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APPLICATION OF THE PRINCIPLE OF GOOD GOVERNANCE IN THE ACTIVITIES OF THE EUROPEAN COURT OF HUMAN RIGHTS

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Abstract

Based on the methodology of performing axiological and logical-gnoseological analysis of juridically significant factors, the article under discussion presents a partial investigation of the practical application of one of the most fundamental principles of state functioning in the field of human rights protection. The object of investigation in the paper is the way the European Court of Human Rights (ECHR) perceives, understands and interprets the principle of Good Governance in the course of implementing it in Court's activities. The precedents, formulated and adopted by the ECHR frequently acquire the status of legal sources for the member states of the Council of Europe. Therefore, the judiciary bodies of these countries have to rely in their practice on the conclusions, the ECHR came to in the course of considering certain cases. Qualitively equal understanding and application of the above decisions is a cornerstone in forming a common European legal space, as well as plays a leading role in the field of human rights protection, guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 (hereinafter - the Convention) (Council of Europe, 1950). The principle of Good Governance is a complex notion. It directly or indirectly regards the rights and interests of both individuals (ensuring them certain rights and freedoms in a vast number of articles of the Convention) and social groups. This requires a complex analysis of the principle in both theoretical and practical aspects of its definition and application. Relying on the methodology of profound analysis of the axiological component of a certain legal phenomenon, like the content of some decisions of the Strasbourg Court, the authors of the article attempt to practically trace the implementation of the principle of Good Governance in the course of administering justice in Ukraine, as a member state of the Council of Europe. Therefore, the article under studies deals with the specifics of practical application of the principle of Good Governance in the ECHR activities, as well as with using precedent experience in the system of administrative judiciary of Ukraine.

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Key words:

Law; state; individual; justice; the principle of Good Governance; human rights; state's obligations; the European Court of Human Rights; administrative judiciary; the effectiveness of regulatory-legal acts; state governing.

1. Introduction

The issue of understanding and practical application of the principle of Good Governance in the course of implementing human rights is quite complex and multifaceted. The analysis of the content of the Convention (Council of Europe, 1950) indicates one very important peculiarity - this principle is directly or indirectly applied in the course of ensuring and protecting all human rights, which are listed in the text of the Convention. The above idea is substantiated by the state's responsibility to guarantee and respect human rights, and in case of violation of at least one of them, an individual gets the opportunity to file his own claim in the European Court of Human Rights against the state, and not against a government official, who has committed such a violation.

2. Methodological background

The research under studies has been carried out resting on axiological and logical-gnoseological analysis of juridically significant factors. In the course of the investigation, the authors drew particular attention to the previous works on the issue under discussion, like those by Korzhenko, Nikitin, Levchenko, Radziyevskyy, Averyanov, Derets, Pukhtetskaya, and others.

3. Main paragraph

It is essential that the principle of Good Governance is extremely relevant for building a law-based state. Any government official must adhere to this principle when taking decisions, performing his / her duties, or committing certain action, since full compliance with all of the principle's requirements provides opportunities to ensure a high level of justice in the country, guarantees citizens' rights, as well as prevents and reduces the number of lawsuits against government officials.

The notion of Good Governance was introduced in the European Union at the beginning of the XXI century. It rested on the concepts that followed from the content of the principles of formation and functioning of the European Union itself, as well as the need of solving the current problems of that time. Those were the concepts of multilevel governance, political networks and European administrative space. The principle of Good Governance has acquired the status of a governmental model in the United Nations development

program "Governance for Sustainable Human Resources Development" (United Nations, n.d.), which identified its main features:

1) Participation, according to which its participants are assigned with the right to vote. In its turn, citizens' participation in governing can be carried out both directly and indirectly, through legitimized intermediary institutions, or through representatives;

2) Consensus orientation, which requires to observe the balance of interests, with the purpose of achieving a broad consensus in regard to local issues and procedures;

3) Accountability suggests that the government, private business and certain structures of civic society are subject to the community and other bearers of rights;

4) Effectiveness and efficiency in pursuing the state policy lies in the efficient use of the resources to meet citizens' demands;

5) Responsiveness of the process participants implies that any institutions and respective processes shall serve to all society members;

7) Equity means that well-being of society depends on the interests of each of its members;

8) Rule of law presupposes that the state's legal system shall be fair and equal for all members of society, especially in the field of human rights protection;

9) Strategic vision suggests that community leaders and the community itself have long-term perspectives on Good Governance and human development, as well as clearly understand the need for appropriate measures to implement them.

The combination of the above features makes up the structure of the principle of Good Governance. In this regard, we shall consider the practical peculiarities of the issue under studies, without detailed dwelling upon its theoretical aspects.

