

INTERNATIONAL LEGAL PROTECTION OF INFORMATION RIGHTS IN COURT

В статті досліджується міжнародний правовий захист інформаційних прав людини у суді. Розгляд справ у суді є публічним і змагальним. Обов'язковим елементом розгляду справи є наявність юридичного представництва. Індивідуальна заява попадає на розгляд однієї із Секцій суду, голова якої призначає суддю-доповідача. Останній визначає, як саме розглядатиметься справа: трьома (Комітетом) чи сімома (Палатою) судьями.

Ключові слова: *правовий захист, суд, інформаційні права, людина, інформаційні права і свободи, Конвенція, законодавство, Євросуди, національна правова система.*

В статье исследуется международную правовую защиту информационных прав человека в суде. Рассмотрение дел в суде является публичным и состязательным. Обязательным элементом рассмотрения дела является наличие юридического представительства. Индивидуальное заявление попадает на рассмотрение одной из Секций суда, председатель которой назначает судью – докладчика. Последний определяет, как будет рассматриваться дело: тремя (Комитетом) или семью (Палатой) судьями.

Ключевые слова: *правовая защита, суд, информационные права, человек, информационные права и свободы, Конвенция, законодательство, Суд, национальная правовая система.*

This paper examines the international legal protection of information rights in court. Legal proceedings are public and adversarial. Obligatory element of the case is to have legal representation. An application gets to the one of the sections of the court, whose head is appointed Judge -Rapporteur. Last determine how the case will be considered: three (Committee) or seven (Chamber) judges.

Key words: *legal protection, the court, the right information, people, information rights and freedoms of the Convention, the law, the European Court, the national legal system.*

Problem. Fundamental rights and freedoms are inherently universal, that should be the same in every state. No factor in the middle of any state should not narrow the legal standards of fundamental rights and freedoms, as last directly related to human dignity.

Through the study of security advantages as the object of judicial protection, established its relationship with information rights and freedoms on the basis of constitutional norms of the European Union.

Analysis of recent research and publications. Protection of information rights and freedoms is directly related to a number of problems: the general problem of constitutional rights and freedoms involved VF Pohorilko, P. Rabinovich, M. Todyka, S. Shemshuchenko, problems of international law and comparative Law in terms of information rights and freedoms raised VN Denisov, MI Kozyubra, PF Martinenko, information law dealt VB Aver'yanov, SS Alekseev, IV Aristova, IL seen V. D. Havlovskyy, VI Gurkovsky, Y. Dodin, AP Koryenyev, GM Krasnostup, OD Krupchan.

Constitution of Poland unbreakable, and respect for and protection it is the duty of public authorities. This gives reason to believe that when human dignity is violated, the violated rights and freedoms of man and citizen. Because dignity is given to man by nature and are inalienable (inherent to man), it must be protected by the state: the deprivation of human dignity leads to the disappearance of man as such (as a species).

The purpose of this paper is to investigate and study the international legal protection of human rights information in Sidi.

The main material. The converse, that it is a violation of human rights is a violation of her dignity wrong. Violations not all of the rights and freedoms cause a violation of dignity. We believe that only a violation of fundamental rights and freedoms of man and citizen leads to a violation of dignity. Resolution 59 (1) UN General Assembly declared that freedom of information is a fundamental right and the criterion of all other freedoms. Since then, the constitution of most European countries included in the basic information rights and freedoms. From this it can be argued that information rights are fundamental rights. In addition, all court cases related to the violation of the rights and freedoms of information we can speak of a violation of dignity (violations of fundamental right).

German Constitution interprets the concept of dignity even wider, as Article 1 states: "Human dignity is inviolable. To respect and protect it – the duty of the government." This allows to interpret: any attack on human dignity is the basis for the trial, any violation of fundamental rights is also the basis for the trial. Proof that it is a violation of fundamental rights leads to a violation of dignity is the value which gives the German Constitution the fundamental rights of the article: "For the German people acknowledge inviolable and inalienable human rights as the foundation of every human community, of peace and justice on earth."

