DOI:10.35774/app2024.04.030
УДК 342.4:328 (045)

Mykhailo Samuliak,
Post-graduate student of the Department of Administrative Law and Procedure of the Western Ukrainian National University, lawyer
ORCID: https://orcid.org/0009-0003-4660-3536

THE PARTICIPATION OF THE PROSECUTION AUTHORITY IN CASES OF ADMINISTRATIVE OFFENCES (THE ECHR JUDGMENT IN THE CASE OF FIGURKA V. UKRAINE)

The issue of the prosecutor's involvement has been repeatedly raised in Ukrainian courts in cases of administrative offences, including under Article 130 of the Code of Ukraine on Administrative Offences (hereinafter- CUAO). There is no consensus in the legal community in Ukraine on this issue. Consequently, the examination of the ECHR case law concerning the compliance of the legal framework regulating administrative proceedings under Article 130 of the CUAO with the principle of impartiality represents a pertinent and significant issue for the legal community. The volume of administrative cases under Article 130 of the CUAO within the judicial system is exceptionally large. This is the most common category of administrative offence cases.

The purpose of the article is to analyse the case law of the ECHR concerning the compliance of the legal framework regulating administrative proceedings under Article 130 of the CUAO with the principle of impartiality. The analysis is conducted in the context of the absence of the prosecuting authority throughout the proceedings, with a particular focus on the case of Figurka v. Ukraine.

In summary, the ECHR has recognized the legal framework regulating administrative proceedings under Article 130 of the CUAO as compliant with the European Convention on Human Rights, even in cases where the prosecuting authority was absent throughout the proceedings. The absence of the prosecutor from all court hearings does not, in itself, constitute a violation of the Convention. However, this does not necessarily mean that in every administrative offense case under Article 130 of the CUAO, where the prosecuting authority is absent throughout the proceedings, there is no breach of Article 6 § 1 of the Convention. I am convinced that the Figurka case should not be regarded as a final resolution on this matter.

Keywords: *the prosecution authority; administrative offences cases; European Court of Human Rights; the European Convention on Human Rights; Code of Ukraine on Administrative Offences; Principle of impartiality.*

Самуляк М.

Участь сторони обвинувачення у справах про адміністративні правопорушення (рішення єспл у справі «фігурка проти україни»)

Питання участі прокурора неодноразово піднімалося в національних судах у справах про адміністративні правопорушення, в тому числі за статтею 130 КУпАП. В юридичній спільноті України немає єдиної думки з цього питання. Отже, дослідження прецедентної практики ЄСПЛ, щодо відповідності нормативно-правового регулювання проваджень у справах про адміністративні правопорушення за статтею 130 КУпАП, принципу неупередженості є актуальним та важливим питанням. Кількість справ про адміністративні правопорушення за статтею 130 КУпАП у національній судовій системі є надзвичайно великою, це найпоширеніша категорія справ про адміністративні правопорушення.

Метою статті є аналіз прецедентної практики ЄСПЛ щодо відповідності нормативно-правового регулювання проваджень у справах про адміністративні правопорушення за ст. 130 КУпАП, принципу неупередженості, в контексті відсутності сторони обвинувачення протягом усього провадження в суді, з урахуванням висновків ЄСПЛ у справі «Фігурка проти України».

ЄСПЛ визнав національне нормативно-правове регулювання справ про адміністративні правопорушення за статтею 130 КУпАП, таким, що відповідає вимогам Конвенції про захист прав людини і основоположних свобод, навіть у випадках, коли прокурор як сторона обвинувачення відсутній протягом усього провадження в суді. Сам факт відсутність прокурора на всіх судових засіданнях під час розгляду справи про адміністративне правопорушення не є порушенням Конвенції. Однак це не означає, що в кожній справі про адміністративне правопорушення за статтею 130 КУпАП, де прокурор відсутній протягом усього провадження, немає порушення пункту 1 статті 6 Конвенції.

