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Application of Legal Entities to the European Court of Human Rights: a Significant Disadvantage as the Condition of Admissibility

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Lyudmyla Deshko

Kiev National University of Trade and Economics, Ukraine

deshkol@yahoo.com

ORCID: https://orcid.org/0000-0001-5720-4459

Abstract

This article lists the content and deals with the criteria for assessing the presence or absence of material damage suffered by the applicant to the European Court of Human Rights, the subject of entrepreneurship, as a new condition for the admissibility of an individual application. The article establishes that the list and content of the criteria for assessing the presence or absence of material damage suffered by the applicant to the European Court of Human Rights are different for individuals and for legal entities — business entities. Moreover, the article initiates a discussion on the list and content of these criteria for the subjects of entrepreneurship — the applicants to the European Court of Human Rights. In the light of the Court's practice, the author reveals their content as well as legal categories such as 'substantial harm', 'financial harm', 'pecuniary damage', 'non-pecuniary damage' incurred by the applicant, the subject of entrepreneurship, and highlights the issues to which objectives may be caused by 'moral harm' in case of violation of the rights of the subject of entrepreneurship.

Key words:
European Court of Human Rights;, admissibility criteria; significant disadvantage, legal entity

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Introduction

The right to an individual appeal to the European Court of Human Rights is the cornerstone of the Convention system. Having used all national remedies, entrepreneurs who consider themselves victims of an alleged violation of their rights by one of the State Parties to the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as 'the Convention'), appeal to the European Court of Human Rights (hereinafter referred to as 'the Court'). They lodge applications to the Court to restore their violated rights at the national level in accordance with the principle of subsidiarity. Since 1998, the number of legal entities appealing to the Court has been increasing. This can be attributed to many factors, such as the ratification of the Convention by the new countries Moldova (1997), Ukraine (1997), Russian Federation (1998) and its entry into force in the said countries[1]. The second factor is the non-fulfilment or inappropriate execution of national courts decisions with the state or state-owned enterprises primarily being the debtor. The third factor can be found in the systemic shortcomings of the national legislation in number of countries and application practices already reflected in pilot decisions against them. Last but not least, military conflicts in the states Members of the Council of Europe as a result of which the subjects of business, being the victims of violation by one of the High Contracting Parties by the rights set forth in the Convention or the Protocols thereto, apply to the Court.

Mainly in the light of a continuous increase in the caseload of the Court and the Committee of Ministers of the Council of Europe, and, in particular, the need to enable the Court to preserve its leading role in the protection of human rights in Europe in order to maintain and improve the effectiveness of the control system in the future, the international legal mechanism of access to the Court has changed. The conditions of admissibility of individual applications comprise one of the elements of this mechanism (Protocol No. 14 to the Convention, Protocol No. 15 to the Convention). In accordance with the changes introduced into the Convention by the Protocol No.

1 See for details the European Court of Human Rights, Violations by Article and by State, 1959-2017; European Court of Human Rights, Analysis of statistics by year 2006-2017; European Court of Human Rights, Pending applications allocated to a judicial formation 2018.

15 of 24 June 2013 (open for signing by the High Contracting Parties to the Convention), 'the Court declares inadmissible any individual application submitted in accordance with Article 34 if the Court considers that the applicant has not suffered material damage' (The Council of Europe 2013). the Convention and the Protocols thereto do not require any consideration of the application concerning merits.

'Substantial damage' is a complex abstract concept. In any given case the Court formulates a legal position(s) on the interpretation of this Convention. The mere list and content of the general criteria for assessing (measuring) the presence or absence of substantial damage led to a sharp debate among judges of the Court, lawyers, governments of the State Parties to the Convention, experts (for some of the best-known works see Keller, Fischer and Kühne 2010: 1037-1039; Leach 2011: 41; Jacobs, White and Ovey 2017: 17-18, 44). They are the continuation of previous discussions on the principle of 'd minimis non ur t r tor', the application of which used to be 'disguised' in nature (previously not formally fixed in the Convention, but rather referred to it in the judgments of the Court), as well discussions on the applicants' right to access the Court.

