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Evaluative Concepts of the European Convention on Human Rights: Current Issues of Application as Exemplified by Article 6[3]

Abstract

The article is devoted to the study of the correct application of the evaluative concepts contained in the norms of the Convention for the Protection of Human Rights and Fundamental Freedoms. Attention is drawn to certain difficulties in the application of the evaluative norms in the Convention: despite their objective necessity and usefulness, they create a room for the law enforcement entity's own discretion up to subjectivism in resolving specific cases; they serve as an objective obstacle to the unification of the case law of the ECtHR and this creates preconditions for unequal implementation of ECtHR judgments in the national legal order; they cause the risk of errors in the application of the provisions of the Convention by the competent authorities of the Contracting States. It is established that the application of legal norms containing evaluative concepts is challenging not only owing to the specific properties of the evaluative concepts themselves, but also due to the peculiarities of adjudication by the ECtHR when applying the evaluative norms. The relevant case law of the ECtHR as well as examples of national legislation are analysed in support of these theoretical conclusions. Since the lack of uniform application of the evaluative norms of the Convention causes divergent use of the ECtHR's judgments in the domestic judicial system, it is advised to follow a number of rules for reasoning of decisions by the domestic court. These rules will serve as a certain guarantee against ambiguous implementation of ECtHR judgments at the national level.

Keywords: Convention for the Protection of Human Rights and Fundamental Freedoms, evaluative concepts, judgments of the ECtHR, guarantees for adjudication.

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Pojęcia wartościujące w Europejskiej Konwencji o Prawach Człowieka – aktualne kwestie dotyczące zastosowania na przykładzie art. 6

Streszczenie

Artykuł jest poświęcony badaniu właściwego stosowania pojęć wartościujących zawartych w normach Konwencji o Ochronie Praw Człowieka i Podstawowych Wolności. Uwagę zwraca się na pewne trudności w zastosowaniu norm wartościujących w Konwencji: mimo swojej obiektywnej niezbędności i przydatności stwarzają one przestrzeń dla dokonywania własnej oceny przez organ porządku publicznego, sięgającej subiektywizmu, w przypadku rozstrzygania konkretnych spraw; stanowią one obiektywną przeszkodę na drodze do ujednolicenia orzecznictwa ETPC, a to zaś stwarza wstępne warunki dla nierównego wdrażania wyroków ETPC w narodowym porządku prawnym; powodują ryzyko wystąpienia błędów przy stosowaniu przepisów Konwencji przez organy właściwe dla państw-stron. Ustalono, że stosowanie norm prawnych zawierających pojęcia wartościujące stanowi wyzwanie nie tylko ze względu na określone właściwości samych pojęć wartościujących, ale też ze względu na szczególne cechy orzekania przez ETPC przy zastosowaniu norm oceniających. Analiza stosownego orzecznictwa Europejskiego Trybunału Praw Człowieka, jak i przykładów prawodawstwa krajowego służy wsparciu tych teoretycznych wniosków. Ponieważ brak jednolitego stosowania norm wartościujących Konwencji powoduje rozbieżność w stosowaniu wyroków ETPC w krajowym systemie sądownictwa, zaleca się, by sądy krajowe przestrzegały kilku zasad przy uzasadnianiu decyzji. Zasady te będą pewną gwarancję przeciw niejednoznacznej implementacji wyroków ETPC na poziomie krajowym.

Słowa kluczowe: Konwencja o Ochronie Praw Człowieka i Podstawowych Wolności, pojęcia wartościujące, wyroki Europejskiego Trybunału Praw Człowieka, gwarancje orzekania.

Introduction

One of the most effective international means of consolidating the efforts in protection of fundamental human rights on the European level is the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as 'the Convention'). The significance of the Convention is determined not only by the full support of the member States of the Council of Europe, but also by the remarkable functionality of the European Court of Human Rights (hereinafter referred to as 'the ECtHR'). The case law of the ECtHR becomes a part of the national legal system in many Contracting States. In Ukraine a special piece of legislation has been adopted for this purpose, namely the Law on the implementation of rulings and application of the case law of the European Court of Human Rights. Such importance of the Convention gives relevance to the theoretical study of its properties and the challenges in its application and implementation. These challenges include the existence of evaluative concepts in the text of the Convention. The evaluative concepts used in the Convention leave considerable room for their study and the need for their unified interpretation and effective application.

