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## Teisės aktualijos

# CRITERIA FOR THE COURT'S COMPLIANCE WITH THE OBLIGATION TO PROVIDE JUSTIFICATION OF ITS DECISIONS

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*The article aims to identify the criteria of 'the court's compliance with the obligation to provide justification of its decisions. The following criteria have been identified: a court accepted the party's (parties') argument that has the following features: is concrete; is relevant; is appropriate; in case of court's refusal to accept the evidence provided by the party (parties), the court provides detailed and compelling reasons for this refusal listed in its decision document; the evidence was admitted in a fair way; the evidence was examined in a fair way; implications of evidence examination and application of judicial norms are in compliance with CPHRFF; the procedural decision-making is fair.*

Article 3 of the Constitution of Ukraine states that a person, his / her life and health, honor and dignity, immunity and security are to be recognized as the highest social value in Ukraine. Ensuring and securing the human rights and liberties of the citizen is the key priority of the state[1]. Under chapter 3 of Article 55 of the Constitution of Ukraine everyone, after having exhausted all the means of national legal protection, has the right to appeal to appropriate international judicial institutions or to appropriate bodies of international organizations, of which Ukraine is a member or a participant, for protection of their own rights and freedoms.

'It is a court that plays an effective role in and is particularly responsible for the protection of the human rights and freedoms of the citizen', as O. Kychunska points out[2]. The Court's decision, as the most important act of justice, is aimed to secure the protection of the human rights and freedoms guaranteed by the Constitution of Ukraine, and to secure the fulfillment of the principle of rule of law enshrined in the Constitution of Ukraine. In this regard courts have to comply strictly with requirements of lawfulness and justification as to the decision on the case[3].

At the same time, cases against Ukraine examined by the European Court of Human Rights (from now on – ECtHR) for the period of time from 2006 to September of 2015, provide the evidence of

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[1] Constitution of Ukraine adopted at the Fifth Session of the Verkhovna Rada of Ukraine on June 28, 1996 № 254k/96-VR. *Supreme Council of Ukraine*, 1996, № 30, p. 141.

[2] КУЙБІДА, Р.; СИРОЇД, О. Посібник із написання су дових рішень. К.: 'Дрім Арт', 2013, с. 8.

[3] Про судове рішення у цивільній справі: Пленум Верховного суду України: Постанова від 18 грудня 2009 р. N 14 [Електронний ресурс]. *Верховна Рада України*. Режим доступу: <http://zakon4.rada.gov.ua/laws/show/v0014700-09>.

a growing number of decisions adopted by the courts of Ukraine that are not in compliance with the requirements of justification[4]. Accordingly, ECtHR upholds violations made by Ukraine of the para 1 Chapter 6 of Convention for the Protection of Human Rights and Fundamental Freedoms (from now on – CPHRFF).

It is due to the shortcomings of the current legislation of Ukraine and deficiencies in the practice of its application (para 24 of the ECtHR decision on the case of 'Pronin against Ukraine' from 18 of July 2006[5], para 18 the ECtHR decision on the case of 'Bogatova against Ukraine' from 7 of October 2010[6]), and also, as noted by the courts of Ukraine, 'to ambiguous application of the provisions of CPHRFF, decision of the European Court of Human Rights, as a part of the national legislation of Ukraine according to the provisions of Article 9 of the Constitution of Ukraine by national courts'[7].

In constitutional law the necessity to investigate the content of the court's obligation regarding the justification of its decision is caused by pressing social needs. Some aspects of the investigated topic have been reflected upon in the works of both national and foreign researches. However, no study has been done on the criteria of the court's compliance with its obligation to provide justification for its decisions.

Above mentioned proves that the topic that has been chosen for this study is relevant and important to investigate.

The article aims to identify the criteria of the court's commitment to comply with its duty to provide justification for its decisions.

