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**FEATURES OF APPLICATION IN THE CIVIL JUSTICE
OF THE EUROPEAN CONVENTION ON THE PROTECTION
OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS**

Key words: *ratification, human rights, European Convention on Human Rights and Fundamental freedoms.*

Ukraine's ratification of the European Convention for the Protection of Human Rights and Fundamental Freedoms became an effective instrument for the protection of human rights. A person, who applies to a court, has the opportunity to refer directly to the Convention on the Protection of Conventional Rights and to the practice of the European Court of Human Rights. The courts apply the Convention and the Court's case law as a source of law in the examination of cases in accordance with Part 1 of Art. 17 of the Law of Ukraine «On implementation of decisions and application of the practice of the European Court of Human Rights».

Ukraine fully recognizes in its territory the effect of Article 25 of the Convention on Protection human rights and fundamental freedoms of 1950 to recognize the competence of the European Commission of Human Rights to accept from any person, non-governmental organization or group of persons a statement addressed to the Secretary General of the Council of Europe on the violation of the rights of Ukraine set forth in the Covenant Articles, and articles 4 6 of the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms on the recognition of the jurisdiction of the European Court of Human Rights, which is mandatory and without a special agreement. That is provided by the Law of Ukraine «On Ratification of the 1950 Convention on the Protection of Human Rights and Fundamental Freedoms, First Protocol and Protocols No. 2, 4, 7 and 11 to the Convention». That is why the Convention is an integral part of national legislation and should be implemented in the actual practice of the courts.

The European Convention on the Protection of Human Rights and Fundamental Freedoms, as an international treaty, has a certain priority over the law's application of the current law, but, applying the provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms, one should proceed from the assumption that the highest priority is the Constitution of Ukraine regarding the ones that are valid for Ukraine international treaties. The conclusion of international treaties that contradict the Constitution of Ukraine, is possible only after the introduction of appropriate amendments to the Constitution of Ukraine that is according to Part 2 of Art. 9 of the Constitution of Ukraine.

It is possible to draw the following conclusion from the above. The provisions of the European Convention on the Protection of Human Rights

and Fundamental Freedoms in the system of normative acts of Ukraine have the force of law and a formal priority over other laws in the context of competition. The accession to the European Convention on the Protection of Human Rights and Fundamental Freedoms puts the States Parties in an obligation to bring their legislation in the line with European standards.

The judgment of the European Court of Human Rights (ECHR) has a significant impact on the practice of the enforcement of domestic courts. But the mechanism of such influence is specific, since the States Parties to the Convention, as a rule, carry out appropriate measures of general or special nature arising from decisions of the European Court on human rights. The Council of Europe's position on the implementation of the European Court of Human Rights was reproduced in Recommendation No. R (2000) 2 of the Committee of Ministers on the review of cases and the resumption of proceedings at the domestic level in connection with decisions of the European Court of Human Rights of 19 January 2000 p. The Committee of Ministers noted in this Recommendation that according to Art. 46 of the Convention, the States parties of the Convention have undertaken to comply with the decisions of the European Court of Human Rights. In addition, Protocol No. 14 strengthened the mechanism of implementation of ECHR judgments, providing for the possibility of reviewing cases of non-compliance with its own decisions.

But neither the ECHR, nor the Committee of Ministers of the Council of Europe could force the state, for example, to take certain measures of a general nature – changes in national legislation and the general practice of applying legislation.

There is a widespread view that ECHR rulings have a pretentious character for national judicial practice in the legal theory. At the same time, it should be borne in mind that the ECHR takes different decisions in terms of the impact on the practice of national courts. The ECHR makes decisions on specific cases (Articles 42, 43, 44), decisions and decisions on the inadmissibility of applications submitted to the court (Article 45), the appeal of the Panel of Members of the Grand Chamber on the interpretation or application of the provisions of the Convention, or Protocols to it or other issues of a general nature (Clause 2 Article 43) in accordance with the Convention. the Grand Chamber adopts a ruling in the latter case. In addition, the ECHR adopts advisory opinions on the interpretation of the Convention and the Protocols thereto in accordance with clause 1 of Art. 47, art. 49 of the European Convention on the Protection of Human Rights and Fundamental Freedoms, at the request of the Committee of Ministers.

