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**ON THE ISSUE OF PROTECTION OF PUBLIC MORALITY:**

**REALITIES OF MODERN LEGISLATION**

**ДО ПИТАННЯ ЗАХИСТУ СУСПІЛЬНОЇ МОРАЛІ: РЕАЛІЇ**

**СУЧАСНОГО ЗАКОНОДАВСТВА**

**К ВОПРОСУ О ЗАЩИТЕ ОБЩЕСТВЕННОЙ МОРАЛИ: РЕАЛИИ**

**СОВРЕМЕННОГО ЗАКОНОДАТЕЛЬСТВА**

*Summary. The article examines the issue of protection of public morality of modern Ukrainian legislation and the direction of resolving this issue in the decisions of the European Court of Human Rights. The urgency of the issue of moral protection is undeniable, because any offence, crime or action that harms others is an immoral phenomenon. The protection of morality, therefore, aims to prevent illegal human activities and criminal acts in the future. The decisions of*

*the European Court of Human Rights are aimed at achieving this goal, which is dictated by humanistic tendencies and social and legal progress. However, the protection of public morality under current Ukrainian legislation does not fully meet this goal of the European Community. The relevant law of Ukraine "On Protection of Public Morality" specifies only some legal bases of protection of society from the distribution of products that may adversely affect public morality, leaving all other issues of morality aside. This leads to such negative consequences as disrespect for the elderly, careless attitude to family responsibilities, degradation of personality, etc., because it is morality that originally exists in society, defining the essence of human nature, which exists in contrast to the animal world. The article analyzes the decisions of the European Court of Human Rights and finds that the issue of legal protection of public and personal morality can be divided into two areas: protection of personal morality in the moral interests of society and protection of morality recognized in society and currently valid. . An analysis of the judgments of the European Court of Human Rights has given grounds to assert that the European Community searches for justice by combining the interests of society and the needs of the individual. The Court recognizes moral and fair interference in a person's private life if such interference: meets an urgent need and a social need; meets the condition of "the need for such intervention in a democratic society"; is proportional to the legitimate aim; directly provided by law within the meaning of Art. 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms. The following are recognized by the European Court of Human Rights as illegal and immoral: systematic storage and use by public authorities of information about a person's private life; use of information relating to a person's distant past;*

**Key words:** *society, morality, legal norms, decisions, the European Court, personal life.*

**Анотація.** В статті досліджується питання захисту суспільної моралі сучасного українського законодавства та напрями вирішення цього питання в рішеннях Європейського Суду з прав людини. Актуальність питання захисту моралі беззаперечна, оскільки будь-яке правопорушення, злочин або дія, що задає шкоди іншим, є явищем аморальним. Захист моралі, таким чином, має на меті запобігти незаконним людським проявам та злочинним діям у майбутньому. Саме на досягнення такої мети, яка продиктована гуманістичними тенденціями та соціально - правовим прогресом, спрямовані рішення Європейського Суду з прав людини. Втім, захист суспільної моралі за чинним законодавством України не в повній мірі відповідає зазначеній меті Європейської спільноти. Відповідний закон України «Про захист суспільної моралі» зазначає лише деякі правові основи захисту суспільства від розповсюдження продукції, яка може негативно впливати на суспільну мораль, залишаючи всі інші питання моралі стороною. Це приводить до таких негативних наслідків як: неповага до літніх людей, легковажне ставлення до обов'язків в сім'ї, деградації особистості тощо, адже саме мораль первісно існує в суспільстві, визначаючи сутність людської природи, яка існує на протигагу тваринному світові. В статті проаналізовані рішення Європейського Суду з прав людини та встановлено, що питання правового захисту суспільної та особистої моралі можна умовно поділити на дві площини: захист особистої моралі людини в лоні моральних інтересів суспільства та захист моралі, яка визнана в певному суспільстві і діє на даний час. Аналіз рішень Європейського Суду з прав людини, надав підстави стверджувати, що пошук справедливості Європейське співтовариство здійснює шляхом поєднання інтересів суспільства і потреб окремої людини. Моральним та справедливим Суд визнає втручання в особисте життя особи, якщо таке втручання: відповідає нагальній необхідності і соціальній потребі; відповідає умові «необхідності такого втручання у демократичному

