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THE RIGHT TO PROTECTION AS A SIGN OF A FAIR TRIAL IN JUDGMENT OF THE EUROPEAN COURT OF HUMAN RIGHTS

The article researches the right to protection as one of the signs of a fair trial on the basis of the legislation of Ukraine and the practice of the European Court of Human Rights. On the basis of the decisions of the European Court of Human Rights, the importance of the right to protection is emphasized to comply with the rules of judicial review and the protection of human rights and freedoms in each state.

Key words: *the right to protection, court's judgement, trial, court, justice, European Court of Human Rights.*

The right to protection is one of the fundamental standards for criminal proceedings. The observance of this principle depends on the outcome of the pre-trial investigation of criminal proceedings and court proceedings.

Violation of the principle of the right to a defense is the basis for appealing a court decision, which emphasizes the relevance of the subject under study.

The right to protection is enshrined in the national legislation of European countries, including Ukraine. Part 1 of Article 63 of the Constitution of Ukraine provides that a suspect, accused or defendant shall have the right to protection [1]. In accordance with Article 20 of the Criminal Procedure Code of Ukraine (CPC), a suspect, accused, acquitted, the convicted person has the right to protection, which is to provide him with the opportunity to provide oral or written explanations on suspicion or accusation, the right to collect and submit evidence, to take to participate personally in criminal proceedings, to use the lawyer's assistance, as well as to exercise other procedural rights provided for by the CPC [2]. It should be noted that the function of a defense counsel in criminal proceedings in accordance with Ukrainian legislation is performed exclusively by a lawyer, which ensures a high level of protection of legal assistance. As correctly noted by N.M. Bakayanova, changes to Art. 131-1 of the Constitution of Ukraine increase the role of advocacy in public relations, require lawyers to perform their professional duties at a high professional level [3, p. 3].

The CPC clearly identifies cases in which the defense counsel's participation is compulsory. Thus, since the person has acquired the status of a suspect in a criminal proceeding concerning particularly serious crimes, participation of a defender is mandatory. The legislator also provided for the mandatory participation of a defense counsel in the following cases: in respect of persons suspected or accused of committing a criminal offense under the age of 18; with regard to persons for whom enforcement of coercive measures of educational nature is foreseen; regarding persons who, due to mental or physical defects (dumb, deaf, blind, etc.) are not able to fully realize their rights; concerning persons who do not speak the language of criminal proceedings; with regard to persons for whom the use of compulsory measures of a medical nature is foreseen or the issue of their application is being resolved; on rehabilitation of a deceased person; with respect to persons in respect of which a special pre-trial investigation or a special judicial proceeding is conducted; in the case of an agreement between the prosecutor and the suspect or accused of the recognition of guilt [2]. However, there are cases in which a person is not provided with a lawyer, although the case relates to those in which the defense counsel's participation is compulsory.

According to this issue, it is important to study the practice of the European Court of Human Rights. After all, according to Art. 2 of the Law of Ukraine "On Enforcement of Judgments and Practice of the European Court of Human Rights" [4] the judgment of the European Court of Human Rights is binding on Ukraine pursuant to Article 46 of the Convention for the Protection of Human Rights and Fundamental Freedoms [5]. An important step in this aspect is the introduction of amendments to the Constitution in 2016. These amendments were enshrined in Article 55, Part 5 of the Constitution of Ukraine, the right of every person to apply for the protection of their rights and freedoms to the relevant international judicial institutions

or relevant bodies of international organizations after the use of all national remedies, the member or participant of which is Ukraine [1].

