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**RIGHT TO ACCESS TO JUSTICE IN THE PRACTICE
OF THE EUROPEAN COURT OF HUMAN RIGHTS**

The essence and elements of the right to access to justice are investigated in the article on the basis of the analysis of the case law of the European Court of Human Rights.

Key words: *right to access to justice, the European Court of Human Rights (ECtHR), the European Convention for the Protection of Human Rights.*

The right to access to justice has a special place in the human rights system. Without its realization, it is impossible to realize the principle of the rule of law, the existence of a law-governed state, the formation of civil society. The decisive trend is that the applicants, who turn to the European Court of Human Rights (hereinafter –the ECtHR), are increasingly referring to the right to access to justice. To date, there has been a fairly significant case-law on the implementation of this right. An analysis of this practice makes it possible to identify the essential features of the right to access to justice, to theoretically substantiate the fundamental significance of this right in the process of securing any other human rights and freedoms.

In view of the content of Article 6 of the European Convention on Human Rights (hereinafter – the Convention), everyone is guaranteed the right to access to justice, which provides that everyone has equal rights to apply to the courts and, in the administration of justice, provides a fair trial, regardless of the parties of the process and nature of the dispute [1]. The European Court of Human Rights, having examined the case of *Golder v. the United Kingdom* in 1975, has essentially come to the conclusion that «...the structure of Article 6 of the Convention would be ineffective if it did not protect the right for the consideration of this case... Therefore, the right to access to justice is an integral part of the right guaranteed by Article 6 (1)...» [2].

The right to access to justice follows the principle of international law, which prohibits denial of justice (*Golder v. the United Kingdom*). This principle applies both to civil and to criminal proceedings (*Devere v. Belgium*) and ensures the right to a judicial decision (*Ganci v. Italy*) [3, p. 101]. Thus, the ECtHR refers the legal capacity to sue to the accessibility of justice, that is, the right to bring an action before the court that has the power to deal with matters of fact and law pertinent to a particular dispute in order to make a binding decision. There is a certain area of intersection of this right and the right to a «court established on the basis of the law», because both of these rights include the requirement for access to a judicial institution capable of making binding decisions, rather than conclusions of a recommendation nature (*Benten v. the Netherlands*) [3, p. 105].

In *Ashingdean v. the United Kingdom*, the Court concluded that the right of access to justice might be limited: States have the right to impose restrictions on trial participants, but these restrictions should have a legitimate aim, be proportionate and not so significant as to distort the essence of the law. The right to claim compensation for pecuniary and non-pecuniary damage is considered as an integral part of the right to access to justice in civil cases both for individual applicants and for legal entities (*Zivulinskas v. Lithuania*) [3, p. 274].

The procedural barriers to accessibility (terms, costs, jurisdiction) of the European Court of Human Rights include the establishment in national law of procedural restrictions and requirements for the proper administration of justice, but restrictions should not violate the very essence of the right to access to justice (*Hadjianastassiou v. Greece*). In the case (*Airi v. Ireland*), the ECtHR noted that full access to justice can be ensured through free legal aid, as well as the simplification of the procedure for representing its interests in civil cases in person. Moreover, if the state itself has established a system of free legal aid in civil matters, any refusal to grant it will be treated as interference with the exercise of the right to access to justice (non-autonomous requirement). However, if the state has established an effective mechanism for distinguishing between cases that require or do not require legal aid, and the Convention gives States a great deal of freedom in this regard, then there will be no violation (*Granger v. the United Kingdom*). In addition, the accessibility of justice includes such an element as the final decision of the court means that the court decisions become final, become binding without any risk of their cancellation (*Brumarescu v. Romania*) [4, p. 190].

When analyzing the case law practice of the ECHR, it should be noted that the right to access to justice applies not only to the right to apply to a court but also provides for a wider range of powers related to the fairness of the consideration procedure.

In view of modern theoretical and legal studies, the idea of the real nature of justice prevails: the accessibility of justice implies not only the solution of various organizational and technical issues when appealing to a person for judicial protection, but also the content of the justice itself. That is, access to justice will be considered implemented when the trial has all the signs of justice.

