

IMPACT OF DIRECT EFFECT OF CONSTITUTIONAL NORMS AND PRACTICE OF THE EUROPEAN UNION ON THE EFFICIENCY OF HUMAN RIGHTS' REALIZATION AND PROTECTION

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ABSTRACT

It has been emphasized that the norms of the Constitution of Ukraine and the norms of the Convention for the Protection of Human Rights and Fundamental Freedoms are correlated in structure, form of action and features of application that allows determining the conceptual features for the formation of the mechanism of realizing and applying the Constitution of Ukraine as norms of direct effect. It has been emphasized that the central idea is the uneventful application of the norms of the Constitution of Ukraine and the Convention for the Protection of Human Rights and Fundamental Freedoms at the stages of realizing human rights and their protection due to the similar nature and legal structure of their norms. It has been noted that the use of such an approach creates an objective opportunity to establish whether there were violations of any requirements at the stages of: protecting such a right (existence and application of preventive measures), implementing the right (obstacles to achieving a certain good by a person) and protecting human right (taking sufficient and effective measures aimed at restoring the person's status). It has been stated that the norms of the Constitution of Ukraine, given their legal properties, can be applied similarly to the way how the European Court applies the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms. Considering the provisions of the current procedural legislation of Ukraine on the powers of courts, it has been proved that human rights are realized and protected in out-of-court and judicial manner exclusively and directly on the basis of the norms of the Basic Law. It has been noted that the forms of applying the Convention for the Protection of Human Rights and Fundamental Freedoms should be understood as methods of applying the norms of the Convention for the Protection of Human Rights and Fundamental Freedoms by the authorized subjects to certain legal relations that is expressed in the relevant acts, namely: literal application – carrying out law-enforcement activities on the basis of the norms of the Convention for the Protection of Human Rights and Fundamental Freedoms without their interpretation; expanding application – the implementation of law-enforcement activities on the basis of the norms of the Convention for the Protection of Human Rights and Fundamental Freedoms as a result of their interpretation.

Key words: Constitution of Ukraine, Direct Effect of the Norms of the Constitution of Ukraine, Analogy of Law, Realization and Protection of Human Rights, Mechanism of Realizing Human Rights, Forms of Realizing and Applying Legal Norms, European Court of Human Rights

INTRODUCTION

The Constitution of Ukraine (Law of Ukraine, 1996) proclaims a human being, his or her life and health, honor and dignity, inviolability and security as the highest social value. The enshrinement of human rights in the Constitution of Ukraine is the main guarantee of their realization and protection. Part 3 of the Art. 8 of the Basic Law establish that the norms of the Constitution of Ukraine are norms of direct effect. Therefore, each constitutional norm can be directly applied within law-enforcement activities.

However, the method of enshrining human rights in the Constitution of Ukraine does not guarantee the effectiveness of direct effect of constitutional norms in the process of their realization and protection. As a result, the level of the realization of human rights and their protection carried out by public authorities and local self-government agencies is unsatisfactory.

The European Court of Human Rights in its rulings against Ukraine recognizes the low quality of the regulatory framework as one of the main reasons for the inadequate protection of human rights, which results in difficulties in the application of regulatory legal acts. In particular, the European Court of Human Rights in the cases of *Mikhaylyuk & Petrov vs. Ukraine* (Application No 11932/02) and *Poltoratskiy vs. Ukraine* (Application No 38812/97) recalls that the requirement “in accordance with the law” presupposes the sufficient quality of the national legislation: its availability to the relevant person, who can actually foresee the consequences of such an act’s application, as well as the compliance of national legal acts with the rule of law principle.

LITERATURE REVIEW

The provisions of Chapter II of the Constitution of Ukraine (1996) “Human and Citizens’ Rights, Freedoms and Duties” textually repeat to a great extent the wording of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention, 1950). Accordingly, the case law of the European Court of Human Rights, which ensures the protection of the Convention rights and freedoms, can be an example of the direct application of the norms of the Convention. Similarly, the approaches to the interpretation of the Articles of the Convention for the Protection of Human Rights and Fundamental Freedoms applied by the European Court of Human Rights can be as guidelines for national case law.

