

UDC 340.12

DOI <https://doi.org/10.32849/2663-5313/2021.1.29>

Veronika Horielova,

Candidate of Legal Sciences,

Associate Professor at the Department of State Legal Sciences

“KROK” University

PROBLEMS OF THE RELATIONSHIP BETWEEN MORAL AND LEGAL IN JUDGMENTS OF THE EUROPEAN COURT OF HUMAN RIGHTS

The article is devoted to the study of issues related to the relationship between law and morality, in particular, the peculiarities of approaches to understanding morality in the decisions of the European Court of Human Rights. It is seen that the theoretical – legal understanding of the problem of combining moral and legal is possible only by studying the case law of the European Court of Human Rights, which, as we know, has not yet developed a single method of establishing compensation for non-pecuniary damage. However, in each decision there are certain approaches of the European Court of Human Rights to the understanding of moral harm, and hence to the very category of “morality”. In addition, the European Convention on Human Rights, the purpose of which is to achieve justice, does not reveal the essence of the concept of “justice”, which allows the European Court of Human Rights to decide this issue differently in each case. The consequence of the violation of justice is the compensation of moral damage, because the main feature of moral foundations is the ability to reduce the existing human suffering. The Court restores justice and affirms morality through monetary compensation, although it is not known that it is impossible to assess injustice or immorality. The article analyzes the decisions of the European Court of Human Rights and identifies a list of negative phenomena that the Court in any case considers immoral and unfair. It can be said that the goal of the European Convention on Human Rights is to achieve harmony of law and morality in every country. So, the category of “morality” in the content of the decisions of the European Court of Human Rights is identified with the category of “justice”. Also, justice (morality) extends to compensation for any harm – and therefore the restoration of justice – is the assertion of morality. Thus, it is in the decisions of the European Court of Human Rights that the understanding of morality, its high values is revealed and there is a constant approach to the ideal coexistence of people. Thus, it is in the decisions of the European Court of Human Rights that the approach to understanding morality, its high values is revealed and there is a constant approach to the ideal coexistence of people. It is in the decisions of the European Court of Human Rights that the understanding of morality, its high values is revealed and there is a constant approach to the ideal coexistence of people. Thus, it is in the decisions of the European Court of Human Rights that the approach to understanding morality, its high values is revealed and there is a constant approach to the ideal coexistence of people. Thus, it is in the decisions of the European Court of Human Rights that the approach to understanding morality, its high values is revealed and there is a constant approach to the ideal coexistence of people.

Key words: morality, moral principles, justice, court, law.

Formulation of the problem. With the development of philosophical and legal thought, issues affecting the relationship between morality and law acquire special significance. Theoretical and legal understanding of the problem of the relationship between moral and legal is possible by studying the case-law of the European Court of Human Rights, which, as we know, has not yet developed a single method for understanding and grading morality, and hence the purpose of compensation for moral damage. It turns out that compensation for moral suffering is spontaneous, and the amount of funds received by victims varies considerably.

Analysis of recent research and publications. Theoretical concepts of morality and law date back to antiquity and are reflected in the works of the great thinkers of the past: Plato, Aristotle, Cicero, and so on. Of particular importance are issues affecting the relationship between morality and law in the early nineteenth century and is associated with the name of Kant in German classical philosophy. Today, many scholars are interested in issues of law and morality, among them: V.S. Solovyov, Yu. M. Samolyuk.

Part of the general problem has not been solved previously. Scholars consider the prob-

lem of compensation for moral damage in all its branches of law, but the study of the content of morality, based on which the decisions of the European Court of Human Rights are made, does not pay attention, which is a significant gap.

Formulating the goals of the article. The purpose of the article is to examine the content of morality, which is taken into account when establishing compensation for non-pecuniary damage, based on the decisions of the European Court of Human Rights; provide conclusions and suggestions.

Presentation of the main research material. Theoretical and legal understanding of the problem of combining moral and legal is possible by studying the case-law of the European Court of Human Rights, which, as we know, has not yet developed a single method of awarding compensation (or as noted – compensation) for moral damage. However, in each decision, it is possible to allocate certain approaches of the European court concerning understanding of moral damage, and consequently the category “morality”. Also, the European Convention on Human Rights does not disclose the concept of justice or its essence, which allows the European Court of Human Rights to decide this issue in each case, because the interpretation of the Convention rests with it (according to Article 32 of the Convention) [1].

