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THE RIGHT TO A FAIR TRIAL AS A EUROPEAN STANDARD OF HUMAN RIGHTS IN CRIMINAL PROCEEDINGS

Abstract

This article examines the right to a fair trial as a European standard of human rights in criminal proceedings. The essence of fairness criterion that applies in relation to the properties of the verdict, which is predominantly evaluative, subjective.

Keywords

litigation, human rights, criminal procedure, the European standard, Justice of Ukraine, legal proceedings, the verdict of the court.

Statement of the problem

The right to a fair trial is one of the essential building mechanism of criminal justice system that would embody all the nuances of European standards to reform the criminal justice in Ukraine.

The analysis of recent research and publications

D. Enikyeyev argues that the right to a fair trial is of fundamental importance and provides the basis for the principle spravedlyvosti1.

In this regard, LM Ashirov offers distributed implementation of the provisions on the validity of all proceedings and decisions of the criminal protsesu1 subjects.

And despite of the feasibility and reasonableness of this approach, the possibility of specified provisions related to overcoming difficulties both theoretical and practical. First, the

right to a fair trial – is primarily a general principle of legal procedure that is closely intertwined with the concept of the principle of legality. Secondly, the use of the term "justice" traditionally associated only with a court where it appears one of its main properties. A.M. Baranov, for example, generally denies the possibility of application criterion of justice to procedural decisions that are intermediate in nature. One explanation for the above points of view, can be considered the essence of fairness criterion that applies in relation to the properties of the verdict, which is predominantly evaluative, subjective.

The main material of the study

In this regard, we consider it necessary to draw attention to the fact that the interpretation of justice, in the context of European standards, based primarily on the nature of the compliance protsesualnyh rights of criminal proceedings, based on the provisions of the ECHR and the ECtHR interpretation of the existing system, and therefore has objective. From this we can conclude that the nature of the procedural decisions at any stage of the criminal justice system depends on the validity of the whole movement of criminal proceedings in the criminal case, and that, above all, points to the impossibility of separating justice in its objective sense from a particular action.

In practice, the ECtHR made the principle that the provisions of justice apply not only at the trial stage, but the stage of pre-trial proceedings ("the demands of justice refers to the process in general and not limited to adversarial hearings" 3) as a violation of the rights of interested persons to this stage affects the possibility of further fair procedure. From the textual content of art. 6 of the ECHR, which is a set of separate powers of the subject, expressing some level of European standards in the face of the trial, the understanding of a fair trial must include the following provisions: the independence and impartiality of the court, the publicity of the proceedings, the proceedings in terms of reasonableness a case, equality of parties and

adversarial in criminal proceedings, the right to legal assistance. Guarantees the right to a fair trial can be differentiated on the fundamental (independence and impartiality of the court, the publicity of the case, the reasonableness of the terms con-tion of the case) and status (equality and adversarial procedure in criminal proceedings, the right to legal assistance). Fundamental safeguards aimed at creating a fair trial, warranty status - to ensure parity between the parties during the proceedings. Let us examine them in detail.

1. Independence and impartiality of the court. As required by § 1 of Art. 6 ECHR, the cases should be independent and unbiased (impartial) court. Since the provisions of said paragraph c. 6 may give the impression that the guarantees of a fair trial apply only to proceedings in court. But on this occasion the ECHR clearly established that ensure the right to a fair trial is impossible without security of access to the courts. Therefore, according O.A. Banchuk and P.O. Kuibida, the right to "access to justice" has become a complex category that is regarded as one of the preconditions for the existence of a fair trial. The basis of a fair trial, access to the procedure is a fair trial, justice which must be real, not formal.

The right of access to a court - a person able to submit the case to trial, and the court should consider it without unnecessary and undue legal or practical obstacles. This right, according to S. Shevchuk entrusted to the State as a negative obligation to refrain from creating undue procedural barriers to access to justice and positive - to provide practical and effective access to justice.

Independence, impartiality and legitimacy - the three are closely intertwined, organic guarantees of a fair trial. ECHR judgment determines the body, performing judicial functions must meet several requirements: independence against the executive branch as a party in the case, the terms of office of its members, the guarantees provided by the procedure which it operates.

