

PROTECTION OF INFORMATION RIGHTS AND FREEDOMS. INTERNATIONAL LEGAL ASPECTS

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ABSTRACT

This article examines the protection of information rights and freedoms, international legal aspects, to improve justice 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 in this category cases.

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INTRODUCTION

No factor in the middle of any state should not narrow the legal standards of fundamental rights and freedoms, since the latter is directly related to human dignity.

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

Polish Constitution states: "natural and inalienable dignity is the source of rights and freedoms of man and citizen. It is firm, 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 converse assertion that the violation of human rights is a violation of dignity is invalid. No violations of the rights and freedoms cause a violation of digni-

ty. We believe that only a violation of fundamental rights and freedoms of man and citizen leads to a violation of dignity.

ANALYSIS OF RECENT STUDIES.

Resolution 59 (1) of the 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. On this basis, one could argue that information rights are fundamental rights. In addition, all court cases involving violation of the rights and freedoms of information we can speak of a violation of dignity (violations of fundamental right).

German Constitution the concept of dignity interpreted more broadly, as Article 1 states: "(1) The dignity of man is inviolable. To respect and protect it - the duty of the government." This allows to interpret: any assault on human dignity is the basis for the trial; any violation of fundamental rights is also the basis for the trial. Proof that the violation of fundamental rights leads to a violation

of dignity, is the value which gives the German Constitution fundamental rights of the article: "(2) The German people therefore acknowledge inviolable and inalienable human rights as the foundation of every human community, peace and justice on earth".

THE MAIN MATERIAL

The German state protects fundamental rights (and hence dignity) of all power: "The fundamental rights ... are required legislative, executive and judiciary as directly applicable law". Proof is another rule: "By 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, protects and natural foundations of life". We believe that the dignity and defines the natural foundations of life.

The 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 prescription and non-cancelable". In this regard, three concepts in the first place is freedom (liberty) and equality in dignity and rights are considered as a condition of human freedom.

The Italian Constitution has increasingly developed 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 background". This is a public dignity, that is human dignity that 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 the continuation of the reduced article: "The task of the Republic - remove obstacles ... 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 perform the courts, they

should provide reliable (perfect) protection mechanism.

Disadvantages of national law (see. Item 1.2.), Their protyrychivist (see. P. 1.2.), Imperfect in some countries (see. P.2.4.) Does not allow you to defend the fundamental rights and freedoms. On the basis of the Universal Declaration of Human Rights established international courts, whose activities are subject to fruntuyetsya 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, m. 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); Africa - The African Court on Human and Peoples' Rights (1998, base paper - African Charter on Human and Peoples 1981), and European countries that have ratified the fundamental document - European Court of Human Rights, the basis of which is 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 of the practice of the European Court is that its decisions the Court makes an understanding of the fundamental standards of human rights. In Ukraine, it appears under its Law of 23. 02. 2006 "On the implementation of decisions and application of the European Court of Human Rights". This practice is recognized as a source of law.

The jurisdiction of the European Court shall extend to all questions of interpretation and application of the Convention and its protocols. In the exercise of the courts of justice, approaches to the interpretation of the Convention shall be applied flush with the provisions of the Constitution, since the rules of the Convention is directly applicable as the provisions of the Constitution. Head of the European Court of J.-P. Costa sees 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.

The 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 annual reports Ukrainian ombudsman from speeches local officials, judges of the European Court.

Thus, the Verkhovna Rada of Ukraine VM Litvin notes that for the entire period - from their 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 deemed unacceptable and removed them from the list. Head of the European Court of J.-P. Costa notes that the majority of the Court is now considering applications regard to the new Member States (55% of the cases in question come from 5 countries that joined the system in the past 15 years); with more than 8% of applications relating to Ukraine. Judge Basel (Switzerland), the Court of Appeal S. Gass states that in 2009 the Court came in 1400 against Ukraine.

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

1. In 2010 with 109 cases considered by the European Court statements citizens of Ukraine, only one violation was found.
2. In their view standards of new laws associated with information not fix presumed to limit be necessary in a democratic society. Reason for this is Article 17 of the Law of Ukraine "On Enforcement of Judgments and application of the European Court of Human Rights", according to which the European Court is a 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 para. 1.3., Para. 1.4.).

3. The Parliament of Ukraine on Human Rights considers that the reflection of the 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 readiness of national representatives of the judicial corps for the introduction of approaches and positions of the European Court in the Ukrainian legal space, lists the reasons for this: in many cases, courts exercise abstract link without guidance on the specific decision of the body; make reference to a specific solution without specifying its correlation with national law and the circumstances of the case.

