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Constitutional law and judicial guarantees: their structure and interpretation at the national and international level

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Abstract

The article is devoted to the study of the essence of constitutional law, together with judicial guarantees, their interpretation and normative consolidation in international legal acts and national regulations, as well as to the clarification of the place of the right to a fair trial in human rights. Thanks to the use of a system of general scientific and special scientific concepts and methods, it was established that the conceptualization of the right to a fair trial was given by the European Convention for the Protection of Human Rights and Fundamental Freedoms and, moreover, is reflected in the precedent practice of the European Court of Human Rights. In this context, characteristic features of the right to judicial guarantees are defined, its procedural and functional components are distinguished, and procedural and substantive justice are characterized. Everything allows concluding that, the characteristic features of the constitutional right to a fair trial in a state governed by the rule of law are defined as: the perceived ability of a person to exercise the specified

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right; the presence of a special subject-object structure; appropriate actions in specially created state judicial institutions to restore violated rights.

Keywords: constitutional rights; fair trial; judicial proceedings; European Court of Human Rights; legal hermeneutics.

El derecho constitucional y las garantías judiciales: su estructura e interpretación a nivel nacional e internacional

Resumen

El artículo está dedicado al estudio de la esencia del derecho constitucional, junto a las garantías judiciales, su interpretación y consolidación normativa en los actos jurídicos internacionales y normativos nacionales, así como tambien, a esclarecer el lugar del derecho a las garantías judiciales en los derechos humanos. Gracias al uso de un sistema de conceptos y métodos científicos generales y científicos especiales, se estableció que la conceptualización del derecho a un juicio justo se dio gracias al Convenio Europeo para la Protección de los Derechos Humanos y las Libertades Fundamentales y, además, se refleja en la práctica precedente del Tribunal Europeo de Derechos Humanos. En este contexto, se definen rasgos característicos del derecho a las garantías judiciales, se distinguen sus componentes procesales y funcionales y se caracteriza la justicia procesal y sustantiva. Todo permite concluir que, los rasgos característicos del derecho constitucional a un juicio justo en un Estado de Derecho se definen como: la capacidad percibida de una persona para ejercer el derecho especificado; la presencia de una estructura especial sujeto-objeto; acciones apropiadas en instituciones judiciales estatales especialmente creadas para restaurar los derechos violados.

Palabras clave: derechos constitucionales; juicio justo; procedimientos judiciales; Tribunal Europeo de Derechos Humanos; hermenéutica jurídica.

Introduction

The right to a fair trial, being an integral part of the principle of the rule of law, appears today as a fundamental legal value of any democratic society (Matat, 2016). With the ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 (hereinafter referred

to as the Convention), Ukraine also undertook obligations under this international legal document, which requires the need to organize its legal system in such a way as to ensure the real guarantee of the right provided for by the Convention to a fair trial.

However, according to the statistical data of the European Court of Human Rights (hereinafter referred to as the ECtHR), Ukraine is consistently among the top five countries in terms of the number of appeals to the ECtHR. At the same time, almost half of the decisions of the ECtHR relate to the violation of the right to a fair trial (Boyko, 2020).

Under such conditions, one of the key issues of modern Ukraine, on the territory of which martial law has been introduced, is whether the modern national judicial system is able to ensure the administration of justice and the right of citizens to a fair trial, which is a fundamental and primary duty of the state. Unfortunately, in the conditions of special legal regimes, these aspects of the right to a fair trial are not always fully implemented, and the state faces a number of problems, the complex solution of which is one of the priority directions of a modern democratic state (Rogach *et al.*, 2022).

1. Methodology of the study

The methodological basis of the research combines general scientific and special scientific concepts, theories and methods of scientific knowledge of objective reality, in particular: dialectical, formal-legal, historical-legal, method of classification and grouping, analysis and synthesis, comparative analysis, formal-logical method, modeling and abstraction, system, complex and others.

Thus, the dialectical method is used to learn the content and structure of the constitutional right to a fair trial. Historically, the legal method was used during the analysis of the patterns of formation and development of the principle of justice as a key principle of justice in the modern legal state. The system method was used in the analysis of the implementation of European standards into national legislation as a single, mutually agreed and mutually conditioned system.

