

FACETS OF PROTECTION OF ECONOMIC RIGHTS AND FREEDOMS

Olena Kovalenko¹, Sergii Vasyliiev², Mykola Zhdan³

Abstract. It is evident that one of the key areas of focus for the national economy is the constitutional consolidation, guarantee and protection of a wide range of economic rights and freedoms of the individual. The empirical experience of the realisation of constitutional economic rights and freedoms highlights trends and contradictions in this area, which requires a special study. A thorough examination of the implementation and judicial protection of constitutional economic rights and freedoms has enabled the identification of certain issues and the formulation of proposals for the enhancement of legislation in this domain of social relations. In Ukraine, despite a substantial corpus of scientific studies in the field of human rights, there is virtually no comprehensive scientific research on economic rights and freedoms of man and citizen. Nor is there a universally recognised list of these rights, nor a consensus on the sectoral nature of economic rights and freedoms. Thus, the relevance of the study of theoretical and practical issues of protection of fundamental economic rights and freedoms is due, firstly, to the globalisation of human rights doctrine in the modern world; secondly, to the need to create a holistic view of the forms of protection of fundamental economic rights and freedoms; thirdly, to the need to improve the current legislation and to the need to create effective mechanisms for the realisation and protection of economic rights and freedoms in Ukraine. The *subject of the research* is the constitutional provisions establishing economic human rights, the legal basis for their judicial protection; the regularities of the functioning of the judicial protection mechanism; scientific works that study theoretical and practical issues related to judicial protection of economic rights, as well as judicial practice. The *methodological basis* of the study is constituted by general theoretical and special methods of scientific cognition, principles and approaches to defining the concept of economic rights and freedoms of man and citizen, their essence, content and forms of protection. In particular, the method of dialectical logic was used to reveal the mechanism of their realisation of economic rights and freedoms. The sociological method was utilised to analyse internal and external factors, as well as social processes, which resulted in the recognition and consolidation of economic rights and freedoms of the individual. These rights and freedoms were considered to be an independent group of rights and freedoms. The current state of their implementation was also analysed. The formal logical method was employed to define the basic concepts of legal structures for the consolidation of economic rights and freedoms of the individual. The systemic and functional method was used to classify forms of protection of economic rights and freedoms of the individual and citizen, and to identify their features. The methodological basis also incorporates such general scientific methods as analysis and synthesis, generalization, modelling, and others. The application of these and other methods of scientific knowledge guaranteed the objectivity and reliability of the study of forms of protection of economic rights and freedoms, and the achievement of the goals and objectives set for the dissertation. The critical and analytical comprehension of issues pertaining to the protection of economic rights and freedoms enables the drawing of scientific and theoretical conclusions. This, in turn, highlights the positions of judicial practice and renders the discussion of problems in the protection of economic human rights more constructive and, as a consequence, more effective. *Results.* Economic rights, understood as a set of human and civil rights, are pivotal in realising the human potential in the sphere of economic relations. They enable individuals to claim material support from society, as represented by the State, and to utilise the fruits of

¹ H.S. Skovoroda Kharkiv National Pedagogical University, Ukraine (*corresponding author*)

E-mail: kovalenko.olenah@hnpu.edu.ua

ORCID: <https://orcid.org/0000-0002-0883-9869>

² Donetsk State University of Internal Affairs, Kropyvnytskyi, Ukraine

E-mail: svvasiliev2015@gmail.com

ORCID: <https://orcid.org/0000-0003-3226-6981>

³ H.S. Skovoroda Kharkiv National Pedagogical University, Ukraine

E-mail: zhdannik9@gmail.com

ORCID: <https://orcid.org/0000-0002-7773-0402>



human activity in various domains to create conditions conducive to a life that is worthy of the human being. The study posits that the realisation of the rule of law and the rule of law in the State is contingent not solely on the adoption of high-quality regulations and the assurance of their implementation. Rather, it asserts the necessity of an effective mechanism to protect the rights of individuals and legal entities. The protection of economic rights and freedoms is a matter of particular interest to scholars and law enforcement officials, due to its specifics at both the national and supranational levels.

Keywords: economic rights, forms of protection of rights, constitutional jurisdiction, judicial protection, cross-border jurisdiction, extrajudicial forms of protection, polyformism, cyber law.

