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Laura BZOVA[1]

Abstract

The relevance of the study of judicial reasoning in public law is related to the challenges of modern litigation, which require new approaches to the construction of a court decision. This is also due to the constitutional reform in Ukraine, in particular the latest amendments to the Constitution of Ukraine in the field of justice. The emergence of the priority issue of constitutionality led to the rupture of the system, where the protection of fundamental rights in a particular issue was essentially ensured in accordance with the case law of the European Court of Human Rights. The Constitutional Court of Ukraine always uses the decisions of the European Court of Human Rights to form its own legal positions, after which they actually become a substantive element of the motivating part of the decision of the Constitutional Court of Ukraine. It is concluded that regardless of whether the decision of the European Court of Human Rights has been ruled on Ukraine or not, it is a source of constitutional law of Ukraine.

Keywords:

Constitutional state; legal positivism; interpretation; law justification; constitutional argument; legislative; constitutional judge.

Introduction

The emergence of the priority issue of constitutionality led to the rupture of the system, when the protection of specific rights was essentially provided in accordance with the case law of the European Court of Human Rights. The belated introduction of the a posteriori review of constitutionality in the legal

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system, which is very broadly based on the review of conventionality, leads to a review not only of the relationship between legal systems, but also, above all, the role played by different jurisdictions in regulating these relations. In fact, the harmonization of the essential definition of fundamental rights is usually done through a game of persuasion, which is carried out between different jurisdictions. The idea of studying the issue of ensuring the validity of the decisions of the Constitutional Court within the framework of recognizing the decisions of the European Court of Human Rights is caused by the relevance of modern «living» constitutional law in the system of most European countries. It should be noted that legal argumentation is a set of technical and legal means for conducting a certain legal process for the application of various mechanisms to achieve a legal result based on compliance with the values of law.

The legal argument plays a significant role in countries that recognize the rule of law as the most important virtue of civilized societies. Although we consider law only as an institutional normative order, argumentation (for example, the task of adding reasons to defend an opinion) is a joint activity of legal practice for both legal operators (judges, lawyers, prosecutors, etc.) and for scholars.

Every case law has minor or gravitational issues necessary to resolve the contradiction of this particular situation, which must be interpreted as a difference in the search for the ratio decide decidendi, as the consequences of case law are extracted for this reason to make a decision.

Decisions of the Constitutional Courts are sometimes challenged as such in Strasbourg, the applicants claiming that they are neglecting their right to a fair trial, guaranteed by Article 6 § 1 of the Convention. An inexhaustible source of petitions, this provision provides an angle of attack for challenging many aspects of the «tribunal» - its access, jurisdiction, composition, procedure, and so on - which will lead to control over conditionality.

It should be noted at the outset that the Court refuses to rule abstractly on the applicability of Article 6 § 1 to constitutional courts in general or to States such as Germany, Spain or Portugal. According to the consistent practice of the Court, proceedings may fall under Article 6, even if they take place in a constitutional court. In this respect, it does not matter whether the proceedings in such a court fall under a preliminary decision or a constitutional appeal against court decisions. The same applies in principle when the constitutional court considers an appeal addressed directly to the law, if national law provides for such an appeal. For the application of Article 6 § 1, it is necessary and sufficient that there should be a dispute as to civil law or duty or criminal prosecution.

It is inevitable that the jurisprudence of Strasbourg will clash with the jurisdiction of the constitutional courts when constitutional rights and customary rights overlap and the same issue is consistently addressed at national and European level. Therefore, there is a risk of differences or even conflicts of

interpretation. The control over the conditionality of constitutional case law is subject to certain principles, which are also very general, as they also apply to other jurisdictions.

Indeed, the «European control» conferred on the Court precludes it from being bound by decisions of national courts, even if they were of a constitutional nature, for two reasons. First, the constitutional nature of the rule of law does not exclude it from the Convention. It is through all their «jurisdiction», which is exercised primarily through the Constitution, that states are responsible for their compliance with the Convention. The hierarchy of standards that it understands and sets for each state in its domestic legal order fades or worships the supremacy of European government. Article 19 of the Convention requires the Court to «ensure compliance with the obligations arising from the High Contracting Parties to the Convention and its Protocols». The founding principle of the Pacta sunt servenda presupposes that it has the final say in the application and interpretation of the Convention.

