UDC 341.231.14

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ACCEPTABILITY CONDITIONS OF AN INDIVIDUAL COMPLAINT AT THE EUROPEAN COURT OF HUMAN RIGHTS

The contribution with the title Acceptability Conditions of an Individual Complaint at the European Court of Human Rights characterizes acceptability conditions of a complaint as it is affirmed by the Article 34 of the European Convention for the Protection of Fundamental Rights and Freedoms. According to it each individual, non-governmental organization or a group of people are eligible to place their complaint at the European Court of Human Rights under the condition that they object the infringement of their rights acknowledged and declared by the Convention or by the protocols by one of its High Contracting Parties.

Keywords: European Court of Human Rights, the European Convention for the Protection of Human Rights and Fundamental Freedoms, individual complaint, acceptability conditions.

Ондрова Ю. Критерии приемлемости индивидуального заявления в Европейский суд по правам человека. *Охарактеризованы условия принятия жалобы в соответствии с требованиями статьи 34 Европейской конвенции о защите основных прав и свобод. В соответствии с ней каждый человек, неправительственная организация или группа людей имеют право подавать свои жалобы в Европейский суд по правам человека при условии, что они являются объектом нарушения своих прав, признанных и задекларированных Конвенцией или протоколам одной из Высоких Договаривающихся Сторон.*

Ключевые слова: Европейский суд по правам человека, Европейская конвенция о защите основных прав и свобод, индивидуальная жалоба, условия приемлемости.

Problem statement. The European Council is an international organization which had originated in 1949 with the aim to protect human rights and fostering the cooperation among the European states when solving common problems. At present the European Council associates 47 states which are at the same time Contracting Parties of the European Convention for the Protection of Human Rights and Fundamental Freedoms. The Convention is an international human and legal agreement which had become valid on the 3rd of September 1953 by its ratification approved by ten Contracting

Parties. Latter on other countries have gradually come into it. From the Convention systematic arrangement point of view the Contracting Parties have the specified basic aims and justification of the Convention which are in more detail defined by the Preamble. By the Article 1 of the Convention the High Contracting States recognize the rights and freedoms affirmed by the Chapter 1 of the Convention to all states being under their jurisdiction. Procedural regulations applicable in connection with the redressing of the infringed rights at the European Court of Human Rights are delineated by the Chapter II. The priority of the European Court of Human Rights rests in their activities regarding making decisions on claims concerning the infringement of rights declared by the European Convention on Human Rights and Fundamental Freedoms or which are acknowledged by its supplementary protocols. The European Court of Human Rights is an international judicial body offering the protection of rights which are mostly abridged by the inter-State law application.

The right protected by the European Convention on Human Rights and Fundamental Freedoms is infringed not only by acting or non-acting which are in contradiction with the inter-State legal order, but similarly by such acting which is in compliance with it, but nonetheless the definite inter-State legal regulation is in contradiction with the human rights sheltered by this Convention [1, p. 18]. The European Court of Human Rights is eligible to deal with two kinds of complaint, the international complaint and individual complaint. By Article No. 33 of the Convention the inter-State complain might be placed to the Court by every High Contracting Party following the aim to investigate infringements of the Convention procedures and its protocols for the breach of which some of the High Contracting Party is responsible. The encoring of an individual complaint is an object of the Covenant Article No. 34 adjustment. According to the first sentence of the mentioned Article the European Court of Human Rights can agree to take complaints put down by any individual, non-governmental organization or a group of people who consider themselves to be aggrieved in consequence of the encroachment of rights acknowledged by the Convention or by its protocols by one of its High Contracting Parties. An individual complaint placed in compliance with the Convention must be put down in a written form by means of the filled-out blank form available in the Court internet website. It must contain all obligatory content necessities defined by the Article 47 paragraph 1 letters a) and g) of the Court Rules of Procedure, and besides that, it must be attached by the relevant document copies mainly as regards the Court or any other decisions referring to the complaint purpose in order to be in conformity with Article 47 paragraph 1 letter h) of the Rules of Procedure.

The results of the study. Conditions of the complaint acceptance, both individual and inter-State, are defined by the Article 35 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. Fulfillment of all conditions declared by the quoted provision constitutes the basic requirements for the evaluation of complaint admissibility

by the European Court of Human Rights. Any kind of objections concerning not admissibility, as far as it is allowed by the claim core and its factors must be followed by Article 55 of the Court Rules of Procedure, it means that the aggrieved Contracting Party is obliged to put forth its stance to claim admissibility in a written form or in the verbal statement. In Mooren case against Germany [2, p. 189] the European Court of Human Rights declared «the obligation of the aggrieved Contracting Party to put forth a complaint regarding inadmissibility of the grievance does not concern only to a certain objection of unacceptability, but it concerns the assured definite reasons constituting the inadmissibility of a definite complaint».

