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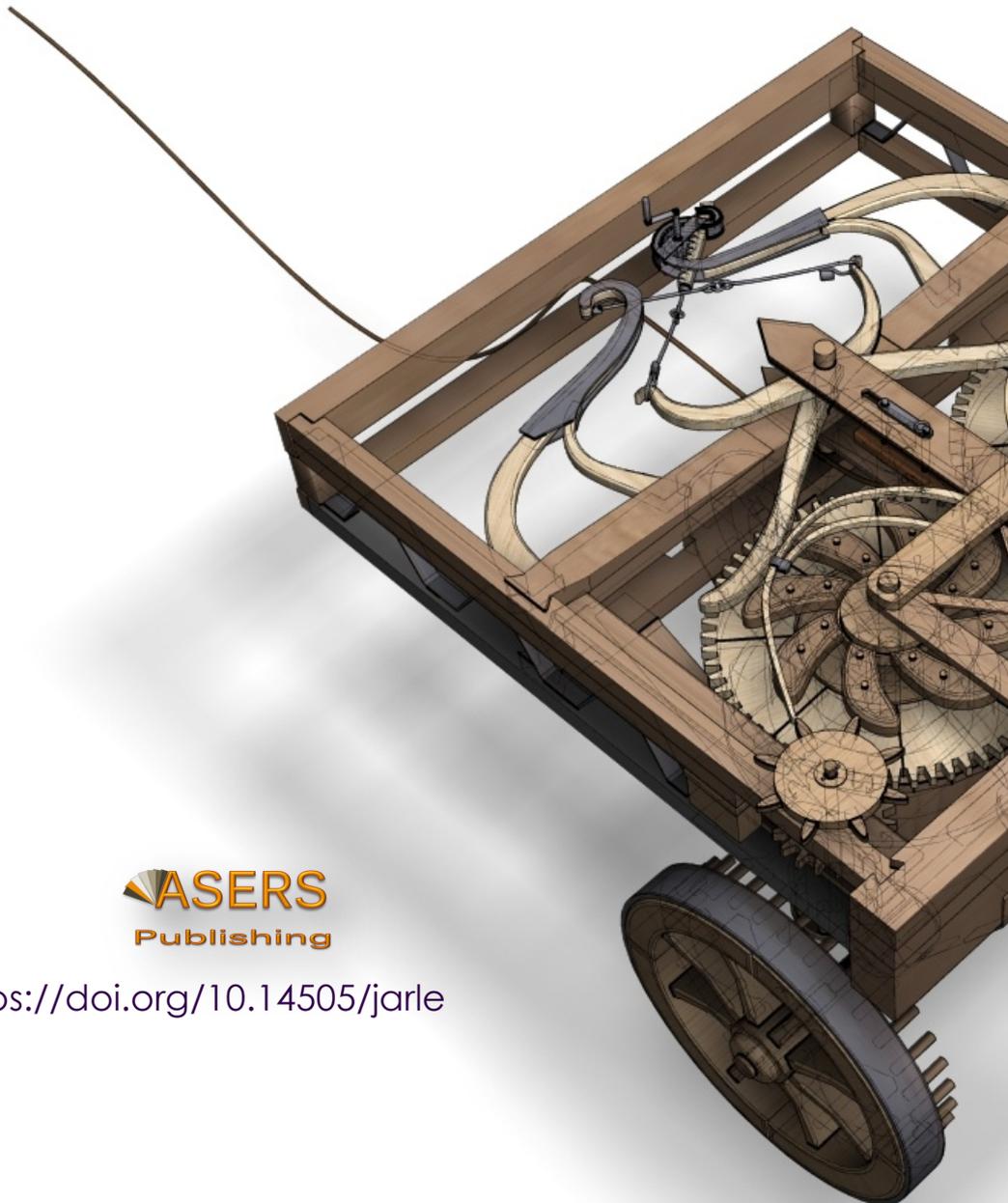
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Activity of the European Court of Human Rights and Its Impact on Ukraine's Criminal Justice Policy

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Abstract:

The relevance of the study is due to the fact that one of the main directions of Ukraine's domestic policy is ensuring the rights and freedoms of citizens through national and international mechanisms for their protection. In this context, the article aims to analyze the activities of the European Court of Human Rights as an effective international mechanism for the protection of human rights and freedoms and its impact on the criminal law of Ukraine as an integral part of crime prevention policy. Leading approach to the study of this problem is the method of generalization of legal theory and practice that has afforded revealing impact of the activities of the European Court of Human Rights on the criminal law of Ukraine. The materials of the paper imply the practical significance for the university teachers of the legal specializations.

