IMPACT OF THE PILOT DECISIONS OF THE EUROPEAN COURT OF HUMAN RIGHTS ON THE LEGAL SYSTEM OF UKRAINE

PETRENKO Yuriy Mykolayovych - barrister
https://orcid.org/0009-0006-0282-8284
УДК 342.1
DOI: https://doi.org/10.32782/ep.2024.3.40

The article analyzes the influence of pilot decisions of the European Court of Human Rights on the legal system of Ukraine. It is noted that one of the main features of the pilot decisions of the Court against Ukraine is the fixation in them of a systemic problem in the state, which is the basis of the violation of the Convention on the Protection of Human Rights and Fundamental Freedoms, and which undermines the effectiveness of the convention mechanism – causes an increase in the number of applications to the European Court of human rights, and providing assistance to states in finding an effective mechanism for solving this problem. The influence of the pilot decisions of the European Court of Human Rights was carried out in the following directions: 1) introduction of an ad hoc approach: Ukraine introduced special means of legal protection and expanded the existing means of protection at the legislative level and through judicial interpretation; 2) overcoming dysfunctions in the legal system of Ukraine: taking measures by state authorities regarding the availability of budget funds to pay compensation to applicants; 3) introducing changes to the legislation of Ukraine regarding strengthening the responsibility of state executives for inaction; 4) cancellation of the ban on the seizure and sale of property belonging to state-owned or state-controlled enterprises; 5) urgent implementation of specific reforms in the legislation and administrative practice of Ukraine to bring the national legislation of Ukraine and the practice of its application in line with the conclusions of the European Court of Human Rights.

Key words: the legal system of Ukraine, the principle of the rule of law, the jurisdiction of the European Court of Human Rights, the decision of the European Court of Human Rights, the pilot decision of the European Court of Human Rights, a systemic problem.

Formulation of the problem

Ukraine became a member of the Council of Europe in 1997, recognizing the jurisdiction of the European Court of Human Rights [1]. The conscientious fulfillment of international obligations under the Convention on the Protection of Human Rights and Fundamental Freedoms requires the creation of an effective national mechanism for ensuring the rights guaranteed by the Convention [2; 3]. At the same time, the practice of the European Court of Human Rights shows that the state has systemic structural problems that cause violations of the Convention [4; 5]. The duration of the existence of such problems has a negative impact on the effectiveness of the convention mechanism, as more and more applications are received from applicants to the European Court of Human Rights regarding the violation of their rights and freedoms guaranteed by the Convention, and the European Court of Human Rights has to consider them because they are not covered by the principle of de minimis non curat praetor.

Therefore, the issue of the influence of pilot decisions of the European Court of Human Rights on the legal system of Ukraine is relevant.

State of problem research

In legal science, the issues of the impact of decisions of the European Court of Human Rights on the legal system of Ukraine were raised in scientific works D. Belova, Yu. Bysaga, O. Boryslavska, N. Mishina, M. Savchyna, O. Shcherbanyuk and other scientists. The change in social relations and the state of war in Ukraine indicate that this issue requires further research.

The purpose of this article is to characterize the impact of pilot decisions of the European Court of Human Rights on the legal system of Ukraine.

Presenting main material

On November 25, 2008, the Chamber of the European Court of Human Rights decided to consider the case «Yuriy Mykolayovych Ivanov v. Ukraine» [6] as a matter of priority and to apply the procedure of the «pilot» decision of the European Court of Human Rights. At its 114th session, the Committee of Ministers considered the measures needed to guarantee the long-term effectiveness of the control system established by the Convention and recommended, inter alia, to Member States: «taking into account decisions of the Court indicating structural or general deficiencies in national law or practice, exercise control over the effectiveness of existing national legal remedies and, if necessary, create new effective legal remedies in order to avoid consideration of similar cases in the Court...» [7].

In the Annex to the Recommendation of May 12, 2004, the Committee of Ministers stated: «...The Court is faced with the problem of an ever-increasing number of applications. Such a situation jeopardizes the long-term effectiveness of the system, and therefore requires an immediate response from the contracting parties. It is in this context that the presence of effective It is most likely that the improvement of the existing national remedies will have qualitative and quantitative consequences for the workload of the Court: – on the one hand, the flow of applications submitted for consideration should decrease: if the consideration of cases in national bodies is sufficiently thorough, fewer applicants will be forced to turn to the Court; – on the other hand, thanks to the improvement of national legal remedies, it will be easier for the Court to consider applications, if before that the national body considered the cases on the merits...» [7].

When a decision pointing to structural or general deficiencies in national law or practice («pilot case») has already been taken and a large number of applications to the Court with the same problem («analogous cases») are already pending or likely to be submitted, the respondent State should, if necessary, provide potential applicants with an effective remedy that will enable them to apply to the competent national authority and which can also be used by those applicants who have already applied to the Court. Such a quick and effective means of protection would make it possible to restore their rights at the national level in accordance with the principle of subsidiarity of the convention system [7]. Therefore, in order to ensure the effective implementation of decisions made by the Court in such cases, the Court can apply the procedure of a «pilot» decision, and it is this procedure that enables it to clearly indicate in such a decision the existence of structural problems underlying the violations, as well as specific the means or measures by which the responding state should remedy the situation.