I would like to note that the European Convention on Human Rights directly uses the term “morality” only in paragraph 1 of Art. 21: “judges must have high moral qualities” [1], but the essence of “moral” permeates the entire content of this document, for which it was created. Also, following by Art. 41 of the Convention “if the Court finds that there has been a violation of the Convention or the Protocols thereto and if the domestic law of the High Contracting Party concerned provides for only partial compensation, the Court shall, if necessary, give just satisfaction to the injured party”. In meaning, we can say that the term “justice” here actually identifies the category of “morality”, the meaning of which is justice, because it is not fair and is immoral (not moral). If we agree with Plato – the main feature of the moral foundations is the ability to satisfy existing suffering. The Court restores justice and affirms morality through monetary compensation, although it is not known that it is impossible to assess injustice or immorality. Thus, it can be concluded that the Court itself assesses morality and sets a “price” for immorality. At the same time, the Court recognizes the category of “justice” as a criterion for assessing immorality.

Thus, the term “justice” is in the context of paragraph 6 of Rule 46 in relation to the subject-matter of the application and the general indication of just satisfaction under Article 41 of the Convention, on behalf of the party or parties who consider themselves victims; according to Rule 54A, paragraph 1, the parties are invited to add to their observations any arguments concerning just satisfaction and a proposal for an amicable settlement; Rule 60 sets out the requirements for fair satisfaction; Rule 75 contains requirements for a Decree on just satisfaction (amounts designated as fair satisfaction) [2]. This testifies to the value of the category of “justice” for the world community, because it is the observance of justice in the state ensures the harmony of public life. The category of “justice” is also an ideal world order [3, p. 4]; it is a perfect virtue – the greatest of all the other virtues, which identifies the category of “legality” [4, p. 32]; this is the idea of honesty (truth) [5, p. 14]; it is a demand for respect for human dignity and the identity of truth. The mechanism that regulates the struggle and combination of opposites, which restrains violence on the one hand and corruption on the other [6, p. 60, 96]; it is a projection of one’s own interests [7, p. 11]; a system of cooperation of society in which citizens are free and equal [8, p. 24]; it is wisdom and virtue [9, p. 11]; etc. system of cooperation of society in which citizens are free and equal [8, p. 24]; it is wisdom and virtue [9, p. 11]; etc. system of cooperation of society in which citizens are free and equal [8, p. 24]; it is wisdom and virtue [9, p. 11]; etc.

It can be said that the purpose of the European Court of Human Rights is to adhere to Kant’s postulate: do as you would like your actions to become a general law. It is also possible to add the following: the obligation to act in a certain way to certain actions and is a morally practical law [10, p. 56-57]. Indeed, the European Convention on Human Rights can be called a general, morally sound law – that is, dictated by the ideas of reason. Morality permeates the system of norms and principles that guide the Court when there is a need to reconcile the interests of the individual and society (state). The content of the Convention, based on which the Court administers justice, is aimed at regulating the behaviour of people following the concepts of good and evil, regardless of the religious, political and other beliefs of individuals, traditions or peculiarities of education. Taking into account the decisions of the Court in national law, domestic law is gradually harmonized with the interests of the entire European Community, moral contradictions between them are overcome,

and interpersonal communication is regulated. Thus, we can say that the goal of the European Convention on Human Rights is to achieve harmony of law and morality in every country. Here it is very accurate to mention Kant's interpretation of legal law: if the rules that apply only to external acts, will be required that they (laws) themselves were the determining grounds for actions, then these laws will be called moral [10, p. 61] that the European Convention on Human Rights aims to achieve harmony of law and morality in every country. Here it is very accurate to mention Kant's interpretation of legal law: if the rules that apply only to external acts, will be required that they (laws) themselves were the determining grounds for actions, then these laws will be called moral [10, p. 61]. that the European Convention on Human Rights aims to achieve harmony of law and morality in every country. Here it is very accurate to mention Kant's interpretation of legal law: if the rules that apply only to external acts, will be required that they (laws) themselves were the determining grounds for actions, then these laws will be called moral [10, p. 61].

A special point of justice is the following provision: "for the fate of those who do injustice to be more difficult than the fate of those who tolerate it, it is necessary that the whole world or those who govern it, protect justice and have sufficient power to do so" [6, with. 140]. We can say that in this case, we are talking about the European Court of Human Rights. Justice (morality) is revealed in the law, and thus a fair decision of the Court is a decision that is closest to the ideal, which provides for: independence of the judiciary, apolitical, international standards of justice, proper legal regulation and so on.