The purpose of the article is to clarify the place of evaluative concepts in the Convention and to find the ways of their effective and uniform application. To this end, we will analyse the text of the Convention as regards the existence of evaluative concepts, and the case law of the ECtHR which illustrates the practice of interpretation and application of evaluative norms of the Convention. Based on this analysis, we will also offer our vision as regards the means of ensuring the proper application of the evaluative norms of the Convention.

The sources for the present research are the works of scholars on the Convention and the use of evaluative concepts, the text of the Convention, the case law of the ECtHR.

The methodological basis of our study consists of general and special scientific methods. The method of logical analysis is necessary to identify in the text of the evaluative concepts of the Convention. The systematic method was used to categorise the evaluative concepts of the Convention into certain types depending on the substantive criteria. A comparative legal method was applied to find differences in the reasons for the use of evaluative terms in the norms of the Convention and the domestic legislation. The study of the case law of the ECtHR on the application of the evaluative concepts of the Convention is impossible without the method of

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technical and legal analysis. The method of theoretical generalisation makes it possible to offer recommendations on guarantees of proper interpretation and application of the evaluative norms of the Convention.

Evaluative Concepts of the Convention and the Practice of Their Application by the ECtHR

Evaluative legal concept is an abstract characteristic of the real or potential facts expressed in a legal norm, which must be specified during its application or implementation, thus ensuring the legal response of the state to all individualised facts, which are generalised in that legal norm. For instance, evaluations necessarily arise when dealing with such legal notions as *serious damage*, *obvious necessity*, *reliable data*, *bad faith* and so on. The specific features of evaluative concepts include the following: they signify only the most general features of the phenomena reflected in them; the legislator usually does not specify or explain them in the legal norm; they are specified in the process of application of law in each case; they create the possibility of an individual approach to each case; they allow law enforcement agencies to assess autonomously the facts within the limits provided by the evaluative norm, in other words they create ample opportunities for the discretionary implementation and application of law in practice; they create the need for better awareness in law by those who are covered by the relevant legal norms, which may bring to the subjectivism in understanding these provisions; the content of evaluative concepts and their scope may change over time and depend on the context of the norm, as well as the specific circumstances of the case; the content of evaluative concepts has an open structure, a new essential feature can always be added to it.

The use of evaluative concepts in law-making practice is quite common for many countries. For instance, the evaluative concepts are inherent in the criminal process (and, accordingly, in the sources of law that determine the principles of criminal justice) of such states as France, Germany, Italy, Austria, Spain, England, the USA and Canada.[4] According to research, in the Civil Procedure Code of Ukraine one can find more than 180 evaluative concepts which are used to form

[4] V.M. Stratonov, *Perspektyvy rozvytku y vykorystannia otsinochnykh poniat i terminiv u kryminalnomu protsesi Ukrainy*, [in:] I.D. Shutak (ed.), *Yurydychna tekhnika i tekhnolohiia: teoriia ta praktyka zastosuvannia* [tezy dop. ta povidoml. uchasn. II Vseukr. nauk.–prakt. konf. (m. Lviv, 24-25 lystop. 2016 r.)], Kharkiv 2016, p. 135.

320 articles.[5] Many researchers of evaluative concepts agree that their use in the texts of legislative acts is objectively inevitable.

Table 1. Evaluative concepts in Article 6 of the European Convention on Human Rights

	The evaluative concept (EC)	EC regarding the legal status of the person	EC concerning society, the state and law	EC concerning state bodies, the European Court and their activities	EC establishing qualitative and quantitative parameters	EC regarding the legal status of the official
1	Fair trial			X		
2	Fair hearing			X		
3	Reasonable time				X	
4	Independent tribunal			X		
5	Impartial tribunal			X		
6	Interests of morals		X			
7	Interests of public order		X			
8	National security in a democratic society		X			
9	Strictly necessary				X	
10	Special circumstances				X	
11	Interests of justice			X		
12	Informed promptly				X	
13	Informed in detail				X	
14	Adequate time				X	
15	Adequate facilities				X	
16	Sufficient means				X	
	Total		**3**	**5**	**8**	

Source: own work.

