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IMPLEMENTATION OF THE DECISION OF THE EUROPEAN COURT OF HUMAN RIGHTS IN THE CASE “POLYAKH AND OTHERS V. UKRAINE“

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Slyusarenko Yu.A. Implementation of the decision of the European Court of Human Rights in the case “Polyakh and Others v. Ukraine“.

The article deals with the implementation of the decision of the European Court of Human Rights in the case “Polyakh and Others v. Ukraine”, which concerns the dismissal of civil servants in accordance with the Law of Ukraine “On Purification (Lustration) of Power” of September 16, 2014. It is noted that this decision had a large public impact resonance. To fulfill it, Ukraine must pay the debt collectors compensation and take additional measures of an individual nature; take measures of a general nature. The application of the decision of the European Court of Human Rights in the case “Polyakh and Others v. Ukraine” to the implementation of the compensation payment did not cause obstacles, just as there are no obstacles for the payment of compensation to debt collectors, since the funds for such payments are in a special budget program. The most difficult is the implementation of the decisions of the European Court of Human Rights in terms of taking measures of a general nature: making changes to the current legislation and the practice of its application; making changes to administrative practice; provision of legal examination of draft laws; provision of professional training on the study of the Convention and the practice of the Court of prosecutors, lawyers, law enforcement officers, workers of immigration services, other categories of workers whose professional activity is related to law enforcement, as well as to keeping people in conditions of deprivation of liberty; other measures to be determined - subject to supervision by the Committee of Ministers of the Council of Europe.

The general measures taken by Ukraine to implement the decision of the European Court of Human Rights in the case “Polyakh and others v. Ukraine” have been analyzed. Attention is focused on the fact that, unlike the lustration laws of other Council of Europe member states, the Law of Ukraine “On Purification (Lustration) of Power” has a wider scope of application and is aimed at achieving two different goals - the protection of society from persons who, due to their behavior in the past can harm the newly created democratic regime and the cleansing of state authorities from persons who were involved in large-scale corruption. A legal assessment of the approach used by the state - preservation of automatic lustration - is given and a conclusion is drawn regarding its compliance with the norms of the Convention on the Protection of Human Rights and Fundamental Freedoms of 1950.

Key words: lustration, power, cleansing, human rights, constitutional responsibility, sanctions, lustration measures, individual responsibility, practice of the European Court of Human Rights, decisions of the European Court of Human Rights.

Слюсаренко Ю.А. Виконання рішення Європейського суду з прав людини в справі «Полях та інші проти України».

Статтю призначено питання виконання рішення Європейського суду з прав людини в справі «Полях та інші проти України», яка стосується звільнення державних службовців відповідно до Закону України «Про очищення влади» від 16 вересня 2014 р. Зазначається, що це рішення мало великий суспільний резонанс. На його виконання Україна має виплатити стягувачам відшкодування та вжити додаткові заходи індивідуального характеру; вжити заходи загального характеру. Звернення рішення Європейського суду з прав людини в справі «Полях та інші проти України»

до виконання в частині виплати відшкодування не викликало перепон, як немає перепон для виплати відшкодування стягувачам оскільки кошти для подібних виплат є у спеціальній програмі бюджету. Найбільш складним є виконання рішень Європейського суду з прав людини в частині вжиття заходів загального характеру: внесення змін до чинного законодавства та практики його застосування; внесення змін до адміністративної практики; забезпечення юридичної експертизи законопроектів; забезпечення професійної підготовки з питань вивчення Конвенції та практики Суду прокурорів, адвокатів, працівників правоохоронних органів, працівників імміграційних служб, інших категорій працівників, професійна діяльність яких пов'язана із правозастосуванням, а також з триманням людей в умовах позбавлення свободи; інших заходів, які визначаються – за умови нагляду з боку Комітету міністрів Ради Європи.

Проаналізовано заходи загального характеру, які вжила України на виконання рішення Європейського суду з прав людини в справі «Полях та інші проти України». Акцентовано увагу на тому, що на відміну від люстраційних законів інших держав-членів Ради Європи, Закон України «Про очищення влади» має ширшу сферу застосування і спрямований на досягнення двох різних цілей - захист суспільства від осіб, які через свою поведінку в минулому можуть заподіяти шкоду новоствореному демократичному режиму та очищення органів державної влади від осіб, які були причетні до широкомасштабної корупції. Надано правову оцінку підходу, який застосовує держава - збереження автоматичної люстрації та зроблено висновок щодо його відповідності нормам Конвенції про захист прав людини і основоположних свобод 1950 р.

Ключові слова: люстрація, влада, очищення, права людини, конституційна відповідальність, санкції, люстраційні заходи, індивідуальна відповідальність, практика Європейського суду з прав людини, рішення Європейського суду з прав людини.

Formulation of the problem.

The issue of implementation of decisions of the European Court of Human Rights, especially on the issue of lustration, in the conditions of martial law in Ukraine, is one of the most urgent. On the one hand, lustration was designed to protect the newly created democratic regime from persons who, due to their past behavior, could harm it, and on the other hand, lustration was designed to cleanse state authorities of persons involved in total corruption. The decision of the European Court of Human Rights “Polyakh and Others v. Ukraine” brought to light the question of what changes need to be made to the legislation of Ukraine and the practice of its application, so that they are compatible with the norms of the Convention on the Protection of Human Rights and Fundamental Freedoms [1–3].