Я переконаний, що висновки, зроблені ЄСПЛ у справі «Фігурка проти України» не повинні розглядатися як заключні в контексті проблеми відсутності сторони обвинувачення протягом усього провадження в суді.

***Ключові слова**: сторона обвинувачення; справи про адміністративні правопорушення; Європейський Суд з прав людини; Кодекс України про адміністративні правопорушення; принцип безсторонності.*

Formulation of the problem. The issue of the prosecutor's involvement has been repeatedly raised in Ukrainian courts in cases of administrative offences, including under Article 130 of the Code of Ukraine on Administrative Offences (hereinafter - CUAO), driving vehicles or vessels by persons under the influence of alcohol, drugs, or other intoxicants [1]. There is no consensus in the legal community in Ukraine on this issue.

In the judgment in case No. 379/1097/24 dated 27 November 2024, Judge Zinkin V.I. of the Tarashchansky District Court of Kyiv Region noted: «The prosecutor was involved in the case in view of the judgments of the European Court of Human Rights dated 08 March 2018 in the case of Mikhaylova v. Ukraine, 06 October 2022 in the case of Bantysh v. Ukraine, and 06 October 2022 in the case of Pushkarev v. Ukraine, which recognized a violation of Article 6 of the European Convention on Human Rights concerning the impartiality of the court due to the absence of the prosecution in administrative offence cases. This involvement was also in light of the prosecutor's powers as defined in Article 250 of the CUAO» [2]. In a similar manner, Judge Bredun D.S. of the Khortytskyi District Court of Zaporizhzhia, in case No. 337/3975/24, notified the prosecutor of the consideration of an administrative offence, referring to the case law of the European Court of Human Rights (hereinafter - ECHR) [3].

However, in the judgment in case No. 626/1036/24 dated 02 august 2024, Kharkiv Court of Appeal Judge Shabelnikov S.K. noted that the motion to involve the prosecutor as a party to the administrative offence case must be dismissed. The Court of Appeal referred to the case of Figurka v. Ukraine of the ECHR. It concluded that the procedure for ensuring the participation of a prosecutor is not provided for in the CUAO, the Law of Ukraine «On the Prosecutor's Office» or any other laws. Moreover, in Chapter 21 of the CUAO, does not include the prosecutor in proceedings on administrative offences. Under such circumstances, it is procedurally impossible to involve a prosecutor in an administrative offence case. This position is also consistent with the legal opinion of the Grand Chamber of the Supreme Court, as set out in case No. 208/712/19, dated 30 August 2023, §§ 20-23 [4].

Despite differing opinions, the judges relied on the case law of the ECHR. Consequently, the examination of the ECHR case law concerning the compliance of the legal framework regulating administrative proceedings under Article 130 of the CUAO with the principle of impartiality-particularly in instances where the prosecuting authority was absent throughout the proceedings-represents a pertinent and significant issue for the legal community. Furthermore, the European Convention on Human Rights [5], as interpreted through the jurisprudence of the ECHR, imposes an obligation to amend legislation and jurisprudence to align with human rights standards, emphasizing this as a duty rather than a discretionary right.

On 16 November 2023, the ECHR delivered a judgment in the case of Figurka v. Ukraine, in which I represented the applicant as a lawyer. In my opinion, this judgment has had a notable impact on the ECHR's approach to the issue of prosecutorial involvement in cases of administrative offenses under Article 130 of the CUAO.

The purpose of the article is to analyse the case law of the ECHR concerning the compliance of the legal framework regulating administrative proceedings under Article 130 of the CUAO with the principle of impartiality. The analysis is conducted in the context of the absence of the prosecuting authority throughout the proceedings, with a particular focus on the case of Figurka v. Ukraine.