The state that positions itself in the world as a law-based one is obliged not only to declare respect for human rights, but also to ensure them. By proclaiming certain rights and freedoms on its territory, the state is obliged to elaborate an effective legal mechanism, through which citizens can exercise them. What is more, this mechanism should not be bureaucratic or too difficult to operate since it will not only complicate the process of human rights implementation, but may even make it impossible. In particular, a too complex and cumbersome bureaucratic component of implementation may actually enable the state to avoid performing its duties or to shift the implementation procedure to an individual. In this way, the state removes itself from fulfilling its obligations and even partially uses this position for its own benefit. These are the cases when the state declares exemption of certain citizens' categories from paying taxes and fees. At the same time, the state works out a mechanism for

the implementation of this right, which is neither effective nor possible to implement. As a result, citizens lose their material resources, whereas the state gets considerable benefits as there occurs no reduction of tax revenues. In such cases, the fact of violation of human rights is obvious (Article 1 of Protocol 1 to the Convention) (Council of Europe, 1950).

The European Court of Human Rights could not ignore the situation, described in the previous passage. Its legal position on this issue is to be seen in numerous decisions on the cases that directly or indirectly affect the problem under investigation. In its decisions on the cases "Lelas v. Croatia" (Case of Lelas v. Croatia, 2010), "Pincova and Pine v. the Czech Republic" (Case of Pincova and Pine v. The Czech Republic, 2002), "Gashi v. Croatia" (Case of Gashi v. Croatia, 2007), "Trgo v. Croatia" (Case of Trgo v. Croatia, 2009), the ECHR has expressed its opinion on the application of the principle of Good Governance. The survey of the ECHR decisions in the above cases proves that in accordance with the principle of Good Governance, the bodies of state power are obliged to introduce and keep to certain procedures that allow citizens to exercise the rights, guaranteed by the state. Moreover, the bodies of state power that do not introduce and keep to their own procedures shall not be able to benefit from their wrongdoing or avoid performing their duties. To put it differently, the ECHR clearly determines the unlawful purpose that the bodies of state power may pursue by imposing certain procedures and failing to fulfill their obligations. Such illegitimate actions may be committed either in order to avoid fulfilling one's responsibilities, or in order to obtain certain benefits. In both cases, suffer citizens since they actually find themselves in a situation that makes it impossible to exercise their rights. Moreover, the state can benefit from such a situation in case a citizen cannot exercise his / her right to exemption from taxes and fees. As a result, the citizen loses his money, whereas the state acquires it. This leads to the violation of human rights. That is the reason why the ECHR has come up with a legal position, in compliance with which the risk of any mistake of the body of state power shall be borne by the state itself, and mistakes cannot be corrected at the expense of the persons they concern. Taking into consideration the ECHR position, we may assert that in the absence of an effective legal mechanism, whereby citizens exercise their rights, the state is obliged to prove the legitimacy of its mistakes and errors. That is why the state, when introducing a certain mechanism of legal regulation of some sort of relations, is obliged to ensure its implementation. Otherwise, all the negative consequences of the lack of proper legal regulation are borne by the state. Besides, if the state, represented by the authorized bodies, does not fulfill its obligations (which does not contribute to legal certainty in the field of certain legal relations that affect the property or other interests of the individual), the negative consequences of this inaction shall be borne by the state as well.

Undoubtedly, it is almost impossible to completely avoid such negative factors in the activities of the state because it is quite a difficult, costly and time-consuming task to bring the entire regulatory base in line with the principle of Good Governance. Nevertheless, such difficulties should not be the reason why the state evades its responsibilities, which could result in violating human rights.

The state's judiciary system plays a primary role in improving the above-described situation. This is stipulated by the fact that individuals appeal to courts in case their rights are violated. Ukraine, as a member of the Council of Europe, is no exception to this rule. Our state directly applies the decisions of the European Court of Human Rights as a source of law while fulfilling its functional duties. Numerous resolutions of the Supreme Court of Ukraine prove that it observes the principle of Good Governance to full extent. These are the Resolutions of 30.01.2018 (case №819 / 1498/17) (2018), 31.01.2018 (case №819 / 1667/17) (2018), 14.02.2018 (case №826 / 23087/15) (2018), 20.02.2018 (case №819 / 1730/17) (2018), 20.03.2018 (case №819 / 1249/17) (2018) and others.

4. Conclusions

All this shows that Ukraine is facing a very acute problem of high-quality practical implementation of the principle of Good Governance. This problem may subsequently affect the content of respective regulatory-legal materials, as well as lead to the violation of human rights.

In the course of carrying out this research, we have surveyed only a small part of the decisions of Ukrainian courts, related to the issue of our study. Therefore, we can claim that this problem is quite relevant for Ukraine and needs urgent solution. Nevertheless, a very positive factor is that the practice of the ECHR makes it possible to avoid the negative consequences, associated with the imperfect implementation of the principle of Good Governance in the legal field of Ukraine. Apart from that, Ukraine's accession to the Council of Europe is very likely to promote the implementation of this principle at both legislative and judicial levels.

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