

**EXERCISING THE RIGHT TO PROTECTION OF HUMAN AND CIVIL RIGHTS
AND FREEDOMS IN THE EUROPEAN COURT OF HUMAN RIGHTS**

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Abstract

This paper is based on the analysis of some international legal acts, monographic and scientific publications. It also considers practice of hearing cases on protection of human and civil rights and freedoms by the European Court of Human Rights and implementation of its rulings in European countries. This analysis made it possible to identify some of the problems associated with evaluating the effectiveness of the work of this court. The conclusions are formulated about the attempts to create a world-wide common practice of judicial resolution of disputes related to the violation of the right to protection of human and civil rights and freedoms.

Keywords

European Court of Human Rights – Human and civil rights and freedoms
Responsibility – Jurisdiction

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Introduction

The European Court of Human Rights is an international body which jurisdiction extends to all member states of the European Council that have ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms and concerns all matters relating to the interpretation and application of the Convention, including interstate cases and individual complaints.

In this paper, we will rely on the scientific work of such authors as B. Wiecek¹, H. Roth², G. N. Herlitz³, S. Haß⁴, C. Löser⁵, A.-C. Zoellner⁶, E. Tonkov⁷, M. Markhgeym, A. Nifanov, A. Novikova⁸ and others.

The main international legal instruments in the field of human rights are: The International Covenant on Civil and Political Rights; International Covenant on Economic, Social and Cultural Rights; Convention on the Elimination of All Forms of Racial Discrimination; Convention on the Elimination of All Forms of Discrimination against Women; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; Convention on the Rights of the Child.

These international legal instruments, as well as other ones, provide for a variety of measures to facilitate the implementation of agreements on human rights, and protection of these rights.

International procedures in the field of human rights are divided into different groups by their methods of implementation and sources of information and include: consideration of state reports on the fulfillment of their obligations in the field of ensuring human rights, consideration of state claims to each other for violations of such obligations, examination and investigation of situations related to human rights violations which are alleged or established by domestic means, compilation of special lists containing information about the persons responsible for human rights violations, initiation of requests for individual criminal responsibility, consideration of complaints from individuals, groups or non-governmental organizations on violations of their rights. A person who wants to exercise the right to protect his/her human rights and freedoms has the opportunity to choose a variety of procedures and organizations.

¹ Zivilprozessordnung und Nebengesetze Großkommentar. Band 4: §§ 253–299^a. B. Wiecek, R.A. Schütze, H.-J. Ahrens, D. Assmann, S. Weth. 4. Aufl. Berlin, 2013. 1175 S.

² H. Roth, Die "tatsächliche Vermutung" im Zivilprozess. A Festschrift for prof. Dr. Hakan Pekcanitez. Izmir. 2015.

³ G. N. Herlitz, The Meaning of the Term "Prima Facie". Louisiana Law Review. Vol: 55, iss 2. 1994.

⁴ S. Haß, Die Urteile des Europäischen Gerichtshofs für Menschenrechte. Charakter, Bindungswirkung und Durchsetzung. Peter Lang GmbH. Frankfurt a/M. 2006.

⁵ C. Löser, Die Wirkung von EMRK und Urteilen des EGMR in Deutschland. Übung Staatsrecht. 2014.

http://www.cloeser.org/pub/Staatsrecht_+_Verfassungsprozessrecht/19%20EMRK%20und%20EGMR%20-%20Teil%201.pdf

⁶ A.-C. Zoellner, Das Verhältnis von Bundesverfassungsgericht und Europäischem Gerichtshof für Menschenrechte. Verlag Dr. Kovac. Hamburg. 2010.

⁷ I. N. Kuksin; E. E. Tonkov; E. V. Safronova; E. M. Vasekina and E. I. Shabalina, The constitutional experience of consolidation the human rights function of the state in the post-soviet space. The Turkish Online Journal of Design, Art and Communication TOJDAC. April. Special Edition. 2017.

⁸ Butko, L. V.; Markhgeym, M. V.; Nifanov, A. N.; Novikova, A. E. and Usatov, S. A. Territory in the constitutional standards of federal states. Journal of Politics and Law. Vol: 10 num 4 (2017): 221-224.

Our study analyzed the first section of the European Convention for the Protection of Human Rights and Fundamental Freedoms, where articles 2-13 contain rights and freedoms subject to international protection.

Methods

Various general scientific methods and ways of logical cognition were used in the work: system, analysis and synthesis, abstraction, and formal-logical approaches. The disclosure of the topic was facilitated by the use of linguistic-legal, formal-legal and comparative-legal methods.

