3. Konventsiya pro zakhyst prav lyudyny i osnovopolozhnykh svobod: Zakon Ukrayiny vid 17.07.1997 r. № 475/97-VR. Ofitsiynyy visnyk Ukrayiny. 2006. № 32. S. 270
4. Miroļubovs and Others v. Latvia № 798/05, 15.09.2009. URL: http://www.echr.ru/documents/doc/2469006/2469006-008.htm
5. Prakticheskoye rukovodstvo po kriteriyam priyemlimosti. URL: https://www.echr.coe.int/Documents/Admissibility_guide_RUS.pdf
6. Prozvanchenkov A.V., Shabkhazov A.R. Zloupotrebleniye pravom v resheniyakh Yevropeyskogo suda po pravam cheloveka i Konstitutsionnogo suda Rossiyskoy Federatsii. URL: https://cyberleninka.ru/article/v/zloupotreblenie-pravom-v-resheniyah-evropeyskogo-suda-po-pravam-cheloveka-i-konstitutsionnogo-suda-rossiyskoy-federatsii
7. Press release issued by the Registrar of the Court. ECHR 433 (2018). 12.12.2018. URL: https://hudoc.echr.coe.int/eng-press#{%22itemid%22:[%22003 6278929-8183064%22]}.
8. Informatsiyne ahentstvo 1NEWS. URL: https://1news.com.ua/ukraine/yespl-zloviv-ukrayinskogo-advokata-na-chislennih-falsifikatsiyah.html.

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ON THE INFLUENCE OF THE ECHR'S DECISIONS ON UKRAINE'S JUDICIAL PRACTICE

The article researches general provision on the ECHR activity, its influence on the judicial system and judicial practice of Ukraine.

Key words: *judicial practice, Supreme Court, unity of judicial practice, Convention, European Court of Human Rights.*

The European Court of Human Rights is the international court, created in 1959, which considers applications from persons, nongovernmental organization, group of individuals or from the state about violation of the European Convention on Human Rights.

Unfortunately, Ukraine play a leading role in the number of complaints made to this Court. In 2018 number of complaints was 12,9% from the general amount of complaints, in 2017 – 12,9%, in 2016 – 22,8 % [1]. Mostly citizens apply because of the violation of the Art. 6 "Right to a fair trial" of the Convention.

Ukraine ratified this Convention in 1997, and therefore the Court's decisions have binding nature. This provision is enshrined in the Law of Ukraine «On the Fulfillment of Decisions and Application of Practice of the European Court of Human Rights» dated February 23, 2006. Problems related to the implementation of these decisions require a separate study.

Consequently, the reduction of the number of appeals to the ECHR can be considered as an indirect confirmation of increasing public confidence in the judiciary, improving the quality of justice and, as a result, the existence of a single judicial practice.

It seems that it is also necessary to draw attention to the legal nature of the decisions of this court in Ukraine. Thus, Art. 17 of the Law of Ukraine «On the Fulfillment of Decisions and Application of Practice of the European Court of Human Rights» stipulates that Ukrainian courts have apply in practice the case law of the ECHR as a source of law. M. Marguelo noted that the «practice of the Court» includes not only the practice of the ECHR in cases against Ukraine, but the whole array of the Court decisions [2]. The said normative provision is also enshrined in Part 2 of Art. 6 of The Code of Administrative Proceedings of Ukraine, according to which the court applies the rule of law, taking into account the judicial practice of the ECHR, thus the question of the case-law of the court's decisions raises.

According to the point of view of A. Marchenko, for most European countries, the practice of the ECHR is merely an interpretation of the rules, highlighting the essence of the provisions of the Convention, which facilitates its direct application. Thus, the decisions of this Court are not precedent, but are the only source of a dynamic interpretation of the Convention. The scientist also noted that the ECHR decision is a new type of source of law that is not part of the usual classification of sources of law for on precedent and codified norm [3, c. 24].

