The Right to a Fair Trial: the ECtHR Case-Law and Its Implementation in the Ukrainian Judiciary

Since the Ukrainian jurisprudence needs new legal mechanisms based on the implementation of the decisions of the European Court of Human Rights (hereinafter – EctHR) that will ensure the exercise of the right to a fair trial, the subject under the study is relevant. Authors of this study aim to examine the right to a fair trial in terms of its content and provision in Ukraine through the prism of decisions of Ukrainian courts in various instances and the relevant case-law of the EctHR. The conducted research involves studying empirical and theoretical materials related to the content of normative consolidation and law enforcement use of the right to a fair trial. The methodological framework also includes the following research techniques and methods: dialectic, systemic, functional and structural, analysis, and synthesis. The authors determine the said right is considered within its constituent elements and relevant manifestations in legal science and case-law, including fairness and publicity of the trial, compliance with the signs of independence, impartiality, legality, and the rule of law, equality of participants, and proceedings within reasonable time limits. The characteristics of the said right and the mentioned elements are subjected to appropriate interpretation within the relevant judgments of the ECtHR during proceeding case materials in national courts of the signatory states to the Convention. There is an extensive terminological and procedural experience of the ECrHR used in the case-law of Ukraine in matters of ensuring the right to a fair trial and its exercise. The conclusions of the article may be used to improve legislative, law enforcement practice, and research in the framework of creating legal structures to ensure the exercise of the said right in the country, taking into account the ECtHR case-law.

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1. Introduction

The right to due process of law (fair trial) is of the highest priority among the human rights and fundamental freedoms defined by the European Convention on Human Rights (hereinafter: ECHR)[1], as it is actually reproduced in Article 6 of this international legal act and traced directly or indirectly to other human rights regulations. It is possible to draw the same conclusion when reviewing the domestic and case-law of the European Court of Human

1 Convention for the Protection of Human Rights and Fundamental Freedoms, Council of Europe. https://www.echr.coe.int/documents/convention_eng.pdf. [accessed: 12.01.2022].

Rights and research developments existing in this area. Indeed, it is necessary to agree with Galera G. Rodrigo[2], who considers the right to a fair trial as the key to implementing the principle of the rule of law concerning human rights and freedoms. When examining the right to due process of law, one should also consider the guarantee for everyone to exercise access to court as the main tool for protecting disputed, violated, unrecognized rights and protected interests regardless of their whereabouts and the relevant jurisdiction of public authorities[3].

In connection with the rule of law and sometimes as a component of its content, the principle of legal certainty is considered. The above principle aims at creating clear rules, guarantees, and legal mechanisms that ensure the coordination of public authorities on public relations to balance public and private interests. The available sources consider the coexistence of such legal constructions for ensuring the content of the due process of law[4].

Finally, the said right finds its reasoned manifestation in creating and implementing a guarantee to protect human rights and freedoms, which determines reasonable time limits for a fair, impartial case hearing and ensures the efficiency of the process[5]. The given information is appropriately interpolated in various areas where the exercise of the right to due process of law is studied, in particular in terms of the stages of the relevant proceedings, such as the stage of appeal[6], and cassation review[7].

The manifestations of the right to a fair trial in terms of its content are very multifaceted in the ECtHR case-law. However, in the context of this study, the issue is very relevant if the implementation of judgments of this international court is regarded through the prism of the protection of human rights and fundamental freedoms. Therefore, the study aims to examine the

2 Galera Rodrigo, „The right to a fair trial in the European Union: Lights and shadows" *Revista de Investigações Constitucionais*, No. 2 (2015): 12.

3 Duska Sarin, „Right to access to court in jurisdiction of the European Court of Human Rights" *Pravni Vjesnik*, No. 3-4 (2015): 286.

4 Oksana Kachalova, Viktor Kachalov, „The right to a fair trial and a special procedure: Is there a conflict?" *Tomsk State University Journal*, 445 (2019): 198.

5 Luca Sabbi, „The reasonable time of tax proceedings in the Italian legal system" *Intertax*, No. 6-7 (2018): 587.

6 Yurii Prytyka, Serhij Kravtsov, „Review of court decisions: Does Ukraine guarantee the right to a fair trial in appeal?" *Amazonia Investiga*, No. 23 (2019): 690.

7 Oleksii Drozd et al., „Cassation filters in administrative judicial procedure: A step in a chasm or a novel that Ukrainian society expected?" *Amazonia Investiga*, No. 40 (2021): 229.

right to a fair trial in terms of its content and provision in Ukraine through the prism of decisions of Ukrainian courts in various instances and the relevant case-law of the EctHR. The defined purpose of research gives the chance to formulate theses that will become a reference point in the carried-out works within the limits of this article. First, the case-law of Ukraine fully reflects all components of the exercise of the right to due process of law, taking into account the ECtHR position in this matter. Second, the ECtHR case--law provides a detailed interpretation of the content of the said right, including fairness and publicity of the trial, compliance with the signs of independence, impartiality, legality, and the rule of law, equality of participants, proceedings within reasonable time limits. Third, the subject-matter jurisdiction provides a reason to expand the interpretation of the concept of „ civil rights and obligations" through the lens of public law disputes.