суспільстві»; є пропорційним до поставленої законної мети; прямо передбачено законом в сенсі ст. 8 Конвенції про захист прав людини і основоположних свобод. Незаконними та аморальними Європейським Судом з прав людини визнаються: систематичне зберігання та використання державними органами влади інформації про приватне життя особи; використання інформації, яка стосується далекого минулого особи; обробка інформації що стосується «дуже особисті» та конфіденційної інформації.

**Ключові слова:** суспільство, мораль, правові норми, рішення, Європейський суд, особисте життя.

**Анотація.** В данній статтє исследується вопрос защиты общественной морали современного украинского законодательства. Основные критерии направления в решении этого вопроса, многократно присутствуют в решениях Европейского Суда по правам человека. Актуальность вопроса защиты морали неоспорима, поскольку любое правонарушение, преступление или действие, причиняет вред другим и по факту есть явлением аморальным. Целью защиты морали, таким образом, выступает предотвращение незаконных человеческих проявлений и преступных действий в будущем. Именно для достижения такой цели, продиктованной гуманистическими тенденциями и социально - правовым прогрессом, направлены решения Европейского Суда по правам человека. Впрочем, защита общественной морали по действующему законодательству Украины не в полной мере соответствует указанной цели Европейского сообщества. Соответствующий закон Украины «О защите общественной морали» отмечает лишь некоторые правовые основы защиты общества от распространения продукции, которая может негативно влиять на общественную мораль, обходя все другие вопросы общественной морали стороной. Что соответственно, приводит

к таким негативным последствиям таким как: неуважение к пожилым людям, легкомысленное отношение к обязанностям в семье, деградации личности и т.д., ведь именно мораль изначально существует в обществе, определяя сущность человеческой природы, которая существует в противовес животному миру. В статье проанализированы решения Европейского Суда по правам человека и установлено, что вопросы правовой защиты общественной и личной морали можно условно разделить на две плоскости: защита личной морали человека в русле моральных интересов общества и защите морали, которая признана в отдельно взятом обществе и действует в настоящее время. Анализ решений Европейского Суда по правам человека, дал основания утверждать то, что поиск справедливости Европейское сообщество осуществляет путем сочетания интересов общества и потребностей отдельного человека. Нравственным и справедливым Европейский Суд считает вмешательства в личную жизнь человека, если такое вмешательство: соответствует настоятельной необходимости и социальной необходимости; соответствует условию «необходимости такого вмешательства в демократическом обществе»; пропорционально поставленной законной цели; прямо предусмотрено законом в смысле ст. 8 Конвенции о защите прав человека и основных свобод. Незаконными и аморальными Европейским Судом по правам человека признаются: систематическое хранение и использование государственными органами власти информации о частной жизни лица; использование информации, касающейся глубокого прошлого лица; обработка информации касающейся «сугубо личного», а так же другой конфиденциальной информации.

**Ключевые слова:** общество, мораль, правовые нормы, решения, Европейский суд, личная жизнь.

**Formulation of the problem.** Any crime or any other harmful act is an immoral phenomenon that contradicts the notion of good. Immorality always generates anti-social behaviour in a person who does not meet moral and legal norms and provides for an appropriate measure of responsibility. By protecting morality, we thus prevent certain illegal actions in the future, because the goal of social and legal progress and humanistic tendencies of European legislation is the moral and legal protection of the individual. Unfortunately, the protection of public morality under the current legislation of Ukraine does not fully meet this goal. The relevant law of Ukraine "On Protection of Public Morality" establishes only some legal bases for the protection of society from the distribution of products that adversely affect public morality, leaving all other issues aside.

**Analysis of recent research and publications.** Scientists AP devoted their research to the issue of law and morality. Hare, N.M. Onishchenko, O.V. Zaychuk, V.D. Gvozdetsky, O.A. Jacob, P.D. Bilenchuk, S.S. Cream etc. This article analyzes the Ukrainian legislation and the case-law of the European Court of Human Rights.