JEL Classification: K24, K38

1. Introduction

The contemporary paradigm of economic rights and freedoms, in conjunction with a comprehensive examination of its ramifications on the advancement of the entire spectrum of human rights within the Ukrainian State, necessitates a commensurate enhancement of methodologies employed to comprehend their constitutional and legal essence, alongside the exploration of diverse modalities for their safeguarding. The scientific doctrine demonstrates a propensity towards a more autonomous contemplation of economic rights and freedoms, as well as modernisation of the emphasis on their placement within the traditional group of rights. This is guided by the construction enshrined in international human rights acts and focuses on the processes of globalisation in the field of economy and law.

Despite the existence of a substantial corpus of scientific literature encompassing special studies of theoretical provisions on the protection of human rights and freedoms, certain problems of improving legislation, both in terms of the judiciary and judicial proceedings, remain unaddressed by legal science. Indeed, there is a paucity of comprehensive studies of various forms of protection of economic rights and freedoms.

An analysis of the national scientific literature shows that certain problems of protection of economic rights and freedoms of man and citizen have been studied by such scientists as V. Poedinok, P. Rabinovich, Y. Ryzhuk, M. Savchyn and others. Problems of protection of rights of business entities have been studied by legal scholars: O. Belyanovich, O. Bryntsev, O. Kot, L. Nikolenko, O. Podtserkovnyi, V. Reznikova, V. Shcherbyna and others. In the context of this subject, the works of A. Muller, R. O'Connell and E. Petersmann are of particular value. These scholars conducted a comparative study of the judicial and extrajudicial protection of economic rights of man and citizen in foreign countries. Their study was based on extensive empirical material. Nevertheless, as demonstrated by the scientific material analysed and the judicial practice that has been generalised, there are a multitude of unresolved issues in the domain of

economic legal relations that do not contribute to the advancement of the economic sector or the economy as a whole. Consequently, the necessity for effective legal regulation of the procedure and methods for protecting violated, unrecognized or disputed rights and legitimate interests of economic relations, based on modern, sound scientific developments, is determined by the objective of ensuring sustainable economic development of Ukraine. A considerable number of provisions pertaining to the specifics of the protection of economic rights and freedoms remain the subject of controversy at present, indicating the necessity for further elaboration of certain issues.

The purpose of the article is twofold: firstly, to determine the place and role of economic rights in the context of general human rights; and secondly, to identify the forms and features of their most effective protection in the national and transnational formats.

2. The Nature of Economic Rights and Freedoms

In order to comprehend the concept of economic human rights and freedoms, it is imperative to establish a foundational understanding of the legal nature of "human rights". This concept has been elegantly articulated by P. Rabinovich: "Human rights are the possibilities of a person (or a group of people) to obtain and use the means necessary to satisfy their biologically and socially justified – in specific historical conditions – needs for existence and development, determined by the level of development of society and ensured by the obligations of other subjects." (Rabinovich, 2013)

The guarantee of human rights can be regarded as an indicator of the sustainability and maturity of the state. This position is the result of the gradual formation of state and legal views in the direction of recognizing a person, their rights, freedoms and legitimate interests as the highest social value, a guideline in the activities of the state and all public institutions (Sokolenko, 2012).

With regard to the definition of economic human rights, the scientific doctrine does not adopt a single approach to disclosing their content and

system. Accordingly, Y. Frolov delineates economic rights and freedoms of the individual in Ukraine as a distinct category within the overarching framework of constitutional rights and freedoms. These rights are defined as the capacity of individuals to possess, utilise and dispose of economic assets, in addition to the acquisition and protection thereof, in accordance with the manner, limitations, forms and procedures stipulated by the Constitution and legislation of Ukraine (Frolov, 2005). Y. Ryzhuk (2012) defines economic rights as "legally enshrined opportunities for a person and a citizen to participate in social production (exchange, distribution and use) of tangible and intangible goods, to freely dispose of the results of their economic activity in order to meet their own needs". As Waldron (2010) argue, certain authors place significant emphasis on the systemic nature of economic rights and freedoms, viewing them as an integrating element of a decent standard of living. It can thus be argued that economic rights are a form of manifestation of individual freedom in the sphere of the economy and, to a greater extent, derive from human nature.

In accordance with classical principles, constitutional economic rights encompass a range of provisions that facilitate the pursuit of intellectual endeavours by ensuring the fundamental rights to labour, property and entrepreneurship are upheld.

These rights can be considered generic constitutional economic rights, which, in turn, are divided into specific rights depending on the subject matter and type of activity that the economic relations arising from it are aimed at. It is evident that the division is predicated on the subject matter of regulation within the framework of the right to private property. This division is further delineated by the right to private ownership of land, real estate, and movable property. Within the framework of the right to entrepreneurship, the division is characterised by the right to activities based on own and hired labour, as well as the right to activities related to the production and movement of goods and the provision of services. Finally, within the framework of the right to labour, the division is evident in the right to access to labour during the conclusion and termination of an employment contract, as well as the right to receive a salary to maintain a decent standard of living.