The formal-logical method made it possible to develop and form the main definitions, and the systemic-structural method contributed to distinguishing the elements of the right to a fair trial. Modeling and abstraction methods were used in the process of formulating conclusions. General epistemological methods of cognition are also widely used - induction, deduction, analysis and synthesis, which made it possible to study the theoretical and logical essence of the application of the principle of justice in the judiciary of a modern European state.

2. Analysis of recent research

Many scientists (Guyvan, 2019; Adygezalova, 2022; Rogach, 2022; Boyko, 2020) are devoted to the question of effectiveness and efficiency of the right to a fair trial in the context of its implementation on the basis of legal certainty in international and national law.

At the same time, it should be noted that although these scientists made a significant contribution to the development of the theoretical aspects of the studied issues, the question of modern understanding of the guaranteed Art. 6 of the Convention on the right to a fair trial, as well as the state of its implementation in Ukraine, and the problems associated with it, insufficient attention has been paid.

The purpose of this article is to clarify the essence and define the main structural elements of the right to a fair trial; analysis of the modern understanding of the right to a fair trial in the practice of the European Court of Human Rights (hereinafter referred to as the ECtHR); determination of the conceptual basis for improving the process of implementation into the national legal system of the practice of the Court regarding the application of Art. 6 of the Convention.

3. Results and discussion

The right to a fair trial is one of the fundamental rights of every person, thanks to the functioning of which it is possible to talk about the development of democratic, legal principles of state formation, because it is a guarantee of the protection of violated rights, freedoms and legitimate interests of a person. Proper and effective implementation of this right is impossible without a clear understanding of its concept and structure.

That is why the terminological awareness of the concept of the right to a fair trial and the definition of its structural elements has important theoretical and practical significance, as it will ensure its meaningful implementation in the best possible way. Moreover, it covers an extremely wide field of various categories, because "it concerns both institutional and organizational aspects, as well as specifics of the implementation of individual court procedures" (Koval, 2006: 129).

First of all, we note that part of the guarantees that make up the content of the right to a fair trial are not mentioned in Art. 6 of the Convention. They are developed and interpreted by the precedent practice of the ECtHR. Indeed, it is quite difficult without the application of such decisions to unambiguously identify and outline the meaning of the terms "reasonable term", "legal certainty", "justice", "independence of judges", "impartiality", etc. (Guyvan, 2019).

At the same time, it should be noted that in accordance with Part 1 of Art. 32 of the Convention, the interpretation of its norms is assigned to the exclusive competence of the Court. Therefore, the practice of the ECtHR, which under the specified circumstances is recognized as the basis of the official international interpretation of the 1950 Convention, is decisive for the formation of the legal relationship of the legislator of the countries participating in the Convention and the relevant law enforcement institutions.

The ECtHR interprets the concept of the right to a fair trial quite broadly, in particular, based on the fact that it is of fundamental importance for the functioning of democracy and the principle of the rule of law. Thus, in the decision of 17.01.1970 in the case "Delcourt v. Belgium", the ECtHR noted that a restrictive interpretation of the right to a fair trial would not correspond to the purpose and meaning of the provisions of Art. 6 of the Convention on the Protection of Human Rights and Fundamental Freedoms (Case of Delcourt v. Belgium, 1970).

Based on the fundamentality and multifacetedness of the right to a fair trial, a uniform understanding of it is not possible without a comprehensive understanding of the three interrelated constituent legal categories (definitions) – "law", "justice" and "court".

Being a "regulatory norm of political communication", the law should serve as a "criterion of justice". And in order to know what law is, one should understand what phenomena it is connected with and where it comes from. As noted in the scientific literature, first of all, it got its name from justitia – "truth, justice", that is, law is the "art of goodness", "equality and justice". That is why, like any regulatory norms, legal relations are a manifestation of what is fair and proper. And it is no coincidence that the word "right" in the Ukrainian language has a common root with the word's "truth", "right", "justice" (Murashyn, 2014).

