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Guyvan P. D.,
Candidate of Juridical Sciences, Honored Lawyer of Ukraine,
Professor
Poltava Institute of Business,
Poltava

EUROPEAN PRINCIPLES OF FAIR AND TIMELY JUDICIARY: UKRAINIAN REALITIES

Summary. *The work is devoted to the study of topical issues of the organization of a fair trial. Emphasis is placed on the urgency of studying the issue of timeliness of national justice as one of the main principles of fair justice. At the same time, it is extremely important to properly and adequately use the European Convention for the Protection of Human Rights and Fundamental Freedoms, in particular its Art. 6, and make appropriate references to the case law of the European Court of Human Rights. The author analyzes the legal concept of "reasonable time", which operates, both international and Ukrainian law. At the same time, fundamental differences between the national and conventional meaning of this term have been established. It has been established that a period that can be defined as reasonable cannot be the same for all cases and it would be unnatural to set one term in a specific numerical expression for all cases. This paper argues that the national judiciary is currently suffering the most from excessive and unjustified delays in court proceedings, putting the result beyond the time limit of reasonableness and thus nullifying the effectiveness of judicial protection in general. In particular, practical examples illustrate the issue of untimely court proceedings, as well as improper compliance with the principle of non-cancellation of final verdicts by national courts. The author emphasizes that as a result of such neglect of democratic principles in the field of Ukrainian judiciary, there is often an arbitrary and subjective interpretation of European case law, which does not add legal certainty to public relations. the issue of normative introduction of liability for unjustified and unreasonable delay of consideration of the case is raised and defended in the work. Such liability should be introduced for all participants in the case, but especially for the judiciary.*

Introduction

The Convention for the Protection of Human Rights and Fundamental Freedoms is the main document that introduces world values into national legal systems and promotes fair and just justice. It is noteworthy that the European Court of Human Rights, which is called upon to apply and interpret convention provisions, is guided in this matter by the principle of legal certainty as the main formative indicator of a fair trial. However, the Convention itself does not contain normative enshrinement of legal certainty in the form of clear and unambiguous prescriptions. In such circumstances, awareness of the content and real essence of the legal certainty of norms and court decisions is achieved through the judicial application of its elements in the decisions of the European Court of Human Rights. The practice of this body is called precedent, because in resolving cases it tends to generally follow the approaches used by it before, if it does not consider it necessary to change them. In particular, in the motivating part of the decision, the court, instead of reproducing the arguments expressed earlier, may refer to the arguments expressed in previous decisions. However, the Court has repeatedly emphasized that it is not bound by its own previous decisions, its enforcement has an evolutionary component, and the ECtHR changes its legal position from time to time [1, p. 50]. This body, developing case law, provides certain clarifications of the definitions and rules of use in the conduct of legal proceedings of certain provisions of the Convention.

National legislation seeks to incorporate these principles into the Ukrainian legal system. Article 17 of the Law of Ukraine “On Enforcement of Judgments and Application of the Case Law of the European Court of Human Rights” indicates the need for courts to apply the Convention and the case law of the ECtHR as sources of law, and Article 18 of this Law defines the reference to the Convention and case law. As we can see, the law refers precisely to the "practice of the Court" in its general sense, ie not only decisions concerning Ukraine, but also others must be taken into account and properly analyzed in the administration of justice. The main thing is not the subjective composition of the parties to the dispute, but its content. In this case, the defining principle of a fair court is the ability to obtain fair justice, regardless of which social group a person belongs to, or other personal characteristics [2, p. 178]. The principles of equality and adversarial proceedings are part of the right to a fair trial guaranteed

by the Convention. It is their proper observance that the ECtHR quite often refers to when justifying its decisions.

The problem of meeting reasonable deadlines in court proceedings is relevant not only for our state, but also for many others. Violation of the temporal principles introduced in Art. 6 of the Convention by States parties accounts for about 40% of the total number of violations. The issue of efficiency and effectiveness of the right to a court in the context of the duration of its implementation on the basis of legal certainty in international and national law is the study of numerous domestic and foreign scholars who have studied the definiteness of law and court decisions. But this happened mainly in general terms, not enough attention is paid to the analysis of compliance with the requirements for fairness of the judiciary in the issuance of verdicts by the Ukrainian law enforcement agency in certain civil disputes. In particular, the timeliness of trials, the adherence to the principle of non-abrogation of final verdicts and the development of mechanisms for the timely enforcement of national courts have not been properly scientifically clarified. As a result, in the field of Ukrainian judiciary, there is often an arbitrary and subjective interpretation of European case law, which does not add legal certainty to public relations. At the same time, the issue of meeting reasonable deadlines for litigation, as practice shows, is very important. Currently, civil doctrine lacks an analysis of the effectiveness and efficiency of updated temporal legislation. There is no serious clarification of the timing of cases and enforcement of judgments that meet the criterion of reasonableness in specific cases. Carrying out such work will provide an opportunity to develop concepts on the effectiveness of timeliness of law. The study of legal approaches to the effectiveness of law enforcement of the European principle of timely judging as one of the main principles of a fair trial is the main goal of this scientific work.