For example, A. Clark identifies several core components of property rights. These include the right to possess (exclusive physical control over an object), to use it personally, and to determine how and by whom it may be used (the right to control). Property rights also encompass the right to derive income from the object – either through personal use or by granting others permission to use it – as well as the right to its capital value, which allows the owner to transfer, consume, modify, or even destroy the

object. Further elements include the right to security (protection from expropriation), the ability to transfer ownership through inheritance or will, the concept of perpetuity, the obligation to avoid harmful use, and liability – meaning the object may be claimed to satisfy a debt (Clark, 2005).

Economic human rights in Ukraine are ensured by universal constitutional guarantees, which include: (1) judicial protection of human and civil rights and freedoms and appealing against decisions, actions or inaction of state authorities, local self-government bodies, officials and employees in court (Art. 55(1), (2)); (2) the right to protect one's rights by any means prohibited by law (Art. 55(1), (2)); (2) the right to protect one's rights by any means not prohibited by law (Art. 55(5)); (3) a guarantee of compensation for damages caused by unlawful decisions of persons or bodies acting on behalf of the state (Art. 56); (4) the possibility to receive information on the content of rights and obligations (Article 57); (5) the right to legal support (Article 59); (6) the right to apply for protection of their rights to the Ukrainian Parliament Commissioner for Human Rights, relevant international judicial institutions or to the relevant bodies of international organisations of which Ukraine is a member or participant (Articles 55(3), (4)); (7) the right to apply to state authorities, local self-government bodies and officials and officers of these bodies (Article 40).

These regulatory and legal guarantees are intended to directly ensure the legitimacy of the exercise of human rights and freedoms, the protection and defence of these rights and freedoms in the event of their violation by any party, whether private or public officials, state and local authorities or public organisations.

Moreover, such guarantees serve to facilitate the development of the economic sphere and function as a framework within which public authorities can formulate economic policy directives. The significance of these guarantees in establishing a market economy has been consistently underscored in the rulings of the Constitutional Court of Ukraine. These decisions are intended to safeguard the economic stability of the nation and to protect the sustainability of the economic system. This is achieved, in part, by establishing an equitable balance between constitutionally significant values and by finding a compromise between international law and national law in the context of general globalisation.

It is important to note that the mechanism of realising constitutional economic rights encompasses their protection and defence. However, it is crucial to distinguish between the protection of constitutional rights and their defence. It is imperative to recognise the significance of safeguarding economic rights, which is an ongoing endeavour encompassing

a range of measures. These measures are meticulously designed to avert any infringement on these rights and to ensure their effective realisation through the implementation of various guarantees. The protection of economic rights of citizens can be defined as a specific activity and a set of measures that are implemented in the event of a violation of the right, with the aim of restoring the violated right. The protection and defence of economic rights of citizens is expressed in the activities of both the subject of law and the responsible authorities. The protection of economic rights is ensured by their conscientious exercise, which does not allow for abuse of the right. Such abuse may be expressed, for example, in unfair competition and monopolistic activities. Adherence to the prohibitions contained in legislation on the protection of economic rights, in conjunction with the fulfilment of assigned duties, is instrumental in ensuring equal access to relevant resources and goods (works, services) by subjects of law. Nevertheless, the protection of economic rights is contingent upon the effective fulfilment of duties by the state, through the provision of appropriate guarantees.

3. Constitutional Justice in the Protection of Economic Rights

The resolution of economic disputes may be achieved through the utilisation of various forms of judicial protection, with constitutional and judicial protection assuming a predominant role. The leading function of the Constitutional Court is supported by the following arguments: (1) the performance by the constitutional judicial bodies of the function of reviewing the provisions of normative acts for their conformity with the laws of Ukraine; (2) the possibility of formulating and clarifying in the course of constitutional judicial review the generally recognised principles of law on which all other judicial bodies base their activities; (3) the priority of the decisions of the Constitutional Court of Ukraine, which is determined by the supreme legal force of the Constitution of Ukraine.

The activities of the Constitutional Court of Ukraine (henceforth referred to as the CCU) ensure compliance with the regime of constitutionality, as opposed to legality, which is exercised in the administration of other types of justice. Constitutionality is a phenomenon of a higher order than legality. It is the fundamental principle of the doctrine and practice of constitutionalism. It is precisely this mechanism that ensures the direct effect of the Constitution and the real protection of citizens' rights on the basis of equality (Riznyk, 2020).

