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WHY SHOULD EUROPEAN STANDARDS ON HUMAN RIGHTS BE APPLIED IN THE ADMINISTRATION OF JUSTICE?

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The application of European standards to human rights cases presents the possibility of making proper court decisions. European standards present certain guidelines for protecting human rights and fostering the maximum protection of those human rights. Some courts of certain European states have directly referred to this in their decisions on European standards as to the guideline on the protection of human rights.[1] In administering justice, the application of European standards has several significant preponderance, and if used, the Georgian courts will have the opportunity to ensure the protection of human rights in compliance with European standards. In administering justice, the application of European standards could be applied as follows:

a. to properly explain general or vague domestic legal norms;
b. to prevent any collision with domestic normative acts;
c. to narrow the gap in domestic normative acts;
d. to foresee the decisions of the European court;
e. to develop national standards of human rights;
f. to render legal credibility to court decisions.

a) Application of European Standards as to properly explain general or vague domestic legal norms

Application of European standards in administering justice provides the national court with the opportunity to properly interpret general or vague norms of Georgia's domestic normative acts.[2]

In deciding a lawsuit, a national court may, in principle, apply a domestic normative act, but in order to properly interpret its provision it may also apply the European standard of human rights. In this case, the European standard and domestic normative act are compatible. Accordingly, the legal basis of court decisions will be a domestic normative act (for instance, a law) as well as European standard of human rights. The application of European standards as the means to interpret domestic normative acts takes place when a domestic normative act does not sufficiently explicitly settle public relations, thus presenting the risk of making an improper decision. The court can, by applying the European Convention, ensure proper interpretation of a domestic normative act.

It is most common to apply the European Convention as a means to clarify domestic normative acts in court practice of the states which are parties to the Convention.

The role of applying European standards of human rights as the means to properly interpret a domestic normative act is approved not only in the national court practice of the states where the European Convention is recognized as the integral part of the legislation but also of those in which the Convention is not recognized as such.

It is noteworthy, that case law of the European Court on Human Rights is practiced not only in the courts of the states which are parties to the Convention but also in courts of non-European states.[3] This trend is partly stipulated with the similarity of provisions envisaged by the European Convention and of the civil and political rights of the international pact.[4] Decisions of non-European states are proof of this. For instance: In hearing the case *Philargita v. Penaral* the US cassation court applied the case law of the

[1] G. Ress, The Effect of Judgments and Decisions in Domestic Law, in: The European System for the Protection of Human Rights, R. Macdonald, F. Matscher & H. Petzold (Eds.), 1993, 842. aseve ix. *Cosmos Press* v. *The Police,* 2 CLR 73, 1985, 76-81.

[2] N. Bratza, The Treatment and Interpretation of the European Convention on Human Rights By the English Court, in: Aspects of Incorporation of the European Convention of Human Rights into Domestic Law, J.P. Gardner (Ed.), 1993, 69; See also the Statement of Lord Daning: "The position [...] is that if there is any ambiguity in our statutes or uncertainty in our law, then these courts can look to the [European] Convention [on Human Rights] as an aid to clear up the ambiguity and uncertainty, seeking always to bring them into harmony with it." Lord Denning, in: *R.* v. *Chief Immigration Officer, Ex parte Bibi* [1976] 3 All E.R. 847.

[3] E. Benvenisti, National Courts and the International Law on Minority Rights, 2 Austrian Review of International and European Law, 1, 1997, 4-5.

[4] R. Lillich, Towards the Harmonization of International Human Rights Law, in: Recht zwischen Umbruch und Bewahrung: Ferstschrift für Rudolf Bernhardt, 1995, 467.