**Part of the general problem has not been solved previously.** The process of building a legal and democratic state cannot leave aside the issue of morality in the legal field. In this article, we examine the criteria of morality in the decisions of the European Court of Human Rights, which remain out of consideration in Ukrainian law.

**Formulating the goals of the article.** On the basis of the decisions of the European Court of Human Rights to identify the criteria for moral and immorality put forward by the European Community today.

**Presentation of the main research material.** The connection between law and morality is not debatable, because crimes cannot be moral. According to the Law of Ukraine "On Protection of Public Morality", public morality is a system of ethical norms, rules of conduct that have developed in society based on traditional spiritual and cultural values, ideas of goodness, honour, dignity, public

duty, conscience, justice [1]. The question of whether everyone today understands what honour, dignity, justice, evil or good are, remains open. Morality is not created in a day, but is the foundation of historically accumulated views and ideas that have become the norm for correcting the actions of people in society. Morality dictates the directions of education, supports traditions, is a means of persuasion. However, today, when there is no one common morality, the same for all,

The case-law of the European Court of Human Rights is permeated with the issue of morality and compensation for moral damage. The European Court of Human Rights, applying the norms of the European Convention on Human Rights as norms of direct action, makes decisions that reflect the essence and content of this convention. Thus, we get interconnectedness: the European Convention on Human Rights is useless without its interpretation by the European Court, and the European Court operates based on the provisions of the Convention.

Examining the issue of legal protection of morality, it is impossible to bypass the case-law of the European Court of Human Rights, the content of which can be divided into two planes:

- 1) personal morality and the interests of society;
- 2) morality, which is recognized in a particular society and operates at present.

Concerning the first plane, the European Court of Human Rights (hereinafter - the Court) reveals the content of morality through the prism of personal and public priorities, outlining a fair distinction between society's demands and the needs of the individual in protecting fundamental human and civil rights and freedoms. Thus the moral Court recognizes:

- the possibility of interfering in a person's private life if it meets an urgent need and social need, and, in particular, is proportionate to the legitimate aim pursued in *Kutzner v. Germany* (§ 60), *Savina v. Ukraine*, *Johansen v. Norway* "etc.). By "necessity of interference" the Court means that the

interference must meet an urgent social need, in particular where such interference is proportionate to the legitimate aim pursued. Interference in a person's private life will also be considered morally justified if it is provided by law within the meaning of Art. 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms [2].

- the possibility of interference in private life provided that "such interference is necessary in a democratic society" in accordance with the context of paragraph 2 of Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms (Hokkanen v. Finland, K. and T. v. Finland), «R., S. and S. v. The United Kingdom», «Kurochkin v. Ukraine», etc.). Thus, the Court emphasizes that, to determine whether certain measures were "necessary in a democratic society", it is necessary to assess whether the reasons given for justifying such measures were appropriate and sufficient for Article 2 § 2. 8 of the Convention ("Council v. The Republic of Moldova", "Campbell v. The United Kingdom", "Calogero Diana v. Italy", etc.).
- the possibility of interference in private life under the condition of direct "provision in law" ("Halford v. the United Kingdom", "Domenicini v. Italy", "Avilkina and others v. Russia", etc.). However, the wording "prescribed by law" is interpreted as such a contested measure, which must have some basis in national law and must comply with the rule of law (Halford v. The United Kingdom). Also, in the context of this issue, the European Court of Human Rights emphasizes that the relevant category of "legality" should be: adequately accessible and predictable for public awareness; understandable, so that everyone has the opportunity, if necessary and with appropriate assistance, to coordinate their behaviour and meet the requirements of the law;

In almost all cases, it is emphasized that the purpose of the Convention is to seek justice and a balance between the interests of society and the needs of the



individual. Emphasis is placed on the need to achieve a state in the state where the common interests are balanced with the interests of each person (for example, the case of *V. v. France*, *I. v. The United Kingdom*, *Stjerna v. Finland*, *Johansson v. Finland* »Etc.). Thus, the Court seeks to find justice in bringing society and the individual to a moral consensus. Such decisions are reflected in the light of Art. 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms [2], in which the concept of personal autonomy is an important principle that protects the personal sphere of each person as an individual human being.

