

ПРАВА ЛЮДИНИ І ГРОМАДЯНИНА

УДК 342.7

G. TSYVERENKO,
PhD in Legal Science, Associated Professor
Alfred Nobel University, Dnipropetrovsk, Ukraine

REGARDING TO SOME ASPECTS ABOUT HUMAN RIGHTS' PROTECTION IN THE EU AND UKRAINE

The article describes the legal culture in the field of defence of human right, and also accents attention on numerous methods in that a law exists in society on the whole, and also to the study of legal consciousness. Research traces, how law interpreted by certain persons, as he is used, and how him it is tried to avoid or resist. The special attention is spared to popular interpretations of law and some theoretical discussions in the study of questions of legal culture of Ukraine.

Key words: human rights, legitimizing, society of law, Ukrainian legal culture.

The human rights' concept evolved within the European Union gradually, in parallel with the integration deepening. For a long time the European Community institutions denied the applicability of the established human rights standards to the processes occurring within the organization. Thus, most of the EU countries' citizens, being protected from violations of their rights by the State mechanism, prevailing in the Council of Europe, remained absolutely defenseless in the face of a new supranational mechanism, expanding and gaining strength every year. European Communities' Institutions theoretically had the right to issue acts of the secondary law, which EU members are required to comply with, and which contain provisions, that are contrary to the obligations assumed by states for the accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter – the «European Convention»). Of course, such situation caused the European Community law confidence crisis. 10 years after the European Economic Community establishment, the German Constitutional Court undetermined the European Community law order and legitimacy and denied its supremacy over the national system.

After the conflict successful resolution, it became clear that European Communities further development without acknowledgement and securing of the human rights concept in the supranational legal order is impossible. Head for the gradual inclusion of the provisions of the human rights' acknowledgement and protection in the European Communities legal order, and in future in the European Union. A key role in the establishing system of the human rights' protection in the European Union plays the European Convention for the Protection of Human Rights and Fundamental Freedoms, which was given the status of the «auxiliary law source» and which, in fact, has been the main human rights' directory in the European Union for the long time.

Many specified treaties exist within the UN system of human rights protection. These treaties refer to specific human rights (such as the prohibition of torture) or to the rights of persons belonging to a particular group (such as children, or refugees).

Ukraine became a party to the European Convention for the Protection of Human Rights and Fundamental Freedoms in 1995. Most people who believe that their human rights were violated by the Polish state choose the regional procedure since this regional system has a more ef-

fective mechanism for protecting human rights and freedoms than the UN system. However, it is important to remember that even though the UN system of protection is less effective than the European system, it does work faster. When time is of the essence, the UN system might prove the better choice.

The aim of the authors of this packet is to familiarize the user with the human rights protection mechanism that exists within the United Nations.

Protecting human rights is closely linked to advancing long-term, sustainable development. Rights are both part of the goal of development and instrumental to attaining other goals such as economic growth or democracy.

The links between rights and development are many and complex:

– Lack of rights leads to exclusion and marginalization of citizens, which lies at the root of much poverty, even in resource-rich environments.

– Lack of rights exacerbates conflict and leads to cycles of violence.

– Having rights means that people participate in making choices about their own lives, unleashing their own creative energies and strengthening social unity.

– Living within a rights-protecting culture allows people to develop to the maximum of their capabilities.

USAID's human-rights programming is based on the following:

1. Protection of rights – actions or programming aimed at preventing or avoiding rights violations by the state.

2. Protection of human rights defenders.

Increasing the capacity of vulnerable populations (including victims of torture or war trauma, people with disabilities, indigenous or tribal peoples, LGBT individuals, labor activists, detainees, women and children) to defend their rights and advocate for themselves.

Atrocity prevention, aimed at preventing attacks on vulnerable or marginalized populations.

Efforts to stop human trafficking and protect its victims.

Promotion of rights – actions or programming aimed at advancing rights, empowering communities and rights advocates, and advancing awareness, including:

Legislation and regulations aimed at preserving human rights in national law.

Human-rights education and awareness, especially among particularly vulnerable or marginalized populations.

Transitional justice or support for the different ways in which societies come to terms with a legacy of past human-rights violations and/or war crimes.

Principles – a way of working and thinking that imbues all our development work – a cross-cutting issue with applicability to everything we do:

Individuals have rights; our goal is to help them realize those rights.

Governments have duties; our goal is to help them carry out those duties.

