INNOVATION, WORK, SOCIETY

THE MORAL AND ETHICAL DIMENSION OF THE EUROPE AN CONVENTION ON THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

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Summary

The article highlights the problem of the moral and ethical dimension of the European Convention on Human Rights and Fundamental Freedoms. It emphasizes that for modern humanity, in the context of the attack of global dictatorships on the democratic world, it is very important to preserve and effectively utilize those legal acts that have become expressions of international legal standards, as they possess a profound humanitarian moral and legal significance. One of such international acts is the ECHR. This is an international legal act that embodies the universal humanistic experience. It is drafted in the framework of the natural law approach, which combines law with the spiritual culture of humanity, morality, ethics, religion, and God. The convention enshrines the principles of natural law, which, as distinctive programmatic guidelines for legislative activity, direct it towards a humanistic approach, orienting it towards the affirmation and protection of essential aspects of human existence and natural human rights. These principles, enshrining universal values and meanings, are intended to protect individuals and their rights from the arbitrariness of state power.

The signatory states of the Convention are obliged to adhere to these legal standards in dealing with human beings. These principles, traditions, customs, values, meanings, etc., embody the fundamental principles of human existence. They concentrate everything that is universal, humanistic, and essential for people to fully develop and improve; without them, human existence is partial, incomplete, and distorted, which is why violating them is unacceptable. Each article of the Convention is filled with deep moral and ethical content. Each article, without exaggeration, embodies legal morality.

Ukraine, having signed the Convention in 1997, undertook the obligation to implement its provisions into national legislation and to align legal practices with the legal standards enshrined in the Convention. Legal reform in modern Ukraine is aimed at transforming the legal sphere into a humanitarian one, filled with moral and legal content, thus overcoming the bankrupt legal reality.

Key words: European law, international legal standards, principles of law, natural law, morality, moral values and principles, universal values, norms of international morality, jusnaturalism, legal reform.

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1. Introduction

The modern democratic world is facing a powerful onslaught from global dictatorships, which means that human rights are under significant threat. Each dictatorship primarily attacks individual human rights, which, in turn, constitute a threat to it. It is currently very important to preserve and protect the effective mechanism for the protection of human rights that has developed in the European legal space over the last half a century. One of the important components of this mechanism is the European Convention on Human Rights (ECHR), which emerged as a result of the international community's reflection on the bitter experience of the brutal onslaught of European dictatorships in the first half of the 20th century on human rights. The ECHR belongs to those legal acts that can, without exaggeration, be considered an outstanding spiritual and cultural achievement, the culmination of the legal accomplishments of the European meta-ethnos. Jurists rightly analyze the ECHR as a source of national law, as the embodiment of legal standards, as a tool for the protection of violated human rights *(Andriychuk, O. 2007), (Paliuk, V. 2004), (Zaitsev, Yu. 2004), (Bordun-Komar, N. 2021), (Bratasyuk, V. 2015), (Kaplina, O. 2007), (Lazovsky, A. 2019)*. However, in addition to this, this legal act is an international document that demonstrates the unity of morality and law, certifying their inseparability, interdependence, and mutual necessity. This legal act, as a specific constitution of human rights of the European meta-ethnos in the application of the European Court of Human Rights, has become an effective mechanism for restoring violated justice and human rights.

2. The European Convention on Human Rights and Fundamental Freedoms as an embodiment of universal human spiritual experience

The ECHR as an international legal act in a concentrated form is the embodiment and expression of law as a universal, human, supranational phenomenon. Such an interpretation is possible only within the framework of the natural law approach, which does not reduce law to the "letter of the law," but thinks of it as inseparable from the human spiritual and cultural dimension, considering it as a specific quintessence of universal human values. Such an interpretation of the ECHR is very important for modern Ukraine, which is slowly overcoming the legalistic approach to law and to which it is currently very important to infuse legal reform with a moral-legal content. Jusnaturalism represents a special way of philosophical thinking aimed at justifying the moral nature of legal provisions, the sources of which are the ideals and principles of natural law *(Bachynin, V. 2002), (Bratasyuk, M. 2014)*.

