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Case Note

LEGAL GROUNDS FOR RESTRICTIONS OF HUMAN RIGHTS IN THE EUROPEAN COURT OF HUMAN RIGHTS CASE-LAW

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Summary: 1. Introduction. – 2. The Genesis of the Concept of Human Rights Generations. – 3. Classification of Human Rights and Fundamental Freedoms Restrictions. – 4. Restrictions of Human Rights in the ECtHR's Case-Law. – 5. Limitations of Social and Economic Human Rights. – 6. Conclusion.

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LEGAL GROUNDS FOR RESTRICTIONS OF HUMAN RIGHTS IN THE EUROPEAN COURT OF HUMAN RIGHTS CASE-LAW

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Abstract This article is devoted to the study of the legal grounds for restrictions of human rights in the ECtHR's case-law. The study stipulates that the concept of generations of human rights, based on the historical progress of ensuring human rights and fundamental freedoms, is a set of rights that require the proper protection and will constantly shift towards large-scale expansion, taking into account changes in society and the achievements of humanity.

The study notes that even though at the end of the 20th century, the idea of human rights' division into three generations (civil and political; social, economic and cultural; collective rights) was proposed in the science of international law, nowadays, it is difficult to clearly attribute certain rights to these categories.

The research states that the division of rights into generations is convenient, but it should be noted that the concept of three generations of human rights is based on the historical progress of ensuring human rights and fundamental freedoms. Therefore, the set of rights that require protection will constantly change.

The article highlights a few restrictions on human rights and freedoms, mainly concerning the first and second generations. The study determines that the specifics of restrictions of fundamental human rights are directly related to the difference between absolute and relative rights.

The ECtHR explains that the objectives of human rights restrictions are substantially expanded and introduced in order to: maintain the state and public safety or economic well-being of the country; prevent riots or crimes; protect health or morals; ensure the rights and freedoms of others; protect the national security, territorial integrity; prevent of disclosure of confidential information; maintain the authority and impartiality of judicial authorities.

Keywords: human rights, constitutional restrictions, fundamental freedoms, European Court of Human Rights, case-law, judicial authorities, European values, economic rights, civil rights, generations of rights

1 INTRODUCTION

Nowadays, human rights have become one of the main value benchmarks of social development in a democratic society. Human rights have had a great influence on the character of the state, as they have become the key restrictions of its power. Moreover, they contribute to the establishment of democratic interaction between the state authorities and the individual, thereby releasing a person from the will and interests of these authorities. The formation of a legal state would not be possible without the establishment of freedoms and human rights in public consciousness and practice.

The idea of 'human rights has become widespread in recent decades. Various legal schools, scientists, politicians, and lawyers interpret this concept. Some scientists believe that human rights are certain opportunities that are necessary to meet the needs of its existence and development in specific historical conditions,¹ objectively conditioned by the level of development achieved in society, and should be common and equal to all people.² According to others, human rights ensure the dignity and human worth of every man, woman, and child. Human rights are universal and inalienable rights to express, act, grow, learn, and live according to one's own ideas.³

Since the advent of the idea of human rights, various classifications of them have been proposed. Depending on the chosen criteria, the peculiarities of the human rights vision, and the level of scientific development of this issue, there has been a historical sequence of the development of human rights classification – from a simple division into arbitrarily separated components to proposals for complex systems of interrelated human rights. The classification of fundamental rights is attaining the key practical importance, particularly in the development and creation of constitutions and other laws of any state, since it can contribute to ensuring the completeness and validity of the sequence of such rights in the legislation, as well as the differentiated definition of the legal means of their protection and guarantee.

Obviously, the division of human rights in society should be approached from a historical perspective. After all, the existing catalogue of human rights, which is currently recorded in most international legal documents and constitutions of legal states, was the result of the historical formation of human rights standards. Ukrainian researchers note that initially, human rights were imagined as specific rights of the state, which concerned only its subjects or foreigners.⁴ Subsequently, the supporters of natural law proposed the idea that in addition to the rights of the state, there are also certain natural human rights. Later, with the increasing role of positivism in law, human rights began to be explained not only by their natural but also by their positive origins. Therefore, in the history of international relations, the first attempt to distribute human rights was their classification into natural and positive.⁵

1 S Domaradzki, M Khvostova, D Pupovac, 'Karel Vasak's Generations of Rights and the Contemporary Human Rights Discourse' (2019) 20 *Hum Rights Rev* 423-443 < <https://doi.org/10.1007/s12142-019-00565-x> > (accessed 11 September 2021).