According to V. Kravchyk, the justification of the court's decision defines its inner quality, and is the requirement of the formal aspect of decision[8]. The decision can be considered justified if a court, when adopting it, designated all the circumstances of the case that are related to the subject being proven, supported them with the evidence check and reached a conclusion that is reasonable regarding those aspects[9]. O. Shumanovuch, in his dissertation, points out that, depending on the types of relationships that exist between the sides, the set of legal facts that has to be investigated will differ[10]. According to the ECtHR practice, which reflects a principle of proper judicature, courts and bodies that resolve disputes have to outline accurately the grounds on which the decision they are adopting is being based on. The scope of this duty may vary depending on the character of the decision itself and should be determined by taking into account the circumstances of the particular case (para 26 ECtHR decision on the case of 'Garcia Rooys against Spain' from 21 of January 1999[11]).

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[4] European Court of Human Rights: Case-Law [Електронний ресурс]. *Європейський суд з прав людини*. Режим доступу: <http://echr.coe.int/Pages/home.aspx?p=caselaw&c=>.

[5] Рішення Європейського суду з прав людини у справі 'Проніна проти України' від 18 липня 2006 р. [Електронний ресурс]. *Верховна Рада України*. Режим доступу: <http://zakon4.rada.gov.ua/laws/show/974_096>.

[6] Рішення Європейського суду з прав людини у справі 'Богатова проти України' від 7 жовтня 2010 р. [Електронний ресурс]. *Верховна Рада України*. Режим доступу: <http://zakon2.rada.gov.ua/laws/show/974_670>.

[7] Вивченя та узагальнення практики застосування окружними судами та місцевими загальними судами як адміністративними судами округу Конвенції про захист прав людини та основоположних свобод 1950 року, практики Європейського суду з прав людини при вирішенні адміністративних справ впродовж 2010 року - першого півріччя 2011 року: Житомирський апеляційний адміністративний суд [Електронний ресурс]. *Верховна Рада України*. Режим доступу: http://protokol.com.ua/ua/zastosuvannya_rishen_evropeyskogo_sudu_z_prav_lyudini_v_sudoviy_praktitsi_problemi_interpretatsii/>; Інформаційний лист Вищого Адміністративного Суду України від 6 травня 2011 р. № 622/11/13-11 [Електронний ресурс]. *Вищий адміністративний суд України*. Режим доступу: <http://www.vasu.gov.ua/>.

[8] КРАВЧУК, В. М. *Науково-практичний коментар до Кодексу адміністративного судочинства України.* Харків: Фактор, 2011, с. 522.

[9] ТРУШ, М. Вимоги до судового рішення в адміністративній справі. *Вісник Львівського університету*. Серія юридична, 2013, випуск 58, с. 173.

[10] ЗАВОРОТЬКО, П. П. *Судове рішення*. К., 1971, с. 58.

[11] Рішення Європейського суду з прав людини у справі 'Гарсія Руїс проти Іспанії' від 21 січня 1999 р. [Електронний ресурс]. *Верховна Рада України*. Режим доступу: <http://zakon4.rada.gov.ua/laws/show/980_360>.

National researchers and practitioners reasonably state that the approach of Ukrainian lawmakers to the justification and motivation of the court's decisions is somewhat simplified and arbitrary[12]. ECtHR in its turn emphasizes: 'Despite the fact that Article 6 of CPHRFF guarantees the right to fair trial, no rules have been adopted there in regard to the eligibility of the proof neither to the method of its evaluation, that in first instance turns to be the subject of regulation of national legislation and national courts' (para 28 ECtHR decision on the case of 'Garcia Rooys against Spain'). Similarly, it is the responsibility of the national authorities, in particular the courts, to interpret the national law; ECtHR will not replace its own interpretation even in the absence of arbitrariness (para 47 ECtHR decision on the case of 'Mala against Ukraine' from 3 of July 2014[13]). Along with that, the practice of ECtHR shows that it may disagree with the interpretation of the national authorities' norms (ECtHR decision on the case of 'Shramik against Austria'[14], 'Rooys Matheos against Spain' etc) and has to verify the fairness of proceedings, including methods of proving the evidence and procedural decision making (para 38 ECtHR decision on the case of 'Taminnen against Finland' from 15 of June 2004[15]).

