HUMAN RIGHTS AND CLIMATE CHANGE (BASED ON THE CASE LAW OF THE EUROPEAN COURT OF HUMAN RIGHTS)

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The article analyzes the decisions of the European Court of Human Rights in cases concerning the impact of climate change on human rights. The following decisions are considered: "Verein KlimaSeniorinnen Schweiz and Others v. Switzerland", "Carême v. France" and "Duarte Agostinho and Others v. Portugal". Particular attention is paid to the first of them – in it the European Court of Human Rights recognized climate change as a serious threat to human rights.

It is noted that in the case "Verein KlimaSeniorinnen Schweiz and Others v. Switzerland" the Court recognized that states have an obligation to ensure effective protection of everyone's right to life and to respect for private and family life from threats caused by climate change. The Court emphasized the preventive nature of this protection and the right of everyone to effective judicial protection in a national court in the event of a violation of their rights and fundamental freedoms caused by the implementation of climate policy.

In the cases of Carême v. France and Duarte Agostinho and Others v. Portugal, the ECtHR established that in order to recognize a person as a "victim" of a human rights violation, it is necessary to prove the concrete and direct impact of shortcomings in state policy, emphasizing that abstract or potential threats do not in themselves automatically render an application to the ECtHR admissible.

The article also analyzes the impact of these decisions on the national legislation of the Council of Europe member states (reform of national legislation, development and implementation of climate strategies).

It is argued that the practice of the ECtHR is shaping a new paradigm of the legal responsibility of states, where human rights and environmental protection are interrelated.

Keywords: human rights, state, climate change, environment, judicial protection, environmental policy, preventive protection, European Court of Human Rights.

Problem statement

Climate change and environmental degradation are among the most pressing global challenges of the 21st century. Their impact on the health, life and well-being of citizens is gaining increasing social and legal significance. Climate change is one of the greatest modern threats to human rights. In response to these challenges, the member states of the Council of Europe have developed comprehensive legislative and policy mechanisms in the field of environmental protection and mitigation of the consequences of climate change. However, the effectiveness of these measures largely depends on the ability of judicial institutions to ensure control over compliance with norms and the implementation of state obligations. That is why judicial control in this area is becoming not only an instrument of legal regulation, but also a key factor in ensuring human rights.

Increasingly, climate risks create new legal situations that require interpretation of the existing norms of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as the Convention) [1]. The European

Court of Human Rights (hereinafter referred to as the Court) is gradually expanding the interpretation of the Convention, covering issues related to environmental rights. Just as the Court once first interpreted the norms of Art. Art. 2-3 of the Convention on euthanasia, transplantation, medical care and subsequently formed an established practice [2-7], so the practice of the Court is currently being formed in the so-called climate cases. Given that the climate is changing and these changes occur, including through the activities of states (for example, their environmental, climate policies, etc.), they negatively affect people's health, their lives, it can be argued that the Court will face the challenge of interpreting Art. 2, Art. 3 and other articles of the Convention in the context of climate change.

Scientific development

Research in recent years shows that courts are becoming an important tool for protecting human rights in the context of climate change. Peel J. & Osofsky H. analyze the global trends of "climate claims", where claimants demand that states take specific measures to protect life and health [8]. Of particular interest is the practice of the ECHR, where in the cases of "Verein KlimaSeniorinnen Schweiz and Others v. Switzerland", "Carême v. France" and "Duarte Agostinho and Others v. Portugal" new standards are being developed for the definition of a "victim" of human rights violations and the obligations of states to provide preventive protection. Researchers such as Ghosh S. and Kotzé L. emphasize that the current trend in the European legal system is to closely integrate human rights principles into environmental law, which stimulates states to more actively implement climate strategies [9; 10]. The practice of the ECHR in cases related to climate risks emphasizes that the protection of human rights includes the obligation of the state to respond to global environmental threats, and not only to specific incidents.

Despite the considerable attention paid to climate cases in the ECtHR, there is a lack of systematic research on the impact of ECtHR decisions on the national legislation and policies of the Council of Europe member states. In addition, the legal nature of the preventive obligation of states in the climate field and the mechanisms for its implementation through judicial review require further analysis.

