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Decisions of European Court of Human Rights and Constitutional Court of Ukraine: Problem of Competition*

The ratification of the *Convention for the Protection of Human Rights and Fundamental Freedoms* ("the *Convention*") has become an important event for the legal system of *Ukraine* and the *Ukrainian* society. It actually means that national courts have entered a crucial phase in gaining experience of applying this international document.

In 2006, the *Verkhovna Rada* of *Ukraine* passed a special law "*On the Fulfillment of Decisions and Application of Practice of the European Court of Human Rights*" aimed to regulate relations arising due to the obligation of the state to execute judgements and decisions of the *European Court of Human Rights* in cases against *Ukraine*; to eliminate the causes of violation by *Ukraine* of the *Convention for the Protection of Human Rights and Fundamental Freedoms* and protocols thereto; to incorporate the *European* standards on human rights into *Ukrainian* judicial procedure and administrative practice; to reduce the number of applications against *Ukraine* filed with the *European Court of Human Rights* (ECHR). The law specifically provides for the mechanism of enforcing the ECHR's judgements awarding compensations, as well as it establishes the procedure of filing a suit for damages incurred by the state budget because of the compensations paid. Moreover, the *Criminal Code of Ukraine* (Part 3, Art. 382) sets forth that an official's deliberate non-execution of ECHR's decisions entails criminal responsibility.

In accordance with Part 1, Art. 17 of the *Law of Ukraine "On the Fulfillment of Decisions and Application of Practice of the European Court of Human Rights"* [11. – 2006.– № 12. – Art. 792], courts, in examining cases, use the *Convention* and the ECHR practice as sources of law. Therefore, the significance of the *Convention* for judicial enforcement is a pressing and top-priority issue. The same is true for ECHR's judgement application [See: 8, pp.18-24; 9, pp.140-142; 16, pp.41-46]. One of the aspects of this issue is correlation between the decisions of ECHR and those of the *Constitutional Court of Ukraine*.

The impact of ECHR's decisions on court practice and their legal effect within the legal system can be considered by analogy with those of the decisions of the *Constitutional Court of Ukraine*. Still, there are certain substantial differences between them, which are accounted for by the different statuses of these courts. ECHR decides issues of application of conventional rules but does not exercise judicial review over domestic laws, whereas it is the very function of the *Constitutional Court of Ukraine* to exercise judicial review within the national legal system.

In considering the actual impact of the ECHR's decisions and those of the *Constitutional Court of Ukraine* on the national legal system, we can see that a certain competition between them is likely to occur. The problem of relationship between the decisions of the two courts really exists. *P. M. Rabinovich* rightly notes that despite certain distinctions in the nature, designation (function) and powers (competence) of each of these

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judicial bodies both have similar positions on the nature and content of the concept of "the rule of law"; yet, unlike the *Constitutional Court of Ukraine*, the ECHR tends to emphasize that interpretation of the content of the concepts of law and the rule of law is situational, and it avoids an extremely abstract definition of the concept of law that could cover all life situations in any concrete historical context and involving any concrete individual without exception. *P. M. Rabinovich* writes that there has not been a single case, where the two judicial institutions have come to principally different conclusions in their decisions on the same issue, which is quite probable, though [14, pp.8, 9]. The scholar's predictions were correct; moreover, he himself has indicated the particular cases where the ECHR disagreed with the bodies of constitutional justice [15, p. 18].