The principle of justice, enshrined in Article 6 of CPHRFF is violated when national courts ignore concrete, relevant and important pieces of evidence provided by a claimant (para 25 decision on the case of 'Pronin against Ukraine', and para 280 decision on the case of 'Nechuporchyk and Yonkalo against Ukraine' from 21 of April 2011[16]). ECtHR determines the importance of national authorities to provide detailed and compelling reasons for their refusal to accept the evidence provided by a claimant, particularly when such evidence is significant to the outcome of the proceedings (para 53 decision on the case of 'Mala against Ukraine', para 33 decision on the case of 'Vytztym against Austria' from 26 of July 2007[17]).

Thus, in the case of 'Bogatova against Ukraine' from 7 of October 2010, the claimant asserted that national courts did not provide the adequate justification for the decisions they made and did not consider her argument concerning the mismatch between the value of her retirement payments and the one required by the Constitution of Ukraine. The court determined that in the same way as in the case of 'Pronin against Ukraine', this time the national courts did not make any attempt to examine the claim from this point of view, despite the clear reference to that in front of each judicial body. To decide upon which actions of the national courts are the most appropriate regarding this argument does not belong to the ECtHR responsibilities.

Although, ECtHR states that one of the possible ways to react to the given argument of the claimant could have been to bring this question to the Constitutional Court, which in this way could have adopted the decision in accordance to the norms of pension legislation and the requirements of the Constitution. The national courts, by fully ignoring the arguments of the claimant, though they were specified, relevant and significant, fail to fulfill their obligations under para 1 the Article 6 of the CPHRFF (para 18).

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[12] ЦУВІНА, Т. Умотивованість рішень суду та право на суд у цивільному судочинстві [Електронний ресурс]. *Збірник наукових праць 'Проблеми законності'*. Режим доступу: <http://plaw.nlu.edu.ua/wp-content/uploads/2015 /05/205-214.pdf>.

[13] Рішення Європейського суду з прав людини у справі 'Мала проти України' від 3 липня 2014 р. [Електронний ресурс]. *Верховна Рада України*. Режим доступу: http://zakon4.rada.gov.ua/laws/show/974_a23>.

[14] Рішення Європейського суду з прав людини у справі 'Шрамік проти Австрії' [Електронний ресурс]. *Європейський суд з прав людини*. Режим доступу: <http:// http://www.echr.coe.int>.

[15] Рішення Європейського суду з прав людини у справі 'Таммінен проти Фінляндії' від 15 червня 2004 р. [Електронний ресурс]. *Європейський суд з прав людини*. Режим доступу: <http:// http://www.echr.coe.int>.

[16] Рішення Європейського суду з прав людини у справі 'Нечипорук і Йонкало проти України' від 21 квітня 2011 р. [Електронний ресурс]. *Верховна Рада України*. Режим доступу: <http://zakon2.rada.gov.ua/laws/show/974_683>.

[17] Рішення Європейського суду з прав людини у справі 'Вітцтум проти Австрії' від 26 липня 2007 р. [Електронний ресурс]. *Європейський суд з прав людини*. Режим доступу: <http:// http://www.echr.coe.int>.

In the case of 'Mala against Ukraine', ECtHR emphasizes that despite the fact that the argument of claimant as to accepting disadvantageous payment and her intention to appeal against it were not expressed clearly in a trial court, she continued to insist on this relevant and concrete question in her appeal. The Court of Appeal left it without examination, and by doing so violated the principle of law enforcement established by ECtHR practice. Appeal was also not discerned in the ruling of the Supreme Court of Ukraine which by its nature is more concise and formal considering its third level jurisdiction that is being applied to it, despite the fact that the Court of Cassation is empowered to review the justification of lower courts.

According to T. Tsyvinova, para 1 of the Article 6 of CPHRFF covers only the system of procedural guarantees and per se may never be applied to the results of case examination. ECtHR in its turn by analyzing if decisions made by national courts fulfill the requirements of legality and justification, would in fact acknowledge its status as a fourth instance of national courts, which is unacceptable[18]. Judges of ECtHR Ann Power-Ford, Ganna Yudkivska and Helena Ederblom in a joint dissenting opinion on the decision of ECtHR in the case of 'Mala against Ukraine' emphasize that 'Critics of the Court of Appeal on the fact that one of the main arguments of the claimant has not been discerned by it, may be interpreted as an exceeding of competences by ECtHR and its acting as a court of 'fourth instance' if the decision made does not seem to be arbitrary in a sense of full absence of justification'[19].