2. Methodological Framework

The research is carried out taking into account the study of empirical and theoretical material related to the content of normative consolidation and law enforcement use of the right to a fair trial. The basis for the analysis of empirical material was the Ukrainian and ECtHR case-law. In terms of the content of the said right, views of scholars, and different approaches to the interpretation of relevant legal and semantic categories, a study of existing Ukrainian jurisprudence was conducted to establish the level of existing legal structures and law enforcement practice. All of the above was carried out in the light of the ECtHR decisions in this part and aimed to determine whether the measures taken by the judiciary complied with international statutory obligations of Ukraine.

The authors distinguish sets of public cases where the concept of „civil rights and obligations" is mentioned widespread to clarify the substantive jurisdiction of the ECtHR and the sectoral affiliation of the relevant case--law on ensuring the right to due process of law. The research relies on a solid methodological framework, including philosophical and ideological, general and special research methods and techniques. In particular, with the help of the dialectical method, a holistic system of ideas about the essence of the right to due process of law was created in the context of the case-law of the ECtHR and Ukrainian courts of various instances and jurisdictions. Using theoretical and structural-functional methods, the theoretical and legal characterization of the constituents of the said right and related categories was carried out. The authors used methods of analysis and synthesis to describe and disclose the content of numerous key research concepts, including the right to a fair trial, the principle of legal certainty, the principle of equality, reasonable time, etc.

3. Results and Discussion

The ECtHR ensures the Contracting Parties fulfill their obligations under the ECHR provisions, including the right to a fair trial. Ukraine, as a signatory to the provisions of this Convention, has undertaken to comply with its regulations, as a result of the decisions of the ECtHR. The said right is considered within its constituent elements and relevant manifestations in legal science and case-law, including fairness and publicity of the trial, compliance with the signs of independence, impartiality, legality, and the rule of law, equality of participants, and proceedings within reasonable time limits. Its characteristics and the elements are the subjects to appropriate interpretation within the relevant judgments of the ECtHR during proceeding case materials in national courts of the signatory states to the Convention. In this regard, there is an extensive terminological and procedural experience of the ECtHR used in the case-law of Ukraine in matters of ensuring the right to a fair trial and its exercise by the average Ukrainian.

Linguistic and legal analysis of the provisions of Article 6 of the ECHR[8] shows the following. The right to due process of law should be considered in the context of the content of such concepts as fairness and publicity of the trial, ensuring this process by a court that meets the criteria of independence, impartiality, and its implementation within a certain time frame given the reasonableness of all participants. In addition, a separate feature of the implementation of this right is legality, which can be considered both in a broad and narrow sense, as well as in the plane of the phenomenon under consideration, such as the legality of the procedure for consideration of a particular category of cases. In a broader sense, this concept should be considered as the conformity of legal proceedings, consistent with the implementation of the rule of law, which is more reasonable given this study and the importance of such a fundamental principle of regulation of public relations in modern jurisprudence. No less important is the separation of the subject of consideration by the court in the context of the above issue of the dispute over civil rights and obligations of a person or the establishment of the criminal charges against them. In addition, the ECtHR itself provides a broader understanding of disputes in civil matters, where the jurisdiction of the relevant provisions of the Convention also extends to other relationships that go beyond purely civil, for example, public or administrative-legal relations[9].

8 Council of Europe, Convention for the Protection of Human Rights and Fundamental Freedoms.

9 Case of König v. Germany. Application no. 6232/73, ECHR. http://hudoc.echr.coe.int/eng?i=001-57512. [accessed: 24.11.2021].

The activities of the ECtHR are examined through the prism of the content of the ECHR[10], in terms of ensuring that the Contracting Parties fulfill their obligations under the Convention and its Protocols. In 1997, the Verkhovna Rada of Ukraine[11] ratified the Convention, and the obligations of Ukraine as one of the signatories have been subject to the jurisdiction of the ECtHR since that moment. For the enforcement of the international court's decisions, Verkhovna Rada of Ukraine[12] adopted the Law, which norms determine the procedure and content of the court decision execution. The Law also establishes the form and procedure according to which the case-law of ECtHR and provisions of the Convention can be applied through the activities of administrative and judicial bodies of Ukrainian jurisdiction.

When examining whether the case-law of Ukraine complies with the case-law of the ECtHR in terms of ensuring the right to due process of law, one should point out the following. In clarifying the ECtHR jurisdiction on compliance with the obligations of the Contracting Parties to the provisions of the Convention on the said right in the case-law of this instance and the Ukrainian justice system, attention is paid to clear rules for determining the fairness of a decision, among which are the following:

1) the subject of consideration of this issue is not the establishment of errors in fact or law committed by the national court;
2) the latter is rebutted in the event the rights and freedoms established under the Convention have been violated;
3) there is a violation of procedural guarantees established by Article 6 § 1 of the Convention[13].