Relying on the above understanding of the evaluative concepts and norms, it is possible to identify at least 85 evaluative concepts in the Convention. Notably, Section I of the Convention contains 57 such elements, Section II includes 24 of

[5] I. Turchin-Kukarina, *Viznachennya zmistu that the civic-processual otsnogo otsnaga comprehension "rozumnyh strings"*, "Right of Ukraine" 2012, 7, p. 294.

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them, and Section III enumerates 4 evaluative concepts. The leader in this regard is Article 6 of the Convention enshrining the right to a fair trial, which uses 16 such concepts (see the table 1). The analysis of the evaluative concepts used in the Convention suggests that these concepts relate not so much to the characterisation of individual rights as to the way these rights should be protected, the definition of certain conduct, the standards of state-to-person relations, the standards of conduct by the states. The evaluative concepts of Article 6 relate to generally accepted social values, the requirements imposed by the society, the activities of the bodies of the modern state, especially the judiciary, involving references to the qualitative and quantitative legal characteristics.

Comparing the preconditions for the introduction of evaluative concepts in the domestic legislation and the preconditions for their use in the Convention, we can see some differences. The main one, in our opinion, is that, in relation to national legislation, the principal purpose of the evaluative concepts is ensuring effective legal influence on social relations. At the same time, the purpose of the evaluative concepts in the Convention is to consolidate fundamental human rights under one umbrella, regardless of the characteristics and level of development of the State, and to establish possible effective means of their protection.

The usefulness of incorporating evaluative concepts in legal norms is confirmed by the functions they perform. Such functions include: ensuring individual legal regulation and establishing its boundaries; delimitation of the effects of the legal norm; mitigation of formality of law; legislative economy; covering gaps in legislation; ensuring the certainty of legal relations; prognostic assessment.[6] Despite the recognised positive importance of the evaluative concepts in international and national law, first of all their universality and, at the same time, the possibility of providing an individual approach to each legal situation related to human rights, there are doctrinal and practical discussions related to the application of evaluative concepts (which, obviously, affect the ECtHR which must apply the evaluative norms of the Convention). Those discussions include, in particular, the following observations:

- *Evaluative concepts create a room for the discretion of the authorities which may bring up to subjectivism in resolving specific cases.* A certain illustration of this can be the approach of the ECtHR in interpreting the concept of a fair trial. In the Grand Chamber case of *Salduz v. Turkey* the concept of fair trial was extended to the pre-trial stage of criminal proceedings, when the ECtHR

[6] T.V. Kashanina, *Ocenochnye ponyatiya v sovetskom prave: avtoref. dis. … kand. yurid. nauk: 12.00.01.*, Sverdlovsk 1974, p. 6; M.G. Stoyakin, *Dopolnitel'nye osnovaniya yuridicheskoj kvalifikacii pravonarushenij*, "Pravovedenie" 1993, 1, p. 90–94.

had to determine whether or not the right of access to a lawyer had to be ensured by the States starting from the first interrogation. The answer by the ECtHR was affirmative. The ECtHR stated in particular:

> "Against this background, the Court finds that in order for the right to a fair trial to remain sufficiently "practical and effective" (see paragraph 51 above), Article 6 § 1 requires that, as a rule, access to a lawyer should be provided as from the first interrogation of a suspect by the police, unless it is demonstrated in the light of the particular circumstances of each case that there are compelling reasons to restrict this right. Even where compelling reasons may exceptionally justify denial of access to a lawyer, such restriction – whatever its justification – must not unduly prejudice the rights of the accused under Article 6 (see, mutatis mutandis, Magee, cited above, § 44). The rights of the defence will in principle be irretrievably prejudiced when incriminating statements made during police interrogation without access to a lawyer are used for a conviction."[7]