1. General principles of a fair trial

In its Judgment of 30 January 2003, the Constitutional Court of Ukraine emphasized that justice is inherently recognized as such only if it meets the requirements of justice and ensures the effective restoration of rights [3]. The general features of a fair trial are set out in Article 6 of the main international human rights instrument, the Convention for the Protection of Human Rights and Fundamental Freedoms, which is also a source of Ukrainian national law. Among the

qualifications that the Convention provides for the concept of a fair trial, one of the main ones is the administration of justice within a reasonable procedural period. After all, according to the convention provisions, which are implemented in practice through the adoption of specific law enforcement decisions by the European Court of Human Rights, a fair and impartial judgment in compliance with the rules of openness and publicity will not be considered fair if unreasonable and unjustified procrastination in the process of consideration of the case. Therefore, non-compliance with the time parameters of litigation is a separate violation of a person's convention right to a fair trial, which is protected under Art. 6 of this international act.

Therefore, the legal concept of a reasonable time for consideration of the case needs to be defined. First of all, it should be noted that this definition should be interpreted as the shortest period of consideration and resolution of the case, sufficient to provide timely (without undue delay) judicial protection of violated rights, freedoms and interests of the person. In this case, this term cannot be identified with a set of periods for the commission of certain procedural acts by the court or the parties to the case, as is often interpreted in domestic civilization. The international legal understanding of this temporal dimension is much broader and covers not only certain periods of time to take certain actions within the case, but also sets time limits for the entire process, from the moment of initiation of proceedings to its full completion. It is important that the European legislation in this area considers as the term of termination of proceedings not only the decision of the final court decision but also its actual execution.

The specific limits of the reasonableness of the time limit for consideration of the case are not defined in the Convention. They are also absent in the case law of the European Court of Human Rights. In them, as a result of the consideration of a factual dispute, the Court determines only whether the duration of the proceedings was adequate to certain circumstances of the case, which affected the length of certain elements of the process. These are such qualifying circumstances as the complexity of the case, the number of participants, the material interest of the parties, the number of necessary procedural actions, etc. [4, p. 173]. Thus, the ECtHR's practice of interpreting a “reasonable time” clearly confirms that a period that can be defined as reasonable cannot be the same for all cases and it would be unnatural to set one term in a specific numerical

expression for all cases. Therefore, as some researchers rightly point out, the reasonableness of the duration of the proceedings should be assessed in the light of the circumstances of a particular case [5, p. 56].

Certain procedural issues concerning the consideration of the case, of course, must be resolved by a specific judicial body. Thus, only the court has the right to decide what procedural actions need to be taken to obtain evidence, what is the mechanism of interrogation of witnesses, whether it is necessary to appoint an expert examination, involve third parties in the case, and so on. The court in this regard shows its discretion within the limits set by law. But all these actions must take place within the time frame also established by law. Therefore, the responsibility for late performance of procedural actions rests with the court. In this regard, the position of the ECtHR is well-established and unambiguous: adjournment of the case, appointment and examination, participation of a judge in other cases and other necessary actions do not in themselves contradict current legislation, but can not lead to violation of the right to justice within a reasonable time. Article 13 of the Convention guarantees the existence of an effective remedy before the relevant national authority in breach of the requirement of Article 6 § 1 to deal with the case within a reasonable time [6, § 126].

As we can see, the Court, without clearly defining a reasonable procedural time-limit for litigation, can only introduce certain criteria for assessing such relevant factors in each case, which it does in practice. But the adaptation of such case law to real cases of justice is a matter for the national judiciary. This is an important factor, especially for the Ukrainian judiciary, because it is no secret that the national judiciary is currently suffering the most from excessive and unjustified delays in court proceedings, putting the result beyond the reasonableness of time and thus nullifying the effectiveness of judicial protection in general. The fact is that despite the instructions in Art. 210 Code of Civil Procedure of Ukraine on the cut-off period of court proceedings usually within one month after the start of the trial on the merits, first, this period, as indicated, can not be considered reasonable in the sense of convention, and, secondly, even such an imperative regarding the temporal dimensions of justice is openly neglected by almost all Ukrainian courts on the ground [7, p. 22].

