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RIGHT TO JUST PROCESS IN THE JUDICATURE OF THE EUROPEAN COURT OF HUMAN RIGHTS

The contribution with the heading Interpretation and Application of the Chosen Aspects of the Right to Just Process in the Judicature of the European Court of Human Rights characterizes theoretical aspects of the right to just court procedure affirmed by Article 6 paragraph 1 of the European Convention on the protection of human rights and fundamental freedoms as one of the most basic rights to whom the contracting parts of the Convention grant to everybody who is in their jurisdiction. By their content they amend to the contribution of the decision of the European Court for human rights concerning the chosen aspects of the just court procedure which within its stable judicature is understood as the right to be able to get to a court and as the right to just court procedure as well.

Keywords: The European Court for Human Rights, The European Treaty on Protection of Human Rights and Basic Freedoms, Just Court Trial, Right to Access to Court, Right to Just Court Procedure.

Ондрова Ю. Право на справедливое правосудие в деятельности Европейского суда по правам человека. *Дана характеристика теоретических аспектов права на справедливый судовой процесс согласно пункта 1 статьи 6 Европейской конвенции о защите прав человека и основных свобод как одного из общих прав, которые участники Конвенции предоставляют каждому гражданину, кто находится в их юрисдикции. По содержанию они являются вкладом в решение Европейского суда по правам человека в отношении осуществления справедливого судопроизводства, которое в определенных пределах воспринимается как право на обращение в суд и право на рассмотрение в судовом процессе.*

Ключевые слова: Европейский суд по правам человека, Европейский договор о защите прав человека и основных свобод, справедливое судовое рассмотрение, право на доступ к суду, право на справедливое судовое рассмотрение.

Background. The European Court of Human Rights had been established by the member states of the European Council in 1959 in the French city Strasburg. Its prime task is to decide on claims on violation of rights anchored by the European Convention for the Protection of Human Rights and Basic Freedoms or by its additional protocols. The European Court for human rights is an international judicial body who provides the guarantee of

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rights which are mostly violated by the interstate interpretation of law. The violation of right which is protected by the European Convention on Human Rights and Basic Freedoms can appear not only by the acting but or not-acting which is in a contradiction with the inner-state legal order but by also which such legal order which is in compliance with it but the domestic state legal regulation is in disagreement with human rights protected by this Convention [1, p. 18]. The Convention is an international human and legal treaty which had become valid on 30th September 1953 by its ratification of ten contracting parties to whom gradually joined other states. From the systematic accomplishment of the Convention the basic goals and the sense of the agreement, especially the preamble, had been defined by the contacting states. The commitment to respect human rights are stated by Article 1, the catalog of basic human rights guaranteed to everybody by the upper contracting parts being valid for those who belong to their jurisdiction as it is affirmed by the regulations stated by Article 2–18 Head I. The procedural regulations applicable in connection with the claiming to reinstate the violated rights at the European Court for Human Rights are affirmed by Head II, and further regulations regarding activities of the Strasburg bodies on protection of rights are affirmed by Head III. In the course of several years regarding the existence of the European Convention for the protection of human rights and basic freedoms, its text has been amended by the additional protocols whose aim has been mainly to extend the existed catalog of human rights and basic freedoms and the modification of the Convention control mechanism.

The analysis of recent researches and publications. The content of the right to a fair trial is essentially constituted by the case-law of the European Court of Human Rights and the national courts of the countries that are parties of the European Convention for the Protection of Human Rights and Fundamental Freedoms. Significant findings from the chosen issue also bring extensive comments on the constitutional text or text of international conventions determining the content of the right to a fair trial [2]. Inspiration can also be the scientific studies and work dealing with the analysis and analysis of the guaranteed rights of Art. 6 and 7 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

The **aim** of the article. The aim of the contribution with the heading Interpretation and Application of the Chosen Aspects of the Right to Just Process in the Judicature of the European Court of Human Rights is to characterize theoretical aspects of the right to just court procedure affirmed by Article 6 paragraph 1 of the European Convention on the protection of human rights and fundamental freedoms as one of the most basic rights to whom the contracting parts of the Convention grant to everybody who is in their jurisdiction. By their content they amend to the contribution of the decision of the European Court for human rights concerning the chosen aspects of the just court procedure which within its stable judicature is understood as the right to be able to get to a court and as the right to just court procedure as well.