Another scientist – K. Ismaylov, concluded that the most widespread views on the legal nature of the decisions of the ECHR are their understanding as interpretative acts and judicial precedents. Conversely, Y. Popova points out that the case law of the ECHR, at least repeatedly confirmed, can be difficultly categorize as well-established judicial practice, because the practice of the ECtHR is not a practice of the courts of the national judicial system, its decisions are valid because they have nature of the convincing precedents [2, p. 62].

It is necessary to mention, that this Court can significantly influence the quality of the work of the Supreme Court and the condition of the judicial practice in the state, for example, by paying attention to the inconsistency of the legal positions of the highest judicial body of the state. Thus, considering the case «Serkov v. Ukraine» (application no. 39766/05), the ECHR noted the inconsistency of the legal positions of the Supreme Court of Ukraine. It was found, that on January 15, 2003, the Supreme Court of Ukraine made a decision that allow application of the exemption from value added tax to import transactions carried out by a single (unified) taxpayer. In future, on December, 23, 2003, the Supreme Court of Ukraine applied the opposite approach, establishing that exemption from VAT can not apply to import transactions carried out by such taxpayers. According to the ECHR, the lack of transparency negatively affects public confidence and faith in the law, as well as the predictability of court decisions. The Court also noted that the possibility of different interpretations of the same provisions of the law was mainly due to gaps in national legislation on this issue.

In the case «Sokurenko and Strigun v. Ukraine» (application No. 29458/04 and No. 29465/04), the ECHR considers that, having exceeded its powers, which were clearly set out in the Commercial Procedural Code, the Supreme Court can not be considered as the court which was established by law in the sense of clause 1 of Art. 6 of the Convention relating to the proceedings complained. This led to the practice of EU decisions in some cases [4, p. 16-17, 40].

In our opinion, ensuring the unity of the judicial practice of the ECHR also uses non-procedural mechanisms. Thus, the ECHR systematically issues manuals on the correct application of the articles of the Convention, for example, Art. 4 «Prohibition of slavery», art. 5 «Right to freedom», and separate reviews of judicial practice of the Court on one or another issue.

Concerning the possible cooperation between the ECHR and the Supreme Court, we share the opinion of S. Shevchuk, who drew attention to the need to reconcile court practice between this court and the courts of the national system, including the Supreme Court. It's necessary to mention, that the ECHR does not assess the correct application of domestic law and does not play the role of the highest judicial authority, but only intervenes when states «do not work» at the national level and do not stop violating rights and freedoms [5, p. 91].

References:

1. Annual reports. Web-site of the European Court of Human Rights. URL: https://www.echr.coe.int/Pages/home.aspx?p=court/annualreports&c=
2. Margelo M. Pretsedent, yakiy zobov'yazue: deyaki aspekti sutnosti rishen Evropeyskogo sudu z prav lyudini v pravoviy sistemi kontinentalnogo prava. Visnik akademiyi advokaturi Ukrayini. 2013. № 3(28). Pp. 62–67.
3. Marchenko A.A. Pretsedentniy harakter rishen Evropeyskogo sudu z prav lyudini v pravoviy sistemI Ukrayini. Mitna sprava. 2013. № 6. Pp. 23–28. URL: http://nbuv.gov.ua/UJRN/Ms_2013_6_5.
4. Fuley T.I. Zastosuvannya praktiki Evropeyskogo sudu z prav lyudini v administrativnomu sudochinstvi: Naukovo-metodichniy posibnik dlya suddiv. 2-ge vid. vipr., dopov. K., 2015. 128 P. URL: http://www.osce.org/uk/ukraine/232691? download=true.
5. Shevchuk S. Evropeyskiy sud z prav lyudini ta ukrayinska sudova sistema: neobhidnist uzgodzhennya sudovoyi praktiki. Pravo Ukrayini. 2011. № 7. Pp. 88–92.