It is true that today one might face different approaches to the interpretation of basic legal institutions, used by the ECHR and national constitutional courts. Some authors reasonably consider that ECHR's interpretation of rules should be applied not only by general courts but also in constitutional justice in interpreting the *Fundamental Law* or other laws [3, p.4]. This implies formal superiority of ECHR's decisions over decisions of constitutional courts. At the same time there is another point of view on this issue. *S. Fursa* and *Ye. Fursa* rely on the assumption that since the *Ukrainian* court system is not subordinate to the *Strasbourg Court*, their relations should be based on the principles of interaction rather than subordination. Accordingly, the scholars believe that the *Constitutional Court of Ukraine* and, consequently, general courts are only bound by the *Constitution of Ukraine*. So, all normative acts that are to enter into force in Ukraine must be checked for conformity to the *Constitution*. The researches logically state, that considering this issue in detail one might come across some difficult situations related to further review of judgements because of exceptional circumstances. In this event the case will be reviewed by the *Supreme Court of Ukraine*, however there is a possibility that the citizens will raise the question of the ECHR decision not being in conformity to the *Constitution of Ukraine*. Thus, there arises a conflict between *Ukraine's* international and domestic obligations, the latter arising under the Fundamental Law. In other words, interpretation of provisions in ECHR decisions in order to check them for conformity to the *Constitution of Ukraine* might be a problem [20, p.7].

Relations between ECHR judgements and the decisions rendered by national constitutional courts also constitute a pressing issue in scientific literature and court practice of the Western countries. On 14 October 2004 the *Federal Constitutional Court of Germany* rendered a decision that had caused a furious reaction and discussion concerning the previous ECHR decision in the case of *Görgülü v Germany* (of 26 February 2004). Most often the former decision has been perceived as disappointment at the reluctance of the *Federal Constitutional Court of Germany* to implement the ECHR decision on the ground that the *Constitutional Court* made reference to some national specific features. Such disagreements had never happened before as both ECHR and national courts were considered to serve the common goal – protection of fundamental human rights. In addition, human rights in *Germany* had predominantly been observed and violations of the *Conventions* had been regarded as insignificant [21, p.417].

The ECHR judgement in this case could be reduced to the following: there had been a violation of Article 8 of the *Convention* and it must be made possible for the applicant, as the child's natural father, at least to have access to his child. Before the case was

brought before ECHR, the applicant had sought custody of his child in the *Wittenberg District Court*. In 2001 the *Court* ruled for the applicant. The judgement was appealed by the child's foster parents to the *Higher Regional Court of Naumburg*, which revoked it. In 2002 the applicant lodged a complaint with the *Federal Constitutional Court of Germany*; the *Court* rejected it. *Mr. Görgülü* applied to ECHR alleging that Art. 8 of the *Convention* had been violated since *German* courts had rejected his request for custody without sufficient grounds. In 2002 the *Dessau Regional Court*, having examined the foster parents' application, rendered a judgement of adoption of the child. *Mr. Görgülü* applied to *the Higher Regional Court of Naumburg* for custody and access rights; the *Court* held that the judgement could not be rendered until the ECHR had decided the case of *Görgülü v Germany*, as the legal action in the ECHR was underway. In other words, before the judgement was rendered by the ECHR, two parallel legal actions involving *Mr. Görgülü's* rights had been taking place, but the national courts had not been able to decide the cases pending proceedings before them.

After the ECHR rendered a judgement of 26 February 2004 and held that there had been a violation of Article 8 (right to respect for private and family life) of the *Convention*, concerning the refusal to give the applicant custody and access rights, the *Wittenberg District Court* granted *Görgülü* custody of the child (June 2004). At the same time the *Court* at its discretion limited the access to the child by two hours per week. This judgement was again revoked by the *Higher Regional Court of Naumburg*, which ruled that ECHR judgements are not binding on *German* courts, in particular on the *Wittenberg District Court*, since otherwise final decisions of the higher national courts would lose their legal force. The *Higher Regional Court of Naumburg* argued that the *Convention* constitutes ordinary law, and the ECHR cannot overrule national judicial body. ECHR's judgements are binding on the *Federative Republic of Germany* as a subject of international law, but not on its bodies responsible for administering justice, which are independent under Art. 97.1 of the *Fundamental Law of Germany*.

