between the working methods of the judges of the Strasbourg Court and those of judges in the domestic court.

With the entry into force on 1 August 2018 of Protocol No. 16 in relation to 10 States parties (Albania, Armenia, Estonia, Finland, France, Georgia, Lithuania, San Marino, Slovenia and Ukraine) there appered a new form and the possibility of a dialogue between the Strasbourg Court and domestic courts. The Supreme and Constitutional Courts are given the opportunity to request an advisory opinion from the Strasbourg Court on the points of interpretation and application of the rights and freedoms enshrined in the Convention and its Protocols. The advisory opinion, which is adopted by the Grand Chamber of the Court, contains the reasons and arguments of the Court, but it is not binding on domestic courts.

The prerequisite for applying to the Strasbourg Court for an advisory opinion is that a request must originate in pending domestic proceedings currently being heard by a highest court or tribunal or Constitutional Court. The first advisory opinion was adopted on 10 April 2019 at the request of the French Court of Cassation *(Cour de cassation),* and it concerns the issue of recognition a birth certificate issued abroad to a child born abroad as a result of a gestational surrogacy arrangement.

This opinion is noteworthy in that the Grand Chamber for the first time defined the boundaries of advisory opinion requests. It confirmed that the Court has no jurisdiction either to assess the facts of a case or to evaluate the merits of the parties' views on the interpretation of domestic law in light of Convention law, or to rule on the outcome of the domestic proceedings. Its role is strictly limited to furnishing an opinion regarding the questions submitted with the requirements of the Convention and its case-law.

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THE EXPERIENCE OF THE UNITED KINGDOM CASE LAW IN FORMING OF HUMAN RIGHTS PURSUANT TO THE ECHR JUDICIAL PRACTICE

Key words: *European Court of Human Rights, ratio decidendi, Constitution.*

The European Court of Human Rights entitles its own practice as a case-law. The basis of the judicial precedent in the judicial practice of the ECHR is the principle of ratio decidendi (from Latin – the basis for resolution), and the precedent manifests itself in the fact that in the decision of cases the Strasbourg court tends to follow as a whole the approaches that were used by them earlier, if not recognized as necessary to change them. In particular, in the motive part of the judgment (imperative conclusion), the court, instead of reproducing the arguments it has previously expressed, may refer to the

considerations expressed in previous decisions [5, p.71]. At the same time, the ECHR has repeatedly emphasized that it is not bound by its own previous decisions and, indeed, from time to time changes its legal positions. This is justified, because although the possibility of changing judicial practice does not contribute to legal certainty, it should be noted that there is a dialectical contradiction between legal certainty and the development of law. Although it can be argued that ECHR's own decisions are not necessarily mandatory.

However, it is important to consider how the national judicial systems should refer to the case-law of the ECHR, in particular, whether the ECHR's decisions should not be binding in a particular sense, at least for some of them, given that the parties to the Convention for the Protection of Human Rights and Fundamental Freedoms (the Convention) are countries with different legal traditions belonging to both the Anglo-Saxon legal family (countries of «common law») and the Romano-Germanic legal family (the «continental law» countries).

Having examined the Anglo-Saxon precedent of England, which is a member of the United Kingdom, the latter acts precisely because of the doctrine stare decisis (the law of the same circumstances should apply equally) in its more rigorous modification. Therefore, the impression may seem that the precedent of the ECHR should be perceived in England as an Anglo-Saxon precedent, and should take the highest level in the hierarchy of precedents.

However, the situation is different – in the event of a conflict between the precedent of the ECHR and the precedent of the highest court in England, only the last one (Leeds City Council v. Price and others) applies. This assertion can be seen in the judgment of the Court of Appeal regarding the incompatibility of the ECHR case-law in Connors v. 2004. United Kingdom with the precedent established by the House of Lords in 2003 in the Harrow London Borough Council v. Qazi. As a result, it was argued that in such circumstances, the courts of England should be guided by the precedent of the House of Lords, and not the precedent of the ECHR.