2 P Łuków, 'A Difficult Legacy: Human Dignity as the Founding Value of Human Rights' (2018) 19 *Hum Rights Rev* 313-329 < <https://doi.org/10.1007/s12142-018-0500-z> > (accessed 11 September 2021).

3 E Shyshkina, 'Some Aspects of the Legal Nature of Decisions of the European Court of Human Rights' (2005) 4 *Law of Ukraine* 102-104.

4 S Shevchuk, *The Judicial Protection of Human Rights: The Practice of the European Court of Human Rights in the Context of the Western Legal Tradition* (2nd edn, ammend., cor. Referat 2007).

5 N Fennelly, 'Human Rights and the National Judge: His Constitution; The European Union; The European Convention' (2011) 12 *ERA Forum* 87 < <https://doi.org/10.1007/s12027-011-0195-y> > (accessed 11 September 2021).

2 THE GENESIS OF THE CONCEPT OF HUMAN RIGHTS GENERATIONS

At the end of the 20th century, in 1977, the French lawyer Karel Vasak proposed for the first time in the science of international law the idea of dividing human rights into three levels or generations. This idea was highlighted in his scientific work, called 'Human Rights: A Thirty-Year Struggle: The Sustained Efforts to Give the Force of Law to the Universal Declaration of Human Rights'.⁶

The fundamental principles of the division of human rights were certain core values – freedom, equality, fraternal relations, etc. All the above-mentioned principles were proclaimed during the Great French Revolution of 1789-1799. In particular, the civil and political rights, which correspond to the first principle of the French Revolution – freedom belonged to the first generation of human rights. Among these rights are the right to a fair trial, the right to freedom of speech, religion, etc. In other words, those rights that were primarily considered as an integral part of a person. The aforementioned rights were reflected at the legislative level for the first time in the Universal Declaration of Human Rights of 1948 (Articles 3-21)⁷ and later in the International Covenant on Civil and Political Rights of 1966.⁸

The second generation of human rights covers economic, social, and cultural rights. They correspond to the second principle – equality – formed during the Great French Revolution of 1789-1799. These include the right to work, the right to social protection, the right to property, etc. Along with civil and political rights, this block of rights was originally reflected in the Universal Declaration of Human Rights of 1948 (Articles 22-27) and later in the International Covenant on Economic, Social and Cultural Rights of 1966.⁹

The third generation of rights were the rights of the community or the so-called collective. However, from the very beginning, it was quite difficult to establish what rights belonged to this category. While the rights of the first and second generations were addressed to each person in particular, the solidarity rights were addressed to a group of people, a certain community, etc. For instance, the right to self-determination, development, the environment, etc. The main problem that appeared in regard to the allocation of the third generation of rights was the correlation between human rights and the human rights of peoples. In the absence of a clear definition of such rights, there is still no official regulatory consolidation.

The civil and political rights – the rights of the first generation – were constituted and formulated in the process of many bourgeois revolutions. Later, they found their specification and legalisation in the social and legislative practice of many democracies. These rights primarily include: the right to life, the right to freedom of thought, the right to conscience and religion, the right of every citizen to participate in state affairs, the right to equality before the law, the right to life, the right to freedom and security of the individual, the right to freedom from arbitrary arrest, delay or expulsion, the right to public and in compliance with all the requirements of justice, the consideration of the case by an independent court, etc.¹⁰

6 V Lenhart, K Savolainen, 'Human Rights Education as a Field of Practice and of Theoretical Reflection' (2002) 48 *International Review of Education* 145–158 (2002) < <https://doi.org/10.1023/A:1020382115902>> (accessed 11 September 2021).

7 The Universal Declaration of Human Rights 1948 <<https://www.un.org/en/universal-declaration-human-rights/>> (accessed 11 September 2021).

8 International Covenant on Civil and Political Rights 1966 <<https://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>> (accessed 11 September 2021).

9 International Covenant on Economic, Social and Cultural Rights 1966 <<https://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>> (accessed 11 September 2021).

10 M Medvedeva, M Vols, M Wieling, 'Using machine learning to predict decisions of the European Court of Human Rights' (2020) 28 *Artif Intell Law* 237-266 <<https://doi.org/10.1007/s10506-019-09255-y>> (accessed 11 September 2021).