Following the judgments of the ECtHR in relevant proceedings, the Ukrainian courts refer to Article 6 § 1 of the Convention, which concerns the non-alternative application of this norm to the sense of the right of access to a court. Thus, the existing court rulings on the opening of proceedings, such

10 Council of Europe, „Convention for the Protection of Human Rights and Fundamental Freedoms.

11 On the ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950, the First Protocol and Protocols Nos. 2, 4, 7 and 11 to the Convention, Verkhovna Rada of Ukraine. https://zakon.rada.gov.ua/laws/show/en/475/97-vr/print. [24.11.2021].

12 Law of Ukraine On Enforcement of Decisions and Application of the Cas-law of the European Court of Human Rights, Verkhovna Rada of Ukraine. https://zakon.rada.gov.ua/laws/show/en/3477-15/print. [24.11.2021].

13 Case of Garcia Ruiz v. Spain. Application no. 30544/96, ECHR. http://hudoc.echr.coe.int/eng?i=001-58907. [accessed: 21.12.2021].

as the Novoaidar District Court of Luhansk Region in case 419/505/2021[14], which relies on the position expressed in Delcourt v. Belgium[15] that, given the content of the above provision, the right to due process of law, as the main guarantee for exercising human rights and freedoms, occupies such a decisive place among other legal constructions of this normative act that any restrictive application does not correspond to its purpose.

In addition, the observance of the rule of law affects the level of access to the courts in a democratic country since it ensures real access at all stages of the proceedings. As it is stated in Miragall Escolano v. Spain[16], this access must have no extreme formalism since the excessively strict interpretation of a procedural rule by domestic courts limits the right of applicants to access to the courts and creates obstacles to the consideration of their claims. Ukrainian courts use this position to substantiate the decisions taken on the existence of grounds for restricting the rights and interests of participants in court proceedings in terms of taking appropriate procedural actions. This is the case in the decision of the Kharkiv District Administrative Court in case No. 820/9430/15[17], which recognized the valid reasons for missing the deadline to apply to the court and allowed the plaintiff to exercise this right, as well as in the decision of the Novoaidar District Court of Luhansk Region. In the Ukrainian judiciary, the essence of the right to access to the courts is explained within the position the ECtHR holds in the case of Kreuz v. Poland[18], arguing the law should enshrine the following signs of restriction of the said right:

1) the purpose of the restriction should be legitimate;
2) the balance between the measures employed and the rightfulness of the purpose pursued by such restriction must be reasonable.

14 Judgment of Case no. 419/505/2021, Novoaidar District Court of Luhansk Region. https://reyestr.court.gov.ua/Review/95868896. [accessed: 21.12.2021].

15 Case of Delcourt v. Belgium. Application no. 2689/65, ECHR. http://hudoc.echr.coe.int/eng?i=001-57467. [accessed: 15.11.2021].

16 Case of Miragall Escolano v. Spain. Application nos. 38366/97, 38688/97, 40777/98, 40843/98, 41015/98, 41400/98, 41446/98, 41484/98, 41487/98 and 41509/98, ECHR. http://hudoc.echr.coe.int/eng?i=001-58451. [accessed: 21.12.2021].

17 Judgment of Case no. 820/9430/15, Kharkiv District Administrative Court. https://reyestr.court.gov.ua/Review/54725707. [accessed: 18.12.2021].

18 Case of Kreuz v. Poland. Application no. 28249/95. ECHR. http://hudoc.echr.coe.int/eng?i=001-59519. [accessed: 18.12.2021].

These institutional concepts are directly reflected in the dissent opinion held by the Grand Chamber of the Supreme Court in case No. 927/999/19[19] in resolving the jurisdictional conflict related to the consideration of a commercial dispute. The content of the right to due process of law is different in nature of independence and impartiality, reasonably argued in numerous decisions of the ECtHR. In particular, in the case of Pullar v. the United Kingdom[20], the court identified two criteria that characterize impartiality within the framework of the exercise of the said right. They are as follows:

1) personal impartiality is presumed until evidence is provided that refutes this (subjective);
2) the creation of such guarantees by the procedural order of consideration of the case, which excludes any doubts about the impartiality of the court (objective).

A fairly rational objective criterion of impartiality is set out in another case[21]. It states there must be a determination of any undoubted facts that may cast doubt on the judge's impartiality, in addition to their conduct. This is fully implemented in the practice of the Ukrainian Supreme Court so in case 462/3689/16-ts[22] it is noted that in terms of the first criteria of impartiality, the personal beliefs and conduct of an individual judge are taken into account, ie whether the judge showed bias or impartiality in the present case, and in the context of the second, whether there were convincing facts that could indicate his impartiality, ie whether there are reasonable grounds to fear in this case that a particular judge was impartial, the position of the person concerned is significant but not conclusive.

In this case, the Supreme Court of Ukraine upheld the doubts the applicant had in the court's impartiality precisely because of a violation of the objective criterion of this legal category, which manifested itself in the existence of an employment relationship between the wife of the judge hearing the case and the plaintiff. The European Court has linked and interpreted the essence of the independence of the trial together with impartiality on the

19 Case No. 927/999/19, Dissenting opinion of the judges of the Grand Chamber of the Supreme Court. https://reyestr.court.gov.ua/Review/90458965. [accessed: 3.12. 2021].