How did the very idea of creating such a specific 'international code of human rights' *(Paliuk V. 2004), (Bilas, Yu. 2011)* for the legislative consolidation of fundamental human rights at the intergovernmental level come about? To answer this question, one must refer to significant events of the first half of the 20th century, namely: the strengthening of the role of the USA in international politics after World War I, its horrific consequences for people, the escalation of European dictatorships during the interwar period, and particularly the scale of the assault on human rights by German Nazism and its catastrophic consequences for Europeans during World War II. All of this together showed how vulnerable a person can be in the face of total violence from state power, which led to the need for the formation of a new world order and the creation of an effective mechanism for the protection of human rights. The activity of states in consolidating human rights, the individual was intensified by a number of states in the first half of the 20th century. A number of international legal acts emerge, in 1950 – the Convention for the Protection of Human Rights and Fundamental Freedoms *(Bilas, Yu. 2011)*. Alongside this,

there emerged a belief that mere recognition of human rights is insufficient for their protection, and that a more effective mechanism is necessary – and Europeans create the European Court of Human Rights.

Legal scholars believe that it is obvious that the foundation of the entire European construction of human and civil rights is the "natural law doctrine with the idea of the existence of a certain set of fundamental rights and freedoms independent of society and the state" *(Bykov, O. 2018), (Bordun-Komar, N. 2021), (Bratasyuk M. 2014).* As we mentioned earlier, the natural-law approach contains a powerful charge of humanism. This doctrine, which began to take shape in antiquity and became a European legal tradition, recognizes natural human rights as inherent to human existence and therefore inalienable. Article 2 of the French Declaration of the Rights of Man and of the Citizen of 1789 states that "the aim of any political association is the preservation of the natural and inalienable rights of man. These are liberty, property, security, and resistance to oppression" *(Bilas, Yu. 2011).* It is precisely due to this doctrine that in the 20th century there was a transition of natural law norms into positive legal norms, international and national state legislation.

With the establishment of the UN and the adoption of the Universal Declaration of Human Rights after World War II, for the first time in history, a list of fundamental human rights and freedoms was established that are to be protected worldwide, the legal content of these rights and freedoms was agreed upon, and the lawful cases for permissible restrictions were defined *(Bordun-Komara, N. 2021), (Parashchuk, L. 2021), (Popadynec, M. 2021).* Thus, the basic principles of a fundamentally new, truly legal thinking and application of law were created, in contrast to the legalistic approach that had dominated international life up to that time. Later, more than 120 countries around the world recognized the norms of the Universal Declaration at a constitutional level. The list, content, and permissible restrictions of the rights and freedoms contained in it have transformed into universally recognized customary norms of international law. Today, they are perceived as international human rights standards, the inviolability of which must be upheld by all countries that have recognized this international legal act.

International human rights standards are interpreted differently by lawyers. Among Ukrainian lawyers, there is a position that they do not amount to anything substantial; they are general ideas and provisions that should not be taken into account because they are vague, and national legislation is more effective and quite suitable for protecting human rights *(Melnyk, M. 2025).* According to another viewpoint, international standards are limited to legal principles, but they serve as a foundation for resolving legal issues, including the protection of human rights *(Khvorystiankina, A. 2005).* They are necessary in order to "organize the communal life of a legal society" *(Maksimov, S. 2016).* Indeed, the effective application of European law is possible through understanding the role and purpose of general principles of law. The principles of natural law, being unique program-oriented foundations of legislative activity, direct it towards a humanitarian course, focusing on the affirmation and protection of essential aspects of human existence and natural human rights. These principles very aptly concentrate the spiritual-humanitarian potential of humanity.

We are more inclined to the interpretation of international legal standards in the broad sense proposed by S. Holovaty, T. Fuley, V. Paliy, and others: legal standards are generally recognized by the international community as principles of law, traditions, customs, legal norms, categories, legal institutions, and especially legal values, etc. *(Holovaty, S. 2009), (Bordun-Komar, N. 2021), (Fuley, T. 2015).* International legal standards are not artificially created constructs. These principles, traditions, customs, values, meanings, etc., embody the

fundamental bases of human existence. They concentrate everything that is universal, humanitarian, and essential, without which people cannot fully develop, improve, and without which human existence is partial, incomplete, and distorted.