It is worth noting that civil and political rights within the circle of fundamental human rights are often called subjective rights, as indicated in both the foreign and domestic doctrine of international law. To support this circumstance, it is possible to stipulate that, firstly, the fundamental rights are subjective and, secondly, are negative. This means that the state should not interfere in the sphere of the personal freedom of citizens but, on the contrary, create conditions for citizens' participation in political life.

We would like to underline that the first generation of rights is recognised by international and national documents as inalienable and subject to restriction under no circumstances. Very often, these rights are referred to as 'human rights', since the rights of the second and third generations are not so much rights as privileges aimed at the protection of the socially weaker population.¹¹

The second generation of human rights constitutes social, economic, and cultural rights. It should be noted that this generation appears as a separate category only at the turn of the 19th and 20th centuries, reflecting the results of the enormous social struggle that took place in the capitalist societies of that time. Mainly the socialists with new liberals were the main 'ideological embodiers' of this generation of rights who played an important role in the genesis of the human rights generations concept. The main idea was the necessity to revise the negative concept of freedom.¹² The new liberalism, assessing the unfavourable situation associated with the sharp polarisation of the bourgeois society, put forward the idea of its innovative restoration. Its main goal was to soften the confrontation between the rich and poor in society through a set of social reforms.

The second generation of human rights covers more positive than negative rights, which require state participation for their implementation. They record only the specific conditions of existence that are designed to ensure the self-reproduction of a person with worthy qualities of being.¹³ Social and economic human rights are characterised by two important features. Firstly, they serve as a form of realisation of social justice but not a simple set of specific benefits. Social justice, as the fair application of national wealth and opportunities by society's participants regardless of their social status, is possible under the conditions of significantly different levels of material benefits. It is directly dependent on the poverty or wealth of any society.

Secondly, the dignity of a person, ensured by social rights, is directly related to the general sense of the idea of inalienable human rights. A decent life is an expression of the basic right to self-preservation and property. It also creates a necessary condition for the realisation of human freedom. Antiquity stated the provision that only a person who owns land could be free. Similarly, social rights provide for the real autonomy of the individual and are a kind of social guarantee of human dignity. The content and structure of the rights of a decent life become a clear expression of the degree of true freedom that exists in a democratic society. The rights of a decent life are the conditions of existence that can ensure the productive development of society for an individual. They are followed by the

11 M Picchi, 'Prohibition of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: Some Remarks on the Operative Solutions at the European Level and their Effects on the Member States. The Case of Italy' (2017) 28 *Crim Law Forum* 749-776 <<https://doi.org/10.1007/s10609-017-9306-y>> (accessed 11 September 2021).

12 S Benhabib, 'The End of the 1951 Refugee Convention? Dilemmas of Sovereignty, Territoriality, and Human Rights' (2020) 2 *Jus Cogens* 75-100 <<https://doi.org/10.1007/s42439-020-00022-1>> (accessed 11 September 2021).

13 V Muraviov, N Mushak, *Judicial Control of Public Power as Legal Instrument for Protection of Human Rights and Fundamental Freedoms in Ukraine. Rule of Law, Human Rights and Judicial Control of Power* (Springer 2017).

recognition of everyone's right to fair application of all the opportunities that create the life of society as a whole.¹⁴

While international human rights documents emphasise the equal significance of political and civil rights, as well as economic, social, and cultural issues, constitutional law scholars often hesitate to make such an equivalent. Furthermore, there is no clear approach to the definition of social and economic rights. Very often, such rights are not considered universal but are mainly associated with the social status of a person.

In particular, the legal scholar E. Kuzelewska believes that social and economic rights should include all the social services and financial support provided by the state to its citizens in accordance with their social status: age and disability pensions, sickness benefits, free healthcare systems, etc.¹⁵

3 THE CLASSIFICATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS RESTRICTIONS

At the same time, there is another classification of human rights based on the establishment of the content of human rights and the possibility of their restrictions. The theory of constitutional law defines the specifics of restrictions on fundamental rights that are directly linked to the difference between absolute and relative rights. Absolute rights are primarily considered to be natural rights, independent of the state, unconditional and unchanging, which under no circumstances can be infringed upon by the authorities. Such rights include rights enshrined in the constitutions of the European countries, in particular, the right to life, the right to dignity, the right to freedom of conscience, etc.