20 Case of Pullar v. United Kingdom. Application no. 22399/93, ECHR. http://hudoc.echr.coe.int/eng?i=001-57995. [accessed: 3.12.2021].

21 Case of Kleyn and Others v. the Netherlands. Application no. 39343/98, 39651/98, 43147/98 and 46664/99, ECHR. http://hudoc.echr.coe.int/eng?i=001-61077. [accessed: 2.01.2022].

22 Judgment of case no. 462/3689/16-ts, Ukrainian Supreme Court. https://reyestr.court.gov.ua/Review/98105377. [accessed: 2.01.2022].

example of the decision in the case Agrokompleks v. Ukraine[23]. The court denied independence due to the following merits of the case:

1) providing excessive opportunity by the normative provisions of the procedural law to officials to interfere in the procedure of resolving the case;
2) creation of discretionary powers to the relevant officials in resolving the case on the merits;
3) the existence of normative and organizational preconditions for the formulation of various, sometimes opposite, approaches for national courts to apply and interpret the law.

According to the international court, legal certainty is one of the essential principles of the rule of law, related to the previous features of the right to due process of law. At the same time, guided by the decisions the ECtHR[24] holds, Ukrainian courts[25] clarify the content of this principle as a manifestation of the qualitative characteristics of the law, which eliminates the risk of arbitrariness in any relationship. Since the wording of regulations is not always clear, there is a need for interpreting and applying them properly in legal matters. Therefore, the main purpose of court proceedings is direct to get rid of such interpretative doubts in the light of changes in everyday practice, as a consequence of creating legal certainty on these issues, which is highlighted in the case of Cantoni v. France[26].

The manifestation of the principle of legal certainty follows from the above decision: the request for reviewing the final and binding decision is within neither party's rights if its purpose is only to get the case re-reviewed and its new decision. A subsequent review by higher courts should in no way be considered a covert means of appeal, as a result of which the possibility of several views on the matter in controversy cannot be grounds for reconsideration. The higher court shall exercise the powers and authority to review a case only when correcting errors of law, miscarriage of justice, and not reviewing the case on the merits. The following thesis can serve as a formulation for the proper implementation of the principle of legal certainty:

23 Case of Agrokompleks v. Ukraine. Application no. 23465/03, ECHR. http://hudoc.echr.coe.int/eng?i=001-122696. [accessed: 2.01.2022].

24 Case of C.G. and Others v. Bulgaria. Application no. 1365/07, ECHR. http://hudoc.echr.coe.int/eng?i=001-86093. [accessed: 2.01.2022].

25 Case No. 490/9823/16-ts, Dissenting opinion of the judges of the Grand Chamber of the Supreme Court. https://reyestr.court.gov.ua/Review/79088952. [accessed: 2.01.2022].

26 Case of Cantoni v. France. Application no. 17862/91, ECHR. http://hudoc.echr.coe.int/eng?i=001-58068. [accessed: 10.01.2022].

1) when a dispute is resolved by courts, their decision shall not be subject to dispute[27];
2) if the disputes arise within one of the highest judicial authorities, the court itself turns into the source of uncertainty, thereby compromising the principle of legal certainty and discrediting public trust in the judiciary[28];
3) court decisions must be reasonably predictable[29].

The decision of the ECtHR in the case of Ryabykh v. Russia[30] reflects the position on the departure from the said principle, which is preceded by important and insurmountable circumstances. It is concluded that the above principle implies the impossibility of any of the parties to the dispute to require a review of the final court judgment, which has gone into effect, with exceptions. Among the latter in the case of Ryabykh v. Russia[31] refers to the purpose of deviating from this principle, which is to correct significant deficiencies or material errors.

The essence of the principle of legal certainty, taking into account the relevant case-law of the international court directly in the decision of the Grand Chamber of the Supreme Court in case 182/7775/15-ts[32]. As a result, the court concluded that this principle is interrelated with another one - equality of arms. The latter principle is an integral part of the first and finds its manifestation in the ability of both parties to present the evidence and case itself in conditions that are not significantly worse than the opponent. This is reproduced in the judgment of the ECtHR in the case of Dombo Beheer B.V.

27 Case of Brumărescu v. Romania. Application no. 28342/95, ECHR. http://hudoc.echr.coe.int/eng?i=001-58337. [accessed: 10.01.2022].

28 Case of Lupeni Greek Catholic Parish and Others v. Romania. Application no. 76943/11, ECHR. http://hudoc.echr.coe.int/eng?i=001-169054. [accessed: 13.01.2022].

29 Case of S.W. v. the United Kingdom. Application no. 20166/92, ECHR. http://hudoc.echr.coe.int/eng?i=001-57965. [accessed: 13.01.2022].

30 Case of Ryabykh v. Russia. Application no. 52584/99, ECHR. http://hudoc.echr.coe.int/eng?i=001-61261. [accessed: 13.01.2022].