The Legal Department has generalised the Court's case on the list and content of criteria for measuring the presence or absence of material damage to the applicant as an individual (ECHR 2014). The Secretariat of the Court prepared 'A Practical Guide on Admissibility Criteria (ECHR 2014). A High-Level Conference of the member States of the Council of Europe in the Declaration on the Future of the European Court of Human Rights actively encouraged States-members to consider facilitating their translation into the respective national languages. At the same time, the issue of the list of criteria for material damage and their content regarding applicants as entrepreneurs remained unnoticed in these publications.

The introduction of a new condition for the admissibility of individual applications - substantial harm — has become an impetus for the intensification of discussions among scholars about the role of the new condition for the admissibility of an individual statement by the Court in the international legal mechanism for access to the Court (Gerards, Glas et al. 2017), as well as with respect only to the general criteria for assessing (measuring) its availability or absence, regardless of the subject

of the application — be it an individual or a legal entity as a subject of entrepreneurship (for some of the best known works see Shelton 2016; Rainey, Wicks and Ovey et al. 2017).

Paragraph 80 of the Explanatory Commentary to Protocol No. 14 affirms that 'the Contracting Parties expect the Court to develop an objective criterion for the application of the new rule through the gradual development of precedent practice'. On 1 February 2017 the Court applied this criterion to more than 30 cases and rejected applications in more than 20 cases. Most of them were cases against Ukraine[2]. From one case to another the Court formulates the legal position (provision) for the interpretation of material harm. The Court's case-law shows that the list and content of the criteria for assessing the presence or absence of material damage suffered by the applicant may not be the same for individuals and legal entities as entrepreneurs. For the first time in legal science, this article launches a discussion on the list and content of these criteria for business entities as applicants to the Court.

Introduction of a new condition for the admissibility of an individual statement by the Court — significant damage

On 1 June 2010 Protocol No. 14 to the Convention entered into force. It introduced a new condition for the admissibility of an individual application by the Court causing the applicant a significant harm. Previously, 'de minimis' was not formally enshrined in the Convention. There it was only referenced in the judgments of the Court (Deshko 2016: 220). Thus, its application had a hidden (disguised) nature.

26-27 April 2011 a high-level conference of the member States of the Council of Europe approved the Declaration on the future of the Court. The Conference challenged the Court to give full effect onto the new admissibility condition in accordance with the principle that the Court does not deal with trifles ('de minimis non curat praetor').

'Substantial damage' is a complex abstract concept; that has been causing sharp debate during its consideration. According to the position of the constitutionalists, shared not

2 See for details the European Court of Human Rights, Analysis of statistics 2006-2017; European Court of Human Rights, Overview of the Court's case-law 2017.

only by the bulk of the judges of the Court but the majority of the Committee of Ministers of the Council of Europe member States as well, the Court gained special powers to reject cases that do not overlook important issues enclosed by the Convention.

Opposing the constitutionalists are supporters of the so-called individual justice or 'individualists. They consider 'substantial harm' and the principle of 'de minimis non curat pr etor' as a barrier to filing complaints to the Court by individuals or legal entities, and underline that the legality of the Court for individuals is at the heart of judicial protection. 'Substantial damage' as a condition for the admissibility of an individual statement also causes a sharp debate among academics and politicians. Nikos Vogiatzis argues that 'the admissibility criterion: undermines direct access to justice at the international level; affects the right of individual petition to the Strasbourg Court; constitutes misunderstanding of the subsidiarity principle within the Convention machinery' (Vogiatzis 2016: 185). N. Sevostyanova, Ukrainian Deputy Minister of Justice in her dissertation entitled 'Appeal to the European Court of Human Rights as the realisation of the right to access to justice warns that... in the presence of unconditional positive decisions, it is necessary to recognise that there is a probability of lowering the level of access to the ECHR... so that the concept of 'substantial harm' is a very abstract category. Due to the lack of normative specification, this could be the reason for the rejection of many individual statements, which are violations of the Convention and need to be considered by the Court' (Sevostyanova 2011: 17). Gerards', Glas' scientific researches explore two approaches to the notion of access to justice, both generally and for the Convention system specifically. The main argument of the researches is to show the value of taking a substantive approach to access to justice in the Convention system (Gerards, Glas 2017: 11).