European law is not a static phenomenon, but on the contrary – it is a truly 'living', dynamic, flexible entity. It strives to 'keep up' with life, exists in constant development, and improves through interaction with the national law of the EU member states *(Zaytsev, Yu. 2004), (Bilas, Yu. 2011), (Popadynec M. 2021), (Bratasyuk, V. 2015).*

In the Treaty on European Union, paragraph 3 of the preamble and paragraph 1 of Article 6 enumerate the main principles of liberty, democracy, the rule of law, respect for human rights, and fundamental freedoms *(Treaty on European Union).* Among these principles, the principle of the inalienability of natural human rights holds an important place, as their realization is the fulfillment of human needs, without which a full-fledged human existence is simply impossible *(Bratasyuk, M. 2014).*

Ukrainian legal experts emphasize that the European Convention on Human Rights and Fundamental Freedoms establishes the most successful system of international law principles for the protection of human rights in the world, and establishes one of the most developed forms of international legal procedure *(Holovatyy, S. 2006, Kozyubra, M. 2005).* The Convention is a "living" document that must be interpreted "in light of the conditions of today," and the unity of methodological approaches based on the precedential practice of the Court, combined with a diverse and multifaceted toolkit for assessing the circumstances of the case and the positions of the parties, allows for the creation of what is called "living" law of the Convention" *(Bilas, Yu. 2011), (Zaytsev, Yu. 2004).* It is unfortunate that humanity had to endure two world wars to realize the necessity of forming such an effective legal mechanism for protecting human rights from the arbitrariness of power.

3. The Moral and Ethical Content of the ECHR

It was mentioned above that international human rights standards can only be adequately interpreted within the framework of the natural law doctrine, which views law as a spiritual and cultural phenomenon, a form of existence of the universal human spiritual experience. This legal doctrine, in contrast to legalism, perceives law as inseparable from such an organic spiritual and cultural regulator of social relations as morality, its principles and values, ethics, religious norms, etc. The principles of law are based on values; law itself is a form of being of universal human values. It is these values, according to a number of legal scholars, that are the primary source of legal standards and norms *(Bilas, Yu. 2011), (Bordun-Komor, N. 2021), (Shevtsova, A. 2024).* Scientists note that, since there is no clear list of standards and principles of human rights, and their content is expressed in the process of implementing European justice, this also reflects the jusnaturalist nature of European standards.

In this context, it would be appropriate to mention the well-known interpretation of law by the Constitutional Court of Ukraine, which in its Decision of November 2, 2004, stated that law cannot be reduced solely to legislative norms, as they may contradict fairness. It includes legal ideology, in particular the idea of justice, traditions and customs legitimized by society, principles and values of morality, etc. *(Decision of the Constitutional Court of Ukraine, 2004).* In this interpretation of law, the Constitutional Court of Ukraine took the positions of the natural law doctrine, overcoming the legalist doctrine that dominated in the legal sphere of Ukraine at that time. By the way, this interpretation of law was criticized by representatives of the legalist doctrine, who called it romantic rather than legal and scientific.

However, this decision of the Constitutional Court of Ukraine dated November 2, 2004, gave an additional impetus to Ukrainian legal scholars in overcoming the bankrupt legalistic worldview and thinking, which, as is known, severed the law from spirituality and culture, from morality, religion, humanity, and God. They perceived law as a purely authoritative-political phenomenon, a system of universally binding behavioral rules established by authority and protected by it from violations. The 'letter of the law,' embodying the will of power, was considered in legalism as a higher value alongside humans, universal human values, justice, God, and so forth. It is clear that such repressive thinking is incompatible with democratic principles and values, which is why changing it to humanitarian thinking is a necessity for societies that are on the path to building democracy. Contemporary Ukraine is making this shift, although it is difficult and not as fast as it should be.

Despite all the differences between law and morality as regulators of social relations, it is worth emphasizing that they are united by a common ground – namely, universal human values and meanings. Values such as the person, their life, dignity, honor, freedom, natural rights, justice, equality, their equal scale for legal subjects, good faith, compassion, humane treatment of all living things, the common good, etc. – these are moral-legal values, common to both morality and law. In general, morality is a fundamental basis for making legal decisions, for the existence of law. The experience of totalitarianism, whether German or Moscow, proves that if universal human morality is destroyed, law suffocates; it has no foundation for its existence.