An independent and impartial court created on the basis of the law is an element of the accessibility of justice. Accordingly, the right to access to justice includes three interlinked requirements relating directly to the judicial authority. In its decisions, the ECtHR has determined: «The court established on the basis of the law» refers to the question whether the determining authority has the characteristics of the «court» within the meaning of Article 6, as well as the legality of the court at the national level (*Lavents v. Latvia*, 2002); «Independence» as the existence of procedural safeguards for the separation of the judiciary from other branches of government, primarily from the executive one (*Clark v. the United Kingdom*); «Impartiality» as a lack of bias and interest in relation to the parties to a particular dispute, as well as independence from the influence of the parties to the dispute (*Piersack v. Belgium*, 1982) [5, p. 210-215].

The fairness of the trial as an integral part of the accessibility of justice in ECHR judgments is determined by the «just» nature of the consideration of a particular dispute at all stages. «Justice», from the point of view of Article 6, depends on whether the applicants were given the opportunity to state their position in the case and to challenge the evidence that they consider to be erroneous, and not because of the level of correctness (faithfulness) of the national court decision (*Gefgen v. Germany*, 2008). In addition, in some decisions of the ECtHR, one can find the position that «fair consideration» includes such aspects of justice as the adversarial nature of the process (*Rowe Davis v. the United Kingdom*, 2000), equality of parties (*Brandstetter v. Austria*, 1991), personal presence (*Ekbatani v. Sweden*, 1988) and the right to a public hearing (*Campbell and Fell v. the United Kingdom*, 1984).

The reasonableness of the trial period is determined by Article 6, which is independent of the national procedure for determining the duration of procedural actions, since the violation of the statute of limitations, established by national laws, does not necessarily indicate a violation of Art. 6. Unlike many national systems, in practice, the ECtHR does not have a time limit to deal with a particular dispute and all disputes are dealt with according to specific circumstances. As can be seen in the analysis of the practice of the ECHR, the reasonable period is determined by the aggregate verification based on criteria such as the nature of the dispute (*Martins Moreira v. Portugal*, 1990), dispute complexity (*De Clerk v. Belgium*, 2007), parties' behavior (*Zimmermann and Steiner v. Switzerland*, 1983), the behavior of the authorities (*Pretto v. Italy*, 1983) [5, p. 321].

Consequently, we can conclude that the Convention for the Protection of Human Rights and Fundamental Freedoms gives everyone the right to access to justice. In pursuit of this theoretical construct, the European Court of Human Rights is attempting to give a more practical effect to this provision of the Convention in order to more effectively implement the mechanism of protection of human rights. In its decisions, the ECHR enshrined the right to access to justice, and also disclosed in detail the characteristics of each of its constituent elements. The right to access to justice is a prominent place among universally recognized human rights, since it opens up opportunities for the protection of all other rights and embodies the idea of a real nature of justice.

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THE EXPERIENCE OF THE UK CASE LAW IN THE ESTABLISHMENT OF HUMAN RIGHTS ACCORDING TO THE ECHR JUDICIAL PRACTICE

Key words: *judicial precedent, judicial practice, ECHR case law.*

The European Court of Human Rights refers to its practice as case law (precedent). Judicial precedent in the judicial practice of the ECHR is based on the principle of *ratio decidendi* (from Latin – the basis for resolution), and the precedent manifests itself in the fact that the Strasbourg court while deciding cases normally tends to follow the previously used approaches, unless the Court deems them necessary to be changed. In particular, in the imperative conclusion of its judgment, the Court, instead of reproducing the arguments it previously expressed, may refer to the considerations stated in its previous decisions [5; p. 71]. At the same time, the ECHR has reiterated that it is not bound by its own previous decisions and, indeed, from time to time changes its legal positions. This approach appears justified; in actuality, although the possibility of changing judicial practice does not contribute to legal certainty, it should be borne in mind that there is a dialectical contradiction between legal certainty and the development of law. Nonetheless, it can be argued that the ECHR does not always regard its own decisions as necessarily binding.

At the same time, it is important to consider how the national judicial systems should treat the ECHR case law, in particular, whether the ECHR judgments should be binding on them in one way or another, at least in certain cases, given that the parties to the Convention on Human Rights and Fundamental Freedoms (hereinafter – the Convention) follow different legal traditions belonging to either the Anglo-Saxon legal family (common law countries) or to the Romano-Germanic legal family (continental law countries).

Having examined the Anglo-Saxon precedent of England, which is a part of the United Kingdom, the latter acts precisely according to the doctrine *stare decisis* (the law should be applied equally under equal circumstances) in its more rigorous modification. Therefore, it may seem that the precedent of the ECHR should be perceived in England as an Anglo-Saxon precedent, and should occupy the highest level in the hierarchy of precedents. However, the situation is actually different – in the event of a conflict between the