Keywords: Constitution of Ukraine; domestic policy; Convention for the Protection of Human Rights and Fundamental Freedoms; subjects of criminal-legal policy of Ukraine; human rights and freedoms.

JEL Classification: K14; K49.

Introduction

In the period of European integration processes one of the main directions of Ukraine's internal policy as an independent, democratic and legal state is the protection of human and citizen's rights and freedoms, which are realized through national and international mechanisms of their protection. In particular, after using all national means of juridical protection in accordance with Article 55 of the Constitution of Ukraine, everyone is guaranteed the right, after the use of all national means of juridical protection, to apply for the protection of their rights and freedoms to the relevant international institutions or to the relevant bodies of international organizations which member or participant is Ukraine (Constitution of Ukraine 1996, Section 4, Article 55). With regard to ensuring the implementation of the above given constitutional norm, on February 23, 2006 the Verkhovna Rada of Ukraine adopted the Law 'On Enforcement of Decisions and Application of the Practice of the European Court of Human

Rights' No. 3477-IV (On the Enforcement of Judgments 2006), according to which, while considering the cases by the courts of Ukraine, the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950, No. 995_004 (Convention for the Protection of Human Rights 1950), which was ratified by Ukraine in 1997 with The Law of July 17, 1997, No. 475/97-BP (Ratification of the Convention 1997), as well as the practice of the European Court of Human Rights should be used as a source of law. At the same time, this indicates that the European Court of Human Rights, which is the main interpreter of the above-mentioned Convention and its Protocols, has an important place in the system of juridical protection in European countries.

The methodological basis of the scientific research is a set of modern methods of scientific knowledge, the use of which is objectively preconditioned by the urgency of the research issue, in particular: the dialectical method has been used while establishing and studying the impact of the European Court of Human Rights on the criminal policy of Ukraine; the comparative-juridical (comparative) method made it possible to analyze the provisions of the Basic Law of Ukraine, the Convention for the Protection of Rights and Fundamental Freedoms of November 4, 1950 No. 995_004 and other normative legal acts aimed at ensuring the protection of human and citizen's rights and freedoms; the method of generalizing legal theory and practice has been used while formulating the conclusions as a result of a study of the activities of the European Court of Human Rights and its impact on the criminal justice policy of Ukraine.

Under the current conditions of the development of society, one of the priority directions of both international and domestic policy of any state is the protection of human and citizen's rights and freedoms. This is due to the fact that all people are born free and equal in their rights, which are the social and political guarantees necessary to protect them against any endeavors. In this regard, as a full member of the world community, Ukraine has recognized the right of its citizens to seek protection not only from national but also international institutions, stipulating it in the Basic Law. In particular, according to Section 4 of Article 55 of the Constitution of Ukraine, every person has the right, after using all national means of juridical protection, to apply for the protection of their rights and freedoms to the corresponding international judicial institutions or to the relevant bodies of international organizations which member or participant is Ukraine (Constitution of Ukraine 1996; Abramova *et al.* 2018). The peculiarity of international legal guarantees of human and citizen's rights and freedoms lies in the fact that, unlike the domestic means of providing them, which are established by the rules of domestic law, the system of international and regional protection of human and citizen's rights and freedoms is based on the international legal norms created by signing multilateral agreements on relevant issues by States. And, as I. Ya. Diuriagin emphasizes, 'the right to defense is like a weapon - if it is necessary, one must be able to use it' (Dyuryagin 1989).

1. Research on the Activities of the European Court of Human Rights for Ukraine's Criminal Justice Policy

Today, the European Court of Human Rights, as a supranational body of justice, is one of the most influential and unique international control mechanisms for the observance of human and civil rights and freedoms guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 marking a qualitatively new stage of harmonization and integration of the legal systems of the European states (Bessarabov 2003) to which any person, non-governmental organizations or groups of people who consider themselves to be victims of a violation of the rights set out in the above Convention and its Protocols are entitled to appeal (Convention for the Protection of Human Rights 1950, Article 34).