Regarding the second moral plane, which is considered in this article, we can name two points: the moral ideas prevailing in a particular state and the moral doctrines that apply today. The European Court of Human Rights has determined that morality that is recognized in a particular society at a given time, taking into account certain historical and religious beliefs, should not seriously interfere with a person's private life to immerse him or her in an abnormal situation, vulnerability, humiliation and depression. For example, the Court notes that in the twenty-first century, the right of transgender people to personal development and to physical and moral protection, which is fully exercised by other people in society, must be recognized and can no longer be considered a debatable problem that can be solved only with the time, which would make it possible to better clarify the issues related to this problem (the case of "*I. v. the United Kingdom*").

Today, the principle of protection of personal data is aimed at protecting the fundamental rights and freedoms of man and citizen, and therefore immoral is considered non-interference in privacy in connection with the illegal processing of personal data. The European Court of Human Rights emphasizes in its judgments that the interference with a person's privacy to store his or her personal data must be proportionate to the purpose of such collection and must provide for a limited period of storage of personal data (*Z v. Finland*). "*S. and Marper v. The United Kingdom*" (*Panteleyenکو v. Ukraine*) To date, some agreement has been

reached at international level and, in particular, between the member states of the Council of Europe on the fundamental principles of data protection and the relevant basic procedural guarantees which must be incorporated into national legislation to justify the need for any possible intervention. The moral content here is that all existing data processing systems are "designed to serve the person" regardless of nationality or place of residence of individuals, and to promote economic and social progress, trade and human well-being (paragraph 2) [3]. Thus, the European Court of Human Rights has repeatedly concluded that the following actions are considered illegal and immoral: expansion of trade and human well-being (item 2) [3]. Thus, the European Court of Human Rights has repeatedly concluded that the following actions are considered illegal and immoral: expanding trade and human well-being (paragraph 2) [3]. Thus, the European Court of Human Rights has repeatedly concluded that the following actions are considered illegal and immoral:

- systematic storage and use by public authorities of information about a person's private life (cases "Rotaru v. Romania", "S. and Marper v. the United Kingdom");
- use of information concerning the person's distant past (cases of Rotaru v. Romania, MM v. the United Kingdom);
- processing of information concerning "very personal" and confidential categories of information, such as information on the state of a person's physical or mental health or information on a change of article (cases "Z. v. Finland", "I. v. Finland", "P . and S. v. Poland »,« LH v. Latvia »,« YY v. Russia »).

**Conclusions.** Thus, analyzing the decisions of the European Court of Human Rights, we can say that the search for justice and balance in society is carried out by the European Community by combining the interests of society and the needs of the individual. The Court recognizes moral and fair interference with a person's private life if such interference:

- meets the urgent need and social need;
- meets the condition of "the need for such intervention in a democratic society";
- is proportional to the legitimate purpose;
- directly provided by law within the meaning of Art. 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

The following actions are recognized as illegal and immoral by the European Court of Human Rights: systematic storage and use of information about a person's private life by public authorities; use of information relating to a person's distant past; processing of information concerning "very personal" and confidential information.

### **References**

1. Law of Ukraine "On Protection of Public Morality". URL: <https://zakon.rada.gov.ua/laws/show/1296-15#Text>
2. European Convention for the Protection of Human Rights and Fundamental Freedoms. URL: [https://zakon.rada.gov.ua/laws/show/995\\_004#Text](https://zakon.rada.gov.ua/laws/show/995_004#Text)
3. Directive 95/46 / EC of the European Parliament and the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data. URL: [https://zakon.rada.gov.ua/laws/show/994\\_242#Text](https://zakon.rada.gov.ua/laws/show/994_242#Text)
4. Surikov v. Ukraine, judgment of 26 January 2017, application No. 42788/06. URL: <https://ips.ligazakon.net/document/SOO00966>