European Court in relation to the banning of torture;[5] The Supreme Court of Zimbabwe in hearing the case *Tyrer v. the United Kingdom* applied the decision of the European Court in order to testify that corporal punishment presents the type of "inhuman and degrading" punishment banned by Article 3 of the European Convention;[6] the same court in hearing another case pertaining to juvenile corporal punishment applied the decisions the European Court made on the cases: *Tyrer v. the United Kingdom* and *Campbell and Cosans v. the United Kingdom.*[7] The Supreme Court of Zimbabwe in hearing one case considered the decision of the European Court on the case: *Soering v. the United Kingdom;*[8] The Supreme Court of India has referred to European Convention and case law of European Court in order to interpret the Constitution of India;[9] The application of European Court case law is also known in the court practice of Canada.[10]

Based on this information, in administering justice, non-European countries apply European standards of human rights in order to ensure proper interpretation of general and vague domestic normative acts of the state.[11]

The Courts of Georgia should interpret the provisions of the Constitution of Georgia in accordance with European standards. By applying these standards, the court will avoid such interpretations of the constitution that protect human rights with lower standards than what is envisaged by the European standards. The Courts of Georgia may apply the European standards as a guideline, fostering its capacity to make a proper decision.

National courts should apply European court case law; otherwise there is a big likelihood that the provisions of the European Convention will be interpreted in a different manner which might cause the state to violate the commitments envisaged by the European Convention. If the national court fails to apply European standards it may even restrictively interpret the right that is granted to a person by the European standards. In consequence, the person will not be provided with the right that is granted to him/her by the European standards. In such a case, if the person refers to the European court testifying that the national court has failed to ensure him/her with the right granted by the European standards, he/she will win the lawsuit in the European Court and the latter will establish that the state in question is restrictively interpreting the European standards as defined by the case law of the European court and has not met the commitments envisaged by the Convention.[12]

b) The Application of European Standards as a Tool Preventing Collision with the Domestic Normative Act

In the court practices of the European states, European standards of human rights are also applied during collisions with domestic normative acts. In such cases, the national court applies the Europeans standard if the latter has established that a lower domestic normative act (for example, a law) contradicts the European standard.

In Georgian courts the occasional detection of a collision between the European standards and human rights standards reinforced by domestic normative acts could be interpreted by the fact that there are few legal contradictions between international treaties of human rights and the domestic normative acts of Georgia. However, such interpretation could be conclusive only in theoretical terms. In practical terms, this reason will be inconclusive, which, *inter alia* is derived from the fact that in a state which is still in the process of establishing its legal base in relation to human rights, the probability of contradictions are much higher than they are in those states having long legal traditions in ensuring human rights in compliance with modern standards.[13]

[5] 630 F 2d 876 (1980).

[6] *Ncube, Tshuma and Ndhlovu* v. *The State* (1988) 2 Afr. L. Rep. 702. quotation: J. Merrils, The Development of International Law by the European Court of Human Rights, 1993, 20.

[7] The case _ *Campbell and Cosans* v. *the United Kingdom*) (1982) — is about banning corporal punishment at schools as a disciplinary measure See. *Juvenile* v. *The State*, Judgment No. 64/89, Crim. App. No.156/88. ЗОЪ.: J. Merrils, The Development of International Law by the European Court of Human Rights, 1993, 20.

[8] J. Dugard, The Role of Human Rights Treaty Standards in Domestic Law: The Southern African Experience, The Future of UN Human Rights Treaty Monitoring, P. Alston & J. Crawford (Eds.), 2000, 277-278.

[9] A. Lester, Freedom of Expression, in: The European System for the Protection of Human Rights, R. Macdonald, F. Matscher & H. Petzold (Eds.), 1993, 468 (footnote 16).

[10] Report of the Sixty-Sixth Conference, International Law Association (1994), 1994, 334; Y. Iwasawa, The Domestic Impact of International Human Rights Standards: The Japanese Experience, The Future of UN Human Rights Treaty Monitoring, P. Alston & J. Crawford (Eds.), 2000, 267.

[11] A. Bayefski, International Human Rights Law in Canadian Courts, in: Enforcing International Human Rights in Domestic Courts, B. Conforti & F. Francioni (Eds.), 1997, 321; R. Lillich, Towards the Harmonization of International Human Rights Law, in: Recht zwischen Umbruch und Bewahrung: Ferstschrift für Rudolf Bernhardt, 1995, 467.

[12] J. Velu, Report on "Responsibilities for States Parties to the European Convention", in: Proceedings of the Sixth International Colloquy about The European Convention on Human Rights, 13-16 November 1985, 1988, 592-593.