31 Case of Ryabykh v. Russia. Application no. 8269/02, ECHR. http://hudoc.echr.coe.int/eng?i=001-93775. [accessed: 17.01.2022].

32 Judgment of case no. 182/7775/15-ts, Grand Chamber of the Supreme Court. https://reyestr.court.gov.ua/Review/85467886. [accessed: 17.01.2022].

v. the Netherlands[33], as well as detailed in Beer v. Austria[34], where the development states that each party should be allowed to review the comments or evidence provided by the other party, including the other party's appeal, and to provide its comments in this regard. In the context of the above, the trust in the justice the parties hold is at stake, based on the realization that they had the right to unleash their position on each document in the case papers.

Finally, all the above manifestations of the content of the right under consideration both within the framework of the literal interpretation of Article 6 § 1 of the ECHR and the case-law reproduce another important feature of this legal construction. The feature lies in ensuring that a case is heard within a reasonable time. For the public substantive and procedural law of Ukraine is relatively new the concept of reasonableness in implementing the legal mechanism for the regulation of public relations. The reasonableness of the conduct of legal entities, whether private or public, can be considered at the level of a general concept as a legal principle, as reflected in Art. 3, part 1 sec. 6 of the Civil Code of Ukraine[35], where it is considered along with justice and good faith. Such an approach of the legislator is quite reasonable and logical, which follows from the essence of the basic principles according to which the regulation of relevant social relations, among which the principle of justice, good faith, and reasonableness occupy a prominent place. The opinion that justifies the use of the concepts of good faith and reasonableness as the basic principles of law as an evaluative category of behavior of participants in public relations is correct[36]. This view is held by Z.V. Romovska, which directly defines justice, good faith, and reasonableness as a common value between law and moral norms[37].

The very essence of these evaluative concepts has a fairly complete understanding of the Ukrainian language, where reasonableness is considered in the sense of „reasoning, comparing the phenomena of objective reality and drawing conclusions", good faith – „honestly, diligently and honestly perform

33 Case of Dombo Beheer B.V. v. the Netherlands. Application no. 14448/88, ECHR. http://hudoc.echr.coe.int/eng?i=001-57850. [accessed: 17.01.2022].

34 Case of Dombo Beer v. Austria. Application no. 30428/96," ECHR. http://hudoc.echr.coe.int/eng?i=001-59204, [accessed: 22.01.2022].

35 Law of Ukraine The Civil Code of Ukraine, Verkhovna Rada of Ukraine. https://zakon.rada.gov.ua/laws/show/en/435-15/print. [accessed: 22.01.2022].

36 Natalya Besedkina et al., „Categories of reasonableness and good faith in private law Regulation" *Laplage Em Revista*, No. 3A (2021): 64.

37 Zorislava Romovska, *Ukrainian civil law: General part. Academic course* (Kyiv: Attica, 2005), 14.

their duties", justice – „Human relations, actions, and deeds that meet moral, ethical and legal norms"|. In terms of their content, the above interpretation of good faith, reasonableness, and fairness emphasizes the evaluative-intellectual component of the behavior of participants in public relations within the first concept and the evaluative-volitional component of the behavior of such persons in the context of the other two categories.

Based on the information mentioned above, we can formulate a description of the principle of reasonableness in private law as the behavior of the subject, which corresponds to the correct moderate reaction of an ordinary person, which is a consequence of the decision based on a comparison and analysis of objectively formed reality for administrative law, the Code of Administrative Procedure[38] considers the content of reasonableness as a principle within the so-called principle of the reasonableness of the time. It is consistent with the essence of the principle of fair, impartial, and timely consideration of administrative cases, which is reproduced in civil proceedings[39]. Although it is necessary to agree with the explanation of the Plenum of the Supreme Specialized Court of Ukraine for Civil and Criminal Cases, reflected in the Resolution of this instance of October 17, 2014 No. 11, where the reasonableness of time is a direct manifestation of reasonableness in procedural right[40].

As a special legal category or as a manifestation of this principle, reasonableness is subject to consideration by the Civil Code of Ukraine[41] in addition to the term also in terms of conduct (Article 12), compensation for non-pecuniary damage (Article 23), payment (Article 353), price (Article 874), the term (Article 1146), costs (Article 1232), etc. This issue needs special attention in terms of temporal prevention from exercising rights by the relevant actors, i.e., as a reasonable time for the exercise of rights and performance of duties. In particular, the issue of reasonable time is considered within the framework of administrative law in the qualification of illegal actions

38 Law of Ukraine, The Code of Administrative Judiciary of Ukraine, Verkhovna Rada of Ukraine. https://zakon.rada.gov.ua/laws/show/en/2747-15/print. [accessed: 28.11.2021].

39 Olena Marycheva et al., „Peculiarities of using information technologies through the prism of the principles of civil proceedings" *Amazonia Investiga*, No. 44 (2021): 227.

40 Resolution No. 11, October 17, Plenum of the Supreme Specialized Court of Ukraine for Civil and Criminal Cases. https://zakon.rada.gov.ua/laws/show/en/v0011740-14/print. [accessed: 28.11.2021].