Conducted a survey of 1283 judges of courts of general jurisdiction (see. Appendix E, p. 1.2.) Made it possible to determine 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 judges surveyed state 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 Bar hull of the European Court. In addition, 2% of respondents denied one party in consideration of the trial on the basis of the Convention

and the case law of the European Court. 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) courts of appeal (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 examines the practice of judicial protection of information rights and freedoms of other courts and over 90% of them supplement their own knowledge of the precedents of the European Court 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 of this category of cases. 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 protected by the Convention, implemented in the European Court precedents. Thus, it is proved that statement (at least in the area of information) S. 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 legal matter as a constitutional and at the Convention 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 considered Strasbourg and presented in p. 1.3., Pointed out that the fundamental rights of affected relative rights, information rights are.

The Convention, which lies at the heart of the European Court are too concise law, and without knowledge of case law of the Court mostly "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 develops in specific cases over time (evolving society).

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 a "living tool" that develops in the development of society and "should be interpreted in light of the present". in other words, although the Convention does not change the interpretation of its articles is dynamic, evident in the examination of specific cases (see. p .1.3.). 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. It is the fundamental policies of the European Court on the principle of subsidiarity. The latter, according to the judges of the European Court of Al Kovler that the system of supranational control are additional (subsidiary) in relation to a 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. "The essence of this principle determines A. Kovler, that the major "severity" advocacy rests with sovereign states; on the state is "responsible for the outcome," and the choice of means to achieve the result Convention gives to the discretion of. We can add that discretion in achieving results is governed by the use of the Convention and case law of the Court.

According to that judge subsidiarity can be productive only if the relevant provisions of the Convention available to judges and used in domestic law. The above gives reason to believe that although the Constitution of Ukraine Convention as prescribed norm of direct action, so it is unwritten duty of ratification of the latter. Also, do not use the domestic courts of the Convention and the case law of the Court to protect the rights and freedoms is not nothing but a disregard for the principle of subsidiarity: the problem of

security and guarantees of the Convention rights and freedoms primarily serve the state, not the European Court.

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

Features functioning of the European Court are as follows.

The Court is unable to assess the correctness of the decision of national authorities, but reserves the right to verify doskonalnist of the decision making process. The role of procedural aspect stands restrictive component 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" [Dubetskiy against Ukraine (Dubetska and Others v. Ukraine), № 30499/03, 2011].

1. The court shall consider only the compliance of legal measures with the Convention.
2. 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. In this case ... the serious allegations made by the applicant in violation of his rights and freedoms, the more thoroughly should be the actual base "[Pedersen of Denmark and Badshard against (Pedersen and Baadsgaard v. Denmark), 2004, p.].
3. "The competence of the Court to assess compliance with domestic law is limited.

First it was the national authorities should interpret and apply the law" [Chapel v United Kingdom (Chappel v. The UK), 1989, p.].

4. The Court does not interpret the provisions of national law: "The Court's role is limited to checking whether an interpretation is compatible with the Convention" [Lisitsa against Croatia (Lisica v. Croatia), 2010, p.].
5. The court hears cases only if the conditions of admissibility: the exhaustion of domestic remedies.
6. "The Court reiterates that, in principle, its task is not to determine what measures deficiencies would be appropriate for performance by the respondent State of its obligations under Art. 46 of the Convention ..." [Skotstsari and Dzhyunta against Italy (Scozzari & Giunta v. Italy), №№ 39221/98 and 41963/98, p.249, ECHR 2000 - UIII].

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 of 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.].

Each individual State Party concerned may apply to the court for the protection of the rights and freedoms osnovolozhnyh. 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; 3) used all national remedies to address information violated rights and freedoms; 4) the term breach of information rights and freedoms shall not exceed 6 months from the date of the decision the subject of powers of the state.

Explanatory note for applicants and application form is available at the European Court, it can directly take the Secretariat of the Court, or get mail, after referring to the Court of appeal setting out the nature of the violated fundamental rights and freedoms.

The cases before the Court is a public and adversarial. Exceptions may be when the Chamber or the Grand Chamber will decide differently. Obligatory element of the proceedings is the existence of legal representation (applicants who do not have sufficient funds CE provides legal assistance). Individual applications falls for consideration of a Section of the Court, whose head is appointed Judge-Rapporteur. The latter determines how the matter will be considered: three (Committee) or seven (Chamber) judges.

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