Analysis of resent research and publications. V.V. Ishchenko observes that the 1984 CUAO, which primarily regulates proceedings in administrative offence cases, is significantly outdated and thus requires frequent amendments and updates until a fundamentally new CUAO is introduced [6]. I.M. Sopilko and Y.D. Tarasenko highlight that the necessity of updating the CUAO is underscored by the ECHR judgment in the case of Bantysh and Others v. Ukraine, which found a violation of Article Article 6 § 1 of the European Convention on Human Rights [7]. O.V. Hlibko believes that our country should draw on the experience of other nations and, finally, introduce adversarial proceedings in administrative tort cases, with a clear separation of the defence, prosecution, and adjudication functions. Additionally, other fundamental principles should be applied, primarily the principle of equality of the participants in administrative tort proceedings. [8]. Based on an analysis of the case law of the ECHR, N.B. Pysarenko noted that, within the meaning of the Convention, administrative offences - cases of which are considered by the court - fall within the realm of criminal law if the rules protected by the relevant articles of the CUAO concern all citizens and/or if prosecution for certain acts results in the imposition of serious punitive penalties on the offenders [9].

Presentation of the main material of the research. The volume of administrative cases under Article 130 of the CUAO within the judicial system is exceptionally large. According to Report No. 1-п of the courts of first instance, 982,234 cases of administrative offences were considered by these courts in 2023, of which 176,641 cases were under Article 130 of the CUAO). Thus, 17.98% of the total number of administrative offence cases concerned Article 130 of the CUAO, making it the most common category of administrative offence cases. Furthermore, according to this report, 115,258 people were brought to administrative responsibility by the courts of first instance under Article 130 of the CUAO [10]. According to Report No. 2-п of the courts of appeal on the consideration of appeals in cases of administrative offences for 2023, the courts of appeal reviewed a total of 31,035 appeals against decisions of the courts of first instance in cases of administrative offences. Of these, 18,944 appeals were filed under Article 130 of the CUAO. Consequently, 61.04% of the reviewed appeals concerned Article 130 of the CUAO, making it the most common category of appeals [11].

According to Article 250 of the CUAO, the Prosecutor and Deputy Prosecutor, while supervising the observance and correct application of laws in administrative offence proceedings, have the right to: initiate proceedings in administrative offence cases; get acquainted with the case file; verify the legality of actions of bodies (officials) in the case; participate in the case hearing; file motions; give opinions on issues arising during the case hearing; verify the correctness of the In proceedings on administrative offences under Articles 172-4 to 172-9, 172-9-2 of the CUAO, the participation of the prosecutor in the court hearing is mandatory. As can be seen from the above provision, the prosecutor is not obligated to participate in cases of administrative offences under the Article 130 of the CUAO. Chapter 21 of the CUAO does not require that police officers or representatives of the authority responsible for issuing the administrative offence report may present and substantiate the charges before the national court.

In the case of Figurka v. Ukraine the Court has noted: «The Court has previously held that proceedings leading to the withdrawal of points from a driving licence were «criminal» within the meaning of Article 6 of the Convention (see, for example, Malige v. France, 23 September 1998, §§ 35-40, Reports of Judgments and Decisions 1998-VII, and Igor Pascari v. the Republic of Moldova, no. 25555/10, §§ 20-23, 30 August 2016). The Court finds no reason to reach a different conclusion in the present case. It follows that Article 6 of the Convention applies in its criminal limb (…) According to the applicant, that fact in itself created a doubt about the court's impartiality since the Court of Appeal had to take the role of a prosecuting party (...).

However, in the present case nothing in the applicant's submissions or in the case file indicates that the absence of the prosecutor at the hearing before the Court of Appeal could give raise to justified doubts about that court's objective impartiality or otherwise affect the fairness of the proceedings. In particular, there is no indication that the Court of Appeal itself, in the absence of a prosecuting party, took steps that could be interpreted as assuming the role of the prosecuting party, such as, for example, changing the body of evidence to the applicant's disadvantage, introducing new incriminating evidence of its own motion or removing certain evidence submitted by the prosecution (contrast, for example, Ozerov, cited above, §§ 51-58). There is no indication either that the Court of Appeal modified, of its own motion, the charges contained in the administrative offence report (contrast Karelin, cited above, § 18) or that it treated the evidence in a manner that would suggest that the burden of proof was shifted to the applicant (compare Makarashvili and Others v. Georgia, nos. 23158/20, 31365/20 and 32525/20, §§ 60-63, 1 September 2022). The Court also notes that the physical absence of the prosecutor during the hearing before the Court of Appeal had no impact on the possibility for the prosecuting authorities under domestic law to intervene, had they considered it necessary, and to file written pleadings. In these circumstances taken as a whole, it cannot be considered that the Court of Appeal took the role of a prosecuting party or was put in a position requiring it to take the role of a prosecuting party (...).