The court applied the «pilot» decision procedure in the cases of «Yuriy Mykolayovych Ivanov v. Ukraine» dated October 15, 2009 [8], «Kharchenko v. Ukraine» dated February 10, 2011 [9], «Balytskyi v. Ukraine» dated November 3, 2011 [10], «Kaverzin v. Ukraine» dated May 15, 2012 [11], «Vasyl Ivashchenko v. Ukraine» dated July 26, 2012 [12], «Olexandr Volkov v. Ukraine» dated January 9, 2013 [13], «Verentsov v. Ukraine» dated April 11, 2013 [14]. After a pilot decision in which a specific structural problem has been recognized, one alternative may be an ad hoc approach, where the relevant state determines the expediency of introducing a special remedy or expanding an existing remedy at the legislative level or through judicial interpretation, and if after the pilot cases, special remedies are introduced, governments must immediately notify the Court so that it can take them into account in future similar cases [7].

In the decision «Yuriy Mykolayovych Ivanov v. Ukraine», the European Court of Human Rights noted that «the Court considers it expedient to apply the procedure of a «pilot» decision in the case under consideration, taking into account first of all the repeated and chronic nature of the problems underlying the violations, a large number victims of such violations in Ukraine and the urgent need to provide them with immediate and adequate compensation at the national level» [6].

The Court also noted that all the above-mentioned factors were within the control of the state, which has not yet managed to take measures to improve the situation, despite the significant and consistent practice of the Court in resolving such cases (§85 of the decision of the European Court of Human Rights in the case «Yuriy Mykolayovych Ivanov v. Ukraine»), and that «...The systemic nature of the problems indicated in this case is also evidenced by the fact that at this time approximately 1,400 applications against Ukraine, which fully or partially relate to such problems, are pending before the Court, and the number of such applications is constantly increasing» (§86 of the decision of the European Court of Human Rights in the case «Yuriy Mykolayovych Ivanov v. Ukraine») [6].

Every quarter, the Representation Body prepares and sends to the Cabinet of Ministers of Ukraine a submission on taking measures of a general nature, which includes proposals for solving the systemic problem specified in the Court's decision and eliminating its root cause. Simultaneously with the submission, the Representation Body prepares an analytical review for the Supreme Court of Ukraine. Simultaneously with the submission, the Representation Body prepares and sends proposals to the Apparatus of the Verkhovna Rada of Ukraine for consideration during the preparation of draft laws. According to Art. 15 of the Law of Ukraine «On the Implementation of Decisions and Application of the Practice of the European Court of Human Rights», the Prime Minister of Ukraine, in accordance with the above-mentioned submission, determines the central bodies of the executive power, which are responsible for the implementation of measures of a general nature, and immediately gives them appropriate instructions. The central body of the executive power, specified in the mandate of the Prime Minister of Ukraine, within the term established in the mandate: ensures within its competence the issuance of departmental acts for the implementation of measures of a general nature and controls their implementation, as well as submits to the Cabinet of Ministers of Ukraine proposals for the adoption of new, cancellation of current legal acts or amendments to them.

The Cabinet of Ministers of Ukraine issues, within its competence, acts for the implementation of measures of a general nature; submits to the Verkhovna Rada of Ukraine draft laws on the adoption of new, repeal of existing laws or amendments to them as a legislative initiative. The relevant acts must be issued and the corresponding draft law must be introduced by the Cabinet of Ministers of Ukraine for consideration by the Verkhovna Rada of Ukraine within three months from the date of issuance of the mandate of the Prime Minister of Ukraine. In the event of non-execution or improper execution of the Decision, the guilty officials whose authority is responsible for this execution shall bear administrative, civil or criminal liability provided for by the laws of Ukraine (Article 16 of the Law of Ukraine «On Execution of Decisions and Application of the Practice of the European Court of Human Rights»). If the state does not have time to make the appropriate changes to the national legislation, the Committee of Ministers can independently study the nature of the legislative changes, if necessary, and extend the deadline for the implementation of the decision.

Conclusions

1. One of the main features of the pilot decisions of the European Court of Human Rights against Ukraine is the fixation in them of a systemic problem in the state, which is the basis of the violation of the Convention on the Protection of Human Rights and Fundamental Freedoms, and which undermines the effectiveness of the convention mechanism – causes an increase in the number of applications to of the European Court of Human Rights,

and providing assistance to states in finding an effective mechanism for solving this problem.

2. The impact of pilot decisions of the European Court of Human Rights was carried out in the following directions:

1) introduction of an ad hoc approach: Ukraine introduced special means of legal protection and expanded existing means of protection at the legislative level and through judicial interpretation;

2) overcoming dysfunctions in the legal system of Ukraine: taking measures by state authorities regarding the availability of budget funds for the payment of compensation to applicants;

3) introducing changes to the legislation of Ukraine regarding strengthening the responsibility of state executives for inaction;

4) cancellation of the ban on the seizure and sale of property belonging to state-owned or state-controlled enterprises; 5) urgent implementation of specific reforms in the legislation and administrative practice of Ukraine to bring the national legislation of Ukraine and the practice of its application in line with the conclusions of the European Court of Human Rights.