In the case of 'Golovko against Ukraine' from 1 of February 2007[20] the claimant complained about injustice and the procedural outcome in very general terms. Court denied as apparently unjustified the part of the appeal regarding that the claimant had an opportunity to provide all the necessary arguments to defend her interests during proceedings (para 44).

Although courts have a restricted power to adopt decisions concerning the choice of proof in a particular case and adding proof on the reliability of the parties allegations, these bodies are obliged to justify the grounds for their actions by outlining the motivation for those actions (para 36 decision on the case of 'Sooeminen against Finland' from 1 of July 2003[21]). One of the purposes of the justified decision is to demonstrate to the parties that they were heard.

Though, in the case of 'Kyznetsov and other against Russian Federation' from 11 of January 2007[22] national courts have rejected the evidence provided by the claimant referring to the fact it came from the 'stakeholders with certain interests' (para 38, 40). ECtHR determines that the claimants had repeatedly pointed out – in written forms sent to district and regional courts as well as orally – that the police officers, namely Mr Lozoviagin and Mr Vildanov, had recognized repeatedly the fact of giving the order to Mr Kyznetsov to inform gathered persons about the suspension of the meeting. In the decisions of the regional courts these claims were not evaluated and nothing was mentioned about the key question. Neither the district nor the regional courts provided justification for their rejection of the evidence provided by the claimants – witnesses of a conversation in which Mr Kyznetsov, the Head of the Commission and police officers participated, and who provided testimonies that were not in contradiction with each other on the subject of the case.

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[18] ЦУВІНА, Т. Умотивованість рішень суду <...>.

[19] Спільна окрема думка суддів Європейського суду з прав людини Е. Пауер-Форд, Г. Юдківської та Х. Єдерблом в рішенні Суду у справі 'Мала проти України' від 3 липня 2014 р. [Електронний ресурс]. *Верховна Рада України*. Режим доступу: <http://zakon4.rada.gov.ua/laws/show/974_a23>.

[20] Рішення Європейського суду з прав людини у справі 'Головко проти України' від 1 лютого 2007 р. [Електронний ресурс]. *Верховна Рада України*. Режим доступу: <http://zakon4.rada.gov.ua/laws/show/974_188>.

[21] Рішення Європейського суду з прав людини у справі 'Суомінен проти Фінляндії' від 1 липня 2003 р. [Електронний ресурс]. *Європейський суд з прав людини*. Режим доступу: <http:// http://www.echr.coe.int>.

[22] Рішення Європейського суду з прав людини у справі 'Кузнецов та інші проти Російської Федерації' від 11 січня 2007 р. [Електронний ресурс]. *Європейський суд з прав людини*. Режим доступу: <http:// http://www.echr.coe.int>.

ECtHR was struck by the inconsistency of the judges' approach, who, on the one hand, admitted the fact that the chairman and his assistants arrived at the liturgy of claimants and that the meeting was suspended earlier, and, on the other hand, refused to recognize the connection between these two events, without offering any other explanation for the meeting being suspended earlier.

Their conclusion about the circumstances of the case creates an impression that the arrival of the chairman and the decision of the claimants to stop the liturgy had been just a coincidence. Such approach allowed the national courts to avoid taking into consideration the main point of the claimants' complaint that states there were no other legal grounds neither for the chairman nor for the police officers to interfere into the liturgy process of the claimants.

So, the main issue raised by the violation of the claimants' rights – violation of their right to freedom of religion – was in this way put beyond the national courts' scope of consideration that in fact have refused to consider claimants' complaints (para 84).

Taking this into account, ECtHR has reached the conclusion that national courts did not fulfill their obligation to justify the grounds for their decision and did not prove that the parties' positions were heard during a fair trial and in compliance with the principle of equality. Thereby, ECtHR established the violation of the Article 6 of CPHRFF as having taken place (para 85 decision of ECtHR on the case of 'Kyznetsov and others against Russian Federation').

So, the court's decision is considered to be justified when it clarifies the grounds on which it was made.

