COLLECTION "COLLECTION OF SCIENTIFIC JOURNAL OF THE SCIENTIFIC RESEARCH INSTITUTE OF PRE-JUDICIAL PROBLEMS INVESTIGATION 2023-2
ISSN 2786-7900
https://doi.org/10.61417/2786-7900.2023.2.3

CERTAIN ASPECTS OF THE PRACTICE OF THE EUROPEAN COURT OF HUMAN RIGHTS REGARDING ENSURE OF THE RIGHTS OF THE ACCUSED IN CRIMINAL PROCEEDINGS

UDC 343.1

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The article examines some issues related to the application and interpretation of the Convention on the Protection of Human Rights and Fundamental Freedoms in the context of Art. 6, which regulate the right to a fair trial.

The study outlines the decisions of the European Court regarding the observance of European standards for the observance of the rights of persons who are held criminally liable. Issues of compliance were considered: presumption of innocence, awareness of the nature and reasons of the accusation, compliance with the conditions necessary for preparation for the defense, provision of qualified legal assistance.

It has been established that the practice of the European Court clearly defines the principle of the presumption of innocence as a provision that ensures the right of a person to

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be informed immediately and in detail about the nature and reason of the accusation, and most importantly to have enough time and opportunities to prepare his defense.

It was emphasized that the defenders are obliged to analyze the indictment in detail and to monitor compliance with the procedural order of serving the indictment in order to prevent the violation of the rights and freedoms of the person, which may be caused by the unprofessionalism and negligence of the prosecutors.

The need to provide adequate time and legal means to prepare for the trial in order to present all the necessary arguments to achieve a legal and fair decision has been proved.

It is emphasized that the main provisions enshrined in the Convention on the Protection of Human Rights and Fundamental Freedoms and in the decisions of the European Court of Human Rights create obligations for national authorities to ensure the rights of the accused in criminal proceedings, with the aim of observing and ensuring rights and fundamental freedoms on their territory a person

Keywords: Conventions on the protection of human rights and fundamental freedoms, the European Court of Human Rights, the accused, the right to defense.

Introduction. The European Court of Human Rights is an international judicial body, as the last hope for the restoration of violated rights by national bodies based on complaints by individuals. The competence of the court includes the recognition of facts of violation of the applicant's rights through the application and interpretation of the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 (hereinafter - the Convention).

After ratifying the Convention, Ukraine fully recognized the jurisdiction of the European Court of Human Rights on its territory in all matters related to its interpretation and application.

In turn, the improvement of the national criminal procedural legislation took place and continues to be improved, taking into account European standards of human rights. Any

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restrictions on the rights of a person who is involved in the field of criminal procedural relations must be consistent with the decisions of the European Court, which reveal deficiencies in the observance of human procedural rights.

Analysis of recent publications and research. Implementation and implementation by the state of international legal norms regarding ensuring the rights of the accused in criminal proceedings were the subject of research by: S. A. Alpert, T. V. Varfolomeeva, Y. M. Groshevoi, O. V. Kaplina, O. P. Kuchynska, L. M. Loboyka, E. D. Lukyanchikova, A. V. Moldovana, V. T. Nora, M. S. Strogovych, V. M. Tertyshnyk, L. D. Udalova, V. Yu. Shepitko, O. H. Yanovska and many other scientists, which testifies to the relevance of the issue of compliance with the right to defense.

Setting objectives. In view of the above, the purpose of the publication is to study the Convention on the Protection of Human Rights and Fundamental Freedoms in the context of Art. 6, which regulate the right to a fair trial.

Research results. Representatives of pre-trial investigation bodies, the prosecutor's office, the court, and lawyers always refer to the relevant practice of the European Court in their decisions, complaints, and petitions in order to ensure the achievement of human rights and freedoms.

The right to a fair trial must be attributed to the main European standards of human rights, which are most often applied in the criminal process of Ukraine (Article 6 of the Convention).

In the context of these standards, it is necessary to highlight issues related to persons who are brought to criminal liability. It is definitely necessary to start with the presumption of innocence.