It is necessary to pay attention to the following fundamentally important point: today there is no single international doctrine of "public morality", from which it must be stated that, firstly, each state has its own trends in the development and understanding of morality, and secondly different approaches to compensation for non-pecuniary damage caused to a person in the decisions of the European Court of Human Rights itself. For example, in the judgment of the European Court of Human Rights, in the case "Raimondo v. Italy" of 24 January 1994 states that the Court cannot accept the claimed claims for non-pecuniary damage due to the lack of clarity, although the Court considers that the person did suffer and suffered discretionary compensation for that person [11]. Thus, if the Court finds that there has been non-pecuniary damage and that it must be reimbursed, then the Court assesses

this damage based on the principle of fairness enshrined in Art. 41 of the European Convention, and taking into account the standards derived from its case law. When applying to the European Court of Human Rights for compensation for non-pecuniary damage, applicants may indicate the amount which they consider to be fair, and applicants have the right to leave the amount of compensation to the Court's discretion. The Court considers it fair that it may be held that, in respect of certain complaints, the finding of a violation of the Convention is in itself sufficient just satisfaction and there is no need to provide any pecuniary compensation. The court may also, for reasons of fairness, award damages in the amount less than the actual damage or costs actually incurred, or not award damages at all. This applies, for example, cases when, in the contested situation, the applicant is guilty of the amount of damage or costs incurred. In determining the amount of compensation, the Court may also take into account the relevant observations of the applicant as a victim of the violation of the party and the Contracting Party responsible for the public interest. Finally, in fairness, the Court usually takes into account local economic circumstances [12].

Thus, the analysis of the judgments of the European Court of Human Rights makes it possible to state that the Court finds in any case immoral and unjust:

- physical and moral suffering, cruelty,
- life frustration associated with the loss of faith injustice (for example, the cases of *Lolaev vs Russia*, "*Yasa vs Turkey*", "*Cakici vs Turkey*", "*Avsar vs Turkey*", "*Svinarenko and Slyadnev vs Russia*", etc.);
- frustration associated with a sense of long-term uncertainty (cases "*Shchiborsch and Kuzmin vs Russia*", "*Lolaev vs Russia*");
- feelings of anxiety and helplessness (for example, in the case of "*Pelipenko vs the Russian Federation*", "*Pelipenko vs the Russian Federation*", etc.);
- humiliation of human dignity (cases "*Ashot Harutyunian vs Armenia*", "*Khodorkovskiy v. Russia*", "*Lutsenko vs Ukraine*", "*Basenko vs Ukraine*", etc.);
- encroachment on the physical and spiritual integrity of the person (cases of *Mesut Deniz vs Turkey*, "*Bati and Others vs Turkey*", "*Oleksiy Mykhaylovych Zakharkin vs Ukraine*", "*Basenko vs Ukraine*", *Aleksandr Nikonenko vs Ukraine*), (*Afanasyev vs Ukraine*);
- violation of legality and passivity of bodies and officials of state power (cases "*Yuri Illarionovitch Shchokin vs Ukraine*", "*Trapeznikova vs Russia, Dudnyk vs Ukraine*", "*Koval and Others vs Ukraine*");

– ignoring the rights of the victim of the crime (cases “Pirali Orujov vs Azerbaijan”, “Fyodorov and Fyodorova vs Ukraine”, “Kolegovy vs Russia”);

– ill-treatment of people, non-compliance by courts with the principle of independence, impartiality, public control (cases “Nechiporuk and Yonkalo vs Ukraine”, “Labita vs Italy”, “Assenov and Others vs Bulgaria”, etc.);

– discrimination on the grounds of sex (for example, the case of Zarb Adami vs Malta).

It should be noted that the issue of morality (just satisfaction) until 2000 concerned only the individual and the European Court of Human Rights clearly followed the approach according to which moral harm – damage moral (French) – can be caused only to an individual. However, the case of “Komingersol SA” vs Portugal “marked a radical turn in the law enforcement practice of the European Court, becoming a landmark for the resolution of the issue of compensation for non-pecuniary damage to legal entities. In § 35 of the judgment, in this case, the Court noted that “Damage caused to an enterprise, in addition to the material component, may contain objective and subjective elements. Among these elements should be recognized damage to the reputation of the enterprise, but also uncertainty in the planning of decisions, violations in the management of the enterprise, the consequences of which cannot be accurately calculated, and finally, albeit to a lesser extent, the feelings of anxiety and discomfort experienced by members of the company’s management. “In the operative part of the Resolution on the specified case, accepted unanimously, the neutral concept of damage (fr. Dommage) – “damage” – without specification is used. However, the corresponding clarification in the operative part of the Resolution was made by Judge K. Rozakis (joined by three other judges) in his concurring opinion. In his opinion (with which we agree) the emphasis should not be on the human factor, it was enough to take as a basis the concept of autonomous legal community (entité critique autonomy), covered by the Convention, without distinction between individuals and legal entities [13]. In that judgment, the Court demonstrated that there were cases in which one law is not enough for a fair decision, and then moral views can serve as an appendix to the law.

Thus, it is in the decisions of the European Court of Human Rights that the understanding of morality, its high values is revealed and there is a constant approach to the ideal coexistence of people. After all, where law is affirmed by morality, it acquires not only reg-

ulatory significance, but also the highest trust. In the rulings of the European Court of Human Rights, we note that morality and law are born of one system of social relations based on goodness, justice and reason. From the texts of the decisions, it can be seen that in friendly countries many problems have historical, political, economic roots.

