THE ROLE OF THE DECISIONS OF THE EUROPEAN COURT OF HUMAN RIGHTS IN IMPROVING NATIONAL MECHANISMS FOR ENSURING THE RIGHT TO EDUCATION IN THE MEMBER STATES OF THE COUNCIL OF EUROPE

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The article reveals the role of the decisions of the European Court of Human Rights in improving national mechanisms for ensuring the right to education in the member states of the Council of Europe in general and in Ukraine during the period of the legal regime of martial law in particular. The decisions of the European Court of Human Rights in the cases of «Catan and others v. Moldova and Russia», «Loizidou v. Turkey», «Folgero and others v. Norway», «Ponomaryov v. Bulgaria» and their impact on the legislation of states in the field of education, the practice of its application are analyzed. It is noted that the decisions of the European Court of Human Rights: 1) are an act of interpretation of the norms of the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950; 2) are mandatory for implementation by a member state of the Council of Europe that has been recognized as a violator of a right and/or fundamental freedom guaranteed by the Convention (the state must take measures of a general and individual nature to implement it); 3) are a source of law in the member states of the Council of Europe. Attention is drawn to the fact that the Convention is a living organism, and the practice of the European Court of Human Rights under Art. 2 of Protocol No. 1 to the Convention is not a given once and for all – it develops and this development directly affects national legislation and the practice of its application, because in order to faithfully fulfill the international obligations assumed under Art. 2 of Protocol No. 1 to the Convention, the state must ensure the compatibility of the norms of national legislation and the practice of its application with the norms of the Convention and the practice of the European Court of Human Rights. Also, the principle of subsidiarity, included in Protocol No. 15 to the Convention, imposes a joint responsibility on the European Court of Human Rights and the member states of the Council of Europe for the protection of the right to education, and on national authorities – they must interpret and apply the national legislation of the state in the field of education in such a way that the right to education, guaranteed by Art. 2 of Protocol No. 1 to the Convention, is implemented, and in case of its violation, it is protected.

Keywords: right to education, ensuring the right to education, legal regime of martial law, protection of the right to education, source of law, national legislation, practice of applying state legislation, interpretation, European Court of Human Rights, decisions of the European Court of Human Rights, implementation of decisions of the European Court of Human Rights, measures of a general nature, measures of an individual nature.

Formulation of the problem

The right to education is one of the fundamental human rights [1]. It is guaranteed by the constitutions of all member states of the Council of Europe. The Council of Europe has also introduced a mechanism for the collective guarantee of this right: it is enshrined in Article 2 of Protocol No. 1 to the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms [2]: in accordance with Articles 33-34 of the Convention, interstate and individual applications may be submitted to the European Court of Human Rights; at the

request of the Committee of Ministers of the Council of Europe, the Court may provide its advisory opinions on the interpretation of the right to education; in accordance with Article 32 of the Convention, the jurisdiction of the European Court of Human Rights extends to all questions of interpretation and application of the norms of Article 2 of Protocol No. 1 to the Convention; final judgments of the European Court of Human Rights are binding on the state(s) in the case to which it(they) is a party; supervision over the execution of the Court's final judgments is carried out by the Committee of Ministers of the Council of Europe.

At the same time, it is not uncommon for states to delay the implementation of decisions of the European Court of Human Rights in cases to which they are parties, and despite the existence of decisions of the European Court of Human Rights, which have acquired the status of final in the case, they do not make changes to their national legislation, the practice of its application, which results in the violation of everyone's right to education and the appeal of victims of the violation of this right to the European Court of Human Rights after exhausting all national legal remedies.

The purpose of this article is to characterize the role of the decisions of the European Court of Human Rights in improving national mechanisms for ensuring the right to education in the member states of the Council of Europe. In legal science, the issue of the right to education was studied in scientific articles by L. Deshko, V. Prodan, T. Slinko, I. Shchebetun and other scholars. At the same time, the development of social relations, the occupation of part of the territory of Ukraine by Russia necessitate the study of the role of the decisions of the European Court of Human Rights in ensuring the right to education in the occupied territories, as well as the right to education under martial law.

Presenting main material

In order to fulfil its international obligations under Article 2 of Protocol No. 1 to the Convention, each member state of the Council of Europe must create effective national regulatory and organizational and legal mechanisms that would be fully compatible with the norms of the Convention and the case-law of the European Court of Human Rights.

