Fundamental Freedoms and ECHR judgments interact as complementary and interlinked systems, the application of the rules of the Convention and ECHR judgments in itself should be considered appropriate, effective and necessary in substantiating the motivating part of court decisions in the event of a conflict between national legislation and an international treaty. References to the ECHR's decisions may also confirm the provisions of national law. In such cases, court rulings containing references to international law and international treaties appear to be more reasoned. The fundamental importance of the norms of the European Convention on the Protection of Human Rights and Fundamental Freedoms and the ECHR's decisions are, in the cases of gaps in domestic law and law enforcement practice, in interpreting national law in the context of the requirements of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

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REFORMING THE PROCEDURAL LEGISLATION OF UKRAINE THROUGH THE PRISM OF LEGAL PURISM AND FORMALISM IN THE LAW

Key words: *judicial system, right to a fair trial, purism.*

At the present stage of state-building, the efficiency of the functioning of the judicial system in Ukraine has become an indicator of the level of development and interaction of such categories as the state and civil society, where the sub-category is the judiciary, and the landmark is human rights. In such circumstances, respect for the guarantees of the right to a fair trial is almost the main indicator of the rule of law.

Thus, the right to a fair trial, provided for in Art. 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) (hereinafter referred to as the Convention) includes various constituent elements, each of which is interpreted by the European Court of Human Rights (hereinafter – ECHR) in the consideration of a particular case which

indicates the violation of this article. In the case of Golder v. The United Kingdom [1], the ECtHR first established the right of access to a court as an integral aspect of the guarantees of the right to a fair trial under Art. 6 of the Convention. The embodiment of this right includes, among other things, the right to institute proceedings in court, where the guarantees of clause 1 of Art. 6 of the Convention apply both to the organization and the composition of the court and to the trial of the case (Naim-Laman v. Switzerland [2]). However, the existence of a person's right to a claim may depend not only on the substantive content of the relevant right, but also on the existence of procedural prohibitions that impede or limit the possibility of presenting potential claims to a court (McElhine v. Ireland [3]), which consist in establishing too formal requirements for the procedural documents filed by a person (Case Beles et al. v. the Czech Republic [4]). Thus, in the legal science the concept of «legal purism» appeared.

The very term «purism» was defined as an exaggeration of aspirations for the purity of the language, excluding all other elements from it [5, p. 796]. Now it implies an excessive desire for purity, the superiority of form over content. The notion of legal purism as a restriction of the guarantees of access to a court was first applied by the ECtHR in the case of Sutiazhnik v. Russia [6], where, under this term, strict adherence to laws was understood not for the purpose of correction of court mistakes or insurmountable circumstances, but in contrast to the principle of legal certainty, which consists in the abolition of the correct decision on the merits in violation of the procedural rules of the case.

Procedural obstacles connected with the appearance of a person in court were manifested in the formalism of law. Thus, the establishment of the state of formal requirements was known in the Roman law, which was based on the expression: «Summum jus sum injuria est – Absolute execution of the law leads to the greatest injustice» [7, p. 108]. Formalism in the law is expressed in the tendency and desire in the application of the right to give preference to the letter of the law before its actual intention. And may be manifested, for example, in the event of the finding of an inadequate proof of payment of a court fee for filing an appeal, a payment order for payment due to the failure of indicating the case number, within which the relevant complaint is filed and the date of the adoption of the contested act of appeal [8].

Thus, with the introduction of changes to the procedural legislation [9], the domestic legislator, in some way, introduced the tendency of formalization of the requirements for the right to apply to the court for protection, while at the same time on their expediency and feasibility. Such requirements have appeared, including the financial sphere. In particular, the narratives of the Ukrainian civil procedural law became the provision on the preliminary (oriented) calculation of the amount of legal expenses that it incurred and is expected to incur in connection with the consideration of the case (Article 134 of the Civil Code of Ukraine, Article 124 of the Code of Economic Procedure of Ukraine), as well as the provision of judicial expenses (Article 135 of the Civil Code of Ukraine, Article 125 of the Code of Economic Procedure of Ukraine). From an objective point of view, it is rather difficult to calculate the costs that a

party may incur in the proceedings, since it is not possible to determine in advance what procedural actions will be required in the future to protect their rights and what costs will be incurred in this regard [10, p. 114]. And the application to the party of such a measure, such as the maintenance of court costs, may deprive a person of remedies (Garcia Manibardo v. Spain [11]), and will provide an opportunity to challenge the preservation of the status quo between the parties. And in order for national legislation excluding access to the court to be compatible with Art. 6 of the Convention, it must be compatible with the rule of law (Baka v. Hungary [12]).

Conclusions: Legal purism and formalism in law are phenomena, albeit of the same content, but different in consequence. Thus, legal purism requires a particularly careful approach to the definition, since it violates such a property of a court decision as res judicata and the principle of legal certainty. Formalism in law, on the contrary, while restricting the right of a person to access the court, manifests its necessity in a more serious attitude of the person to the trial, as well as to the potential possibility of pre-trial settlement of the dispute.

However, the Ukrainian legislator incorrectly approached the establishment of formal requirements in the financial sphere, since it is inappropriate to raise citizens' legal awareness by collecting funds from them [13], it is possible to approach this question by introducing the appropriate procedure for pre-trial settlement of a dispute, the first attempt of which has not been successful (Draft Law on Mediation dated December 2015).

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HONESTY AND GOOD REPUTE OF THE LAWYER IN ECHR'S JUDGMENTS

This article addresses the issues and proposes on honesty and good repute of the lawyer as a fundamental principle of Ukrainian Rules of Advocates' Ethics. Analyzing the ECHR's practice, the author examines aspects of observance of this principle in practice of law and concludes that the requirement of honesty and good reputation of the lawyer follows from the nature, tasks and functions of the Bar.

Key words: *bar, practice of law, honesty and good repute of the lawyer, ECHR's practice, rules of advocates' ethics.*

The European Parliament resolution on the legal profession and the general interest in the functioning of legal systems of 23 March 2006 «recognizes fully the crucial role played by the legal professions in a democratic society to guarantee respect for fundamental rights, the rule of law and security in the application of law, both when lawyers represent and defend clients in Court and when they are giving their clients legal advice» [1].

The special role of lawyers, as independent professionals, in the administration of justice entails a number of duties, particularly with regard to their conduct *(Van der Mussele v. Belgium, 23 November1983, Series A no.70; Casado Coca v. Spain, 24 February 1994, § 46, Series A no.285-A; Steur v. the Netherlands, no. 39657/98, § 38, ECHR2003-XI; Veraart v. the Netherlands,*