The prejudiced decision provides the parties with the opportunity to appeal against it and to get it reviewed by the above standing authority (para 58 decision on the case of 'Seriavin and others against Ukraine' from 10 of February 2010[23]). So, in the case of 'Hadgianastasiy against Greece' from 16 of December 1992[24] the claimant was not able to identify the grounds on which the Military Court of Appeal made its judgment. He filed a complaint noticing that he had no opportunity to specify his cassation complaint. On 18 of July 1986 the Court of Cassation recognized his arguments as too general and left his complaint without examination on the base of non-cognizability. In this case the court's decision that was announced by the Head of the Military Court of Appeal did not include any notion of the questions that found their place in the proceeding protocols, and is not based entirely on those same arguments and motives that is the decision of the Permanent Court of Air Force. As the claimant received the proceeding protocol only after sending a cassation appeal on the violation of procedural law, at that moment he did not possess the necessary information to specify his complaint.

Accordingly, ECtHR reached the conclusion that the right to protection was restricted in a way that the claimant did not have an opportunity for fair trial. Thereby, ECtHR stated the violation of para 3 of the Article 6 of the CPHRFF together with para 1 of the Article 6 of CPHRFF.

So, the decision of the court is justified if the court stated clearly enough the reasons and motives for its decision, which in its turn did not create difficulties to appeal against it. Only justified decisions may guarantee public control on the exercise of justice (para 30 decision on the case of 'Girvirsary against Finland' from 27 of September 2001[25]). Referring to ECtHR practice, T. Tsyvina notices that the declaration during the court hearing only of the introductory and resolution parts of courts' decisions makes the motives for the decision inaccessible to public.

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[23] Рішення Європейського суду з прав людини у справі 'Серявін та інші проти України' від 10 лютого 2010 р. [Електронний ресурс]. *Верховна Рада України*. Режим доступу: <http://zakon2.rada.gov.ua/laws/show/974_672>.

[24] Рішення Європейського суду з прав людини у справі 'Хаджіанастасіу проти Греції' від 16 грудня 1992 р. [Електронний ресурс]. *Європейський суд з прав людини*. Режим доступу: <http:// http://www.echr.coe.int>.

[25] Рішення Європейського суду з прав людини у справі 'Гірвісаарі проти Фінляндії' від 27 вересня 2001 р. [Електронний ресурс]. *Європейський суд з прав людини*. Режим доступу: <http:// http://www.echr.coe.int>.

Therefore, it is quite obvious that such cases should be discerned not only from the perspective of requirements to justify the court's decision, but also from the perspective of the principle of public transparency in civil proceedings.

The option to declare only the introductory and the resolution part of decision at a proceeding that is provided in Art. 218 Code of Ukraine, contradicts in a certain way the practice of ECtHR. In those cases the full text of the decision is available only to the persons who participated in a hearing, which means that the motives of the court are not available to the public that is an infringement of the principle of transparency of trial.

Vchena and M. Tyzov are unanimous on the notion that in such cases the decision is made without support of appropriate justification that is without following the logical documental unity of the judicial act for the moment of its oral objectivation by declaring only its resolution part. This case also has to be discerned from the perspective of the proportionality principle under which the restriction of the right to a transparent trial cannot be justified by deficiencies of the judicial system or by overload of work of judges etc.[26]

Thereby the court's decision can be considered as justified when national courts and bodies that settle disputes accept the claimant's argument that fulfill the following criteria: 1) is concrete; 2) is relevant; 3) is appropriate. In case of absent justification the decision is considered to be prejudiced and violation of the right to fair trial guaranteed by the Article 6 of the Constitution occurs.

According to the established practice of the ECtHR, it is the national courts that have to examine the evidence provided in the first instance. In the case of 'Malova against Ukraine', ECtHR have found no signs of a deviation in integrity taking place in the first proceedings: '…the first bill provided by the claimant was of a definitive nature and was not appealed against by parties. The second bill was not provided as a piece of evidence before 3 of April 2006 – the day of trial, at the end of which the decision was made by the trial court. Though the court opted to refer to the second bill (from 1 of April 2006), taking into account the fact that the court has heard the representative of a state executive service, that [the service] issued both bills from 24 of January and from 1 of April 2006, ECtHR recognizes no signs of deviation in integrity in this decision by the Khortuckuy court. ECtHR also emphasized that according to the protocol of judicial proceedings the claimant did not express any intentions to appeal against the bill from 1 of April 2006 and did not ask for the suspension of proceeding until this bill will become definite. At the same time, taking into account all the circumstances of this case and in particular the fact of the court ignoring the claimant's argument that is crucial to the outcome of the proceedings, ECtHR considers the first hearing as the one that is not in compliance with the principle of justice enshrined in Article 6 of CPHRFF (para 56–57 decision on the case of 'Malova against Ukraine'). Moreover, according to ECtHR, the problem (having arisen in the) first proceeding undermines the justice of the second proceeding.