When it comes to the independence of judges, mostly meant their independence from other state agencies and officials. Is no

exception and independence of the legislature (parliament) of the country, which can be designed to influence the courts. To determine the level of independence of a tribunal in the case ECHR is guided by several criteria:

- The procedure of appointment of judges;
- The duration of the judges;
- Availability of external signs of independence;
- The guarantee of judicial activity, hindering influence them in the exercise of justice,

Important in the process of appointment of a person as a judge of the Court is the claim that the fact that the appointment of a member of the judiciary by the executive itself is not a violation of the Convention. Also, when considering specific cases the European Court concluded that, for example, 6-year and 3-year term of office of judges sufficient to guarantee its independence.

The principles derived from EU practice were made in relation to criminal proceedings, particularly with regard to the issue of impartiality of the court. This is a concept that has become the practice courts value obtained for the narrow sense, which usually it is embedded. This is because the practice of the ECHR under Art. 6 has undergone significant evolution observed COP ¬ particular, increased attention to external attributes of impartiality, as well as increased public interest to guarantee fair ¬ opportunities justice. According to the ECtHR case law, impartiality ¬ ness can be assessed in different ways. There is a distinction between subjective approach, trying to figure out what the judge thought deep down in similar circumstances, and objective approach, ¬ kanym called to show that the behavior of the judge excludes all sorts of doubts about his impartiality.

Impartiality as requiring the court indicates that the court hearing the case must be subjectively impartial, that none of its members should not have any personal interest and bias. Judges should be free of personal feelings, tastes, preferences. It is believed that the judge is impartial if there is no evidence that

would indicate otherwise. That is, in the case there is a presumption of impartiality of judges. European Court of Justice, for example, questioned the impartiality of the court, a judge or jury clearly expressed their racist attitudes on defendants in criminal cases. Also uperedzhenym Court recognized that under preliminary investigation applied to the defendant's precautions and then heard the case on the merits.

It also has to be objectively impartial, that should be enough safeguards to exclude any legitimate doubt in this regard. This aspect imposes additional requirements for judges to participate in the political life of the state and any other activity, as this may cause suspicion in the personal interest of the judge when deciding the case. The judge will not be impartial and objective in the case of addiction. Dependence of judges to be stored until it is established mechanisms that eliminated the possibility of influence of illegal persons who have some leverage and can use them for profitable results resolve the case out of the administration of justice procedures.

European Court noted that the requirement of impartiality is not just the judges conducting proceedings in courts of first instance, but also has provided appellate and cassation courts in the event of the establishment and functioning of the state.

From the standpoint of the impartiality of judges may be questions of "active" or "passive" role of the courts in deciding cases. The above question in Ukrainian legal science, as opposed to the practice of the ECHR, and is regarded as part of the principle of adversarial proceedings.

Yes. courts of criminal jurisdiction in Ukraine granted considerable powers, indicating a bias conviction in criminal court cases. They are empowered to delegate operational and investigative authorities take appropriate measures to search for evidence in the case (including with Art. 66th CPC of Ukraine), and send the case back for further investigation for reasons of incompleteness or incorrectness of preliminary investigation (Article 281 of the CPC of Ukraine), delegate authority, who conducted the investigation, do some investigation (Article 315-1 Code of Ukraine).

If such powers of the court are not considered by the European Court as a violation of the adversarial trial, they can serve as a basis for any doubt in the impartiality of the court. Since vytrebovuyuchy own evidence and making decisions, going beyond the requirements of the parties in the case, making their own order and remit the case for further investigation, the court both on the side of one of the parties to the case.

Speakers called CE authority to use the courts send criminal cases for further or new investigation "archaic practice" and urged Ukrainian authorities to review the relevant provisions of the Criminal Procedure Code.

2. Publicity of the case. Publicity of the trial is one of the essential guarantees of fair process. Paragraph 1 of Art. 6 ECHR obliges judges to ensure publicity of criminal proceedings. Publicity protects actors from justice in secrecy, outside the control of the public. Publicity is a means of maintaining confidence in the courts and in furtherance of the purpose of Art. 6 ECHR: ensure fairness to all participants of the trial process.

In the publicity of proceedings means at least two aspects:

1) public hearing if any person, including the parties and counsel may be present during the proceedings;
2) open ad a judgment upon consideration of the case.