Currently, the questions regarding the interpretation of the concept of «law», the definition of its features and approaches to understanding are sufficiently described in the legal literature. Without resorting to an in-depth polemic on this matter, we share the point of view of scientists who indicate that the term «right» is widely used in various spheres of social life, is polysemic in its meaning and is used in such meanings as: the presence of a person of a certain interest; the possibility of committing an act; as a guarantee of one's own behavior; a requirement for the behavior of other persons; compliance with the criteria of correctness and justice; justification, truthfulness, etc. In view of this, law should be distinguished from the point of view of two meaningful components:

a) objective law, that is, a set of legal norms expressed (externally objectified) in relevant legal sources - regulatory legal acts, court decisions, legal customs

etc; b) the right is subjective, which belongs to individual persons (subjects) and consists in the presence of certain legal opportunities for each of them» (Petryshyn *et al*., 2015: 87-88).

As noted in the scientific literature, «the term «right» comes from the root «rights», which means truth, justice» (Skakun, 2001). However, the concept of «right» does not have a legal meaning in all cases. Legal law, in contrast to customs, is also called «legislative law», which, in turn, is often defined as «positive law», that is, what comes from the state and society, expressed in written norms, contained in normative legal documents, in particular, laws, court precedents, acts of the executive power, etc. (Skakun, 2001).

With the development of the state and social relations in general, there was a need for normative consolidation of the rules of behavior and customs formed in one or another sphere of life. Undoubtedly, this is the way in which the necessary system of guarantees for the protection of the rights, freedoms and legitimate interests of the participants in legal relations, including in the field of criminal justice, is being formed in the state.

And as history shows, this is done taking into account the socio-cultural, economic, political and legal features of the state's development. It is thanks to the legal norms enshrined in the law that various legal conflicts and disputes are resolved in democratic states governed by the rule of law. And in this aspect, the right to a fair trial is of great importance, which is clearly evidenced by the norms of Art. 55 of the Constitution of Ukraine, according to which the rights and freedoms of a person and a citizen are protected by the court (Constitution Of Ukraine, 1996).

So, it is axiomatic that in the modern world, law is a social institution that expresses the objective will, the degree of freedom and equality, allows the realization, survival and reproduction of both an individual and society as a whole. As the main regulator of joint actions, the law requires individuals to focus on the main criterion – justice, which reflects the basic values of society that ensure its self-survival.

In scientific literature, law is interpreted in an objective and subjective sense. In the context of our research, the subjective understanding of the concept of law plays an important role, which is interpreted in two meanings: 1) in a broad sense - everything that follows from legal norms (objective law) for a person and characterizes him as a subject of law; the right to specific opportunities; 2) in the narrow (proper) way – the possibility of a certain behavior of a person provided by a legal norm; the measure of a person's possible behavior is defined in legal norms (Shestopalova, 2011).

It should be noted that in the national judiciary, the subjective right of each participant is realized through such principles as access to justice, competition, ensuring the right to defense and the right to appeal procedural

decisions, actions or inaction, dispositiveness, etc. In particular, a person is given a legal opportunity to use a certain right provided for by law at his discretion; require other participants in the trial to act within the limits of the law; apply to state bodies and officials for the protection of their rights, etc.

For this purpose, the state is entrusted with the obligation at the legislative level to establish effective and efficient legal mechanisms and guarantees for the realization of the subjective right of an individual.

An important definition that is part of the researched construction is «justice», which has a more moral and philosophical orientation, while it is also used in modern legal science. In this context, it is worth noting that:

> Rules for judicial review of disputes, conflicts, and prosecution occupy a prominent place in the Bible. Actually, its provisions are aimed at ensuring the correctness and justice of the relevant decisions. In particular, it is about the equality of people before the court, the responsibility of a person for his actions, ensuring the justice of the court decision (Murashyn, 2014: 193).

Therefore, based on the evolution of the judiciary and law in general, it can be argued that the modern democratic principles of ensuring the protection of human rights and freedoms cannot exist without the functioning of a fair judiciary.

After all, in modern judicial proceedings, the court itself, being an independent and impartial arbitrator, puts the «final point» by considering the case on its merits and making a final decision, thereby resolving contradictions between the parties to the conflict, who are participants in the relevant procedural legal relations.

