

ROLE OF THE EUROPEAN COURT OF HUMAN RIGHTS IN ENSURING OF RIGHTS PROTECTION OF THE CITIZENS OF UKRAINE

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Abstract.

Purpose: task of the scientific article is research of role of the European Court of Human Rights concerning human rights protection in Ukraine. **Methods of research:** when writing the article there were used general-theoretical and specially scientific methods of cognition in considering complaints to the European Court of Human Rights. System and structural method made it possible to research international and legal mechanism of access to the European Court of Human Rights as an integral system and highlight elements of its structure. Dogmatic method was used when formulating of conclusions and recommendations of practical nature within the subject matter of research. During writing of the article there were also used Aristotelian methods and modes: analysis, synthesis, induction, deduction, abstracting, modelling etc. **Results:** it is pointed out that the more effective and qualitative legal protection on domestic level is, the less applications to international and European juridical instances, including the European Court of Human Rights, will be. It is defined that the European Court of Human Rights should be an impetus to changes in the society and reforming of the judicial system of our state, since its role in ensuring of protection of human rights in Ukraine is considerable. **Discussion:** national legislation, international treaties, which concern activity of the European Court of Human Rights and its judgements.

Keywords: European Court of Human Rights, Convention for the Protection of Human Rights and Fundamental Freedoms, judicial system, judgement, interpretation.

1. Introduction

One of the main problems in the world is the issue of human rights protection. Nowadays the issue of rights and freedoms of human and citizen is the main problem of domestic and foreign policy of the states in the world community. It has acquired a special attention since the last century, when a lot of contemporary countries have taken a course of democratization and the rule of law. Provision of human rights and freedoms and their practical implementation are standards of assessment of the level of democratic development of any country.

Since the date of declaration of independence, Ukraine has also embarked on the path of democratic development. One of the main aspects that is fundamental in the formation of a strong, democratic state of the European model is acceptance of benefits of universal values over class ones and pri-

ority of generally accepted norms of international law over the norms of domestic law.

On November 17, 1997, the Verkhovna Rada of Ukraine ratified the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950. This Convention is basic under creation of legislation and includes main requirements for protection of human rights and is their guarantor. After its ratification by the Verkhovna Rada of Ukraine these requirements were implemented on the territory of our state. Thus, a new stage of legal development and reform has begun for Ukraine, the content of which is to approximate national law to European standards through the transfer of European legal values, which find their practical implementation in case law of the European Court of Human Rights.

2. Analysis of the latest researches and publications

Recently, in the scientific literature, a lot of attention has been paid to analysis of certain aspects of practice of the European Court of Human Rights. For example, P. Rabinovych described the impact of decisions of the European Court of Human Rights on national law practice. M. Buromenskyi considered problems of development of Ukrainian legislation in context of European law. T. Dudash, V. Tumanov, T. Polianskyi and others also researched practice of the European Court of Human Rights.

3. Setting objectives

The task of the article is research of protection of human rights in Ukraine by the European Court of Human Rights.

4. Statement of the main material

The second section of the Convention for the Protection of Human Rights and Fundamental Freedoms is an important component of it, which describes the work of the main body on protection of rights – the European Court of Human Rights. In accordance with Art. 33 and 34 of the Convention it is possible to submit to the European Court two categories of complaints – interstate and individual ones.

According to Art. 33 of the Convention, Any High Contracting Party may refer to the Court any alleged breach of the provisions of the Convention and the Protocols thereto by another High Contracting Party [1]. Consideration of interstate complaints does not depend on whether violation of the Convention directly affects interests of the applicant state or whether the victim has nationality of the state which applies to the European Court of Human Rights. These circumstances do not influence on recognition of complaint as admissible, because purpose of interstate cases is first of all bringing into effect of the conventional human rights mechanism, in cases when it comes of violations of the European public order. Interstate cases form an insignificant part in practice of the European Court of Human Rights.

The main purpose of the European Court is to protect human rights by means of consideration of individual complaints. Natural persons, non-

governmental organizations (legal entities) or groups of people can be subjects of submission of individual complaints. Undoubtedly, the largest quantity of complaints comes to the European Court of Human Right from natural persons and it does not matter whether the applicant is a citizen of the member state of the Convention, a foreigner, a person with dual citizenship or a stateless person.

The main thing to accept complaints by the European Court of Human Rights for consideration is that the applicant was a victim of violation of the Convention, since it does not stipulate an opportunity of consideration of abstract cases that is those ones on violation of human rights in general.