Arguing that the violation of the right to respect for family life was confirmed by the ECHR judgement of 26 February 2004 and neither the *Wittenberg District Court* nor the *Higher Regional Court of Naumburg* had taken it into account, *Mr. Görgülü* filed his second complaint with the *Federal Constitutional Court of Germany*. In its judgement of 14 October 2004 the *Federal Constitutional Court* noted that the *Convention* is binding not only on the state as a subject of international law, but on its domestic bodies as well. However, it pointed out that the *Convention* does not have the status of constitutional law in the sense the *German* legal system understands it. Consequently, the *Convention* does not override other ordinary laws. Therefore, ECHR judgements can be incorporated into the national legal system only if they conform to superior national rules, especially, constitution ones. Relying on this argument, the *Federal Constitutional Court* noted that violation of the *Convention* does not constitute a sufficient ground for individual constitutional complaints (as was the case with the complaint in 2001). In the *Court's* view, national courts could neglect the relevant provisions of the *Convention*, which violate the *Fundamental Law of Germany* (case No. 2 BvR 1481/04 of 14 October 2004, the *Federal Constitutional Court of Germany*). As one can see, such a specific approach has led to the conclusion that actually this court neglects ECHR's judgements concerning the interpretation of the *Convention*.

Matthias Hartwig from the *Max Planck Institute*, on the contrary, believes that such an approach of the *Court* to the implementation of the *Convention* is unique, since it links constitualization of the *Convention* guarantees to the means of individual constitutional complaints. This indicates, first of all, the cooperation between the ECHR and constitutional courts and makes individual constitutional complaints and broadening the jurisdiction of the *Constitutional Court* possible. Before that the *Constitutional Court of Germany* had avoided cases involving violations of rights in the context of the *Convention* [22, p.893].

It should be noted that the problem of conflict of ECHR judgements and the decisions rendered by national constitutional courts is becoming general, being regarded as one of the aspects of the crucial issue of correlation between national and supranational legal institutions. The ruling of the *Constitutional Court of the Russian Federation* N 187-O-O of 15January 2009 in the case brought by *Konstantin Markin* has become one of the most notable events in recent years. The *Court* held that in certain cases *Russia* can decline from execution of ECHR's judgements. As is known, after that, *President* of the PACE *Ann Brasseur* made a statement that all the state parties to the *European Convention for the Protection of Human Rights and Fundamental Freedoms* are obliged to execute ECHR's judgements and expressed concern about the ruling of the *Constitutional Court of the Russian Federation*. Later, in 2014, an amendment was introduced to Article 101 of the Law of the *Russian Federation "On the Constitutional Court"*. According to the amendment, if a court reviews a case as a result of an international body for the protection of human rights and freedoms having rendered a judgement ruling that human rights and freedoms have been violated in the *Russian Federation*, the question whether the court can apply the law can be decided only after the law has been checked for conformity to the *Constitution of the Russian Federation* on the request for the check of the constitutionality of the law filed by the court with the *Constitutional Court of the Russian Federation* (Art. 101). This actually means that a domestic mechanism for non-execution of ECHR's judgements has been created [19].

Here are the circumstances of the case: *Mr. Konstantin Markin*, a serviceman in the *Russian* army, after the divorce, asked for a parental leave to take care after his newly-born child, but the head of the military unit and military courts rejected his request because the law provides that three years' parental leave could be granted only to female military personnel. Feeling that his rights had been violated he applied to the *Constitutional Court*, claiming that the provisions of the *Federal Law on Obligatory Social Insurance of Sick Leave or Maternity Leave* as well as the *Federal Law on the Status of Military Personnel (Military Service Act)* and the relevant provisions of the *Regulations on Military Service* were incompatible with the equality clause in the *Constitution* as they didn't grant the right to parental leave for male military personnel. However, the *Constitutional Court* held that by voluntarily choosing military service citizens agree to the conditions and limitations related to the acquired legal status. Accordingly, the specific legal status presupposes that male military personnel are not entitled to a parental leave and child-care allowance. By granting, on an exceptional basis, the right to parental leave to servicewomen only, the legislature took into account, firstly, the limited participation of women in military service and, secondly, the special social role of women associated with motherhood.