Ukraine acceded to the Convention for the Protection of Human Rights and Fundamental Freedoms on July 17, 1997, by adopting the Law of Ukraine “On Ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950, the First Protocol and Protocols 2, 4, 7 and 11 to the Convention” dated from July 17, 1997. The Convention was ratified and, accordingly, the application of its provisions was legalized.

According to the Art. 19 of the Convention for the Protection of Human Rights and Fundamental Freedoms, there shall be set up a European Court of Human Rights to ensure the observance of the engagements undertaken by the High Contracting Parties in the Convention and the Protocols thereto.

According to Part 1 of the Art. 32 of the Convention for the Protection of Human Rights and Fundamental Freedoms, the jurisdiction of the European Court shall extend to all matters concerning the interpretation and application of the Convention and the Protocols thereto which are referred to it as provided in Articles 33, 34, 46 and 47.

The study of the issue of legal force and direct effect of the norms of the Constitution of Ukraine became relevant on June 26, 1996.

The action of the Basic Law is a condition and moment of its realization, integration into social practice, realization of citizens’ rights and freedoms. The action should be understood as a regulatory influence of the Constitution on public relations, which can be carried out directly, in

conjunction with other legal norms that often determine the procedure for implementing the norms of the Basic Law, and indirectly – after their preliminary specification in other legislative acts. The direct effect of the constitutional norms is inherent in all forms of implementing the norms of law: execution, use, application. The effect of the constitutional norms can take place not only within the framework of constitutional legal relations between specific subjects, but also in the form of adopting legislative acts provided by the Constitution, as well as acts of executive agencies. Thus, the norms of the Constitution directly act if the relevant social relations are regulated by the constitutional means and those means are sufficient to resolve a specific life situation.

The Constitution, according to Boryslavskyy, is a constant factor of state and legal impact on the development of society and the state. The concept of the implementation of the Constitution, according to the author, should be understood as a system of measures aimed at putting into practice the current Constitution, *i.e.*, systematic, permanent, purposeful activities of public authorities, local self-government agencies and their officials, citizens and their associations (Boryslavskyy, 2003).

There are three levels of implementing the constitution according to Savchyn:

- 1) Micro level – the implementation of constitutional provisions and norms
- 2) The meso-level, which consists of socio-political debates on the ways of implementing the constitution, constitutional culture and consciousness, legal regimes, constitutional responsibility.
- 3) Macro level direct effect of the constitutional norms, the state of the current legislation and the mechanism of social protection (Savchyn, 2018).

Chystokolyaniy in the dissertation research “Constitutional and Legal Norms in Ukraine” notes that the constitutional norms have a special procedure of action. In accordance with Part 3 of the Art. 8 of the Basic Law direct effect means that other laws directly provided by the constitutional provisions are issued for the execution of the norms of the Constitution of Ukraine, and direct effect of the norms of the Constitution of Ukraine within law-enforcement sense means that all subjects of the constitutional law are primarily guided by the norms of the current Constitution. However, the direct nature of the action is not applied to all norms of constitutional law, but only to those that are objectified in the Constitution of Ukraine. Constitutional and legal norms, which are reflected in other sources of constitutional law, are not endowed with the properties of the norms of direct effect (Chystokolyaniy, 2005).

Todyka pointed out that direct effect should be considered in both legislative and law-enforcement aspects. Direct effect of the Constitution in the legislative aspect means that other laws are issued to execute its norms, in particular, specified in the text of the Constitution; direct effect in the law-enforcement aspect is the use of constitutional norms by state authorities and public associations (Todyka, 2000).

Onischenko in the dissertation research “The Constitution of Ukraine as the Main Source of Constitutional Law of Ukraine” notes that the effect of the Constitution can be considered in two aspects: static and dynamic. The essence of the static aspect is that the Constitution is valid from the moment of the announcement on its introduction into operation. The second aspect of the Constitution’s effect – dynamic – is denoted in the Basic Law by the concept of “direct effect” (Onischenko, 2005).

Principle of Legal Certainty is an Important Part of the Supremacy of the Law and Constitutes a Set of Requirements to Organization and Functioning of the Legal System with Intent to Secure a Stable Legal Status of a Person through Improvement of the Processes of Law-Making and Law Enforcement (Kurylo, Teremetskyi & Duliba, 2020).

