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CHARACTERISTICS OF PROPERTY RIGHTS PROTECTION IN EUROPEAN COURT OF HUMAN RIGHTS DECISIONS

Olha CHEPEL

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Olha CHEPEL[1]

Abstract

Establishing in the state of civilized property relations is the key to the formation of an effective democracy in it. This article has mechanisms for protecting property rights and the responsibility of the Member States of the European Convention on Human Rights and Fundamental Freedoms in the practice of the European Court of Human Rights. In the decisions of the European Court of Human Rights it has been determined that the subjects of the right to protection of their property may act not only individuals and legal but also state entities, and objects are movable and immovable, tangible and intangible elements that have economically valuable characteristics. The case law of the European Court in the field of protection of property rights is analyzed and the main points of the European Court of Human Rights are researched regarding the legal nature of the State's positive responsibility in the execution of judgments of the Strasbourg Court of Human Rights.

Keywords:
European Court of Human Rights; property rights protection; state; responsibility; the Convention for the Protection of Human Rights and Fundamental Freedoms.

I. MAIN PARAGRAPH

One of the important achievements of international law in recent decades is the creation of an international system for the protection of human rights, based on universally accepted principles, which have been consolidated in a number of international treaties of both universal and regional character. International practice and doctrine of property rights protection for a long time belonged to the internal competence of states. Expansion of the mutual influence of the states' geographical sphere within which the movement of persons, capital, goods and services is carried out will raise the problems connected with the protection of property rights at the international legal level and, accordingly, intensify the activity of international judicial institutions, in particular, such a judicial body of the

[1] PhD, Associate Professor, the Yuriy Fedkovych National University of Chernivtsi Chernivtsi, Ukraine o.chepel@chnu.edu.ua

Council of Europe as European Court of Human Right (Court; European Court; Strasbourg Court - further in text). The activities of the European Court of Human Rights are unique not only from the point of view of ensuring the effective protection of property rights at the international level with the provision of the possibility for individuals and legal entities to protect their rights but also from the position of establishing certain clear theoretical and practical approaches for the national courts of the member states European Convention for the Protection of Human Rights and Fundamental Freedoms in 1950 (hereinafter - the Convention ; European Convention; Strasbourg Convention), on the basis of which the Court has been established and is in operation, on the protection of human rights. Since it became one of the most important international human rights protection institutions in the whole of almost all European countries: both those with a precedent right system (e.g., the United Kingdom) and countries of continental law (e.g. Germany, France, Italy, Ukraine etc.); therefore, the study of the peculiarities of the protection of property rights in the decisions of the Strasbourg Court concerning different countries of the world is relevant.

The impact of the Court practice on the national judicial system is decisive not only in the context of the implementation [1] of individual decisions concerning Ukraine, but also because it has a general character, which in its turn is represented by the normative (case-law) nature of the Court's rulings. These general decisions not only affect the domestic legislative framework in the field of protecting the rights of property of a person, but also necessarily require consideration of the case law of the Strasbourg Court in law making and enforcement activities of state authorities of Ukraine. Therefore, issues related to the activities of the European Court in the context of the pan-European system of human rights protection have become the subject of the study of such domestic scientists as M. Antonovich, M.O. Bayramatov, MV Buromensky, V.G. Butkevich, N. Gorobets, A. A. Yakovlev and other.

A plenty of foreign scientists devoted their work to issues of the property rights protection of a person and a citizen, in particular from the point of view of subjects and objects on the right to protect a person's property. Among them should be mentioned: M. Jenis, M. Kars-Frisk, J-P. Costa, P. Manukyan V.I., Mullerson, T.M. Neshataev E. L.V.Sadheyev D.Harris and others.

