наказание являлось не только карой, но и предупреждением о недопустимости нарушения обычаев Войска Запорожского.

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PROTECTION OF THE RIGHT TO A FAIR TRIAL AT THE EUROPEAN COURT OF HUMAN RIGHTS

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SUMMARY

The article deals with the issue of protecting the right to a fair trial by the example of the European Court of Human Rights. The article contains the conclusions about a two-level nature of this right whose minimal content is given in article 6 of the European Convention on Human Rights. The right to a fair trial has an expanded content due to the practical activity of the European Court of Human Rights.

Key words: a fair trial, rights of man and the citizen, Conventions for the Protection of Human Rights and Fundamental Freedom.

* * *

В научной статье рассматривается вопрос защиты права на справедливое судебное разбирательство на примере Европейского суда по правам человека. Автором делается вывод о двухуровневом характере этого права, минимальное содержание которого приводится в статье 6 Европейской конвенции по правам человека, а расширение содержания права на справедливое судебное разбирательство происходит благодаря практической деятельности Европейского суда по правам человека.

Ключевые слова: справедливое судебное разбирательство, права человека и гражданина, Конвенции о защите прав человека и основных свобод.

The problem statement in general terms and its connection with important scientific and practical tasks. One of the tendencies of the Ukrainian society development is the decrease of the level of trust in judicial authority. According to the opinion poll data that was conducted with the participation of Razumkov Centre sociological service, nowadays 44.9 % Ukrainians do not trust in judicial authority. Moreover, 31.5 % respondents gave a negative answer to the question «Were the court trials you were involved in legal and fair?» As of March, 59.8 % respondents do not support the judicial activity in Ukraine (for comparison, in February of 2005, at the beginning of the research, 29.3 % respondents did not support the judicial activity) [1].

The right to a fair trial (the right to a fair court) belongs to so-called first-generation rights of man and the citizen and is provided by fundamental international agreements. As it was truly stated by E. L. Trehubov, 'the creation of main mechanisms of the guarantees of basic human rights and freedoms is one of the greatest achievements of the international cooperation in XX century' [2, p. 358].

Thus, at the level of the United Nations (UN), the right to a fair trial shall be established by the Universal Declaration of Human Rights of 1948, whose article 10 states the following, 'Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him' [3], and the International Covenant on Civil and Political Rights of 16 December 1966, whose article 14 contains the following statement, 'All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law' [4].

Speaking about the regional level, we should mention the Convention of the Commonwealth of Independent Nations on Human Rights and Fundamental Freedoms, whose article 6 states that 'All persons shall be equal before the judicial system. In the determination of any charge against him, everyone shall be entitled to a fair and public hearing within a reasonable time by an independent and impartial court' [5]. Finally, the right to a fair trial is mentioned in article 47 of the Charter

of Fundamental Rights of the European Union, 'Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law' [6].

Today, the allocation of this right in article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 (hereafter – Convention on Human Rights) has 'the biggest practical importance for the citizens of Ukraine. It is as following 'In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law [7].

On 9 November 1995 Ukraine joined the Council of Europe and it opened the Ukrainian citizens the opportunity to address the European Court of Human Rights, that is a supranational court jurisdiction with the right to adopt mandatory decision, with the purpose of their right protection, including the right to a fair trial. Meanwhile, there occur many problematic issues when this right is being realized in practice. This is related, among others, to the complicated structure of this right and the constant extension of its content due to the decisions of the European Court of Human Rights (further – Court of Human Rights).

