of law. Consequently, this means that the practice of the European Court has primarily legal significance and is a direct regulator of public relations. In addition, for its proper implementation, it is not necessary to expect introducing of other normative legal acts, and judicial authorities can not refuse their application with reference to the necessity of adoption of some additional "specifying" rules of law.

O. Konstantniy states that complete decision implementation of the European Court of Justice should be based on ideological and legal value [5] Indeed, under the implementation of judgment of the European Court of Justice, one should understand not only the payment of compensation, but also the State adoption of individual measures in order to eliminate a specific violation imposed by the European Court of

Justice as well as the general measures aimed at eliminating the grounds for the receipt of the European Court of the same statements against Ukraine in the future perspectives [6].

According to Article 382 of the Ukrainian Criminal Code (hereinafter referred to as the "UCC") intentional non-execution of a judgment, decision, decree, court rulings which have become legally binding, or impediment to their execution - shall be punishable by a fine of five hundred to one thousand non-taxable minimum of citizen incomes or imprisonment for a term up to three years; the same actions committed by an official - shall be punishable by a fine of seven hundred and fifty to one thousand non-taxable minimum incomes, or imprisonment for a term up to five years, with the deprivation of the right to occupy certain posts or engage in certain activities for a term up to three years; actions foreseen by part one or two of this Article , committed by an official who has responsible or particulally responsible post, or by a person previously convicted for a crime envisaged by this Article or if they caused significant damage to the rights and freedoms of citizens, state, public interests or interests of legal entity - is punishable by imprisonment for a term of three to eight years with the deprivation of the right to occupy certain posts or engage in certain activities for a term up to three years; intentional non-performance by the official of the European Court of Human Rights decision - is punishable by imprisonment for a term of three to eight years, with the deprivation of the right to occupy certain posts or engage in certain activities for a term up to three years [6].

The analysis of the sanctions chapter 1-3 Article 382 of the UCC testifies that these crimes are considered by the legislator as acts of a small or medium gravity, as well as grave crimes. It allows a legislator to apply punishments which are alternatives to deprivation of liberty: to fine for a great variety of violations, to restrict liberty and develop not single but alternative sanctions that give the opportunity to choose the most appropriate punishment, taking into account the specific features of the crime and the person who committed it. However, the question arises: why is a punishment for a deliberate non-compliance with the European Court of Human Rights decisions by an official more severe than a deliberate nonfulfillment of a sentence, decree or court

orders? After all, the principle of binding judgments of national courts is one of the constitutional principles of legal proceedings, which is set in Articles 124, 129 of the Constitution of Ukraine and has the highest legal force. Moreover, the legal consequences of non-enforcement of decisions of national courts for individuals and legal entities are the same as in the case of non-enforcement of judgments of the European Court of Human Rights.

One of the forms of implementation of court decisions is compulsory enforcement which is applied in the case when the obligated person avoids the voluntary execution of the decision.

Based on the comprehensive study of the significance of the decisions of the European Court of Human Rights in the norms of the General and Special Parts of the UCC the following conclusions have been made:

1. Recognition of the jurisdiction of the European Court of Human Rights by Ukraine means, firstly, the recognition in the national criminal law of the binding force of the Court's decisions, and secondly, the Court's ruling applies to all States parties to the Convention for the Protection of Human Rights and Fundamental Freedoms; thirdly, the Court is empowered to determine the extent of the rights and obligations that are entrusted to the State.

2. Based on the principle of binding judgments of the European Court of Human Rights in national criminal law, it should be noted that the Court's decisions are normative. According to Article 32 of the Convention for the Protection of Human Rights and Fundamental Freedoms, the jurisdiction of the European Court of Human Rights extends to all matters specified in the Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols.

3. Taking into account all mentioned above, we propose the disposition of the first, second and third parts of Article 382 of the UCC in the following way:

"Article 382. Failure to comply with a court decision

1. Deliberate non-execution of a judgment, decision, decree, court ruling, which became legally binding, or impediment to their execution shall be punishable by a fine

of five hundred to one thousand non-taxable minimum incomes, or imprisonment for a term up to three years.

2. The same actions committed by an official shall be punishable by a fine of 700 to one thousand non-taxable minimum incomes, or imprisonment for a term up to five years, with the deprivation of the right to occupy certain posts or engage in certain activities for a term up to three years.

3. The same actions committed by an official who holds a responsible or particularly responsible post or by a person previously convicted for a crime envisaged by this article or if they caused significant damage to the rights and freedoms of citizens, public or public interests or legal interests protected by law as well as deliberate failure by the official to comply with the judgment of the European Court of Human Rights, - shall be punishable by restraint of liberty for a term up to five years or by deprivation of liberty for the same term, with the deprivation of the right to occupy certain posts or engage in certain activities for a term up to three years. "

Part 4 of Article 382 of the UCC is proposed to be excluded from Article 38 of UCC

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the Ukrainian Criminal Code