Materials and methods. The prime method applied in the presented article rests in the use of analyses and assessment of the available Judicature of the European Court of Human Rights and the European Convention on the Protection of Human Rights and Fundamental Freedoms and in this way to make the reader more familiar with the topic in question.

The results of the research. The right to just trial is amended by the Convention in the ruling № 6 as an integral part of the catalog of basic rights and freedoms. In case of Campbell and Fell against the United Kingdom [3], the European Court for Human Rights declared that «the guarantee of just procedure belongs to the most fundamental principles of every democratic society in compliance with the aims of individual regulations of the Convention». Without the real statement of the mentioned right and identification of conditions of its protection and possible correction in cases of its violation, the rest of basic rights and freedoms would be illusory and would have exclusively a declarative character without having their enforcement. The enumeration of rights, which the Convention in compliance with the citied article guarantees, is not an absolute one. It stands for the protection standard for everybody who is under the jurisdiction of contracting states of the Convention. The procedural protection of individuals is above the range of the Convention being extended by the judicature of the European Court for Human Rights, and what's more, by the interstate adjustment of individual rights in a definite contracting state which might guarantee a higher standard for the procedural protection of these rights.

Article 6 paragraph 1 contains the general demands related to the decision-making on civil rights, commitments and the decision-making on the justification of criminal accusation as well. Article № 6 paragraphs 2 and 3 guarantee some other rights which can be claimed only by an individual who faces the criminal accusation [4, p. 573]. In case Delcourt against Belgium [5] the European Court for Human Rights declared that «within the sense of the Treaty understanding of democratic society, the right to just execution of justice is placed on such an important place that the restrictive interpretation of Article 6 could not be in compliance with the aim and purpose of the citied regulation».

Within the sense of the European Court for Human Rights the right to just trial is understood firstly as the right to have an access to court, and secondly as the right to fair and just trial. The right to have an access to court is combined with the rights referring to the state obligations to build a court structure fulfilling the criteria confirmed by the Article 6 of the Convention and besides that to enable everybody to have an access to courts [1, p. 39]. In case of Golder against the United Kingdom [6] the European Court for Human Rights had solved the situation when the minister of domestic affairs had not granted a permission to the accused to contact the legal actor who might help the claimer to lay down a suit at law for insult of his honor against one of the superintendents. The principle,

according to which it must existed a chance to file a civil suit to court, belongs among the universally acknowledged fundamental lawful principles In the matter of question the European Court for Human Rights came to the conclusion that «by means of the interpretation devices their obligation has been to find out whether the access to court stands for the unified factor or whether it is an aspect of this right. Regulation № 6 paragraph 1 affirms the right to court in which the right to have an access to court is a part, it means the right to begin a court lawsuit in civil matters and that is only one of the aspects extended by the additional ones, such as guarantees prearranged by the mentioned Convention Article. All of them are related to the organization and composition of a court and the course of proceeding as well. In this way all of these mentioned aspects embody the right to just trial».

However, the right to access to court has it place in criminal indictment as well. In this case the stated right is provided not on the basis of laying down a case to court by the accused, but mostly, but not exclusively, on the foundation of accusation which is lay down by the specific state body. When deciding on the less serious delinquencies in its initial phase made by some administrative bodies and not by courts, then consequently even in the criminal matters the right to access a court might be done by laying down a case to court by the accused by means of the legal remedy against the decision which had been made by the administrative body regarding the legitimacy of the criminal indictment [4, p. 620]. In compliance with what has been put into attention the state is obliged to create a system of independent and impartial courts established by law who deal with cases respecting just, acting publicly and in a reliable appointed time regarding everybody who is under the jurisdiction of contracting states of the Convention. Courts are obliged to decide with required quality taking into consideration one's civil rights and commitments. Following these principles they decide on any criminal deed he/she is accused on.