For example, Teremetskyi, in the context of some relevant areas of law-enforcement,

emphasizes the role of the Constitution of Ukraine in regulating tax relations or the importance of taking into account the European practice in the context of protecting the rights of personal data of the subjects (Teremetskyi, 2011; Teremetskyi, 2015).

Given the above, we can distinguish the main features of the norms of the Constitution of Ukraine: ensuring the effect solely by virtue of enshrining the relevant provisions in the text of the Basic Law; is the embodiment of objective law that does not require active actions in order to extend to certain legal relations; extends to all legal relations arising on the territory, where there is the state sovereignty of Ukraine; is different from other regulatory legal acts in regard to the distribution on the territory, according to the range of people and in time; is embodied in the form of direct and indirect effect.

RESEARCH METHODOLOGY

To achieve the objectives of the study, the authors have used a set of methods that provide a comprehensive analysis of all major issues of the topic, in particular by applying the comparative and legal method we analyze the provisions of Ukrainian laws, study the relevant decisions of the European Court of Human Rights in their partial relationship with the provisions of the Ukrainian laws and study the role and significance of the norms of the Convention for the Protection of Human Rights and Fundamental Freedoms under direct application of the norms of the Constitution of Ukraine in the field of the realization and protection of human rights.

RESULTS AND DISCUSSION

The text of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter – the Convention) was approved and signed on the Session of the Committee of Ministers in Rome on November 4, 1950.

Preamble of the Convention states: “The governments signatory hereto ... Considering that the aim of the Council of Europe is the achievement of greater unity between its members and that one of the methods by which that aim is to be pursued is the maintenance and further realisation of human rights and fundamental freedoms; Reaffirming their profound belief in those fundamental freedoms which are the foundation of justice and peace in the world and are best maintained on the one hand by an effective political democracy and on the other by a common understanding and observance of the human rights upon which they depend; Being resolved, as the governments of European countries which are like-minded and have a common heritage of political traditions, ideals, freedom and the rule of law, to take the first steps for the collective enforcement of certain of the rights stated in the Universal Declaration, Have agreed as follows: ...» (Convention, 1950).

Systematic analysis of the provisions of the Preamble to the Convention leads to the conclusion that the purpose of the application of the norms of the Convention by the Member States is the effective provision, recognition and observance of human rights through a common understanding of these rights.

Thus, the Convention and its Protocols allocate the list of such human rights and fundamental freedoms as: right to life (Art. 2 of the Convention); right to liberty and security (Art. 5 of the Convention); right to a fair trial (Art. 6 of the Convention); right not to be tried or punished twice (Art. 4 of Protocol No. 7); right of appeal in criminal matters (Art. 2 of Protocol No. 7); compensation for wrongful conviction (Art. 3 of Protocol No. 7); right to respect for private and family life (Art. 8 of the Convention); right to marry (Art. 12 of the Convention); equality between spouses (Art. 5 of Protocol No. 7); freedom of thought, conscience and religion (Art. 9 of the Convention); freedom of expression (Art. 10 of the Convention); freedom of assembly and association (Art. 11 of the Convention); right to an effective remedy (Art. 13 of the Convention);

protection of property (Art. 1 of the Protocol); right to education (Art. 2 of the Protocol); right to free elections (Art. 3 of the Protocol); freedom of movement (Art. 2 of Protocol No. 4).

Besides, the provisions of the Convention and its Protocols indicate the prohibition of: prohibition of torture or inhuman or degrading treatment or punishment (Art. 3 of the Convention); no punishment without law (Art. 7 of the Convention); prohibition of slavery and forced labour (Art. 4 of the Convention); general prohibition of discrimination (Art. 1 of Protocol No. 12); prohibition of imprisonment for debt (Art. 1 of Protocol No. 4); prohibition of expulsion of nationals (Art. 3 of Protocol No. 4); prohibition of collective expulsion of aliens (Art. 4 of Protocol No. 4); abolition of the death penalty (Art. 1 of Protocol No. 6).

An important achievement for the international mechanism of human rights protection, as a result of the adoption of the Convention, was the creation of the European Court of Human Rights (hereinafter – the European Court).