"The public nature of the proceedings referred to in paragraph 1 of Article 6 (ECHR - clarification of the author.] Protects the sides of the secret administration of justice beyond the control of the public, it is one way of ensuring confidence in the courts. Ensuring transparency of justice, it contributes to purposes of Article 6 § 1 (ECHR - clarification auth.) - namely, the fairness of the trial, the guarantee of which is one of the fundamental principles of every democratic society within the meaning of the Convention ", - stated the European Court in the case" Pretto and Others v. Italy ".

Publicity (openness) trial may be limited in cases proceeding closed hearings. These meetings, according to the ECHR can be carried out for:

- Protection of morals, public order or national security;

- Interests of minors;
- The protection of the private life of the parties;
- Interests of justice.

Another case allowable limit open court hearing, when it can be treated without the parties and other interested persons was put directly ECHR. According to his practice in appellate litigation and cassation where doslidzhuvatymutsya factual circumstances, but only verified application of the law, can occur without participation of the parties and it is not to violate the principle of openness, justice, "the Court has repeatedly stated that if the proceedings in the Court first instance was public, the lack of "openness" in the proceedings in the courts of the second or third instance may be warranted characteristics of the procedure in the case. If the appeal concerns only questions of law, leaving aside the factual circumstances of the case, the requirements of Article 6 (ECHR - clarification of the author.) Can be observed even when the applicant was not given an opportunity to be heard on appeal or cassation court in person. In the latter case it is of such authority before which the school is challenged ¬ lyuvaty established facts of the case, but the interpretation of the rights violated.

"On the principle of publicity of the trial drew attention to the Committee of Ministers of the Council of Europe as the need placing ¬ judicial rulings in electronic databases.

One of the purposes of the adoption of this document is directly reflected in the preamble and Guidelines provides that "full awareness of the practice of all courts is one of the main conditions of fair application of the law." This goal can serve as the selection of judicial decisions that are made in accordance with certain criteria. These criteria are:

- hierarchical selection, i.e. selection of rulings one or more instances depending on their hierarchical status in the legal system of a country;
- geographic selection, which is to select the judgments of the geographical location of the court;

- selection by fields of law, that the selection of judicial decisions in one or more fields of law such as criminal law, environmental law, procedural law, tax law, etc.;

Selection in fact, that the selection of judicial decisions depending on whether they are legal interest. "Legal interest" means that if the judgment creates a legal norm, for example, sets a legal precedent that reflects the procedural practice so that the decision is or may be important for proper and detailed information on the case law in this or that field of law.

Sampling should be carried out in such a way as to ensure objectivity and representativeness of the database. Conducted the selection of judicial decisions should provide a broad and all-surround access to information on court decisions and, on the other hand, preclude accumulation of useless information.

Important in the selection decisions are issues of confidentiality and protection of personal data. In accordance with the provisions of Recommendation, they must be regulated domestic law of the country in accordance with the principles of the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data. After selection decisions, they must be submitted and rozmishuvatysya, usually in the form of complete original texts in the automated search engine.

In Ukrainian procedural law principle of publicity of the trial with the principles of transparency and openness of the trial. Article 129 of the Constitution of Ukraine comes to publicity trial, Article 9 of the Law of Ukraine "On the Judicial System of Ukraine" - the transparency and openness of the trial proceedings, Article 20 Code of Ukraine - the publicity of the trial. Often the principles of transparency and openness are identified, but in the present law and doctrine they divorced.

Transparency requires the court to ensure that persons whose interest refers to the right, the right to know the date, time and place of hearing it, the right to be heard in court, and be aware of all decisions taken in the case.

Openness trial gives individuals who are not involved in the proceedings, the right to be present at the hearing. Procedure.

Limit this right only in the case of closed hearings in certain cases, by law you ¬.

Common reasons for holding closed hearings contained in Ukrainian criminal procedure law, the content in general coincide with the list contained in the Convention. In particular a closed hearing may be conducted with a view to ensuring secrecy in cases of crimes committed by persons under sixteen years of age, and cases of sexual crimes, prevention of disclosure of intimate aspects of people, the safety of persons taken under protection (Part 2 of Art . 20th CPC of Ukraine).

Terms of publicly ads judgments contained in paragraph four of article 20 of the Criminal Procedure Code, which stipulates that judgments of courts in all cases prog ¬ loshuyutsya publicly.