In the context of safeguarding economic rights and freedoms, the doctrine of the horizontal effect of the constitution and fundamental rights, in conjunction with the constitutionally conformist interpretation

of legislation, assumes significant importance. The doctrine of the horizontal effect of fundamental rights is of crucial importance in ensuring equality in private law relations and preventing discriminatory practices. It is therefore vital that legislation, standard contractual terms and contractual practice comply with the fundamental principles of law (Koukal, 2019).

To illustrate this point, reference is made to the Constitution of Ukraine, which stipulates in Article 92(7) (1) that the legal regime of property is determined exclusively by the laws of Ukraine. In accordance with this constitutional provision, the CCU has formulated a number of legal positions, according to which: (1) the legal regime of property, the procedure and conditions for the acquisition and termination of property rights, as well as the rights to own, use and dispose of property are determined by laws; (2) in order to realise the right to property enshrined in the Constitution of Ukraine, sectoral laws are required that establish specific norms of property usage by the owner, taking into account the interests of all subjects of legal relations; (3) only the laws of Ukraine establish the legal regime of property, based on constitutional provisions specified in laws that may also contain certain features of the legal regime of certain forms of ownership; (4) the legal regime of ownership, the procedure and conditions for the acquisition and termination of ownership, as well as the rights to own, use and dispose of property (land) are determined by law (CCU Decision No. 8-r/2019 of 25.06.2019).

Furthermore, it is possible to distinguish between cases in which the subjects of the right to constitutional petition complained about (a) non-compliance with "budget laws" restricting the rights of citizens with the Constitution of Ukraine; and (b) restrictions on the possession, use and disposal of property rights, etc.

Constitutional jurisdiction is therefore an important institution for the purpose of guaranteeing economic rights. The significance of the CCU's acts of official interpretation of legal norms is that they serve to eliminate uncertainty in understanding other general legal provisions. It is evident that these prescriptions are characterised by all the features of legal norms, with the only peculiarity being that they are applied in conjunction with interpretive normative provisions. Concurrently, this feature merely signifies the auxiliary importance of acts of official judicial interpretation of legal provisions, whilst failing to refute their law-making significance. A salient feature of the CCU acts is that, in contrast to the acts issued in cases concerning the constitutionality of legal acts, these acts of normative interpretation do not result in the loss of legal force of any legal acts, individual norms and legal provisions. However, it is imperative to acknowledge the necessity for a re-examination

and refinement of the latter to align it with the constitutional interpretation provided by the CCU (Vasyliiev, 2023).

The specific conditions for the acquisition and procedure for the realisation of economic, human and civil rights, as well as the actual amount of material benefits guaranteed by their normative content, are not subject to protection through constitutional proceedings. It is submitted that economic, human and civil rights are subject to judicial protection to the extent that their realisation is difficult or impossible due to existing shortcomings in the legislative regulation of the relevant normative mechanism.

Concomitantly, it is imperative to acknowledge that courts, in their adjudication of economically binding interpretations of positive rights, must be cognisant of the ramifications of their decisions. As A. Meleshevykh (2010) rightly observed, the capacity of the judiciary to influence the distribution of economic benefits in the absence of adequate economic, analytical and forecasting resources allows for the following reservation: an overly active utilisation of judges' discretion in interpreting positive human rights may yield unintended consequences for society.

4. Judicial Forms of Economic Rights Protection

The judicial protection of rights is universal in nature, offering the highest level of guarantees for the protection of subjective rights and legitimate interests. The system of judicial bodies plays a pivotal role in ensuring the stability of the constitutional order's foundations. It is responsible for safeguarding the rule of law and maintaining order within the socio-economic structure. The constitutional features of the judicial form that distinguish it from other forms are as follows: protection on behalf of the state by an independent jurisdictional body (court) by the procedure for consideration and resolution of disputes strictly regulated by law.

The legal nature of the economic rights of a person belonging to the private law sphere determines the main elements of the judicial procedure for their protection, which indicates the proactive nature of actions of individuals and legal entities exercising their right to judicial protection. In this sense, the constitutional right to judicial protection can be revealed through the power to demand protection of one's right and the corresponding obligation of the court to provide such protection by ordering the violator to take actions to restore the violated right, and recognise or transform the right.