The acceptable complaint is such a grievance which fulfills all formal necessities, it must not be identical with the complaint already dealt by the European Court of Human Rights, besides that, it must be flawless that the claimer does not misuse his/her right by placing a complaint, and without any doubt it must be clear that a claim is reasonable [3, p. 13]. Following the provision of the Article 35 paragraph 1 the European Convention for the Protection of Human Rights and Fundamental Freedoms, the conditions of the complaint admissibility have stated that all inter-State remedial measures must be used under the conditions that they respect generally recognized international law and observe the time-limit of six months to put down a complaint. The stated due-time begins since the day of the final decision approval.

The condition of the use of all inter-State remedial measures is the expression of subsidiarity on which the control mechanism of the Convention is based. All those who want to start proceeding against the state at the international Court or arbitration body are obliged to use all remedial measures which are available by the inter-State legal system as it is declared by the European Court of Human Rights and affirmed by Article 35 paragraph 1of the Convention [2, p. 191]. And besides that the cited Article of the Convention deals exclusively with the need to use primarily all inter-State remedial means and not the remedial means of the international organizations. In compliance with what has been said, the purpose of the condition to use all potential of the inter-State remedial means by domestic bodies in order to prevent or hamper the infringement of the denumerable right, and in this way to violate the Convention as well. The mentioned rule has its source in the assumption that domestic legal order is cable to offer the effectual devices against the rights encroachment as it is declared by the Convention in Article 13. In accordance with this Article everybody, whose rights and freedoms given by the Convention are infringed, is eligible to claim a legal remedy at the domestic body without taking into consideration that the infringement has been done by the individuals when fulfilling their administrative duties.

In case Andrasik and others against Slovakia [4] the European Court of Human Rights comments «the aim of the Article 35 is to offer the Convention Contracting Parties an opportunity to make prevention of the occurrence of the violation of right or to provide the legal remedy in claimed

cases before they are put down at the Convention bodies. In this way the states are quit of a duty to answer for their doings at the international body before they have been given a chance to put things right by means of their own legal systems. In this connection the mechanism of the human rights protection created by the Convention is perceived as an important aspect of the subsidiarity principle regarding the relations towards the inter-State systems maintaining the safeguard of human rights. Article 35 of the Convention requires making the use of such legal remedies which are in relation to objects in point of law and, at the same time they are at disposal and they are effective enough. The existence of such remedial means must be sufficiently guaranteed not only in theory but in practice as well; otherwise the remedial means would miss the required accessibility and effectuality. It depends on an individual state that the mentioned conditions exist and that they are properly fulfilled».

The Convention formulated statement «to deal with a case at Court within the time-limit of six months since the day when the final decision has been made» is considered to be slightly awkward and unlucky by the professional literature [2, p. 202] as it is created an artificially impression that the European Court of Human Rights is eligible to deal with a complaint only within the time–limit of six months since the day of the final decision-declaration made on the domestic level. The problem of the mentioned formulation rests probably from the wrongly formulated English wording, while the French version of the Convention uses the expression meaning that within the six months since the day when the final decision has been proclaimed it is necessary to lay down a complaint at Court and not stating that at the mentioned time-term the Court has to deal with a complaint. The European Court of Human Rights in case of Sabri Günes against Turkey [5] declared that» the purpose of determining the rule to keep six months' time-term since the day when the final decision has been made on the domestic level is to save the legal security for those who object violation of their rights protected by the Convention at Court, and besides that, requiring the legal security to deal with a case in a reliable time-limit. What`s more the state bodies and other aggrieved persons are protected by determining the due-time in order not to be held in a legal insecurity for a rather long time and therefore the stated term is created with the purpose to provide reasonable time-term conditions. Besides that the purpose of determining the time-term is to provide enough time for a potential claimer to re-consider and to reevaluate the laying down of complaint and what`s more to prepare adequate arguments which might strengthen the argumentation and will clearly show violation of the Convention in case when the claimer is finally decided to put forth a complaint at Court.