The main material

The ECtHR dismissed the applications of the four individual applicants as lacking "victim status" within the meaning of Article 34 of the Convention. The Court noted that in the context of climate change, the establishment of an individual right to be a victim is "particularly strict", since the impact of climate change is often massive, the group of individuals is uncertain and the causal link is complex. The Court, however, found that the association KlimaSeniorinnen had standing to apply to the Court (as applicant): the association was legally registered in Switzerland, acted in the interests of its members, and the Court considered that it "acted on behalf of" the individuals whose rights had been violated.

In the case of Verein Klima Seniorinnen Schweiz and Others v. Switzerland [11], the first ECtHR judgment directly concerned with climate change, the applicants, the association KlimaSeniorinnen Schweiz and four individual applicants, including elderly women, claimed that climate change was threatening their health and lives through more frequent and intense heat waves. They alleged a violation of Articles 2 (right to life) and 8 (right to respect for private and family life) of the Convention on account of Switzerland's insufficient measures to mitigate the effects of climate change. They also alleged a violation of Articles 6 (right to a fair trial) and 13 (right to an effective remedy) on account of the domestic courts' failure to examine their complaints on the merits.

Switzerland denied that its climate policy was inadequate, noting that the country was already taking measures to reduce greenhouse gas emissions. It also argues that the domestic courts have properly examined the case and that the domestic protection mechanism for the applicants is therefore effective.

The Court found that Switzerland had violated Article 8 of the Convention by failing to take sufficient measures to combat climate change, which had led to serious consequences for the health and well-being of the applicants, in particular elderly women who are

particularly vulnerable to high temperatures. [11] The Court also noted that the State has a positive obligation to provide effective protection against the serious consequences of climate change.

The judgment has influenced the legislation of a number of Council of Europe member states. In particular, the Swiss Government has received direct recommendations from the Court on strengthening climate policy, including mitigating the effects of heat waves on vulnerable groups. A process has been initiated to update laws and regulations, for example on energy, construction and health, to meet the standards set by the Court.

Some governments have begun to revise their climate strategies and national emission reduction plans to avoid such claims. In particular, France, Germany and the Netherlands have discussed integrating ECHR rulings into risk assessment and climate action planning procedures.

Thus, serious consequences of climate change for the health and life of citizens can be considered a violation of human rights, even if the damage has not yet fully occurred. The state is obliged to act preventively: to assess future risks and implement measures to minimize them, and not to wait for damage to occur: to take effective measures to protect the life and health of citizens from serious threats, including climate change. This obligation follows from Articles 2 (right to life) and 8 (right to respect for private and family life) of the Convention. The lack of preventive measures in the field of climate policy can be considered a violation of the Convention. Everyone has the right to an effective remedy, even in cases concerning complex or long-term threats such as climate change.

The Court recognized that states have a certain freedom to choose climate policy instruments, but this freedom is not unlimited: when measures are manifestly insufficient or are not implemented with a delay, the state exceeds the permissible margin of appreciation. In this case, Switzerland was found to have exceeded the limits of its discretion.

In Carême v. France [12], the applicant alleged that France was not taking sufficient action to combat climate change, which violated his right to life and private life. France denied that its climate policy was inadequate, noting that the country was already taking measures to reduce greenhouse gas emissions. However, the ECtHR declared the application inadmissible on the grounds that the applicant lacked victim status: the applicant had failed to demonstrate that he had been directly affected by France's failure to take sufficient action on climate change. The ECtHR noted that in order to be considered a victim, the applicant had to have suffered a concrete and direct impact on his rights. The Court noted that the applicant no longer resided in the municipality of Grande-Synthe (he had moved to Brussels) and therefore had no direct connection with the place he described as "under threat". Furthermore, as he had lodged the application in his capacity as a former mayor, the Court noted that a municipal authority or a former mayor, acting in a public capacity, could not act as private victims within the meaning of the Convention. The court indicates that simply living in a risk area without clear personalized harm or connection to a dangerous phenomenon may not be sufficient to accept a claim.

