

LABOR LAW AND SOCIAL WELFARE LAW

DOI <https://doi.org/10.30525/978-9934-588-92-1-47>

**PROTECTING OF THE RIGHT TO PENSION PROVISION:
THE CASE LAW OF THE EUROPEAN COURT
OF HUMAN RIGHTS**

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Protection of human rights in modern conditions is a priority of every state. Judicial practice shows that every year the number of citizens' complaints about the violation or non-recognition of their rights is growing. Most of these appeals concern the protection of social rights, including the right to a pension. An important role in ensuring the implementation of the mechanism for the protection of such rights today is played by the International Judicial Institute – the European Court of Human Rights (hereinafter – the ECtHR).

The issue of the mechanism of human rights protection was covered in the works of foreign scholars, in particular, such as S.V. Bakhin, M.O. Boil, L. Zwaak, and domestic M.M. Antonovych, O.A. Banchuk, T.Z. Herasymiva, O.I. Kulchytska, S.M. Prylypko, V.M. Rudenko, Yu.S. Shemshuchenko, I.S. Yaroshenko and others.

In general, the problem of the nature of social (in the established domestic terminology – socio-economic) human rights and mechanisms for their implementation and protection is one of the most complex and controversial in modern legal theory and practice.

Social rights include the right to education, the right to social security, the right to health care and medical assistance, the right to housing, the special rights of the child and the rights of persons with disabilities. The right to social security is one of the social rights enshrined in Article 22 of the Universal Declaration of Human Rights. The essence of the right to social security is that the state guarantees the provision of sufficient funds to

citizens who due to objective circumstances completely or partially lost the opportunity to work and receive remuneration for work, as well as assistance to families in connection with the birth and upbringing of a child [1].

It is generally accepted that human rights and freedoms have ceased to be a purely internal affair of the state. Every democratic society today creates the right conditions for the application of international law on human rights, guided by the relevant principles and rules enshrined in the documents of international and European organizations. One of the most important constitutional guarantees is the right to judicial protection, which cannot be limited, even in conditions of war and emergency state [2, p. 278].

Today, the main international human rights body on our continent, which provides protection of human and civil rights and freedoms, is the European Court of Human Rights, which was established in 1959 on the basis of the European Convention for the Protection of Human Rights and Fundamental Freedoms in 1950 (hereinafter – Convention) [3, p. 16-17]. The jurisdiction of the ECtHR shall extend to all questions of interpretation and application of the Convention and the protocols thereto submitted to it under Articles 33, 34; 46 and 47 (Article 32 of the Convention). In addition, despite its uniqueness, it is subsidiary in nature and is limited to the interpretation and application of the Convention and not the domestic law of the High Contracting Parties. The creation and functioning of such an important body as the ECtHR is an important asset of the European legal system of human rights protection [4, p. 71].

It should be noted that the ECtHR cannot act as an appellate body in relation to national courts, hold new hearings in cases, revoke, amend or review decisions of national courts or laws adopted at the national level [2, p. 277]. Each decision of the ECtHR shouldn't be regarded as a separate episode, but instead is a contribution to all case law under the Convention.

Thus, the activities of the ECtHR are aimed at monitoring the States parties to the provisions of the Convention to ensure the latter on the basis of their own legal institutions adequate protection of human rights. It is necessary to agree with the opinion of the scientist Bondarenko A.I. however, that the ECtHR has become a driving force for fundamental changes in the European human rights architecture.

As practice shows, the issue of protection of the ECtHR's right to social security, namely the right to a pension, deserves special attention. According to Article 1 of Protocol No. 1 to the Convention, the right to a pension is included in the concept of «property». The concept of «property» in the sense of this article has an autonomous meaning, ie is not limited to ownership of tangible property and does not depend on the formal classification in domestic law: certain other rights and interests that constitute assets may also be

considered «property» and «own». Analyzing the practice of the ECtHR cases of violation of property rights, we can conclude that the concept of «property», as well as «property», has a fairly broad interpretation and covers a number of economic interests (assets) – as material, and intangible and includes the right to a pension and social payments.

It is worth considering the case of the European Court of Human Rights – the case «Pichkur v. Ukraine» of 07.11.2013. The content of the complaint was discrimination on deprivation of an old-age pension on the basis of a change of residence, ie violation of Art. 14 of the Convention in conjunction with Art. 1 of the First Protocol. Following the ECtHR's examination, it was decided to infringe the applicant's rights and to pay him EUR 5,000 in respect of pecuniary and non-pecuniary damage. In reaching its decision, the Court was guided by the fact that if a Contracting State has legislation in force which provides for entitlement to social benefits due or not due in advance, that legislation must be regarded as giving rise to an interest in bringing proceedings under Art. 1 of the Protocol of the first, for persons who meet the requirements of such legislation. Thus, the right to a pension falls under Art. 1 of the Protocol of the First Convention only if the person within the national social security system has a reasonable right to receive appropriate benefits. Another ECtHR decision concerning Ukraine, combined into one proceeding on two complaints of its citizens regarding the recalculation, can be considered similar pensions.

Analyzing the role of the state defined by the ECtHR in ensuring social human rights, domestic researchers state that the assessment of state intervention in social rights by the Court was carried out through the methodology used by it to assess other groups of rights (analysis of purpose, criterion of «statutory» degree of proportionality) which are used to achieve it), but with a number of features. The main feature of these was the emphasis on the content of the legal obligation to actually ensure the relevant social law and the recognition of the wide discretion of the national public authorities on relevant issues. In addition, state intervention in social human rights was assessed taking into account not only the financial situation of the state, but also the content of its economic policy [5, p. 151–152]. Determining the content of the economic policy of a particular state by international judicial and human rights institutions is a rather difficult task, which is not limited to its legislative regulation. It includes among these various concepts, ideas, doctrines, goals, as well as the activities of government and administration to implement such policies, which have such areas and types as monetary, fiscal, investment, price, competition and incl. social.

Summarizing the above, we can draw the following conclusion. The European Court of Human Rights is a permanent international judicial body

that plays an important role in protecting human rights in modern conditions, including the right to a pension. The functioning of such an international judicial institution can not only solve a problem of protection of violated rights, but also affect the development of the legal system of each state.

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