International human rights standards, being an expression of universal human values and ideals, embody a new form of humanism, in contrast to anthropocentric humanism, universal, planetary humanism, as it is aimed at protecting not only the individual and their rights but being as such *(Bordun-Komar, N. 2021).*

Important international acts are filled with moral content, which enshrine and reveal the moral principle of respect for the individual by the state. At the same time, this principle is a principle of law. Human rights and freedoms are a systemic phenomenon, enshrined in the Vienna Declaration and the Programme of Action adopted at the World Conference on Human Rights in 1993. These documents emphasize: 'All human rights are universal, indivisible, interdependent, and interrelated.' Furthermore, they emphasize the fundamental requirements regarding the state's attitude towards human rights: 'The international community must approach human rights globally, on a fair and equal basis, with the same approach and attention.' /…/ States, regardless of their political, economic and cultural systems, are obliged to promote and protect all human rights and fundamental freedoms" *(Vienna Declaration, Programme of Action, 1993).* In these lines, there is a deep moral and ethical subtext, conveying an attitude toward a person as a special value. An international standard such as the principle of respect for human rights, while being a moral principle, is clearly articulated in the Statute of the Council of Europe *(Statute of the Council of Europe, 1949).*

The EU Charter of Fundamental Rights embodies the mega principle of the rule of law, which is a concentrated expression of legal standards. Legal practice based on principles other than the rule of law cannot be correct, just, humane, or objective, scholars rightly emphasize. We would only add that it must also withstand the test of morality. The new version of Article 8 of the Treaty on European Union enshrines an element of European human rights standards: the principle of equality for all subjects of law. *(Treaty on European Union).* This principle expresses respect for the dignity of all subjects of law; being legal, it is also moral.

N. Bordon-Komar (2021) rightly emphasizes that European standards of law, human rights, and fundamental freedoms, once recognized and implemented in practice, gain the force

of norms of international morality and international law, becoming substantively expanded and deepened, which is also asserted by O. Lohvynenko, V. Kampo, V. Bratasyuk and others.

These rights and freedoms must be respected by state institutions and their officials; the rights and freedoms enshrined in the ECHR are universal in nature, guaranteed to all persons under the jurisdiction of the participating states according to the principle of legal equality, including stateless individuals or citizens of other states; the ECHR affirms the principle of non-discrimination regarding the rights and freedoms it enshrines; restrictions apply only for purposes provided for by the Convention.

Currently, Ukrainians are suffering from total violence perpetrated by Putin's Russia. This is not only illegal, it is immoral. The ECHR prohibits the suspension of fundamental rights and freedoms such as: the right to life, the prohibition of torture, slavery or servitude, as well as the retroactive effect of the law (no punishment without law) in the event of war or a state of emergency. The Convention establishes the individual's right to effective legal remedies in national instances.

The ECHR guarantees a number of rights, each of its articles has a moral content, protecting moral principles and values. Article 2 protects every person from deprivation of life – this right is guaranteed to everyone, without any discrimination. Article 3 of the Convention establishes the prohibition of torture, as well as inhuman or degrading treatment or punishment, and protects the physical integrity of the individual; Article 4 of the Convention prohibits slavery and servitude, forced and compulsory labor, including in prisons. The right to liberty and personal security, which reflects the level of democratic development, is established by Article 5 of the Convention. This is the right of an individual not to be subjected to arbitrary deprivation of liberty (detained, arrested, imprisoned, or taken into custody), along with specific guarantees for a person deprived of liberty. Article 6 of the Convention guarantees everyone the right to a fair and public hearing in determining their civil rights and obligations or in the course of any criminal charge against them. As we can see, each article demonstrates a deep respect for the human 'self', human dignity and honor, and for inalienable human rights, so the moral dimension of the content of these articles is beyond doubt.

Article 18 of the ECHR prohibits restrictions by the signatory states on human rights beyond the limits and purposes specified by the ECHR. It is unacceptable to impose unlimited, excessive, and unfounded restrictions on human rights, which sounds very moral. Article 7 of the Convention protects a person from punishment for committing a criminal offense that was not classified as a crime at the legislative level at the time of its commission. Article 8 of the Convention establishes the principle of respect for private and family life, home, and correspondence secrecy. The European Court of Human Rights interprets this right in light of the provision set out in paragraph 2 of Article 8, which states that 'state authorities may not interfere with the exercise of this right'.

More examples can be given from the Convention that demonstrate the unity of law and morality; however, it seems that the ones presented are sufficient to leave no doubt about this unity.