Therefore, the legislature's decision cannot be regarded as discriminatory. On these grounds the *Constitutional Court* rejected *Markin's* complaint as inadmissible [10].

Markin was not satisfied with the decision and he filed a complaint with the ECHR. In the judgement rendered on 7 October 2010 ECHR disagreed with the *Constitutional Court's* arguments and held that there was no objective and reasonable justification for the difference in treatment between men and women regarding entitlement to parental leave. The ECHR established that the *Russian Federation* had violated Article 8 ("the right to private life") and Article 14 ("non-discrimination") of the *European Convention for the Protection of Human Rights and Fundamental Freedoms*. Later, on 22 March 2012 the ECHR *Grand Chamber*, having rejected *Russia's* objections, upheld the judgement and awarded *Konstantin Markin* additional compensation for the emotional harm [12; 13].

The *Chairman* of the *Constitutional Court* of the *Russian Federation V. Zorkin* called this judgement unprecedented, regarding the statement that "*the Russian legislation in question is incompatible with the Convention*". In his opinion, the fact that domestic authorities better understand the society and its needs means that these authorities are in a superior position in relation to international courts for the assessment of what public interest consists in. This, he believes, is what the subsidiarity principle, based on which the *European Court* is supposed to act, generally means. Moreover, each decision of the *European Court* is not only a legal but political act. When such a decision is taken in the interests of the protection of the rights and freedoms of the citizens and the development of our country, *Russia* will always precisely obey it. But when it or another decision of the *Strasbourg Court* is doubtful from the point of view of the goal of the *European Convention on Human Rights* and moreover in a direct fashion concerns national sovereignty and fundamental constitutional principles, *Russia* has the right to work out a defence mechanism against such decisions. Precisely through the prism of the *Constitution* the problem of the relationship between judgements of the *Constitutional Court* and the ECHR must also be worked out. [5]. He also argued that in deciding the *Markin* case the ECHR had gone far beyond this particular case in making its conclusions and, as generally known, Article 46 of the *Convention* doesn't vest the *Court* with such powers, so the mechanism of such legal orders can be used only to make pilot decisions, the possibility of rendering which is authorized by Protocol 14. But pilot decisions are possible provided that systematic problems in a number of spheres occur. The situation is getting even more ambiguous when in deciding a particular case the ECHR evaluates not only the legal rules contradicting to the *Convention*, but also issues orders to change them, despite the fact that the constitutionality of those rules was viewed by the *Constitutional Court* [4, p.22].

In *Ukraine* the judgements of the *Constitutional Court of Ukraine* and the judgements of the ECHR are equally binding [18, p. 39]. This question is decided formally at the legislative level and the civil procedure provides mechanisms of correcting judicial practice taking into consideration the judgements of both the ECHR and the *Constitutional Court of Ukraine*. Under Article 355 of the *Civil Procedural Code of Ukraine* judicial decisions in civil cases can be reviewed by the *Supreme Court of Ukraine* if challenged on the grounds that an international judicial institution, the jurisdiction of which is recognized by *Ukraine*, established the violation of the international obligations by *Ukraine* in deciding these cases. As for the decisions of the *Constitutional Court of*

Ukraine, they are to be applied in deciding civil cases and non-application may provide the grounds for reviewing them in the *Court of Appeals* or the *Court of Cassation*. In addition, Article 361 of the *Civil Procedural Code of Ukraine* stipulates that if the *Constitutional Court of Ukraine* rules unconstitutional a law, a statute or one of their provisions applied by the court in deciding a case provided the execution of the court's decision is pending, such a decision may be reviewed on the ground of a newly discovered fact.