In case of the use of all domestic remedial means the six-month-due-time to put forth a complaint begins since the day of the declaration of the final decision. During this time the claimers are obliged to use only those means which create the extent of the domestic inter-State legal order, and

in case when they are available and sufficient for achieving the redress of claimed violations [2, p. 203]. The European Court of Human Rights in case of Sapeyan against Armenia [6] declared «in case in which on the domestic state level the renewal proceeding starts, or the investigation of the final decision is provided, then the restoring of the passage of six-month term is only conceivable when it touches provisions of the Convention against which it was created the foundation for the investigation of the final decision, or in the case of reinstating the proceeding before the appealed body. The different approach would be in case of the contradiction with the subsidiarity principle on which the Convention is founded and whose base rests in hearing the claim by the inter-State bodies responsible for the protection of rights which have the priority before the use of bodies responsible for the protection of rights on the international level». In case of Chitayev and Chitayev against Russia [7] the European Court of Human Rights commented «in case of the absence of domestic remedial means, or in case of their existence but not being of use, or if they are not sufficient enough to provide a legal remedy owing to the violated rights, the six-month-due-time-term starts to pass since the day of the case occurrence when it was founded the reason for a complaint». A lot of cases can be found in the European Court of Human Rights judicature when the beginning of the passing of the six-month term was differently stated in connection with taking into consideration the character of certain definite cases, e.g. Pyzel case and others against Poland, or the case of A. A. against the United Kingdom. Therefore, the rule of the six-month period of time can be considered to be of an individual character depending always on the definite case conditions causing a plaintiff to pursue complaints as regards the protection of his/her rights. In this connection the European Court of Human Rights in case Sabri Günes against Turkey [5] declared that «while taking into consideration the legal rules on the state domestic level and their interpretation together with the application Courts practice, the determination of the beginning of passing the six-month term is an important aspect, but not a definitely decisive one».

By Article 35 paragraph 2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms the European Court of Human Rights following the Article 34 will not adjudicate an individual complaint which is anonymous or when it is in its essence the same as the complaint which has been already reviewed by Court, or if it is a subject-matter of any other international investigatory or arbitral procedures and if it does not contain any other new realities. The individual complaint laid down to Court is considered to be anonymous if a complaint or its enclosure has not any signs in order to identify a definite complainant. The European Court of Human Rights in case of Sindicatul Păstorul celá Bun against Romania [8] expressed the provision of the Article 35 paragraph 2 of the Convention does not concern those cases in which complainants put down real and legal facts to Court and which consequently enable the Court

to identify complainants and to demonstrate their connections to disputable realities. The European Court of Human Rights refused to regard a complaint to be an anonymous one only because of the missing a complainant`s sign on the blank form if there were stated all needful data together with the signed correspondence by the complainer. The complaint is not considered to be anonymous in case when a complainant presents his/her name but there are some doubts regarding truthfulness of his/her name and it is not able convincingly refute the suspicions for the reasons that the complainant refuses to attest his/her identity [2, p. 208].

In compliance with Article 35 paragraph 2 letter b) of the Covenant the individual compliant is refused in case if it is in its essence the same as the matter-of-case which was already dealt by the Court, or if it is now a subject-matter of the international investigation or the arbitral procedure and if a complaint does not contain any new relevant facts. In case of Lowe against the United Kingdom [9] the European Court of Human Rights defined the purpose of the first part of the Article 35 paragraph 2 letter b) of the Covenant in the following way «the purpose of the quoted Article of the Covenant is to safeguard the legal help to Court decisions and in this way to prevent complainers to pursue the repeated complains to put down to Court seeking another Court decision in the same matter in question in order to cancel the previous Court decision». When evaluating the individual complaints, such complaints will be considered to be identical ones having the same factual base as the previous ones. Speaking about the unacceptability based on the identical factual base, such complaints are considered to be inacceptable even if the complainants demonstrate new facts, but they merely serve for supporting the arguments creating the factual base of the previous complaint. In this connection the European Court of Human Rights in case of Kafkaris [10] against Cyprus emphases that «in order to take into account a complaint and consequently to deal with it by the Court, it is needful for the complainant to put down a new complaint with the different factual base or to add to the previous complaint such realities having the character of the important new facts for the case in question which so far have not be known and laid down to the Court». The reality that the case was put down to another international reviewing or peace-making body is not in itself sufficient in order to come to the conclusion that conditions stated by Article 35 paragraph 2 letter b) of the Covenant are fulfilled. Connected with this, the European Court of Human Rights examines the character of such a body, the quality of its proceeding done and the nature of the effects of such decisions, whether they are similar or the same with the proceeding and decision effects as regards the individual complaint as it is declared by Article 34 of the Covenant [2, p. 211]. By Article 35 paragraph 3 the Court declares every individual complaint unacceptable put down by Article 34 of the Covenant if it is found out that the complaint is incompatible with the Covenant provisions or its protocols and if it is evidently that a complaint is unjustified or if it violates law by putting it down, or if the complainant

does not suffer any sufficient damage. Anyway there is one exception when the complaint foundation requires the investigation respecting human rights guaranteed by the Covenant and its protocols. According to the Covenant the condition, that no case must be refused until it has not been properly examined by the domestic court, has to be fulfilled.