The European Court of Human Rights has repeatedly drawn attention to the inadmissibility of violating the right to protection. Thus, in the case of *Nechiporuk and Yonkalo v. Ukraine* (application no. 42310/04, judgment of 21 April 2011), the applicant argued that the national authorities did not effectively investigate his complaint of torture in the police. The Government objected to this statement and argued that the effectiveness of the investigation had been verified and confirmed by the courts of two instances during the trial of the applicant. The European Court of Human Rights came to the conclusion that the authorities did not adequately try to find out what had happened to the applicant at the Southwest Police Department. In its decision, the European Court of Human Rights stated that access to a lawyer should be provided at the first interrogation of a suspect by police officers, except in cases where, in the particular circumstances of the case, it has been demonstrated that there are good reasons for limiting such a right. The right to protection will in principle be irreparably violated if the indictments obtained during interrogation by law enforcement agencies without access to a lawyer will be used for the purpose of her conviction. The European Court of Human Rights has consistently indicated that ensuring access to a lawyer at an early stage is a procedural guarantee of the right not to testify against themselves and the main guarantee of the prevention of ill-treatment, noting the particular vulnerability of the accused at the initial stages of proceedings when he falls into a stressful situation and simultaneously faced with the increasingly complex provisions of criminal law. Any exception to the exercise of this right must be clearly defined, and its action must be strictly limited in time. These principles are particularly relevant in the case of serious accusations, since precisely in the case of a person facing the most severe punishment, his right to a fair trial should be ensured in a democratic society as much as possible [6, p. 16-18].

In another case, *Bassenko v. Ukraine* (application no. 24213/08, judgment of November 26, 2015), the applicant complained that he had no effective means of legal protection in connection with alleged ill-treatment with him. The applicant noted that the delays in the investigation of the criminal case against S. led to the fact that his civil action was ineffective means of legal protection. The European Court of Human Rights in its decision noted that as a result of unjustified delay in criminal proceedings from the time of the attack on the applicant until the applicant learned of the conviction of S., and therefore could probably sue him for damages, that is, until September 25 2007, five years and seven months passed. Accordingly, this claim can not be regarded as capable of giving due and sufficient reparation for the violation of Article 3 of the Convention in the particular circumstances of the case. In view of this, the European Court of Human Rights concludes that the shortcomings of the criminal proceedings did not allow the applicant to be compensated in a timely manner. This meant that, in theory, the compensatory remedies available to the applicant under national law in practice in the particular circumstances of the case were ineffective.

Consequently, there has been a violation of Article 13 of the Convention [7, p. 10-14]. Thus, the European Court of Human Rights acknowledged that due to the long duration of the pre-trial investigation, the detainee was illegally deprived of legal remedies.

Interestingly, that in the case of *Bartha v. Georgia* (application no. 10978/06), the European Court of Human Rights came to the conclusion that the refusal of the court to postpone a meeting at the request of a lawyer who participated in another process, and consideration of a case without a lawyer is a violation Art. 6 (right to a fair trial) of the Convention for the Protection of Human Rights and Fundamental Freedoms. Lawyer Barataya could not take part in the proceedings (labor dispute), because at that very time he was involved in another hearing. The lawyer informed the court about this and filed a petition for the postponement of the meeting. Bartha also demanded postponement of consideration of the case, refusing to take part in a hearing without a lawyer. However, the court passed an in absentia decision to reject the claim. The lawyer tried unsuccessfully to challenge this decision. However, the higher courts came to the conclusion that, in accordance with national law, there was no justification for the refusal to participate in the hearing, and that the participation of the lawyer in another hearing was not a valid reason for the annulment of the decision adopted in absentia. In addition, they found that Mr. Bartha had been warned by a first-degree judge of the consequences of his refusal to attend the hearing. Bartha appealed to the European Court of Human Rights. Referring to Article 6 of the Convention, he argued that the decision by correspondence deprived him of the opportunity to take part in proceedings on an equal basis with the other party represented by a lawyer [8].

As a conclusion should be said, that the right to protection, as an important element of the right to a fair trial, is given considerable attention in the decisions of the European Court of Human Rights. The study of the practice of the European Court of Human Rights and the use of the findings of this court as a source of law plays an important role in respecting the basic principles of legal proceedings and ensuring the protection of human rights and freedoms in each state.

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