



REALIZATION OF THE RIGHT TO LIFE ON THE MATERIALS OF THE PRACTICE OF THE EUROPEAN COURT OF HUMAN RIGHTS

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ABSTRACT

The article considers realization issues of the right to life based on the European Court of Human Rights case-law. As a result of the study was shown that the right to life is a personal inalienable natural right to life, which can be protected in the European Court of Human Rights under Article 2 of the Convention for the Protection of Human Rights and Fundamental Freedoms. The purpose of the article is a comprehensive analysis of the possibility to exercise the right to life based on the European Court of Human Rights case-law. The study concluded that when making decisions courts of the European Union and other states aimed at ensuring fundamental freedoms in accordance with the Convention should apply ECHR case-law. The article examines the issues of gaps in the law of Ukraine and some countries of the world, related to euthanasia, the legal status of the embryo and some others. Emphasis is placed on the need for States Parties to pay special attention to the

realization of the right to life of refugees as a particularly vulnerable category of the population.

Key words: right to life, human rights, judicial practice, ECHR, European Court of Human Rights, Convention for the Protection of Human Rights and Fundamental Freedoms

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1. INTRODUCTION

The main of the inalienable human rights is the right to life. The right to life is a personal inalienable natural right of every person to life, which arises at birth and is a part of a multifaceted human rights system, it is a universal, natural and inalienable human right, which is realized with equal force everywhere (Miroshnichenko O. A., 2005). The human right to life is quite relevant, as it is enshrined in the norms of many international legal instruments, as well is the efforts object of many international intergovernmental and non-governmental organizations. Such considerable attention is due to the fact that a large number of states recognize the human right to life as an indisputable achievement of the world. Ukraine joined the circle of such countries in 1999, when by the Constitutional Court of Ukraine judgment (1999) the deprivation of life as a result of the death penalty as a punishment was abolished. One of the important international institutions designed to protect the right to life is the European Court of Human Rights (hereinafter - the ECHR), which monitors the states compliance with Art.2 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter - the Convention).

2. MATERIAL AND METHODS

When writing the article, the authors used the practice of the ECHR as an empirical basis of the study. The legal framework for this study was formed by international conventions and Ukrainian legislation. The theoretical basis of the article is the scientific works of Ukrainian and foreign scientists. The methodological support of this study was carried out using general scientific and special methods of cognition, selected taking into account the purpose of the work. Thus, the epistemological method was used to study the general prerequisites, means and patterns of development of mechanisms for protecting the human right to life, including in the ECHR. The dialectical method - when searching for the right approaches to solving theoretical and legal problems arising in the legal regulation of the human right to life. Using the method of legal analysis, the scope of human rights to life has been determined. The statistical method was used to study the dynamics in the processes related to the human right to life realization in the ECHR. The comparative legal method made it possible to compare the norms of the national legislation of Ukraine and other countries with the practice of the ECHR in the field of ensuring the human right to life. The structural method is used to study the types of human right to life that are protected in the ECHR.

3. REVIEW AND DISCUSSION

A great number of states have ratified the Convention for the Protection of Human Rights and Fundamental Freedoms, including Ukraine. The Ukrainian national legal system bases itself on the Constitution of Ukraine, which states that “Every person has the inalienable right to

life. No one shall be arbitrarily deprived of life. The duty of the State is to protect human life. Everyone has the right to protect his life and health, the lives and health of other persons from unlawful encroachment.” (Constitution of Ukraine, 1996). Both Article 2 of the Convention and the Constitution of Ukraine emphasize that everyone's right to life is not only declared, but also protected by law (Convention for the Protection of Human Rights and Fundamental Freedoms, 1950). These provisions are completely transferred to parts 1, 2 of Art.281 of the Civil Code of Ukraine, which recognizes the inalienable nature of law, and Art. 270 of this Code specifies that every individual has this natural right (Civil Code of Ukraine, 2003).

As Ukraine is a member state of the Convention, its national courts must apply the case-law established by the ECHR (Convention for the Protection of Human Rights and Fundamental Freedoms, 1950, Law of Ukraine "On International Treaties and Agreements", 2004). Another basis for direct implementation of ECHR judgments in Ukraine is the Law of Ukraine “On Enforcement of Judgments and Application of the Case Law of the European Court of Human Rights” of February 23, 2006.

ECHR decisions are primarily based on the Convention. Thus, the decision of *Andranikou and Konstantinou v. Cyprus* states that the right to life "is one of the most fundamental provisions of the Convention and protects one of the fundamental values of a democratic society". This is confirmed by the decision of the European Court of Human Rights in the cases "*Gongadze v. Ukraine*", "*Serhiy Shevchenko v. Ukraine*", "*Ogur v. Turkey*", "*Kaya v. Turkey*", "*Ilkhan v. Turkey*", "*McCarr v. The United Kingdom*".

The next requirement for a fair trial is independence in all its manifestations. Without this condition, an honest judicial investigation cannot be conducted, which is one of the grounds for filing complaints with the ECHR. An example of such a violation in relation to Art. 2 of the Convention there are decisions in the cases "*Paul and Audrey Edwards v. The United Kingdom*", "*Mastromatteo v. Italy*", "*Mosendz v. Ukraine*".