Discussion and results

Human and civil rights and freedoms are enshrined in the first section of the European Convention on Human Rights and Fundamental Freedoms. Their list which is not exhaustive, include:

- The right of ownership, the right to education, the right to participate in free elections by secret ballot (1st protocol dated March 20, 1952);
- The right to freedom of movement, the right to choose a place of residence, the right to enter / leave to / from any country (the protocol dated September 16, 1963);
- The prohibition of the death penalty (protocol 6 of April 28, 1983);
- The right to comply with the procedure for expulsion of aliens, the right to appeal in criminal cases, the right to compensation in case of judicial error, the right not to be re-tried and punished, the establishment of equality of spouses (protocol 7 dated November 22, 1984);
- The right to secrecy when entering for consideration by the European Court of Justice or for consideration of complaints and reports on complaints by an expanded or truncated composition of the Court (Protocol 9 dated November 6, 1990).⁹

The European Court of Human Rights does not separate the rights and freedoms of a person and citizen on a sectoral basis. In the opinion of the European Court of Human Rights, the nature of the violated (protected) right is important, and not the branch of legislation or the type of legal proceedings within which the question of violation of human and civil rights has arisen. The protected rights of a person and a citizen may concern private-law or public relations. In the opinion of the European Court and the Commission on Human Rights, important is a violation of individual law.

Thus, the most frequently encountered cases on the protection of human and civil rights in the European Court of Justice include:

- The right to equality of spouses
- The right to a fair trial;
- The right to compensation in case of a judicial error;
- The right to decent conditions of detention;
- The right to appeal against actions and decisions of state bodies (officials);
- The right to a reasonable time for consideration of cases, etc.

⁹ <http://www.echr.europa.org/convention/protocols.htm>

Of course, the observance of the procedure for exercising the right to protect such a right in the national system of state bodies or courts should be taken into account.

It is important to understand that the European Court of Human Rights provides an opportunity to protect those human rights and freedoms that are protected by law (not only national but also in particular the European Convention). If the interests of a person do not fall into this category, their protection cannot be a subject of consideration either in the national court or in the European court.

The right to protection of human rights and freedoms can be exercised both in national state and judicial bodies, and in interstate ones, that is confirmed by the provision of Article 13 of the European Convention: every person whose rights and freedoms set forth in this Convention have been violated has effective means of legal defense against state bodies even if such a violation was committed by persons acting in capacity of an official.

For many people who applied to the European Court of Human Rights, this was the last opportunity to restore their violated right or freedom. In the global ranking, more than 70% of the citizens of Sweden, Germany, Switzerland, Belgium, Finland and more than 50% of the citizens of Russia supported such an opportunity. Citizens of Turkey, Lebanon, Serbia, China and Ecuador did not give such high credence to intergovernmental bodies. Perhaps this is due to the peculiarities of the mentality inherent to the citizens of these countries.¹⁰

The legal system of the countries that have ratified the Convention on Protection of Rights and recognized the jurisdiction of the European Court of Human Rights has undergone positive changes that have helped to reform the judicial system in order to strengthen the guarantees of the realization of the human right to protection of rights.

However, contradictions exist between the national law of European countries and the provisions of the Convention on the Protection of Human Rights.

One of these contradictions is the attitude towards criminal penalties. In Spain, for example, terrorists are not eligible for parole. And by decision of the European Court of Human Rights, convicts who have served a sentence of imprisonment for more than 30 years are subject to release. In the UK, persons who have committed serious and especially grave crimes with extreme cruelty are condemned to life imprisonment. With regard to Great Britain, the European Court of Justice had considered that every 25 years the cases in which the sentence is connected with life imprisonment are subject to review with a view to showing humanity to the convicts and freeing them from punishment.

In many cases, the contradictions that we are talking about arise due to a broad interpretation of the provisions of the Convention by the judges of the European Court of Human Rights. For example, when deciding in the case of “Tyrerr against the United Kingdom”, the judges of the ECHR stated the thesis: “The convention is a living instrument that should be interpreted in the light of today’s conditions”.

The main causes of contradictions are:

¹⁰ <http://www.wingia.com>

- Opposition of the judges' own opinion to the established practice of the European Court under the influence of various factors (political, economic, etc.);
- Reaching a consensus among the judges of the European Court and representatives of European states, in support of the positions of their countries.

However, there are other examples of execution of judgments held by the European Court. For example, in the case of *Görgühl*, the Federal Constitutional Court of Germany decided that the integration of Germany into the world community does not provide for the renunciation of sovereignty of this country, but contributes to the implementation of fundamental constitutional principles.¹¹ By the way, Germany is an example of such integration. Decisions of the European Court of Human Rights are regularly published there, analyzed and integrated into national legislation and law enforcement practice.

Conclusions

Thus, the European Court of Human Rights remains an important link in the system of intergovernmental bodies granting the right to any person to protect their rights and freedoms, if the national possibilities for that are exhausted. Considering that such decisions are made primarily to protect the rights and freedoms of citizens, the state must fulfill the decisions of the European Court of Human Rights. However, it is also necessary to eliminate the contradictions that impede the execution of judgments of the European Court by the states that ratify the Convention.

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¹¹ Resolution of the Federal Constitutional Court of Germany dated October 14, 2004 No. 2 BvR 1481/04 on the complaint of K. Görgühl. http://www.bverfg.de/entscheidungen/rs20041014_2bvr148104.html

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