

12. Konstytutsiynyi Sud Ukrainy vydav zabezpechuvalnyi nakaz [‘The Constitutional Court of Ukraine has issued an interim order’] <<http://www.ccu.gov.ua/novyna/konstytuciynyy-sud-ukrayiny-vydav-zabezpechu-valnyy-nakaz>> accessed 10 May 2019 (in Ukrainian).
13. Terletskyi D, Navishcho nam konstytutsiina skarha? [‘What is a constitutional complaint for?’] <http://yur-gazeta.com/publications/practic_e/sudova-praktika/navishcho-nam-konstituciyna-skarga.html> accessed 10 May 2019 (in Ukrainian).
14. Uzun v. Turkey, no. 10755/13, 30 April 2013.

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LAWFULNESS AS THE MAIN REQUIREMENT FOR PROPERTY RIGHTS INTERFERENCE IN CRIMINAL PROCEEDINGS: LEGAL POSITION OF THE EUROPEAN COURT OF HUMAN RIGHTS

The article is devoted to the research of the legal position of the European Court of Human Rights regarding the definition of the content of lawfulness as the main requirement for interference in the property rights to the material objects, seized as material evidences in criminal proceedings.

Key words: *lawfulness, interference in the property rights, criminal proceedings, material evidences, European Court of Human Rights.*

The results of the research of the practice of the ECHR indicate that the conditions of lawfulness for interference in the property rights, to which the Court makes an assessment, are: 1) the compliance of the requirement of lawfulness; 2) the existence of a general (public) interest, which interfered the interference in the property rights; 3) the ensuring a fair balance between the requirements of general (public) interest and the protection of property rights.

The compliance of the requirement of lawfulness implies that interference in the property rights, including in connection with the implementation of criminal proceedings, must be prescribed by law and not be arbitrary. In the practice of ECHR, lawfulness is defined as the main requirement for interference in the property rights. Thus, the Court has repeatedly emphasized that the first and most important requirement of Article 1 of Protocol No. 1 is that any interference by a public authority with the peaceful enjoyment of possessions should be lawful (§ 58 of judgment from 25.03.1999 in the case of *Iatridis v. Greece*, § 167 of judgment from 23.01.2014 in the case of «East/West Alliance Limited» v. Ukraine) [1; 2].

In accordance with the legal position of the ECHR, the decision of the issue of the lawfulness of state’s interference in the property rights is preceded by the decision of the issue of ensuring a fair balance between the requirements

of general (public) interest and the protection of property rights. In particular, the Court points out that issue of whether a fair balance has been struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights only becomes relevant once it has been established that the interference in question satisfied the requirement of lawfulness and was not arbitrary (§ 33 of judgment from 24.03.2005 in the case of *Frizen v. Russia*, § 42 of judgment from 24.05.2007 in the case of *Viktor Konovalov v. Russia*, § 31 of judgment from 06.11.2008 in the case of *Ismayilov v. Russia*) [3; 4; 5]. In case of recognition of the interference illegal in the meaning of Article 1 of Protocol No. 1, the Court states that there is a violation of this norm and concludes that it unnecessary to examine whether a fair balance has been struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights (§ 36 of judgment from 24.03.2005 in the case of *Frizen v. Russia*, § 46 of judgment from 09.06.2005 in the case of *Baklanov v. Russia*) [3; 6].

Determining the content of lawfulness as the main requirement for interference in the property rights, the Court in the case of «East/West Alliance Limited» v. Ukraine notes that the requirement of lawfulness in the understanding of the Convention requires compliance of the relevant provisions of national legislation and matching to the principle of the rule of law, including freedom from arbitrariness (§ 167 of judgment from 23.01.2014) [2]. Thus, state's interference in the property rights is recognized by the Court as lawful in the event of its implementation on the basis of law, in accordance with the procedure established by it and in accordance with the principle of the rule of law. Summarizing the legal positions, outlined in judgments from 09.11.1999 in the case of *Spacek s.r.o. v. the Czech Republic* and from 05.01.2000 in the case of *Beyeler v. Italy*, ECHR in the case of *Baklanov v. Russia* and in the case of *Shchokin v. Ukraine* indicates that when speaking of «law», Article 1 of Protocol No. 1 alludes to the same concept to be found elsewhere in the Convention. This concept requires firstly that the impugned measures should have a basis in domestic law. It also refers to the quality of the law in question, requiring that it be accessible to the persons concerned, precise, and foreseeable (§ § 40 – 41 of judgment from 09.06.2005, § 51 of judgment from 14.10.2010) [6; 7]. Regarding the rule of law, in the practice of the Court it is defined as one of the fundamental principles of a democratic society, is inherent in all the Articles of the Convention and entails a duty on the part of the State or other public authority to comply with judicial orders or decisions against it (§ 58 of judgment from 25.03.1999 in the case of *Iatridis v. Greece*, § 33 of judgment from 24.03.2005 in the case of *Frizen v. Russia*) [1; 3].