4. The significance of European human rights standards for the legal reform of modern Ukraine

Ukraine, having chosen the path of integration into the European legal space, must accordingly reform its legal sphere. This reform cannot be limited to just changing legislation, as our reformers initially thought. As a member of the Council of Europe, Ukraine is obliged to align its laws and practices with European standards, particularly in line with the provisions

of the Convention on the Protection of Human Rights and Fundamental Freedoms *(Law of Ukraine dated February 23, 2006 No. 3477-IV, as amended on December 2, 2012).*

Ukraine inherited a heavy legacy in the legal sphere after gaining independence – a legal reality devoid of moral-legal content, the dominance of the 'letter of the law' in all elements of this reality. This meant that there was no place for a person in this pseudo-legal reality at all. This was the essence of totalitarianism – the total lack of rights for the people, the elevation of state power over them, the humiliation of human dignity, the denial of natural non-alienable human rights, and so on. This meant not only humiliation, negation of rights, but also the denial and undermining of morality, universal values, and principles that are the fundamental foundations of human existence. Choosing the democratic path of development meant for Ukrainians the inevitability of conducting deep, total legal reform.

The essence of legal reform in modern Ukraine should lie in filling legal life with the spirit of law, with a humanistic and moral content. Reform should consist not only of formal, superficial changes but also of profound substantive changes. This essence of reform is well articulated by M. Kozyubra, who emphasized: "...the limitation of discretionary powers, that is, the decision-making by state bodies and officials at their own discretion, as a component of the rule of law and the state of law, requires, first of all, that the activities of both the state as a whole and its bodies, including the legislative one, be subordinate to the affirmation and assurance of human rights and freedoms... Inalienable and inalienable rights and freedoms of a person stand in the way of arbitrariness not only of the executive and judicial authorities but also of parliament, limiting its freedom of discretion in enacting laws *(Koziubra, M. 2005).* Subjects of law enforcement should evaluate the situation not so much by its formal compliance with the law, the will of the state, but by its compliance with human morality and human individuality. We resonate with the position of R. Zipelius, who emphasizes that "today the possibility of not applying the law that does not fulfill its purpose and clearly contradicts existing moral requirements, natural law, and common sense is recognized, since law must be an instrument for establishing justice" *(Zippelius, R., 2004).*

As mentioned above, the European Convention on Human Rights has a powerful moral and legal significance, embodying the standards of law that it represents. The implementation of its provisions in practical legal fields, in legislative activities, and in the sphere of justice is capable of ensuring proper respect for Ukrainians by the state, a real opportunity to exercise their inalienable rights, and to receive corresponding protection for them *(Tertishnyk, V. 2017). (Shevtcova, A. 2024).*

The execution of this complex task requires the state and society to be adequately prepared in terms of worldview and thinking – this applies to both state officials and citizens, whose legal awareness must transform into legal consciousness; in political terms – as long as the oligarchic regime exists, real legal transformations are unlikely to occur. There is simply a need for a strong will, courage, and civic maturity of the law enforcement subjects to apply the practice of the European Court of Human Rights and European legal standards. This real work will yield the appropriate results – Ukraine will emerge as a rule of law.

5. Conclusions

In summary, the following conclusions can be drawn:

– law cannot exist outside of moral principles. The unity and interdependence of morality and law cannot be questioned. Morality is a fundamental basis of human existence and legal decisions;

– despite all the differences, which are many, morality and law share common essential characteristics – these are common universal human values and meanings, enshrined in moral-legal principles; – European legal standards, enshrined in the European Convention on Human Rights and Fundamental Freedoms, have a deeply humanitarian nature.

– European standards of law, enshrined in the European Convention for the Protection of Human Rights and Fundamental Freedoms, have a profoundly humanistic moral and legal content. They are a remarkable result of the universal spiritual and cultural experience in the field of law; therefore, their practical application will result in the creation of a humanistic legal space *(Law of Ukraine of 23.02.2006 No. 3477-IV (as amended on 02.12.2012).*

– the essence of legal reform in modern Ukraine should lie in the transformation of the legal sphere towards its humanization, filling it with moral-legal content, which can be particularly facilitated by the application of European legal standards in legal practice and legislative activities. It is precisely through the substantive implementation of legal standards that are filled with universal moral content that the legal reality of modern Ukraine should change, rather than superficially and formally, as is unfortunately the case today.

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