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CURRENT SITUATION AND PROSPECTS OF ENFORCEMENT BY THE EUROPEAN COURT OF HUMAN RIGHTS (ECHR) FOR THE RIGHTS OF FOREIGN CITIZENS

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Purpose: to conduct a comprehensive analysis of the current state and practice of consideration of cases concerning the rights of foreign citizens and stateless persons by the European Court of Human Rights (ECHR). **Research methods:** synthesis, analysis, formal-legal, comparative-legal. **Results:** the main types of violations of the Convention for the Protection of Human Rights and Fundamental Freedoms and its protocols in terms of granting rights to foreigners and stateless persons identical with nationals was established, the main grounds for extradition and criteria for violation of the right to liberty and security was identified. **Discussion:** the key cases brought against foreigners and stateless persons in the European Court of Human Rights are covered, international legal acts defining the rights of foreigners at the local level are considered, ECHR judgments on foreigners are analyzed in detail and eligibility criteria are determined for each of the main cases.

Keywords: ECHR; foreigner; stateless person; extradition; detention; right to vote.

Problem statement and its urgency. Mass migrations to the countries of the European Union, socio-economic, humanitarian problems and the war in eastern Ukraine are the reasons for the departure of Ukrainian citizens abroad every day. It is inevitable that the signing of the Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their Member States, on the other hand, the above-mentioned agreement facilitated the procedure of departure and entry to The EU, pushing the latter to the policy of equalizing the constitutional and legal status of citizens of member states with foreigners. Moreover, in the countries of the European society there is a tendency to involve foreigners and stateless persons in the life of the community at the local level [1, p. 12]. Both The Congress and the OSCE/ODIHR have indicated the desire to grant civil rights to foreign nationals residing in the territory for a long time, in particular in a recent document on the 2013 municipal elections in the Former Yugoslav Republic of Macedonia and the

2015 local elections in Albania. The election reports contain provisions on "a new trend in the right to vote in local elections for residents who are not citizens but have lived in the territory for a long time" [2].

Analysis of recent research and publications. Issues of ensuring human and civil rights at the international level, as well as the constitutional and legal status of foreigners and stateless persons have become the subject of scientific works I.M. Sopilko, O.A. Radziwill, K.S. Tokareva, A.V. Levenets, S.A. Panasyuk and others.

The purpose of the scientific article is to provide a comprehensive analysis of the current state and practice of cases concerning the rights of foreign citizens and stateless persons by the European Court of Human Rights (ECHR).

Presenting main material. One of the main documents defining the rights of foreigners at the local level is the 1992 Convention on the Participation of Foreigners in Public Life at the Local Level. It is important to note that in the preamble to this

Convention, the signatory states state that "the aim of the Council of Europe is to achieve greater unity between its members in order to preserve and implement the ideals and principles of their common heritage and to promote their economic and social progress" [3].

Moreover, in the same Preamble, States "recognizing that foreign permanent residents are actively involved in the lives and well-being of local communities, and are convinced of the need to strengthen their integration into local communities, especially by empowering them to participate in public affairs of local significance". This Convention provides for the following rights: the right to freedom of expression; the right to freedom of peaceful assembly and association, including the right to form and join trade unions; involvement of foreign permanent residents in formal investigations, planning procedures and other consultation processes on local issues; the right to vote in elections to local self-government bodies; the right of states to determine residency requirements and other rights [3]. The next, but not less important document at the international level is the European Charter of Local Self-Government. As for judicial protection, Article 11 of the Charter enshrines the principle of the right to judicial protection of the interests and rights of local communities [4]. According to Article 11 of the above-mentioned Charter, local self-government bodies have the right to use legal remedies to ensure the free exercise of their powers and respect for the principles of local self-government enshrined in the constitution or national law. As S.A. Panasyuk noted: "The Charter not only provides for the possibility of protecting the municipal rights of local communities by going to court, but also the existence of an independent body that can be a municipal ombudsman (commissioner for the rights of local communities) (in fact, not only the possibility protection not only the realization of the subjective right of the collective subject, but also the existence of appropriate organizational and legal structures that are endowed with such a right of protection" [5, p. 68].