During the examination of the evidence, ECtHR is guided by the criteria of 'beyond reasonable doubt' (decision on the case 'Vitkovsky against Ukraine' from 26 of September 2013[27]). Such proof may follow from a set of derivations or unrebutted presumptions, that are significant, clear and coherent with each other (para 161 decision on the case of 'Ireland against United Kingdom' from 18 of January 1978[28]).

In the case of 'Trofimchyk against Ukraine' from 28 of October 2010[29] the claimant complained

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[26] ЦУВІНА, Т. Умотивованість рішень суду <...>.

[27] Рішення Європейського суду з прав людини у справі 'Вітковський проти України' від 26 вересня 2013 р. [Електронний ресурс]. *Професійна юридична система*. Режим доступу: <http://zakon.nau.ua/doc/?uid=1079.6559.0>.

[28] Рішення Європейського суду з прав людини у справі 'Ірландія проти Сполученого Королівства' від 18 січня 1978 р. [Електронний ресурс]. *Європейський суд з прав людини*. Режим доступу: <http:// http://www.echr.coe.int>.

[29] Рішення Європейського суду з прав людини у справі 'Трофимчук проти України' від 28 жовтня 2010 р. [Електронний ресурс]. *Верховна Рада України*. Режим доступу: <http://zakon2.rada.gov.ua/laws/show/974_846>.

about injustice in the judicial trial on her dismissal, in particular she put under doubt the national courts' examination of the facts and asserted that the courts had not taken into account the evidence she provided on her dismissal as being a result of active participation in labor dispute between the workers and the head of KTP 'Komunenerhiia' (para 48).

According to the legal position of ECtHR, in the decision in the case of 'Plataky against Greece' from 11 of January 2001[30] (para 27), ECtHR had to determine whether the proceeding was fair in general and whether the implications from the evaluation of evidence and the application of legal norms were in compliance with CPHRFF. ECtHR pointed out that although the derivations of the national courts were not precise and clear enough, it seems that their position on the absence of the claimant on 3 of March 1999 was related to the fact that her absence was not justified, and accordingly violated working discipline.

'ECtHR does not find enough reasons to disagree with the application by the national courts of the appropriate national laws to the circumstances of the claimant's case. During the hearing of the case, the national courts listened to anumber of witnesses and examined various documents related to the disciplinary measures applied to the claimant, as well as evidence provided by the parties. The claimant received the opportunity to comment on the evidence provided by her former employer.

The Courts' decision to refuse to satisfy the claimant's complaint , was justified in a way that seems to be appropriate and sufficient regarding the subject of the case', – was stated by ECtHR (п.п. 42, 53 decision on the case of 'Trofumchyk against Ukraine'). ECtHR recognized no signs of injustice or prejudice in the courts' refusal to examine in detail the claimant's arguments about her persecution by her employer, as courts clearly stated that this evidence was entirely unjustified. Therefore ECtHR repeated that although para 1 of Article 6 of CPHRFF makes it obligatory to the courts to provide justification to their decisions, this may not be interpreted in a way that each piece of evidence has to be responded to separately (para 55 decision on the case of 'Trofimchyk against Ukraine').

In the case of 'Golovko against Ukraine' ECtHR dismissed a part of the claim stating injustice and the outcome of the proceedings in too general terms as clearly unjustified considering that the claimant's arguments were discerned by judicial bodies appropriately (para 44).

So, in cases where the conclusions of national courts are lacking accuracy and clarity regarding the parties' arguments, but the proceeding in general is justified and consequences of evidence evaluation and application of judicial norms are in accordance to CPHRFF, then it is not possible to talk about the violation of Article 6 of CPHRFF.