On the basis of that approach, the domestic legal systems of the Council of Europe countries had to react in order to develop relevant practices commensurate with that requirement. Meanwhile there have been cases where that principle (that there must be a lawyer from the first interrogation) could not and should not have been followed by the domestic authorities. For example, in Smolik v. Ukraine[8] and Bandaletov v. Ukraine,[9] the applicants confessed to the crime at the time of their first contact with police without the participation of defence counsel, and their confessions were subsequently used by the criminal courts for conviction purposes. In those two cases the ECtHR found that there had been no issue with the right to a fair trial, given that the police had carried out the initial search operations immediately after the crime, interviewing victims' acquaintances, including the applicants, without any indication that such interviews had taken place due to the suspicion of the applicants in the crimes. Developing further its approach, a comprehensive response to the scope of the notion of 'fair trial' in the context of access to a lawyer during initial investigative stages was given in another landmark case

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7 Case of Salduz v. Turkey, 27 November 2008, ECHR, paragraph 55, http://hudoc.echr.coe.int/eng?i=001-89893 (access: 28.03.2022).

8 Case of Smolik v. Ukraine, 19 January 2012, ECtHR, https://hudoc.echr.coe.int/eng?i=001-108645 (access: 28.03.2022).

9 Case of Bandaletov v. Ukraine, 31 October 2013, ECtHR, https://hudoc.echr.coe.int/eng?i=001-127401 (access: 28.03.2022).

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of Ibrahim and Others v. the United Kingdom.[10] Several important conditions have been developed in this case to specify when the right to a fair trial will not be violated in the absence of a lawyer at the first interrogation.

- *Evaluative concepts serve as an objective obstacle to the unification of the case law of the ECtHR and this fact creates preconditions for unequal use of ECtHR case-law in the national legal order (up to the abuse of the case-law references mentioned in wrong context).* For instance, when reviewing the practice of Ukrainian courts, notably the decisions of the Courts of Cassation of the Supreme Court of Ukraine on referral of cases to the Grand Chamber of the Supreme Court of Ukraine in connection with the existence of an exclusive legal problem and the need to develop law (the formal grounds for referrals are non-uniformity in the case law of the relevant jurisdiction), it is not difficult to see that in some cases the ECtHR judgments may be used as nothing more than a pretext for the divergent legal reasoning offered by the national courts. It appears that the judgments of the ECtHR, made on the basis of the evaluative norms of the Convention, create conditions for such 'inventive concretisation' of the legal norms at stake.
- *Evaluative concepts pose a risk of errors in the application of the provisions of the Convention by the competent authorities of the member States*. Examples are the cases of Yaremenko v. Ukraine and Shabelnyk v. Ukraine. The ECtHR found violations of the right to a fair trial, the domestic courts reconsidered the cases, but the applicants appealed again and the ECtHR again found violation of Article 6 regarding the new proceedings opened for the purpose of executing the initial judgments of the ECtHR.[11]

The difficulties in the application of legal norms with evaluative concepts is due not only to the specific properties of the valuation concepts themselves, but also due to the peculiarities of the activities of the ECtHR when applying the evaluative norms of the Convention, namely:

- The object of evaluation by the ECtHR, in our opinion, will be a set of factors relevant to a particular person or group of persons, which are examined

[10] Case of Ibrahim and Others v. the United Kingdom, 13 September 2016, ECtHR, https://hudoc.echr.coe.int/eng?i=001-166680 (access: 28.03.2022).

[11] Case of Yaremenko v. Ukraine (No. 2), 30 April 2015, ECtHR, http://hudoc.echr.coe.int/eng?i=001-154022 (access: 28.03.2022); Case of Shabelnik v. Ukraine (No. 2), 1 June 2017, ECtHR, http://hudoc.echr.coe.int/eng?i=001-173775 (access: 28.03.2022).

when conducting the proceedings under the Convention. The ECtHR seeks to establish significance of certain facts – be it individual, collective, or general.[12]

- When applying norms with evaluative concepts, the ECtHR clarifies their meaning by taking into account the influence of morality, politics, social reality, legal awareness of society, social values, etc. In this context the role of the general consensus on a particular issue in domestic jurisdictions may be decisive in the interpretation of the evaluative concept, even though the lack of consensus may not conclusively exclude the 'moral reading' of the Convention.[13] These difficult dilemmas in interpretational choices can be seen in the analysis of the case-law of the ECtHR. The scope of the study allows us to analyse only some of the cases illustrating the application of certain evaluation standards under Article 6 of the Convention.