41 Verkhovna Rada of Ukraine, Law of Ukraine, The Civil Code of Ukraine.

under Art. 1851 of the Code of Ukraine on Administrative Offenses[42] on the period of early notification of meetings, rallies, marches, and demonstrations of public authorities and local governments. At the same time, the statement that the duration of the terms of early notification should be within reasonable limits and should not limit the provisions of Art. 39 of the Constitution of Ukraine[43].

Since the cited article of the Basic Law of Ukraine directly indicates the early notification of the executive branch or local self-government bodies about the implementation of the relevant right, one should interpret the very concept of „early" as a temporal limitation of this right, consistent with the manifestation of reasonableness in such relationships. Some courts generally departed from the essence of this type of term and applied the Decree of the Presidium of the Supreme Soviet of the USSR „On the Procedure for Organizing and Conducting Meetings, Rallies, Street Campaigns and Demonstrations in the USSR" of July 28, 1988 was set in ten days[44]. This position of the courts was erroneous due to the permissive nature of the exercise of this right of citizens, defined by this Decree, in contrast to the notification procedure provided by the Constitution of Ukraine. However, it is reasonable to notify that meetings, rallies, marches, and demonstrations will be notified in advance or within a reasonable time, if the relevant authorities objectively have sufficient time in certain circumstances to determine whether the holding of such meetings is under the conditions of the law and if need be, go to court to resolve disputes.

Reasonable time as one of the types of relatively certain terms is reflected in two fundamental Codes of Ukraine - Administrative Procedure[45] and Civil.[46] The positive property of administrative procedural law is the clear definition of the above notion as the shortest term for consideration and

42 Law of Ukraine, The Code of Ukraine on Administrative Offenses, Verkhovna Rada of Ukraine, accessed 28 November, 2021, https://zakon.rada.gov.ua/laws/show/en/2747-15/print. [accessed: 28.11.2021].

43 Law of Ukraine, The Constitution of Ukraine, Verkhovna Rada of Ukraine. https://zakon.rada.gov.ua/laws/show/en/254k/96-vr/print. [accessed: 28.11.2021].

44 Decree On the Procedure for Organizing and Conducting Meetings, Rallies, Street Campaigns and Demonstrations in the USSR, Presidium of the Supreme Soviet of the USSR. https://zakon.rada.gov.ua/laws/show/v9306400-88/print. [accessed: 28.11.2021].

45 Verkhovna Rada of Ukraine, Law of Ukraine, The Code of Ukraine on Administrative Offenses.

46 Verkhovna Rada of Ukraine, Law of Ukraine, The Civil Code of Ukraine.

resolution of administrative cases, adequate to provide timely court protection of rights, freedoms, and interests of public relations that have been violated (para 11 part 1 Art. 4 of the Code of Administrative Procedure of Ukraine). In the case of M.S.S. v. Belgium and Greece, the ECtHR[47] the following criteria in the context of the reasonableness of a term: the behavior of the applicant and state bodies involved, the case complexity, and its significance for the applicant. In the context of the above, the Constitutional Court of Ukraine in its judgment of 30 January 2003 No. 3-rp/2003 defined of a reasonable time in the pre-trial investigation as an estimate, ie one determined in each case given all the circumstances of the criminal investigation, citing the said ECtHR[48].

In the above Resolution, the Plenum of the High Specialized Court of Ukraine for Civil and Criminal Cases, following the Constitutional Court of Ukraine, based on the results of the ECtHR, distinguished such criteria of reasonable time within civil cases as legal and factual complexity; the conduct of the applicant, any persons involved, and other participants in the process; behavior of public authorities (primarily the court); the character of the process and the role it plays for the applicant. Furthermore, this court additionally pointed out the following criteria of reasonable time in civil procedural law: the existence of circumstances that make it difficult to consider the case; the number of co-accused, co-litigant, and other participants in the process; the necessity for examinations and their complexity; the necessity for broad witness interview; a foreign element involved in the case and the need to clarify and resort to the rules of foreign law. At the same time, when considering criminal cases, the complexity of criminal proceedings was singled out among the criteria of reasonableness; behavior of participants in criminal proceedings; the manner of exercising the powers of the investigator, prosecutor, and the court, which provides an interpretation of the essence of each of the criteria.

However, for the first time in the Ukrainian legislation this type of term was regulated in the civil legislation, in the example of provisions of articles 564 (duties of the guarantor), 619 (receiving the answer by the creditor to the presented requirement), 666, 670, 672, 678, 680, 6811, 684, 688, 690, 700, 704 (realization of the content of the contract of sale), 776, 777 (within the content of the lease agreement), 846, 852, 857, 858, 872, 877, 884 (exercise of rights and obligations) languages by the parties to the contract), 919, 935 (exercise of rights under contracts for the provision of transport services),

47 M.S.S. v. Belgium and Greece. Application no. 30696/09, ECHR. http://hudoc.echr.coe.int/eng?i=001-103050. [accessed: 2.01.2022].

48 Judgment of the Case no. 1-12/2003," Constitutional Court of Ukraine, https://zakon.rada.gov.ua/laws/show/en/v003p710-03/print. [accessed: 2.01.2022].