According to C. Briere, even though constitutional rights and freedoms are endowed with the highest legal force, most of them are not absolute because law may limit their implementation. Such restriction is allowed in the interests of the protection of the health and morality of the population, national security, territorial integrity of the state, and the rights and freedoms of other citizens, as well as for the protection of public order, prevention of crime, and clarification of the truth during the investigation of a criminal case, if it is impossible to obtain information by other means, to prevent disclosure of information obtained confidentially, or to maintain the authority and impartiality of justice.¹⁶

All other human rights, except the absolute, are called relative. Relative rights include such rights as those that belong to a person in relation to a second obliged person (persons).¹⁷

The doctrine of constitutional law determines another kind of classification of the restrictions on human rights and freedoms. Thus, the national scientist S Shevchuk believes that the

14 C Briere, 'Conditionality in defining the future cooperation in criminal matters between the United Kingdom and the European Union' (2020) 21 ERA Forum 515-531 <<https://doi.org/10.1007/s12027-020-00641-7>> (accessed 11 September 2021).

15 E Kuzelewska, M Tomaszuk, 'European Human Rights Dimension of the Online Access to Cultural Heritage in Times of the COVID-19 Outbreak' (2020) Int J Semiot Law <<https://doi.org/10.1007/s11196-020-09712-x>> (accessed 11 September 2021).

16 R Khosla, J Banerjee, D Chou, et al., 'Gender equality and human rights approaches to female genital mutilation: A review of international human rights norms and standards' (2017) 14 Reprod Health 59 <<https://doi.org/10.1186/s12978-017-0322-5>> (accessed 11 September 2021).

17 RA Edwards, 'Police Powers and Article 5 ECHR: Time for a New Approach to the Interpretation of the Right to Liberty' (2020) 41 Liverpool Law Rev 331-356 <<https://doi.org/10.1007/s10991-020-09255-y>> (accessed 11 September 2021).

ontological essence of the phenomenon, which is a factor of restriction on natural (health of the population) and social rights, which are divided into further categories as social (public order, economic prosperity) and social in a broad sense (national security, territorial integrity, sovereignty of the state, morality of the population). We agree with these views and consider that both the scope and content of human and citizen rights and freedoms can limit them.¹⁸

For instance, Art. 29 of the Universal Declaration of Human Rights contains a set of permanent restrictions necessary for the existence of society, those that the state can impose 'to meet the fair demands of morality, social order and social welfare'.¹⁹ Art. 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter - ECHR) contains a similar concept 'in the interests of state security and territorial integrity'.²⁰ Such restrictions can be established only by laws and to the legal extent specified by law.

4 RESTRICTIONS OF HUMAN RIGHTS IN THE ECtHR'S CASE-LAW

Art. 16 of the ECHR allows for a number of restrictions on human rights and freedoms.²¹ Such restrictions can take various forms. However, it should be borne in mind that this article concerns only a certain type of activity (political), a certain category of the population (foreigners), and certain rights and freedoms (freedom of expression, freedom of assembly and association). In addition, certain restrictions on the right to freedom of expression are allowed. This means that this right is not absolute. It is confirmed by para. 2 of Art. 10 of the ECHR. In conformity with this article, the exercise of such freedoms may be subject to such formalities, conditions, restrictions, or sanctions.

If we carefully analyse the specified para. of Art. 10 of the ECHR, three criteria for intervention should be indicated. Firstly, the legality of interventions and, secondly, their democracy – formalities, restrictions, or penalties – must be established by law and are necessary for a democratic society. Secondly, these are exhaustively defined grounds for permissible interference with the exercise of the right under Art. 10 of the ECHR. All these restrictions should be implemented in the interests of national security, territorial integrity, or public safety, to prevent riots or crimes, for the protection of health or morals, to protect the reputation of other people, to prevent the disclosure of confidential information, or to maintain the authority and impartiality of the court.²²

In regard to the first ECtHR cases concerning the consideration of restrictions to protect the reputation or rights of others, the ECtHR formulated several important principles related to the protection of the reputation of politically exposed persons and different categories of expressed views.²³ Regarding the protection of the reputation of politically exposed persons, the ECtHR formulated an approach – the limits of permissible criticism against a politician are wider than the limits of criticism against a private person. Unlike the latter, a public person inevitably and consciously puts himself in a position in which every word that he or she pronounces and each

18 S Shevchuk, (n 4).

19 The Universal Declaration of Human Rights 1948 <<https://www.un.org/en/universal-declaration-human-rights/>> (accessed 11 September 2021).