Let us turn to the Grand Chamber case of Ibrahim and Others v. The United Kingdom, in which the ECtHR developed the concept of a fair trial in the context of right of access to a lawyer at early stage of pre-trial investigation and the conditions under which such a right may be restricted. The Court's analysis of the 'compelling reasons' for restricting access to a lawyer, where again the evaluation criterion is used, is indicative. Thus, in paragraph 259 of the judgment, the Court recognises that where the respondent Government have convincingly demonstrated the existence of 'urgent need' to avert serious adverse consequences for life, liberty or physical integrity in a given case, this can amount to compelling reasons to restrict access to legal advice for the purposes of Article 6 of the Convention. After all, in such circumstances, the authorities have a pressing duty to protect the rights of potential or actual victims in accordance with other articles of the Convention. We would like to point out the Court's caution in its own interpretation of evaluative concepts and its desire to avoid excessive subjectivity. To this end, it resorted to comparative legal methods of legal analysis. The ECtHR also referred in this case to Directive 2013/48/EU of 22 October 2013, which enshrines the right to legal aid, but provides for an exception to this right when, among other things, there is an 'urgent need' to avert serious adverse consequences for the life, liberty or physical integrity of a person. The ECtHR further noted the practice in the United States, where, following the judgment in Miranda v. Arizona, the US Supreme Court clearly stated in its judgment in New York v. Quarles that there is a 'public safety exception' to the Miranda rule, permitting questioning to take place in the absence

12 *Praktyka Yevropeiskoho sudu z prav liudyny. Pratsi Lvivskoi laboratorii prav liudyny*, Lviv 1997, p. 17.

13 See in this regard G. Letsas, *The Truth in Autonomous Concepts: How to Interpret the ECHR*, "European Journal of International Law" 2004, 15, p. 305.

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of a lawyer and before a suspect has been read his rights where there is a threat to public safety. Finally, the ECtHR drew attention to the approach in Canada and in a number of Council of Europe member States, where laws permit temporary delays in access to legal services. Thus, it is clear that the ECtHR attempts to rely on social reality and the existing understanding of the relevant principles in developed legal systems.

Another relevant example could be the ECtHR case-law on metal cages and glass cabins in the court rooms. In the Grand Chamber case of Svinarenko and Slyadnev v. Russia,[14] the applicants' detention in a metal cage in the courtroom constituted degrading treatment, which is prohibited by Article 3 of the Convention. In view of the ECtHR findings, many domestic courts have begun to replace metal cages with glass cabins. However, it should be borne in mind that these changes may also lead to a violation of other evaluative norms of the Convention. In the case of Yaroslav Belousov v. Russia,[15] these new arrangements were investigated: glass cabins in the courtroom led to a violation of Article 6 of the Convention in various respects, including for failure to comply with the 'adequate facilities' within the meaning of Article 6.3(b) of the Convention. The ECtHR noted that the right of the accused to communicate with his lawyer without the risk of being eavesdropped by a third party was one of the main requirements of a fair trial in a democratic society. Given the importance of the right to a fair trial, any measures that restrict the defendant's participation in the proceedings or impose restrictions on his or her interaction with lawyers should be introduced only to the extent necessary and should be proportionate to the risks in the particular case. The applicant was separated from the rest of the hearing by glass, a physical barrier which to some extent reduced his direct participation in the hearing. This made it impossible for him to have a confidential exchange with his lawyer, with whom he could speak only through a microphone and in the immediate vicinity of the police guard. The use of a security installation was not justified by any specific risks or problems with the order at court hearings, but it was common practice. The trial court did not take any steps to remove these restrictions. Such circumstances prevailed throughout the hearing at first instance and could not but have a negative impact on the fairness of the proceedings as a whole. The applicant's right to participate effectively in the proceedings and to receive practical and effective legal aid was restricted, and these restrictions were neither necessary nor proportionate.