The German state protects fundamental rights (and hence dignity) of all power, " Fundamental rights ... are required legislative, executive and judiciary as directly applicable law". Proof there is another rule: " Making the constitutional order within the legislative power and ensuring the exercise of executive and judicial powers in accordance with the law and the state, aware of our responsibility to future generations, also protects the natural foundations of life." We believe that human dignity and defines the natural foundations of life.

Relationship between dignity, rights and freedoms established by the Constitution of the Czech Republic : "People are free and equal in dignity and rights. Fundamental rights and freedoms are inherent, inalienable, not subject to limitations and can not be canceled ." In this regard, the three concepts in the first place there is freedom (liberty) and equality in dignity and rights is seen as a key condition of human freedom.

The Italian Constitution even greater degree develops the concept of dignity: " All citizens have equal social dignity and are equal before the law without distinction of sex, race, language, religion , political opinion, personal and social origin ." This is a social advantage , that human dignity does not exist outside of society . Inherent dignity of all members of society, who are both equal before the law regardless of the differences between individuals . Any restrictions on the equity (including – esteem) prevent the development of the human personality and development. The proof is provided by the extension of the article: "The task of the Republic – remove barriers ... which actually restrict the freedom and equality of citizens , prevent the development of the human person and the effective participation of all workers in the organization of the state ... ".

Given the fact that the protection of the rights and freedoms of exercise courts, they should provide reliable (perfect) protection mechanism.

Disadvantages of national law , they protyrichyvist , imperfect in some countries do not allow you to defend the fundamental rights and freedoms. On the basis of the Universal Declaration of Human Rights established international courts , whose activity technique based on respect for common legal standards in relation to people of all countries covered by their law .

Rights and Freedoms protects the people of the Americas Inter-American Court of Human Rights (1978 , of Costa Rica, the basic document is the American Declaration of the Rights and Duties of Man in 1948 and the American Agreement on Human Rights 1969) African – African Court of on Human and Peoples (1998 , Reference document – African Charter on Human and Peoples' rights 1981), and European countries that have ratified the fundamental document – the European Court of Human Rights, at the heart of which lies the Convention .

Ukraine ratified the Convention on 11 September 1997 and also recognized the compulsory practice of the European Court. According to the academician AD Svyatotskoho , the value is the practice of the European Court that its decision the court makes an understanding of the standards of fundamental rights and freedoms. In Ukraine it is found in accordance with its law of 23 . 02. 2006 "On the implementation of the decisions and practices of the European Court of Human Rights." This practice is recognized as a source of law .

European Court jurisdiction extends to all questions of interpretation and application of the Convention and its Protocols . In the exercise of the courts of justice approaches to interpretation of the Convention shall be applied flush with the provisions of the Constitution , since the provisions of the Convention is directly applicable , as the Constitution. Head of the European Court J.-P. Costa finds that the Convention is intended to guarantee rights that are practical and effective , not theoretical and illusory. The above fully confirmed case " Airy against Ireland " (Airey v. Ireland), 1979, p.24 .

Difficulties in the domestic proceedings relating to human rights , inadequate legal framework, distrust of people in the national courts forcing people to turn to the European Court , whose authority in the protection of fundamental rights and freedoms is growing. This is evident from the cases that come to the site of the European Court of Ukrainian Ombudsman annual reports , speeches from local officials , judges of the European Court .

Yes , the President of Ukraine Verkhovna Rada Volodymyr Lytvyn said that during the whole period – from initial applications against Ukraine and until 31 December 2010 – before the European Court received 30,738 applications against our country , of which 19,532 cases were unacceptable and removed them from the list. Head of the European Court J.-P. Costa notes that most of the work of the Court is now considering applications regard to the new Member States (55% of cases are considered to come from 5 countries that joined the system in the past 15 years) and more than 8% of applications relating to Ukraine . Judge Basel (Switzerland), the Court of Appeal S. Gass notes that in 2009 the Court came in 1400 against Ukraine .