20 Convention for the Protection of Human Rights and Fundamental Freedoms Council of Europe 1950 <https://www.echr.coe.int/documents/convention_eng.pdf> (accessed 11 September 2021).

21 Convention for the Protection of Human Rights and Fundamental Freedoms Council of Europe 1950 <https://www.echr.coe.int/documents/convention_eng.pdf> (accessed 11 September 2021).

22 V Lenhart, K Savolainen, (n 6).

23 D Owen, 'On the Right to Have Nationality Rights: Statelessness, Citizenship and Human Rights' (2018) 65 *Neth Int Law Rev* 299-317 <<https://doi.org/10.1007/s40802-018-0116-7>> (accessed 11 September 2021).

action becomes the subject of the most thorough and detailed study by both journalists and the general public. The ECtHR continued to adhere to this position consistently.

In the decision in *Castells v. Spain*, the ECtHR also adopted this approach regarding criticism of the government.²⁴ At the same time, the ECtHR noted that the limits of permissible criticism against the government are even wider than in relation to a politician. In the decision in the *Oberslyk* case, the ECtHR further touched upon the problem of public discussion of the privacy of politicians and formulated the following principle: undoubtedly, a politician has the right to protect his or her reputation, including when acting as a private person, but in this case, the need for such protection should be balanced by the interests of free discussion on political topics.²⁵

In the interpretation of opinions as views and assessments, the case *Lingens v. Austria* is of primary importance.²⁶ The essence of the case was that the Austrian Chancellor in a television interview defended the Chairman of the Liberal Party, about whom it had become known that he served in the armed forces. On this occasion, a journalist, Lingens, suggested in two articles that the Chancellor defended this gentleman for political reasons and accused the Chancellor of tactlessness, immorality, and subbing out former Nazis. The Chancellor sued Lingens, accusing him of defamation. In an Austrian court, the journalist was unable to prove the veracity of his judgments, and the claims were satisfied.

In addition, one of the significant rights protected by the ECHR is the right to liberty and security. This right is provided in Art. 5 and clarified by Art. 1 of Protocol No. 4.²⁷ This right is guaranteed to everyone, that is, to any individual, regardless of citizenship, age, or gender and regardless of whether the person is free or imprisoned. The main goal of Art. 5 of the ECHR is to protect a person from unlawful acts by the state, unlawful arrest, detention, etc. Thus, this article defines a clear framework for the state's actions. In order to minimise the risk of arbitrariness on the part of the authorities, this article provides for a set of rights and guarantees for their protection. In addition, in accordance with the legal positions of the ECtHR, deprivation of liberty must be under independent judicial control and be accompanied by the responsibility of individual officials for their actions.²⁸

The concept of freedom and personal immunity is interpreted by the ECtHR. According to the legal positions of the ECtHR, this right applies only to the individual's physical freedom, and therefore it does not protect the spiritual (moral) freedom or other manifestations of freedom. Regarding the differences between the categories of 'freedom' and 'personal immunity', the former Commission noted in one of its decisions that freedom and personal integrity should be perceived as one notion, thus personal immunity is considered in the context of freedom. The deprivation of liberty has two mandatory elements. The objective element involves keeping a person in a confined space for a certain period. The subjective element assumes that a person legally does not consent to such deprivation of liberty.

24 *Castells v Spain* App no 11798/85 (ECtHR, 23 April 1992) <https://www.hraction.org/wp-content/uploads/castells_v_spain.pdf> (accessed 11 September 2021).

25 D Beyleved, 'The Principle of Generic Consistency as the Supreme Principle of Human Rights' (2012) 13 *Hum Rights Rev* 1-18 <<https://doi.org/10.1007/s12142-011-0210-2>> (accessed 11 September 2021).

26 *Lingens v Austria* App no 9815/82 (ECtHR, 08 July 1986) <<https://opil.ouplaw.com/view/10.1093/law:ihrl/58echr86.case.1/law-ihrl-58echr86>> (accessed 11 September 2021).

