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EUROPEAN COURT OF HUMAN RIGHTS AS AN INSTRUMENT FOR PROPERTY RIGHTS PROTECTION

Key words: *property rights protection, judgment, Convention for the Protection of Human Rights and Fundamental Freedoms.*

The issue of the property rights protection is regulated not only at the national level, but also at the international level, in particular, by the Convention for the Protection of Human Rights and Fundamental Freedoms.

Courts and unified judicial practice play an important role in ensuring the protection of property rights [6]. Consequently, the final nature of the ECHR judgments and the binding nature of their execution can be regarded as the most important condition for guaranteeing human rights and freedoms.

Therefore, in order to protect property rights effectively, it is necessary to familiarize with the practice of the European Court of Human Rights in order to highlight issues which need attention in the protection of this category of cases.

Thus, the Article 1 of the First Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms provides that every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties [1].

The ECHR in the judgment on the case of «Fedorenko v. Ukraine» defined the main criteria for determining compliance with the requirements of the Art. 1 of the First Protocol to the Convention, namely:

whether there was an interference with possessions;

whether the interference was lawful under the provisions of national law;

whether the interference pursued a goal aimed at satisfying the interests of the community;

whether the interference was justified. In other words, whether it was observed «fair balance» between the demands of the general interests of the community and the requirements of the individual's fundamental rights.

When considering the European Court of Human Rights cases that deal with the violation of the norms of the Art. 1 of the First Protocol, the Court proceeds from the analysis of the three parts of the norm in their entirety: 1) the principle of peaceful possession of property; 2) violation of such principle; 3) control over the enjoyment of the right to peaceful possession [7, p. 92].

Thus, the European Court of Human Rights in «Marckx v. Belgium» case interpreted the term «peaceful possession» as a protection of property right, in which the court stated: «By recognizing that everyone has the right to the peaceful enjoyment of his possessions, Article 1 is in substance guaranteeing the right of property» [2].

The violation of such «peaceful possession», which belongs to natural and legal persons, is, in essence, any interference with the ownership of the said persons. Precisely this interference can take the form of deprivation of the possibility of the right realization to use an object owned by the indicated persons, failure to provide for permits prescribed by legislation, other forms of interference with the realization of property rights [4, p. 20].

Considering applications on violation of the Article 1 of the First Protocol to the Convention, the Court hears cases not only on the interference with the possessions, which is connected with the formal deprivation of the right to possess property, but also cases where interference with the right to peaceful possession of property or deprivation of such a right occurred de facto. Thus, in the case of «Sporrong and Lonnroth v. Sweden» was discussed the formal restrictions of the right of ownership, which led to a violation of the Article 1 of the First Protocol. In this case, the European Court of Human Rights has made a conclusion stating that the judgement must be based not only on a formal approach but also on a comprehensive and complete study of the factual circumstances of the case that could indicate the actual deprivation of the person's property possession.

The Court recalls that interference with the peaceful enjoyment of possessions must strike a «fair balance» between the demands of the general interests of the community and the requirements of the protection of the individual's fundamental rights [5]. Therefore, it is worth noting that it is necessary to insist on the need for a proportional relation between measures that are used and the goal sought to be achieved by depriving a person of his property right.

In deciding whether this requirement was met, the Court proceeds from the fact that the State has a wide discretion both as regards the choice of

method measures and in determining whether justified consequences of such measures in view of the general interest to achieve the goal of a certain law.

The court must determine whether the required balance has been respected in a manner compatible with the right of a person to «peaceful possessions» in the sense of the first sentence of the Article 1 of the Protocol No. 1 (Judgment in case of «Zvolsky and Zvolska v. Czech Republic») [3].

Cases in which property rights violations are concerned should be verified by the ECHR to comply with the balance between the needs of the general public importance and the preservation of the individual's fundamental rights. First of all, relying on the fact that the person concerned should not bear a disproportionate and excessive burden.

Analyzing the European Court of Human Rights practice it is worth paying attention to the concept of «property», which is constantly expanding, as property within the meaning of the Convention and its Protocol – an independent phenomenon that in no way related to its interpretation at the national level. Thus, in addition to movable and immovable property, protected by the Art. 1 of the First Protocol, there are also under protection shares, patents, licenses, professional clientele («good name»), material compensation awarded by a court decision, the right to a pension, etc.

Summarizing the above, we can conclude that interference with property rights is possible only when it is based on the law, pursues a legitimate aim in the public interest and provides a balance between the latter and the private interests of the person whose rights are being interfered.

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