Argument of the paper

In the vast majority of developed countries of the world today in one form or another there are bodies of judicial or quasi-judicial constitutional review. The modern constitutional and legal doctrine has been enriched due to the activity of the body of constitutional jurisdiction. As a rule, it is manifested in the legal positions of the constitutional court. In the modern science of constitutional law, the argumentation of the constitutional court, which he uses in forming his final decision in the case is called the legal position of the court.

In connection with the recent social changes taking place in the world, there is a need to analyze the validity of the decisions of the Constitutional Court through the prism of recognizing the decisions of the European Court of Human Rights as sources of law.

According to Article 2 of the Law of Ukraine «On Enforcement of Judgments and Application of the Case Law of the European Court of Human Rights», a decision is binding on Ukraine in accordance with Article 46 of the Convention (Verkhovna Rada of Ukraine, 2012).

In the process of resolving a specific case, the Constitutional Court of Ukraine uses the decision of the European Court to formulate legal positions, but not as a whole, but only individual conclusions (legal positions) of this international body, which are formulated by it in similar cases. In addition, the legal positions of the European Court are reflected in the decisions of the Constitutional Court in conjunction with any norm (group of norms) of the Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols.

S. Shevchuk noted that the decisions of the European Court of Human Rights are of a normative nature, are adopted in the process of resolving specific cases and are related to their factual circumstances. Nevertheless, in his opinion, the practice of the CCU should be consistent with the practice of the ECtHR, as democracy is based on fundamental values, rights and freedoms, and ECtHR decisions have a strong practical and methodological potential for the correct application of ECHR rules. He also rightly expressed that the Constitution of Ukraine duplicated almost all the rights enshrined in the ECHR, but national practice often does not correspond to the interpretation of the ECtHR's ECHR. At the same time, the binding nature of European case law for Ukraine follows from the principle of «hierarchy of jurisdiction» - the European Court of Human Rights has the highest jurisdiction in the field of judicial protection of human rights and freedoms, which follows directly from Part 4 of Art. 55 of the Basic Law, despite the fact that the activities of the ECtHR are additional, as the main burden of this protection must be borne by national jurisdictions (Shevchuk, 2011).

K. Ismailov takes a different view and argues that the rules of the ECHR are the source of law, and the decision of the European Court of Human Rights can be called only a source of its interpretation (Ismailov, 2011).

In the theory of law, there are certain hypotheses about jurisdictional conflict when using the decisions of the European Court of Human Rights as sources of law. For example, when a treaty requirement and a constitutional requirement are incompatible. This could be the case, for example, if a Strasbourg judge has ordered the recognition of specific rights for religious minorities, which are prohibited by the Constitution (34). The first solution would lead to the transfer of this hypothesis to the theory of «principles inherent in constitutional identity».

In fact, such a contradiction between constitutional and contract law should be resolved more broadly in favor of constitutional law. Indeed, if the Constitutional Court has succeeded in certain cases in overriding Union law over constitutional requirements and in accordance with its inherent principles, it is on behalf of interpretation that it retains the requirements of Article 88-1 C, which by definition does not apply to the European Convention on Human Rights.

But these hypotheses must be exceptional for both pragmatic and diplomatic reasons and for more theoretical reasons. Regarding the first, it should be noted that the European Court avoids major conflicts with states, even minorities, over issues that profoundly affect their national identity (as demonstrated by recent case law on the existence of crucifixes in classes in Italy, or Irish law on abortion (35)). On the other hand, and in the same movement, the Constitutional Court takes maximum account of the decisions of the European Court of Human Rights.

In order to form one's own point of view among the above pluralism of views on the nature of ECHR decisions, it is necessary to compare not only doctrinal works, but also current legislation and existing law enforcement practice. Thus, in accordance with the provisions of Part 4 of Art. 55 of the Constitution of Ukraine, the European Court of Human Rights can be considered an international judicial institution to which the protection of rights and freedoms can be applied by anyone who has used in Ukraine all the remedies guaranteed by domestic law.

It is inevitable that the jurisprudence of Strasbourg will face the constitutional courts whenever constitutional and treaty rights intersect, and the same issue will be dealt with consistently at national and European level. Therefore, there is a risk of differences or even conflicts of interpretation. The review of the constitutionality of constitutional judicial law is subject to certain principles, which are very general, as they apply to other jurisdictions. This applies to a wide range of rights, as evidenced by several examples.

Legal decisions are the result of a process of legal justification, and they can be more or less explicit. Legal decisions can, for example, be visible when they have a direct impact for formal reasons. On the other hand, legal decisions can also be indirect and their consequences can be hidden because they are elements of complex situations. Naturally, due to misinterpretation, negligence or poor quality, legal decisions can also have no effect, and many possible consequences can be perceived between these extreme situations.