The European Court for Human Rights repeatedly deals with the question of accessibility and conditions of the possible infringement of the right to access the court. In case of Ashingdane against the United Kingdom [7] they put into attention that «any encroachments declared by an inner- state law must not infringe an access to court in such a way or to such an extent which would violate the right of a certain person in its essential foundations. Such encroachments are in compliance with the Article 6 paragraph 1 of the Convention only under such conditions if they are followed by a legitimate aim and while the reasonable balance among the used means and the followed aim exists». Limitation in the access to court might be of a various character. They can be determined by a factual inner-state reality and thus it might legitimately limit an access to court being in compliance with Article 6 paragraph 1 of the Convention. The typical example may be the created immunity of certain persons by the domestic right and thus hampering them accusation. In case A. against the United Kingdom [8; 4, p. 632] the

European Court for Human Rights decided on the objection of the claimer who had felt offended by the insulting pronouncements of a Member of the House of Commons of the British Parliament. The Member of Parliament presented a speech concerning the claimer offending her of an impropriate behavior caused by her social status. The complainer had not been given any chance to defend herself against those pronouncements and the reason was the absolute immunity of the Member of Parliament. The European Court for Human Rights repeatedly stated that «parliamentary immunity follows the legitimate aims resting in the protection of the freedom of speech on the parliamentary grounds and at the same time safeguarding the power division between the legislative power and judicial power. The parliamentary immunity is the generally respected principle of the contracting parties and does not excessively limit the right to court access as it is guaranteed by Article 6 paragraph 1 of the Convention». Moreover the court declared that the plaintiff had ability to use other means in order to attain the right of correction. In compliance with what had been said the court concluded that the pronouncements presented by the Member of the House of Commons of the British Parliament might be considered to be not very correct ones, but the citied Article of the Convention had not been broken.

Another example of the legal procedural obstacles of the access to court is the allocation of court fees. From the stable European Court for Human Rights judicature follows that the subordination of submitting a case to court by paying a court fee does not constitute the violation of the right to access a court. In case of Kreuz against Poland [9] the Court declared that «during its activities there have not been excluded chances of introducing financial limits regarding the individual's access to court following the interest of the properly operation of the judicature». Moreover, it added that in the dispute of question in which the accusation had been founded by the reality resting in not paying of the court fee, the amount of the court fee and the condition of its payment to lay down an accusation in order to attain the compensatory damage constituted a really unfair obstacle to access a court. By the author's opinion the strict implementation of the principle of the court fees being the condition for the decision in case might create the situation when the proceeding part might de jure claim his/her right, but de facto because of not to be able to pay the court fee, his/her right to court is an illusory one.

The second aspect of the right to just court proceeding corresponds to the right to just court trial. Justice of hearing and decision-making on civil rights or commitments or on any other criminal deed of which an individual is accused as stipulated by Article 6 paragraph 1 of the Convention. In some way the demands to just court proceeding might be understood as «a residual clause» from which anything what might be considered to be an important part of the right to just proceeding might be derived by the European Court for Human Rights. We can say that it is done so, when such important facts are missing or simply if they have not been included into the Convention

in Article № 6 by its creators. The notion of the just debating a case and the fair court proceeding is of an unsubstantial connotation. Therefore, the notion content has to be obligatorily and completely shaped by the Court [4, p. 736]. According to the European Court judicatory the principle of the use of equal arms closely interconnected with the principle of contradiction might be included into the general principles of the just court proceeding. The right to be present at the debating a case by court, the right to place reasons of the court decision made and other rights finally form the abstract notion «just court proceeding» and just frame up the enforceable and content fulfilled principle.