The analysis of the latest research and publications which start the solution of this problem and which the author uses, emphasis on those parts of the general problem that are still unsolved and which this article is devoted to. Different theoretical and practical aspects of the right to a fair trial were studied by both foreign and native sciences. Namely, this issue was addressed in the works of E. S. Alisiievych, S. F. Afanasieva, Zh.-L. Berzhel, V. F. Boiko, M. V. Buromenskyi, V. H. Butkevych, I. S. Hrytsenko, Yu. M. Hrytsenko, Yu. M. Hroshevyi, K. V. Husarov, V. N. Denysov, M. L. Entin, , V. I. Yevintov, V. V. Komarov, O. V. Kaplina, S. V. Kivalov, M. I. Koziubra, M. O. Kolokolov, R. O. Kuibida,V. T. Maliarenko, V. Ye. Marmazov, I. Ye. Marochkin, A. S. Matsko, V. T. Nor, J. Oberto, I. S. Piliaiev, M. A. Pohoretskyi, D. M. Prytyka, P. M. Rabynovych, O. I. Rabtsevych, O. M. Tolochko, Ye. L. Trehubov, K. Kharbi, L. Heide, and others.

At the same time, modern scientific works concentrate more on separate structural elements of the right to a fair trial.

The objectives of the article (setting the tasks). The objective of this article is to study the peculiarities of the protection of the right to a fair trial at the European Court of Human Rights.

Main material of the research with the complete grounding of the scientific result received. It is indisputable that the right to a fair trial belongs to the most important rights guaranteed by the Convention on Human Rights, since public justice, by playing the key role in the institutes of democratic states, is the guarantee and protection mechanism for all the other institutes [8, p. 29]. Prior to discussing the issue of protecting the right to a fair trial at the European Court of Human Rights, it is necessary to define some key elements of the general nature of this right.

First of all, when trying to define the place of the right to a fair trial in the general system of the rights of man and the citizen, it is requisite to emphasize that it belongs to the so-called first-generation rights of man and the citizen. Being the main achievement of bourgeois revolutions, these rights, as it was demonstrated above, are provided by the main international acts and are imprescriptible. According to law books these very rights are to be considered as human rights proper, while the rights of the second and third generation 'are in their nature only 'social pursuit' id est rather privileges for 'retribution of the national income in favour of the socially weak' rather than rights [9, p. 565].

Also, speaking about this right from a perspective of 'dimensions of law order' (the first – the rights that cannot be limited even under the state of war or other emergency state (the right to life, personal immunity, prohibition of torture and slavery etc), the second – secondary rights, id est those appearing due to the autonomous interpretation of certain norms by the European Court, the third – the rights that ensure the effective development of a democratic society), the right to a fair trial refers to 'the third dimension of law order' [10, p. 27].

But disregarding the approaches to the characteristics of importance of the right to a fair trial in the system of the rights of man and the citizen, its significance in the modern world is doubtless. According to J. McBride, 'the right to a fair trial is central in the very construction of a legal state. Judging from the enormous amount of cases with the violation of article 6, we can conclude that the European Court closely watches the process of the states' fulfillment of all the duties ascribed to them by article 6 [11, p. 9].

As it was mentioned above, the Convention on Human Rights has article 6 'The Right to a Fair Trial', whose content should be given in full, devoted to the right to a fair trial:

'1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

3. Everyone charged with a criminal offence has the following minimum rights:

a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

b) to have adequate time and the facilities for the preparation of his defence;

c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court' [12].

Thus, having analyzed the provisions of article 6 of the Convention on Human Rights, we can make the conclusions of a complex structure of the right to a fair trial whose content is far more extended than in the above-mentioned references to the provisions of international acts as well as the right to a fair trial with a fair result of the hearing. The complex nature of the structure of the right to a fair trial make it the subject of interest for both legal scientists and legal practitioners, since the response to this question has not only theoretical, but also significant practical importance.

Thus, owing to the content of p 1 of article 6 of the Convention on Human Rights, E. L. Trehubov distinguishes the following elements:

1) the right to hearing;

2) the fairness of hearing;

3) the publicity of hearing and proclamation of judgment;

4) the reasonable time of hearing;

5) the hearing by a tribunal established by law;

6) the independence and impartiality of tribunal [13, p. 359].