The analysis of the practice of the ECHR allows to assert that the assessment of the lawfulness of state's interference in the property rights during criminal proceedings is provided by the Court in terms of compliance by the national courts of the grounds and procedures for limitation and deprivation of property rights, which enshrined by norms of the criminal procedural law. In particular, the subject of assessment of the ECHR in specific cases was: 1) the

lawfulness of the seizure of material evidences during the investigative actions and their accession to a criminal case (§ 56 of judgment from 07.06.2007 in the case of *Smirnov v. Russia*, § § 177 – 181 of judgment from 23.01.2014 in the case of «East/West Alliance Limited» v. Ukraine) [2; 8]; 2) the lawfulness of the imposition of seizure on property during criminal proceedings (§ 38 of judgment from 18.07.1994 in the case of *Vendittelli v. Italy*) [9]; 3) the lawfulness of the imposition of seizure on property during criminal proceedings and the use of special confiscation as a way of resolving of the fate of material evidences (§ 51 of judgment from 24.10.1986 in the case of *Agosi v. United Kingdom*, § § 27 i 30 of judgment from 22.02.1994 in the case of *Raimondo v. Italy*) [10; 11]; 4) the lawfulness of the use of special confiscation as a way of resolving of the fate of material evidences, belonging to the applicant, including the money that was subject to smuggling (§ § 42 – 46 of judgment from 09.06.2005 in the case of *Baklanov v. Russia*) [6] and the property of the applicants, acquired inappropriately and inexplicably in what way (§ 98 of judgment from 12.05.2015 in the case of *Gogitidze and Others v. Georgia*) [12]; 5) the lawfulness of the use of special confiscation as a way of solving of the fate of material evidences to the property of third persons (§ § 28 i 29 of judgment from 24.03.2005 in the case of *Frizen v. Russia*, § 74 of judgment from 15.01.2015 in the case of *Veits v. Estonia*) [3; 13].

Recognizing the state's interference in the property rights is unlawful, the Court states a fact of violation of Article 1 of Protocol No. 1. At the same time, the conclusion about the illegality of state's interference in the property rights is based not only on the absence of grounds for the interference in the property rights in the national criminal procedure law, but also on the «insufficiency» of the criminal procedural law itself, which is its inaccessibility for the interested persons, the fuzzy formulation of the definition of the grounds for the application of one or another measure of state's interference in property rights during criminal proceedings or unpredictability in their application. In particular, in the case of *Smirnov v. Russia* the Court expressed doubts that a broad discretion regarding the maintenance of material evidences in a criminal case that was provided to an investigator by the CCP of the Russian Federation and was not accompanied by efficient judicial supervision would pass the «quality of law» test (§ 56 of judgment from 07.06.2007) [8]. In the case of *Baklanov v. Russia*, having regard to the national courts' lack of reference to any legal provision as a basis for the forfeiture of an important sum of money and to the apparent inconsistencies of case-law compared to the national legislation, the Court considers that the law in question was not formulated with such precision as to enable the applicant to foresee, to a degree that is reasonable in the circumstances, the consequences of his actions (§ 46 of judgment from 09.06.2005) [6].

References:

1. Case of *Iatridis v. Greece*: Judgment of the ECHR from 25.03.1999. URL: <https://www.legal-tools.org/doc/b01366/pdf/>.
2. Case of «East/West Alliance Limited» v. Ukraine: Judgment of the ECHR from 23.01.2014. URL: http://zakon2.rada.gov.ua/laws/show/974_994.

3. Case of Frizen v. Russia: Judgment of the ECHR from 24.03.2005. URL: <https://www.legal-tools.org/doc/8bf829/pdf/>.
4. Case of Viktor Kononov v. Russia: Judgment of the ECHR from 24.05.2007. URL: <http://echr.ketse.com/doc/43626.02-en-20070524/view/>.
5. Case of Ismayilov v. Russia: Judgment of the ECHR from 06.11.2008. URL: <https://rm.coe.int/16806ebe18>.
6. Case of Baklanov v. Russia: Judgment of the ECHR from 09.06.2005. URL: <https://www.legal-tools.org/doc/542328/pdf/>.
7. Case of Shchokin v. Ukraine: Judgment of the ECHR from 14.10.2010. URL: http://zakon2.rada.gov.ua/laws/show/974_858.
8. Case of Smirnov v. Russia: Judgment of the ECHR from 07.06.2007. URL: <http://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=001-80953&filename=001-80953.pdf>.
9. Case of Vendittelli v. Italy: Judgment of the ECHR from 18.07.1994. URL: <http://www.javier-leon-diaz.com/property/Vendittelli%20v.%20Italy.pdf>.
10. Case of Agosi v. United Kingdom: Judgment of the ECHR from 24.10.1986. URL: <https://rm.coe.int/16806ebc9d>.
11. Case of Raimondo v. Italy: Judgment of the ECHR from 22.02.1994. URL: <https://rm.coe.int/16806ebe1a>.
12. Case of Gogitidze and Others v. Georgia: Judgment of the ECHR from 12.05.2015. URL: [http://www.scourt.gov.ua/clients/vsu/vsu.nsf/7864c99c46598282c2257b4c0037c014/895eb1efa4312a8dc22580f8003dfa2d/\\$FILE/Toriri%20za%20i%20proti%20Gpyzii.pdf](http://www.scourt.gov.ua/clients/vsu/vsu.nsf/7864c99c46598282c2257b4c0037c014/895eb1efa4312a8dc22580f8003dfa2d/$FILE/Toriri%20za%20i%20proti%20Gpyzii.pdf).
13. Case of Veits v. Estonia: Judgment of the ECHR from 15.01.2015. URL: [https://hudoc.echr.coe.int/eng#{"itemid":\["001-150303"\]}](https://hudoc.echr.coe.int/eng#{).

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THE EUROPEAN CONVENTION ON HUMAN RIGHTS AS A TOOL OF PROTECTION OF LEGAL PERSONS

The article is devoted to the recognition of The European Convention on Human Rights as a tool of protection of interests of legal entities in the European Court of Human Rights, as well as any other individual.

Key words: *European Court on Human Rights, legal persons, the right to a fair trial.*

Both domestic law and international law are increasingly coming to recognize corporations, other private non-natural persons and even public juristic entities as subjects of criminal liability. A significant question for theory and practice is whether such private or public legal entities can find direct protection under international fundamental human rights norms when criminal law and criminal procedure are being applied against them.