ECtHR stated that national courts did not justify their decision in the case of 'Seriavin and others against Ukraine' properly. So, ECtHR emphasized that in its decision from 29 of January 2003 the Court of Sviatoshyno recognized that before the start of renovation works on an attic, a building, under the rights of common ownership, the decision belonged jointly to the claimants together with the owners of other apartments and the local authority. At the same time, the court noticed that the local authority unilaterally and without the consent of the claimants had a right to dispose of the attic floor as it was the only owner of the building.

The text provides no evidence that after renovation works on attic were finished, the claimants were secluded from the rights of common ownership or have lost that rights for some other reasons. It is not clarified why claimants were considered as co-owners of the house in the context of renovation works, but were not considered as such in the context of transfer of rights on the attic floor.

The decision of the Court of Appeal of the city of Kyiv from 14 of April 2003 did not clarify anything. Even if it is to presume, taking into account the court's reference to the Article 119 of Civil Code of Ukraine, that the attic floor – a part of the building that was built without the participation of the

[30] Рішення Європейського суду з прав людини у справі 'Платаку проти Греції' від 11 січня 2001 р. [Електронний ресурс]. *Європейський суд з прав людини*. Режим доступу: <http:// http://www.echr.coe.int>.

claimants – does not belong to common property, the normative base on which the claimants' ownership rights to the attic room were secluded is not clear.

The court of Appeal did not comment on the fact that Article 119 of the Civil Code of Ukraine is about works sponsored by one of the co-owners and with the consent of the rest of the co-owners, but in this case the renovation was sponsored by a third party, to which one of the co-owners (the local authority) unilaterally and against the will of the other co-owners promised to grant a right to the renovated area.

Moreover, ECtHR emphasized that it is not clear from the justification of this decision whether the court of Appeal supported the conclusion of the trial court under Article 60 of the Law of Ukraine 'On Local Government in Ukraine' on the local authority ownership right to the building as such, or decided that claimants under the right of common ownership own the building, but not the attic floor.

Above mentioned allows us to reach the conclusion that the decision of the court is considered to be justified, when the court examined the parties' pieces of evidence that are significant to the outcome of the proceeding and the method of this examination is justified, when implications of this examination and application of judicial norms are in compliance with CPHRFF.

In Ukraine, the courts of Appeal and the courts of Cassation in their rulings and decisions quite often do not generalize a proof of evidence provided by a person who complains, rather they refer to such a procedural source of evidence as a document that was either taken by a trial court but afterwards was recognized as invalid, or that [document] is not definitive.

So, following the decision in the case of 'Mala against Ukraine' in regard to the biased nature of decisions adopted as a result of the first proceedings, during the second proceedings, courts were obliged to refer to the document – the bill of the state executive service from 1 of April 2006 that afterwards was recognized as invalid, instead of referring to the document – the bill from 19 of October 2006 provided by the claimant as a definite document that identified the value of unpaid debt.

ECtHR concluded that para 1 of Article 6 of CPHRFF was violated and concluded the injustice of both proceedings considering the claimant's arguments.

Hence, the decision of a court or a body that settles disputes is considered to be fair when it includes the reference of the court to the document that has the following features: 1) is valid; 2) is definitive.

Conducted analysis allows us to reach the following conclusions:

1. The following criteria of a court's commitment to the obligation to justify its decisions are identified:
   - a court accepted the party's (parties') argument that has the following features: is concrete; is relevant; is appropriate; in case of the court's refusal to accept the evidence provided by the party (parties), the court provides detailed and compelling reasons for this refusal in its decision;
   - the evidence was admitted in a fair way;
   - the evidence was examined in a fair way;
   - implications of evidence examination and application of judicial norms are in compliance with CPHRFF;
   - the procedural decision-making is fair.
2. Additionally, it was justified that critics of the court of Appeal for ignoring one of the party's arguments, even a significant one, can be interpreted as an exceeding of the competence by the European Court of Human Rights and as acting as a 'fourth instance' in case the decision does not seem to be prejudicial in a sense of full absence of its justification.

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