[13] The study conducted by independent experts on the compatibility of the Georgian legislation with the requirements of the European Convention of Human Rights shows the necessity of bringing many of Georgia's normative acts in conformity with the European Convention. Study on the Compatibility of Georgian Law with the Requirements of the Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols, HRCAD(2001)2, 2001; See also the reports of the European Councils' experts. Report on the Conformity of the Legal Order of Georgia with Council of Europe Standards, AS/Bur/Georgia (1997) 1, Parliamentary Assembly, Council of Europe, 25 September 1997.

To prove this, we can bring an example from the Constitution of Georgia. In general, it could be noted that if a legal contradiction with the European standards of human rights can be found in the Constitution of Georgia, it should not be discarded that there might be some other contradiction in relation to other domestic normative acts.

Paragraph 4 of Article 18 of the Constitution of Georgia establishes a provision stipulating that "physical or psychological coercion of a detainee or of a person whose liberty is restricted in a different manner, is inadmissible." The provision itself is derives no problem in terms of compatibility with the European standard, but what is problematic is Paragraph 1 of Article 46 which grants the president the right to limit certain paragraphs established by the Constitution, among them Article 18, during emergencies or martial law. So it turns out that the president is authorized to allow physical or psychological coercion of a detainee or of a person whose liberty is restricted in a different manner, which directly contradicts Article 3 of the European Convention of Human Rights (which bans torture, inhuman or degrading treatment, or punishment) and the case law of the European Court.

Article 18 of the Constitution of Georgia would have been problematic had the constitution not been amended and the mentioned paragraph not been transferred as an additional 3rd paragraph from Article 18 to Article 17 of the Constitution. Contradiction with international, among them European, standards prompted this amendment to the Constitution of Georgia.

These examples give a clear indicator that legal contradictions could even emerge between the Constitution of Georgia and international and European standards of human rights, which in this specific case lasted almost 11 years before an amendment was made in the Constitution.

In general, the application of the Convention in court practice of the states that are parties to the European Convention against the norm established by domestic normative act is comparably infrequent. Notwithstanding, two cases can be traced in the court practice of Georgia which are reviewed below.

The issue of protecting human rights with different standards adjoins with that of the collision of norms. In some cases the principle of effective protection of human rights may contradict that of hierarchical relations**.** If the ordinary court establishes that domestic normative acts (for instance a law) provides a person with more effective protection than the European Convention of Human Rights, the ordinary court shall grant preponderance and apply the domestic normative act in spite of the fact that Georgian legislation grants a higher level to the European Convention. Such an approach is justified by the effective protection of human rights. The Court of Georgia shall apply the act which secures more effective protection of human rights. It would not be right if, during the collision between European Convention and the law, the Court of Georgia applies European Convention (which has a higher hierarchical level than the law) if the law provides more protection of human rights of a person than the European Convention in detriment to the more effective protection of human rights as established by the law.

One of the preponderance of the application by the courts of the European Convention of Human Rights as well as of international treaties of human rights is that it gives the opportunity of identification of such a domestic normative act that protects human rights with lower standards than stipulated by the European Convention. If a court does not apply the European Convention, and universal international treaties, it will simply be unable to identify the collision between a domestic normative act and the European Convention and accordingly, in making a decision the court will be guided by lower standards of protection of human rights. Admittedly, in this specific case the European Convention will have prevalence but there is no assurance that in future, without uprooting the collision, another court in case with similar circumstances will apply the European Convention and grant preponderance to the latter.

c) Application of European Standards as the Tool for Narrowing the Legal Gap in Domestic Normative Acts

In administering justice, European standards of human rights can be applied in order to narrow the legal gap in Georgia's domestic normative acts. This occurs when a domestic normative act (for example, a law) does not regulate relevant public relations (so the legal vacuum is palpable) while such relations are regulated by the European Convention.