As the American philosopher J. Rawls rightly points out, the main idea embedded in the concept of justice is the idea of honesty. Justice should not be confused with a comprehensive view of the goodness of society, for it is only part of any such conception. For example, it is important to distinguish the meaning of equality, which is one aspect of the concept of justice, from the meaning of equality, which belongs to a larger social ideal (Rawls, 1999).

U. Koruts notes that «the conceptualization of the sociological-legal category «justice» today is in a state of permanent transformation of both its substantive and methodological content. As a social phenomenon, justice is becoming an increasingly amorphous and unattainable characteristic of social development, since economic processes contribute to the concentration of public goods in rather limited social strata, which generates property inequality, and therefore, inequality of opportunities for individuals to realize their rights and freedoms, regardless of their formal legislative consolidation (Koruts, 2015).

Understanding the category «justice» ensures its universality both from the point of view of the philosophical context of the legal foundations of social relations regulation, and the purely legal content of social relations. In the context of a trial, «justice» appears simultaneously as an axiological category; as a means of achieving a balance of public interests and expectations; as a basis for the formation of legal value; as the main category in establishing the right to a fair trial» (Koruts, 2015: 38).

Making a fair decision (both a decision and a sentence) directly depends on the substantive trial procedure itself. That is, the adoption of a fair final decision directly depends on the conduct of a fair trial. Therefore, in the legal sense, justice should be considered as a property of the law, expressed, in particular, in «an equal legal scale of behavior and in the proportionality of legal responsibility to the offense committed or as a dimension, equality in the legal status of subjects» (Berezhanskyy, 2017).

In the modern world, as J. MacBrayd quite rightly points out, justice cannot be achieved where the prosecution and the defense in criminal proceedings are in an unequal position. Such procedural inequality can be seen, for example, when the testimony of experts is not actually neutral, but incriminating, when the defense is deprived of full access to the materials of the court case, when the prosecution can make submissions to the first or appellate instance, and the defense cannot react (MacBrayd, 2010), and the right to a fair trial involves an internal balance of the interests of the parties, taking into account the specifics of a specific case, the evidence presented, and the possibility of appealing the decision.

The external manifestation is disclosed through the rules on the publicity of the proceedings within a reasonable period of time by an independent and impartial court. The discretion of the judge in this regard acquires special importance, since the criteria of justice are subjective. Justice should be characterized as a property (quality) of law. Accordingly, the objectivity of the decision depends on the extent to which the court will correctly understand the circumstances of the case and bring them into compliance with the legislation (Vylova, 2014).

Defining justice in a narrow sense, the ECtHR singles out such requirements that are not specified in paragraph 1 of Art. 6 of the Convention: proper notification and hearing, taking into account by the court only evidence obtained by legal means, issuing a reasoned decision, the principle of equality of parties in the adversarial process, the prohibition of interference of other branches of government in the process of administration of justice, the principle of legal certainty.

From such positions, «justice» in the procedural sense is an analogue of «due judicial procedure», which, in our opinion, includes a number of requirements in its content: proper notification and hearing, taking into

account evidence obtained only by legal means, reasonableness of the decision; the principle of «competitiveness and equality of parties»; the principle of legal certainty; prohibition of interference of other branches of government in the process of administration of justice.

It should be emphasized that in the context of the conceptual reformation of national legislation, the issue of judicial protection of human rights, freedoms and legitimate interests is in constant focus among international institutions, lawyers - scientists and practitioners, as well as civil society. After all, every person wants to be sure that his constitutional rights and freedoms will be protected in case of falling into the sphere of judicial proceedings, and in the case of their violation, they will be restored.

That is why all legislative acts, which are adopted at the state level and regulate a certain sphere of legal relations, must meet the requirements declared in international legal acts and the Constitution of Ukraine. And although the principles of justice are not directly recognized in the norms of the Constitution of Ukraine, the specified category, being a norm-principle of a democratic, legal society, practically permeates all its provisions.

According to the correct statement of N. Gren, in modern society, justice is the basis of the right to a fair trial. The state and civil society create competent bodies of state power to ensure the rights and freedoms of citizens and to implement the functions of the state. One of the most important functions of the rule of law is the administration of justice, therefore this right is an important principle of the rule of law and the basis of democratic transformations in society (Gren, 2016).