Judgments of the European Court of Human Rights are of particular importance for convention law as an international treaty law, as they reflect the current state of development of the convention and its protocols. Pursuant to Articles 42 and 44 of the ECtHR, decisions of the Court take legal effect and therefore take legal effect. The Contracting Parties undertake, under Article 46 of the ECHR, to comply with the final judgment of the Court in all cases to which they are a party.

Legal argumentation in the decisions of the CCU methodologically consists in the use of all known methods of scientific research, achievements of hermeneutics, doctrinal developments, as well as precedents of the European Court of Human Rights and the arguments of its previous decisions. However, the Court may use only those arguments of its own decisions and those of the European Court of Human Rights, which are based on a thorough examination and have become the basis for a decision. References to the provisions of the Constitution or international acts, decisions of the European Court of Human Rights, and unsubstantiated statements in one's own decisions cannot be regarded as an argument. A simple set of such references or extraction of certain provisions of a court's reasoning does not meet the requirements for the content of the motivating part of the decision, they do not create a belief in the validity of the arguments of the Court's position. It is inadmissible to use in the

argumentation of such a technical and legal technique as legal fiction, as well as shuffling, manipulating the statements of the European Court of Human Rights and its own decisions, or rather a conscious and deliberate attempt to recognize certain legal judgments, guidelines that have nothing to do, arguments in order to create the illusion of persuasiveness of the position of the Court. Such actions show signs of argumentative fraud and such «arguments» of the Court's decision cannot be considered fair with the corresponding consequences for the judges who voted for it.

The case law of constitutional courts in recent years has largely explained the placement of the ECtHR in the context of Constitutional Court judgments (Romboli, 2008). The most analytical and complete cornerstones of the case law of the Court, which, with some approximation, can be identified as follows:

(a) the classification of the rules of the ECtHR within the meaning given to them by the European Court of Human Rights as interposed rules;

(b) the nature of the extreme coefficients of the decision on constitutionality arising from the fact that «if there is a conflict between a domestic rule and a rule of the ECtHR», «the national judge must first verify the interpretation of the former in accordance with the generally accepted rule»;

(c) the inalienability of a judgment of the Court as soon as it appears impossible to resolve the conflict interpretatively, «since [an ordinary judge] cannot challenge an internal rule or accept its application by considering it in contrast to the ECtHR and hence the Constitution»;

(d) the following possible exclusion of the suitability of the usual rule for the integration of the considered constitutional parameters, as this rule is placed «at the subconstitutional level»;

(e) the impossibility for the Court to «review the interpretation of the Convention given by the Court of Strasbourg», as the rules of the ECtHR must «apply within the meaning given to them by the European Court of Human Rights»;

(f) the determination of the extent to which the Constitutional Court may impose its own assessments on the assessments of the Strasbourg Court, consisting in «an assessment of European jurisprudence consolidated in relation to the granting rule in order to respect its substance but with an error of adaptation features of the legal system in which the norm operates is intended to fit» (Ruggeri, 2012).

Judicial practice

Analyzing the case law of the Constitutional Court of Ukraine, it can be argued that in its activities the court often uses the case law of the European Court of Human Rights. For example, in the decision of the Constitutional Court of Ukraine in the case of the constitutional petition of 55 deputies of

Ukraine on the compliance of the Constitution of Ukraine (constitutionality) of Article 375 of the Criminal Code of Ukraine of June 11, 2020, the court notes: The European Court of Human Rights stated on 18 December 2008 (application № 48068/06): «In the case of deprivation of liberty, it is extremely important to ensure the general principle of legal certainty. The requirement of «quality of the rule of law» within the meaning of Article 5 § 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 means that if national law allows for deprivation of liberty, such law must be sufficiently accessible, clearly worded and predictable -what is the risk of arbitrariness(§ 19)» (Verkhovna Rada of Ukraine, 2020a).

In his constitutional complaint against Görgul, the complainant complained, inter alia, of, in his view, inadequate enforcement of the judgment of the European Court of Human Rights of 26 February 2004 and of the Supreme Regional Court of Naumburg's disregard for international law. By his constitutional complaint, the complainant alleges a violation of his fundamental rights under Art. 1, art. 3 and Art. 6 GG, as well as the right to a fair trial. At the same time, he applied for a temporary court order to hear his son.