Thus, in accordance with the Art. 19 of the Convention to ensure the observance of the engagements undertaken by the High Contracting Parties in the Convention and the Protocols there to, there shall be set up a European Court of Human Rights (Convention, 1950).

As of 2021, 47 States have ratified the Convention (including with reservations) and, as a result, have committed themselves to the obligations set out in its Preamble.

As a general rule, constitutions (constitutional acts) of democratic states contain provisions on the absolute priority given to human rights, their effective protection.

Thus, the purpose of every political union is to preserve natural and inalienable human rights in accordance with the provisions of the Declaration of the Rights of Man and of the Citizen of 1789 (Law of France, 1789).

According to the Art. 1 of the Basic Law of the Federal Republic of Germany (Law of Germany, 1949), the German people recognize the inviolable and inalienable human rights as the basis of every human community, peace and justice in the world. The following fundamental rights are binding for the legislature, executive power and judicial system as a directly applicable law.

According to Articles 2 and 3 of the Constitution of the Italian Republic (Law of Italy, 1947), the Republic recognizes and guarantees the inalienable human rights – both of individuals and social entities, where these individuals are realized, and requires the performance of inalienable responsibilities arising from political, economic and social solidarity. The Republic's objective is to eliminate obstacles of economic and social nature that restrict the freedom and equality of citizens, hinder the full development of the human personality and the effective participation of all workers in the political, economic and social organization of the state.

Part 2 of the Art. 3 of the Constitution of Ukraine state that human rights and freedoms and their guarantees determine the essence and orientation of the activity of the State. The State is answerable to the individual for its activity. To affirm and ensure human rights and freedoms is the main duty of the State.

According to the content of the Art. 46 of the Convention, the High Contracting Parties undertake to abide by the final judgment of the European Court in any case to which they are parties (Convention, 1950).

Given the competence of the European Court and its doctrinal approach to resolving cases, the decision of the European Court is a certain “standard” for the protection of human rights and freedoms in practice. Moreover, the decisions of the European Court are recognized as a source of law in some countries (for example, the Art. 17 of the Law of Ukraine “On Enforcement of Decisions and Application of the Case Law of the European Court of Human Rights”).

At the same time, we believe that national judicial authorities are not deprived of the procedural opportunity to protect human rights and freedoms effectively, following the example of the European Court.

Thus, the articles of the constitutions (constitutional acts) of democratic states, which enshrine human rights and freedoms in the vast majority according to the structure and content – are similar to the Articles of the Convention. In particular, such provisions are set out in the form of declarative norms, which generally contain statements about the relevant human right and determine the possibility (or impossibility) of its restriction under certain conditions.

Given the legal nature of human rights and, in particular, given that their list is not exhaustive, the application of such norms is possible only in the light of their lateral interpretation.

As a rule, constitutions are endowed with the highest legal force in the hierarchy of regulatory legal acts of the national system and the legal property of direct effect, which guarantees the direct implementation of such norms in regard to their observance, implementation, use and application by the subjects of the relevant legal relations.

The supreme legal force of the constitution and the direct effect of its norms are those legal properties that directly ensure the implementation of constitutional provisions and without the need for itemization in other legislative acts.

We emphasize that given the provisions of the Art. 32 of the Convention, the European Court is exclusively guided by the provisions of the Convention: the jurisdiction of the European Court extends to all matters of interpretation and application of the Convention and its Protocols submitted to it under the Articles 33, 34, 46 and 47.

The European Court In finding violations of the Convention absolutizes the possibility of realizing human rights and freedoms. This position follows directly from the provisions of the Convention: it should be noted that the norms guarantee human rights and freedoms and establish the possibility for restricting them as an exception and compliance with appropriate guarantees.

Thus, the European Court, considering the relevant facts, directly establishes the lawfulness, reasonableness and proportionality of any restriction complained by the applicant.

In addition, the legal positions of the European Court indicate that the rights and freedoms that are not directly enshrined in the Convention are subject to the protection. It is confirmed by the following statement: "...the norms of the Convention should be applied with some flexibility and without undue formalism. This means, in particular, that the European Court must realistically assess both existence of formal means of legal protection and general context where they are used, as well as the applicant's personal circumstances". (Case of Kucheruk V. Ukraine).