A full regime for the protection of foreign property is possible subject to due observance of the international legal standards developed by the international community in the national legal systems. The Convention for the Protection of Human Rights and Fundamental Freedoms (1950) [2]

establishes a list of the most important rights for a person, including the right of ownership. The constituent parts of this Convention are separate protocols that complement and develop its provisions. Article (hereinafter - Art.) 1 of Protocol No. 1 (1952) to the Strasbourg Convention provides: «Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law "[18]. In particular, Article 1 of Protocol No. 1 regards as individuals the right to property protection of individuals and legal entities who have been affected by the violation of their rights, that is, they are victims in the sense of Art. 34 of the Convention. According to this article, the European Court of Human Rights. may accept applications from any person, non-governmental organization or group of individuals who will confirm the violation of one of the countries parties to their rights recognized in the Convention or the protocols thereto. At the same time, the States Parties to the Convention undertake not to impede in any way the effective exercise of the right to petition the Court [3: 60].

For the recognizing a person as a victim it is required to have the applicant actually been the victim of the offense he claims as it is enshrined in the judgment of the Court in «Klass & Others v. The Federal Republic of Germany» [7] case, where the Court stated that Art. 25 of the Convention did not allow the applicant to file a complaint against the state only because he considers that officials of state authorities violate his rights, in particular the right of possessiveness, without proper justification of his arguments.

That is, the Court's case law shows that the victim of an offense under Art. 34 of the Convention is understood to mean a person whose rights have been directly affected by acts or omissions of public authorities or a person who was at risk of suffering from the impugned actions or inaction of public authorities [15: 13].

Subjects of the right to protect their property can be not only natural and legal persons, but also state entities. In particular, in the case of «Former King of Greece and others v. Greece» [8], a former ruling monarch and members of the former royal family in connection with the deprivation of the applicants for their property without any compensation from the Greek state filed the complaint. The Greek Government argued «... the impugned property was inextricably linked to the head of state institution and therefore did not fall under the notion of «possession» protected by Art. 1 of Protocol No. 1 to the Convention (1950). The most prominent ... characteristic of the legal status of the alleged "royal ownership" of the Greek Crown was that it always had a quasi-public character.» [8].

The Strasbourg Court, analyzing the evidence presented, pointed out that "although ... and agrees with the fact that the royal property in some way enjoyed a special status, but the fact that Greece itself repeatedly treated it as a private property and did not submit it the evidence that governs its status as a state-owned object, therefore prevents the European Court from finding that it is state-owned and has never belonged to the former royal family.» [8].

In this situation, in our opinion, the international legislator has shown loyalty to the property rights protection, having assessed the circumstances of the case and the arguments of the parties together, made a reasoned decision.

As regards the protection of property rights, the analysis of Art. 21 of the Convention shows that, in the same way as in Protocol 1 to the Convention on Human Rights, the concept of «property» is based on the value characteristics of the «concept of the concept», which includes in itself all movable and immovable objects, physical and intangible elements, and any other intangible object that can be of value [5], that is, the institution of protection of property rights extends to all objects that are characterized by signs of economic value, regardless of her tangible or intangible nature.

Also, it should be noted that the state, as an object of property rights protection, speaking outwardly in the person of its bodies, is responsible for the actions of the latter, but not for the actions of individuals, in particular, in accordance with Art. 34 of the Convention, the Court may accept applications, in which it is argued that there was a violation of the rights guaranteed by the Convention by public authorities. The court is not authorized to consider complaints of individuals and legal entities against individuals and companies. The case-law of the European Court of Human Rights testifies to the existence of a positive State's responsibility to protect the rights of property of a person, in particular, the international law-maker first emphasized that, by virtue of Art. 1 of the Convention, each of the High Contracting Parties «provides everyone who is under its jurisdiction rights and the freedoms defined in the Convention "[17].

V. I. Manukyan believes that considering Art. 1 of the First Protocol as providing the state with a wide range of powers in the area of property rights restriction. In particular, he noted that »... the second part of this provision shows that Strasbourg has left many issues with the implementation of this right to the state, and the state can thus actively interfere with the right of ownership to achieve its social and economic goals.»[13: 413].