Such an approach may be considered correct in case of treating the right to a fair trial in its 'initial' state and not taking into account the contribution of the European Court on Human Rights practice in the understanding of this right that will be mentioned later.

The approach proposed by M. Entin is believed to be more accurate. It was further developed by Ukrainian legal scientists I. Hrytsenko and M. Pohoretskyi.

Thus, M. Entin distinguishes among organic, institutionary, procedural and special components of the right to a fair trial. The elements providing an effective usage of the right to a fair trial such as access to the courts and execution of judgment are the organic component. The institutionary component is the criteria the legal system of a state and its separate organs, such as the order of court creation, legal corpus formation, court empowerment time, guarantee of independence and neutrality of a judge, are to meet. The procedural component of the right to a fair trial includes the possibility of the participation of a person and his representative in hearing. The special criteria are the requirements caused by the peculiarity of a criminal procedure that are part of p. 2 and 3 of the Convention on Human Rights [14, p. 86-87].

Specifying the above-mentioned structure, I. Hrytsenko and M. Pohoretskyi propose to distinguish the following elements in the right to a fair trial:

'1) institutionary elements (provisions that define the legal system organization in general and every separate legal body in particular, i.e. court creation on the basis of law, independence of a court, neutrality of a court);

2) organizational and functional elements (provisions that combine the criteria of court organization and functioning, i.e. access to the courts, equity of parties, the right to legal assistance, publicity (transparency and openness) of hearing, mandatory character of court judgment);

3) functional elements (provisions that determine the procedural order and rules of judicial process, i.e. adversary character and reasonable time of hearing);

4) special elements (provisions that relate to the field of the criminal process, i.e. presumption of non-guilty, the right to protection, the right to an interpreter)' [15, p. 4].

Such an approach to the definition of the 'element-by-element' structure of the right to a fair trial is considered to be more correct, since we must admit that when protecting the right to a fair trial the Court of Human Rights is constantly expanding the content of this very right.

Thus ,for instance, hearing in 1975 the case 'Golder Against Great Britain' the Court of Human Rights attached the rule stating that the right to access the courts is an essential element of the right to a fair trial, although article 6 of the Convention on Human Rights does not contain a direct reference to this right [16, p. 359]. In the same way, due to the practice of the Court of Human Rights there appeared the right to execute judgments (case 'Hornsby v. Greece' from 19 March 1997), inadmissibility of incidental reversal of final court judgments (case 'Brumarescu v. Romania' from 23 October 1999).

Therefore, as it was stated by S. F. Afanasiev, the content of article 6 of the European Convention 'is only prima facie, since the conventional norm receives its complex evolutional interpretation due to the work of the European Court of Human Rights, whose decision is mandatory for the member states of the European Court in case of detecting an notional conventional breach' [17, p. 4].

Herein, it should be mentioned that the extension of the content of the right to a fair trial is conducted by the Court of Human Rights not only by means of specifying certain norms, but also whole categories.

Thus, speaking about some vagueness of the field of applying article 6 of the Convention on Human Rights, J. McBride emphasizes the absence of a unified approach to the public-law or private-law character of the very notion of 'civil rights and obligations' used in both English and French versions of the Convention: the English version contains some terms ('civil rights and obligations') typical for constitutional law and, thus have public-law character, whereas the terminology of the French version ('d'une caractere civile') is private-law that enables the conclusion that 'the first approach gives the opportunity to apply article 6 to most decisions made by the public authority organs, whereas the second one limits the sphere of applying article 6 with the issues connected with the agreements, civil offences, property relations and other interests of the kind' [18, p. 9]. Herein, it is noted that despite the preference for the French version, the judicial practice of this issue is developing and adapting to every separate case, thus article 6 also concerns the cases of public-law character (namely, public-law regulation of the professional activity in fields of medicine and law, such as obtaining certain licenses, the right to a pension by age, social insurance benefits). Hence, even if under the national legislation the case is of public-law character, it can be treated from the civil-law point of view, if the trial results are valid for civil rights and obligations (decision of case 'Ferrazzini v. Italy' from 12 June 2001). Meanwhile, the provisions of article 6 of the Court of Human Rights do not rule the disputes regarding taxation. The latest extension of the spheres of applying article 6 occurred due to the trial 'Vilho Eskelinen and others v. Finland' (provision from 19 April 2007), when the disputes concerning state employees and their public functions were included

into the category of cases discussed in the article.