To demonstrate the application of the European Convention by national courts as the sole legal basis, the 1997 decision of the Criminal Chamber of the Supreme Court of Poland can be brought.[14]

[14] See the verdict of the Criminal Chamber of the Supreme Court of Poland on the case — *Mandugeck*. 29 July, 1997See also A. Drzemczewski & M. Nowicki, Poland, in: Fundamental Rights in Europe: The European Convention on Human Rights and its Member States (1950-2000), R. Blackburn & J. Polakiewicz (Eds.), 2001,

The case was about the extradition of two wanted Chinese citizens to China arrested in Poland on charges of fraud and extortion. The Chinese authorities requested extradition of those persons from Poland.

To nullify the extradition order before the Supreme Court, the Chinese citizens referred to two arguments: a) in China capital punishment is envisaged for such crimes; b) there is well-founded doubt that both of them will suffer torture and/or inhuman or degrading treatment or punishment. Based on these arguments, they were attesting that their extradition to China would be considered as a violation of Article 3 of the European Convention thus, requesting cancellation of the extradition order. The Supreme Court of Poland nullified the extradition order. The court made a statement which, because of its significance is quoted in full:

"That China is not part to the European Convention of Human Rights is not essential as the issue is related to relations between China and Poland. The Convention (the European Convention of Human Rights) obligates the high contracting parties with commitments to `provide everyone with rights and liberties defined in I part of the Convention`. Besides, we shall rely not only on the text of the Convention but also on the case law of the Strasbourg Court. The court of Strasbourg has repeatedly interpreted the Convention regarding the extradition. […] Article 3 of the Convention bans torture or inhuman or degrading treatment or punishment. 15 Extradition to the state in which a person may sustain torture or degrading treatment or punishment amounts to the violation of the article. It is not necessary to prove that the person will indeed sustain such a treatment or punishment. Suffice is to identify the probability of such a treatment or punishment. (See Soering v. the United Kingdom — 1989; Kruz Varass and other v. Sweden —1991; Vilvaraja v. the United Kingdom — 1991; Ahmed v. Austria - 1996).[15]

Thus, extradition is inadmissible if there is a likelihood that the person to be extradited will sustain torture or inhuman or degrading punishment.

The same rule holds to Paragraph 1 of Article 6 of the European Convention. [...] Extradition is inadmissible if there is a probability that the person to be extradited will not be provided with principle assurances of the just court after the extradition court proceedings.

This court is unable to identify any fact regarding the prevailing situation in China. We can only rely on the conclusions of regional courts (which were not discarded by the appeals court) according to which, there is a big likelihood that the plaintiffs, if extradited, would be treated in a way that infringes on international law, particularly, Article 3 of the European Convention."

It is clear from the mentioned case that the Supreme Court of Poland applied the European Convention (as well as European Court case law) as a tool narrowing the legal vacuum in national legislation.

d) Application of European Standards as a Tool to Foresee the Decisions of the European Court

Application of the case law of the European Court by national courts is also caused by the fact that it gives the national courts the opportunity to foresee the decisions which the European Court will supposedly make against the state if the application is filed in the European Court.

If the European Court of Human Rights on the previous case established the infringement of the Convention by the state there is a big likelihood that in future in a similar case which might be heard by the European Court, the latter will make a similar decision, in particular, it will establish a violation of the Convention by the state.[16]

If national courts will not consider case law of the European Court, and will not correct legislation and practice, especially that of court practices, in compliance with the decisions made previously by the European Court on similar cases they will pose the threat that the European Court will establish infringement of the European Convention by the state. In other words, if the national court discards the previous decisions made by the European Court on similar cases in which the European Court has established the infringement of the Convention, supposedly, in case of a suit against the state, the European Court will make a similar decision.[17]

Clearly, it is in the interest of the state, and of its national courts to apply case law of the European Court that will grant the latter with the possibility to protect the rights of physical and legal entities with

[15] M. O'Boyle, Extradition and Expulsion under the European Convention on Human Rights: Reflection on the Soering Case, in: Human Rights and Constitutional Law, Essays in Honour of Brian Walsh, J. O'Reilly (Ed.), 1992, 96-98.

[16] J. A. Carrilo Salcedo, The European System of Protection of Human Rights, in: Judicial Protection of Human Rights at the National and International Level, vol. I, 1991, 376-377; J. Merrils, The Development of International Law by the European Court of Human Rights, 1993, 12.