The fact that the domestic courts almost never followed the Convention in law enforcement, and are based on national law , make decisions contrary to the Convention the following facts:

1. In 2010, of the 109 cases that the European Court has considered the applications of citizens of Ukraine, only one was found violations.

2. According to the human rights standards of new laws related to information does not provide for a presumption of restriction be necessary in a democratic society. Reason for this is Article 17 of the Law of Ukraine "On the implementation of the decisions and practices of the European Court of Human Rights" , under which the European Court is the source of law in the national legal system. Not provided with the right to information regardless of frontiers , but in the Internet age is an axiom (both human rights activists confirmed the observations in Section 1.3. , § 1.4.).

3. Ukraine Parliament Commissioner for Human Rights believes that reflection of judicial protection of human rights in Ukraine is the increase in the number of appeals to the Ukrainian and European Court decisions on acceptance of the Ukraine , who stated systematic violations of the right to a fair trial .

4. Former President of the Supreme Court of Ukraine V. Onopenko, based on jurisprudence, said the lack of willingness of members of the national corps of judges for the implementation of approaches and positions of the European Court of Ukrainian legal space, lists the reasons for this: in many cases, courts exercise abstract link ... no specific guidance on the decision of this body, make reference to a specific solution ... without specifying its correlation with national law and the circumstances of the case.

Surveyed 1283 general court judges helped to clarify the main difficulties of low frequency of cases under the Convention and the Court's precedents. These are:

1. The absence of cases relating to the protection of information rights and freedoms of man and citizen. The majority of respondents (92%) do not represent the ability to protect individual rights of information with just one document – the Convention. They want to be acquainted with the approaches formed the European Court when considering specific cases related to the information sector. Only 7% of the judges concluded that in their practice, there have been isolated cases where one party sought to persuade the court to hear the case on the basis of the Convention. This suggests a lack of familiarity and advocate case with the European Court. In addition, 2% of respondents refused to one of the parties to the proceedings of the trial on the basis of the Convention and the European Court precedents. 61% of respondents noted the lack of guidelines for the protection of information rights and freedoms of man and citizen -based practice of the European Court of higher courts.

2. The vast majority of judges (86% of 206 respondents) appellate courts (Appendix S), while on training courses, not deepened their knowledge of the practice of the European Court to protect the rights and freedoms in the information field. More than 50% of the judges reported that they had not provided guidance on the precedents of the European Court in 2008 – 2010. More than 62% of judges in this category are exploring the practice of judicial protection of information rights and freedoms of other ships and more than 90% of them own replenish their knowledge about the European Court precedents from different sources.

As a suggestion for improving the justice system for the protection of individual rights Information Appeal Court represent appropriate training, including – the practice of the European Court, they need to be supported seminars on judicial practice this type of case. Only then will they be able to advise trial courts.

In 1.3. shown that the constitutional provisions relating to the protection of information rights and freedoms in Ukraine, successfully defended the Convention, implemented in the precedents of the European Court. Thus, it is proved that statement (at least in the sphere of information) SV Shevchuk is relevant. In particular, the researcher said, "The rules of the Constitution of Ukraine on the rights and freedoms of man and citizen reflect mostly conventional position, the legal guarantees of fundamental rights and freedoms is a common law as a constitutional matter, and the Convention on the level." To claim that the Convention provides protection of information rights and freedoms can be based on the study of the Court. In a number of cases dealt with Strasbourg and presented in § 1.3. Stresses the fact that the fundamental rights of affected relative rights include the right information.

Convention, which lies at the heart of the European Court are too concise law, and without knowledge of the precedents of the Court largely "scares" judges from the management of it. We believe that the only constant study of precedents the Court will allow to see it not as the default (ossified) document, and one that occurs in specific cases over time (growing community).