938, 939 (in the relationship of storage), 1004, 1017, 1041 (in the provision of intermediary services), 1082 (within the factoring agreement), 1101 (when carrying out settlement operations), 1146 (when realizing the content of the obligation under the public promise of remuneration) of the Civil Code of Ukraine[49].

In civil substantive law, the opinion is expressed that „reasonable time" means the need to consider all the specific circumstances in which the parties to the legal relationship[50]. At the same time, it is proposed to consider reasonable such a period during which a person endowed with a normal, average level of intelligence, knowledge, and life experience can adequately assess the situation, and model the necessary, legally significant behavior. In civil law, the nature of a reasonable term is formed within such principles as fairness, good faith, and reasonableness under paragraph 6 of part 1 of Article 3 of the Civil Code of Ukraine[51]. A similar point of view was observed within the procedural limits concerning the exercise of the right to due process of law by conducting a trial within a reasonable time.[52] Thus, both within private and public law, the purpose of a reasonable time is to ensure the relevant subjective law is implemented to consider the interests of all participants in public relations.

Ukrainian courts extend the jurisdiction of the ECtHR not only to purely civil disputes, as well as the scope of establishing the merits of criminal charges against a person but also widely use the relevant court decisions of this international judicial institution in public disputes. Examples of this are cases touching upon the protection of individual rights and freedoms in relations with public authorities. Thus, there are a large number of decisions of courts of administrative jurisdiction, in which the exercise of the right to due process of law is considered within the relevant decisions of the ECtHR.

Among them is the decision of the Odesa District Administrative Court of November 9, 2016, in case No. 815/5876/16[53] to consider the motion

49 Verkhovna Rada of Ukraine, Law of Ukraine, The Civil Code of Ukraine.

50 Volodymyr Luts, *Terms and data in civil law* (Kyiv: Yurinkom Inter, 2013), 48.

51 Verkhovna Rada of Ukraine, Law of Ukraine, The Civil Code of Ukraine.

52 Tatiana Suzdaltseva, "Grounds for the right to compensation for violation of the right to a fair trial within a reasonable time or the right to execute a judicial act within a reasonable time" *Tomsk State University Journal*, 395 (2015): 155.

53 Judgment of case no. 420/3574/19, Odesa District Administrative Court. https://reyestr.court.gov.ua/Review/85675501. [accessed: 21.12.2022].

to dismiss the presiding judge in an administrative lawsuit against public authorities to appeal the registration procedures, which applied the position of the ECtHR regarding the impartiality and impartiality of the court in the case of Piersack v. Belgium[54], according to which, although impartiality usually means the absence of bias, its absence or, conversely, the presence can be verified in various ways. The above makes it possible to distinguish between two approaches - subjective and objective. The first one reflects the personal beliefs of the judge in a particular case. The second one determines whether there were sufficient guarantees to rule out any doubts in this regard. Where the court concluded that in assessing the impartiality of the court should distinguish between subjective and objective aspects.

The judgment of the Donetsk District Administrative Court in case No. 200/9979/19-a[55] on the recognition of illegal activities of a public entity with the operating concept of „property", which includes permits (permits or licenses), which takes place in the ECtHR decision in Tre Traktorer Aktiebolag v. Sweden[56]. This position directly ensures the introduction into the jurisprudence of a mechanism for a fair settlement of the case in essence within the rule of law, where disputes require consideration not only of national law but also the ECtHR case-law and the Convention.

In case No. 728/968/17, which was considered by the Bakhmatsky District Court of the Chernihiv Region[57], regarding the recovery of a social benefit from a public authority in the form of a pension concerning the materials of the case Salesi v. Italy[58] interprets the content of civil rights and obligations under Article 6 of the Convention in a broader sense than provided by national law, as a result of which the absolute right to access to a court is interpreted within the framework of exercising the due process of law. The above provided for the connection between the content of the guarantees enshrined

54 Case of Piersack v. Belgium. Application no. 8692/79, ECHR. http://hudoc.echr.coe.int/eng?i=001-57557. [accessed: 3.12.2021].

55 Judgment of case no. 200/9979/19-a, Donetsk District Administrative Court. https://reyestr.court.gov.ua/Review/86096836. [accessed: 10.01.2022].

56 Case of Tre Traktorer Aktiebolag v. Sweden. Application no. 10873/84. ECHR. http://hudoc.echr.coe.int/eng?i=001-57586. [accessed: 3.12.2022].

57 Judgment of case no. 728/968/17, Bakhmatsky District Court of Chernihiv Region. https://reyestr.court.gov.ua/Review/67802256. [accessed: 24.11.2022].

58 Case of Salesi v. Italy. Application no. 13023/87, ECHR. http://hudoc.echr.coe.int/eng?i=001-57814. [accessed: 21.12.2022].

in Article 6 of the ECHR and a legal mechanism developed by the state for implementing the final and binding court decision.