National procedural law does not provide features making judgments of the higher courts and these procedures are subject to the rules making judgments at first instance.

Important guarantee transparency of court operations and control it from the public and yuku is a publication of the texts of judgments. Unfortunately, in Ukraine court decisions are published informally and selectively, with the exception of decisions of the Constitutional Court of Ukraine. Therefore, due to the better implementation of the principle of publicity should, in our view, to introduce mandatory publication in all judicial decisions, such as the Internet.

In implementing the published texts of judgments should be clearly defined, or the decision to publish the full names of the actors, as is customary in the U.S., or encrypt personal information, as in many European countries.

Despite the fact that announced in open court judgment becomes public, search a database of judicial decisions should not be given the opportunity to use it to gather information about a particular person. Therefore, to prevent such occurrences in the texts of court decisions open to the public, it is advisable not to disclose information that make it possible to identify the person - in particular, the names and pri-withhigher, address of residence. It is thus ensured the right person for the privacy of the Law of Ukraine "On access to court decisions."

3. The reasonableness of the terms of the proceedings. Part 1 of Art. 6 ECHR enshrines the right of everyone to a fair and public hearing within a reasonable time by an independent and impartial tribunal, the question of the validity of any criminal prosecution.

SV Shevchuk, who has devoted much of his research to compliance with the ECHR Ukraine, says that compliance with the requirements for a reasonable period of lawsuits was not the biggest problem for the legal systems of most Council of Europe member states. Currently, there is no clear plan of action to overcome it neither national governments nor the ECHR. The largest number of cases against Ukraine in recent years with regard to violations of the national courts of the right to a fair trial within a reasonable time.

Introducing a reasonable time frame and focus of national mechanisms for the protection of the right to respect for their bodies of inquiry, investigation, prosecution and trial would: 1) bring Ukrainian legislation on criminal procedure in line with the ECHR and 2) improve the image of Ukraine in Europe;

Three) significantly reduce the state budget expenditures to persons whose rights violations to trial within a reasonable time recognizes the ECHR, and 4) a step towards the establishment in Ukraine of the rule of law, and 5) protect the interested participants in the criminal process, and officials who carried his from illogical legal liability for violating the terms of formal proceedings in criminal cases.

4. Equality of arms and zmahalnistu trial. The principles of equality of arms and adversarial litigation in ECHR derived from the principle of the rule of law, which in particular finds its expression in the provisions of Article 6 of the ECHR on fair trial.

As for the principle of equality of arms ECtHR noted that this principle extends to cases of civil rights and obligations, and in criminal cases [168] and requires that each party was given reasonable opportunity to present his case in a way that does not puts it in a much less favorable position compared with an opponent.

Requirement of adversarial litigation in particular the ECHR is formulated as follows: "The principle of competition means that the parties in criminal proceedings have the right to examine all evidence or observations involved in the case to comment."

The principles of equality and competitiveness as elements of a broader notion of a fair trial, referred to in paragraph 1 of Article 6 of the ECHR, partially embodied in the ECHR and in paragraph "c" of paragraph 3 of Article 6, which guarantees to persons charged with a criminal offense such competitive rights as the right to question witnesses against him or have them examined, and requiring attendance and examination of defense witnesses under the same conditions as witnesses against him. These capabilities persons accused of committing criminal offenses guaranteed not only in litigation, but also on pre-trial investigation, as Article 6 of the ECHR also apply to pre-trial stage of litigation.

In Ukraine the principles of equality and adversarial trial enshrined in Article 129 of the Constitution of Ukraine, and in particular Article 16,16-1 PDA Ukraine.

Equality of parties to the case means giving them equal rights and equal responsibilities to participate in the process and defending their position. Equal rights (obligations) does not necessarily mean that they must be the same, it is that each of the parties have rights and have responsibilities, adequate rights and obligations of the other party.

One way to better implement equality and competitiveness in the pre-trial investigation may staty'pokladennya authority to address above procedural issues (involving a lawyer, translator, collection of evidence, examination, etc.) with the prosecution of judges.

The Convention on the participation of the defendant in court hearings meet the provisions of Article 262 Code of Ukraine, which provides for mandatory participation of the defendant in meeting trial court in criminal proceedings. Found only two cases in which the hearing is possible in the absence of the defendant;

- if the defendant is outside Ukraine and avoids coming to court;

- if the defendant asks to consider the case without a crime for which there can be sentenced to imprisonment.