This state of affairs is often facilitated by the improper qualification of our judges and their thinking by outdated paradigms in resolving disputes on the merits. Thus, allegedly concerned with the

need to evaluate the materials more comprehensively and objectively, the courts often unjustifiably indulge individual participants in the case in illegally delaying its consideration. As a result, it is quite common for individuals, having been duly notified of the time and place of a court hearing, not to appear without good reason. At the same time, repeated postponements of meetings for a significant period of time are an illegal act of a law enforcement body. Of particular note is the failure of Ukrainian courts to respond to procedural abuses of participants related to failure to provide responses to lawsuits and other evidence within the statutory period. The new Civil Procedure Code of Ukraine in this regard takes a very categorical position, which is fully consistent with the civilizational principles of fast and high-quality justice, set out in the Convention. Namely, the law states that evidence not submitted within the period prescribed by law or the court is not accepted for consideration by the court, unless the person submitting them has justified the impossibility of submitting them within the specified period for reasons beyond its control. But, unfortunately, the national judiciary is still in the grip of outdated beliefs, according to which the longer the evidence is collected, the more reasonable the court decision. We are convinced that this is a wrong approach not only by the progress of the current procedural legislation, but also by international law enforcement practice. But the consciousness of Ukrainian judges is changing very slowly. This is evidenced by numerous cases of attracting additional evidence to the case file without any justification for the seriousness of such an action, even at the stage of appellate or cassation review [8]. As a negative consequence of such violations, we have an illegal increase in the length of proceedings.

Also, very often the reasons for a significant delay in the trial are de facto violation of the deadlines for the opening of proceedings, appointment and conduct of proceedings, unjustified numerous adjournments, adjournments due to reasons that by law can not serve as a basis for this. For example, a significant violation of the established in Art. 187 of the CPC of the five-day period for initiating proceedings. The reason here is very simple and lies in the deliberate neglect of procedural details regarding the procedure for initiating proceedings. The fact is that in the new code for some reason the normative prescriptions concerning terms of sending of decisions on opening of proceedings have disappeared. Let's say in Art. 187 of the Code states that a judge must initiate proceedings no later than five days from the date of receipt of the

claim in the absence of grounds for leaving the application without motion, but nothing is said about the deadline for sending this decision to the parties. It would seem that nothing is important, because the current law states that the trial should begin no later than sixty days after the case is opened, so everything is supposed to be settled temporally, and no additional legal time regulator is needed to determine when to open a case. But only in theory, but the practice in Ukrainian courts is strikingly different.

In fact, in almost all courts there are numerous cases when the decision to open proceedings, dated within five days from the filing of the lawsuit with the appointment of the case to the first hearing, the parties receive six months, and in some cases much later. As a result of such fraud, the judge can be accused only of lack of control over the late direction of the decision. The very content of the decision in the temporal sense does not cause remarks, although all conscious participants in the process are well aware of the essence of such judicial abuse. Therefore, we have a significant number of cases when, for example, a minor labor dispute, which eventually required as much as one court session to resolve it in essence, was resolved in the first instance (ie the decision did not enter into force) [9] only after 2 years and 2 months.

Such a leisurely approach by the judges of this court to the resolution of a labor dispute has in fact led to a substantial violation of a person's right to a fair trial by hearing the case within a reasonable time, as the Convention states. After all, the delay in the process led to the de facto impossibility of resolving the case on the merits, that is, setting a fair decision. Judge for yourself. The employer at one time changed the working conditions of the employee by his order, reducing his powers and wages. Accordingly, the employee immediately appealed the order to the court. He motivated his demands by the fact that the employer did not acquaint him with this order not just for 2 months, as required by Art. 32 of the Labor Code of Ukraine (in case of change of working conditions, the employee must be notified in writing for at least 2 months), and in general the employee was not notified in writing of this order. At the same time, at the court hearing held on February 28, 2020, the owner did not deny the fact that the employee had not been notified of the order issued against him, noting that he could not make the notice due to the person's hospital stay. If the court had considered this dispute in time in January 2018, it would have recognized the fact of violation of labor

legislation in time. Then the employer, having paid the employee a certain amount of illegal reduction of earnings, could immediately correct his mistake by making a similar order within two months and notifying the employee. And the conflict would be over.