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14 Case of Svinarenko and Slyadnev v. Russia, 17 July 2014, ECtHR, http://hudoc.echr.coe.int/eng?i=001-154022 (access: 28.03.2022).

15 Case of Yaroslav Belousov v. Russia, 4 October 2016, ECtHR, https://hudoc.echr.coe.int/eng?i=001-166937 (access: 28.03.2022).

One more example of using the evaluative concepts in the application of Article 6 by the ECtHR. The case of B. and P. v. The United Kingdom[16] concerned the absence of a public hearing 'in the interests of justice'. The proceedings concerned the determination of the children's place of residence. The applicants applied for open hearings, but such applications were rejected. In examining complaints of violations of the right to a public hearing, the ECtHR noted that child custody proceedings are the best examples of cases where the exclusion of the press and the public can be justified in order to protect the privacy of the child and the parties and to ensure the interests of justice. In order for the judge deciding such an issue to be able to get as complete and accurate picture of the advantages and disadvantages of the various accommodation options and contacts open to the child, it is important that parents and other witnesses have the opportunity to speak openly on very personal issues. The ECtHR noted that the English courts had the discretion to conduct such proceedings in public, but only if the special circumstances of the case so required. In addition, under English law, a judge must consider an open hearing at the request of one of the parties. However, no such special circumstances were established and no violation of the applicants' right to a public hearing took place.

This cursory analysis of the case law of the ECtHR illustrates that in each case when the ECtHR uses evaluative concepts, they are interpreted depending on the specifics of particular circumstances. This situation is not an exception, but rather a regularity.[17] The evaluation criterion that determines the nature of the legal assessment by the ECtHR is a set of its axiological and legal attitudes, including factors related to the individual characteristics of particular legal situation.

A difficult and important factor for decision-making process is the need to combine the goal of the Convention 'to ensure universal and effective protection of human rights', on the one hand, and the inevitability of restrictions on human rights, on the other hand. A number of evaluative concepts used in Article 6 of the Convention outline the possibilities for such restrictions. These include such concepts as *interests of morals*, *interests of public order*, *interests of national security*, *interests of justice*. The ECtHR, in dealing with these restrictions, applies the so-called doctrine of margin of appreciation, which, to speak broadly, refers to the room for manoeuvre the ECtHR is prepared to accord national authorities in fulfilling their

16 Case of B. and P. v. The United Kingdom, 24 April 2001, ECtHR, https://hudoc.echr.coe.int/eng?i=001-59422 (access: 28.03.2022).

17 For similar considerations in respect of other evaluative concepts used in the Convention, see: B. Bulak, A. Zysset, *'Personal Autonomy' and 'Democratic Society' at the European Court of Human Rights: Friends or Foes?*, "UCL Journal of Law and Jurisprudence" 2013, 2, p. 233.

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obligations under the Convention.[18] This doctrine is based, *inter alia*, on the need to strike a balance between the sovereignty of the member States of the Council of Europe and their obligations under the Convention. In this regard, the ECtHR is constantly faced with the dilemma of performing tasks aimed at developing general principles for resolving cases, and at the same time being forced to take into account the diversity of political, economic, cultural, social and other situations of social life in different countries. In our opinion, the solution to this problem can be facilitated by taking into account the general principles of restricting human rights.[19]

In such circumstances, it becomes relevant to examine the guarantees of proper use of the evaluative concepts of the Convention.

Guarantees the Proper Use of the Evaluative Norms of the Convention

Based on the above considerations and taking into account our previous research on evaluative concepts,[20] it appears possible to make a number of theoretical conclusions and practical proposals regarding the rules of interpretation and application of Convention norms containing evaluative concepts.