[17] E. Alkema, Responsibilities Deriving from the Implementation of the European Convention on Human Rights: Responsibilities for States Parties to the Convention, in: Proceedings of the Sixth International Colloquy about The European Convention on Human Rights, 13-16 November 1985, 1988, 708.

the European standards. If national courts have applied case law and protected the rights of persons with the standards established by the latter, it is less likely that these persons will refer to the European Court to protect their rights and hence, and it is not probable that European Court will establish that the state has infringed the European Convention.

As a rule, the fact that the European Court of Human Rights in making a decision considers its previous decisions (case law) does not necessarily mean that it can not change its judgment and interpret the Convention provisions differently. In one case — Cossey v. the United Kngdom — the European Court noticed that application of the practice on hearing the next cases "does not obstruct the court to divert from the previous decision if the latter has conclusive reasons for that. Such an alteration may take place, for instance, in order to provide such interpretation of the Convention which reflects public transformations and is compatible with modern requirements."[18]

Both the Convention and the European Court have practiced the probability of such decisions which differs in its modern approach to certain matters of the protection of human rights from the previous one.[19] Article 30 of the European Convention directly foresees the adoption of such a decision that is incompatible with the previous decision made by the court.[20] As for the European Court's practice in relation to the interpretation of the European Convention differing form the previous interpretations, there have been multiple cases in court practice when the European Court interpreted the provisions of the Convention in a different manner.[21]

e) Application of the European Standards as the Tool for the Development of National Standards of Human Rights

One of the preponderance for the application of the European standard of human rights is that is renders the opportunity to develop national standards of human rights along with the European ones.

According to the European standards of human rights one of the facets for the interpretation of the provisions of legislation is that the European Convention is recognized as the 'vibrant' document. Recognizing the Convention as such signifies that its provisions shall be interpreted in accordance with the changes brought about in the awareness of the society.[22]

Unless the provisions of the Georgian legislation are interpreted in accordance with the European Standards, the context of the norms of legislation may 'trail' the rights of that protected by the European standards increasingly developing with the rise of the standards of the protection of human rights. Unless a national court shall not apply the European standards for the interpretation of legislation, legislation provisions may be interpreted more restrictively, thus violating the rights envisaged by the European standards.[23]

According to the European standards of human rights, the interpretation of domestic normative acts of Georgia shall foster the harmonization of protection of human rights' standards envisaged by the European Convention, by case law of the European Court and by Georgian legislation. It is clear that such harmonization shall take place in order to raise the protection of human rights standards. If a Georgian legal norm is interpreted by the case law of the European Court and the national court has inferred that case law of the European Court establishes higher standards for the protection of human rights, the national court shall interpret the provisions of legislation in a way that shall be compatible with case law. On the other hand, if the national court has established that interpretation of legislation according to case law of the European Court has a contradictory result, i.e. the Court of Georgia shall not interpret legislation with lower standards established by case law of the European Court if such an interpretation may restrict the right envisaged by legislation.

The interpretation of Georgian legislation with the European standards of human rights is particularly important in relation to the Constitution of Georgia.

Interpretation of the constitutional provisions in compliance with the European Convention of Human Rights is facilitated by similarities between the provisions of the Constitution of Georgia and the European Convention. Such a similarity is caused by the fact

[18] Septemeber 27, 1990, Series A, no. 184, paragraph 35.

[19] See cases: Delcourt v. Belgium — 1970 and *Borgers* v. *Belgium* (1990); *Schiesser* v. *Switzerland* (1979); See also L. Wildhaber, Precedent in the European Court of Human Rights, in: Protecting Human Rights: The European Perspective, Studies in Memory of R. Ryssdal, P. Mahoney, F. Matscher, H. Petzold & L. Wildhaber (Eds.), 2000, 1532-1533.

[20] Article 30 of the European Convention stipulates that `if a case heard in the Chamber raises the important issue influencing the Convention or interpretation of its protocols, or if court decision on the case may ensue incompatible outcome, the Chamber has the right to deny the jurisdiction, at any time, before making a decision in favour of a higher Chamber, if the all parties of the case do not contradict to it.`

[21] J. Merrils, The Development of International Law by the European Court of Human Rights, 1993, 14.