In accordance with the Article 35 paragraph 3 the Court declared the unacceptability of every individual complaint which was put down in such a way as it is declared by Article 34 of the Covenant and according to it, it was found out that the complaint was incompatible with the Covenant provisions or its protocols, and therefore, the complaint was evidently unreasonable or clearly misusing the right, or if it was found out that the complainant was not harmed. On the other had there is a certain exception which rests in a fact when the respecting of human rights how they are assured by the Covenant and its protocols require the examination of the essence of the complaint in question if it is evident that it was not properly reviewed by the domestic Court. In such a case it must not be refused because of that mentioned reason.

According to the Practical Instruction Manual the criteria of the complaint acceptability issued by the European Court of Human Rights following the Article 35 paragraph 3 letter a) of the Covenant, it is necessary to understand under the concept «the misuse of law» the harmful execution of law to other purposes than to those ones which are directly determined and defined by the general legal theory. In compliance with what has been said any activity of the complainant which is evidently in contradiction with the purpose of law regarding making the use of an individual complaint and thus hampering the appropriate work of Court and the proper execution of proceeding is qualified as the misuse of law to lay down a complaint. The most frequent cases declared by the Court as the unacceptable complaint as regards the abuse of law are such complaints having the misleading information or untrue information, or if «the violating language» is used, further on if the regular course of proceeding, its confidence and reliability is evidently encroached, and if the absence of the real purpose of putting down a complaint is apparent. Besides that there are some other example cases which cannot be completely listed down.

Compatibility of the complaint with the provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms *ratione personae* requires the obvious violation of the Covenant by one of its Contracting States or the violation of the Covenant on the basis of which such acting might be considered to be done by a definite Contracting State. In case Sejdić and Finci against Bosnia and Herzegovina [11] the Court declared that «even if an accused state does not put forth a complaint regarding incompatibility with the Covenant provisions *«rationale personae»*, the Court is obliged to deal with it using its administrative power». The complaint compatibility with the Covenant provisions *ratione loci* requires the obvious violation of the Covenant done on the territory which

belongs to the accused state jurisdiction, or done on such a territory which is under its control and under its powers. From the point of view of the *ratione temporis,* the complaint is compatible with the Covenant provisions only after the Covenant ratification and its attached protocols by the accused state. In compliance with the international law general rules the Covenant Contracting Party-Contracting State, is not bound by the Covenant provisions in the time when the Covenant was not bound on its territory or the validity of the Covenant has expired on the territory of the accused state. The complaint compliance with the Covenant provisions *ratione materiae* means that right whose complainant objects must be protected by the Covenant or its supplemented protocols. In connection with the stated conditions of the complaint compliance with the European Covenant for Protection of Human Rights and Fundamental Freedoms, the cases whose complaint was declared unacceptable owing to their incompliance with the Covenant provisions can be delimitated. According to the Article 35 paragraph 3 letter a) of the Covenant the complaint is considered to be inacceptable if:

a. a complainant pursues complaints regarding the rights or freedoms which are not guaranteed by the Covenant;
b. if a complaint has been laid down by a complainant who has no right to do as it is affirmed by Article 34 of the Covenant, or in case when a complaint is directed against the subject who by the Covenant is not responsible for the breach of the subject matter in question;
c. if it concerns an actions which happened before the Covenant and its supplementary protocols have become bound for a definite state;
d. if it concerns an incidents which have happened on the territory outside the jurisdiction of the accused state [2, p. 213].

Some individual complaints are in many cases declared to be unacceptable because of the fact that in spite of their declaring facts statement, which might be complete and true, they do not create the foundation for the violation of the Covenant and its protocols by the legal judgment of the Court. Therefore in such cases a complaint is refused as essentially ineligible.