The Court also has regard to the subject matter of the present case, which concerned a minor traffic offence not punishable by imprisonment, a category of offences to which the criminal-head guarantees of Article 6 do not apply with their full stringency (see Marčan v. Croatia, no. 40820/12, § 37, 10 July 2014, and contrast, for example, Ozerov; Krivoshapkin; Malofeyeva; Butkevich; Gafgaz Mammadov; Ibrahimov and Others; Huseynli and Others; Hasanov and Majidli; Karelin; and Mikhaylova, all cited above). There has, accordingly, been no violation of Article 6 § 1 of the Convention» [12].

To comprehend the significant influence on the ECHR's approach to the issue of prosecutorial involvement in cases of administrative offenses, it is necessary to examine the key case law referenced by the Court in its judgment in Figurka v. Ukraine.

In the case of Thorgeir Thorgeirson v. Iceland applicant raised the issue of the prosecutor's absence from the trial. The applicant argued that, under the current Icelandic legislation, less serious cases that did not require an

adversarial procedure could be handled without the presence of the Public Prosecutor. As a result, according to the applicant, district court judges in such cases were effectively authorized to assume the functions of the prosecutor.

In its judgment, the ECHR noted: «In the present case the Reykjavik Criminal Court held twelve sittings between 10 September 1985 and 16 June 1986. The Public Prosecutor was absent from the following six sittings (…) On the other hand, the Public Prosecutor was, with one exception, present at all the sittings at which evidence was submitted and witnesses were heard (9 and 25 October 1985, 15 November 1985, 31 January 1986 and 17 February 1986). The exception was the sitting of 17 February 1986, which was essentially devoted to the showing of a video-taped television programme. Both the applicant and the prosecutor appeared at a further sitting held on 28 April 1986, when they agreed that no further investigation was necessary (see paragraph 22 above). It can be seen from the foregoing that, at those sittings at which the Public Prosecutor was absent, the Reykjavik Criminal Court was not called upon to conduct any investigation into the merits of the case, let alone to assume any functions which might have been fulfilled by the prosecutor had he been present. In these circumstances, the Court does not consider that such fears as the applicant may have had, on account of the prosecutor's absence, as regards the Reykjavik Court's lack of impartiality can be held to be justified. Accordingly, there has been no violation of Article 6 para. 1 (art. 6-1)» [13].

Despite its date, the judgment is still valid, it continues to be referenced by the Court and the parties in all cases concerning the involvement of the prosecution in administrative offense proceedings. This judgment is of significant importance as it emphasizes that the absence of the prosecutor during certain hearings, will not automatically be regarded as a violation of Article 6 of the European Convention on Human Rights. The Court assesses the impact of the prosecutor's absence during specific hearings on the fairness of the proceedings as a whole.

The case Ozerov v. Russia differs from Thorgeir Thorgeirson in that the prosecutor was absent for the entire trial before the first-instance court. When the case was transferred to the national court prosecutor's office requested that it be examined with the participation of a prosecutor. The judge also ordered that the trial be conducted with the presence of a public prosecutor. However, the case file contains no information about whether the prosecutor was notified of the hearing or the reasons for their absence. Despite this, the national court proceeded with the trial in the prosecutor's absence.