Various factors influence the state's provision of everyone's right to education: the development of social relations, martial law, etc. If a person under the jurisdiction of a member state of the Council of Europe believes that his or her right to education has been violated, he or she has the right, after exhausting all national legal remedies, to apply to the European Court of Human Rights. Similarly, if one of the member states of the Council of Europe believes that another state is violating (a continuing violation) or has violated everyone's right to education, it may apply to the European Court of Human Rights with an interstate complaint.

When considering a case, the European Court of Human Rights, among other things, interprets Article 2 of Protocol No. 1 to the Convention in light of the development of social relations, factors that affect the provision of the right to education (for example, the legal regime of martial law, the occupation of part of the territory of one state by another state, etc.). Such an interpretation is not given once and for all - it may undergo evolution [3]. Accordingly, each member state of the Council of Europe, in order to faithfully fulfill its international obligations [4], must take into account the decisions of the European Court of Human Rights when developing its national legislation and the practice of its application, even if this state was not a party to the case.

For example, the decision of the European Court of Human Rights in the case "Catan and Others v. Moldova and Russia" of 19 October 2012 [5] is relevant for Ukraine given that part of the territories of Ukraine, as well as part of the territory of Moldova, is occupied by Russia [6; 7] and this decision raised the issues of the jurisdiction of the state, the obligations under Article 2 of Protocol No. 1 to the Convention of the state whose territory is occupied and the obligations of the state that occupied the territory of another state, as well as the issue of measures taken in the occupied territory in the field of education, the consequences of the educational policy of the separatist authorities for the education of children and family life; the

decision "Loizidou v. Turkey" of 18 December 1996 [8] raises the issue of effective (although not legal) control over the territory of the state and the imposition of responsibility for violations of human rights and fundamental freedoms that occurred in this territory on the state that exercises such effective control.

Therefore, the decisions of the European Court of Human Rights are acts of interpretation of the norms of law. At the same time, the Convention is a living organism and with the development of social relations, the emergence of new factors such as the occupation of the territory of another state by one state, pandemics, etc. the practice of the European Court of Human Rights is also evolving. The occupation of the territory of one state by another state became the factor that led to the interpretation by the European Court of Human Rights of Art. 1 of the Convention, Art. 2 of Protocol No. 1 to the Convention and other articles of this regional international human rights instrument in the case of "Catan and Others v. Moldova and Russia". Ukraine takes this decision into account when developing and implementing state policy in the field of education to ensure the right to education of citizens of Ukraine who are in the occupied territories. In particular, the possibility of distance learning for schoolchildren has been introduced, schoolchildren who studied in schools in the territories of Ukraine occupied by Russia are accepted for study at higher education institutions, etc.

In the case of "Folgerø and others v. Norway" [9] the issue of violation of the right of parents to raise their children in accordance with their religious or ideological beliefs was raised. The children's parents considered the compulsory participation of their children in religious classes to be a violation of their freedom of religion and conscience, as guaranteed by the Convention. We emphasize that the religious classes in question were generally compulsory, they were not optional religious courses, and the schools did not take into account the students' unwillingness to participate in such classes. Moreover, even at the parents' request, the children were not exempted from religious classes.

After the European Court of Human Rights delivered its judgment in the case of Folgerø and others v. Norway, Norway took general measures to implement the Court's judgment, including amendments to its national legislation. In particular, parents were granted the right to be completely exempted from the course if it contradicted their beliefs; another subject was introduced in schools – Religion, Philosophies of Life, and Ethics; the neutrality of teaching was strengthened, and the Christian component was reduced. Thus, after amending the national legislation, Norway provided real mechanisms for parents to refuse religious courses in the educational process of their children; an alternative in subjects was provided.

In the case of "Ponomaryovi v. Bulgaria" [10], the Ponomaryovi brothers, who were legally residing in Bulgaria, were faced with a situation where their family was forced to pay for their secondary school education. This was due to the fact that at that time in Bulgaria there were laws that allowed charging tuition fees from foreigners, because although the Constitution of Bulgaria guaranteed the right to education, certain Bulgarian legal acts nevertheless allowed schools to charge money for the education of those who did not have Bulgarian citizenship. In particular, the Bulgarian Law on Public Education provided for the possibility of charging tuition fees from persons who were not citizens of the country, and the Bulgarian Law on Foreigners did not contain clear provisions on access to secondary education for foreign children. Special mechanisms for the integration of foreign students into the public education system in Bulgaria were also absent.

The European Court of Human Rights has concluded that charging fees for schooling for foreigners legally residing in Bulgaria violates the principle of equality and is contrary to Article 14 of the Convention in conjunction with Article 2 of Protocol No. 1 to the Convention. In order to comply with the judgment of the European Court of Human Rights, Bulgaria has revised its policy on access to education for foreigners.