Thus, according to the data published in the report of the European Court of Human Rights for the year 2018, Ukraine takes the third place among the 47 member states of the Council of Europe (86 decisions) on human rights abuses (The European Court of Human Rights – Ukrinform). It should be noted that Ukraine has been in the top five for the last five years in terms of the number of decisions taken by the European Court of Human Rights against it, which, in this case, testifies to the low efficiency of the national judicial system in the protection of the rights and freedoms of an individual as well as a citizen and the trust of Ukrainians by the decision of the European Court of Human Rights, whose legal force, according to the principles of public international law, is directed, first and foremost, to a State party to the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950, No. 995_004.

Taking into account the above mentioned, recently in the Ukrainian science the issue on the role of the activity of the European Court of Human Rights for the juridical, in particular legal-criminal, policy of Ukraine has been increasingly raised, which, according to Borisov and Fris, is a system-forming element of the state policy in the sphere of combating crime, which develops strategy and tactics, formulates the main tasks, principles, directions and goals of criminal law influence on crime, develops means of their achievement and is expressed in the norms of the legislation on criminal law responsibility, practice of their application, decisions of official interpretation of criminal law norms by the Constitutional Court of Ukraine, resolutions of the Plenum of the Supreme Court of

Ukraine as well as positions of the Supreme Court on the usage of the laws on criminal responsibility by the respective courts of Ukraine (Fris and Kharchenko 2016). In particular, the European Court of Human Rights is seen to exert its influence on Ukraine's criminal justice policy as one of the subjects of shaping the above-mentioned state policy by adopting decisions that are its sources at the same time. This can be justified as follows.

It is known that the decisions of the European Court of Human Rights are the acts of the official interpretation of the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms of the 4th of November 1950 No. 995_004 and its protocols, which are a part of the national legislation of Ukraine and on which European cooperation on collective protection of human rights and fundamental freedoms is based. This means that the official interpretation of the Convention for the Protection of Human Rights and Fundamental Freedoms from the 4th of November 1950 No. 995_004 has the right to be exercised only by the European Court of Human Rights by rendering its decisions which are formally binding on the jurisdictional activities of national courts. Thus, in Section 1 of Article 32 of the above mentioned Convention it is stated directly that the jurisdiction of the Court extends to all issues of interpretation and application of the Convention and its Protocols submitted to it in accordance with Articles 33, 34 and 47 (Convention for the Protection of Human Rights 1950, Section 1, Article 32).

In this regard, Ukraine as an independent state and member of the Council of Europe, having ratified on 17 July 1997 the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 No. 995_004, the First Protocol and Protocols No. 2, 4, 7 and 11 to it, which were adopted in accordance with the provisions of the Universal Declaration of Human Rights of December 10, 1948, No. 995_0150 (Universal Declaration of Human Rights 1948), entered its own recognizance not only to comply with the decisions of the European Court of Human Rights, but also in accordance with the provisions of Article 17 of the Law of Ukraine 'On the Enforcement of Judgments and the usage of the practices of the European Court of Human Rights' of February 23, 2006 No. 3477-IV the courts committed themselves to apply the above mentioned Convention and the practice of the European Court of Human Rights as a source of law when considering cases (On the Enforcement of Judgments 2006, Article 17). Exceptions may be made only where the interpretation of the provisions of the Convention by the European Court of Human Rights is inconsistent with the Constitution of Ukraine, the legal force of which is higher than the legal force of international treaties, including the above mentioned Convention.

It is from this point on that the European Court of Human Rights as the most authoritative international mechanism for the establishment and protection of the constitutional rights and freedoms of man and citizen, created to consider the applications of citizens of European states who ratified the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950. 995_004, began to play an important role in the life of every Ukrainian, and its decisions influence the formation, reforming and modernization of modern human rights systems and ensure the practical application of European legal standards for decision-making by national courts. Moreover, it should be noted that the decisions of the European Court of Human Rights are of material importance in the application of the Criminal Code of Ukraine, as they reveal the characteristics of the institutions of the General and Special parts thereof. For example, to ensure compliance with the provisions of Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 No. 995_004 The European Court of Human Rights issued several judgments on what is meant by the term 'private life', which is protected by the Criminal Code of Ukraine (Article 182 'Violation of inviolability of the private life'). In particular, the European Court of Human Rights recalls that privacy encompasses: physical and psychological inviolability of a person ('Pritti v. The United Kingdom' 2002; 'Y.F. v. Turkey' 2003), information on a person's health status ('Z. v. Finland' 1997), various aspects of a person's physical and social self-identification ('Mikulic v. Croatia' 2002) and others.