Nowadays, the problem of human rights protection in Ukraine, taking into account the political situation on its territory, is under critical condition. As of August 31, 2017, in the base of the European Court of Human Rights there were 19000 cases against Ukraine standing in line for consideration. It is 21,3% from the total quantity of cases in the database of the European Court of Human Rights. This is the highest indicator among member states of the Council of Europe.

At first glance, the question is why there is such a big quantity of complaints against Ukraine, considering that all human rights are enshrined in the basic law of the country – the Constitution of Ukraine, that there is an individually authorized person who controls the implementation of all obligations to protect human rights and other aspects that create all the necessary conditions for our lives.

Considering the problems of this issue, we can make conclusion that one of the main problems is that there is no clearly established mechanism through which international legal acts are effective in Ukraine, including the Convention and practice of the European Court of Human Rights. In works of V. Ievintova there were analyzed the most common approaches to application of international treaties, ratified by Ukraine.

In our opinion, the scheme proposed by the author may be used in application of the Convention and practice of the European Court of Human Rights, since it is based on norms of national legislation and meets the established traditions of European law. In particular, the researcher notes that:

1. International treaties, which are ratified by Ukraine, acquire the status of norms of national law and should be applied appropriately. Direct application of these international treaties cannot be ruled out if the legislator has not made their respective transformation into national law.

2. In the event of a conflict between the rules of the ratification agreement and the rules of national law, the ratification agreements are superior to others and subject to priority application.

3. It is forbidden to introduce in the law of Ukraine treaties that are contrary to the Constitution of Ukraine. Such treaties take the second place after the Constitution of Ukraine as the sources of legal norms which should be applied [2, p. 10-11].

Above we have already mentioned about practice of the European Court of Human Rights. In accordance with the Law passed by the Verkhovna Rada of Ukraine on February 23, 2006 No. 3477-IV On Implementation of Decisions and Application of the European Court of Human Rights Practice, which is an important event in establishing of the rule of law and European approaches to understanding of human rights in the activities of domestic courts. Article 17 defines obligation of Ukrainian courts to apply the Convention and practice of the European Court as source of law [3].

As statistics shows, observance of this law in Ukrainian courts is neglected. Although there are a lot of discussions concerning this assertion. Judicial precedent (practice of the European Court of Human Rights) is not the main source of law in the legal system of Ukraine. But some scientists, for example O. Kolisnyk considers that in the course of proceedings, national courts should refer to findings of the European Court of Human Rights as a direct source of law. They should not only be guided by a formal interpretation of law but also observe the idea of justice and humanity inherent in decisions of the European Court of Human Rights and implement it in their decisions [4, p. 46-51].

In real time the Constitutional Court of Ukraine sometimes refers to judgments of the European Court of Human Rights when interpreting the laws. For example, there is a judgment of the Constitutional Court of Ukraine in case No. 1-14/2015 of June 16, 2015 at the request of the Verkhovna Rada

of Ukraine on provision of conclusion as to compliance of the draft law on amendments to the Constitution of Ukraine concerning immunity of people's deputies of Ukraine and the judges with requirements of Articles 157 and 158 of the Constitution of Ukraine. In this decision the Constitutional Court of Ukraine refers to the judgment of the European Court of Human Rights in case of "Volkov v. Ukraine" of May 27, 2013 [5].

Every year the number of examples of using practice of the European Court of Human Rights by national courts during the decision-making of cases or the adoption of procedural decisions increases, how the national court should do, when considering the case, it establishes existence of a conflict between provisions of the law and provisions of the Convention or practice of the court. In such cases, it is best to turn to interpretations of laws by the Constitutional Court of Ukraine, because this is the judicial authority that is empowered to officially interpret the Constitution of Ukraine, which includes provisions of the Convention, and verify the authenticity of laws in accordance with the constitution and their interpretation, if it is necessary. Moreover, as we have already noted, the Constitutional Court of Ukraine already applies provisions of the Convention and practice of the European Court in the resolution of cases. Perhaps this will not solve all the problems and will not prevent violation of the Convention in all cases, but this can greatly improve judicial protection of rights and freedoms guaranteed by the Convention. It will also help to avoid a situation where some courts will give preference to the provision of law and others in a similar case will neglect such a norm, referring to provisions of the Convention and practice of the European Court of Human Rights. In addition, it is most important for national courts to read directly the texts of judgments of the European Court of Human Rights, since, when deciding on justification for the interference of executive authorities with certain human rights guaranteed by the Convention, courts should know exactly how these issues may be considered by the European Court.