As the Chairman of the European Court of Human Rights noted at one time, the presumption of innocence is one of the key guarantees of fair trials, because the judiciary must

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act on the basis of innocence until a person has acquired the status of a suspect, and if he is guilty, then law enforcement agencies must prove it [2] .

The presumption of innocence is a legal provision according to which the accused (defendant) is considered innocent until his guilt is proven in accordance with the procedure established by law, and the person may be found guilty in a guilty verdict of a court that has entered into force [3].

In accordance with Part 2 of Art. 6 of the Convention, everyone accused of committing a criminal offense is presumed innocent until proven guilty in a legal manner. The European Court of Human Rights in its decision on the case "Deweer (Deweer) v. Belgium" dated February 27, 1980 subjects this norm to a thorough interpretation, namely, it defines:

- the limits of the presumption of innocence (within the proceedings regarding the committed criminal offense);

- the moment when a person is recognized as guilty of committing such an offense (when guilt is proven in a legal manner);

- the inadmissibility of a different procedure for finding a person guilty than is provided for in the law, i.e. the presumption is recognized as one of the elements of a fair trial [1].

The legal content of the presumption of innocence is defined by the Constitution of Ukraine in Article 62, which stipulates: "A person is considered innocent of committing a crime and cannot be subjected to criminal punishment until his guilt has been proven in a legal manner and established by a guilty verdict of the court" [4].

This principle is reflected in Art. 17 of the Criminal Procedure Code of Ukraine, which specifies the need to treat a person as innocent until his guilt in committing a criminal offense is established by a court verdict that has entered into force.

The peculiarity of the principle is to oppose in criminal proceedings against accusatory bias, subjectivism, tendency or even arbitrariness, everything that turns criminal proceedings

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into a tool of execution against the accused, identifies the accused with the guilty, makes him virtually lawless [5, p. 390].

This thesis corresponds to the clarifications in the case "Daktaras (Daktaras) v. Lithuania" dated 10.10.2000, in which the court reminds that the presumption of innocence, proclaimed in clause 2 of Art. 6 of the Convention, is one of the components of the requirement of a fair trial, which is contained in clause 1 of Art. 6. This requirement will be violated if the statement of a public official regarding a person accused of a criminal offense constitutes an opinion that he is guilty, despite the fact that it has not yet been proven according to law. Even in the absence of any official ing conclusion, such an opinion is sufficient for the assumption that the official has certain grounds to consider the accused guilty.

In this regard, the Court emphasizes the importance of what words a public official chooses for his motivation, when the case has not yet been considered by the court and when the person has not yet been found guilty.

In addition, the presumption of innocence may be violated not only by a judge or court, but also by other state authorities, including the prosecutor's office. This happens especially when the prosecutor, as was the case in this case, performs a quasi-judicial function, because he decides on the petitioner's motions to dismiss charges at the stage of the pre-trial investigation, the procedure of which is under his full control [1].

Therefore, the Convention directly indicates the obligation for the court to decide on the validity of the accusation brought against the person. The court must find out not only the validity of the indictment, but also the legality of the subject of its preparation and delivery.

It is necessary to pay attention to the conclusion of the Constitutional Court of Ukraine, which, with reference to the practice of the European Court, emphasized that the procedure for gathering evidence provided for by national law must correspond to the fundamental rights recognized by the Convention, and also noted that the accusation of a person for committing a crime cannot be based on evidence obtained as a result of violation or limitation of its

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constitutional rights and freedoms, except for cases in which the Basic Law of Ukraine allows such limitations [6].

According to Art. 87 of the Criminal Code of Ukraine, if the evidence is obtained as a result of a significant violation of human rights and freedoms, it is considered inadmissible and its further use is unacceptable. Therefore, if the indictment is based on inadmissible evidence, then the further prospect of bringing a person to criminal responsibility becomes a big question for the prosecuting authorities.

This is emphasized in the case of Barbera, Messegue and Jabardo (Barbera, Messegue and Jabardo) v. Spain dated 06.12.1998, which states that the duty of the prosecution is to inform the person of the charges so that he can prepare and properly present his arguments in his defense, and the evidence that forms the basis of the court's conclusion about the guilt of the accused must meet the requirements of sufficiency and persuasiveness [7].