«Do no harm»; our programming should not inadvertently lead to rights violations, including forced displacement or systematic discrimination of people.

After the acknowledgement of the need to respect the fundamental human rights in the European Communities institutions' and bodies' activity and in the secondary law publication, the process of the mechanism establishing is began in order to detect and prevent violations in this area and to restore the violated rights. However, the human rights protection mechanism established within the European Union deserves a fairly strict criticism. Nowadays, the most effective tool of the violated rights protection in the European Union is the European Court of Justice.

Previously, the only supranational judicial body empowered to settle the disputes related to the human rights violation and which are guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms, was only the European Court of Human Rights.

Some time these courts' remit did not overlap, but gradually ECJ got the jurisdiction to hear claims concerning the human rights protection, and in these cases the Court of the European Union is primarily focused on the European Convention.

However, nearly all such elements can also be described as part of law (as long as law is not limited to legal rules). For the same reason, legal culture cannot sensibly be separated from law, and it is not entirely clear that the term legal culture provides analytical advantages over a broad and encompassing concept of law.

Equally problematic is the relationship between legal culture and general culture. Legal culture is often viewed as that part of the culture which concerns itself with law. However, law is relevant in nearly all areas of life, so it is difficult to draw a sharp division between legal culture and general culture. More useful is the division between internal and external legal culture introduced by Lawrence M. Friedman (but already visible in Savigny) [2]. Internal legal culture describes the attitude towards law of legal actors such as judges and lawyers; external legal culture describes the attitude towards law of the general population. Legal sociologists frequently consider the external legal culture as more important; doctrinal lawyers, by contrast, focus more on internal legal culture. The more autonomous law is within the society, the more important internal legal culture becomes in comparison to external legal culture. Often, these analyses presume a relatively homogeneous and static concept of culture: Culture is used with a view to a community (frequently a nation – state) and provides this group with its identity, by establishing internal coherence and external difference, as well as relative consistency over time. All of these elements:

- focus on the nation;
- state, internal coherence, external isolation, lack of change;
- have in the meantime become very doubtful in anthropology and sociology. Nevertheless, in the legal debate they are often still presumed to be self-evident.

Analysis of the judicial practice of the European Court of Human Rights and the European Court of Justice suggests to make a conclusion about two European human rights systems' coordination, as well as about the evolution of the international organizations law in the field of human rights protection.

Thus, we can say that the human rights concept's formation in the European Union law had quite long and difficult way from the complete denial to the fundamental principle and necessary condition for the new members accession. In addition, today the human rights protection mechanisms' formation is still in motion.

One of the most interesting aspects is the possibility for EU to join the European Convention on Human Rights – a procedure which had no analogue in the international law history.

In the light of the entry into force of the Treaty of Lisbon, that amend the founding treaties of the European Union, the study of various aspects of European Union law, including the concept of human rights has become particularly important and is among the priorities, including Ukrainian legal science, as the European Union is one of the key strategic partners of Ukraine, and effective collaboration is possible only with a full understanding of the legal nature and the inner workings of a partner.

References

1. Zakharov Y. (2005). Ukrainian Helsinki Human Rights Union. Kharkiv, Folio. – 312 p.
2. Convention for the Protection of Human Rights and Fundamental Freedoms, 213 U.N.T.S. 222, entered into force Sept. 3, 1953. European Treaty Series. Rome, no. 5, 4.XI.1950.

В статье, посвященной правовой культуре в сфере защиты прав человека, акцентируется внимание на многочисленных способах, в которых закон существует в обществе в целом, а также изучении правового сознания. Исследование прослеживает, каким образом закон интерпретируется конкретными лицами, как он применяется, и каким образом его пытаются избежать или противостоять. Особое внимание уделяется популярным трактовкам закона и некоторым теоретическим дискуссиям в изучении вопросов правовой культуры Украины.

Ключевые слова: права человека, легитимизация, законное общество, украинская правовая культура.

У статті, присвяченій правовій культурі у сфері захисту прав громадян, акцентується увага на численних способах, в яких закон існує в суспільстві в цілому. Дослідження окреслює, яким чином закон інтерпретується конкретними особами, як він застосовується, і яким чином його намагаються уникнути або протистояти. Особлива увага приділяється практиці застосування Конвенції щодо захисту прав громадян, популярним розумінням закону, формулюються деякі теоретичні дискусії у вивченні питань правової культури України.

Ключові слова: права людини, легітимізація, законне суспільство, українська правова культура.

Одержано 3.03.2015.