Based on the Court's precedents, BA Malanchuk (Regional Coordinator of the joint program of the EU and the Council of Europe "Combating ill-treatment and impunity" called the Convention "living mechanism" that develops in the development of society and "must be interpreted in light of the present." in other words, although the Convention does not change the interpretation of articles is dynamically evident in the process of reviewing specific cases. Providing legal protection of information rights and freedoms requires constant study of the European Court and the study of changes in the legislation of the Parties to the Convention. therefore, based on activities of the European Court on the principle of subsidiarity. latter, according to the judges of the European Court A. Kovler that supranational control system is optional (subsidiary) in relation to national, it follows from Article 1 of the Convention: "The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section 1 of this Convention." essence of this principle determines A. Kovler, that the major "severity" advocacy lies in sovereign states, for the state is the "responsibility for the outcome" and the choice of means to achieve the result Convention gives to the discretion of the state. We can add that the discretion to achieving results using regulated Convention and precedents of the Court.

According to the same judge subsidiarity can be productive only if the relevant provision of the Convention is available and used by judges in domestic law. The above gives reason to believe that although the Constitution of Ukraine stipulates Convention as directly applicable, so it is the duty of the unwritten ratification of the latter. Also, do not use the domestic courts of the Convention and the Court's precedents for the protection of human rights is nothing like ignoring the principle of subsidiarity: the problem of the protection and safeguarding of the Convention rights and freedoms primarily serve the state, not the European Court.

Generally accepted in the EU is the rule of law. This principle is inclusive (the components highlighted in Appendix I) with respect to the principles made by the Court when considering specific cases. In summary judgment, a judge of the court retired VG Butkevych defined core values that reflect the rule of law: 1) protection of human rights, and 2) the functioning of the state and its agencies associated requirements of law, the prohibition of state tyranny and 3) the principle of equality of rights (individuals and businesses) before the law, and 4) ensuring law and order in society, and 5) the existence of effective and predictable justice (right of access to justice, the right to a fair trial, and others).

Features functioning of the European Court are as follows.

1. The Court is unable to assess the correctness of the decision of the national authorities, but reserves the right to check the thoroughness of the decision making process . The role of procedural aspect restrictive component acts of appreciation . The proof is that the Court must " first of all check whether the decision-making process fair , and only in exceptional circumstances, it can go beyond this limit and revise the material conclusions of the national authorities ."

2. The court is considering legal action only line with the Convention.

3. The Court "may not be an appeal (cassation , supervisors), it can not as detailed as the national court , examine the factual circumstances of the case. ... Thus the more serious allegations made by the applicant in violation of his rights and freedoms , the more thoroughly to be the actual base . "

4. " The competence of the Court to assess compliance with domestic law is limited. Namely First National authorities should interpret and apply the law"

5. The Court does not interpret the provisions of national law : " The Court's role is limited to checking whether the interpretation is consistent with the Convention " [Lisitsa against Croatia (Lisica v. Croatia), 2010, § 52].

6. The court hears cases only if the conditions of admissibility : the exhaustion of domestic remedies.

7. "The Court reiterates that , in principle, its task is not to determine what measures deficiencies would be appropriate to perform the respondent State of its obligations under Art. 46 of the Convention ..." [Skotstsari and Dzhyunta v. Italy (Scozzari & Giunta v. Italy), № № 39221 /98 and 41963 /98, p.249 , ECHR 2000 – VIII].

Subjects appeal to the European Court identified in its affairs. In particular, "The Court may receive applications from any person , non-governmental organization or group of individuals claiming to be the victim of assumption one of the High Contracting Parties of the rights set forth in the Convention or the protocols thereto " [Hlinov against Ukraine , № 13693 /05 , 2009, p.63].

Each individual State Party concerned may apply to the court for the protection of the rights and freedoms osnovolozhnyh [79 Minutes 9]. Appeals shall be made only in writing when : 1) it suffered (was the victim) of that State violated his rights and freedoms (in our case – news), 2) the complaint concerns the subject of authority of the state , and 3) used all domestic remedies to address information violated rights and freedoms , and 4) the term breach of information rights and freedoms shall not exceed 6 months from the date of the decision the subject of state power .

Explanatory note for applicants and application form can be found at the European Court , it can directly take the Secretariat of the Court, or receive email , after referring to the Court of appeal setting out the nature violated the fundamental rights and freedoms.

