THE ROLE OF DECISIONS OF THE EUROPEAN COURT OF HUMAN RIGHTS IN THE LEGAL MECHANISM OF ENSURING THE CITIZEN'S RIGHT TO PARTICIPATE IN THE MANAGEMENT OF STATE AFFAIRS

BASALAYEVA Alla Valentynivna - PhD, Lecturer of Constitutional Law Department of Taras Shevchenko National University of Kyiv
ORCID: 0000-0001-7558-2621
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The article is devoted to the role of the decisions of the European Court of Human Rights in the normative-legal mechanism of ensuring the citizen's right to participate in the management of state affairs. It is noted that the right of a citizen enshrined in the Constitution of Ukraine is declarative if an effective regulatory and legal mechanism for its provision has not been created. The decision of the European Court of Human Rights is designed to ensure the effectiveness of this mechanism not only in theory, but also in practice.

Decisions of the European Court of Human Rights, which raised issues of violation of the right of citizens to participate in the management of state affairs (persecution of political opponents, political pressure on the judiciary, dismissal and prohibition of access to public service positions of some categories of civil servants, etc.) contributed to the identification of the reasons for the violation by Ukraine the norms of the Convention on the Protection of Human Rights and Fundamental Freedoms and protocols thereto, elimination of these causes; make it possible to predict what violations may be committed by the state as a result of the adoption of certain normative legal acts that regulate social relations arising from the exercise of the right of a citizen to participate in the management of state affairs and the right to protect this right in the event of its violation, or as a result of the application of one or other practices of its application, which may arise, administrative practices and prompts to take preventive measures (ensuring legal examination of draft laws, etc.) so that such violations do not occur; ensure compliance by Ukraine with the provisions of the Convention; ensure restoration of the violated citizen's right to participate in the management of state affairs; contribute to the implementation of European standards of the human right to participate in the management of state affairs into national legislation and the Ukrainian judiciary and administrative practice, as well as to create prerequisites for reducing the number of applications to the European Court of Human Rights against Ukraine; encourage professional training on the study of the Convention and the practice of the European Court of Human Rights regarding the right of citizens to participate in the management of state affairs for those categories of employees whose professional activity is related to law enforcement; ensure elimination of deficiencies of a systemic nature, termination of violations of the Convention caused by these deficiencies, and ensure maximum compensation for the consequences of these violations.

Key words: normative-legal mechanism for ensuring the citizen's right to participate in the management of state affairs, the European Court of Human Rights, decisions of the European Court of Human Rights, sources of law, international standards of the citizen's right to participate in the management of state affairs.

Formulation of the problem.

Any constitutional right is declarative if there is no effective national legal mechanism for its enforcement [1; 2]. The constitutional right to participate in the management of state affairs, including in the exercise of control in the financial and economic sphere, both di-

rectly and through representatives elected to state authorities, is the right of a citizen that allows him to participate in the political life of society [3]. At the same time, there are not only a few cases when the shortcomings of the national regulatory and legal mechanism for ensuring this right are used to settle accounts with political opponents (the decision of the European Court of Human Rights in the case "Lazarenko v. Ukraine", "Tymoshenko v. Ukraine", etc.), political pressure on the judiciary (the decision of the European Court of Human Rights in the case "Olexandr Volkov v. Ukraine", etc.), dismissal and prohibition of access to civil service positions of some categories of civil servants without observing the criteria established by the practice of the European Court of Human Rights , and in violation of the general principles of law recognized by civilized nations (the decision of the European Court of Human Rights in the case "Polyakh and others v. Ukraine", etc.). The consequence of this is the finding by the European Court of Human Rights that Ukraine has violated certain norms of the Convention, which indicates the improper fulfillment of international obligations and the ineffectiveness of the national mechanism for ensuring the constitutional right of a citizen to participate in the management of state affairs. In the decisions against Ukraine, the European Court of Human Rights states the existence of systemic problems that require their solution because they endanger the effectiveness of the conventional mechanism for the protection of human rights and fundamental freedoms (pilot decisions of the European Court of Human Rights).