27 Protocol 4 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, securing certain Rights and Freedoms other than those already included in the Convention and in the First Protocol thereto [1963] <https://www.echr.coe.int/Documents/Library_Collection_P4postP11_ETS046E_ENG.pdf> (accessed 11 September 2021).

28 Convention for the Protection of Human Rights and Fundamental Freedoms Council of Europe 1950 <https://www.echr.coe.int/documents/convention_eng.pdf> (accessed 11 September 2021).

In order to determine the violation of Art. 5 of the ECHR, the ECtHR does not consider itself bound by the legal opinions of national authorities as to whether imprisonment took place. It carries out an autonomous assessment of the circumstances of the case and takes into account the specific situation and such significant factors as the ability to leave the limited territory, the degree of supervision and control over the movement of persons, the degree of isolation and the availability of social contacts. This provision is reflected in the decision *Stork v. Germany* of 16 June 2005.²⁹

It should also be noted that deprivation of liberty might take various forms – arrest, imprisonment, placement in psychiatric or social institutions, detention in transit zones of airports, interrogation at the police station, detention and search by the police, counteracting mass disorder by the police in order to protect public order, house arrest, etc. At the same time, Art. 5 does not provide protection for less serious forms of interference with personal freedom – in case of taking measures to ensure the implementation of traffic rules, mandatory registration of foreigners or citizens, and different types of control that do not significantly limit the freedom of movement of a person within the territory of residence.³⁰

The main difference, in our opinion, between the restriction of freedom of movement, which is serious enough to qualify as imprisonment under para. 1 Art. 51 and the usual restrictions on freedom of movement regulated by Art. 2 of Protocol No. 4 lies in the degree or intensity of manifestation and not in nature or essence. This provision was implemented due to the decision of the ECtHR in the case of *Guzzardi v. Italy* of 6 November 1980.³¹

It is important to understand the essence of the right to liberty and security. This right belongs to the category of relative rights. This is due to the fact that Art. 5(1) of the ECtHR defines six cases in which this right may legitimately be limited. Such cases include: 1) the legal imprisonment of a person after his or her conviction by the competent court; 2) the lawful arrest or detention of a person for failure to comply with the lawful order of the court or to ensure the fulfilment of any duty established by law; 3) the lawful arrest or apprehension of a person made in order to introduce them to a competent judicial authority in the presence of a reasonable suspicion of committing an offence or if it is reasonably deemed necessary to prevent the offence or escape after its fulfilment; 4) apprehension of a minor on the basis of a lawful decision in order to apply supervisory measures of an educational nature or the lawful detention of a minor in order to bring him or her to the competent authority; 5) the lawful detention of persons to prevent the spread of infectious diseases, the lawful detention of mentally ill people, alcoholics, or drug addicts; 6) the lawful arrest or detention of a person in order to prevent him/her from entering the country or the person for whom the deportation or extradition procedure is carried out.³²

It should be emphasised that the above list is exhaustive. This means that member states do not have the discretionary powers to expand it. However, even in these cases, the ECtHR provides a rather narrow interpretation, emphasising that only this approach meets the goals of this article. This provision was established by the ECtHR in *Khayredinov v. Ukraine* of 14 October 2010, *Lutsenko v. Ukraine* of 3 July 2012, and others. In addition, Art. 1 of

29 *Stork v Germany* App no 61603/00 (ECtHR, 16 June 2005) <<https://www.globalhealthrights.org/wp-content/uploads/2013/10/ECtHR-2005-Storck-v-Germany.pdf>> (accessed 11 September 2021).

30 K Kovács, 'Parliamentary Democracy by Default: Applying the European Convention on Human Rights to Presidential Elections and Referendums' (2020) 2 *Jus Cogens* 237-258 <<https://doi.org/10.1007/s42439-020-00028-9>> (accessed 11 September 2021).

31 *Guzzardi v Italy* App no 7367/76 (ECtHR, 6 November 1980) <<https://ihirda.uwazi.io/api/files/16123724136607p14ac09sbr.pdf>> (accessed 11 September 2021).

32 M Stachowiak-Kudła, 'Academic freedom as a source of rights' violations: A European perspective' (2021) *High Educ* <<https://doi.org/10.1007/s10734-021-00718-3>> (accessed 11 September 2021).