The European Court, upholding the rule of law, subsidiarity applies some norms of the Convention – in combination with others: a violation of one applicant's right resulted in an unlawful restriction of another right (for example, Case of Pichkur V. Ukraine establishes the violation of the Art. 14 of the Convention combined with the Art. 1 of the Protocol, given that the authorities did not provide any justification for depriving the applicant of his pension merely because he had lived abroad).

It should be noted that, according to the case law of the European Court of Human Rights, it is necessary to establish whether violations of any requirements were committed at the stages of: security of such a right (existence and application of preventive measures), realization of the right (obstacles in the process of achieving a certain good by a person) and protection of human right (taking sufficient and effective measures to restore the status of a person).

Thus, the European Court finds as violations both deprivation of a person of a certain right or its denial by public authorities and any case of inadequate security of such a right, creation of obstacles to its realization and ineffectiveness of protective measures.

This gives grounds to conclude that the European Court supports the position on the complex (structural) nature of human rights and freedoms, in particular, by highlighting certain components in their structure that are subject to independent protection.

Such practice and application of lateral interpretation of the norms of the Convention gives a procedural opportunity for the European Court to be limited to a single regulatory legal act to ensure the effective protection of human rights and freedoms.

If we analyze the essence of the violations recognized by the European Court in its decisions, we can conclude that they are established by detecting non-compliance with any element of the relevant human right, but not just the state's denial of such a right in general. Thus, the analysis of the case law of the European Court gives grounds to distinguish the following general and universal violations of human rights and freedoms arising from their content:

- 1) Insufficient "quality of the law", which results in its inaccessibility to individuals, difficulty in application to public authorities, the possibility of ambiguous interpretation and nebulosity;
- 2) Omission of public authorities to ensure the realization of human rights and freedoms. In particular, such omission may be manifested in: non-adoption of the relevant regulatory legal acts, inadequate conditions for the realization of human rights; lack of preventive measures that would prevent the violation of such rights;
- 3) Actions of state authorities that were not based on the law (executed not within the limits and not in the manner prescribed by laws, as well as in the absence of appropriate powers);
- 4) Inconsistency of interference in human rights with the criteria of "necessity in a democratic society" and proportionality, achievement of a "legitimate purpose";
- 5) Lack of effective investigation of the violation of the relevant human right or the establishment of its excessive duration.

Similar structure of the construction and same legal properties of the norms of the constitutions (constitutional acts) of democratic states and the Convention give grounds for the conclusion about the possibility of their standard application and, as a result, increase of the efficiency for protecting human rights and freedoms at the national level (Motkova, 2018).

Thus, national judicial authorities, given the legal properties of the Constitution (constitutional acts), can apply the latter in the same way as the European Court applies the provisions of the Convention, in particular, by establishing whether there were violations of any requirements at the stages of: protection of such a right (existence and application of preventive measures), realization of the right (obstacles in the process of achieving a certain good by a person) and protection of human rights (taking sufficient and effective measures to restore the person's status).

CONCLUSION & RECOMMENDATION

The Constitutional Court of Ukraine applies the norms of the Basic Law directly in its jurisdictional activity by interpreting them literally and broadly. Direct effect of the norms of the Constitution of Ukraine has an absolute nature and extends both to the requirements on the essence of regulatory legal acts and to their content, as well as to the method of formulation and adoption procedure. The practice of the Constitutional Court of Ukraine confirms that the norms of the Constitution of Ukraine are subject to the realization in any form and in all legal relations that take place in the state.

Taking into account the analysis of the role and significance of the norms of the Convention for the Protection of Human Rights and Fundamental Freedoms in the direct application of the Constitution of Ukraine in the field of the realization and protection of human rights, we can suggest the following content of the mechanism of applying the norms of the Convention for the Protection of Human Rights and Fundamental Freedoms by the European Court in order to protect human rights and freedoms by including the following elements: establishment of the circumstances of the case and the legal norm to be applied in the appropriate case; clarification of the content of the legal norm, its interpretation in combination with the circumstances of a

particular case; taking a decision in the case; issuance of an act for applying the norm of law. The use of such a mechanism gives grounds to establish whether there were violations of any requirements at the stages of: protection of such a right (existence and application of preventive measures), realization of the right (obstacles in the process of achieving a certain good by a person) and protection of human rights (taking sufficient and effective measures to restore the person's status). Thus, the similar structure of the construction and similar legal properties of the norms of the Constitution of Ukraine and the Convention for the Protection of Human Rights and Fundamental Freedoms give grounds to conclude on the possibility of their typical application.