So, practice of the European Court of Human Rights is nevertheless used in the judicial practice of Ukraine, but the mechanism of its application has not yet been improved and there is no high-

quality practice of using of the European Court judgements and provisions of the Convention in considering cases.

Another reason of such quantity of citizens' applications is violation of their rights at different stages of the case: pre-trial investigation, judicial process or execution of court's decision.

For example, according to the judgement of the European Court of Human Rights in case of "Vyerentsov v. Ukraine" rights of the citizen of Ukraine Vyerentsov were violated in compliance with p. 1 and 3 Art. 6, Art. 7 and Art. 11 of the Convention. It was stated in description of the case that rights of the applicant had been restricted during his seizure and the right to legal protection and appeal of a decision had been banned. So, rights of Vyerentsov were restricted from the moment of his seizure, pre-trial investigation and at the stage of judicial process [6].

Regarding this reason, the problem of violation of human rights is obvious. Law-enforcement bodies often abuse their authority prescribed by law or for the purpose of simplification of work they carry out partial analysis of cases and their investigation that consequently makes a suspect become guilty up to the moment of court hearing of the case.

In our opinion, in order to solve this problem, it is necessary to make amendments to normative and legal acts which concern activity of law-enforcement and other state bodies, where more precisely determine functions, duties and authority vested to these bodies and make punishment in execution of judgements of the European Court of Human Rights.

Execution of decisions of the European Court of Human Rights is necessary condition of efficiency of its activity, since without taking measures by the state, aimed at execution of a decision of the European Court of Human Rights, stated violation and measures concerning its elimination and indemnification remain on paper. In compliance with Art. 46 of the Convention for the Protection of Human Rights and Fundamental Freedoms the High Contracting Parties undertake to abide by the final judgement of the Court in any case to which they are parties.

However, increase of quantity of "cloned" applications, filed to the European Court of Human Rights against a certain state, testifies that execution of decisions of the Court concerning elimina-

tion of structural problem, stated in the judgement, is not perfect [7].

In the mechanism of protection of human rights and freedoms, created by the Convention, an appropriate role belongs to the Committee of Ministers of the Council of Europe. According to Art. 46 of the Convention for the Protection of Human Rights and Fundamental Freedoms this very body carries out supervision of execution of judgements of the European Court of Human Rights. The Committee of Ministers carries out supervision of execution of a judgement by means of communication with the government of an appropriate state. Thus, the body which is responsible in Ukraine for cooperation with the European Court of Human Rights is the Secretariat of the Government Agent before the European Court of Human Rights under the Ministry of Justice of Ukraine that has to contact regularly with CM CE and provide it with information about measures that the state is planning to undertake and undertaken ones in performance of this or that judgement of the Court [8].

Another factor which influences on formation of an effective mechanism of human rights protection is a principle of "dynamic" interpretation of the Convention. When characterizing the work of the European Court of Human Rights, the main task of the Court is interpretation of provisions of the Convention for the purpose of prevention of probable repeated commitment of rights restriction.

The principle of "dynamic" interpretation means that in the course of time the Convention is developing according to contemporary needs of protection that is it adapts to contemporary environment of the world, novations which are introduced every day. For example, in the case of "Siliadin v. France" of July 26, 2005 the Court emphasized the deficiency in the French legal system that did not provide efficient protection of the applicant, who became a victim of slavery in one French family [9].

Such deficiencies also exist in the Ukrainian legal system. This occurs due to the fact that legislation does not develop according to contemporary requirements. So, rights are restricted because of non-compliance with their interpretation created by the European Court of Human Rights in cases entering their database.

5. Conclusions

At present the European Court of Human Rights is one of the main international human rights institutions of European system of protection of human rights. The European Court of Human Rights with its decisions and given recommendations influences on formation, reforming of contemporary national human rights systems, practical use of European legal standards in making decisions by national courts.

It should be emphasized that decisions of the European Court of Human Rights are obligatory for member states, and their execution is controlled by the Committee of Ministers of the Council of Europe. According to this rule the states are obliged to acknowledge jurisdiction of the European Court of Human Rights and strictly execute its judgements after ratification of the European Convention by the state. Controlling mechanism, stipulated by the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950, does not have analogs up to now in practice of interstate cooperation in the sphere of protection of human rights and freedoms.