[22] S. Jensen, The European Convention on Human Rights in Scandinavian Law: A Case Law Study, 1992, 236.

[23] W. Binchy, The Bill, the Advantages and Disadvantages of the Approach Taken, and Possible Alternatives, paper presented to the Conference of the Law Society of Ireland on the European Convention on Human Rights Bill (2001), 19 October 2002.

that the provisions of the European Convention were considered during the elaboration of the Constitution of Georgia. Provisions of the European Convention even served as the foundation for some articles of the Constitution of Georgia. As German expert, V. Goull, remarked in his study, in which he explored the elaboration process of the Constitution, "analysis and assistance conducted by the Venice Commission has established on the early stage the compatibility of the norms of the draft with those of the European Council, to the fore, with those of the European Convention of Human Rights."[24]

Such a similarity is particularly evident in relation to Paragraph 3, Article 22 and Paragraph 4 of Article 24 of the Constitution of Georgia formulations of which are similar to those of relevant provisions of the European Convention.

Given the European Court's significant progress in developing and specifying the material articles of the European Convention, the European Convention and case law of the European Court may serve as a guideline for interpreting the provisions of human rights of the Constitution of Georgia.

To demonstrate, the similar regulation of the right to freedom of expression could be referred to. Paragraph 2 of Article 10 of the European Convention of Human Rights establishes that in order to consider restriction of freedom of expression as reasonable, it must meet three conditions: 1) to be defined by the law; 2) to serve fair purpose;[25] and 3) to be indispensable in a democratic society.

The European Court of Human Rights, on the basis of these three conditions, evaluates whether it is reasonable or not to restrict the mentioned right of the Convention. If the European Court identifies that at least one condition is not satisfied, it shall consider that the restriction of human rights is unreasonable and the state has infringed upon the relevant provision of the European Convention.

Paragraph 4 of Article 10 of the Constitution of Georgia, like Article 10 of the European Convention, establishes three analogical conditions regarding the restriction of freedom of speech. In particular, it is noted in Paragraph 4, Article 24 that "implementation of the rights listed in the first and second paragraphs of this article may be restricted by the law under such conditions which are indispensable in a democratic society to ensure national security, territorial integrity or public safety; to prevent crime; to protect the rights and dignity of others; to prevent the unfolding of confidential information; or to ensure the independence and impartiality of the court."

It is clear from the comparison of the provisions between the Constitution of Georgia and the European Convention that the conditions established by these acts are similar in relation to the restriction of the freedom of speech (expression).[26] Paragraph 2 of Article 24 of the Constitution of Georgia like Paragraph 2 of Article 10 of the European Convention establishes three conditions under which freedom of expression might be reasonably restricted. The Court of Georgia can apply the European Convention and the case law of the European Court and use them to evaluate the reasonability of the restriction of freedom of speech.

Application of the European Convention and case law of the European Court will give the possibility to the courts of Georgia to make such a decision compatible with case law of the European Court. The European Convention and case law of the European Court will serve as the guideline facilitating court of Georgia to making a proper decision.[27]

It should be noted that while Article 24 of the Constitution of Georgia regulates "freedom of speech," Article 10 of the Convention regulates "freedom of expression." The latter is broader and contains not only judgments expressed by "speech" but also in other forms (for instance, works of art).[28] The Courts of Georgia may use such a difference between the Convention and the right regulated by the Constitution for such an interpretation of the Constitution of Georgia that is compatible with the European Convention of Human Rights.

f) The Application of European Standards as the Tool Rendering Legal Credibility to Court Decisions

If the national court reviews the European Convention and the case law of the European Court in detail and, along with the domestic normative act (for instance the law), and finds in favor of the European

[24] See V. Goull, elaboration and adoption of the Constitution in Georgia, pp.374, see also pp.32.

[25] For example, for the purposes of national security, territorial integrity or public safety, for the prevention of disorder and crime, for the protection of health or morality, reputation and rights of others, for the prevention of unfolding confidential information or for the maintenance of court authority or impartiality.