That is, within the framework of Art. 11 of the Convention, the main purpose of which is to protect a person from arbitrary interference by public

authorities with the exercise of her rights, under certain conditions, national authorities may intervene in relations between private individuals by adopting reasonable and appropriate measures to ensure their effective implementation right. In particular, the analysis of the above Art. 1 of Protocol 1 to the Strasbourg Convention shows that its rules establish two types of responsibilities for the States parties to the Convention. Negative - the state should not interfere in the exercise of the ownership of a private person without the presence of significant and objective grounds. Any unwarranted and arbitrary interference with state ownership is inadmissible. Moreover, positive - the state has a duty to protect the property rights of a private person from any unwarranted and arbitrary interference by third parties and, if necessary, must take all necessary measures to prevent such interference [4]. A. Yakovlev [19] emphasizes on some interesting aspects of the state's implementation of its positive obligations in the field of property rights, noting, «positive commitments may include certain measures necessary for the protection of property rights. The positive obligations of the state include the provision of effective investigation by the authorized state bodies of applications of individuals and legal entities for crimes related to violation of property rights (for example, theft), as well as the need to protect convention rights not only in the sphere of relations between a person and a state, but also in the field of relations between individuals and legal entities».

An illustration of the recognition of the positive obligations of the state under Art. 1 of Protocol No. 1 is the judgment of the European Court of Human Rights 1950 in the case of «Erdogdu v. Turkey» [9]. The opinion of most judges, taking into account the specific circumstances of the case, was that «the effective exercise of the law protected by this provision (Article 1 of the Protocol) does not depend solely on the state's duty not to interfere and may require the provision of positive measures to protect, especially if there is a direct link between the measures the adoption of which the applicant has the right to expect from the state authorities and the effective use of his property ... in this case there was no doubt that there was a causal link between gross negligence on the part of Syria and the grave consequences for people arising from the demolition of the applicant's home as a result of the displacement. According to the European Court, the related violations were not «interference» but a violation of a positive obligation, since public authorities and employees did not do anything dependent on them to protect the applicant's property interests ... The European Court ... acknowledged that the positive obligation contained in Article 1 of Protocol No. 1 to the Convention required the national

authorities to take the abovementioned measures in order to avoid the destruction of the applicant's home.»[9].

In the cases of continued non-enforcement of legal decisions, the position of the European Court in the question of "positive commitments" is reduced to the fact that the degree of responsibility of the State within the meaning of Art. 6 of the Convention (1950) and Art. 1 of Protocol No. 1 varies according to whether there is or a debtor, a High Contracting Party within the meaning of Art. 34 of the European Convention or a private individual. In the first case, the law-enforcement practice of the Strasbourg Court of Human Rights comes from the fact that the state must comply with the relevant judicial decision in full and on time. And if the debtor is an individual, then the situation is different, since the state does not normally bear direct responsibility for the debts of individuals and its obligations, but the responsibility under the aforementioned provisions of the convention is reduced to providing the necessary assistance to the creditor in the execution of the corresponding court decisions on the reimbursement of funds, for example, through a bailiff service or a bankruptcy procedure.

The lack of procedural guarantees regarding the possibility of protecting the right to peaceful possession of property, which leads to the violation of such right, is recognized as interference with the right to peaceful possession of the property of a person. According to most decisions of the European Court of Human Rights, the impossibility for the applicant to obtain the result of the execution of the judgment given in his favor constitutes an interference with the right to peaceful possession of property [14: 94]. In particular, such a violation may be manifested in the form of deprivation of the opportunity to use property, failure to provide appropriate permissions, or other forms of obstruction of the realization of property rights resulting from the application of legislation or measures of state authority. For example, in the ECHR's judgment in the case of «Broniovski v. Poland» of June 22, 2004 [16].