To apply the general principles of exercising the right to due process of law in resolving disputes in the civil service, the Odesa District Administrative Court in considering case No. 420/3574/19[59] on declaring illegal the order of a public authority to dismiss a civil servant and reinstate him in the civil service applied the judgment of the ECtHR Pellegrin v. France[60], which covers the content of Article 6 § 1 of the Convention. In the light of the foregoing, the Ukrainian courts conclude that the substantive jurisdiction of labor disputes is delimited by a public authority which is not covered by the provisions of Article 6 § 1 of the Convention, where the ECtHR in Vilho Eskelinen and others v. Finland[61]: only disputes raised by civil servants whose duties are a typical example of a specific civil service activity are excluded from the scope of Article 6 (1), as the latter act as public officials and are responsible for the protection of national interests and the interests of other state bodies. This feature was the basis for the conclusion of the Fifth Administrative Court of Appeal in case 400/2892/19[62] not to extend the above provisions of the Convention to relations involving a police officer until he loses his specific status due to dismissal.

4. Conclusion

The study provided an opportunity to draw the following conclusions. The cas-law in Ukraine on the exercise of the right to due process of law, as defined in Article 6 of the ECHR, is based on the content of the relevant judgments of the ECtHR. Given the cas-law of the last instance court, the following rules for determining the fairness of a court decision have been identified:

1) the subject of consideration of this issue is not the establishment of errors in fact or law committed by the national court;
2) the latter is rebutted in the event the rights and freedoms established under the Convention have been violated;
3) there is a violation of procedural guarantees established by Article 6 § 1 of the Convention.

59 Odesa District Administrative Court, Judgment of case no. 420/3574/19.

60 Case of Pellegrin v. France. Application no. 28541/95, ECHR. http://hudoc.echr.coe.int/eng?i=001-58402. [accessed: 22.01.2022].

61 Case of Vilho Eskelinen and others v. Finland. Application no. 63235/00, ECHR. http://hudoc.echr.coe.int/eng?i=001-117762. [accessed: 13.01.2022].

62 Judgment of case no. 400/2892/19, Fifth Administrative Court of Appeal. https://reyestr.court.gov.ua/Review/89674646. [accessed: 2.01.2022].

The observance of the rule of law affects the right to access to the courts in a democratic country, structured in the right to a fair trial since it ensures real access at all stages of the proceedings. Restriction of the right of access to court is possible under the following conditions:

1) the purpose of pursuing the restriction must be lawful;
2) the balance between the measures employed and the rightfulness of the purpose pursued by such restriction must be reasonable.

Directly within the framework of the exercise of the right to due process of law, such features as impartiality, independence of the court, publicity, equality, and reasonableness of the terms of the relevant trial are reproduced. Taking into account the Ukrainian cas-law given the implementation of the decisions of the European Court of Human Rights, the criteria of impartiality include:

1) subjective (personal impartiality is presumed until evidence is provided to refute this);
2) objective (creation of such guarantees by the procedural order of consideration of the case, which excludes any doubts about the impartiality of the court).

The following theses can serve as a formulation for proper implementation of the principle of legal certainty:

1) when the dispute is resolved by the courts, their decision cannot be called into question;
2) if the disputes arise within one of the highest judicial authorities, the court itself turns into the source of uncertainty, thereby compromising the principle of legal certainty and discrediting public trust in the judiciary;
3) court decisions must be reasonably predictable.

Judicial practice allows limiting the effect of the principle of legal certainty, provided that the purpose of departing from this principle is to correct significant deficiencies or material errors made in court proceedings. The principle of equality of the parties is manifested in the ability of each party to present the case and evidence, in conditions that are not significantly worse in terms of the opponent. Among the criteria for a reasonable time of consideration by cas-law are the following: the presence of circumstances that complicate the case; the number of co-accused, co-litigant, and other participants in the process; the necessity for examinations and their complexity; the necessity for broad witness interview; a foreign element involved in the case and the need to clarify and resort to the rules of foreign law. Additionally, within the framework of criminal proceedings: the complexity of criminal proceedings; behavior of participants in criminal proceedings; the manner of exercising the powers of the investigator, prosecutor, and court. The

subject-matter jurisdiction further characterizes administrative proceedings that complement the substance of disputes covered by Article 6 § 1 of the ECHR, thus providing a broad interpretation of the concept of „civil rights and obligations".

5. Recommendations

Given the importance of the cas-law of the European Court of Human Rights, as the entity responsible for the interpretation and application of the Convention and its Protocols, and the implementation of its provisions by the Contracting Parties, it is necessary to propose:

1) to continue the implementation of the decisions of the above court in the Ukrainian judicial system at the level of all instances, as well as sectoral jurisdictions: civil, administrative, commercial, and criminal proceedings;
2) to make a point of the manifestation of the substantive components of the right to a fair trial and related categories, including the right of access to court, impartiality, the impartiality of the court, implementation of the rule of law, and equality of participants, fairness, publicity, and reasonableness;
3) to create a permanent generalizing practice of the Grand Chamber of the Supreme Court on the generalization of judicial practice to ensure the implementation of the content of the right to a fair trial in the context of the relevant decisions of the ECtHR.

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