[26] Notwithstanding the similarity between the Constitution and the provisions envisaged by the Convention in relation to freedom of speech, it shall be noted that that the European Convention also mentions one lawful reason — protection of health and morality on the basis of which human rights might be restricted, which is not envisaged by article 24 of the Constitution. Study on the Compatibility of Georgian Law with the Requirements of the Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols, HRCAD(2001)2, 2001, 24.

[27] J. Polakiewicz, The Application of the European Convention on Human Rights in Domestic Law, 17 Human Rights Law Journal, N11-12, 1996, 407.

[28] *Muller* v. *Switzerland* May 241988, Series A, no. 133, Paragraph 27.

standards of human rights, such a decision shall supposedly be more conclusive for the plaintiff, whether or not the decision is or is not in his/her favor.[29]

It is less likely for a plaintiff to question the fairness of the decision if he/she sees that in its decision the national court has applied not only domestic legislation (which in the plaintiff's opinion might be deficient and does not meet with European standards) but also the European standards of human rights which the plaintiff, as a rule, does not question the quality of rights protected by these standards.

Attention to the positive side of the application of the European standards of human rights, as to the tool rendering legal credibility to the national courts' decision has been drawn in a survey conducted among the judges of Georgia. The survey reads that "in the opinion of the judges, the principal success in applying international treaties of human rights and referring to the decisions of the European Court in their specific activity is the enhancement of credibility of their decisions.

"This, on one hand, indicates having a high legal culture, while on the other, reinforces the belief of the parties precision of court decisions and raises the authority of court since there is a reference to relevant European experience."[30]

In the same survey, one of the judges of the city court puts emphasis on the importance of the application of human rights' standards as a means of raising public trust towards the court. In his opinion, "If a citizen observes that a certain issue is regulated similarly across the world and that not only the local court is `unjust` as he/she deems, he/she will have more confidence towards the court."[31]

If judges apply the European standards of human rights and provide protection of human rights on their basis in administering justice, such decisions will be more conclusive to the parties of the lawsuit, which may cause fewer cases with the second court instance or ending in fewer appeals to the European Court of Human Rights after having completed all domestic means for the protection of human rights.

Thus, applying the European standards of human rights in administering justice has one more very important preponderance. To the fore, it will release the workload of cassation and appellation instances of Georgia. If a plaintiff is convinced that the court has assessed the circumstances over the case not only on the basis of domestic normative acts but also on the European standards and consequently, the plaintiff has been firm in his/her opinion that the decision was fair, the probability of appealing the case to the higher court instance would diminish. Moreover, the aim of the plaintiff is a fair court decision rather than appealing the case. It will also save the resources and release the workload of higher court instances.

If the court's decision is conclusive for the plaintiff (even though his/her complaint was not satisfied) since the national court applied the European standards of human rights along with domestic legislation, it is less likely that he/she would refer to the European Court of Human Rights. If the plaintiff is convinced that the national court adopted a fair decision which is based not only on domestic law but also on European standards, than the case would be finished on a national level. If the plaintiff is not sure that he/she will win the case on the European level, he/she will not appeal to the European Court, also bearing in mind that presently, hearing a case in the European court takes a long time (4-5 years).

On its part, it should be favorable for the state as well for making a decision not only on the basis of domestic legislation but also on the European standards convincing the plaintiff of the fairness of the decision. It should also not be in the interests of the state that a citizen refers to the European court for the protection of his/her rights.

The mentioned analysis clarified that the application of the European standards of human rights is in the interest of all parties, giving the opportunity to decide a lawsuit fairly, promptly and incurring less expenses for both the plaintiff and court (i.e. — the state) alike.

[29] J. Polakiewicz, The Implementation of the ECHR and of the Decisions of the Strasbourg Court in Western Europe: An Evaluation, The Domestic Implementation of the European Convention on Human Rights in Eastern and Western Europe (eds. E. Alkema, T. Bellekom, A. Drzemczewski *et al.*), 1992, 160.

[30] See survey `On application of international treaties of human rights and the decisions of the European Court conducted` by BCG Research under the request of UNDP. See international treaties of human rights and Georgia's court practice, I part, 2006 pp.43

[31] See pp. 44.