It is important to note the polyformism of the judicial form of protection of economic rights and

freedoms in Ukraine. It is evident that the legal separation of different judicial forms of protection of economic rights in Ukraine is carried out with consideration not only of the specifics of protection provided by law and court, but also of the system of bodies administering justice. The protection of economic rights and freedoms is the purview of courts of general jurisdiction in civil proceedings, as well as commercial courts. In certain categories of cases, the protection of economic rights and freedoms is also the purview of administrative courts.

D. Prytyka assesses the advantages of the economic court form of protection of economic rights and freedoms, noting that despite the similarity with the general court form of protection of civil rights, the economic court form of protection differs significantly from the latter. Prytyka (2003) argues that the form of activity established by law for an economic court is most suitable for consideration and resolution of economic disputes, taking into account the impact of an economic court on the economy of Ukraine. Consequently, within the framework of the economic court as a means of safeguarding subjective rights, not only is a particular economic dispute examined, but also the economic activities of entrepreneurs involved in the dispute are impacted in a broader sense. It appears that this element is also significant in establishing the fundamental nature of the concept of "judicial protection of entrepreneurs' rights".

Legal literature offers a list of criteria – conditions, the application of which determines the choice of an effective way of protecting the rights of subjects of law and specifies the discretion of the court in determining them: (1) compliance of the way of protection with the content of the violated right, the nature of its violation and the consequences caused by this violation; (2) compliance with the legislation, treaty, legal principles and the purpose of judicial protection; (3) expediency and efficiency; (4) appropriateness (proportionality, equivalence) to the offence; (5) availability of a mechanism for implementation (enforcement); (6) prevention of violation of the rights and interests of other subjects (Petrunia, 2019).

Today, as a rule, there is no competition between different types of national judicial procedures for the protection of the economic rights and freedoms of individuals and legal entities. The correct definition of the subject-matter of the dispute also makes it possible to clearly determine the court's jurisdiction. And in cases where there are difficulties in the correct determination of the subject matter of the dispute due to its burden with a large number of materials, complexity of the subjective composition, imperfection of the legal regulation of the disputed legal relations, judicial practice in the form of legal positions of the Supreme Court and the ECHR comes to the rescue.

At present, the use of a particular procedural form (civil, commercial, administrative) in the judicial protection mechanism depends on the existence of a commercial risk in the disputed relationship, which determines the quality of the participants. However, the procedure itself in the various forms of legal proceedings includes several standard actions (filing of a claim, notification of the parties, submission of evidence, examination by the court, etc.). The operation of the mechanism of judicial protection of rights in different procedural forms is based on the achievement of identical objectives and is based on the same principles, which allows for the conclusion that there is a similarity of the legal nature of these forms.

Given the specificity and role of the economic sphere in society, the problem of the effectiveness of "economic" legal procedures remains relevant. Real protection of economic rights should be carried out in such a way that it does not harm the economic condition of the subject as a whole. Therefore, the components of efficiency of the process of protection of rights and interests of subjects of economic relations are (a) clarity and simplicity of the protection procedure, (b) clear terms of consideration and resolution of the case, (c) adequate, reasonable court costs, (d) reality of enforcement of court decisions.

5. Protection of Economic Rights by the European Court of Human Rights

In accordance with Article 1 of the Law of Ukraine "On Ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950", the Ukrainian government formally acknowledges the jurisdiction of the European Commission of Human Rights, as outlined in Article 25 of the aforementioned Convention, to receive applications from any individual seeking the protection of their human rights and fundamental freedoms. This document is an appeal to the Secretary General of the Council of Europe by a non-governmental organisation (NGO) regarding violations by Ukraine of the rights outlined in the Convention and Article 46 of the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950. The appeal acknowledges the jurisdiction of the European Court of Human Rights in all matters relating to the interpretation and application of the Convention as compulsory and without the conclusion of a special agreement. Ukraine acknowledges the impact of Articles 25 and 46 of the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950, as well as Protocols No. 4 and No. 7 to the Convention, on its territory.

The jurisprudence of the European Court of Human Rights (ECHR) contains numerous examples

of economic cases. For instance, in the case of *Sovtransavto Holding v. Ukraine* (2002), the court noted that the state has a positive obligation to ensure the proper protection of property rights. The state's positive obligation is threefold: firstly, to protect the rights of the property owner; secondly, to protect the rights of the bona fide owner of the property; and thirdly, to protect the right to an easement. The state's failure to fulfil this positive obligation constitutes a gross violation of property rights. In particular, the ECHR stated that Ukraine had failed to fulfil its positive obligation to properly protect property by allowing an additional share issue, which led to artificial "dilution" of the minority shareholder's stake.