In the judgment of the Federal Constitutional Court of Germany 2 BvR1481 / 04 of 19 October 2004, Chud stated that it should, as far as possible, prevent and remedy violations of international law which constitute misapplication or disregard for international law obligations by German courts. This is particularly true of the international legal obligations arising from the ECHR, which contributes to the development of a pan-European position on fundamental rights. In cases where there is room for different interpretations and assessments within the existing methodological standards, German courts must give priority to such interpretations in accordance with the Convention. The conventional norm in the interpretation of the European Court must in any case be included in the decision-making process, the court is obliged to take due account of it. The neglect of this duty may be challenged by the applicant in the Federal Constitutional Court as a violation of his constitutionally protected fundamental right in conjunction with the rule of law (Infotropic Media, 2018).

In the decision of the Constitutional Court of Ukraine in the case of the constitutional petition of 47 people's deputies of Ukraine on the constitutionality of certain provisions of the Law of Ukraine «On Prevention of Corruption», the Criminal Code of Ukraine, the court notes that the independence of judges from other public authorities is crucial in any - what democracy (Verkhovna Rada of Ukraine, 2020b). In its judgments, the European Court of Human Rights has repeatedly stressed the importance of adhering to the principle of separation of powers and non-interference of the executive and legislative branches in the affairs of the judiciary, which is an important factor in ensuring real independence of the judiciary and judges. In particular, attention is drawn to the importance of the independence of the judiciary from the executive (§ 95 of the

judgment in Ringeisen v. Austria (Merits) of 16 July 1971 (application no. 2614/65) and to the principle of separation of powers). 40 Sacilor-Lormines v. France, judgment of 9 November 2006 (application no. 65411/01). In addition, the concept of separation of powers between the executive and the judiciary is becoming increasingly important in the practice of this court. (§ 78 Stafford v. The United Kingdom, judgment of 28 March 2002 (application no. 46295/99).

The European Court of Human Rights has emphasized that in determining whether a body can be considered «independent», especially from the executive, one should take into account, inter alia, the way its members are appointed, their duration, term of office, safeguards against external pressure and whether the body shows the appearance of independence (§ 34 of the judgment in Pohoska v. Poland of 10 April 2012 (application no. 33530/06) and the term "independent" in Article 6 § 1 of the Convention contains two elements, namely, the independence of the courts from the executive and their independence from the parties to the proceedings (§ 74 of the judgment in Leo Zand v. Austria of 12 October 1978 (application no. 7360/76)).

In its 2010-14 / 22 QPC decision (concerning the presence of a lawyer in police custody), the French Constitutional Council stated that: European case law largely imposes the presence of a lawyer in police custody. In particular, she stated in the decision «Brusco v. France» of 14 October 2010 that «a person in custody has the right to the assistance of a lawyer from the beginning of the event, as well as during interrogations, and this is atiotiori when he has not been informed by the authorities of the right to remain silent». In this connection, the Court refers, in particular, to the principles set out in Adamkevych v. Poland, judgment of 2 March 2010, which states that «the application of Article 6 §§ 1 and 3 in the investigation depends on specific information on the procedure and circumstances of the case».

From this point of view, the Court of Cassation does not directly violate the powers of the Constitutional Council on prosecution, as it makes decisions only from the ordinary point of view. However, he prefers the consequences of the decision of the European Court of Human Rights res judicata over the consequences of the rethinking put forward by the Constitutional Council. The ambiguity stems from the fact that, not to mention this, the Constitutional Council largely takes into account the case law of the European Court of Human Rights, not strictly as a reference standard, but interpreting constitutional standards that the Court of Cassation is a natural judge of conventionality European Court of Human Rights.

On the other hand, with regard to the repeal of a provision that is cnsidered unconstitutional, a decision of the Constitutional Council is necessary without the possibility of invoking the powers of a decision of a court of the European Court of Human Rights. Only the sanction of this transfer by the European Court of Human Rights, under conditions yet to be determined, can,

if necessary, compel an ordinary judge to obstruct the decision of the Constitutional Council (Ruiz-Mateos, C, 1993-1994).

In the Decision of the Constitutional Court of Ukraine in the case on the constitutional petition of the Commissioner for Human Rights of the Verkhovna Rada of Ukraine on the constitutionality of the third sentence of part three of Article 315 of the Criminal Procedure Code of Ukraine (Verkhovna Rada of Ukraine, 2017), the court referred to the case law of the European Court of Human Rights judgment, especially during the post-investigation period and before the trial, as well as on the basis of judgments rendered at the trial stage which do not contain a specified period of further detention, is contrary to Article 5 of the Convention (paragraph 98 of the judgment of 10 February 2011 in the case of Kharchenko v. Ukraine). This approach is consistent with the purpose of Article 5 of the Convention, which is to prevent arbitrary or unjustified deprivation of liberty (paragraph 30 of the judgment of the European Court of Human Rights of 3 October 2006 in McKay v. The United Kingdom).