Thus, article 6 of the Convention on Human Rights contains minimum minimorum right to a fair trial, whose real extension occurs owing to the practical activity of the European Court of Human Rights.

Conclusions.

The right to a fair trial may be investigated in two aspects: narrow as it is stated in article 6 of the Convention on Human Rights and Fundamental Freedoms and wide as it is interpreted in the decision of the European Court of Human Rights. By protecting the right to a fair trial, the European Court of Human Rights is pursuing the way of constant extension of this right.

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*The titles are given in transliteration and author's translation

К ВОПРОСУ ОБ ОПРЕДЕЛЕНИИ И ВИДАХ АДМИНИСТРАТИВНО-ПРАВОВЫХ НОРМ

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SUMMARY

Administrative Law Norms define the boundaries of proper, acceptable and recommended behaviour. The concern is that they establish the legal regime of the relationship between public administration and local self-government, the order of the organizational and management activities, define the rights and responsibilities of citizens in the sphere of the executive power and ensure that they determined the specific content of the administrative and legal norms. It consists in the fact that such a rule regulates relations in the sphere of the executive, that is, in a certain field of public relations: economic, social, administrative, political, etc.

Key words: rule of law, administrative and legal norm, public administration, classification of administrative and legal regulations.

* * *

Нормы административного права определяют границы должного, допустимого и рекомендуемого поведения людей. Речь идет о том, что они устанавливают правовой режим отношений между субъектами государственного управления и местного самоуправления, порядок осуществления организационно-управленческой деятельности, определяют права и обязанности граждан в сфере исполнительной власти и гарантии их реализации определена специфика содержания административно-правовой нормы. Она состоит в том, что такая норма регулирует отношения в сфере исполнительной деятельности, то есть в определенной области общественных отношений: экономических, социальных, административных, политических и т. п.

Ключевые слова: норма права, административно-правовая норма, государственное управление, классификация административно-правовых норм.

Постановка проблемы. Нормы административного права всегда занимали важное место в системе украинского права, поскольку они регулируют разнообразные общественные отношения. Нормы административного права определяют границы должного, допустимого или рекомендуемого поведения людей, порядок деятельности органов исполнительной власти. Характерной особенностью норм административного права является то, что они организуют, укрепляют и защищают правовые отношения, которые возникают в сфере публичного администрирования.

Актуальность темы исследования. Развитие Украины в демократическом русле обуславливает возрастание роли права, ибо оно создает для этого необходимые условия: упорядоченность, определенность, организованность, динамичность общественных отношений. Это непосредственно касается и государственного управления, которое на практике подтверждает взаимосвязь между структурированием аппарата управления и его деятельностью.

Предметом регулирования административного права являются общественные отношения в сфере государственного управления. Объектом административно-правовых норм – лишь те управленческие отношения, которые объективно требуют правового регулирования.

Состояние исследования. Обозначенная тематика была предметом исследования таких ученых, как В.Б. Аверьянов, Р.С. Алимов, Д.Н. Бахрах, Ю.П. Битяк, Д.А. Биленчук, С.В. Ващенко, С.Л. Горевая, Н.А. Гураленко, А.В. Джафарова, Г.Г. Забарный, Р.А. Калюжный, З.Р. Кисиль, Т.А. Коломоец, В.К. Колпаков, А.П. Коренев, С.А. Мосендз, Д.М. Овсянко, А.И. Остапенко, Д.М. Павлов, С. Саенко, С.Г. Стеценко А.Н. Школик, В.А. Юсупов и другие.