Regarding these discussions, let us quote our arguments. In the Declaration on the Future of the European Court of Human Rights (The Council of Europe 2011), the Conference 'reaffirms the commitment of States Parties to the right to individual treatment is the cornerstone of the Convention system'. According to Article 53 of the Convention, 'nothing in it may be interpreted as limiting or derogating from any human rights and fundamental freedoms that may be

recognised under the laws of any High Contracting Party or by any other agreement being a part of it'. According to the statistics of the Court in 2016, 53.500 new applications were filed with the Court. Compared to 2015 (40.550 applications), the overall increase is 32%. 27.300 of them were identified as the subject to a single judge formation and likely to be declared inadmissible (a decrease of 1% relative to 2015). 26.200 applications were identified as likely to be considered by chambers or committees (an increase of 100%)[3]. Consequently, regarding a large number of individual claim that essentially raise the issue of violation of the rules of the Convention and need to be considered by the Court, the decline in the level of access to the Court by their deviation of the criterion for absence of 'significant damage'.

Furthermore, Article 35 (3) (b) of the Convention contains the following clause: the respect for human rights guaranteed by the Convention and the Protocols thereto requires an examination of the merits, even if the applicant has not suffered material damage. This is precisely a compromise between the positions of the constitutionalists and the idealists. As it can be seen, the condition of the admissibility of an individual statement 'significant harm' is not absolute. Even if the applicant has not suffered material damage, respect for human rights requires a substantive consideration, so that the Court cannot declare individual application as inadmissible.

The foregoing suggests that the introduction of a condition for the admissibility of cases in accordance with the principle that the Court does not deal with trifles (de minimis non curat praetor) neither restricts the applicants' right of access to the Court, nor the right to individual treatment. These rights are the cornerstone of the Convention system, although the Convention has a subsidiary nature. The purpose of introducing a new eligibility criterion for individual applications was solely to ensure the effectiveness of the conventional mechanism in the short, medium and long term.

3 http://www.echr.coe.int/Pages/home.aspx?p=reports&c=#n1347956700110_pointer [accessed 10 January 2018].

The general approach of the European Court of Human Rights to the understanding of material harm and the list of criteria for measuring its presence or absence

Although the Convention does not define the term 'substantial harm', according to Article 32 of the Convention, the jurisdiction of the Court extends to all questions of interpretation and application of the Convention and the Protocols thereto. In the Declaration on the Future of the European Court of Human Rights, the Conference challenged the Court to clarify this new condition for the admissibility of individual applications by the subsequent practice of the Court and consistently apply the principles of interpretation of the Convention.

Completely following the same lines as the judges of the Constitutional Court of Ukraine, in the presence of Yevgrafov and Tykhiy, it can be said that in its decisions the Court formulates general and settled positions regarding the understanding of the conventions that 'have a common action, that is they apply to an indefinite circle of persons as to an unlimited number of similar situations ('inexhaustibility' of the explanation). Therefore, in the future, the Court is guided by them and relying on them when considering other analogous cases' (Yevgrafov and Tykhiy 2012). Precisely those decisions in which the Court developed general and settled positions on the perception of material harm have been chosen for the study. By such decisions it is possible to acquire new knowledge of the term "significant harm", as well as the list and content of the criteria for assessing the presence or absence of material damage to the business entities as applicants.

The application of the principle of 'd minimis non ur t r tor' by the Court of dates to 1972 in the case of X. against the UK (ECHR 1972). In 1981 the European Commission on Human Rights, having analysed the circumstances of this case, concluded that the size of the damage inflicted on the applicant in connection with the failure to provide him with the opportunity to consult a lawyer is negligible (ECHR 1981). Referring to the principle of 'd minimis non ur t r tor', the Human Rights Commission decided on inadmissibility. Another example is the judgment of the Court in the case Comochis and others vs. Greece (ECHR 2001). As an argument for the application of the principle of «d minimis

non ur t r tor» the Greek Government declared the applicant's material damage insignificant (slightly over 50 Euro). The Court noted that the applicant had complained not only of the pecuniary damage of it, but also of lengthy proceedings before the national courts, and found the issue substantial under the Convention thus not depriving the applicant of the status of victim of a violation of the Convention.