But after more than two years, the situation did not look so balanced. If the employer's actions are found to be illegal, he must already pay the employee more than a two-year pay gap, including compensation, possible non-pecuniary damage for the employee's long-term illegal dismissal, and carry out serious re-staffing for a significant period. And here in such situation the responsibility of the employer is absolutely other. Therefore, it is not surprising that in such circumstances, provided that the court grossly violated the temporal principles of justice, there was no need to talk at all about the fairness of the trial. It is well known that national courts not only disregard the convention requirements for the timeliness of proceedings, but also face serious problems of bias and selectivity in the merits of the case. Especially when the result is significant for the economically stronger side. This is evidenced by the numerous decisions of the European Court of Human Rights and the significant decline in the authority and prestige of the judiciary, which have so far reached the lowest level in history.

2. Observance of a reasonable term of proceedings is a guarantee of a fair verdict

The requirement of fair trial is aimed at a specific decision as a result of law enforcement activities. In this regard, the requirements concern both the content of the court's verdict (its clarity, consistency, validity, legality and motivation), and the stability and stability of the final court decision, designed to be a regulator of public relations. The ECtHR has repeatedly pointed out that contradictory decisions of national courts may be a separate and additional source of legal uncertainty and, consequently, a violation of the right to a fair trial established by Art. 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms [10, p. 75]. In carrying out their application of the law, courts often have to carry out so-called judicial law-making, which is concerned with the interpretation of national law in accordance with European standards, that is, creative work, in particular on the specification of fundamental rights and freedoms. And it is this activity that is largely based on the doctrine of judicial precedent, the content of which is the obligation of the judiciary to enforce their previous

decisions (stare decisis). This means the need to adhere to the resolved and not to change the resolved issues [11, p. 316].

Meanwhile, certain categories of cases, given their increased social significance, need more attention from the national judiciary. For example, the European Court of Human Rights has made it clear that labor disputes, along with childcare and trauma cases, need special attention and should be dealt with without delay. When considering such cases, a special temporal integrity is required (the case of Khurava v. Ukraine) [12].

In practice, delays in bringing court decisions to the notice of parties are a significant factor in undue delay. Unscrupulous judges also use gaps in the current procedural legislation of Ukraine in this matter. In the latest version of the Code of Civil Procedure, unlike the previous one, there is no clear provision regarding the time during which the decision of the court of first instance, if it was not announced in full at the hearing, must be made. It is known that the vast majority of verdicts are announced by law enforcement agencies in the form of an incomplete text -

introductory and operative part. Meanwhile, it is the motivational and regulatory parts of the decision, which are usually formulated in addition, make it possible to identify both the essence of the judiciary's assessments in the case, and the court's errors and violations of current substantive and procedural law. Therefore, the full text of the court decision, which is the only legal basis for its appeal, is extremely important. Its absence simply makes it impossible to resolve the dispute at later stages of the process.

It would seem that such a minor nuance as uncertainty in the time of finalization of the court decision should not lead to significant delays in obtaining the final text of the court decision and delays in its appeal. But, in fact, such shortcomings of the current legislation have a significant negative temporal effect: today it becomes typical when the full text of a court decision is sent to a party many months later, and there are even cases when such a decision is not sent to the party. This significantly delays or even makes it impossible to initiate, prepare and conduct a review of cases.

According to Article 13 of the Convention, everyone whose rights and freedoms have been violated has the right to an effective remedy before a national authority. In this case, according to the convention provisions, such a right should be especially carefully provided to a person if the violation was committed by persons who exercised their

official powers, in particular by the judiciary. Unfortunately, we must state that in the field of non-compliance with the temporal dimensions of fair trial, the problem not only remains relevant, it is deepening. At the same time, the legislator does not respond to this problem: the lack of legal guarantees to protect the right of a person to a timely trial poses a great danger to the rule of law, when within national legal systems there are excessive delays in the administration of justice. national remedies for violated rights [13, p. 32].

Indeed, the violation of the right to a reasonable time in civil cases in Ukraine is chronic. This aspect has been repeatedly pointed out by international judicial institutions, which have stated similar offenses, proposing to the Ukrainian authorities to resolve this issue primarily in the regulatory framework. While the legislator does not respond to these warnings, the doctrinal proposals expressed by scientists deserve serious attention. In particular, it is necessary to support the proposal made in the literature on the introduction in the Civil Code of Ukraine of state liability for damage caused to a person as a result of violation of the right to a fair trial, including the terms of the process [14, p. 68].