The European Court for Human Rights in case of Niderost-Huber against Switzerland [10] repeatedly points to its own constant judicature by which «the principle of equality of arms is one of the features of the broader concept of just court proceeding and its aim to give an adequate chance for all proceeding parts to present their matter under the conditions which do not provide for them an unreliable stance towards each other». At the same time in the mentioned decision the court stated that «the concept of just court proceeding implicate in itself the right to contradictory proceeding. Within the sense of the stated right or principle it must be provided an equal position for both parts to present all evidence necessary for the required successful outcome of the proceeding, and in addition to it to enable them to become acquainted with all evidence and comments which have been put down during the proceeding with an aim to influence the court decision». The most evident difference between the civil law and the criminal law rests in an individual presence at the court proceeding when debating one's own matter. In the civil law proceeding it is understood as a justification of the proceeding part and not as an inevitable condition of the just court proceeding. In connection with the denial of a personal presence at the proceeding in case Ekbatani against Sweden [11] the European Court for Human Rights expressed their stance «that the accused in criminal proceeding must be present at the court proceeding. When evaluating a question if the presence of the accused was required at the public proceeding, besides other things, the specific aspects of proceeding and the way how the interests of the accused had been really described and protected by court in connection of the character of questions which had to be decided and the significance for the proceeding participant must be taken into consideration». In case Coloza against Italy [12] the Court added that «in case when the accused or a proceeding part are not present the court proceeding is permissible but only under certain circumstances; if the bodies intensively act and to a definite person they were not able to announce the date of the court proceedings». What is more, the court added the conclusion that in most cases the parts of proceeding must be present and they must have justification to take part in every court proceedings.

The meaning of law concerning the presenting reasons of court decision made is evident in three levels. The first level rests in the fact that

the right to obtain the rationale of the court decision is a kind of correction character of the proceeding part right to lay down proposals, and consequently to receive an adequate answer to them. At the same time the given right is a guarantee that the execution of justice is not of an arbitrary character and at the same time that the decision-making is under the control of public.

The third level presents the pre-condition to enforce effectively the remedial tools which are at the disposal for the proceeding participant [5, p. 758]. Regarding the well-grounded reasons of the court decision in case Van de Hurk against Holland [13], the European Court for Human Rights stated «Article № 6 of the European Convention on Protection of Human Rights and Basic Freedoms presents the conclusion that the right to justified reasons of the court decision is not an absolute one, in spite of the fact that courts are bound to give reasons of their decisions. It means that not all arguments of a party have to be answered in detail». In decision Ruiz Torija against Spain [14] the Court adds that «even if taking into consideration the judicature of this court it is not needful to place reasons regarding every argument of the proceeding parts, the court decisions must be justified and they must contain answers of court to all arguments presented by parts leading to final decisions. The reason must be specified taking into consideration the fact conditions of a definite case as it is not sufficient appealing only to certain parts of acts done».

Expressis verbis by Article 6 paragraph 1 the Convention guarantees the justice of court law action by public and by decision in case in a reliable time. The European Court of Human Rights in case Malhous against the Czech Republic [15] emphasized that «according to the constant judicature the public of court actions stands for the basic principle of the Convention Article № 6 paragraph 1. The general public protects the parts of action in court against the so-called secret judicature, and in this way the confidence towards courts activities is strengthened».

In case Axen against the Federal Republic of Germany [16] added that «within the sense of the citied Article of the Convention the public character of a law action by the court body protects the interests of parts in dispute against the secret justice execution without the presence of public. Besides that, it is one of the tools which help to keep confidence to courts of the lower or the higher ranks. When providing a transparent execution of justice, the public attention is helpful to reach the aim of the noted Article resting in the just law court action which is one of the fundamental principles of every democratic society as it is exactly declared by the Convention provisions». Exceptions from the public presence at court proceedings are contained in the second part of the second sentence Article 6 paragraph 1 of the Convention.

It is not in contradiction with the Convention if a domestic law anchors the rule of public exclusion for certain type of cases. The court in case of B. and P. against the United Kingdom [17; 4, p. 688] points out that even if by Article 6 paragraph 1 of the Convention the affirmed general rule

states that proceeding in exceptionally delicate matters should be principally public, it does not in itself exclude a certain type of cases as exceptional which are denoted as such by a state regarding this rule if it is necessary to observe moral interests, public order, national security, or if it is required either by safeguarding the juvenile interests or protecting proceeding parts private life.