Shelton righteously admits that the 'Court finds that only general and rather subjective measure applied' (Shelton 2016: 303). However, as it can be seen, the practice of the European Court of Human Rights testifies that the main element of the admissibility criterion is the question whether the applicant was inflicted on a violation of his/her right or fundamental freedom of 'significant disadvantage'. The criterion of 'significant disadvantage' is based on the idea that the violation of law, irrespective of the extent to which such a violation of a legal position is materialised should reach a minimum degree of gravity for being considered by the International Court. This is the Court's general approach to understanding of material harm. The assessment of this minimum level is naturally relative and depends on all the circumstances of the case.

The Department of Legal Counsel of the European Court of Human Rights in the fourth edition of The Practical guide on admissibility of criteria emphasises that in many cases the severity of the damage is determined by the financial dimensions of the issue under consideration and the importance of the case for the applicant. The financial measure is assessed from the point of view of material and moral damage. In the judgment in Kiusy vs. Greece, the Court found the sum of EUR 1 000 claimed by the applicant for non-pecuniary damage as not decisive for assessing the true significance of the case for the applicant (The Council of Europe 2014: 97). According to the Court in the case of Fernandes vs. France, the consequences of material damage should not be abstractly measured, since even a small financial loss may be substantial given the specific circumstances of the person and the economic situation in the country or region in which it resides (ECHR 2010).

Thus, the financial damage suffered by the applicant is one of the criteria for measuring the presence or absence of material damage. The assessment of the financial damage suffered by the applicant should not be carried out abstractly and assessed

in relation to whether it amounts to or exceeds a certain amount. There is no decision of the Court determining the size of the financial damage caused to the applicant that would be recognised by the Court as material one. Accordingly, the assessment of financial damage suffered by the applicant is carried out as a pecuniary damage assessment in terms of the specific financial situation of the person and the economic situation in the country or region in which the applicant lives, and as a non-pecuniary damage, having regard to the significance of the impact which it had on the applicant.

Kovler, the judge of the Court at the detention centre, focuses on the ruling of the Court in the case of Korolev vs. Russia, in which the Court pointed out that 'the significance of the damage should be assessed in the light of objective social interest' (Kovler 2011: 13). Concerning the question of the assessment of the public interest in determining the significance of the damage to the Court's practice, the principle that complaints violations of fundamental absolute rights will always raise objectively important issues and cannot be declared inadmissible.

In the case of Budchenko vs. Ukraine the Court pointed out yet another criterion for the existence or absence of material damage. 'The severity of the alleged violation must be assessed in the light of both, the subjective perception of the applicant and the fact that the subject of the dispute is objectively relevant to the applicant in a particular case' (ECHR 2014). In the case of Vatrik vs. Romania the Court noted that the subject of the complaint was a matter of principle and found the case admissible. In the case of Giuran vs. Romania the most important point, according to the Court, was that 'for the applicant the fundamental question was precisely the protection of his right to respect for his property and housing' (ECHR 2011). In view of these considerations, such a complaint was found to be admissible.

One of the criteria for assessing material damage the Court also refers to is the gravity of the alleged violation for the exercise of the right and/or the possible consequences of such a violation for the applicant's personal situation (Luchaninova vs. Ukraine, ECHR 2011; Gagliano Giorgi vs. Italy, ECHR 2012).

Thus, as established by the analysis, the criteria for assessing the existence or absence of material damage the applicant

has suffered are as follows: financial damage to the applicant; public interest and the nature of the right; violation of the applicant's subjective attitude to the question of violation of his/her rights and/or fundamental freedom and issues which are objectively relevant to him/her in one or another case; the seriousness of the alleged violation for the exercise of the rights and/or possible consequence of such a violation for the applicant.