But that is only part of the problem. As we have repeatedly pointed out in our works, the issue will never be resolved until an effective and efficient mechanism of strict liability for violation of a reasonable time for consideration of the dispute is introduced [15, p. 147–148]. Many European countries have already begun to develop mechanisms to protect the rights of individuals from excessive length of proceedings in national courts in order to harmonize domestic legislation with the requirements of the ECHR. Thus, in pursuance of the decision of the European Court of Human Rights in the case "Kudla v. Poland" in the Republic of Poland, the Law "On Violation of the Right of a Party to Hear a Case Without Unjustified Delay in Trial" was adopted. According to this law, a person has the right to file a complaint about the violation of his right to timely consideration of the case, if the proceedings in this case lasted longer than necessary to establish the legal and factual circumstances of the case necessary for consideration of the case. Italy also has the so-called Pinto Act, which provides for national remedies in the event of a breach of a reasonable length of trial.

Therefore, a very important element of the requirements of Art. 6 of the Convention requires that the case be heard within a reasonable time. Its improper application in Ukraine has been repeatedly recorded in the case law of the European Court. Thus, the Court found a violation of Article 6 § 1 of the Convention in cases which raise

temporal issues of unreasonableness of the terms of the proceedings in cases such as Pavlyulynets v. Ukraine (§ 53), Vashchenko v. Ukraine (§ 50), Pisatyuk v. Ukraine (paragraphs 24, 30–34) and Popilin v. Ukraine (paragraphs 24–31).

For example, in case Andrenko v. Ukraine [16] the applicant challenged her father's will in a local court in 2002. In November 2008 the court denied her claim as unfounded. After a lengthy appellate review of the dispute, the first-instance decision was overturned and the case remanded to the local court. There, in fact, the case was without any movement at the time of the ECtHR. In dealing with the excessive length of the proceedings, the Court stated that the eight-year and nine-month proceedings, which had not yet been completed, did not meet the criteria for reasonableness of the time-limit established in its established case-law. After all, according to it, the reasonableness of the duration of the proceedings should be determined taking into account the circumstances of the case and taking into account the following criteria: complexity of the case, behavior of the applicant and relevant authorities, and the degree of importance of the dispute for the applicant. In the circumstances of the present case, even though the applicant had twice supplemented her claim and the courts had been awaiting an expert opinion for a decision in the case, it could not be considered particularly difficult.

Although the applicant contributed somewhat to the increase in the length of the proceedings, her conduct alone could not justify a total duration of more than eight years and nine months. Therefore, the Court considers that in the present case there are no delays caused by the applicant's conduct which should not be included in the total length of the proceedings. The Court therefore concludes that the primary responsibility for the excessive length of the proceedings in this case lies with the public authorities. There has accordingly been a violation of Article 6 § 1 of the Convention in the present case. However, the Court's position on the assessments of various factors leading to delays in the process is also stable. Thus, as a rule, the Court does not accept the Government's assertion that the applicant contributed to the increase in the length of the impugned proceedings. The applicant may not be charged with making a complaint and using the means available to him under national law in order to protect his interests. The conduct of the parties does not release the respondent State from liability, as the organization of the proceedings must be

done in such a way that it is fast and efficient, is the task of national courts [17, paragraph 43].

3. Guarantee res judicata – inviolability of the final judgment

In this sense, when respecting the principles of justice that are consistent with the case law of the European Court, special attention should be paid to the issue of respect for final judgments, in the sense that the final judgment should not be questioned in the absence of substantial and irrefutable circumstances. can justify. Otherwise, the verdicts of the Ukrainian courts will be considered as violating the human right to a fair trial. Unfortunately, such cases, far from the principles of justice, are currently quite common. For example, the Commercial Court of Kyiv committed these violations in the case № 910/22191/13 [18]. In this case of bankruptcy of the Accord Credit Union, which began in 2013, no practical progress has been made until the end of 2019. But the steps taken by the improper debtor to freeze the process and get rid of the demands of annoying creditors indefinitely were taken by a surprisingly lenient court. Namely, in December 2014, an amicable settlement was approved in the bankruptcy process, according to which more than 40% of the debt was written off, and the rest was rescheduled for a significant period, which was the subject of a court ruling. In fact, at least until the end of this period, which is 2022, the debtor is relieved of the hassle of repaying his creditors, which he had to pay back in 2008. And after the delay, as is traditionally the case, he will declare his next failure, "throwing" the believers. Such schemes with the active and, we assume, not free assistance of Ukrainian commercial courts in our country do not surprise anyone.