Conclusion. The opportunity to put a complaint to the European Court of Human Rights having the seat in Strasburg stands for an effective and useful device of the protection of individuals' rights, legal entities as well as by some other subjects. In this way they can pursue their right guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms on the international supranational level. The Convention makes difference between two types of complaints by which it is possible to pursue claims by juridical process at the European Court of Human Rights; there are the inter-State complaints and individual complaints. The inter-State complaint serves for each Contracting Party of the Convention for investigation of the breach of its provisions or its attached protocols for which, according to its opinion, the other Contracting Party bears the

responsibility. By Article 34 of the European Convention for the Protection of Human Rights and Fundamental Freedoms every individual, non-governmental organization or a group of people who consider themselves to be harmed by the encroachment of their rights guaranteed to them by the Convention or by its protocols are eligible to laid down the individual complaint if the encroachment was done by one of the Contracting Party. Consequently the conditions of acceptability of a certain complaint are delimitated by the Article 35. Fulfillment of all conditions declared by the mentioned Article of the Convention creates the basic condition for the acceptance of the complaint for its further assessment and proceeding on the subject-matter stated by it.

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Стаття надійшла до редакції 23.05.2017.

Ондрова Ю. Критерії прийнятності індивідуальної заяви до Європейського суду з прав людини.

Постановка проблеми. *Європейський Суд з прав людини має право розглядати два види скарг – міждержавні та індивідуальні. За ст. 33 Конвенції про захист прав людини і основоположних свобод міждержавна скарга може бути подана в суд кожною з Договірних Сторін для розслідування порушень процедур, передбачених цією Конвенцією та її протоколами. Подання індивідуальної скарги є об'єктом коригування ст. 34 цієї угоди. Європейський суд з прав людини може погодитися прийняти скарги, складені будь-якою фізичною особою, неурядовою організацією або групою людей, які вважають себе постраждалими в результаті посягань на їх права, які визначені у Конвенції або її протоколах.*

Тема забезпечення права на подання індивідуальної заяви до Європейського суду з прав людини має досить широкий спектр проблем, однак питання за цією темою залишаються недостатньо дослідженими у багатьох країнах Європейського Союзу, зокрема вимоги до оформлення та умови прийнятності індивідуальних заяв скаржників.

Аналіз останніх досліджень і публікацій. *Європейський суд з прав людини щороку видає Збірник рішень, що сприяє збагаченню існуючої змістовної бази стосовно окремої індивідуальної заяви. Вивченню вироків Європейського суду в окремих випадках та адвокатській практиці присвячено низку наукових праць словацьких вчених. Малодослідженими при цьому залишилися критерії прийнятності індивідуальної заяви до Європейського суду з прав людини.*

Мета *статті є аналіз та характеристика найбільш фундаментальних умов прийняття індивідуальної скарги згідно ст. 34 Європейської конвенції про захист прав людини і основоположних свобод.*

Матеріали та методи*. Під час дослідження застосовано методи аналізу та синтезу для оцінки наявного судочинства Європейського суду з прав людини.*

Результати дослідження. *З 1 листопада 1998 р., коли Протокол № 11 Конвенції став чинним, Європейський суд з прав людини став єдиним органом, повноважним приймати рішення щодо скарг про порушення прав заявників, які вважають, що держава порушила їх права та основні свободи, гарантовані Конвенцією та її Протоколами. На веб-сайті Європейського суду представлений бланк заяви на декількох мовах з інструкціями щодо укладання тексту скарги. Офіційними мовами Суду є англійська та французька, однак, до повідомлення про скаргу та звинувачення держави, заявник може спілкуватися з Судом, використовуючи, наприклад, словацьку мову, і це справа суду, щоб забезпечити переклад на одну з офіційних мов, як це зазначено в судовому наказі процесуального регулювання № 34.*

Висновки. *Можливість подати скаргу до Європейського суду з прав людини є ефективним і корисним засобом захисту прав фізичних та юридичних осіб. Таким чином, вони можуть на міжнародному міжнаціональному рівні здійснювати своє право, гарантоване Європейською конвенцією про захист прав людини і основоположних свобод. Міждержавна скарга може застосовуватися кожною Договірною Стороною Конвенції для розслідування порушення, за яке, на думку заявника, несе відповідальність інша Договірна Сторона. Індивідуальну заяву може подавати кожна людина, неурядова організація або група людей, які вважають себе постраждалими від посягань на свої права. Умови прийняття такої скарги визначено ст. 35 Конвенції і лише повне виконання всіх, задекларованих у ній положень, дає підстави для подальшого оцінювання, вивчення фактів та прийняття вироку Судом.*

Ключові слова: Європейський суд з прав людини, Європейська конвенція про захист прав людини і основоположних свобод, індивідуальна заява, умови прийнятності..