Another structural element in the construction under study is the category «court». First of all, it should be noted that according to Art. 124 of the Constitution of Ukraine, the function of justice at the national level is carried out exclusively by the courts, which, among other things, are entrusted with the duty of ensuring control over the legality and reasonableness of making procedural decisions and conducting actions in criminal proceedings (Constitution Of Ukraine, 1996).

In its activities, on the one hand, the court protects public interests from encroachments by individuals, and on the other hand, the interests of an individual from threats emanating from other individuals or the government itself. Indeed, in a legal, democratic state, the court occupies a special position regarding the protection of the rights, freedoms and legitimate interests of the individual and society in general.

As evidenced by the analysis of doctrinal studies, among lawyers there is no single point of view regarding the understanding of the concept of «court». It is likely that the scientific controversy is caused by the lack of legislative (official) clarification of the concept of court. For example, in Art. 17 of the Law of Ukraine «On the Judicial System and the Status of Judges» only states

that the judicial system is built according to the principles of territoriality, specialization and instance, while the highest court in the judicial system is the Supreme Court.

In general, the judicial system in Ukraine consists of: «1) local courts; 2) appellate courts; 3) Supreme Court. At the same time, higher specialized courts operate in the judicial system to consider certain categories of cases in accordance with this Law» (On The Judicial System And The Status Of Judges: Law of Ukraine, 2016).

In the precedent practice of the ECtHR, the concept of «court» should not necessarily be considered as «a court of the classical type, integrated into the standard system of state courts» (Case of Campbell and Fell v. The United Kingdom, 1984). So, as rightly emphasized in the doctrine, the very term «court» used in Art. 6 of the Convention is interpreted by the ECtHR in a broad sense, and the concept of «court», in addition to actual judicial bodies, may include arbitrations, professional disciplinary bodies, bodies dealing with land issues, authorities of the permit system, etc. (Tregubov, 2010).

Based on this, E. Tregubov defined the following system of criteria (characteristics of such bodies), laid down by the ECHR as the basis for recognition of this or that body by a «court» in the sense of Art. 6 of the Convention: «1) the ability to make binding decisions; 2) mandatory legislative regulation of the functioning and activity of the «court»; 3) the presence of a function established by law regarding consideration of legally significant issues; 4) guaranteed independence from other branches of state power and participants in the case» (Tregubov, 2010).

Today, at the national level, the specified criteria are enshrined in the Law of Ukraine «On the Judiciary and the Status of Judges» dated June 2, 2016, which defines «the organization of the judiciary and the administration of justice in Ukraine, which operates on the principles of the rule of law in accordance with European standards and ensures the right of everyone to fair court» (On The Judiciary And The Status Of Judges: Law of Ukraine, 2016).

Also, the court must be independent and impartial, and its activities must be legal, that is, carried out in accordance with the law. A legal court is the necessary basis for the consideration of a case by a competent court, which, on the principles of the rule of law and according to a defined procedure, resolves legal disputes based on the law. Therefore, the state should not interfere in the results of the trial, because otherwise such principles of judicial proceedings as legality, equality of parties, etc. will be violated.

As can be seen from the analysis of scientific sources, the legal doctrine pays close attention to the definition of the concept of the right to a fair trial, which is due to several main, generally related factors. First of all, this conceptualization is due to Ukraine's ratification of the Convention on the Protection of Human Rights and Fundamental Freedoms, in Art. 6 of which

this right is guaranteed. Also, in the norms of Art. 55 of the Constitution of Ukraine enshrined the right of everyone to a fair trial (Constitution Of Ukraine, 1996), and in Art. 2 of the Law of Ukraine «On the Judiciary and the Status of Judges» dated 02.06.2016 defines that the court, administering justice on the basis of the rule of law, ensures everyone the right to a fair trial (On The Judiciary And The Status Of Judges: Law of Ukraine, 2016).