Thus, in the order of amicable settlement in the bankruptcy process was, in particular, written off part of the debt of KU "Accord" to the creditor G. On this basis, the debtor together with the court concluded that the court decision approving the amicable settlement in bankruptcy is a novelty of the debt and replaces all debt relations between the debtor and his creditors. This approach can be considered fair, but only within the requirements that were stated by the participants in the bankruptcy process: their level with the conclusion of an amicable agreement has really changed. But this does not apply to Mr. G.'s claims. In 2009, he filed a lawsuit with the Accord Credit Union to recover the sums due to him, won the dispute, and the decision came into force. Moreover, the local court of general

jurisdiction, which ruled on the dispute in 2009, secured its execution by seizing the debtor's funds, and this measure is known to be in effect until the final execution of the judgment. In November 2009, enforcement proceedings were instituted by a civil court, which have not been enforced to date. Moreover, the problems with the implementation of this decision are in the plane of interference in the enforcement process by the Commercial Court of Kyiv. Apparently, having a very warm relationship with his long-time relative – the debtor, the court within the appeal of the actions of the executor in enforcement proceedings since 2009 for some reason persistently produces new rulings, which effectively overturns the final decision of a court of another jurisdiction. At the same time, the commercial court does not care at all that no procedural decision can review and revoke the verdict of the court, which has long become final. The fact that only a court that has made a specific decision (Article 448 of the CPC of Ukraine, Article 338 of the Code of Civil Procedure of Ukraine, Part 1 of Article 74 of the Law of Ukraine "On Enforcement" is also open to the Commercial Court proceedings ").

But the main problem of the commercial court is a misunderstanding of the concept of debt, and thus a violation of the European Convention for the Protection of Human Rights and Fundamental Freedoms, the principle of res judicata – the invariability of the final decision. The fact is that the settlement agreement may be an innovation of the regulatory (secured by state coercion through a court decision) requirements that were presented to the debtor in the bankruptcy process. In fact, this is exactly what is written in the commented settlement agreement. However, in relation to our specific case, these regulatory requirements ceased to exist in 2009. Because at this time (long before the bankruptcy case was initiated) by a court decision in a civil dispute, this monetary obligation was granted the protection and legal status of a debt, which is subject to unconditional recovery in Ukraine on the basis of a final decision of a national court. This debt, established by the court, was not and in essence could not be recovered in the bankruptcy process, so it can not be reorganized during the settlement agreement and, moreover, canceled by the commercial court.

Meanwhile, in our country, both the general theoretical foundations of substantive law and international convention principles are often treated in a simplistic and even sloppy manner. Therefore, we have that the inviolable final court decision, which

came into force more than ten years ago, is currently not enforced, because it is called into question by the procedural decision of the commercial court!!! It should be noted that such a frankly illogical and illegitimate decision was supported by the Northern Commercial Court of Appeal. Therefore, "problems in the conservatory", as the classic said, are systemic. And they will once again lead to the responsibility of the state of Ukraine for the violation of fair trial in terms of non-compliance with the principle of res judicata.

In fact, cases of arbitrary review of final decisions by Ukrainian national law enforcement agencies are duly assessed by the European Court of Human Rights. Thus, in the case of Yushchenko and Others v. Ukraine [19], the ECtHR found that virtually the same issue concerning the material relations between the parties was the subject of a civil action in a criminal case and a separate civil proceeding. The criminal case was considered earlier, and the decision on the civil aspect became final. But in civil proceedings, the verdict on the content of the same substantive legal relations, namely the issue of civil liability for possession of certain property, had a completely opposite form. The Court therefore emphasized that in the absence of any indication of any defects in the criminal proceedings, the Court concluded that the new resolution of the same issues nullified the previously concluded proceedings, which meant the de facto annulment of the earlier final decision, therefore, did not comply with the principle of legal certainty.