One of the main authoritative institutions of judicial protection is the European Court of Human Rights. The requirements of international cooperation require states to coordinate their legislation in

various sectoral areas of activity by developing and standardizing international standards [6, p. 280]. Therefore, the case law of the European Court of Human Rights and the experience of other states, which we will consider below, are extremely important for Ukrainian society in view of European integration processes. In recent years the number of cases initiated by foreigners and stateless persons against countries party to the Convention for the Protection of Human Rights and Fundamental Freedoms has increased. According to Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms, any person or group of persons may apply to the European Court of Human Rights [7]. After analyzing the case law of the European Court of Human Rights, we can identify three main categories of cases in which the rights of foreign persons or stateless persons are most often violated: extradition; prohibition of torture; the right to liberty and security of person. In general, these categories of cases closely intersect in judicial practice. For example, in the case of *Kabul v. Ukraine* [8] there is the issue of extradition of a citizen of the Republic of Kazakhstan and the use of torture. Moreover, in some decisions, such as the case of *KAB v. Sweden* [9], Articles 2 and 3 of the Convention are inseparable and should therefore only be considered together.

Cases concerning the application of extradition. The Contracting States have the right, in accordance with generally accepted international law and subject to their treaty obligations, to control the entry, residence and expulsion of aliens (examples of *Abdulaziz, Cabales and Balkandali v. The United Kingdom*, *Boujlifa v. France*), "Case of *Üner v. The Netherlands*" and others). However, if there are serious grounds for believing that in the event of deportation the person in the host country is in real danger in those circumstances, Article 3 of the Convention imposes an obligation not to deport the person to such a country (eg *Saadi v. Italy*). The Court refers to the fact that there must be substantial grounds for "principles" for the application of the latter provision, namely:

1) ill-treatment must reach a certain minimum level - the assessment is relative, taking into account all the circumstances of the case (example of

the case "Hilal v. The United Kingdom", "Case of Demir and Baykara v. Turkey");

2) the danger is real, the host state is not able to eliminate it (example of the case "H.L.R. v. France", "Chahal v. The United Kingdom", "Saadi v. Italy"). And if the information provided gives good reasons to question the authenticity of the person's statements, the latter must give a thorough explanation of the differences in the case file (the cases of Collins and Akaziebie v. Sweden and Hakizimana v. Sweden);

3) the assessment carried out by a Contracting State is adequate and substantiated by in-house materials, as well as materials obtained from other reliable and objective sources (example: "NA. V. The United Kingdom").

The case on the prohibition of torture of foreigners. The above principles also apply to cases prohibiting the torture of foreigners (Kabul v. Ukraine). In the case of "K.A.B. v. Sweden" the court identified an exhaustive list of criteria for application to torture cases, namely:

1) whether there was an armed conflict that would increase the risk of loss to the civilian population;

2) whether torture was used among the parties to the conflict;

3) whether the conflict was localized or widespread;

4) what is the level of intensity of the conflict at the time of the case.

Cases of violation of the right to liberty and security of person. In this category of violated rights in the case of "Svetlorusova v. Ukraine" [10], the court noted that if the case involves imprisonment, it is especially important to adhere to the general principle of legal certainty. The ECHR also refers to the requirement of "quality of law" that in cases where national law allows for imprisonment, this procedure must be sufficiently accessible, accurate and predictable in application in order to avoid the risk of arbitrariness (the case of "Baranowski v. Poland"). The case of "Khudogorov v. Russia"). The judgment also states that the purpose of Article 5 of the Convention is to guarantee the right of arrested and detained persons to judicial review of the lawfulness of the measure of restraint applied to them

(the case of "De Wilde, Ooms and Versip v. Belgium").

Remedies must be available during the detention of a person so that he or she can obtain an immediate judicial review of the lawfulness of the detention, which may, where appropriate, lead to the release of the person. These remedies must be clearly defined not only in theory but also in practice, otherwise they will not be available and effective as necessary for the purposes of this provision (the cases of "Stoichkov v. Bulgaria", "Vachiv v. Bulgaria"). The processes of globalization and rapid development of society lead to the complication of social relations and requires new regulatory instruments of such relations, so better access to justice also implies the availability of legal protection [11, p. 4977]. The availability of remedies implies that circumstances voluntarily created by public authorities must give the applicant a real opportunity to avail himself of remedies. It is important to vote on cases concerning the right to free elections. Some foreigners are allowed to vote and stand in local elections without additional requirements: EU member states grant the right to vote and be elected in local elections to citizens of other EU countries on an equal footing with their own citizens. In Ireland, all foreigners have the right to vote and to stand as a candidate in local elections after registering in Ireland for a certain period before election day, as this requirement is necessary for voter registration. In Slovenia, foreigners who have permanent residence in the country are also granted the right to vote and stand for election in local elections, regardless of the length of their residence in Slovenia. The Nordic Council countries (Finland, Denmark, Sweden, Norway and Iceland) allow citizens of other Nordic Council member countries to vote and stand for election in local elections. The United Kingdom grants the citizens of the Commonwealth and the citizens of Ireland the right to vote and to stand as a candidate in all elections on an equal footing with the citizens of the United Kingdom. However, the practice of applying Article 3 of Protocol № 1 to the Convention is less common than the previous list of cases, and ambiguous [12].