In its judgment, the ECHR noted: «The Court observes that the District Court read out the indictment submitted by the prosecutor's office. It then heard the applicant, who pleaded not guilty to the charge of burglary. The District Court heard the victims and other witnesses. In particular, as regards the charge of burglary, it called and questioned, of its own motion, Mr Y. who gave evidence incriminating the applicant, on which the District Court then relied in its judgment. The District Court further examined other evidence and declared certain written evidence in support of the prosecution's case inadmissible as unlawfully obtained (…) In fact, the body of evidence, which the District Court put as a basis for the applicant's conviction, was changed by the taking of new incriminating evidence of the District Court's own motion, and removing certain evidence submitted by the prosecutor's office in support of the charges in the indictment, and all that without the prosecutor being present to make any statement in respect of these changes (...) What is important is that by examining the case on the merits and convicting the applicant without the prosecutor the District Court confused the roles of prosecutor and judge and, thus, gave the grounds for legitimate doubts as to its impartiality. The presence of the victims at the hearing had no impact on the situation, as this was a case of public and not private prosecution. The Court held that there has been a violation of Article 6 § 1 of the Convention» [14].

In this judgment, the ECHR highlighted two key issues: (i) the Court conducts a thorough assessment of the judge's conduct in administrative offense cases where the prosecutor is absent during oral hearings, specifically evaluating whether the judge's actions effectively substitute for the role of the prosecutor; and (ii) the Court affirmed that a victim cannot substitute for a prosecutor in cases involving public prosecution.

In the case Karelin v. Russia, the prosecutor was also absent for the entire trial before the national court. The applicant argued, inter alia: "that although the offence record referred to his using foul language «against passers-by», the justice of the peace had phrased the charge as using foul language "in the presence of other people"; the judge had not retained the phrase from the offence record, which stated that the applicant «[had not rectified] his behaviour despite remarks from passers-by". In other words, the national court modified, of its own motion, the charges contained in the administrative offence report. The Court concluded that there has accordingly been a breach of Article 6 § 1 of the Convention» [15].

As in the earlier case of Ozerov v. Russia, the ECHR emphasized the inadmissibility of a national judge assuming the role of the prosecuting party. The modification of the accusation is unequivocally within the exclu-

sive competence of the prosecutor. Such a violation clearly has a profound impact on the overall fairness of the trial.

In the case of Makarashvili and Others v. Georgia, the prosecutor was also absent from the entire trial before the national court. The Court observed: "there is a close link, given the circumstances of the present case, between, on the one hand, the applicants' complaint relating to the absence of a prosecutor in the administrative offence proceedings against them and, on the other hand, the domestic court's stance regarding the burden of proof in those proceedings, including the acceptance of certain presumptions in respect of the evidence given by the police officers while acting as the prosecuting authority. In the present case, the first-instance court stated that the evidence given by the police officers, some of whom also acted as the prosecuting authority in the proceedings, carried a higher degree of credibility. The court justified this assertion on the basis of what was termed the «presumption of good governance" on the part of police officers and the latter's professional know-how in respect of the situations that their statements would concern. This reasoning was complemented by the statement that explanations given by persons charged with an offence were to be regarded as untrustworthy and might have aimed at evading responsibility, unless confirmed by other evidence» [16]. The Court noted that the national Court treated the evidence in a manner that would suggest that the burden of proof was shifted to the applicant, therefore that there has accordingly been a breach of Article 6 § 1 of the Convention.

In this case, the ECHR reached a significant conclusion, asserting that other violations of Article 6 § 1 of the Convention may be linked to the issue of the prosecutor's absence during an oral hearing. It is reasonable to presume that the list of potential violations is not exhaustive. The primary objective for an applicant is to demonstrate that the violation related to the absence of the prosecution has affected the overall fairness of the proceedings.