Conclusions

The moral norms of the European Convention on Human Rights play an important role in the process of law enforcement activities in resolving specific cases by the European Court of Human Rights. The category of “morality” in the content of the decisions of the European Court of Human Rights is identified with the category of “justice”. Also, justice (morality) extends to compensation for any harm – whence the restoration of justice – is the assertion of morality.

The above allows us to conclude that the requirements of morality become legally significant only when they are specified by an indication of the obligation to comply with them in legal norms. Therefore, justice can be defined as a moral and legal category, which is a logical assessment of social relations by the criteria that are generally accepted norms of behaviour or fixed in the generally binding regulatory system – the law.

References:

1. European Convention on Human Rights. URL: https://www.echr.coe.int/Documents/Convention_ENG.pdf.
2. Регламент суду : міжнародний документ від 4 листопада 1998 р. / Міжнародні суди, Рада Європи, Європейський суд з прав людини. URL: https://zakon.rada.gov.ua/laws/show/980_067
3. Kahn С.Н. The Art and Thought of Heraclitus: An Edition of the Fragments with Translation and Commentary. Cambridge : Cambridge University Press, 1981. 354 p.
4. Aristotle. The Nicomachean Ethics. Oxford : Oxford University Press, 336 p.
5. Ролз Дж. Теория справедливости / пер. с англ. под науч. ред. В.В. Целищева. Новосибирск : Изд-во Новосибирского университета, 1995. 534 с.
6. Скрипник А.П. Моральное зло в истории этики и культуры. Москва : Политиздат, 1992. 351 с.
7. Козловський А.А. Справедливість як гносеологічний принцип права. Ерліхівський збірник. Вип. 3. Чернівці : ЧНУ, 2003. С. 11–17.
8. Rawls J. A theory of justice. Cambridge, 1971. 562 p. URL: http://www.consiglio.regione.campania.it/cms/CM_PORTALE_CRC/servlet/Docs?dir=docs_biblio&file=BiblioContenuto_3641.pdf.

9. Платон. Держава / пер. з давньогр. Д.В. Коваль. Київ : Основи, 2000. 353 с.

10. Kant I. Kritik der praktischen Vernunft. Herausgeber : Anaconda Verlag, 2011. 208 S.

11. Case of "Raimondo v. Italy". URL: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806ebe1a>.

12. Requirements for fair satisfaction. Practical recommendation issued by the President of the European Court of Human Rights on 28 March 2007 by Rule 32 of the Rules of Court. URL: https://www.echr.coe.int/Documents/PD_satisfaction_claims_UKR.pdf.

13. The case of Komingsol SA against Portugal. URL: <http://www.rpqi.narod.ru/echr/translation/translation/komingsoll.htm>.

Вероніка Горелова. Проблематика співвідношення морального та правового в рішеннях Європейського суду з прав людини

Стаття присвячена дослідженню питань, які стосуються проблем співвідношення права і моралі, зокрема особливостей у підходах до розуміння моралі в рішеннях Європейського Суду з прав людини. Вбачається, що теоретико-правове осмислення проблеми поєднання морального та правового можливе лише шляхом дослідження практики Європейського суду з прав людини, в якій, як відомо, досі не вироблено єдиного методу встановлення компенсації моральної шкоди особі. Втім, у кожному рішенні можна виділити певні підходи Європейського суду з прав людини до розуміння моральної шкоди, а отже, і до самої категорії «мораль». До того ж Європейська конвенція з прав людини, метою створення якої є досягнення справедливості, не розкриває суті поняття «справедливість», що дозволяє Європейському Суду з прав людини в кожному окремому випадку самому вирішувати це питання по-різному. Наслідком порушення ж справедливості є відшкодування моральної шкоди, адже головною ознакою моральних підвалин є здатність вчинками зменшувати наявні страждання людини. Поновлює справедливість та стверджує моральність Суд шляхом грошової компенсації, хоча, як відомо, оцінити несправедливість чи аморальність вчинків неможливо. У статті проведено аналіз рішень Європейського суду з прав людини та виявлено перелік негативних явищ, які Судом у будь-якому разі визнаються аморальними та несправедливими. Можна сказати, що мета Європейської конвенції з прав людини – досягти в кожній країні гармонії права й моралі. Таким чином, категорія «моральність» у змісті рішень Європейського суду з прав людини ототожнюється з категорією «справедливість». До того ж справедливість (моральність) поширюється на відшкодування будь-якої шкоди – і отже, поновлення справедливості – це утвердження моралі. Таким чином, саме в рішеннях Європейського суду з прав людини розкривається розуміння моралі, її високих цінностей та відбувається постійне наближення до ідеального співіснування людей.

Ключові слова: мораль, моральні принципи, справедливість, суд, право.