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VIOLATION OF CONSTITUTIONAL RIGHTS DURING THE APPLICATION OF PRECAUTIONS AND CERTAIN TYPES OF NSDS

The issue of violation of constitutional rights during precautionary measures and certain types of covert investigative (investigative) actions (hereinafter – NSDS) has been discussed repeatedly. These actions do not always take place in compliance with all the requirements specified by law. This leads to certain differences and conflicts, and worst of all, when such non-compliance violates constitutional human rights.

As is known, according to Article 3 of the Constitution of Ukraine [1], a person, his life and health, honor and dignity, inviolability and security are recognized in Ukraine as the highest social value. That is why the implementation of precautionary measures without compliance with the requirements is quite a serious and urgent issue.

Let's start with the fact that the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 (hereinafter – the Convention) stipulates that everyone has the right to respect for his private and family life, his home and his correspondence; public authorities may not interfere in the exercise of this right, except where the interference is carried out in accordance with the law and is necessary in a democratic society in the interests of national and public security or economic well-being, to prevent riots or crimes, to protect health or morality or to protect the rights and freedoms of others (Article 8) [2]. In accordance with the requirements of the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters [3], covert investigations into crimes within national criminal proceedings are provided for.

In its judgment of 12 March 2009 in *Sergey Volosyuk v. Ukraine* (application no. 1291/03), the ECHR disclosed the basic requirements of the right to respect for private and family life and to correspondence guaranteed by Art. 8 of the Convention, in particular: “The Court notes that the parties have not denied that the examination of the applicant's correspondence by the officials of the institution where he was detained constituted an interference with the applicant's right to respect for his correspondence guaranteed by Article 8 § 1 of the Convention [4].

The principle of the rule of law in the decisions of the ECHR concerning Ukraine concerns the requirements of the “quality” of the law and legal certainty requires compliance with the requirements of the “quality” of the law, which provide for interference with individual rights and fundamental freedoms. Thus, the judgment of 10 December 2009 in *Mikhaylyuk and Petrov v. Ukraine* (application no. 11932/02) states: The Court recalls that the expression “in accordance with the law” first of all

requires that the impugned interference had some basis in national law; it also concerns the quality of the relevant legislation and requires that it be made available to the person concerned, who must also be aware of its consequences for himself, and that this legislation must comply with the rule of law (*Poltoratskiy v. Ukraine*). *Ukraine* of 29 April 2003 (application no. 38812/97, § 155) [5].

The ECHR has repeatedly stated violations of the right to respect for private life in cases against Ukraine. For example, in its judgment of 29 June 2006 in *Panteleyenko v. Ukraine* (application no. 11901/02), the ECHR stated that both the storage by public authorities of information about a person's private life and its use is a violation of the right to respect for private life, which is guaranteed by paragraph 1 of Art. 8 of the Convention [6]. Provisions of item 2 of Art. 15 of the CPC of Ukraine on the prohibition of collection, storage, use and dissemination of information about a person's private life without his consent, except as provided by the CPC of Ukraine, applies only to information obtained during criminal proceedings. The principle of non-interference in private life, provided for in Art. 15 of the CPC of Ukraine, much narrower than the right not to respect for private and family life, which is guaranteed by Art. 8 of the Convention. Therefore, in order to prevent breaches of the obligations set out in this Convention, it is important to be aware of the ECHR's approaches to Art. 8 of the Convention [7].

The analysis of the above examples of case law showed that both the ECHR and the courts of Ukraine of different instances adhere to a common position, according to which to verify the admissibility of evidence obtained by NSDC related to interference in private communication, the court should be able to review documents, which gave permission for this action. However, when the court does not have such a possibility in court, the results of the relevant NSDS should be assessed as inadmissible evidence and cannot be used in substantiating the court decision.

In addition, it can be concluded that Chapter 21 of the CPC of Ukraine is fully consistent with the practice and approaches of the ECtHR, but for the most part the ECHR found violations of human rights and freedoms in Ukraine not due to inconsistency of national legislation but due to incorrect practice. In particular, the legislation does not sufficiently define the procedural form of conducting individual NSDCs related to interference in private communication, which would allow the parties to criminal proceedings and the court to verify the authenticity of their results. As a result, the courts do not recognize these results as admissible evidence at the request of the defense or on their own initiative.

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POLICE FIGHT WITH BULLYING IN UKRAINE

Bullying is any deliberate, hurtful, upsetting, frightening or threatening behaviour by an individual or a group towards other people. It is repeated over a period of time and it is very difficult for the victims to defend themselves. Bullying is meant and results in worry, fear, pain and distress to the victim's.

UNICEF defines bullying as unwanted aggressive behaviour by school-age children that results in the child being bullied by another child or group of children in order to humiliate, intimidate and demonstrate force.

Bullying most often occurs in places where there is little or no adult control. It can be a yard, stairs, corridors, toilets, locker rooms, sports grounds. Even at home, victims of bullying can continue to be harassed by sending abusive messages on the phone or through social networks.

According to various studies, almost every third person in Ukraine has been bullied in one way or another, suffered from humiliation and ridicule: 10% – regularly (once a week and more often); 55% – partially exposed to bullying by classmates; 26% – parents consider their children victims of bullying.