State of problem research

In the science of constitutional law, the question of the role of the decisions of the European Court of Human Rights in the mechanism of regulatory legal protection of certain human rights was raised in the work of Professor Lyudmyla Deshko [4-7], Oksana Vasylchenko [9; 10; 11], Olga Lotyuk [12; 13] and other scientists. But the change in social relations, the state of war in Ukraine, the issuing of new decisions by the European Court of Human Rights on the issues of limiting the right of a citizen to participate in the management of state affairs, require new comprehensive studies and the development of those scientific and practical approaches that were laid down by the works mentioned above Ukrainian scientists.

The purpose of this article is to determine the role of the decisions of the European Court of Human Rights in the national regulatory mechanism of the citizen's right to participate in the management of state affairs.

Presenting main material

The jurisdiction of the European Court of Human Rights extends to all questions of interpretation and application of the Convention and its protocols submitted to it for consideration in accordance with Articles 33, 34, 46 and 47 [14; 15]. According to Clause 1 of Art. 46 of the Convention: "The High Contracting Parties undertake to comply with the final decisions of the Court in any cases to which they are parties" [14].

The decisions of the European Court of Human Rights are as follows: 1) the final decision of the European Court of Human Rights in the case against Ukraine, which found a violation of the Convention on the Protection of Human Rights and Fundamental Freedoms; 2) the final decision of the European Court of Human Rights regarding just satisfaction in the case against Ukraine; 3) the decision of the European Court of Human Rights regarding the amicable settlement in the case against Ukraine; 4) the decision of the European Court of Human Rights on approval of the terms of a unilateral declaration in the case against Ukraine [16].

Article 10 of the Law of Ukraine "On the Implementation of Decisions and Application of the Practice of the European Court of Human Rights" defines additional measures of an individual nature, which are used to ensure the restoration of the violated rights of the debt collector [16].

Additional measures of an individual nature are:

a) restoration, to the extent possible, of the previous legal status that the debt collector had before the violation of the Convention;

b) other measures provided for in the Decision.

Restoration of the previous legal status of the debt collector is carried out, in particular, by: a) re-examination of the case by the court, including resumption of proceedings in the case; b) re-examination of the case by an administrative body. Control over the implementation of additional measures of an individual nature, provided for in the Court's decision, which are carried out under the supervision of the Committee of Ministers of the Council of Europe, is entrusted to the Representation Body.

The Committee of Ministers of the Council of Europe in its Recommendation N R(2000)2 to member states "Regarding the re-examination or resumption of proceedings in certain cases at the national level after the adoption of decisions by the European Court of Human Rights" dated January 19, 2000 [17] notes that the practice supervision of the implementation of the Court's decisions showed that retrial or resumption of proceedings proved to be, under certain circumstances, the most effective – if not the only – means of achieving restitutio in integrum.

The Committee of Ministers of the Council of Europe called on the Contracting Parties, in particular, to review their national legal systems in order to ensure adequate opportunities for retrial, including retrial, in cases where the Court recognized a violation of the Convention, in particular:

a) when the aggrieved party continues to suffer significant negative consequences of the decision taken at the national level, consequences for which just satisfaction was not an adequate remedy and which cannot be remedied other than by reconsideration or resumption of proceedings;

b) when the decision of the Court leads to the conclusion that 1) the contested decision of the national court contradicts the Convention in substance, or 2) the recognized violation was based on significant procedural errors or deficiencies that call into serious doubt the outcome of the contested proceedings at the national level.