It is necessary to point out that the role of the European Court of Human Rights in the system of protection of human rights in Ukraine is considerable. The European Court of Human Rights should be an impetus to changes in society and reforming of judicial system.

The more reliable and effective measures of legal protection on the national level are, the less it is necessary for citizens of Ukraine to search protection on the level of all-European institutes and establishments under the Convention for the Protection of Human Rights and Fundamental Freedoms. However, in order to provide such level, citizens of our country should have real access to legal protection of their rights both on national and European level.

Ukraine is still on that stage when there are adopted norms, but the system of their implementation and protection does not have a precise and ideal mechanism. Therefore, there are a lot of complaints of citizens against the state. The main reasons are the following: abuse of power, restriction of the rights under arrest, investigation, trial and execution of court decisions.

To sum up, the legal system of Ukraine is lack of knowledge, practice and desire for removal of

gaps in Ukrainian legislation in order fully to use practice of the European Court of Human Right and change Ukraine into a democratic state of European example.

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**РОЛЬ ЄВРОПЕЙСЬКОГО СУДУ З ПРАВ ЛЮДИНИ
У ЗАБЕЗПЕЧЕННІ ЗАХИСТУ ПРАВ ГРОМАДЯН УКРАЇНИ**

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Мета: завданням наукової статті є дослідження ролі Європейського суду з прав людини щодо захисту прав людини в Україні. **Методи дослідження:** при написанні статті було застосовано загальнотеоретичні і спеціально-наукові методи пізнання при розгляді скарг до Європейського суду з прав людини. Системно-структурний метод дозволив дослідити міжнародно-правовий механізм доступу до Європейського суду з прав людини як цілісну систему та виділити елементи його структури. Догматичний метод було застосовано при формулюванні висновків і рекомендацій практичного характеру в межах проблематики дослідження. У ході написання статті також використовувалися формально-логічні методи та прийоми: аналіз, синтез, індукція, дедукція, абстрагування, моделювання та інші. **Результати:** зазначено, що чим ефективніше та якісніше буде правовий захист на внутрішньодержавному рівні, тим менше звертатимуться до міжнародних та європейських судових інстанцій, в тому числі Європейського суду з прав людини. Визначено, що Європейський суд з прав людини повинен слугувати поштовхом до змін у суспільстві та реформування судової системи нашої держави, оскільки його роль у забезпеченні захисту прав людини в Україні є значною. **Обговорення:** національне законодавство, міжнародні договори, які стосуються діяльності Європейського суду з прав людини та його рішення.

Ключові слова: Європейський суд з прав людини, Конвенція про захист прав людини і основоположних свобод, судова система, рішення, тлумачення.

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**РОЛЬ ЕВРОПЕЙСКОГО СУДА ПО ПРАВАМ ЧЕЛОВЕКА
В ОБЕСПЕЧЕНИИ ЗАЩИТЫ ПРАВ ГРАЖДАН УКРАИНЫ**

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Цель: задачей научной статьи является исследование роли Европейского суда по правам человека относительно защиты прав человека в Украине. **Методы исследования:** при написании статьи были использованы общетеоретические и специально-научные методы познания при рассмотрении жалоб в Европейский суд по правам человека. Системно-структурный метод позволил исследовать международно-правовой механизм доступа в Европейский суд по правам человека как целостную систему и выделить элементы его структуры. Догматический метод был применён при формулировании выводов и рекомендаций практического характера в рамках проблематики исследования. В ходе написания статьи также использовались формально-логические методы и приёмы: анализ, синтез, индукция, дедукция, абстрагирование, моделирование и другие. **Результаты:** отмечено, что чем эффективнее и качественнее будет правовая защита на внутригосударственном уровне, тем меньше будут обращаться в международные и европейские судебные инстанции, в том числе Европейский суд по правам человека. Определено, что Европейский суд по правам человека должен служить толчком к изменениям в обществе и реформированию судебной системы нашего государства, поскольку его роль в обеспечении защиты прав человека в Украине является значительной. **Обсуждения:** национальное законодательство, международные договоры, касающиеся деятельности Европейского суда по правам человека и его решения.

Ключевые слова: Европейский суд по правам человека, Конвенция о защите прав человека и основных свобод, судебная система, решения, толкования.