Новини міжнародного судочинства

Note from the editor[1]

January 2013 had been an important moment for the Court and its future reform. The Parliamentary Assembly of the Council of Europe had been discussing future reform of the Court, having elaborated two interesting documents: "Draft Protocol No. 15 amending the Convention for Protection of Human Rights and Fundamental Freedoms" and report on "Ensuring the Viability of the Strasbourg Court: Structural Deficiencies in the State Parties". Both documents of the PACE attracted a lot of media attention and had been widely discussed among legal professionals. In particular, the Draft Protocol No. 15 had suggested an important amendment to Article 35 of the Convention, suggesting that the application should be lodged with the Court "within a period of four months". The Report prepared by Mr S. Kivalov dealt with a number of issues relating to pilot judgment procedure and the need to reform structural deficiencies existing within the State-parties in order to have more successful enforcement of the judgments of the Strasbourg Court. In addition to that the first months of 2013 showed a number of developments in the overall case-load of the European Court of Human Rights. These developments were particularly visible with respect to the case-load relating to Ukraine, the country which again had an increase in the number of incoming cases[2] as well as in the importance and complexity of cases decided by the Court.

For instance, on 9 January 2013, the Court adopted its judgment in the case of *Oleksandr Volkov v. Ukraine* (application no. 21722/11*)*, having established, among many other elements, that the applicant was dismissed from his position of a judge of the Supreme Court in breach of the requirements of Article 6 paragraph 1 (i.e. in the absence of fair hearing). The judgment discusses structural deficiencies in the Ukrainian judicial system, raising issues of independence of the Ukrainian judiciary, arbitrary disciplinary proceedings concerning acting judges and most importantly the roles of Parliament and the Higher Council of Justice in the procedures of judicial appointments, disciplinary proceedings and their dismissals. Most interestingly, the Court ordered the State to reinstate the applicant in his position of the Supreme Court judge, acting under Article 46 of the European Convention on Human Rights. This judgment is not yet final, but would definitely be of interest for legal practitioners, academics and researches into the European Court's jurisprudence. Thus, we would most probably seek to discuss this judgment in a wider context of requirements of independence of the Ukrainian judiciary and the most recent cooperation between

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[2]. Ukraine had 10,500 cases pending before the Court (8,3% of the overall Court's workload) as in January 2013. The workload did not decline notwithstanding the sharp increase in the productivity of the Court in relation to repetitive judgments (149% and 350 judgments) and applications declared inadmissible and disposed of administratively (65% and 6,500 applications and 1,100 applications disposed of administratively). Official statistics from web-site of the Court: http://www.echr.coe.int/ECHR/EN/Header/Reports+and+Statistics/Statistics/Statistical+data/.

the Council of Europe and the European Union with respect to Ukraine in this area. This would include discussion on the possible implications of the Court's jurisprudence on the required standards of independence and impartiality of the judiciary and its possible impact on the EU – Ukraine relations and the Association Treaty.

Other interesting complex cases concerning Ukraine adopted most recently (January - February 2013) included[3]:

- *Mosendz v. Ukraine* (application no. 52013/08), in which the European Court of Human Rights found two violations of Article 2 (right to life) and a violation of Article 13 (right to an effective remedy) of the European Convention on Human Rights in case that concerned the death of the military serviceman, while he was on guard duty, during his mandatory military service. The Court discussed issues of *didivschyna* in the Ukrainian army;
- *Muta v. Ukraine* (application no. 37246/06), which concerned lack of effective investigation under Article 3 of the Convention (prohibition of ill-treatment) into the circumstance of infliction of bodily injuries on an 11-years old boy, the applicant, who went blind in one eye as a result of having a stone thrown at him by a youth during a dispute ;
- *Prynda v. Ukraine* (application no. 10904/05), which concerned Article 2 complaints (right to life) as to lack of effective investigation into the death of the applicants' son (the applicant's son had been hit and killed by a car and the circumstances of his death were not properly and timely investigated by the authorities) ;
- *Shapovalov v. Ukraine* (application no. 45835/05), a case brought by a civil rights activist who alleged that he was denied access to information in the course of 2004 presidential elections. The Court established a breach of Article 10 of the Convention in that respect, having noted the important aspect of access to information in a democratic society ;
- *Chabrowski v. Ukraine* (application no. 61680/10), in which the applicant a Polish national, complained about the failure of the Ukrainian State to enforce a judicial decision on returning his abducted child to Poland. In this case the Court established *inter alia* a breach of Article 8 of the Convention with respect to failure to respect the applicant's family life ;
- *Karabet and Others v. Ukraine* (applications nos. 38906/07 and 52025/07), in which the Court dealt with complaints lodged by eighteen Ukrainian nationals and concerned their ill-treatment during and after a search and security operation conducted in January 2007, following a hunger strike conducted by the prisoners of the Izyaslav Prison, where the applicants were serving their sentences at the time. The Court, most importantly, established breaches of Article 3 in respect

[3]. For more details as to these and other cases against Ukraine please see the Court's HUDOC database, section for the most recent judgments and decisions against Ukraine. http://hudoc.echr.coe.int .

of the applicants' ill-treatment, lack of medical treatment and assistance provided to them and lack of effective investigation in that respect[4];

- *Sizarev v. Ukraine* (application no. 17116/04), which concerned conditions of the applicant's detention at the Yevpatoriya Temporary Detention Facility and alleges that the authorities were responsible for his having been beaten up by a cellmate and for the lack of an effective investigation into the incident. The Court in this case also established breaches with respect to Article 3 of the Convention (conditions of the applicant's detention, his handcuffing and failure to protect him against prison violence). It also held that the applicant was held in detention contrary to the requirements of Article 5 of the Convention (right to liberty and security of a person).

The Court further adopted several judgments, acting in a composition of three judges, with respect to the longstanding unresolved issue of non-enforcement of final domestic judgments given against the State, State-owned or controlled legal entities, following a pilot judgment procedure launched by the *Yuriy Nikolayevich Ivanov* judgment on the issue of non-enforcement[5] (groups of cases of *Robota, Varava, Alpatov and Feya* in total amounting to more than 300 applications against Ukraine that were ruled on by judgments, in a simplified procedure, given by a committee of three judges).

As seen from the above, the Council of Europe bodies, including the Parliamentary Assembly of the Council of Europe and the Court itself remained very active during the first several months of 2013. In particular, the Court, having adopted quite a number of cases of non-repetitive and complex nature, dealt with a number of cases of "well-established" and "repetitive" nature. Several interesting cases with respect to Ukraine will be discussed in next issues of the column. Nevertheless, the column of the present issue, based on numerous requests for this information from the readers, would concern the eternal discussion on the status of the Court's case-law and its hierarchy, discussing them from theoretical and the practical points of view. Wishing you a pleasant and enjoyable reading!

Regards,

Pavlo Pushkar, PhD

[4]. This case raised issues similar to those discussed in the case of *Druzenko and Others v. Ukraine*, an application brought by prisoners of Zamkova Prison no. 58 in Izyaslav. In that case the Court established, as a result of a fact-finding mission, that the applicants were ill-treated as a result of a special police forces training in that Prison.

[5]. *Yuriy Nikolayevich Ivanov v. Ukraine*, no. 40450/04, 15 October 2009.