The application of the case law of the European Court in order to implement the effective protection of guaranteed rights and freedoms of citizens, as already mentioned, is authorized by law. Thus, non-application or misinterpretation of the Convention principles and practice of the European Court is a violation of national law. The role of European case law is that the ECtHR not only essentially decides the case, but also creates a legal judicial doctrine that allows the law to become a dynamic system that develops, through which human rights standards are formed [20, p. 71]. National law enforcement authorities must be guided by the case law of the European Court in deciding a particular case. If there is confidence that the correctness of the position in the examination of the matter is confirmed by the case law of the ECtHR, the body may refer to such an act of the Court. At the same time, if the right of the subject has not been violated, it will also be very appropriate to substantiate the court's motivation that the case law of the ECtHR does not confirm the position of the person. Such a mechanism will be effective in the presence of a reasonable and clear

court decision in this aspect [21, p. 32-33]. Decisions of national courts taken in violation of these criteria violate fundamental human rights. They should be reviewed and canceled. And this should be clearly in line with the rules of Recommendation No. R (2000) 2 of the Committee of Ministers of the Council of Europe of 19 January 2000, which calls on States to provide for a clear procedure for reviewing a court verdict [22].

As we can see, the principles that ensure compliance with the requirements of a fair trial, including the legal idea of stability and timeliness of court decisions through the application of mechanisms established by the case law of the ECtHR, have been developed so far only theoretically. In practice, in national legal systems, including the Ukrainian one, the argument of uncertainty often works, the main focus of which is the court. It consists in the fact that in a significant class of cases the law does not provide a single correct answer or the existing body of legal norms allows to come to more than one result, and sometimes these results can be opposite [23, p. 50]. The European Court of Human Rights has repeatedly emphasized in its judgments the different and often contradictory approaches to the application and interpretation of domestic law by the Ukrainian judiciary. And it is the approach aimed at achieving legal certainty, eliminating unjustified differences and ambiguities in a particular law enforcement should be adopted as a model of the national judicial system.

At the same time, the shortcoming is obvious that in Ukraine the unity of criteria for using the case law of the European Court in court proceedings has not been established. Preferably, in real proceedings, if a reference is made to a decision of the ECtHR, it is abstract in nature. Quite often, such a reference to international case law is simply irrelevant to the facts of the case. If, however, the decision of the Court used to substantiate the position of the national law enforcement authority is related to the circumstances of the case, the court shall not provide reasons for its compliance with Ukrainian law. In fact, the justification of the position of a party or court in the process is not only the mention of such a decision in the court verdict, but also a detailed analysis of its applicability to a particular case. This must be clearly and reasonably motivated by the court. Only under these conditions is the use of a judgment of the European Court of Human Rights justified. If the relevant motivation confirms the legal side of the proceedings, this must be stated in the decision, and this argument is very important for the established notion of a fair trial. However, where the decision of the ECtHR is not relevant to the subject matter of the dispute, the court must reject the relevant reference as formal and inconsistent with due justification.

Conclusions

A fair trial is a global and European asset as a manifestation of fair and impartial timely consideration of each person's case. There is still a lack of awareness of judges in the Ukrainian legal system about the basic principles of European fair judiciary. The problem is also that even when applying the case law of the European Court of Human Rights, the courts do not always clearly and unambiguously understand the legal meaning of such an application. As established in the paper, the European legal institutions have developed not the very definition of a reasonable time, but specific criteria for compliance of the period of proceedings with the concept of reasonableness. Thus, in each case there is a problem of assessing the reasonableness of the term, which depends on certain criteria developed by the case law of the ECtHR: the complexity of the case, the applicant's conduct, the conduct of public authorities, the importance of issues for the applicant. And, although the lack of formalization in time of the concept of "reasonable time" sometimes leads to delays in decision-making, but in general clearly defined criteria of reasonableness allow the judiciary to work quite effectively.

In Ukraine, the question of the timeliness of court proceedings is one of the most painful problems in the administration of justice. This is mainly due to the court's inadequate provision of the organization of proceedings, including the appearance of the participants; unjustified delay of the process, including too long breaks between court hearings and their postponement without good reason; unmotivated appointment of forensic examinations, their excessive duration and lack of judicial control; unreasonable delay by higher courts in reviewing cases, etc. To remedy this situation, regulatory measures are proposed. In addition to greater detail and specification of the temporal aspects of the relevant norms of the codes, it is also necessary to increase the responsibility of the participants in the process for the timeliness of its implementation. So, specific sanctions must be imposed on the parties to the case, as the parties are obliged to exercise their procedural rights in good faith and to perform their procedural duties strictly. Therefore, the introduction of material liability for unreasonable delay of the proceedings as a result of numerous unfounded motions, appeals against any procedural decisions, which significantly delays the resolution of the case as soon as possible, will promote justice and discipline the participants in the process. But the main thing is the introduction of responsibility for specific actions that lead to an illegal delay in the case, for the jurisdiction.