The Law of Ukraine "On Ensuring the Right to a Fair Trial" dated February 12, 2012 [18] amended Art. 236 of the Code of Administrative Procedure of Ukraine dated December 7, 1984, Art. 354 of the Civil Procedure Code of Ukraine dated March 18, 2004, Art. 11115 of the Economic Procedural Code of Ukraine dated November 6, 1991, Art. 445 of the Criminal Procedure Code of Ukraine dated April 13, 2012, in accordance with which the right of a person in whose favor a decision was made by an international judicial institution, the jurisdiction of which is recognized by Ukraine, was made, to apply for review of court decisions was established. Such review of court decisions is carried out by the Supreme Court of Ukraine. Also, in the above-mentioned procedural codes of Ukraine, among the grounds for submitting an application for review of court decisions, the following was clearly established: establishment by an international judicial institution, the jurisdiction of which is recognized by Ukraine, violation of international obligations by Ukraine during the decision of this case by the court. The above-mentioned normative legal acts of Ukraine establish the deadline for submitting an application for revision of court decisions, the requirements for such application, and the procedure for its submission. In order to ensure the state's compliance with the provisions of the Convention, the violation of which is established by the Court's decision, to ensure the elimination of systemic deficiencies that are the basis of the violation identified by the Court, as well as to eliminate the basis for submitting to the Court statements against Ukraine caused by a problem that was already the subject of consideration by the Court , general measures are taken (Article 13 of the Law of Ukraine "On the Implementation of Decisions and Application of the Practice of the European Court of Human Rights").

Measures of a general nature are measures aimed at eliminating the systemic problem and its root cause specified in the Court's decision, in particular:

a) making changes to the current legislation and the practice of its application;

b) making changes to administrative practice;

c) provision of legal examination of draft laws;

d) provision of professional training on the study of the Convention and the practice of the Court of prosecutors, lawyers, law enforcement officers, workers of immigration services, other categories of workers whose professional activity is related to law enforcement, as well as to keeping people in conditions of deprivation of liberty;

e) other measures determined - subject to supervision by the Committee of Ministers of the Council of Europe - by the respondent state in accordance with the Court's decision with the aim of ensuring the elimination of deficiencies of a systemic nature, cessation of violations of the Convention caused by these deficiencies, and ensuring maximum compensation for the consequences of these violations.

In the resolution "Regarding decisions revealing the systemic problem underlying violations" dated May 12, 2004 [18], the Committee of Ministers suggested that the Court "indicate in its decisions on violations of the Convention what, in its opinion, constitutes a systemic problem , which is at the heart of the violation, and to the root cause of this problem (in particular, in the case when it can cause an increase in the number of appeals) in order to provide assistance to the states in finding an adequate solution to this problem, and to the Committee of Ministers in supervising the implementation of decisions ". In order to ensure the effective implementation of decisions made by the Court in such cases, the Court may apply the procedure of a "pilot" decision, which allows it to clearly indicate in such a decision the existence of structural problems underlying the violations, as well as specific means or measures, with the help of which the respondent state should correct the situation.

The court applied the "pilot" decision procedure, for example, in the case "Olexandr Volkov v. Ukraine" dated January 9, 2013 [19]. In §199 of the Decision, the European Court of Human Rights noted that "... this case shows serious systemic problems in the functioning of the judiciary in Ukraine. ... Moreover, it does not provide sufficient guarantees against abuse and improper application of disciplinary measures, which harms the independence of the judiciary, while the latter is one of the most important values that support the effectiveness of democracies" [19].

The European Court of Human Rights "considers that the nature of the established violations implies that for the proper implementation of this decision, the respondent state will be required to take a number of general measures aimed at reforming the system of judicial discipline. These measures should include legislative reforms, including reforming the institutional structure of this system. In addition, these measures should include the development of appropriate forms and principles of consistent application of national legislation in this area" (§200 of the decision of the European Court of Human Rights in the case "Olexandr Volkov v. Ukraine"). Therefore, the European Court of Human Rights emphasized that Ukraine should immediately implement the above-mentioned general reforms in its legal system. At the same time, the authorities of Ukraine must properly take into account this decision, the relevant practice of the Court and the relevant recommendations, resolutions and decisions of the Committee of Ministers (§201 of the decision of the European Court of Human Rights in the case "Olexandr Volkov v. Ukraine") [19].

Conclusions

The role of the decisions of the European Court of Human Rights is that they encourage the state to ensure the functioning of an effective not only in theory, but also in practice national mechanism for the implementation, protection and protection of the citizen's right to participate in the management of state affairs.