In the case of Mikhaylova v. Ukraine, the Court noted: «The case was examined under rules of procedure which closely resembled those which the Court dealt with in the case of Karelin (cited above, §§ 61-67). The role of the authority which drew up the administrative offence report was limited to transmitting the report and supporting evidence to the court. Once that function had been fulfilled, that authority had no role in the proceedings, and neither did the prosecution service. There was, in other words, no «prosecuting party» or «prosecuting authority» in the proceedings before the court (...) In that sense, there was nobody at the hearing to contradict the applicant. In such circumstances, the Court considers that the trial court had no alternative but to undertake the task of presenting – and what is more pertinent, to carry the burden of supporting – the accusation during an oral hearing. The Court noted that there has accordingly been a breach of Article 6 § 1 of the Convention» [17].

Notably, the Court did not highlight any unacceptable conduct by the judge in the administrative offense proceedings (contrast, for example, Ozerov, cited above, §§ 51-58; Karelin, cited above, § 18). However, the mere absence of the prosecutor raised doubts about the impartiality of the court, as the national court effectively assumed the role of the prosecuting party. Regrettably, the ECHR did not provide further clarification on how the prosecutor's absence influenced the overall fairness of the proceedings.

These principles were later applied in the cases Bantysh and Others v. Ukraine [18] and Glushchenko and Pustovyy v. Ukraine [19], where the Court, referring to the Mikhaylova case cited above, found a violation of Article 6 § 1 of the Convention in the administrative proceedings under the Article 130 of the CUAO, because the prosecutor was absent from the entire trial before the national court.

Returning to the subject of the case of of Figurka v. Ukraine I have to admit that in the present case the prosecutor was also absent the entire trial before the national court. Before the Court I contended that the Court's judgments in cases of Bantysh, Glushchenko and Pustovyy, where the Court had found violations on account of similar situations, which concerned a minor traffic offence not punishable by imprisonment, indicated the existence of a systemic problem at the domestic level. The Government stated that according to Part 5 of Article 7 of CUAO and Article 2 of the Law of Ukraine «On the Prosecutor's Office» which were established on 14 October 2014 after the events, which gave rise of case of Mikhaylova v. Ukraine, the legislation of Ukraine was updated and determine types of cases where prosecution must be present to avoid the violation of the right on an independent and impartial tribunal and improve the court system. Such laws were provided to improve court system in face of long consideration of complaints. All proceedings in the present case were conducted in compliance with Article 251 of CUAO which regulates possible evidence in administrative cases to make objective decision. According to that, prosecuting party can be absent in the proceedings in the applicant case not violating his rights to an independent and impartial proceedings. Also, the Government stress that in contrast to the case of Karelin v. Russia, where the judge's impartiality was undermined by the fact that he changed the charges against the applicant from those indicated in the administrative offense report the charges in the present cases were not modified. Therefore, the Government considered that the above facts evidence that in this category of cases the prosecuting party can be

absent from the proceedings not violating independence and impartiality of the court and that the present applications should be declared inadmissible as manifestly ill-founded pursuant to Article 35 § 3 (a) of the Convention.

On 16 November 2023, the ECHR delivered a judgment in the case of Figurka v. Ukraine, the Court declared the application admissible. Held, that there has been no violation of Article 6 § 1 of the Convention.

On 16 February 2024 me, together with lawyer Mr. Serhiy Zayets filed the Request for the referral to the Grand Chamber under Article 43 of the Convention, Rule 73 of the Rules of Procedure in the case of Figurka v. Ukraine. We were indicated, inter alia, that the Chamber has ignored the solid corpus of the Court's jurisprudence on similar situations within the same legal framework. For example, in the cases against Ukraine of Bantysh, Pushkaryov, Glushchenko and Pustovyy, the Court found a violation of the guarantee of impartiality in respect of at least 7 applicants in a situation like the applicant's case. The same is true for the cases against the Russian Federation as well. In fact, there are no significant differences between the procedural rules for minor traffic offences in Ukraine and in the Russian Federation.