M. Savchyn, outlines the main methodological approaches that should form the basis for studying the peculiarities of the Strasbourg Court's protection of socio-economic values: (1) the concept of fundamental rights does not exclude the possibility of their interpretation in the light of the social and economic needs of an individual ("core rights perspective"); (2) consensus or broad agreement can also provide a valuable legal reference point for the protection of fundamental socio-economic rights by the Strasbourg Court; the basic socio-economic guarantees agreed at national and international level, and in particular the basic obligations recognised by the UN Committee on Economic, Political, Social and Cultural Rights, may be taken into account; (3) the Court, in one way or another, has been confronted in its decisions with the issues of reviewing the legality of the actions of the national legislator in terms of developing a regulatory framework for the implementation of the State's socio-economic policy (Savchyn, 2021).

The analysis of the jurisprudence of the ECHR, which reveals the content of the right to judicial protection, allows us to state that this right (1) relates to the fundamental, inalienable rights and freedoms of man and citizen; provides specific guarantees for the effective restoration of rights by a judiciary that meets the requirements of justice; (2) is a guarantee for the exercise of other rights and freedoms of man and citizen; and applies to citizens, public associations, legal entities – business entities; (3) is not subject to any restriction, since the restriction of this right can in no case be conditioned by the need to achieve the objectives recognised by the state legislation; (4) provides for the possibility of appeal to the court against decisions or actions (inactivity) of any state bodies, including judicial ones, etc.

Simultaneously, it is imperative to acknowledge that, despite the paramount importance and inherent significance of the ECHR's practice of safeguarding economic rights and freedoms, such protection remains subsidiary (auxiliary) to the overarching

international human rights mechanism. This legal position has become pivotal in the regulation of relations between the international human rights system and national jurisdictions. In the case of *Sargsyan v. Azerbaijan* (2015), the court noted: "The main feature of the protection mechanism established by the Convention is that it is complementary to national human rights protection systems. The purpose of the Court is to supervise the fulfillment by the Contracting States of their obligations under the Convention. It should not assume the role of the Contracting States, whose responsibility is to ensure respect for and protection of the fundamental rights and freedoms enshrined in the Convention at the national level."

The ECHR has repeatedly emphasised the paramount importance of economic values materialised in the relevant rights as an integral basis of democracy and, thus, as essential for ensuring the stability of sustainable economic development of the national legal system. Nevertheless, while states are under an obligation to respect, protect and fulfil minimum fundamental economic rights, the ECHR has not established a specific model for their protection. Conversely, it employs a case-by-case approach in resolving cases to ascertain whether the Contracting States fulfil their obligations to ensure the economic rights of the individual thoroughly, consistently and accurately.

6. Non-judicial Forms of Economic Rights Protection: National and Transnational Level

The interaction between legal systems in the context of globalisation and integration is of particular importance, as it promotes adaptation and mutual influence of national legal systems, directing them towards constructive development and harmonisation (Dudnyk, 2023). This process requires specific mechanisms to ensure interaction between different legal systems. For example, (1) the growth of international relations leads to the development of transnational justice, when judicial bodies consider cases with an international dimension, which helps to resolve conflicts between different legal systems and promotes the unification of judicial standards; (2) the use of mediation and consultation mechanisms helps to resolve conflicts and disputes between legal systems through dialogue and compromise; (3) interaction processes involve the exchange of experience and transfer of best practices between different legal systems, which helps to improve law enforcement procedures and ensure a higher level of protection of citizens' rights and freedoms.

It has been posited by certain researchers that the selection of a specific alternative remedy is influenced

by a number of factors, including (a) the nature of the dispute, (b) the particular characteristics of the contractual or non-contractual relations between the disputing parties, (c) the domain of activity, and (d) the timing of the application for dispute resolution – whether this occurs before the commencement of the trial, at the stage of filing a statement of claim, or at the stage of trial (Derevyanko, 2022; Cortés, 2022).

In the contemporary context, a range of alternative mechanisms are available to protect the rights of business entities in Ukraine, including negotiations, mediation, and arbitration. It is evident that this list is subject to constant augmentation.