The speed of a court proceeding is one of the mostly claimed violation of the Convention. Strasbourg bodies on protection of law have been gradually forced to create criteria concerning evaluation of the adequate speed of court action while at the same time they take into consideration the individual character of a case in question [1, p. 43].

In case Süßmann against Germany [18] the court remarks «acceptability of the length of law action must be evaluated from the point of view done by the case special circumstances while at the same time it is needful to take into consideration criteria stated by the judicature of the European Court for Human Rights, complexity of a case, claimer's acting, competent bodies as well as the importance of the matter of dispute for the claimer». Moreover, the Court repeatedly emphasizes that adequacy of the proceeding length is different in civil matters and different in criminal matters. In case of Zimmerman and Steiner against Switzerland [19] declares that «the length in civil law matters lasts since the beginning of proceeding. The proceeding usually begins on the day of laying down an accusation or proposal to the relevant court, usually the court of the first instance. The relevant court might be as well the court of a higher stage that might in certain occasions decide as the first level court».

The beginning of an appointed time in criminal matters the Court stated, besides other cases, a case of DeWeer against Belgium [20] uttering «to serve a summons on a person by the relevant body containing the allegation of commitment the criminal act generates the beginning of the time passage in criminal matters».

The demand to debate the matter in a reliable time follows the general rule «justice delayed means the justice deprived». In this connection the Court puts into attention that it is principally not possible to dismiss a fact that in certain exceptional cases the disproportional delay of court-decision might cause a real adjudication of the right to access a court and it might be a sign of depriving justice.

Conclusion. The right to just trial belongs to the category of human rights and basic freedoms founded on everybody's equality and providing the tangible realization of the democratic and lawful state principles. It contains rights and norms, which to otherwise an abstract notion «just trial», add a real content and enable a tangible enforcement of rights. The stated rights might result from the normative text amending the right to just trial or its essential core. The provision № 6 paragraph 1 of the European Convention on the Protection of Human Rights and Fundamental Freedoms constitutes the

minimal standard regarding the institutional guarantees and law procedural opportunities of the protection of all who are under the jurisdiction of the Convention parts. The efficiency of the given Article constitutes its extensive interpretation spreading by the judicature of the European Court for Human Rights and by the interstate legal adjustment of contracting parties as the Convention do not exclude to offer higher standard of the mentioned rights which would be above the Convention framework. In general the rights which are subsumed under the right to just trial are mostly violated by the national application of law and the decisions on proposals to amend the infringed right to just trial constitute the biggest part of the decision-making agenda of the European Court for Human Rights.

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Ондрова Ю. Право на справедливе правосуддя в діяльності Європейського суду з прав людини.

Постановка проблеми. *Європейський суд з прав людини був створений державами-членами Європейської ради у 1959 р. у французькому місті Страсбург. Його головне завдання – вирішувати претензії щодо порушення прав, передбачених Європейською конвенцією про захист прав людини та основних свобод або її додатковими протоколами. Конвенція є міжнародним договором з прав людини та правової держави, який набув чинності 30 вересня 1953 р. шляхом ратифікації десятьма сторонами, до яких поступово приєднувалися інші держави. Право на справедливий судовий розгляд змінюється Конвенцією у постанові № 6 як невід'ємної частини каталогу основних прав і свобод. У справі Кемпбелла та Фелла проти Сполученого Королівства Європейський суд з прав людини заявив, що «гарантія справедливого судочинства належить до найбільш фундаментальних принципів кожного демократичного суспільства відповідно до цілей окремих норм Конвенції». Без реального викладу зазначеного права та визначення умов його захисту та можливого виправлення у випадках його порушення інші основні права та свободи будуть ілюзорними і матимуть виняткова декларативний характер без їх застосування. Право на справедливий судовий розгляд є правом, що Європейський суд з прав людини та основних свобод найчастіше вирішував у процесі прийняття рішень.*