The list and content of the criteria for assessing the presence or absence of material damage suffered by the applicant as the subject of entrepreneurship

Financial damage to the applicant

The practice of the Court shows that the assessment of the financial damage suffered by the applicant should not be carried out abstractly, rather assessed in the light of all the circumstances of the case. In the case of East/West Alliance Limited vs. Ukraine, the applicant is an Irish company East/West Alliance Ltd located in Dublin, with a representative office in Ukraine (hereinafter referred to as the "applicant company"), alleging a violation of Article 1 of the First Protocol, as well as Article 6, paragraph 1, and Article 13 of the Convention in connection with the numerous and diverse interferences of the authorities with its ownership over fourteen aircrafts allegedly resulting in the deprivation of the applicant company's property and in assessing the damage caused to it as significant, evaluating it at USD 165915960 for material damage caused and USD 10,000 for moral damage caused (ECHR 2017). The analysis of the case shows that the applicant included the following: 1) compensation equivalent to the present market value of fourteen aircrafts, similar to those it had been deprived of; 2) lost profit; 3) the above-mentioned profit from the Lease agreement to a bank account with an average annual interest of 3.8%; 4) expenses incurred under the Agreement of 4 June 2003 on the protection of six An-28 planes. The Court drew attention to the fact that 'the exact calculation of the amount of damage suffered by the applicant may sometimes be impossible in connection with the nature of damage resulting from the violation, which is uncertain in its nature. There may be other obstacles. For example, it is impossible to calculate

accurately the value of a property that no longer exists' (East/West Alliance Limited v. Ukraine, ECHR 2014, §250). The Court was also 'aware of difficulties in calculating lost profits in circumstances where such profits may fluctuate due to a variety of unpredictable factors' (§47). This is especially true in cases of 'economic activity of the enterprise, in which the risks are assumed to a great degree of uncertainty concerning profitable use of the property' (§26).

As to the non-pecuniary damage suffered by the applicant, which according to the general approach of the Court is also one of the criteria for measuring the presence or absence of material damage; in the opinion of the author of this issue regarding business entities is debatable. Could it be the legal entity — the subject of entrepreneurship caused non-pecuniary damage?

In the judgment in Agrokompleks (Ukraine Agricultural Production Complex) vs. Ukraine (ECHR 2018), the Court observes that 'causing a non-pecuniary damage to a commercial enterprise it is impossible to provide precise calculation for moral damage of a commercial enterprise' (§79) that it is 'impossible in principle to make a precise calculation of moral damage to a commercial enterprise' (§79). The Court therefore evaluates on an equitable basis. 'If one or more types of damage cannot be accurately quantified or the difference between material and moral damage is difficult to determine, the Court may decide to make an overall assessment' (Comingersoll S.A. vs Portugal, ECHR 2000, §29).

In other judgments the Court notes that 'pecuniary damage received by commercial enterprises may include aspects that are, to a greater or lesser extent, 'objective' or 'subjective'. The aspects that can be considered include the company's reputation, uncertainty in decision-making, business management issues (for which there is no precise method of calculating the consequences) and finally albeit to lesser extent, anxiety and inconvenience as for management' (Comingersoll S.A. vs. Portugal, ECHR 2000, §29).

As it can be seen, the Court applies a broad approach to the interpretation of non-pecuniary damage inflicted on a business entity. In doing so, the Court does not include the moral suffering of a legal entity to its content, as the manifestations

of emotion are incompatible with the legal nature of any given legal entity. A legal entity is an artificially created subject of law that does not have a psyche. But a legal person may be subject to non-pecuniary damage, which results in a deterioration of business reputation. Negative influence on the positive assessment of business qualities of a legal entity may lead to harmful consequences of a non-property nature, such as a deterioration or deprivation of the possibility for the entity to pursue its objectives and tasks, the deterioration of its relations with partners etc.; the experience of certain mental sufferings by individuals who are part of the management of the subject of entrepreneurship etc.

Thus, to the moral harm of a business entity the Court includes non-pecuniary damage caused to the legal entity itself, and moral damage caused to the management (administration) of a legal entity — individuals.