Legal proceedings are public and adversarial . Exceptions may be when the Chamber or the Grand Chamber will decide differently. Obligatory element of the case is to have legal representation (applicants who do not have sufficient funds CE provides legal assistance). An application gets to the one of the sections of the Court, whose head is appointed Judge-Rapporteur. Last determine how the case will be considered : three (Committee) or seven (Chamber) judges.

Admissibility of the case established by the Committee. Chamber consider matters submitted by the reporting judge and those that are appropriate Committees recognized the Court. Arguing admissibility , the Chamber motivate his conclusion: analyze , based on all the material , whether there are signs of the rights and freedoms guaranteed by the Convention.

Chamber transmit Litigation Grand Chamber (17 judges) where :

- 1) Chamber's decision in the case is contrary to the case-law ;
- 2) it needs a deep interpretation of the articles of the Convention.

Considering the merits of the case , the Chamber may invite the applicant to provide additional evidence and obfruntuvaty claimed compensation. At the hearing on the merits of the applicant state representative has the right to participate as a respondent.

Application to the European Court of Human Rights must meet Rule 47 of the Rules of Court and include:

- 1) A list of the facts underlying the violation;
- 2) a list of violated rights guaranteed by the Convention ;
- 3) the remedies used by the applicant ;
- 4) a list of domestic courts (or other government agencies) in the case of the date of each decision and authority that issued it , a summary of the contents of each decision (attached copies of all decisions) ;
- 5) The signature of the applicant's (or representative) .

Conclusion. Established that the cause of renovation information rights and freedoms in the European Court is not compliance with national courts of the Convention in law enforcement . Based on precedents show that the Convention provides protection to each his own definition of information rights (clause 1.1).

The reasons that the European Court takes a decision contrary to domestic courts in protecting information rights and freedoms :

- Low incidence of cases under the Convention ;
- Lack of judicial practice cases on the basis of the Convention;
- Does not provide guidance to judges from the highest courts in relation to the practice of the European Court on the protection of information rights and freedoms;
- The lack of a common approach in training judges to study the practice of the European Court on the protection of information rights and freedoms;
- Lack of judicial literature on case- Euro court.

The features of the functioning of the European Court, the request of the technology and cooperation with it. Based on the precedent established evaluation criteria of the European Court legitimacy of state intervention in information rights and freedoms.

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СИСТЕМА СУБ'ЄКТІВ КОНТРОЛЮ У СФЕРІ НАДАННЯ ОХОРОННИХ ПОСЛУГ

Статтю присвячено з'ясуванню терміну «система суб'єктів контролю», охарактеризовано теоретичну конструкцію поняття суб'єктів контролю, визначено систему суб'єктів контролю у сфері надання охоронних послуг, охарактеризовано найбільш важливих із них.

Ключові слова: система, суб'єкт, охоронні послуги, суб'єкт контролю, об'єкт контролю, органи влади, громадськість, правове регулювання.

Статья посвящена выяснению термина «система субъектов контроля», охарактеризовано теоретическую конструкцию понятия субъектов контроля, определена система субъектов контроля в сфере оказания охранных услуг, охарактеризованы наиболее важных из них.

Ключевые слова: система, субъект, охранные услуги, субъект контроля, объект контроля, органы власти, общественность, правовое регулирование.

This article is dedicated to the definition of the term "system of control subjects", describes the theoretical design concept of control subjects, and the system of control subjects in the provision of security services, described the most important of them

Key words: system, entity, security services, subject control, object control, authorities, public regulation

Постановка проблеми. Для дійсного забезпечення прав, свобод та інтересів фізичних та юридичних осіб необхідним є функціонування певних правових механізмів із недопущення протиправних посягань на проголошені Конституцією України найвищі соціальні цінності. Одним із таких механізмів, за допомогою якого може бути забезпечена недоторканість прав фізичних та юридичних осіб від протиправних посягань є передбачена національним законодавством можливість таких осіб скористатися послугами з охорони. Одним із найважливіших питань у теоретичних дослідженнях щодо сутності контролю має, зокрема, питання про його суб'єкт.