For example, the Court has reached the same conclusions in the cases against Russia of Platonov and 16 Other applicants [20], Andreyev and 24 Other applicants [21], Buzin and 20 Other applicants [22]. All these cases concern minor road traffic offences, suspension of the driving licence and/or fines. All these cases have been resolved by Committee and this fact underlines that the issue belongs to well established case law. The reasoning of these cases does not contain a detailed description of the circumstances. Rather, the absence of details of individual cases in the judgments indicates that there is a systemic problem which allows us to conclude that the national court is not impartial, regardless of the individual circumstances of such cases. Nevertheless, the Chamber did not argue the difference between the present case and the cases above-mentioned cases and, in fact, implicitly departed from the established case law.

As a result of the inconsistency in the case law, an applicant is unable to determine whether his or her case falls into one category or another and to assess whether there has been a violation of his or her rights in his or her personal circumstances. Under Rule 72 of the Rules of the Court, where the resolution of a question raised in a case before the Chamber might have a result inconsistent with the Court's case-law, the Chamber shall relinquish jurisdiction in favour of the Grand Chamber. The applicant submits that the judgment in his case raises a serious issue of inconsistency of the case-law and clarification of the principles for assessing the impartiality of the tribunal in view of the absence of the prosecuting party in administrative proceedings concerning minor traffic offences. For the above reasons, the applicant requests the Court to refer the case of Figurka v. Ukraine to the consideration by the Grand Chamber.

The panel of five judges of the Grand Chamber, composed of the Judges Síofra O'Leary, Marko Bošnjak, Arnfinn Bårdsen, Anja Seibert-Fohr, Oddný Mjöll Arnardóttir, decided on 8 April 2024 not to accept the applicant's request that the case of Figurka be referred to the Grand Chamber [23].

Conclusion. In summary, the ECHR has recognized the legal framework regulating administrative proceedings under Article 130 of the CUAO as compliant with the European Convention on Human Rights, even in cases where the prosecuting authority was absent throughout the proceedings. The absence of the prosecutor from all court hearings does not, in itself, constitute a violation of the Convention. However, this does not necessarily mean that in every administrative offense case under Article 130 of the CUAO, where the prosecuting authority is absent throughout the proceedings, there is no breach of Article 6 § 1 of the Convention.

I am convinced that the Figurka case should not be regarded as a final resolution on this matter. As a lawyer, I anticipate that in 2025, the ECHR will issue new judgments or decisions in my cases addressing the issue of the inadmissibility of a national judge assuming the role of the prosecuting party in administrative offense cases under Article 130 of the CUAO (see, for example, Ozerov, cited above, §§ 51-58; Karelin, cited above, § 18).

References

1. *The Code of Ukraine on Administrative Offences, Article 250.* Retrieved from https://zakon.rada.gov.ua/laws/show/80732-10#Text [in Ukrainian]
2. *Judgment of the Tarashchansky District Court of Kyiv Region dated 27 November 2024 in case No. 379/1097/24.* Retrieved from https://reyestr.court.gov.ua/Review/123380981 [in Ukrainian]
3. *Judgment of the Khortytskyi District Court of Zaporizhzhia dated 02 September 2024 in case No. 337/3975/2.* Retrieved from https://reyestr.court.gov.ua/Review/121375030 [in Ukrainian]
4. *Judgment of the Kharkiv Court of Appeal dated 02 august 2024 in case No. 626/1036/24*. Retrieved from https://reyestr.court.gov.ua/Review/120882994 [in Ukrainian]