In assessing the Court's use of the said criterion of the presence or absence of significant harm, theorists are not unanimous (Gerards, Glas 2017: 11; Vogiatzis 2016: 185). To our mind, harm suffered by an individual applicant to the Court, the harm Court assesses this damage when considering the admissibility of this application is not decisive for the Court itself. It is important for the Court to assess the presence or absence of significant harm, in combination with another criterion — the importance of the case for the applicant. This will be considered further in this study. Now, we would like to emphasise that no decision of the Court establishes the fixed size of non-pecuniary damage caused to the applicant, a business entity, which would be recognised by the Court as essential. The Court since the right to individual treatment is the cornerstone of the Convention, assesses the applicant's situation and the economic situation in a country or region where he has violated his rights and freedoms guaranteed by the State Party to the Convention.

Public interest and the nature of the violated law

The second criterion for assessing material damage, being the object of the present analysis, is the public interest and the nature of the right, the violation of which is claimed by the applicant.

Thus, in the case of CJSC Pivdenbudtrans and others vs. Ukraine (CJSC "Pivdenbudtrans" and others vs. Ukraine, ECHR 2017), the applicants complained about the duration of civil proceedings and the lack of effective remedy in domestic legislation. The Court noted it had established 'in the case groups Svetlana Naumenko vs. Ukraine (ECHR 2004) and Efimenko vs. Ukraine (ECHR 2006) violations on issues like those considered in this case and declared these complaints to be admissible'.

In the decision of the case of LTD "Polimerkonteiner" vs. Ukraine (ECHR 2016) the applicant complained, inter alia, to the continuing practice of the customs authorities to determine the wrong code of the goods imported by the applicant company, which entails a higher duty and contradicts the position of numerous final court decisions in favour of the applicant company. On 15 March 2016 the Court proposed that the Government should comment on the admissibility and substance of the complaint lodged by the applicant company in accordance with Article 1 of Protocol No. 1 concerning the continued failure of the customs authority to take judicial decisions in favour of the applicant company regarding the determination of the wrong code for its imported goods. The Court disagreed with the Government's reference to the fact that 'this complaint is clearly groundless in the meaning of part 3 of Article 35 of the Convention. It also noted that this complaint is not inadmissible on any other grounds' (ECHR 2016).

Regarding the nature of the breach of law, which is one of the criteria for assessing material damage, the Court noted that the first and most important requirement of Article 1 of Protocol No. 1 is the lawfulness of any interference by public authorities in the peaceful possession of property. The requirement of legality, within the meaning of the Convention, requires compliance with the relevant provisions of domestic law and compliance with the rule of law, which includes freedom from arbitrariness. Moreover, the Court emphasised that in any case of interference, including those aimed at paying taxes, a 'fair balance' between the requirements of the general interests of the public and the requirements of protecting the fundamental rights of the individual should be observed. In the whole, the desire to achieve such a balance is reflected in the structure of Article 1 of the Protocol No. 1. The required balance cannot be met if the person concerned must bear an individual and excessive burden (ECHR 2016, §16-17).

The Court noted that 'it considered a similar situation in the case of Intersplav vs. Ukraine, in which the applicant company had to initiate litigation concerning numerous instances of refusal by the authorities to confirm the amount of VAT refunds to be paid to the applicant company' (ECHR 2007, §38-40) The Court concluded that the result of systematic violations by the public authorities was the overwhelming burden placed on the applicant company. The same idea applies to the case of LTD "Polimerkonteiner" vs. Ukraine.

Governments often state that the Court, when assessing the appropriateness of an individual application for a de minimis criterion should consider measures taken by a State to reduce or eliminate the consequences of violating the applicant's rights and/or fundamental freedoms. Regarding this, the Court notes that the recognition by the respondent State of the violation and the provision of compensation to the applicant on the national level cannot automatically justify the recognition of an individual application as inadmissible. Damage caused by a violation of the provisions of the Convention cannot be reduced to a purely economic measure. In paragraphs 32-35 of the Sancho Cruz case and 14 other "Agrarian Reform cases vs. Portugal", the position of the Court is reduced to the fact that even in cases where the compensation offered at the national level is higher than that normally granted by the Court in similar cases, such a compensation cannot be a determining factor in the question of inadmissibility, as this issue requires an assessment of the nature of the violation and the severity of the damage caused, and not only of its consequences (ECHR 2011).