Since 2004, the ECHR has adopted so-called «pilot decisions» that address the systemic issues of the States parties to the Convention and which urge a state to adopt appropriate measures of a general nature to overcome them. The entry into force of Protocol No. 14 to the Convention in 2010 has led to a simplification of the procedure for handling complaints about which the ECHR has already adopted «pilot decisions», as well as the possibility to suspend consideration of all other similar cases before the adoption of the «pilot decision». The most violent state is given time to take appropriate

revenues, including compensation for all victims of similar violations, as well as amendments to national legislation. The implementation of the «pilot decisions» of the ECHR provides for a permanent dialogue between the respondent State and the Committee of Ministers, which is responsible for overseeing the implementation of ECHR judgments.

The system of acts adopted by the ECHR is the acts of application and acts of interpretation of the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols. Irrespective of the nature of court decisions, they are binding on States Parties to the Convention.

The obligation of all decisions of the ECHR causes controversy over the nature and extent of their precedent. The precedent of decisions of the ECHR is considered not only from the point of view of a case-law, but from the standpoint of universal necessity. Universal Obligation is a broader feature of the decisions of the ECHR.

Literal interpretation of art. 1 of the Law of Ukraine «On Ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms accepted in 1950, the First Protocol and Protocols No. 2, 4, 7 and 11 to the Convention» may lead to the conclusion that only decisions are binding on Ukraine Court, which was adopted against Ukraine. But the ECHR proceeds from the universality of its practice, despite the subjectivity of cases, and in its decisions refers to all the established judicial practice. Such approach to ECHR reflects the principle of legal certainty and ensures predictability of ECHR decisions. With the application of the European Convention on Human Rights and Fundamental Freedoms, Ukrainian courts can apply all the practices of the ECHR, that is, decisions made both in relation to Ukraine and other states.

The practice of the European Court of Human Rights has been diverse and has a significant impact on the practice of national courts, since the European Convention for the Protection of Human Rights and Fundamental Freedoms and the practice of the ECHR are applied by the courts in the consideration of cases concerning the protection of property rights, honor and dignity and business reputation, respect for private life, freedom of thought, conscience and religion, freedom of expression, in the event of questions of fair trial, etc.

The determining factor for the implementation of the European Convention on the Protection of Human Rights and Fundamental Freedoms, the practice of the ECHR by national courts, is the recognition of the jurisdiction of the ECHR as binding on the interpretation and application of the Convention and the Protocols thereto. The application of the Convention should be based on the practice of the ECHR in order to prevent any violation of the Convention and used by the courts. Therefore, decisions of courts should be taken into consideration by the courts in the decisions of the ECHR, which interpret the provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms, which require application in a particular case.

From the point of view of judicial enforcement, and in view of the fact that national laws, norms of the European Convention on Human Rights and

Fundamental Freedoms and ECHR judgments interact as complementary and interlinked systems, the application of the rules of the Convention and ECHR judgments in itself should be considered appropriate, effective and necessary in substantiating the motivating part of court decisions in the event of a conflict between national legislation and an international treaty. References to the ECHR's decisions may also confirm the provisions of national law. In such cases, court rulings containing references to international law and international treaties appear to be more reasoned. The fundamental importance of the norms of the European Convention on the Protection of Human Rights and Fundamental Freedoms and the ECHR's decisions are, in the cases of gaps in domestic law and law enforcement practice, in interpreting national law in the context of the requirements of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

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**REFORMING THE PROCEDURAL LEGISLATION OF UKRAINE THROUGH
THE PRISM OF LEGAL PURISM AND FORMALISM IN THE LAW**

Key words: *judicial system, right to a fair trial, purism.*

At the present stage of state-building, the efficiency of the functioning of the judicial system in Ukraine has become an indicator of the level of development and interaction of such categories as the state and civil society, where the sub-category is the judiciary, and the landmark is human rights. In such circumstances, respect for the guarantees of the right to a fair trial is almost the main indicator of the rule of law.

Thus, the right to a fair trial, provided for in Art. 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) (hereinafter referred to as the Convention) includes various constituent elements, each of which is interpreted by the European Court of Human Rights (hereinafter – ECHR) in the consideration of a particular case which