Аналіз останніх досліджень та публікацій. *Зміст права на справедливий судовий розгляд суттєвим чином складається з практики Європейського суду з прав людини та національних судів країн, що є сторонами Європейської конвенції про захист прав людини та основних свобод. Значні висновки з обраного питання також дають широкі коментарі щодо конституційного тексту або тексту міжнародних конвенцій, що визначають зміст права на справедливий судовий розгляд.*

Мета статті. *Стаття, присвячена тлумаченню та застосуванню обраних аспектів права на справедливий процес у судочинстві Європейського суду з прав людини, полягає в характеристиці теоретичних аспектів права на справедливий судовий процес, затверджених статтею 6 пунктом 1 Європейської конвенції про захист прав людини та основних свобод, як одного з найважливіших прав, яке договірні сторони Конвенції надають кожному, хто знаходиться в їх юрисдикції. За змістом вони вносять правки у рішення Європейського суду з прав людини щодо обраних аспектів справедливого судочинства, яке в межах свого стабільного судового процесу розуміється як право бути в змозі звернутися до суду та також як право на справедливе судочинство.*

Матеріали та методи. *Основний метод, застосований у цій статті, полягає у використанні аналізу та оцінки наявної судової системи Європейського суду з прав людини та Європейської конвенції про захист прав людини та основних свобод, і тим самим ознайомити читача з цією темою.*

Результати дослідження. *Практика Європейського суду з прав людини щодо права доступу до правосуддя та права на справедливий судовий розгляд є дуже важливою, оскільки вона закладає фундамент демократичного суспільства кожною зі сторін до Європейської Конвенції про захист прав людини та основних*

свобод. З 1 листопада 1998 р., коли офіційно набув чинності протокол № 11 Конвенції, Європейський суд з прав людини, який знаходиться в Страсбурзі, як єдиний орган, був уповноважений приймати рішення щодо прийняття скарг тих заявників, які вважають, що їх держава порушує їх права людини та основні свободи, які гарантуються Конвенцією та її протоколами. Бланкова форма, яка подається на веб-сторінці Суду та Судової адміністрації, з її інструкціями щодо подання скарги на кількох мовах, може бути корисною для того, щоб зрозуміти, як подати скаргу до Європейського суду з прав людини. Остаточне рішення Європейського суду з прав людини є обов'язковим, і договірна держава зобов'язана його виконати, включаючи прийняття загальних та конкретних заходів договірною державою щодо запобігання подібним порушенням згідно з Європейською конвенцією про захист прав людини та основних свобод.

Висновки. *Право на справедливу судову процедуру належить до категорії прав людини та основних свобод, що ґрунтуються на рівності всіх людей, і забезпечує відчутну реалізацію демократичних та законних державних принципів. Вона містить права та норми, іншими словами просто абстрактне поняття «справедливе судочинство», додає реального змісту та забезпечує реальне застосування прав. Зазначені права можуть випливати з нормативного тексту, що змінює право на справедливий судовий процес чи його сутність. Положення № 6, пункт 1 Європейської конвенції про захист прав людини та основних свобод є мінімальним стандартом стосовно інституційних гарантій та правових процедурних можливостей для захисту всіх, хто підпадає під юрисдикцію сторін Конвенції. Ефективність даної статті являє собою широке розповсюдження тлумачення судочинства Європейським судом з прав людини та міждержавним правовим узгодженням договірних сторін, оскільки Конвенція не виключає надання вищого стандарту згаданих прав, які можуть перевищувати рамки Конвенції. Загалом, права, які підпадають під право на справедливе судочинство, в основному порушуються національним застосуванням закону, і рішення про пропозиції щодо внесення змін до порушеного права на справедливий судовий розгляд – основна частина порядку денного при прийнятті рішення Європейського суду з прав людини.*

Ключові слова: Європейський суд з прав людини, Європейський договір про захист прав людини та основних свобод, справедливий судовий розгляд, право на доступ до суду, право на справедливий судовий розгляд.

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