In Duarte Agostinho and Others v. Portugal [13], a group of young people alleged that the State's inaction on climate change violated their rights to life, health and private life. They alleged a violation of Art. 2 (right to life), Art. 8 (right to respect for private and family life) and Art. 14 (prohibition of discrimination) of the Convention due to the insufficient measures taken by the States to mitigate the effects of climate change. The States contested that their climate policies were insufficient, noting that they were already taking measures to reduce greenhouse gas emissions. On 9 April 2024, the ECtHR declared the application inadmissible because the applicants had failed to prove that they had been directly affected by the insufficient measures taken by the States to combat climate change. The Court noted that in order to be considered victims, it was necessary for the applicants to have suffered a concrete and direct impact on their rights.

Thus, in order to be considered a "victim" of a violation of Articles 2 and 8 of the Convention, the applicant must prove a concrete and direct impact on his or her rights of the State's actions

or inaction. Abstract, potential or collective threats are not in themselves sufficient grounds for a violation of the Convention. For collective complaints, it is necessary to prove the individual harm of each plaintiff separately.

The Court also expressed concern that extending jurisdiction to other States could create a critical lack of foreseeability and lead to "transforming the Convention into a global climate treaty". The Court emphasized that while a State may have control over GHG emissions, this does not automatically give rise to jurisdiction under the Convention in cases where the applicant lives in another State.

The ECtHR has refrained from a broad interpretation of "jurisdiction" (under Article 1 of the Convention) in transnational environmental/climate disputes. The Court has refused to extend it beyond the applicant's State of residence where effective control or direct effect has not been proven.

Conclusions

The ECtHR has recognised climate change as a serious threat to human rights, including the rights to life, health and the right to private life. States have a positive obligation to take effective measures to combat climate change and to protect individuals on their territory from its effects.

Individual applications may be inadmissible due to the lack of victim status or the lack of a link between the applicants and the specific violations of their rights.

The Court has set high standards for defining a person as a "victim" of a rights violation, requiring a specific and direct impact on the applicant's rights. In the case of Verein KlimaSeniorinnen Schweiz, the ECtHR found a violation of human rights due to the State's insufficient measures to address climate change. In the cases of Carême and Duarte Agostinho, the Court dismissed the applications on the grounds that there was no direct impact on the applicants.

The criteria for the admissibility of applications in climate change cases need to be clearly defined in order to ensure effective access to justice.

The ECHR decisions encourage the member states of the Council of Europe to strengthen national climate policies; integrate human rights into strategies to combat climate change; and develop judicial mechanisms to ensure the implementation of these rights.

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ПРАВА ЛЮДИНИ ТА ЗМІНА КЛІМАТУ (ЗА МАТЕРІАЛАМИ ПРАКТИКИ ЄВРОПЕЙСЬКОГО СУДУ З ПРАВ ЛЮДИНИ)

У статті проаналізовано рішення Європейського суду з прав людини в справах, що стосуються впливу зміни клімату на права людини. Розглядаються такі рішення: «Verein KlimaSeniorinnen Schweiz and Others v. Switzerland», «Carême v. France» та «Duarte Agostinho and Others v. Portugal and Others». Особливу увагу приділено першому з них – у ньому відбулось визнання Європейським судом з прав людини зміни клімату серйозною загрозою для прав людини.

Зазначається, що в справі «Verein KlimaSeniorinnen Schweiz та інші проти Швейцарії» Суд визнав, що держави мають обов'язок забезпечувати ефективний захист права кожного на життя та на повагу до приватного і сімейного життя від загроз, спричинених зміною клімату. Суд підкреслив превентивний характер цього захисту та право кожного на ефективний судовий захист у національному суді в разі порушення його прав і основоположних свобод, спричиненого реалізацією кліматичної політики.

У справах «Carême проти Франції» та «Duarte Agostinho та інші проти Португалії» ЄСПЛ встановив, що для визнання особи «жертвою» порушення прав людини необхідно довести конкретний та безпосередній вплив недоліків державної політики, підкреслюючи, що абстрактні або потенційні загрози самі по собі не спричиняють автоматичну прийнятність заяви ЄСПЛ.

У статті також аналізується вплив цих рішень на національне законодавство держав-учасниць Ради Європи (реформування національного законодавства, розробка та реалізація кліматичних стратегій).

Висновується, що практика ЄСПЛ формує нову парадигму юридичної відповідальності держав, де права людини і захист довкілля взаємопов'язані.

Ключові слова: права людини, держава, кліматичні зміни, навколишнє середовище, судовий захист, екологічна політика, превентивний захист, Європейський суд з прав людини.