Subjective attitude of the applicant

Another criterion for assessing material damage is the subjective attitude of the applicant towards the issue of violation of his/her right and/or fundamental freedom and issues that are objectively relevant to him/her in one or another case.

Thus, in the case of Editorial Board of Pravoye Delo and Shtekel vs. Ukraine (ECHR 2011) the subject of the complaint was a matter of principle for the first applicant - the violation of Article 10 of the Convention and the indication of the general measures to be taken in Ukraine to bring its legislation and judicial practice

in line with the 'European standards of freedom of expression' with regard to the use of 'socially relevant information from the Internet, the authenticity of which is doubtful'. As to the second applicant, the Court noted that he/she had been caused some distress and anxiety because of violation of his/her rights.

The gravity of the consequences of the alleged violation

The fourth criterion for assessing material damage is the seriousness of the consequences of the alleged violation for the exercise of the right and/or the possible consequences of such a violation for the applicant.

In the case of the newspaper Ukraine-centre vs. Ukraine (ECHR 2010), the applicant company assessed the inflicted financial loss at EUR 9675.57. This amount included the amount paid to the plaintiff in the case of discredit considering the expenses incurred by him/her for the payment of executive fees and inflationary costs. It also claimed € 20,000 in respect of non-pecuniary damage, arguing that the amount awarded by the national court had caused financial difficulties leading to the release of journalists, increased publishing costs and a reduced circulation. The court declared the case admissible.

Conclusions

The Court granted full effect to the new admissibility of cases in accordance with the principle that the Court does not deal with trifles ('d minimis non ur t r tor'). Although 'substantial harm' is a complex abstract concept, the Court, however, has developed objective criteria for its application through the gradual development of precedent practice.

At present day the Court's general approach to the understanding of material harm is based on the idea that the violation of law, regardless of the extent to which such a violation of a legal position has been materialised, should reach a minimum degree of gravity for it to be considered by the international court.

The article initiated a discussion on the list and content of the criteria for determining the presence or absence of

material damage suffered by the applicant as the subject of entrepreneurship. Thus, the list of these criteria includes the following: financial damage to the applicant; the public interest and the nature of the law, the violation of which is claimed by the applicant; the subjective attitude of the applicant towards the violation of applicant's right and issues that are objectively relevant to him/her in a particular case; the gravity of the consequences of the alleged violation for the exercise of the right and/or the possible consequences of such violation for the applicant's personal situation.

Pecuniary damage suffered by a legal entity includes: the value of lost, damaged or destroyed property; additional costs (penalties paid to other entities, the cost of additional works, additional expenditures, etc.); the unearned profit (loss of profit) for which the applicant was entitled to count.

The Court applies a broad approach to the interpretation of non-pecuniary damage suffered by a business entity, in fact including non-pecuniary damage caused to the legal entity itself and moral damage to the management of a legal entity, individuals. Altogether, the non-material damage caused to the legal entity itself and the moral damage caused to the management of a legal entity — individuals, the Court calls moral damage caused to the individual beingthe subject of entrepreneurship. It is precisely the use of the term 'moral harm caused to the subject of entrepreneurship' that seems not to be correct because the moral suffering of a legal entity as one of the manifestations of emotions is incompatible with the legal nature of the legal entity. A legal person may be caused non-pecuniary damage, which results in the deterioration of business reputation. Moral damage may be caused only to individuals being the management of the business entity.

In addition, although answering the question: 'Does the entity cause significant harm?', - the court assesses in aggregation of material and non-property damage caused to the entrepreneur as well as moral damage inflicted on his management (administration), nevertheless not seen as correct unification of non-property damage to the subject of entrepreneurship and moral damage inflicted on to management by the only category - moral damage to the entrepreneur.

Finally, being a vivid instrument that should be interpreted in

the light of current conditions the Convention containing list of criteria for assessing (measuring) the presence or absence of material damage cannot be established once and for all. The said criterion will vary depending on the realities of life, thus creating a space for further research.

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