In practice there are cases where the decisions of *the Constitutional Court of Ukraine* are in conflict with the decisions of the ECHR. Thus, in deciding whether the *Law of Ukraine* on the *Introduction of a Moratorium on the Forced Sale of Property*, passed 10 June 2003 [11;.– 2003.–№ 25. – Art. 1217], conforms to the *Constitution of Ukraine*, the *Constitutional Court of Ukraine* found the law to be compatible with the provisions of the *Constitution*. But the Law became a real legal obstacle for enforcing judicial decisions in those cases where the debtor is represented by a state enterprise. The Law imposed a ban on selling assets belonging to state enterprises and undertakings in which the State holds at least 25% of the share capital. This ban therefore stays the execution of all judicial decisions on debt recovery no matter that they were rendered by the court and sent for execution. It actually implies a kind of private enterprises discrimination as the Law conferred privileges on state-owned enterprises in debt. Nevertheless, in deciding this case the *Constitutional Court of Ukraine* proceeded from the fact that the Law didn't violate the constitutional requirement of the obligatory force of the judicial decisions. *The Constitutional Court of Ukraine* specified that judicial decisions on the forced alienation of property of enterprises preceding and following the enactment of the Law are not cancelled by the Law, they remain in force but their implementation is suspended until such time as the mechanism for the forced sale of the property of such undertakings is improved [7, p. 243].

The decision by the *Constitutional Court of Ukraine* brings up a question of its correlation with the decision by the ECHR in the famous case of *Sokur v Ukraine*. The applicant *Sokur* instituted proceedings in the ECHR on the grounds that in May 2001, the *City Court* found in his favour and entitled the "*Novogrodovskaya*" *State Mining Company* to recover unpaid salary for the years 1998-2000 that amounted to UAH 7,405. In May 2001 the decision became effective and was sent for execution. However, it was not executed due to the prohibition on the forced sale of property of the state-owned undertaking. The decision of the prohibition on the forced sale of property was rendered by the *Commercial Court* in which the bankruptcy proceedings were litigated (this power of the court derives from Art. 12 of the Law of Ukraine "*On Restoring Debtor Solvency or Declaring a Debtor Bankrupt*" (of 14 May 1992), [11;–1999.–№ 33. – Art. 1699]). On 26 December 2001 the Law of Ukraine "*On the Introduction of a Moratorium on the Forced Sale of Property*" (of 29 November 2001) [11; – 2001. –№ 52. – Art. 2332] was enacted providing the legal basis for the prohibition on the sale of property of the mining company in debt. The ECHR stated that the *Ukrainian* legislation foresees two situations when enforcement proceedings against a State-owned company can be stayed indefinitely without any possibility for the creditor to challenge the stay or to request compensation for delays. Firstly, there may be bankruptcy proceedings (Art. 12, Law of 14 May 1992), under which the court can ban any debt retrieval from the debtor, and the latter remains immune from any penalties for the delays in honouring

its obligations. Secondly, there is the ban on the attachment of the property of the State-owned enterprises to cover their debts (Law of 29 November 2001). Both bans were applied in the present case. ECHR notes that it cannot deny the general legitimacy of both bans for staying enforcement proceedings against a State-owned company indefinitely. The *Court*, however, specifies that the legislation of *Ukraine* does not offer a creditor or the bailiff, any possibility to challenge such restrictions in case of their abuse or unjustified application. Nor can a compensation claim be made for the delay in enforcement caused by such restrictions.

In these circumstances, the *Court* considers that by delaying for nearly three years the enforcement of the judgement in the applicant's case, the authorities deprived the provisions of Article 6 § 1 of the Convention of much of their useful effect. There has, accordingly, been a violation of Article 6 § 1 of the *Convention* [11; – 2005. – № 33. – Art. 2025].

Thus, in deciding this case, the ECHR acted within the application by *Sokur* as well as within its competence to apply the *Conventional* requirements. It didn't decide (and it actually isn't empowered to decide) on the constitutionality of the two national laws that became obstacles for the fulfilment of the judicial decisions despite the fact that under civil procedure as well as Art. 129 of the *Constitution of Ukraine*, the decisions of the courts that became effective are binding and are to be enforced including the use of such means as the established enforcement procedures by the *State Bailiffs' Service*. At the same time, despite the decision of the *Constitutional Court of Ukraine* which directly concerns the use of the *Laws of Ukraine* of 14 May 1992 and 29 November 2001, the ECHR refrained from assessing the above-mentioned decision.