The scientific literature suggests that, taking into account the experience of certain EU Member States and other developed countries, it is possible to propose in Ukraine: (1) to establish state centres that will provide services on the use of alternative methods of protecting the rights of business entities; (2) to develop a programme for supporting the above-mentioned centres in terms of conducting activities aimed at promoting alternative methods of protecting their rights among Ukrainian business entities, especially those affected by Russia's aggression; (3) to introduce an electronic platform through which business entities and ordinary citizens, especially those affected by Russian aggression, could resolve disputes in a pre-trial procedure, using alternative means of protection of rights, and so forth; (4) to extend the jurisdiction of the International Commercial Arbitration at the Ukrainian Chamber of Commerce and Industry to disputes between Ukrainian business entities (Derevyanko, 2023).

It is important to note the potential for the protection of economic rights at the transnational level, a concept associated with the field of cyber law (Internet Law). This is a body of law that is based on digital technologies, including in the formation of the economic sphere.

As R. Ambrogi notes: "The Internet has created its field of law. Internet law is a dynamic, flexible and unexplored area of practice where the rules have not yet been finalized. It is not even a separate branch of law, but a mixture of theory and practice taken from different areas – a mishmash of parts taken from intellectual property, civil liberties, tort, criminal, property, telecommunications, international trade, commercial and conflict of laws." (Ambrogi, 2004)

The advent of this branch of jurisprudence has precipitated a marked augmentation in the proliferation of non-governmental institutions for the resolution of disputes, encompassing online proceedings, ADR procedures, and other such instruments. The present day sees the phenomenon of supranational commercial arbitration attract interest not only from legal professionals but also from sociologists, who

observe in its example how private entities unite and develop their system of commercial dispute resolution and their own set of arbitration rules, a process which is increasingly authorised by states. That is, as A. Riles notes, arbitration is a kind of analogue of national law, an alternative to national law with all the functional elements of national law: a set of rules, a set of procedures, a set of problems (disputes) (Riles, 2008).

7. Conclusions

The specificity of economic human rights and freedoms, which determines the originality of their legal nature, as well as the immanent connection of this group of rights with the real conditions of the economic state of society, determine the essential features of the means of their guarantee, the mechanism of their implementation and forms of protection.

The mechanism of judicial protection of economic, human and civil rights is a procedure established by law for the implementation by competent entities of a set of measures aimed at compulsory prevention of non-compliance with economic rights and freedoms, removal of obstacles to their realisation and restoration of rights already violated.

Constitutional justice is regarded as the most significant institution for the protection of economic rights of individuals and legal entities of the state. The prevailing doctrinal perspective asserts that the function of constitutional jurisdiction in safeguarding economic rights is contingent upon the fact that the CCU does not undertake a review of normative acts for their legality, but rather for their constitutionality. This is a higher order phenomenon that ensures the direct effect of the Constitution of Ukraine.

The protection of fundamental economic rights of a person and a citizen within the framework of the

relevant type of legal proceedings is based on the general principles of legal proceedings, which, in turn, are periodically improved in the process of constitutional justice depending on the prevalence of private or public interest in the development of economic relations of the country.

The specific features of judicial protection of economic rights and freedoms are as follows: the initiative nature of the actions of subjects to exercise their right to judicial protection; the existence of a pre-trial dispute resolution procedure; the non-alternative obligation to confirm the existence of monetary (property) obligations with written evidence by the provisions of procedural law on the admissibility of evidence; and the peculiarity of the procedure for the enforcement of economic judgments.

An independent form of protection of economic rights and freedoms is out-of-court (alternative) protection, which significantly influences the choice, conditions and characteristics of protection of rights of subjects of economic relations. This form of protection is characterised by time savings in the settlement of disputes, cost savings, the possibility of preserving relations between the parties to legal relations, maintaining the confidentiality of the case, flexibility of the protection process, restoration of rights, a wide range of agreements in the process of protection of rights.

The concept of establishing a dedicated, decentralised system for resolving disputes in the domains of commercial and digital technologies at the supranational level, within quasi-judicial entities, has recently witnessed a notable increase in its level of acceptance and support. Nevertheless, despite the simplicity and effectiveness of this dispute resolution technology, a number of organisational, procedural and procedural issues remain unresolved, which prevent their widespread use.