From the above, we can conclude that the practice of the European Court clearly defines the principle of the presumption of innocence as a provision that ensures the right of a person to be informed immediately and in detail about the nature and reason of the accusation, and most importantly to have enough time and opportunities to prepare his defense.

This provision is enshrined in Clause 3 (a) of Art. 6 of the Convention: "a person must be informed immediately and in detail about the nature and reasons of the charge brought against him." It is the detailed explanation of the accusation that is indicated in this provision of the Convention.

The legislator did not clearly specify the procedure for the detailed explanation of the accused. If we analyze the norms of the CPC of Ukraine, we will not see systematicity. According to Art. 293 of the Criminal Procedure Code of Ukraine, the prosecutor is obliged to deliver a copy of the indictment and a copy of the register of materials of the pre-trial investigation to the suspect under receipt. Under this requirement, the person charged is directly present at the time of service. However, in practice, prosecutors formally approach the

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process of such delivery, without a detailed explanation of the essence of the accusation. There are cases when the prosecutor, citing employment, evades the exercise of his powers and entrusts the delivery of the indictment to the investigator. Subsequently, this procedural violation during the delivery of the indictment leads to its return to fulfill the requirements of Art. 291-293 of the Criminal Code of Ukraine in an appropriate manner, which prevents the court from making a legal and well-founded decision.

In turn, the provisions of Part 2 of Art. 302 of the Criminal Procedure Code impose on the investigator, the inquirer, the duty to explain to the suspect the content of the circumstances established by the pre-trial investigation in case of consent to the consideration of the indictment in the simplified procedure.

Therefore, in the general procedure of criminal proceedings, such an obligation is not indicated, in connection with this, in the criminal procedural law, it is necessary to agree on the procedural powers of the prosecutor regarding the clarification of the essence of the accusation.

The practice of the European Court in the interpretation of clause 3 (a) of Art. 6 of the Convention indicates the need to especially carefully communicate the "accusation" to the person concerned. The indictment plays a decisive role in the criminal prosecution: from its presentation, the person against whom the criminal case is initiated is officially notified of the legal and factual basis of the charges formulated against him (Theodore Kamasinski v. Austria dated November 6, 1981 .; Pélissier and Sassi (Pélissier and Sassi) against France dated March 25, 1999 [1].

In the decisions of the Convention, Mattoccia v. Italy dated 25.07.2000 and Penev v. Bulgaria dated 07.01.2010 recognize the right of the accused to be informed not only about the "cause" of the accusation, that is, about the material facts brought against him and on which the accusation is based, but also about the "character" of the accusation, that is, about the legal qualification of these facts [1].

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The duty to inform the accused rests entirely with the prosecution, and it cannot be observed in a passive way, distorting the information and not informing the defense (Chichlian and Ekindjian (Chichlian and Ekindjian) v. France of 16.03.1989) [1].

In this regard, the defenders are obliged to analyze this procedural decision in detail and constantly monitor compliance with the procedural order of serving the indictment in order to prevent the violation of the rights and freedoms of the person, which may be caused by the unprofessionalism and negligence of the prosecutors.

The amount of information included in the indictment depends on the specific circumstances of the case. The accused must receive all the details in order to: firstly, fully understand the charge brought against him, and secondly, to properly prepare his defense. This provision corresponds to Clause 3 (b) of Art. 6 of the Convention on the creation of conditions (providing time and opportunities) to the accused, necessary for the preparation of his defense.

The proper nature of the information must be assessed in connection with Clause 3 (b) of Art. 6, which recognizes the right of every person to have the time and opportunity necessary to prepare his defense, as well as in the light of the more general right to a fair trial guaranteed by Article 6 (Bäckström and Andersson (Bäckström and Andersson v. Sweden of 05.09.2006) [1].

In another case, Pélissier and Sassi (Pélissier and Sassi) v. France of 25.03.1999, the European Court concluded that the right of the applicants to receive detailed information about the nature and cause of the accusation against them and the right to receive sufficient time and opportunities to prepare his defense In this case, it was allowed to violate the requirements of subparagraphs (a) and (b) of Article 3. 6 of the Convention together with paragraph 1 of this article [1].