In addition, in paragraph 9 of the decision of the Constitutional Court of Ukraine dated 30.01.2003 No. 3-рп/2003 it is stated that justice in its essence is recognized as such only if it meets the requirements of justice and ensures the effective restoration of rights (Case on consideration by the court individual resolutions of the investigator and prosecutor, 2003).

So, as we can see, the practice goes by considering the constitutional right to judicial protection as a component of the right to a fair trial. At the same time, it is worth supporting the point of view expressed by N. Sakara, that it is more appropriate to distinguish the concept of «fair trial» in a broad and narrow sense.

> In a broad sense, this concept includes both institutional and procedural aspects, that is, all the elements provided for in Article 1. 6 of the Convention, since it cannot be a question of a fair trial if the case is considered, for example, in violation of the principles of the administration of justice only by the court, the independence of judges and their submission only to the law, publicity, and others. In a narrow sense, this concept applies only to the requirement of «fairness» of the procedure, which in the text of the article of the Convention is used along with the procedural requirements of publicity and reasonableness of the trial period (Sakara, 2010: 133).

Therefore, the right to a fair trial in the broadest sense should be considered as a fundamental subjective right of a person, enshrined in international and national legal acts, recognized by the international community, endowed with a complex complex structure and including a system of general standards of a fair trial in international and national judicial institutions.

The right to a fair trial includes a set of not only procedural elements-rights, but also institutional and functional ones, in particular, access to justice, independence and impartiality of the court, publicity and openness of court proceedings.

In our opinion, the characteristic features of the constitutional right to a fair trial in a state governed by the rule of law should include: the perceived ability of a person to exercise this right; special subject-object composition; as a result, appropriate actions in specially created state judicial institutions aimed at restoring violated rights.

Today, the right to a fair trial is enshrined and guaranteed both at the international and national levels, while not disclosing its content. This,

of course, determines the existence of scientific polemics regarding its legal understanding. However, in the conditions of a radical reform of the judiciary, the issue of a uniform understanding and enforcement of this right becomes particularly relevant, because the ECtHR has repeatedly stated the violation of the right to a fair trial in its various aspects.

Taking into account the existing doctrinal developments regarding the definition of the structure of the right to a fair trial, we consider it expedient to distinguish two interrelated elements of the right to a fair trial, regardless of the scope of the judiciary, as functional elements of the right to a fair trial (access to justice; independence and impartiality of the court; publicity and openness of judicial proceedings) and procedural elements of the right to a fair trial (competition of the parties; reasonableness of terms; appeal of procedural decisions, actions or inaction).

Conclusions

The constitutional right to a fair trial is a self-sufficient procedural right – a guarantee of ensuring, protecting and restoring all other human rights by applying to the court, which will make a fair decision on the basis of fair procedures. Characteristic features of the constitutional right to a fair trial in a state governed by the rule of law are defined as: the perceived ability of a person to exercise the specified right; the presence of a special subject-object structure; appropriate actions in specially created state judicial institutions aimed at restoring violated rights.

The right to a fair trial in a broad sense should be considered as a fundamental subjective human right, enshrined in international and national legal acts, recognized by the international community, endowed with a complex complex structure and including a system of general standards of fair trial in international and national courts institutions.

The right to a fair trial includes a set of not only procedural elements (competence of the parties; reasonableness of terms; appeal of procedural decisions, actions or inaction), but also a functional component (access to justice, independence and impartiality of the court, publicity and openness of court proceedings).

The term «trial justice» encompasses the unity of procedural and substantive justice. Procedural justice consists in the implementation of judicial proceedings in accordance with the procedural form established by law, which in its essence meets the requirements of justice. Substantive justice is characterized by the content of the decision made by the court during the resolution of a specific dispute or case.

Bibliographic References

ADYGEZALOVA, Gulnaz; ZHINKIN, Sergey; KICH, Irina; BUTKO, Lyudmila; VYSOTSKAYA, Lyudmila. 2022. "Effectiveness of legislation and implementation of the rule of law" In: Cuestiones Políticas. Vol. 40. No. 72. pp. 774–784.

BEREZHANSKYY, Hryhoriy. 2017. "Features of understanding the right to a fair trial" In: Herald of criminal justice. No. 3. pp. 191-196.