Decision of the European Court of Human Rights:

1) contribute to the identification of the reasons for Ukraine's violation of the norms of the Convention on the Protection of Human Rights and Fundamental Freedoms and its protocols, which regulate social relations that arise during the implementation, protection and protection of the citizen's right to participate in the management of state affairs, and the elimination of these reasons;

2) make it possible to predict what violations may be committed by the state as a result

of the adoption of certain normative legal acts that regulate social relations that arise in the exercise of the right of a citizen to participate in the management of state affairs, or as a result of the application of one or another practice of its application, which may to comply with administrative practices and encourages taking preventive measures (ensuring legal examination of draft laws, etc.) so that such violations do not occur;

3) ensure compliance by Ukraine with the provisions of the Convention;

4) ensure the restoration of the citizen's violated right to participate in the management of state affairs;

5) contribute to the introduction of European standards of the human right to participate in the management of state affairs into national legislation and the Ukrainian judiciary and administrative practice;

6) contribute to the creation of prerequisites for reducing the number of applications regarding violation of the right to participate in the management of state affairs to the European Court of Human Rights against Ukraine;

7) encourage those categories of employees whose professional activity is related to law enforcement to study the Convention and the practice of the European Court of Human Rights regarding the right of citizens to participate in the management of state affairs;

8) ensure the elimination of deficiencies of a systemic nature, termination of violations of the Convention caused by these deficiencies;

9) provide maximum compensation for the consequences of violations of the citizen's right to participate in the management of state affairs.

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РОЛЬ РІШЕНЬ ЄВРОПЕЙСЬКОГО СУДУ З ПРАВ ЛЮДИНИ В НОРМАТИВНО-ПРАВОВОМУ МЕХАНІЗМІ ЗАБЕЗПЕЧЕННЯ ПРАВА ГРОМАДЯНИНА НА УЧАСТЬ В УПРАВЛІННІ ДЕРЖАВНИМИ СПРАВАМИ

Статтю присвячено ролі рішень Європейського суду з прав людини в нормативно-правовому механізмі забезпечення права громадянина на участь в управлінні державними справами. Зазначається, що закріплене в Конституції України право громадянина є декларативним якщо не створено ефективного нормативно-правового механізму його забезпечення. Рішення Європейського суду з прав людини покликано забезпечити ефективність цього механізму не лише в теорії, а й на практиці.

Рішення Європейського суду з прав людини, в яких підіймалися питання порушення права громадян на участь в управлінні державними справами (переслідування політичних опонентів, політичний тиск на судову владу, звільнення та заборона доступу до посад державної служби деяких категорій державних службовців тощо) сприяли виявленню причин порушення Україною норм Конвенції про захист прав людини і основоположних свобод та протоколів до неї, усуненню цих причин; дозволяють прогнозувати які порушення можуть бути допущені державою внаслідок прийняття тих або інших нормативно-правових актів, які регулюють суспільні відносини, що виникають при реалізації права громадянина на участь в управлінні державними справами та права на захист цього права вразі його порушення, або внаслідок застосування тієї або іншої практики його застосування, що може скластися, адміністративної практи-

ки і спонукає вживати превентивні заходи (забезпечення юридичної експертизи законопроектів тощо), щоб такі порушення не відбулись; забезпечують додержання Україною положень Конвенції; забезпечують відновлення порушеного права громадянина на участь в управлінні державними справами; сприяють впровадженню в національне законодавство та українське судочинство і адміністративну практику європейських стандартів права людини на участь в управлінні державними справами, а також створенню передумов для зменшення числа заяв до Європейського суду з прав людини проти України; спонукають до професійної підготовки з питань вивчення Конвенції та практики Європейського суду з прав людини щодо права громадян на участь в управлінні державними справами тих категорій працівників, професійна діяльність яких пов'язана із правозастосуванням; забезпечують усунення недоліків системного характеру, припинення спричинених цими недоліками порушень Конвенції та забезпечує максимальне відшкодування наслідків цих порушень.

Ключові слова: нормативно-правовий механізм забезпечення права громадянина на участь в управлінні державними справами, Європейський суд з прав людини, рішення Європейського суду з прав людини, джерела права, міжнародні стандарти права громадянина на участь в управлінні державними справами.