For the first time, the ECHR has initiated a trial concerning a violation of Art. 2 of the Convention only in 1995: "*McCann and Others v. The United Kingdom*". This case gained resonance under the name "Gibraltar case". The applicant lodged a complaint with the court concerning the incident of 28 April 1993, when three people, been considered terrorists by mistake, were killed, but they had no weapons, no detonator control mechanisms, no explosive devices. The court, given that the United Kingdom authorities had failed to take into account the erroneousness of their intelligence operation assessments, ruled that the death of three alleged terrorists was not a prerequisite for protecting others from unlawful violence, and the respondent State was held liable for violating that article.

As a result of such an impartial hearing, the ECHR began to receive many cases, in particular against Turkey: the case of *Akdivar v. Turkey* of 16 September 1996, the case of *Guleg v. Turkey* of 27 July 1998, and the case of *Kurt v. Turkey* of May 25, 1998.

Regarding Ukraine: as of 2019, Ukraine is the leader in the number of cases in the ECHR, along with such countries as Turkey, Russia and Romania. On the positive side, the Ministry of Justice of Ukraine in 2018 noted that Ukraine has left the list of countries that have debts under ECHR decisions.

The ECHR noted: "the first sentence of Art. 2 of the Convention obliges the state not only to refrain from intentional or unlawful deprivation of life, but also to take appropriate measures to protect the lives of those under its jurisdiction".

With regard to the case of *Muravska v. Ukraine*, where the ECHR, having assessed the aspects of the case, reiterated that the obligation to protect the right to life under Art.2 of the Convention together with the general obligation of the state under Art. 1 of the Convention to guarantee to everyone under the jurisdiction of a State the rights and freedoms set out in the

Convention, indirectly require some form of effective formal investigation, when a person is killed as a result of the use of force, public authorities had to take all measures to obtain evidence concerning affairs. The ECHR declared a complaint under Art. 2 of the Convention satisfied and ruled a violation of this article in procedural aspect.

With regard to *Katz and Others v. Ukraine*, the applicants complained of inadequate medical treatment by the authorities during their detention, which resulted in the death of the person. However, the Government argued that O. Bilyak had died not as a result of inadequate conditions of detention, but as a result of an illness which she had been diagnosed with before her detention and which she had not reported to the administration of the Pre-trial detention center.

The case of *Lyubov Yefimenko v. Ukraine* concerns the events of 1993, also the Government argued that the jurisdiction of the ECHR was limited to 1997 (the date of entry into force of the Convention in Ukraine), but the Court noted that its jurisdiction, nonetheless, extended to this legal fact only in proceedings aspects; noted that the promptness and adequacy of the ongoing investigation had been questioned from the outset, and also, taking into account other aspects of the case, ruled that Article 2 § 1 of the Convention had been violated.

With regard to the cases of *Mashchenko v. Ukraine*, *Hailo v. Ukraine*, and *Shevchenko v. Ukraine*, the ECHR unanimously ruled in violation of Art. 2 of the Convention, in these listed cases the applicants point to an inefficient, lengthy and inadequate investigation into the circumstances of the death of citizens.

In 2019 under Art. 2 of the Convention ECHR found a violation of the procedural aspect of the right to life as a result of an ineffective investigation into the deaths of the plaintiffs' relatives in *Zorina and Others v. Ukraine*, where the effectiveness was that the investigating authorities had to collect and investigate evidence carefully, but, the main aspect was that they failed to carry out investigative actions in a timely manner, which made it impossible further to establish the circumstances of the death of the applicants' relatives.

The cases of *Andreev v. Ukraine* of 29 January 2019, *Burgas v. Ukraine* of 18 December 2018, *Zubkova v. Ukraine* of 17 October 2013 were heard by the ECHR, as a result of which the ECHR found a violation of the procedural aspect of Art. 2 of the Convention, which is related to the ineffective and lengthy investigation into the circumstances of the applicants' relatives deaths. The essence of the case was that the investigating authorities had been investigating the criminal case for many years, but failed to investigate properly the circumstances of the person's death, which became one of the reasons for the ECHR's conclusion, which emphasized shortcomings in the criminal process of Ukraine. Violation of the procedural aspect of Art. 2 of the Convention is established in connection with non-compliance with such principles as adequacy, reasonable time, reasonableness of investigative actions (investigations, unjustified delays in proceedings, return of the case for additional investigation, unreasonable number of examinations, etc.).

In parallel with the proper protection of the human right to life, there are issues of the XXI century: the problem of recognizing the right of women to abortion, euthanasia, etc.

The problem of abortion is ambiguous, because some scientists argue that the unborn child cannot be a holder of subjective rights, other researchers and religious followers emphasize that the embryo from the moment of conception has the right to life (Drishlyuk, 2014).