Nevertheless, the ECHR's decision provides substantial grounds to doubt the legitimacy of the *Law of Ukraine* of November 2001 concerning the introduction of a moratorium on the forced sale of property. Moreover, it actually constitutes a precedent as for the obligations of *Ukraine* in deciding cases by national courts that can, in fact, lead to the non-application of the decision rendered by the *Constitutional Court of Ukraine.*

In this aspect, one more case heard by the ECHR is of a particular interest – *Gayduk and Others v. Ukraine* which deals with repayment of deposits to the *Ukrainian* nationals. The applicants asserted that the State had wrongfully used its position as legislature to avoid its obligations to recover their indexed deposits through passing a corresponding act on the indexation scheme and deposits recovery. The applicants did not dispute the *Government's* assertion that they were entitled to recover the money they had initially deposited with the *Savings Bank*. However, they pointed out that, following severe devaluation as a result of inflation, all the deposits were now derisory in amount, even when statutory interest was taken into account. In that connection, they stated that the main purpose of their applications had been to obtain payment of the compensation, not to withdraw the underlying deposits, which were no longer of any interest to them. Besides, some of the applicants did not accept that a distinction could be made between the sums on deposit and the sums paid by the *State* under the indexation scheme. The *Court* notes that the applicants' complaint concerns two separate sums to which they lay claim: firstly, the savings account itself, that is to say the sums they actually deposited with the *Savings Bank*, whatever their real current value, and, secondly, the sums financed by the *State* budget and paid by the *State* under the indexation-of-deposits sche-

me established by *the State Guarantees of the Reimbursement of Ukrainian Citizens' Deposits Act*.

Having examined the case concerning the non-payment of compensations deriving from the *State's* intent to reimburse the value of deposits made in the former USSR *Savings Bank*, the ECHR stated that the right to the indexation of savings as such is not guaranteed by Article 1 of the Protocol. In this connection, this part of the application was declared inadmissible. As to the amounts referred to in this *Act* representing the indexed value of the deposits, the *Court* notes that their availability depends on the amounts which the State allocates to the Treasury subject to certain conditions. As the right to the indexation of savings as such is not guaranteed by Article 1 of Protocol No. 1, it is therefore inapplicable in the instant case. This part of the application is accordingly incompatible *ratione materiae* with the provisions of the *Convention* within the meaning of Article 35 § 3 of the *Convention* and must be rejected in accordance with Article 35 § 3. In the final decision the ECHR declared the application inadmissible and dismissed it [17].

The *Constitutional Court of Ukraine* applied an absolutely different approach in its decision rendered 10 October 2001 pursuant to the constitutional petition by the *Ukrainian Parliament Commissioner for Human Rights* on the conformity of the *Ukrainian Constitution* (constitutionality) with Sections 7 and 8 of the above-mentioned *Act* pursuant to the constitutional *appeal by V. Vorobyov, S. Losev* and other citizens concerning the official interpretation of Articles 22, 41 and 64 of the *Ukrainian Constitution* (the case on the savings of *Ukrainian* citizens).

In deciding the problem of constitutionality of Sections 7 and 8 of the Act, the *Constitutional Court of Ukraine* stands on the grounds that under the *Ukrainian Constitution* everyone has the right to own, use and dispose of his or her property and the results of his or her intellectual and creative activity (Section 1 Art. 41); no one shall be unlawfully deprived of the right of property, the right of private property is inviolable (Section 4 Art. 41).

As for the obligation of the *State* to guarantee the deposits of private individuals of the Savings Bank of Ukraine, it is of a civil character. The restoration of the savings of citizens through compensation accounts representing indexed savings in the branches of the *Ukraine Savings Bank* means not only the update of their real value but also the right of the account holders to demand the recovery of their updated and indexed deposits.