Protocol No. 4 emphasises that no one can be deprived of his or her liberty only on the basis of his or her inability to fulfil a contractual obligation.³³

If we analyse the content of the concept of the right to liberty and personal inviolability, we may define two key types of state responsibilities. They are called the negative and positive. Firstly, the negative duties provide for the abstaining from actions that lead to the violation of Art. 5 of the ECHR. Secondly, the positive responsibilities are aimed at the protection of the freedom of persons and taking measures to prevent violations of this article. In case of interference of state authorities in the freedom and security of persons, it is necessary to know the place of residence of a person, if he or she was taken into custody by public authorities; to provide information about that person's location, and to take effective measures to ensure that no people are at risk. These provisions are enshrined in *Cyprus v. Turkey* of 10 May 2001.³⁴

In addition, the case-law of the ECtHR has formed the basic requirements for deprivation of liberty and personal inviolability, in particular with relation to the requirements of legality and legitimacy. For example, in order to meet the requirements of legality, deprivation of liberty must be carried out in accordance with the procedure provided by law. The term 'law' in this case is widely interpreted by the ECtHR as any current mandatory norm of national law. This means that the detention must comply with the material and procedural norms of national law. It is also important that the provisions of national legislation comply with the ECtHR case-law. This decision was made in *Medvedev and others v. France* of 29 March 2010.³⁵

In situations of imprisonment, it is especially important to adhere to the general principle of legal certainty. It is very important that the conditions of imprisonment are clearly defined in the domestic legislation and that the law itself is accurate enough and allows a person to reasonably and in certain circumstances anticipate the consequences that may be the result of specific actions. This provision is reflected in *Medvedev and others v. France* as well.³⁶

In turn, the requirement of the legality of the deprivation of liberty means the absence of arbitrariness of such deprivation and its compliance with the purpose provided in an exhaustive list under Art. 5 of the ECHR. At the same time, in many decisions, the ECtHR noted that the national legislation that regulates human incarceration should be in line with the ECHR. Otherwise, the imprisonment would be lawful from the standpoint of national law but unlawful from the ECtHR's point of view. In other words, when restrictions are carried out based on the norms of national law contrary to the relevant norms of the ECHR, there will be a violation of Art. 5 of the ECHR.

5 LIMITATIONS OF SOCIAL AND ECONOMIC HUMAN RIGHTS

In addition to the political and civil rights that belong to the first generation of human rights, there are also a number of restrictions in the implementation of economic and social rights that constitute the so-called second generation of human rights. In particular, the right to protection of property is set forth in Art. 1 of Protocol 1 to the ECHR. According to the document, each individual or legal entity has the right to own his or her property peacefully. No one may be deprived of his or her property other than in the interests of society and

33 Protocol 4 (n 28).

34 *Cyprus v Turkey* App no 25781/94 (ECtHR, 10 May 2001) <<https://www.globalhealthrights.org/wp-content/uploads/2013/02/ECtHR-2001-Cyprus-v-Turkey.pdf>> (accessed 11 September 2021).

35 *Medvedev and others v France* App no 3394/03 (ECtHR, 29 March 2010). <https://www.hr-dp.org/contents/436> (accessed 11 September 2021).

36 Ibid.

on the terms stipulated by law and general principles of international law. However, the previous provisions in no way limit the state's right to enact laws that it considers necessary to exercise control over the use of property in accordance with the general interests or to ensure the payment of taxes or other fees or fines.³⁷ Despite the fact that Art. 1 establishes the possibility of a person peacefully owning his or her property, it also has a number of restrictions and features. These features include the protection of their property, the right of any person to unhindered disposal of his or her property, etc.

In general, Art. 1 of Protocol 1 consists of three parts. Part 1 of Art. 1 of Protocol 1 ensures the right to own property peacefully. The interpretation of this provision as a protection of property rights was carried out by the ECtHR in *Marck v. Belgium*, statement no. 6833/74 of 13 July 1979. The ECtHR noted that taking into consideration the right to property, Art. 1 essentially ensures ownership. Part 2 of Art. 1 is the prohibition of deprivation of property that is not in the general public interest and on the terms stipulated by law. This part establishes the grounds and limitations of possible deprivation of property rights. Finally, Part 3 of Art. 1 recognises the right of the state to control the exercise of property rights and impose restrictions on such rights in accordance with the general public interest and payment of taxes or fines.