5. *European Convention on Human Rights.* Retrieved from https://www.echr.coe.int/documents/d/echr/convention_eng [in English]
6. Ishchenko V. V. (2015). Some issues of the content and scope of procedural rights of some participants in proceedings on cases of administrative offences. *The state of human rights observance in modern conditions: theoretical and practical aspects,* 63-65. Retrieved from http://elar.naiau.kiev.ua/jspui/handle/123456789/8727 [in Ukrainian]
7. Sopilko, I. M. & Tarasenko, Y. D. (2024). Participation of the prosecution in cases of administrative offences: on the issue of enfircement of the judgement of the European Court of Human Rights in the case of Bantysh and Others v. Ukraine. *Scientific works of the National Aviation University. Series: Legal Bulletin «Air and Space Law»*. Kyiv: NAU, 100-106. Retrieved from https://law.nau.edu.ua/wp-content/uploads/2024/08/yurvis-2-71-2024.pdf# page=100 [in Ukrainian]
8. Hlibko, O. V. (2015). On the principles of court proceedings in cases of administrative offences. *Scientific Bulletin of the International Humanitarian University. Ser: Jurisprudence, 18 (1),* 139-142. Retrieved from https://www.vestnik-pravo.mgu.od.ua/archive/juspradenc18/part_1/36.pdf [in Ukrainian]
9. Pisarenko, N. B. (2015). Certain Aspects of the Exercise of the Right to Fair Trial of Cases on Administrative Offences. *Journal of East European Law, 22,* 61-69. Retrieved from https://easternlaw.com.ua/wp-content/uploads/2015/12/pysarenko_22.pdf [in Ukrainian]
10. *Report No. 1-p of the First Instance Courts on the Consideration of Citations for Administrative Offences.* Retrieved from https://court.gov.ua/inshe/sudova_statystyka/zvit_dsau_2023
11. *Report No. 2-n of the First Instance Courts on the Consideration of Citations for Administrative Offences*. Retrieved from https://court.gov.ua/inshe/sudova_statystyka/zvit_dsau_2023 [in English]
12. *The case of Figurka v. Ukraine, application no. 28232/22, 16 November 2023,* §§20-21; 33-44. Retrieved from https://hudoc.echr.coe.int/?i=001-228845 [in English]
13. *The case of Thorgeir Thorgeirson v. Iceland, application no. 13778/88, 25 June 1992*, §§ 46-54. Retrieved from https://hudoc.echr.coe.int/?i=001-57795 [in English]
14. *The case of Ozerov v. Russia, application no. 64962/01, 18 May 2010,* §§ 53-54. Retrieved from https://hudoc.echr.coe.int/?i=001-98531 [in English]
15. *The case of Karelin v. Russia, application no. 926/08, 20 September 2016,* §§ 18; 76-77. Retrieved from https://hudoc.echr.coe.int/?i=001-166737 [in English]
16. *The case of Makarashvili and Others v. Georgia, application nos. 23158/20, 31365/20, 32525/20, 1 September 2022*, §§ 60-61. Retrieved from https://hudoc.echr.coe.int/eng?i=001-218940 [in English]
17. *The case of Mikhaylova v. Ukraine, application no. 10644/08, 6 March 2018*, §§ 63-64. Retrieved fromhttps://hudoc.echr.coe.int/?i=001-181381 [in English]
18. *The case of Bantysh and Others v. Ukraine, applications nos. 13063/18 and 3 others – see appended list, 6 October 2022*. Retrieved from https://hudoc.echr.coe.int/?i=001-219783 [in English]
19. *The case of Glushchenko and Pustovyy v. Ukraine, applications nos. 68073/17 and 72743/17, 2 March 2023.* Retrieved from https://hudoc.echr.coe.int/?i=001-223298 [in English]
20. *The case of Platonov and Others v. Russia, applications nos. 5660/18 and 16 others – see appended list, 15 September 2022.* Retrieved from https://hudoc.echr.coe.int/?i=001-219113 [in English]
21. *The case of Andreyev and Others v. Russia, applications nos. 26870/19 and 24 others –see appended list, 23 November 2023*. Retrieved from https://hudoc.echr.coe.int/?i=001-229014 [in English]
22. *The case of Buzin and Others v. Russia, applications nos. 65015/19 and 20 others – see appended list, 23 November 202*3. Retrieved from https://hudoc.echr.coe.int/?i=001-229017 [in English]
23. *Grand Chamber Panel's decisions - April 2024.* Retrieved from https://hudoc.echr.coe.int/fre-press?i=003-7919984-11027338 [in English]

Стаття надійшла до редакції 10.12.2024