Taking into account these provisions, the scheme, established by the *Act* (Section 7) under which the deposits shall be reimbursed not on demand by the account holder as provided for by Article 384 of the *Civil Code of the Ukrainian* SSR, but "progressively taking into account the account holder's age, the amount of the deposit and other criteria and the amount of funds allocated for that purpose in the *Ukrainian State* budget for the forthcoming year" restricts the constitutional right to property of the citizens whose deposits were restored through compensation accounts representing indexed savings in the *Ukraine Savings Bank*. Thus, this provision of Section 7 of the Act is unconstitutional as it doesn't conform to the *Ukrainian Constitution.*

The deposits restored and indexed under the *Act* are subject to private property of the citizens. In this connection, Articles 22, 41 and 64 of the *Ukrainian Constitution*, which needed official interpretation pursuant to the constitutional appeal by *V. Vorobyov, S.*

Losev and other citizens, are extended to cover the right to property to which the abovementioned deposits are subject.

For these reasons, the *Constitutional Court of Ukraine* ruled unconstitutional the provisions of Section 7 of the *Act* of 21 November 1996 [1] which stipulate that deposits, restored and indexed under this *Act* in the branches of the *Ukraine Savings Bank*, shall be reimbursed to *Ukrainian* citizens, foreign citizens and stateless persons taking into account "the account holder's age" and "other criteria".

Pursuant to the constitutional appeal by *V. Vorobyov, S. Losev* and other citizens the provisions of Articles 22, 41 and 64 of the *Ukrainian Constitution* were interpreted as covering the right to property to which the deposits, restored and indexed in the branches of the *Ukraine Savings Bank* under the *State Guarantees of the Reimbursement of Ukrainian Citizens' Deposits Act*, are subject [7, pp. 23–29].

As we can see, the decisions by the ECHR and *Constitutional Court of Ukraine* provide different interpretation of the same provisions concerning the realization of the principle of the rule of law in the right to property. The practice of hearing cases with the application of international legal rules and ECHR's judgements is likely to become the basis for settling disputes between parties to internal legal proceedings. Needless to say that both the *Convention* and ECHR's judgements are binding for *Ukrainian* courts and take precedence over the national legislation. It can be even stated that national civil process will continue its internationalization due to the universalization of human rights and functioning of the universal international legal mechanisms of protecting them. *M. de Salvia* points out that it is due to the court interpretation of the *European Convention* that the general *European* rules on human rights and fundamental freedoms are implemented in life. Assessing this mechanism of the *Convention* implementation, he notes that it's dangerous to state that the acquired *European* unity can easily strengthen its position through jus commune which is directed at harmonisation of fundamental rights preserving at the same time the required number of the national legal systems as well as through the political and economic order of *Europe*. Though legitimate and aspiring to the unification, the *European* order induces controversies which are finally difficult to accept in the form of principles as they concern societies which, taking into account their differences, reflect the riches of the *European* civilization. *European* justice is supranational and doesn't modify national judicial bodies. It demonstrates flexibility as it renders decisions on particular cases. It manages to reveal the guiding principles aimed at regulating the way national government authorities act, especially the actions of legislators, lawyers and practitioners (judges and advocates) [2, pp. 20,21].

It's also worth mentioning that higher national (constitutional) courts (especially in *Germany*, the *United Kingdom, Italy* etc.) take a cautious approach to supranational justice and are ready not to block the application of the ECHR's legal positions but rather to cooperate with the aim of implementing them [24, p. 256; 25, pp. 128-161]. We consider this readiness fundamental and in this connection we'd like to quote *Luebbe-Wolff*, judge of the *Federal Constitutional Court of Germany*: "*If we find somewhat difficult to abide by an ECHR's decision, we are to notify the Strasbourg Court, but we are also to remember the importance of the system to which this decision pertains and to be ready to make a sacrifice to support the work of that system*" [22, p. 98].

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