References:

1. Koruts U.Z. International legal protection of the right to a fair trial in the case law of the European Court of Human Rights and law enforcement practice of Ukraine. Dissertation. Science. 12.00.11. K., 2015. 229 p.
2. Gorodovenko V. The principle of equality of citizens before the law and the court. *Bulletin of the Constitutional Court of Ukraine.* 2012. № 1. P.178 – 186.
3. Decision of the Constitutional Court of Ukraine in the case on the constitutional petition of the Supreme Court of Ukraine on the constitutionality of the provisions of part three of Article 120, part six of Article 234, part three of Article 236 of the Criminal Procedure Code of Ukraine. Prosecutor) dated 30.01.2003 № 3-rp / 2003. URL: https://zakon.rada.gov.ua/laws/show/v003p710-03
4. Sakara N. Yu. The problem of access to justice in civil cases: a monograph. Kharkiv: Pravo, 2010. 256 p.
5. Pisarenko N.B., Semina V.A. Administrative and legal disputes (improvement of the order of decision): [monograph]. Kharkiv: Pravo, 2012. 136 p.
6. Judgment of the European Court of Human Rights of 12 March 2009 in the case of Vergelsky v. Ukraine, application no. 19312/06. URL: https://zakon.rada.gov.ua/laws/show/974_460.
7. Guyvan P.D. Some practical issues regarding the factors that cause non-compliance with reasonable deadlines. *Підприємництво, господарство і право*. 2017. № 8. P. 20–25.
8. Case № 553/3755/15-ц. Archive of Lenin's regional court of Poltava for 2015.
9. Case № 760/1887/18. Archive of Solomyansky regional court of Kyiv for 2018.
10. Rukavishnikova A.A. The genesis of the category of "legal certainty" in modern legal science. *Bulletin of Tomsk State University. Law series.* 2014. № 3 (13). Pp. 71-81.
11. Shevchuk S. Judicial lawmaking: world experience and prospects in Ukraine. K .: Реферат, 2007. 640 p.
12. Judgment of the ECtHR of 8 April 2010, final – 8 July 2010 in the case of Khurava v. Ukraine, application no. 8503/05. URL: https://zakon.rada.gov.ua/laws/show/974_761.
13. Shevchuk S.V. Protecting the right to a reasonable time: European experience and Ukrainian realities. *Bulletin of the Supreme Court of Ukraine.* 2006. № 8. P. 31–36.

14. Sakara N. Yu. Reasonable time of trial as an element of access to justice in civil cases. Actual problems of jurisprudence: mater. conf. young scientists and: to the 200th anniversary of the National Law Academy. J. the Mudry. Kharkiv : Nat. jurid. acad. Of Ukraine named after Yaroslav Mudry, 2004. P. 66–68.

15. Guyvan P.D. Reasonable time for consideration of the case. Ukrainian legislative and law enforcement realities. *Journal of Kyiv University of Law.* 2019. № 3. pp. 144–149.

16. Judgment of the European Court of Human Rights of 20 January 2011 in the case of Andrenko v. Ukraine, application № 50138/07, URL: https://zakon.rada.gov.ua/laws/show/974_763/.

17. Judgment of the European Court of Human Rights of 28 May 2009 in the case of Nesterova v. Ukraine, application no. 10792/04. URL: https://zakon.rada.gov.ua/laws/show/974_514/.

18. Case № 910/22191/13. Archive of the Commercial Court of Kyiv for 2013.

19. Judgment of the European Court of Human Rights of 15 July 2010 in Yushchenko and Others v. Ukraine, applications 73990/01, 7364/02, 15185/02 and 11117/05. URL: https://zakon.rada.gov.ua/laws/show/974_626

20. Travnikov M.A. The future of the European Court of Human Rights: a dead end or a change of concept. *Journal of Russian law.* 2002. № 6. P. 71–74.

21. Judge Valentina Shchepotkina: "More than half of citizens' appeals to the European Court of Human Rights are related to ineffective execution of court decisions". Collection of speeches. Ukrainian Helsinki Human Rights Union "Precedent UA – 2015". Pp. 29-33.

22. Recommendation CE № R (2000) 2 on the review of cases and the reopening of proceedings at the domestic level in connection with ECtHR decisions. URL: https://zakon.rada.gov.ua/laws/show/994_175.

23. Matveeva Y.I. Legal certainty and judicial lawmaking. *Наук. записки нац. ун-ту «Києво-Могилянська академія»*. К., 2010. Т. 103. P. 50–53.