References:

- O'Connell, P. (2014). *Vindicating Socio-Economic Rights: International Standards and Comparative Experiences*. USA: Routledge. Available at: <https://www.corteidh.or.cr/tablas/27966.pdf>
- Muller, A. (2009). Limitations to and Derogations from Economic, Social and Cultural Rights. *Human Rights Law Review*, Vol. 9(4), p. 557–601. DOI: <https://doi.org/10.1093/hrlr/ngp027>
- Rabinovich, P. M. (2013). Some modern concepts of law in Russia and Ukraine (in the light of the need-based understanding of law). *Philosophy of Law and General Theory of Law*, Vol. 1, p. 150–168.
- Sokolenko, O. L. (2012). Theoretical foundations of protection of citizens' rights in a democratic, social, legal state. *Law and Security*, Vol. 3, p. 69–74.
- Frolov, Y. M. (2005). Economic rights and freedoms of human and citizen in Ukraine. Manuscript. Odesa, p. 10.
- Ryzhuk, Y. M. (2012). Constitutional and legal basis of economic rights and freedoms of man and citizen in Ukraine. Manuscript. Kyiv. DOI <https://doi.org/10.32782/chern.v1.2023.4>
- Waldron, J. (2010). Socioeconomic rights and theories of justice. *NYU School of Law, Public Law Research Paper*, p. 10–79.
- Clarck, A. (2005). *Property Law: Commentary and Materials*. Cambridge: Cambridge University Press, p. 193–203.
- Riznyk, S. (2020). On The Concept of Constitutionality of Legal Acts. *Ukrainian Journal of Constitutional Law*, Vol. 2, p. 3–10.

- Koukal, P. (2019). Autorske pravo, public domain a lidska prava. Brno: Masarykova univerzita, p. 271.
- Meleshevych, A., Lozovyi, I., & Sviderska, A. (2010). Juristocracy and The Protection of the Second-Generation Positive Rights by The Constitutional Court of Ukraine. *Scientific notes of NaUKMA*. T. 103. Legal sciences, p. 12–20.
- Vasyliiev, S., Osypenko, R., & Yaholnyk, O. (2023). Transitivity of the state economic policy of Ukraine. *Baltic Journal of Economic Studies*, Volume 9 Number 2, p. 91–96. DOI: <https://doi.org/10.30525/2256-0742/2023-9-2-91-96>
- Prytyka, D. M. (2003). Organizational and legal principles of formation and activity of economic courts of Ukraine. Kharkiv: Yaroslav Mudryi National Law Academy of Ukraine, 26 p.
- Petrunia, V. V. (2019). The concept and system of methods of protection of the rights of business entities. Odessa: Odesa Law Academy, 20 p.
- On ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 (1997). Primary legislative acts. Available at: https://zakononline.com.ua/documents/show/181730___520377
- Sovtransavto Holding v. Ukraine, App. No. 48553/99, Judgment on 27 July 2002. Available at: [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-60634%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-60634%22]})
- Legal regulation of the economic system: institutions, rules, procedures (2021). Monograph: edited by Prof. M. Savchyn. Odessa: Helvetica, p. 756–758.
- Sargsyan v. Azerbaijan [GC], no. 40167/06, § 115, ECHR 2015. Available at: [https://hudoc.echr.coe.int/fre#{%22itemid%22:\[%22001-155662%22\]}](https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-155662%22]})
- Dudnyk, R. M. (2023). The system of law and the legal system of Ukraine in the era of globalism (integration). *Scientific Bulletin of Uzhhorod National University*. Series PRAVO. Issue 79: part 1, p. 40–46. DOI: <https://doi.org/10.24144/2307-3322.2023.79.1.6>
- Derevyanko, B., Nikolenko, L., Turkot, O., Ivanyuta, N., & Butyrska, I. (2022). Mediation as an alternative form of protection of shareholders' rights in property relations. *International Journal of Public Law and Policy*. Vol. 8. № 3-4, p. 227–241. DOI: <https://doi.org/10.1504/IJPLAP.2022.124424>
- Cortés, P. (2022). Embedding alternative dispute resolution in the civil justice system: a taxonomy for ADR referrals and a digital pathway to increase the uptake of ADR. *Legal Studies. First View*, p. 1–19. DOI: <https://doi.org/10.1017/lst.2022.42>
- Derevyanko, B. V., Greshchuk, G. I., & Turko, O. A. (2023). Application of alternative ways to protect the rights of business entities: Ukrainian realities and experience of EU countries. *Economics and Law*, Vol. 1, p. 34–42. DOI: <https://doi.org/10.15407/econlaw.2023.01.034>
- Ambrogi, Robert J. (2004). The Essential Guide to the Best (and Worst) Legal Sites on the Web. 2th edn. N.Y.: ALM Publishing. (Chapter 12).
- Riles, A. (2008). The Anti-network: Private Global Governance, Legal Knowledge, and the Legitimacy of the State. *American Journal of contemporary law*, Vol. 56, p. 623.

Received on: 20th of March, 2025

Accepted on: 23th of April, 2025

Published on: 20th of May, 2025