2. Analysis of the Main Aims and Functions of the European Court

The scope of application of the practices of the European Court of Human Rights is determined by its main objectives. In particular, according to the title and preamble of the Law of Ukraine 'On the Enforcement of Judgments and the Practice of the European Court of Human Rights' from February 23, 2006, No. 3477-IV, the main objectives of the Court are (On the Enforcement of Judgments... 2006):

- (a) ensuring the enforcement of the judgment of the European Court of Human Rights in cases against Ukraine;
- (b) implementation of European human rights standards in the Ukrainian judiciary and administrative practice.

Taking into account all the above mentioned, it follows that the main functions of the judgments of the European Court of Human Rights as a source of criminal policy in Ukraine are:

- (1) interpretation of the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms of the 4th of November, 1950 No. 995_004 and its protocols;
- (2) improvement of national legislation and law enforcement practice in the field of justice in accordance with the provisions of the Convention on the Protection of Human Rights and Fundamental Freedoms of November 4, 1950 No. 995_004 and its protocols;
- (3) implementation of national human rights standards and its practice in national justice, in particular by applying measures of a criminal nature to persons who have committed a socially dangerous act provided for in the relevant section of the Special Part of the Criminal Code of Ukraine;
- (4) ensuring timely and proper implementation of all decisions of the European Court of Human Rights in cases against Ukraine concerning the scope of criminal law measures;
- (5) influence on the consciousness of citizens in order to develop in them an idea of the law, the range of their rights and the international mechanism of protection in case of their violation by specific persons.

In particular, among the judgments made by the European Court of Human Rights, it is advisable to refer to the sources of criminal policy of Ukraine related to the implementation of:

- (a) institute of compulsory measures of a medical nature (judgment of the European Court of Human Rights of the 24th of October 1979 in the case 'Winterwerp versus the Netherlands' (1979); the decision of the European Court of Human Rights from the 5th of October 2000 in the case 'Warbanov against Bulgaria'(2000), judgment of the European Court of Human Rights of the 8th of November 2005 in the case 'Gorshkov versus Ukraine' (2005), decision of the European Court of Human Rights of the 6th of September 2007 in the case 'Kocheruk versus Ukraine'(2007), judgment of the European Court of Human Rights of the 19th of April 2012 in the case 'M. v. Ukraine' (2012), the judgment of the European Court of Human Rights of the 5th of June 2014 in the case 'Akopyan versus Ukraine' (2014) etc.);
- (b) the institute of compulsory treatment (judgment of the European Court of Human Rights of the 28th of March 2006 in the case 'Melnik versus Ukraine (2006), decision of the European Court of Human Rights of the 25th of October 2007 in the case 'Yakovenko versus Ukraine' (2007) etc.);
- (c) the institution of asset forfeiture (judgment of the European Court of Human Rights of the 22nd of February 1994 in the case 'Raymondo versus Italy' (1994); judgment of the European Court of Human Rights of the 5th of July 2001 in the case 'Phillips versus the United Kingdom' (2001) etc.) and other measures of criminal-judicial nature or criminal law institutions of Ukraine.

Conclusions

To summarize the above mentioned, it should be stated that the activities of the European Court of Human Rights activate the process of improving the mechanisms of the national judicial system and encourage the progressive development of the national system of law. Ukraine is, after all, a state that is guided by the European experience and, in order to make it an independent, democratic and law-governed state, the practice of the European Court of Human Rights is very important, since the gradual implementation of its practice is a necessary process to ensure the rule of the Convention of human rights and fundamental freedoms of the 4th of November, 1950, No. 995_004 and its protocols, which together guarantee the constitutional rights and freedoms of an individual and citizen and the improvement of national mechanisms for their protection via establishing the judiciary, enhancing the independence, authority and role of the courts as the sole authority empowered to apply the appropriate measures to the person who encroached to them.

It should be noted that all the decisions of the European Court of Human Rights which are directly or indirectly related to the sphere of implementation of criminal measures are sources of criminal policy of Ukraine, and not just those made by the Court of Justice, which party is Ukraine. This proves once again that the decisions of the European Court of Human Rights setting new legal principles or standards must strongly influence the behavior of other countries, be an impetus for changes in the domestic law and law practice of the participating states in order to improve them. They are important benchmarks for national courts, guided by which these courts could take the same approaches when making their decisions so that they do not become subject to the European Court of Human Rights in the future.

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