Thus, if the state, through its authorities, is required to act in a manner that does not comply with its obligation, its inaction may in certain circumstances lead to State liability under Art. 6 § 1 of the Convention and Art. 1 of Protocol 1 to the Convention 1950. The task of the European Court in such cases is to consider whether the authorities have taken adequate and sufficient measures to help the lender comply with the court's decision.

However, the European Court of Human Rights considers that the inaction of bailiffs and failure of the domestic courts to properly control the situation create a constant uncertainty in the enforcement of a judgment given in favor of the applicant and payment of his due debt. Consequently,

the applicant must live with this uncertainty over a long period of time and the European Court of Justice adheres to the view that the nature of the enforcement proceedings, its overall duration and the uncertainty in which the applicant was located violated the "favorable balance" that must be observed between matters of public interest and necessity to protect the applicant's right to free property (judgment of the European Court of Justice in Pressos Compania «Naviera SA and Others v. Belgium» [10], «Sporrong and Lonnroth v. Sweden» [6], «Shokin v. Ukraine» [11]).

Therefore, if the state has not fulfilled its obligation to ensure that the applicant effectively exercises his right of property guaranteed by Article 1 of Protocol 1. (1952), this entails its positive responsibility. The grounds for positive liability under Art. 1 of Protocol No. 1 may serve as a violation of Art. 6 of the European Convention in respect of a breach by a court of a reasonable time for consideration of a case, as the state is obliged to observe a judicial procedure, which must implement the necessary guarantees of judicial review and which, will allow national courts to effectively and fairly resolve all issues between private individuals.

The failure of the respondent State in the «Sovtransavto Holding v. Ukraine» case [12] to ensure the right of a person to a fair trial, the subject of which were the claims to contest a number of decisions of the general meeting of shareholders adopted in violation of the law and which led to the fact that the share of participation the applicant fell from 49% to 20.7% of the statutory capital. In the opinion of the European Court, it was sufficient reason to admit the fact of a violation of the "fair balance" [20] within the meaning of Art. 1 of Protocol number one, in view of the fact that the state was not a victim, its positive obligation to ensure the efficient use of its ownership of the applicant.

The connection of the positive responsibility of the state within the framework of Art. 6 of the Convention (1950) and Art. 1 of Protocol No. 1 (1952) also appear to be necessary to provide legal remedies for the protection of violated rights. Thus, in the judgment in «Bloomberg v. Latvia» [3], the European Court emphasized that even if the interference with the applicant's property rights came from private individuals, the Strasbourg Court considers that the state party has a positive obligation to provide a sufficient legal protection system property rights and the provision of adequate remedies for the approval of these rights.

In addition, if the intervention is criminal, this obligation requires the authorities to conduct an effective criminal investigation. This implies not the obligation to get the result, but the obligation to take action. On the other hand, the possibility of violating a civil liability may give the victim alternative means of enforcing property rights, even if the prosecution did

not produce positive results. In such circumstances, a State Party may be deemed to have failed to fulfill its positive obligations if the applicant's civil claim does not have prospects as a direct consequence of the conduct of a criminal investigation.

According to the practice of the European Court Article 1 Protocol 1 to the European Convention (1950) establishes the right of unimpeded and free (peaceful) use of its property, regulates the terms of deprivation of property, recognizes the right of the state to exercise control over the use of property according to common interests. Thus, the mechanism provided for by the Convention is designed to protect the rights of citizens and legal entities who are directly violated their rights by the state. Therefore, the state should have a positive responsibility, namely not to interfere with the rights of individuals, but to create conditions for their unimpeded implementation. In the issue of protecting the rights and freedoms that constitute the basis of the legal status of a person in modern legal systems, the judiciary must ensure the rule of law, the highest manifestation of which is justice. The Strasbourg Court recognizes its competence in disputes against states-members to the Convention. However, he does not link the possibility of using an international document with formal features of the national state system, but only recognizes the responsibility of the state-member for the actions of its bodies, endowed with public authority, regardless of the level of government.

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