The norms of the Constitution of Ukraine, given their legal properties, *i.e.*, according to the structure, form of effect, and peculiarities of application, may be applied similarly to the procedure of application of the Convention for the Protection of Human Rights and Fundamental Freedoms by the European Court (in particular, by determining possible facts of violation of any human rights at the stages of: protection (application of preventive measures), realization of the right (overcoming obstacles in the process of achieving a certain good by a person) and protecting the right (taking sufficient and effective measures to restore the person's status).

Violation on the realization of human rights is any interference into the mechanism, namely: denial of the fact of person's acquiring the status that provides the realization of such a right; illegal actions of public authorities, local self-government agencies and third parties aimed at narrowing the content of such rights, terminating the process of their realization; illegal omission of state authorities and local self-government agencies in case of non-fulfillment of the relevant powers aimed at ensuring the realization of such human rights; creating obstacles for achieving the good by a person, which is the purpose of the realization of the relevant right.

REFERENCES

- Boryslavskyy, L.V. (2003). Some theoretical and practical issues for the realization of the Constitution of Ukraine. *Problems of state formation and protection of human rights in Ukraine*, 121-122.
- Case of Kucheruk, V. Ukraine. (2007). Judgment. European Court of Human Rights September 6, (Application No. 2570/04). Strasbourg.
- Case of Mikhaylyuk & Petrov, Ukraine.V. (2009). Judgment. European Court of Human Rights of December 10, (Application No 11932/02). Strasbourg.
- Case of Pichkur, Ukraine, V. (2013) Judgment. European Court of Human Rights November 7, (Application No 10441/06).
- Case of Poltoratskiy Ukraine. V. (2003) Judgment. European Court of Human Rights of April 29,
- Chystokolyaniy, Y.V. (2005) Constitutional legal in Ukraine. Extended abstract of candidate's thesis, Kyiv, Ukraine. V.M. Koretsky Institute of State and Law of the National Academy of Sciences of Ukraine.
- European Convention on Human Rights. (1950). Council of Europe. Rome of November 4.
- Kurylo V., Teremetskyi V., & Duliba, Y. (2020). Property protection in the decisions of the european court of human rights in the field of taxation. *Journal f Law and Political Sciences*, 23/B (2), 215–247.
- Law of France. (1789). The declarations of the right of man and of the citizen of August 26.
- Law of Germany. (1949). Basic law for the federal republic of Germany of May 23.
- Law of Italy. (1947). Costituzione della Repubblica Italiana of December 27.
- Law of Ukraine. (1996). Constitution of Ukraine of June 28.
- Motkova, O.D. (2018). Comparative analysis of the norms of the Constitution of Ukraine and the Convention for the Protection of Human Rights and Fundamental Freedoms (in accordance with the structure, form of effect and peculiarities of application). *Man and the law: Public and legal dimension*, 12-14.
- Onischenko, O.V. (2005). The Constitution of Ukraine as the main source of the Constitution law of Ukraine. Extended abstract of candidate's thesis, Kyiv, Ukraine. Taras Shevchenko National University of Kyiv.
- Savchyn, M.V. (2018). Modern constitutionalism tendencies in the context of globalization and legal pluralism. Uzhgorod.
- Teremetskyi, V.I. (2011). Role of the constitution of Ukraine on regulating tax relations. *Constitution of Ukraine – the basis for building the legal democratic social state and formation of the legal system*, 394-397.
- Teremetskyi, V.I. (2015). Subjects of relations related to personal data. *Law and Safety*, 2(57), 171-176.
- Todyka, Y.U.M. (2000). *Constitution of Ukraine: Problems of theory and practice*. Kharkiv: Fact.