Conclusions

The judgment of the European Court of Human Rights is an act of interpretation of the norms of the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms, and therefore national legislation and practice of its application must be fully compatible with the norms of the Convention and the judgment of the European Court of Human Rights. If a state independently finds that the acquisition of the status of final judgments of the European Court of Human Rights requires amendments to national legislation and/or practice of its application, the state must take all necessary measures to ensure that such amendments to national law and the application of national law take place in practice.

Also, the principle of subsidiarity, included in Protocol No. 15 to the Convention, places a joint responsibility on the European Court of Human Rights and the member states of the Council of Europe for the protection of the right to education, and on national authorities - they must interpret and apply the national legislation of the state in the field of education in such a way that the right to education, guaranteed by Article 2 of Protocol No. 1 to the Convention, is implemented, and in the event of its violation - protected.

The decision of the European Court of Human Rights is mandatory for the execution by the member state of the Council of Europe, which was recognized as a violator of the right and/or fundamental freedom guaranteed by the Convention (the state must take measures of a general and individual nature to implement it). In the member states of the Council of Europe, the decision of the European Court of Human Rights is a source of law.

Since the Convention is a living organism, and the practice of the European Court of Human Rights under Art. 2 of Protocol No. 1 to the Convention is not given once and for all - it develops and this development directly affects national legislation and the practice of its application, because in order to faithfully fulfill the international obligations assumed under Article 2 of Protocol No. 1 to the Convention, the state must ensure the compatibility of the norms of national legislation and the practice of its application with the norms of the Convention and the practice of the European Court of Human Rights.

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Ольшевський І.

РОЛЬ РІШЕНЬ ЄВРОПЕЙСЬКОГО СУДУ З ПРАВ ЛЮДИНИ У ВДОСКОНАЛЕННІ НАЦІОНАЛЬНИХ МЕХАНІЗМІВ ЗАБЕЗПЕЧЕННЯ ПРАВА НА ОСВІТУ В ДЕРЖАВАХ-УЧАСНИЦЯХ РАДИ ЄВРОПИ

У статті розкривається роль рішень Європейського суду з прав людини у вдосконаленні національних механізмів забезпечення права на освіту в державах-учасницях Ради Європи в цілому та в Україні в період дії правового режиму воєнного стану зокрема. Аналізуються рішення Європейського суду з прав людини у справах «Катан та інші проти Молдови та Росії», «Лоізіду проти Туреччини», «Фолджеро та інші проти Норвегії», «Пономарьови проти Болгарії» та їх вплив на законодавство держав у сфері освіти, практику його застосування. Зазначається, що рішення Європейського суду з прав людини: 1) є актом тлумачення норм Конвенції про захист прав людини і основоположних свобод 1950 р.; 2) обов'язкові для виконання державою-учасницею Ради Європи, що була визнана порушницею гарантованого Конвенцією права та/або основоположної свободи (на його виконання держава має вжити заходи загального та індивідуального характеру); 3) є джерелом права в державах-учасницях Ради Європи. Звертається увага на той факт, що Конвенція є живим організмом, а практика Європейського суду з прав людини за ст. 2 Протоколу №1 до Конвенції не є раз і на завжди даною – вона розвивається і цей розвиток безпосередньо впливає на національне законодавство та практику його застосування, адже для того, щоб добросовісно виконувати взяті на себе міжнародні зобов'язання за ст. 2 Протоколу №1 до Конвенції держава має забезпечити сумісність норм національного законодавства та практики його застосування з нормами Конвенції та практикою Європейського суду з прав людини. Також принцип субсидіарності, включений до Протоколу №15 до Конвенції, покладає і спільну відповідальність на Європейський суд з прав людини та держави-учасниці Ради Європи із захисту права на освіту, і на національні органи влади – вони мають тлумачити та застосовувати національне законодавство держави у сфері освіти таким чином, щоб право на освіту, гарантоване ст. 2 Протоколу №1 до Конвенції, було реалізоване, а вразі його порушення – захищено.

Ключові слова: право на освіту, забезпечення права на освіту, правовий режим воєнного стану, захист права на освіту, джерело права, національне законодавство, практика застосування законодавства держави, тлумачення, Європейський суд з прав людини, рішення Європейського суду з прав людини, виконання рішення Європейського суду з прав людини, заходи загального характеру, заходи індивідуального характеру.