In accordance with the provisions of the ECHR, the ECtHR considers all issues of interpretation and application of the Convention and its protocols only after all national remedies have been exhausted. In order to consider allegations of violations of Art. 1 of Protocol 1, the ECtHR examined not only cases in which applicants were effectively deprived of property by expropriation and/or nationalisation but also cases in which such deprivation was deemed *de facto*. One such case is *Sporrong and Lönnroth v. Sweden*, statements no. 7151/75, no. 7152/75, decision of 23 September 1982, decision of 18 December 1984 (fair satisfaction).³⁸

In this case, the ECtHR concluded that although the actual expropriation did take place, the applicants were not deprived of property. Moreover, all the restrictions imposed on their property by the state, namely the permits issued by the state for expropriation on the Sporrong estate for a period of 23 years and on Ms. Lönnroth's property for a period of eight years, as well as prohibitions on construction for periods of 23 and 12 years, respectively, actually led to the fact that the right of the applicants to property was revoked and could be abolished.³⁹ According to the ECtHR, all the consequences of the measures arose from the limited ability of the owners to dispose of their property. These consequences were caused by restrictions imposed on the right of ownership, which affected the value of this property.⁴⁰ The ECtHR found a violation of Art. 1 of Protocol 1 and awarded fair compensation to applicants in its decision of 18 December 1984.

The same violation took place in *Krivenko v. Ukraine*, application no. 43768/07, court decision of 16 February 2017.⁴¹ Mr. Krivenko appealed to the ECtHR with a statement on the illegal deprivation of land ownership. Having examined all the circumstances, the ECtHR noted that the expropriation of property was carried out by the parliament in the public interest and for a legitimate purpose. The ECtHR noted that the prerequisite for such deprivation is to maintain a balance between the general interest and the requirements for the protection of individual fundamental rights. Taking this into account, the Court

37 V Lenhart, K Savolainen, (n 6).

38 *Sporrong and Lönnroth v Sweden* App no 7151/75, 7152/75 (ECtHR, 23 September 1982, 18 December 1984) <<https://blog.uclm.es/cienciaspenales/files/2016/10/21sporrong-proteccion-de-la-propiedad.-titularidad-y-alcance.-privacion-legal-de-la-propiedad.-in.pdf>> (accessed 11 September 2021).

39 Ibid.

40 RA Edwards, (n 17).

41 *Krivenko v Ukraine* App no 43768/07, (ECtHR, 16 February 2017) <<https://www.bailii.org/indices/eu-cases-0128.html>> (accessed 11 September 2021).

indicated that deprivation of property without compensation for its real value is a violation of such balance and imposes an excessive burden on the applicant (see *Rysovskyyi v. Ukraine*, statement no. 29979/04, §71, decision of 20 October 2011). In such circumstances, having established that the applicant was the actual owner of the land, the ECtHR considers the existing fact of deprivation in 2006 of the applicant of his land without any compensation or any other type of appropriate compensation sufficient to recognise the applicant as the victim of a disproportionate burden associated with the deprivation of land.⁴² The ECtHR unanimously delivered the decision. In conformity with the court decision, Art. 1 of Protocol 1 was violated, and the ECtHR appointed to reimburse the material and moral damages to the amount of 10,000 EUR.

6 CONCLUSION

After analysing the concept of human rights, we concluded that regardless of political, cultural, or religious beliefs, each person is a member of the same world community. Everyone has the right to life, respect for his or her honour, dignity, protection, and support. That is why human rights are endowed with universality and a general character so that a person anywhere in the world has a certain guaranteed range of rights and freedoms. In other words, human rights are a model of guarantees necessary for a decent life in the modern world. They perform an integration function and contribute to the formation of a global humanitarian order.

Despite the fact that at the end of the 20th century, the idea of human rights' division into three generations (civil and political; social, economic, and cultural; collective rights) was proposed in the science of international law, nowadays, it is difficult to clearly attribute certain rights to these categories.

We believe that the classification we gave regarding the restrictions on the rights and freedoms of a person and a citizen is still not sustainable. The classification tends to expand, taking into account the emergence of new restrictions and the transformation of traditional restrictions of fundamental rights in the context of the development of modern democratic society.

The ECtHR is an effective mechanism for protecting violated rights and interests, which is confirmed by the fact of implementation of all decisions rendered by it without exception. The ECtHR case-law regarding the restrictions provides the division of human rights into absolute and relative.

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42 M Picchi, (n 11).

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