According to the case law of the European Court of Human Rights, Article 5 § 3 of the Convention applies, after a certain period of time only a reasonable suspicion ceases to be a ground for deprivation of liberty, and the judicial authorities must provide other grounds for continuing detention; in addition, such grounds must be clearly stated by the domestic courts (paragraph 60 of the judgment of 6 November 2008 in Yeloyev v. Ukraine).

Therefore, the reasonableness of the application of precautionary measures related to the restriction of a person's right to liberty and security of person, including house arrest and detention, should be subject to judicial review at regular intervals, periodically by an objective and impartial court to verify the presence or absence. the risks for which these precautionary measures are applied, including at the end of the pre-trial investigation, when some risks may have disappeared.

The European Court of Human Rights has stated in its judgments that the justification for any period of detention, whatever it may be, must be convincingly provided by the State, and that a quasi-automatic extension of such a period runs counter to the guarantees set out in Article 5 § 3 of the Convention. paragraph 66 of the judgment of 9 January 2003 in the case of Shishkov v. Bulgaria; paragraph 40 of the judgment of 10 June 2008 in the case of Tase v. Romania).

The Constitutional Court of Ukraine considers that precautionary measures (house arrest and detention) restricting the human right to liberty and security of person guaranteed by part one of Article 29 of the Constitution of Ukraine may be applied by a court at a new procedural stage - the trial stage, in particular during preparatory court hearing, only on a reasoned court decision and only on the basis and in the manner prescribed by law.

This position of the Constitutional Court of Ukraine is consistent with the case law of the European Court of Human Rights, which in its decision of 15 December 2016 in the case of Ignatov v. Ukraine stated that judicial review at a new procedural stage in the continuation of precautionary measures related to restriction of rights persons to liberty and security of person, shall be justified on the grounds of such extension.

In its judgment of 10 February 2011 in Kharchenko v. Ukraine, the European Court of Human Rights pointed to a violation of Article 5 § 3 of the Convention by national courts of Ukraine, which often justify extending detention on the same grounds throughout the period of imprisonment, and noted that the courts are obliged to substantiate their decisions on the extension of detention on other grounds, which must be clearly stated. Failure by the courts to state in their decisions any grounds which allow a person to be detained for a long period of time is incompatible with the principle of protection against arbitrariness enshrined in Article 5 § 1 of the Convention (paragraph 36 of the judgment of the European Court of Human Rights of 15 December 2016 in the case of Ignatov v. Ukraine).

In its work, the European Court of Human Rights also refers to the practice of constitutional courts. In the case of Lautsi and others c. Italia and in the unanimous opinion of Judge Bonello have repeatedly referred to the decisions of the constitutional courts (Corte Europea dei Diritti dell'Uomo, 2011). For example, the German Constitutional Court in its famous sentence: "Certainly, in a society that provides space for different religious beliefs, a person has no right to be deprived of other manifestations of faith, cults or religious symbols. However, this should be distinguished from the situation created by the state, when a person is influenced without the possibility of escape from the influence of a certain faith, to the acts by which he manifests himself, and to the symbols in which he is represented. This view is held by other supreme or constitutional courts.

Thus, the Swiss Federal Court has found that the obligation of sectarian neutrality to which the state is bound is of particular importance in public schools, as teaching is compulsory. He added that as a guarantor of the state's sectarian neutrality, the state cannot show its commitment to a particular religion in the context of teaching, whether majority or minority, as some people may feel offended by their religious beliefs by the constant presence of a religious symbol at school they do not belong.

In addition, as the Federal Constitutional Court of Germany emphasized in its judgment of 16 May 1995 (Preliminary Paragraph 28), giving the crucifixion an impure meaning would be a departure from its original meaning and a loss of sense of the sacred. To see only a simple «passive symbol» would be to deny the fact that, like all symbols — and more than any other — it concretizes cognitive, intuitive, and emotional reality that goes beyond what is immediately perceived.

The Federal Constitutional Court of Germany would also find this, given the above-mentioned decision, that the presence of the crucifix in school classrooms is provocative because it represents the meaning of the faith it symbolizes and serves to make it «public». Finally, the applicants recall that, in Dahlab v. Switzerland of 15 February 2001 (no. 42393/98, CEDH 2001-V), the Court noted the special force that religious symbols acquire in school settings.