At this stage of the legislation of Ukraine, one of the most important is the question: "Where does the possibility of realization of a woman's reproductive right end and where does the right to life of an unborn child begin?". In some countries of the world, as well as in

Ukraine, the human fetus, regardless of the stage of development, does not have the right to life, which allows a woman to solve this situation, but only until 12 weeks of pregnancy, because further implementation of this procedure is limited in Ukraine.

In the legislation of Ukraine, the issues of reproductive human rights are considered in the Civil Code of Ukraine, the Family Code of Ukraine and the Fundamentals of the legislation on health care. However, the above regulations do not address all reproductive rights issues. For example, in the Civil Code of Ukraine, only one article 281 is devoted to these rights, which states that abortion, if it does not exceed twelve weeks, can be carried out at the request of the woman. In cases established by law abortion may be performed during pregnancy from twelve to twenty-two weeks. The list of circumstances that allow abortion after twelve weeks of pregnancy is established by law.

The important issue of the beginning of human life, the conflict in determining the moment of the beginning of legal protection of life and the legality of abortion are also touched upon in the practice of the ECHR. First of all, the European Commission and the Court are faced with the question of whether Art. 2 of the Convention protect the life of the unborn child, because the Convention does not regulate the issue of emergence of the right to life, as well as the moment of the beginning of legal protection of life.

As for the status of the human embryo, nowadays the rules on the right to life, as applied by international and national human rights bodies, do not protect the human embryo. At the same time, some states and international law have introduced bans, in particular, on the reproduction of embryos for commercial purposes, on the preservation of embryos in vitro for more than a certain period, and others.

With regard to cloning, the approach proposed by the experts of the Commission on Human Rights is the most correct, as they concluded that many of the problems associated with the legal prohibition of cloning could have been avoided if the namely intention to copy genetically another person was prohibited than the cloning technology itself. Thus, the object of the ban would be actions taken to clone the embryo, i.e. to create a copy of another person.

As to the case-law of the ECHR on this range of issues, the Court does not recognize abortion and euthanasia as violations of Art.2 of the Convention. Although the legal status of an embryo is not yet defined in the Convention, the Court considers the moment of a person's birth as the beginning of life but not a particular stage of fetal development.

There is no special law on euthanasia in the national legislation of Ukraine and the term itself is not used at all. It is noted only that it is prohibited to satisfy a request of an individual to terminate his life (*Prava i svobody liudyny i hromadianyna v Ukraini (doktryna Yevropeiskoho sudu z prav liudyny i Konstytutsiinoho Sudu Ukrainy)*, 2013).

Legislative enshrinement of the right to die could be an internal contradiction for the legislator, whose basic principle is the protection of life. The emphasis is still on life: the life must be protected, not death. However, if it is a question of respect for human dignity, then it is logically to introduce the right to die with dignity, in a human way, without unnecessary suffering (then this right does not deny the right to life). The right to a dignified death also includes the right to treatment by humane methods: they must be aimed at alleviating suffering and sorrow, helping to die peacefully, without unnecessary and endless struggle. Such humane treatment always ends only in natural death, without its artificial provocation. It means that the resort to artificial methods, which only slow down the process of dying, has to be thought out and in accordance with their expediency. Everything should be decided taking into account, first of all, the interests of the patient (*Pravo na zhyttia: yevropeiski standarty ta ukrainski realii*, 2007).

The problem of exercising the right to life of such a vulnerable category of the population as refugees seems to be especially difficult. Modernity demonstrates various deaths among refugees. These include deaths from starvation, deaths from bombings and shelling, international conflicts, killings in refugee camps, at home, by the authorities, by terrorist organizations and other.

4. CONCLUSIONS

Summing up, it should be noted that the right to life ensures the natural existence of an individual, is of great importance in the system of rights and is an integral, natural achievement of mankind, which was first enshrined at the international level in the Universal Declaration of Human Rights in 1948, after the end of World War II. The countries of the world have detailed the right to life in their domestic legislation, which contributed to the creation of mechanisms for the protection and restoration of such violated, contested and unrecognized human rights, including in the ECHR.

When making decisions, the courts of the European Union countries and other states aimed at ensuring human rights and fundamental freedoms under the Convention should apply ECHR case-law. After all, any person, who believes that the state authorities of a certain country have violated enshrined in the Convention his right to life or the right to life of his relatives, is endowed with the right to apply directly for the protection of this right to the ECHR, provided that this person could not protect his right by all national legislation means.

The international practice of protecting the human right to life is very diverse. However, the main task of the ECHR and international organizations in addressing issues related to the protection of the human right to life is the observance of the Convention by the States Parties in this area.

As we can see, the right to life is an inalienable right guaranteed by the world community, but even in European law there are gaps in both euthanasia and the unresolved legal status of the embryo, as well as other issues. The ECHR case-law has in fact recognized the human right to passive euthanasia.

However, given the above information, it can be concluded that the decisions of the ECHR, despite the differences of modern views on various aspects of the human right to life, are always based on the provisions of the Convention.

The Convention States Parties should pay special attention to the realization of the right to life of refugees as a particularly vulnerable category of the world.

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