As for scientific research, the issue of implementation of the decisions of the European Court of Human Rights has been widely studied in the scientific works of Y. Bysaga [4], L. Deshko [5–8], H. Nechiporuk [9] and other scientists. But as far as the implementation of the decision of the European Court of Human Rights in the case related to lustration is concerned, there are no comprehensive studies.

Presenting main material. In order to ensure the state's compliance with the provisions of the Convention, the violation of which is established by the Court's decision, to ensure the elimination of systemic deficiencies that are the basis of the violation identified by the Court, as well as to eliminate the basis for submitting to the Court statements against Ukraine caused by a problem that was already the subject of consideration by the Court, general measures are taken (Article 13 of the Law of Ukraine “On the Implementation of Decisions and Application of the Practice of the European Court of Human Rights”).

Measures of a general nature are measures aimed at eliminating the systemic problem and its root cause specified in the Court's decision, in particular:

- 1) making changes to the current legislation and the practice of its application;
- 2) making changes to administrative practice;
- 3) provision of legal examination of draft laws;
- 4) provision of professional training on the study of the Convention and the practice of the Court of prosecutors, lawyers, law enforcement officers, workers of immigration services, other categories of workers whose professional activity is related to law enforcement, as well as to keeping people in conditions of deprivation of liberty;
- 5) other measures determined - subject to supervision by the Committee of Ministers of the Council of Europe - by the respondent state in accordance with the Court's decision with the aim of ensuring the elimination of deficiencies of a systemic nature, the cessation of violations of the Convention caused by these deficiencies, and ensuring maximum compensation for the consequences of these violations.

Every quarter, the Representation Body prepares and sends to the Cabinet of Ministers of Ukraine a submission on taking measures of a general nature, which includes proposals for solving the systemic problem specified in the Court's decision and eliminating its root cause, in particular:

- 1) analysis of the circumstances that led to the violation of the Convention;
- 2) proposals for amendments to the current legislation;
- 3) proposals for making changes to administrative practice;
- 4) proposals to be taken into account during the preparation of draft laws;
- 5) proposals to provide professional training on the study of the Convention and the practice of the European Court of Human Rights for judges, prosecutors, lawyers, law enforcement officers, immigration services, other categories of workers whose professional activities are related to law enforcement, as well as to the detention of people in conditions of deprivation of liberty;
- 6) proposals for the implementation of other measures of a general nature, aimed at eliminating deficiencies of a systemic nature, ending the violation of the Convention caused by these deficiencies, and ensuring maximum compensation for the consequences of these violations;
- 7) a list of central executive bodies responsible for taking each of the measures proposed in the submission.

The Ministry of Justice, in compliance with the decision of the European Court of Human Rights, developed amendments to the Law "On Purification of Power" and prepared for payments to persons who won the corresponding complaint in the ECtHR [10].

But, as the Minister of Justice of Ukraine rightly noted, "... lustration is too broad and a huge number of people were lustrated without any reason" [10].

The Ministry of Justice envisages the creation of a special body – a commission – which will review the applications of persons who have been lustrated and the categories for which the European Court considers it inappropriate to apply automatic lustration [10]. According to the Minister of Justice of Ukraine, as a result of such review, such persons will either be reinstated in their positions or will receive a certain level of compensation for the damage caused, or both" [10].

But some people will remain under automatic lustration – members of the government and top officials. Persons who worked in government bodies during the times of the USSR are planned to be excluded from lustration.

The lack of individual behavior of a person leads to the fact that the European Court of Human Rights recognizes this as a violation of Art. 8 of the Convention on the Protection of Human Rights and Fundamental Freedoms.

In the decision in the case of Polyakh and Others v. Ukraine The European Court of Human Rights established that the application of the measures provided for by the Law of Ukraine "On Purification of Power" constituted an interference with the applicants' right to respect for their private life, it was carried out "in accordance with the law" and presumably pursued the legitimate goals of protecting national and public security, preventing riots, as well as protecting the rights and freedoms of others (§267–282). Also, the European Court of Human Rights established a violation of Article 8 of the Convention, considering that the application of strict measures to the applicants provided for by the Law of Ukraine "On Purification of Power" was not based on an individualized assessment of their behavior, there were no valid reasons for such an approach, and sufficient the narrow design of these measures to address the "urgent public need" that this Law would pursue.

Even if the individual assessment of the applicant's role and behavior is hindered by the person's failure to submit a statement that the Law of Ukraine "On Purification of Power" (see paragraph 49) is not applied to him, and according to the assessment of the national Supreme Court, such failure constitutes a serious violation of the applicant's duties as a judge of the Supreme Court of Ukraine and, in the opinion of the national court, justifies the release of such a person - for the European Court of Human Rights, this is not a convincing argument.

With regard to the argument that the person's failure to submit a statement about the non-application of the provisions of the Law of Ukraine "On Purification of Power" does not allow the state authorities to assess his personal role in the relevant period and demonstrates his non-compliance with the law and the duties of a judge, which is incompatible with his position as a judge of the highest of the judicial instance, the ECtHR observed that the key aspect is that the goal of eliminating persons likely to be associated with negative events during the reign of the former President of Ukraine has already been

achieved thanks to the implementation of the Law of Ukraine “On Restoring Confidence in the Judiciary in Ukraine”.

Conclusions. If, in the future, no changes are made to the Law of Ukraine “On Purification of Power” and the strict measures provided for by the Law of Ukraine “On Purification of Power” will be applied to individuals, if there is no provision for individual assessment of the behavior of individuals, and the development of these measures will remain narrow enough to solve “urgent social need” - this will not be compatible with the norms of Art. 8 of the Convention on the Protection of Human Rights and Fundamental Freedoms.

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