In the case of Mathieu-Mohin and Clerfayt v. The Belgian court clarified that Article 3 applies only to elections of "legislative power" or at least

one of its chambers, if there are two or more of them. However, the term "legislature" does not necessarily mean only the country's parliament. It should be interpreted on the basis of the constitutional system of a particular state [13].

Conclusions. Thus, although there is a tendency to grant foreigners and stateless persons the same rights as nationals, the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms and its protocols are constantly violated. It can be concluded that the main types of the above violations are: extradition, prohibition of torture, violation of the right to liberty and security of person. Thus, the essential grounds for extradition are: ill-treatment, real danger that the host state is unable to eliminate, the assessment must be confirmed and obtained from reliable sources. As for the prohibition of torture, in this case there is an inexhaustible list of grounds, it is important to emphasize that these cases are mostly used during armed conflicts. With regard to the violation of the right to liberty and security of person, the following criteria can be distinguished in most cases: the permission of national law to deprive a foreigner of his liberty and the availability of effective remedies.

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СУЧАСНИЙ СТАН ТА ПЕРСПЕКТИВИ ЗАСТОСУВАННЯ ЄВРОПЕЙСЬКИМ СУДОМ З ПРАВ ЛЮДИНИ (ЄСПЛ) ПРАВА ІНОЗЕМНИХ ГРОМАДЯН

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Мета: провести всебічний аналіз сучасного стану та практики розгляду справ щодо прав іноземних громадян та осіб без громадянства Європейським судом з прав людини (ЄСПЛ). **Методи дослідження:** синтез, аналіз, формально-правовий, порівняльно-правовий. **Результати:** основні типи порушень Конвенції про захист прав людини та основоположних свобод та протоколів до неї щодо надання прав іноземцям та особам без громадянства ідентичні, основні підстави для екстрадиції та критерії порушення права на свободу та безпеки визначені. **Обговорення:** висвітлюються ключові справи, порушені проти іноземців та осіб без громадянства, розглядаються міжнародно-правові акти, що визначають права іноземців на місцевому рівні, детально аналізуються рішення ЄСПЛ щодо іноземців та визначаються критерії прийнятності кожен з основних випадків.

Масові міграції до країн Європейського Союзу, соціально-економічні, гуманітарні проблеми та війна на сході України є причинами виїзду громадян України за кордон щодня. Неминуче, щоб підписання Угоди про асоціацію між Україною, з одного боку, та Європейським Союзом, Європейським співтовариством з атомної енергії та їх державами-членами, з іншого боку, згадана вище угода полегшила процедуру виїзду та в'їзду до ЄС, штовхаючи останні до політики зрівняння конституційно-правового статусу громадян держав-членів з іноземцями. Забезпечення прав іноземців залишається актуальною проблемою сучасної глобалізації. Європейський суд з прав людини відіграє важливу роль у забезпеченні прав іноземців, оскільки зростає кількість справ, порушених іноземцями та особами без громадянства проти країн-учасниць Конвенції про захист прав людини та основоположних свобод. Основними категоріями випадків порушення прав іноземців або осіб без громадянства є екстрадиція, заборона катувань, право на свободу та особисту недоторканість. Судова практика Європейського суду з прав людини у таких категоріях справ, що стосуються іноземних громадян, включає багато справ, стороною яких є Україна.

Напрямок подальших досліджень полягає у визначенні шляхів вдосконалення існуючих механізмів забезпечення прав іноземців та осіб без громадянства в Україні відповідно до європейських та міжнародних стандартів.

Ключові слова: ЄСПЛ; іноземець; особа без громадянства; екстрадиція; затримання; право голосу.