The said position received unanimous support among all members of the House of Lords in deciding on the outcome of an appeal against the decision of the Court of Appeals in Leeds City Council v. Price and others. Thus we have a relatively unique precedent and confirmed by the highest court regarding the primacy in applying in national courts of national law over the application of ECHR case-law.

Moreover, such a conclusion of the House of Lords extends not only to the priority of the national precedent, but also to the priority of the national law. Thus, Lord Braun explained that, given the compliance with the national law of the Convention, the court cannot give more weight to human rights. Moreover, Lord Hope noted that if national law cannot be interpreted in a manner consistent with the Convention (in light of the ECHR practice), then the law must be applied (p.86 of the decision) and Lord Brown emphasized that the court cannot give more weight to the rights of a person than is provided by national law (p.202 of the decision) and should proceed from the

fact that the national law is in conformity with the Convention (paragraph 203 of the decision) [4].

At the same time, the Anglo-Saxon precedent is not perfect in the context of the realization of human rights. There are rare cases of discrimination based on different criteria in the case law of the United Kingdom.

Thus, in the case of «Chaidan v. Godin-Mendoza» (2002), the judge of the UK District Court, based on his decision in the case of «Fitzpatrick v Sterling Housing Association Ltd» (1999), concluded that same-sex marriages are not equivalent to marital relations. While the ECHR in the case «Salguelro v. Portugal» (2001) emphasized that the Convention does not allow differences based on sexual orientation [8].

Thus in the case file has been said that the word «man» (in the context of marriage) applies only to heterosexual couples under the law and the case law of the UK. The ECHR, having decided on the case «Chaidan v. Godin-Mendoza» (2002), noted that such a wording at the legislative level is discriminatory and contrary to the Convention for the Protection of Human Rights and Fundamental Freedoms.

Moreover, the Strasbourg Court explained that same-sex marriages are also considered marital [4].

Another example is the case of «P.M. v. United Kingdom» (2005) regarding discrimination on the legal status. The applicant was recorded as the father of the child who was born with him with his partner outside the marriage. After their divorce (a marriage was not registered officially), the applicant was exempted from the tax on the amount that he paid for the child's maintenance, in accordance with the separate accommodation agreement that the latter concluded with his former partner. However further, Inland Revenue Office was deprived of this right, given that he had never been married to the mother of his daughter. The position of the ECHR in this case is as follows – in both cases (whether married or not), persons are parents of their children and are obliged to pay for their maintenance. Thus, unmarried parents who have established family life with their children may claim equal rights with their married parents regarding contact and care. The Strasbourg Court ruled that it did not see the reasons for the applicant's attitude not as a parent in a marriage divorced and living separately from the mother in the context of a reduction in the tax on child support. The goal of tax reduction was the desire to facilitate married parents to support a new family, so it is not clear why single parents who established such relationships could not bear the corresponding financial obligations, while equally demanding a discount [7].

Considering the precedent issues of discrimination through the prism of Ukrainian legislation, it should be emphasized that the latter is one of the most democratic, humane and legal aspects of the realization of human rights under the Convention. Moreover, the conclusions of the ECHR are binding, and the decisions are binding on the territory of Ukraine, which is confirmed by the Law of Ukraine «On enforcement of decisions and application of the European Court of Human Rights practice» No. 3477-IV of February 23, 2006 [3].

At the same time, the provisions of the Convention are reflected in both the State Main Law – Constitution and other normative legal acts [1]. Thus, the Constitution of Ukraine provides that human rights and freedoms are the highest social value of the state, while international treaties ratified by the Verkhovna Rada of Ukraine are part of the national legislation of Ukraine [2].

Consequently, after the signing of the European Convention for the Protection of Human Rights and Fundamental Freedoms in 1950 and the beginning of the European Court of Human Rights in Strasbourg in 1953, the experimental idea of protecting human rights only on the basis of the Constitution or the Convention becomes a Common-European recognition. The ECHR's case law is universally recognized in Europe and holds an independent place in the continental system of law. Further consideration by the Anglo-Saxon legal system of the ECHR positions will serve as a progressive step towards improving the mechanism for the protection of human rights and fundamental freedoms.

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