References

1. Конвенція про захист прав людини і основоположних свобод від 4 жовтня 1950 р. Офіційний Вісник України. 1998. №13. С.270-302.

2. Поличко Т., Бисага Ю., Берч В., Дешко Л., Нечипорук Г., Петрецька Н. Верховенство конституційних норм у національній системі права. Ужгород: ТОВ «РІК-У», 2021. 220 с.

3. Бисага Ю., Дешко Л., Нечипорук Г. Міжнародна безпека, національна безпека, конституційна безпека: теоретико-правові підходи. Порівняльно-аналітичне право. 2020. №4. С. 43-49.

4. Дешко Л., Іконнікова Н.В. Імплементація рішень міжнародних судових установ в національні правові системи. Порівняльно-аналітичне право. 2018. №1. С. 361-364

5. Федоренко В.Л. Конституційні права і свободи людини та їх гарантування й захист в Україні: монограф. Київ: Вид-во Ліра, 2020. 138 с.

6. Рішення Європейського суду з прав людини у справі «Юрій Миколайович Іванов проти України» від 15 жовтня 2009 р. URL: https://zakon.rada.gov.ua/laws/show/974_479.

7. Резолюція Res(2004)3 Комітету міністрів щодо рішень, які розкривають системну проблему, що лежить в основі порушення ухвалено на 114-й сесії Комітету міністрів Ради Європи від 12 травня 2004 р. URL: http://search.ligazakon.ua/l_doc2.nsf/link1/SO1185.html.

8. Конституційне право на звернення до Європейського суду з прав людини та механізм реалізації права на виконання його рішень / Бисага Ю.М., Нечипорук Г.Ю., Дешко Л.М. та ін. Ужгород: ТОВ «РІК-У», 2020. 236 с.

9. Рішення Європейського суду з прав людини у справі «Харченко проти України» від 10 лютого 2011 р. URL: https://zakon.rada.gov.ua/laws/show/974_662.

10. Рішення Європейського суду з прав людини у справі «Балицький проти України» від 3 листопада 2011 р. URL: https://zakon.rada.gov.ua/laws/show/974_726.

11. Рішення Європейського суду з прав людини у справі «Каверзін проти України» від 15 травня 2012 р. URL: https://zakon.rada.gov.ua/laws/show/974_851.

12. Рішення Європейського суду з прав людини у справі «Василь Іващенко проти України» від 26 липня 2012 р. URL: https://zakon.rada.gov.ua/laws/show/974_873.

13. Рішення Європейського суду з прав людини у справі «Олександр Волков проти України» від 9 січня 2013 р. URL: https://zakon.rada.gov.ua/laws/show/974_947.

14. Рішення Європейського суду з прав людини у справі «Вєренцов проти України» від 11 квітня 2013 р. URL: https://zakon.rada.gov.ua/laws/show/974_945.

15. Про виконання рішень та застосування практики Європейського суду з прав людини: Закон України від 23 лютого 2006 р. URL: https://zakon.rada.gov.ua/laws/show/3477-15#Text.

ВПЛИВ ПІЛОТНИХ РІШЕНЬ ЄВРОПЕЙСЬКОГО СУДУ З ПРАВ ЛЮДИНИ НА ПРАВОВУ СИСТЕМУ УКРАЇНИ

В статті аналізується вплив пілотних рішень Європейського суду з прав людини на правову систему України. Зазначається, що однією з основних рис пілотних рішень Суду проти України є фіксація в них системної проблеми в державі, яка лежить в основі порушення Конвенції про захист прав людини і основоположних свобод, і яка підриває ефективність конвенційного механізму –спричиняє збільшення кількості заяв до Європейського суду з прав людини, та надання допомоги державам в пошуку ефективного механізму розв'язання цієї проблеми.

Вплив пілотних рішень Європейського суду з прав людини здійснювався за такими напрямками: 1) запровадження підходу ad hoc: Україною запроваджено спеціальні засоби правового захисту та розширено існуючі засоби захисту на законодавчому рівні та шляхом судового тлумачення; 2) подолання дисфункцій у правовій системі України: вжиття органами державної влади заходів щодо наявність бюджетних коштів для виплати відшкодування заявникам; 3) внесення змін до законодавства України щодо посилення відповідальності державних виконавців за бездіяльність; 4) скасування заборони на арешт та продаж майна, що належить підприємствам, які перебувають у державній власності або контролюються державою; 5) невідкладне запровадження конкретних реформ в законодавстві та адміністративній практиці України для приведення національного законодавства України та практики його застосування у відповідність до висновків Європейського суду з прав людини.

Ключові слова: правова система України, принцип верховенства права, юрисдикція Європейського суду з прав людини, рішення Європейського суду з прав людини, пілотне рішення Європейського суду з прав людини, системна проблема.