A violation of the requirements of the mandatory participation of the accused in the court considered grounds for nullity on appeal (Section 6 of Part 2 of Art. 370 of the CPC of Ukraine).

Also considered mandatory call to the Court of Appeal convicted who sent the request to participate in the hearing, and if the appeal raises the question of the deterioration of its situation (Part 2 of Art. 358 CPC of Ukraine).

5. The right to legal assistance. ECHR considers the right to legal assistance component of broader in scope and importance of the right to Sulu as guaranteed by Article 6 of the ECHR. For cases of criminal prosecution ECHR emphasized precedence to ensure proper protection of the accused. The right of every person accused of a criminal offense, an effective defense lawyer is one of the attributes of a fair trial.

Subparagraph "c" of paragraph 3 of Article 6 of the ECHR guarantees a person accused of a criminal offense, the following rights:

1) to defend himself in person;
2) through legal assistance of his own choosing;
3) use free legal assistance if the person does not have sufficient means to pay for legal assistance, and if the interests of justice.

Many ECHR judgments concerning the question of legal aid. ECHR did not make the interpretation of the term "free" is used in paragraph 3 (c) of Article 6 ECHR.

In the context of criminal justice protection plays a very important role. Subsection "c" claim to Art. 6 ECHR provides kinds of rights to protect the accused: first case of its right to defend himself in person, then as an alternative it is entitled to provide his defense through an attorney, and finally, in some cases it may be given free legal aid at state expense.

Recognizing the right of every accused to defend himself personally or to use the assistance of a lawyer, the Convention does not specify the conditions under which these rights.

ECHR provides that legal aid person may rely only on the mandatory presence of two bases at once:

1) lack of funds in person;
2) the interests of justice require such assistance.

To determine the fact of lack of funds in the ECHR person recommends national authorities to investigate the application entity of its property, help the competent authorities, the declaration of income and property osoby12.

In addition to poverty as a criterion for legal aid people in ECHR states that legal aid is required interests of justice. In cases of criminal prosecution for providing free legal aid to the poor are always the interests of justice due to the existence of a threat of imprisonment and the severity of other pokarannya1.

The system of legal aid in Ukraine cannot be considered adequate and complete with regard to legislation and its practical implementation – stated in the report of the Parliamentary Assembly RYE3. In Ukraine the right people at the proto-language support, including on legal aid, guaranteed by Article 59 of the Constitution of Ukraine, Article 8 of the Law of Ukraine "On the Judicial System of Ukraine" 4 and PDAs Ukraine.

Advocates appointed in criminal cases tend to become less experienced attorneys who can use it to do to improve their skills. Therefore, to assure the quality and effectiveness of such legal aid is difficult to speak.

Questionable in view of the requirements of the ECHR and the ECtHR understanding of the concept of "chargeless" looks provisions of Part 6. 93 Code of Ukraine, according to which the convicted person who provided free legal assistance, or those who have a financial responsibility for the actions of the convicted person may be obliged to reimburse state funds spent on legal aid. In order to prevent violations of the ECHR appears that judges should refrain from imposing on convict duty to reimburse state

costs of legal assistance even in the case of a person consent to such compensation.

Legal assistance in criminal matters will not have enough efficiency to as long as prosecutors are authorized to remove from the protection of attorneys against whom criminal proceedings (paragraph 4 of Part 1 of Art. Ukraine 61 CCP). Speakers CoE recommended repeal these provisions because they "provide an opportunity for abuse by nominating fabricated charges against an attorney" 2.

The above analysis confirms the relevance for Ukraine ECHR concluded that the state is not enough to fix in the law davtsi "theoretical and illusory rights" and to take measures to their "practical and effective implementation."

Therefore, to ensure the right to legal assistance, including legal aid, can facilitate the adoption of the law on legal aid and the development of appropriate infrastructure. It should provide an annual budget funding of these costs.

The prospects for further research in the chosen direction

As a result of the presentation should be noted that the right to a fair trial as a European standard of human rights in the criminal process – is defined in Article 6 of the Convention provisions guaranteeing a fair trial, and approved on the basis of Article 6 of the ECHR, which affect enforcement of the national criminal justice system and are binding on the latter.

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