The prerequisite for recognizing the constituents of the constitutional right to defense regarding receiving information about the end of the pre-trial investigation was the decision of the European Court in the case of Kornev and Karpenko (Kornev and Karpenko) v. Ukraine

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dated October 21, 2010, which states that the accused must have the opportunity to organize his defense properly in such a way and without limitation of the opportunity to provide the court considering the case with all relevant defense arguments and, thus, to influence the outcome of the proceedings. In addition, the opportunities available to anyone accused of committing a criminal offense should include familiarization - for the purposes of preparing his defense - with the results of investigations conducted throughout the proceedings [1].

In this regard, the Constitutional Court of Ukraine made a fateful decision for the defense in the case based on the constitutional submissions of 47 and 50 People's Deputies of Ukraine regarding the conformity of the Constitution of Ukraine (constitutionality) with parts of the sixth and seventh articles. 218 of the Criminal Procedure Code of Ukraine (case on familiarization of the accused and the defense attorney with the materials of the criminal case) No. 1-рп/2012 dated January 18, 2012. Yes, the terms for the acquaintance of the accused and his defense attorney with all the materials of the case must be determined in each case depending on the volume of the case materials and their complexity, number of accused, actions or inaction (behavior) of the accused or his defense counsel and factors independent of the will of the accused or his defense counsel (for example, illness), etc. [8].

Providing appropriate information to the accused about the nature and cause of the accusation creates opportunities for preparing his defense, regardless of whether he will defend himself independently or with the help of a lawyer. The convention states that the accused may use the professional assistance of a defense counsel chosen at his own discretion, or, in the absence of sufficient funds to pay for legal assistance, receive it free of charge at the expense of the State.

Therefore, the issue of adequacy of time and legal means for preparing his defense gives the accused an opportunity to present all the necessary arguments to the court hearing the case and thus influence the outcome of the proceedings.

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The above is directly related to ensuring the accused's right to defense. This principle provides for the right to choose:

- to protect oneself personally;
- to use the legal assistance of a defender chosen at his own discretion;
- for free legal assistance.

A systematic analysis of the practice of the European Court in terms of providing effective legal assistance provides an opportunity to highlight the main points regarding the further creation of uniform judicial activity.

In the case of Campbell and Fell (Campbell and Fell) v. the United Kingdom dated 28.06.1984, the accused has an absolute right to defense by applying for legal aid to a lawyer of his own choice, if he has the necessary funds [1].

In turn, in the case of Zagorodniy (Zagorodniy) v. Ukraine dated March 20, 2012, the European Court recognized that the applicant's right to free choice his defense was limited, because the defender of his choice was a lawyer, but did not have a certificate of the right to practice law. In the opinion of the Court, such a limitation of the right to freely choose a defense counsel does not in itself raise the issue under subparagraph "c" of paragraph 3 of Article 6 of the Convention, since a certain legal qualification may be required to ensure effective protection of a person. But, by leaving the issue of limiting the right to free choice of counsel unresolved for a long time, the state authorities created a situation that is incompatible with the principle of legal certainty established by the Convention, and which is one of the main elements of the rule of law [1].

In another decision, the European Court indicated that if the accused has the right to free legal aid, the competent authorities are obliged not only to appoint him a lawyer, since he has the right to legal "practical and effective" and not "theoretical and illusory" assistance. However, the state is not responsible for shortcomings in the work of the appointed defender, but the competent national authorities are obliged to react if it is brought to their attention that

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the appointed defender failed to provide effective protection of the person and this fact is obvious (in the case of Artico v. of Italy dated May 13, 1980) [1].

Therefore, the right of every person accused of committing a criminal offense to an effective defense provided by a lawyer is one of the main features of a legal and fair trial.

Conclusion. Summarizing the above, it is necessary to emphasize that the main provisions enshrined in the Convention on the Protection of Human Rights and Fundamental Freedoms and in the decisions of the European Court of Human Rights create new international and domestic legal obligations to ensure the rights of the accused in criminal proceedings, with the aim of observing and ensuring rights and fundamental human freedoms in its territory.

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