The Court concludes that it is not a Constitutional Court and that it must respect the principle of subsidiarity and recognize a particularly wide discretion for the Contracting States not only in determining the relationship between the State and religion, but even when they perform their functions in education and training. According to them, having decided to forcibly remove religious symbols from public schools, the Grand Chamber will send a radical ideological message. They add that the Court's case-law shows that a State which prefers a particular religion, for reasons connected with its history or tradition, does not exceed that limit. Thus, in their view, the display of crucifixes in public buildings is not contrary to the Convention, and we should not see a form of indoctrination in the presence of religious symbols in public places, but an expression of cultural unity and identity. They add that in this particular context, religious symbols have a secular dimension and should not be suppressed.

In the area of the right to a fair trial, the case of Sramek v. Austria is a good example of disagreement. A US resident in Germany wishing to acquire land in Tyrol was denied by the real estate controller and then by the regional real estate authority on the grounds that there was a risk of foreign domination. It was rejected by the Constitutional Court, which ruled that regional authorities should be treated as an independent and impartial tribunal. The Court does not consider this, as the regional authority was composed of a person who is in a state of subordination of functions and services to one of the parties.

German reunification has led to many lawsuits. Some inquiries are of particular interest and scope, such as those submitted by three leaders (head of state and minister and deputy defense minister) and a soldier (serving as a border guard) of the German Democratic Republic (GDR) sentenced by the courts of the Federal Republic of Germany to death. Persons who tried to cross the border between the two German lands. The Federal Constitutional Court found the decisions to be in accordance with the Basic Law. In essence, the Court followed the same approach, which led it to find no violation of Article 7 § 1 of the Convention: at the time they were committed, the applicants had committed crimes of sufficient accessibility and predictability in both GDR and international law.

Direct conflicts between the Convention and the Constitution are very rare. Hence the special importance of the Open Door and the Dublin Well against Ireland, as the Court has achieved the precedence of ordinary law over constitutional law (European Court of Human Rights, 1992). The Supreme

Court has banned two non-profit companies that, among other things, counsel pregnant women in Ireland and their agents, from helping pregnant women travel abroad for abortions by: informing them about clinics, promoting their movements, etc.; it was based on the right to life of unborn children, guaranteed by paragraph 3 of Article 40 § 3 of the Constitution. The Court stated that it was struck by the absolute nature of the prohibition, which proved to be disproportionate and contrary to Article 10 of the Convention. It takes into account several elements: neutrality of recommendations for existing solutions; the existence of other sources information about the possibility of abortion abroad; health risks for women who try to terminate a pregnancy late.

The Supreme Court of Cyprus sought to preserve the supremacy of constitutional norms. His decision on the illegitimacy of the European Arrest Warrant (citing the extradition of Cypriots) effectively led to an amendment that forms the basis of the rule of Community law (Kapardis, 2008). The ECtHR has been declared unlawful but unconstitutional: in fact, the provisions on the rights of the Constitution of Cyprus are in many respects very similar to those of the Convention (Martinico & Pollicino, 2010).

The Hungarian Constitutional Court has shown a rather reluctance to European norms in general, using a clause in the Basic Charter which, although an internal basis for EU participation, establishes a kind of General «reservation» on the functions delegated to its institutions. Thus, the Court has developed a dual category of limits to the legitimacy of community norms: on the one hand, constitutional provisions on fundamental rights prevail; on the other hand, EU acts must be entrusted with their own functions, in accordance with the principle of attribution (Pollicino, 2010). This approach applies to the ECtHR: it has always considered it to be an unconstitutional source (although it is supra-legislative) and has not recognized it as binding.

Conclusions

Referring to the decisions of the European Court, the constitutional review body gives greater authority to its legal position and at the same time shows the coherence of the legal positions of the judicial authorities of the national and international legal systems. The analysis of the decisions of the Constitutional Court of Ukraine shows that the legal positions of the European Court of Human Rights are applied in conjunction with the norms of the ECHR and its Protocols. The Constitutional Court of Ukraine uses the decisions of the ECHR and the legal positions contained in them, primarily to confirm their own legal positions and as a means of specifying the provisions of national legislation in the field of protection and protection of human rights and freedoms. Constitutional courts have a very limited place in the practice of the Court. This does not mean that their role is insignificant, far from it. Whether someone is

thinking about cases involving the functioning of the political system or raising so-called social issues, areas where interests are often important.

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