BOYKO, Alexander. 2020. "The right to a fair trial as a conventional standard for criminal proceedings" In: Scientific Bulletin of the International Humanities University. Series: Jurisprudence. No. 43. pp. 172-175.

CONSTITUTION OF UKRAINE. 1996. Law of Ukraine. No. 254k/96-VR. Available online. In: https://www.president.gov.ua/documents/constitution. Consultation date: 11/01/2023.

DECISION OF THE CONSTITUTIONAL COURT OF UKRAINE. 2003. No. 3-rp/2003. Available online. In: https://zakon.rada.gov.ua/laws/show/v003p710-03. Consultation date: 11/01/2023.

EUROPEAN COURT OF HUMAN RIGHTS. 1970. Case of Delcourt v. Belgium (Application no.2689/65). Available online. In: http://hudoc.echr.coe.int/eng?i=001-57467. Consultation date: 11/01/2023.

EUROPEAN COURT OF HUMAN RIGHTS. 1984. Case of Campbell and Fell v. The United Kingdom (Application no. 7819/77; 7878/77). Available online. In: http://hudoc.echr.coe.int/eng?i=001-57456. Consultation date: 11/01/2023.

GREN, Natalia. 2016. "The Right to a Fair Trial: Problems of Independence and Impartiality" In: Bulletin of Lviv Polytechnic National University. Legal Sciences. No. 837. pp. 247–251.

GUYVAN, Petro. 2019. The right to a fair trial: the essence and temporal dimensions according to international standards: monograph. Right. Kharkiv, Ukraine.

KORUTS, Ulyana. 2015. International legal protection of the right to a fair trial in the practice of the European Court of Human Rights and law enforcement practice of Ukraine. Diss. ... candidate law of science. Kiev, Ukraine.

KOVAL, Irena. 2006. "The Right to a Fair Trial: Case Law of the European Court of Human Rights on Ukraine" In: Law of Ukraine. No. 10. pp. 129-132.

LAW OF UKRAINE. 2016. ON THE JUDICIARY AND THE STATUS OF JUDGES. No. 1402-VIII. Available online. In: http://zakon.rada.gov.ua/laws/show/1402-19. Consultation date: 11/01/2023.

MACBRAYD, Jeremy. 2010. European Convention on Human Rights and Criminal Procedure. Kiev, Ukraine.

MATAT, Yuriy. 2016. "The right to a fair trial: the case law of the European Court of Human Rights and implementation in Ukraine" In: Scientific Bulletin of Uzgorod National University. PRAVO series. Vol. 1. No. 41. pp. 31-36.

MURASHYN, Olekandr. 2014. General Theory of State and Law: Textbook. Kiev, Ukraine.

PETRYSHYN, Alexander; POGREBNIAK, Stanislav; SMORODINSKY, Victor. 2015. Theory of State and Law: Textbook. Kharkiv, Ukraine.

RAWLS, John. 1999. "Justice as Fairness". Collected Papers, Harvard University Press. Cambridge, Massachusetts. London, England.

ROGACH, Oleksandr; SHELEVER, Nataliya; HEREVYCH, Mykhailo; SHULHAN, Iryna; MUZYKA, Mariia. 2022. "Peculiarities of ensuring the constitutional right toa fair trial: international and national aspects" In: Cuestiones Políticas. Vol. 40. No. 75. pp. 615-635.

SAKARA, Natalia. 2010. The problem of accessibility of justice in civil cases: monograph. Right. Kharkiv, Ukraine.

SHESTOPALOVA, Lyudmila. 2011. Theory of Law and the State: A Textbook-Handbook. Kiev. Ukraine. Available online. In: https://www.myslenedrevo.com.ua/uk/Edu/ForStudents/TheoryLawState.html. Consultation date: 11/01/2023.

SKAKUN, Olga. 2001. Theory of State and Law. Textbook. Kharkiv, Ukraine.

TREGUBOV, Evgeniy. 2010. "The right to a fair trial in the case law of the European Court of Human Rights" In: Forum of Law. No. 1. pp. 358-363.

VYLOVA, Marina. 2014. "Right to a Fair Trial: European Standards and Russian Traditions" In: State and law. Economy. pp. 104-110.

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