Regarding the *interpretation of norms with evaluative concepts*, a special system of rules could include the following:

- The explanation of the contents of identical evaluative concepts in different norms of the Convention should be generally the same.
- Socially significant components provided by the evaluative concept should be offered by the interpreter in accordance with the existing knowledge in legal theory and practice (it should be confirmed by the legal practice and, in case of Convention, by the practice of the ECtHR).
- The interpretation of the evaluative term should be correlated with its perception and vision by the society (European community), to correspond to the legal consciousness of the citizens of the united Europe.
- Interpretation of the contents of evaluative concepts, in particular in the rulings of the ECtHR, should be carried out by using formally defined and clear terms.

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18 S. Greer, *The Margin of Appreciation: Interpretation and Discretion under the European Convention on Human Rights*, Strasbourg 2000, p. 5.

19 P.M. Rabinovych, I.M. Pankevych, *Zdiisnennia prav liudyny: problemy obmezhuvannia (zahalnoteoretychni aspekty)*, Lviv 2001, p. 93–95.

20 V.M. Kosovych, *Otsinochni poniattia yak zasib yurydychnoi tekhniky*, Lviv 2010.

- Logical interpretation should be carried out by way of logical expansion and specification of evaluative concepts.
- Systemic interpretation should take place through the comparison of the same evaluative concepts and their understanding in different provisions of the Convention in order to establish the identical and different social significance of acts which are identical in form and somewhat different in content.
- Historical interpretation should be used to study changes in the assessment of socially significant actions over time, the evolution of social significance of phenomena outlined by evaluative concepts.
- Purposeful interpretation should be used to establish a correspondence between socially significant goals (objectives, purpose) of the legal norm and the social significance of specific circumstances existing in the case.

Apart from that, it is possible to identify the following features of the *technique of applying formally undefined norms*:

- The decision of the authority applying the norm (including the ECtHR) cannot be based only on its own discretion. It is necessary to have sufficient information about socially significant factors defined by the evaluative concept in each case (here the principle of comprehensive examination of the circumstances of the case is especially relevant).
- Available information on the social significance of actions, things, processes etc. covered by the evaluative concepts should be further examined and confirmed directly by the law enforcing body.
- When giving reasons for their decisions, the authorities are not only obliged to indicate the features of the action which became the basis for such a decision, but also refer to the factual basis of recognising the presence in the action of a certain socially significant feature.
- Decisions can be validly adopted only if full compliance is achieved between the social significance of the act under the examination and the social significance of the actions that are outlined in the evaluative norms.

There is another aspect that seems worth attention. As noted earlier, the non-uniform application of evaluative norms by the ECtHR results in unequal use of its rulings in the national legal order. In order to prevent the ambiguous implementation of ECtHR rulings in the reasoning of domestic court decisions, the following guarantees should be ensured:

- Domestic courts must not only state a certain similarity of the factual circumstances of the case at hand with those mentioned in the ruling of the ECtHR

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(when using the ruling of the ECtHR as a legal precedent), but also argue their equal social significance within the evaluative concept. Here it is possible to refer to the evaluative concept of 'reasonable time' which the interpretation has been supported by many scientific and practical comments.

- The reasoning of judicial acts should contain additional explanation of legal assessments (given on the basis of ECtHR rulings applying the relevant evaluative norms of the Convention), taking into account the individual characteristics of each case.

In the latter regard, the experience of the Ukrainian judiciary is relevant. Notably, the Grand Chamber of the Supreme Court of Ukraine has established a practice to issue model decisions illustrating the correctness of references to the ECtHR case-law based on the evaluative norms of the Convention.

Conclusions

It could be concluded that the text of the Convention, notably its Article 6, contains a significant part of the relatively defined, evaluative concepts. Their presence is an important prerequisite for an individual approach to resolving each case, these concepts serve as a guarantee for the full protection of human rights and as a factor for the unification of human rights standards. The evaluative nature of the majority of Convention norms, as shown on the example of Article 6, determines the universal significance of the Convention within the legal framework of the Council of Europe and national legal systems. The effective application of certain provisions of the Convention can be facilitated by the recommendations set out in this article on the rules for the interpretation and application of evaluative concepts of the Convention.

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