PROBLEM ISSUES OF THE TRANSLATION OF JUDGMENTS OF THE EUROPEAN COURT OF HUMAN RIGHTS IN UKRAINE (LEGAL ASPECT)

Abstract

The purpose of the article is the comprehensive research of the legal aspect of the translation of judgments of the European Court of Human Rights (ECHR) in Ukraine and the justification of the specificity of such translation.

Scientific novelty is that the author carried out a thorough analysis of the legal aspect of the translation of judgments of the ECHR in Ukraine, which is poorly researched in legal science. It should be stated that there is a rather small number of scientific works devoted to the translation of judgments of the ECHR, and they do not fully reveal and solve problematic issues of the legal aspect of such translation.

Methodology consists of methods and techniques of scientific knowledge. In particular, the formal-logical method was applied to establish the essence of the concept of «official translation of judgments of the ECHR» and other related concepts. The methods of analysis and synthesis made it possible to reveal the logical structure of the main concepts, the construction of definitions and other theoretical constructions, and the comparative legal method – to compare the official and unofficial translations of judgments of the ECHR. The formal legal method was used to formulate definitions of concepts (in particular, «official translation of judgments of the ECHR»).

Conclusions. There are official and unofficial translations of judgments of the ECHR. The Ministry of Justice of Ukraine carries out the official translation of judgments of the ECHR in Ukraine, while other institutions (court secretariats, public associations, etc.) carry out the unofficial translation. Ukraine’s obligation to carry out only the official translation of judgments of the ECHR taken against Ukraine negatively affects the ability of both parties and judges who do not speak the original languages to successfully apply judgments of the ECHR as a source of law.

Solving the problem of establishing unimpeded access of judges to the case law of the ECHR is possible by regularly issuing directories in the Ukrainian language in paper and/or electronic form. In addition, in order to search for court judgments, each judge must have the skills to use the official electronic database of the ECHR – HUDOC.

Key words: legal translation, official translation, unofficial translation, judgment of the ECHR.
Анотація
Метою статті є всебічне дослідження правового аспекту перекладу рішень Європейського суду з прав людини (ЄСПЛ) в Україні та обґрунтування специфіки такого перекладу. Наукова новизна полягає в тому, що автором було здійснено грунтовний аналіз правового аспекту перекладу рішень ЄСПЛ в Україні, що є малодослідженням в юридичній науці. Слід констатувати, що наукових праць, присвячених перекладу рішень ЄСПЛ, є досить незначна кількість, і вони не повною мірою розкривають та вирішують проблеми питання правового аспекту такого перекладу.

Методологію дослідження становлять методи та прийоми наукового пізнання. Зокрема, формально-логічний метод було застосовано для встановлення сутності поняття «офіційний переклад рішення ЄСПЛ» та інших суміжних понять. Методи аналізу та синтезу дозволили визначити логічну структуру основних понять, конструювання визначень та інших теоретичних побудов, а порівняльно-правовий метод – зіставити офіційний та неофіційний переклади рішення ЄСПЛ. Формально-юридичний метод застосовано для формулювання дефініцій понять (зокрема, «офіційний переклад рішення ЄСПЛ»).

Висновки. Існують офіційний і неофіційний переклади рішення ЄСПЛ. Офіційний переклад рішення ЄСПЛ щодо України здійснює Міністерство юстиції України, а неофіційний – інші інституції (кабінети судів, громадські об’єднання тощо). Зобов’язання України здійснювати лише офіційний переклад рішення ЄСПЛ, ухвалених проти України, негативно впливає на можливість як учасників судового процесу, так і суддів, які не володіють мовами оригіналу, успішно застосовувати рішення ЄСПЛ як джерело права.

Роз’яснювання проблеми з налагоджень безперешкодного доступу суддів до практики ЄСПЛ можливе шляхом регулярного випуску довідників українською мовою в паперовому та/або електронному вигляді. Крім того, для пошуку судових рішень кожен суддя повинен володіти навичками користування офіційною електронною базою ЄСПЛ – HUGOS.

Ключові слова: юридичний переклад, офіційний переклад, неофіційний переклад, рішення ЄСПЛ.

Introduction. The issue of interlingual communication in the field of law became especially relevant under the influence of globalization processes in the world and in the process of adapting Ukrainian legislation to the requirements of European law. In the 20th century, the issue of human rights protection gained particular importance. The most important judicial institution, which is designed to protect human rights and freedoms now, is the European Court of Human Rights (hereinafter referred to as the ECHR) or the Strasbourg Court. According to statistical data, Ukraine occupies one of the first places in terms of the number of appeals by citizens for the protection of their rights to ECHR.

Judgments issued by ECHR against Ukraine, which indicate violations by the state of the rights defined by the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as the Convention), are subject to mandatory translation into Ukrainian. The Law of Ukraine «On Enforcement of judgments and Application of the Case Law of the European Court of Human Rights» of February 23, 2006, № 3477-IV regulates the issue of such official translation [1].

It is known that legal translation is considered one of the most difficult types of translation. Within the framework of this scientific research, the object of legal translation is the judgments of the ECHR – a separate link of judicial discourse.

The purpose of the article is the comprehensive research of the legal aspects of the translation of judgments of the ECHR in Ukraine and the justification of the specificity of such translation. The realization of the set goal involves the fulfillment of a number of tasks: to determine the place of judgments of the ECHR in the system of objects of legal translation; to research the official and unofficial translations
of judgments of the ECHR available in Ukraine; to analyze problematic procedural issues that exist in the translation activity of judgments of the ECHR, as well as the application of the case law of the ECHR as a source of law in Ukraine.


However, the field of legal translation of judgments of the ECHR remains understudied. The legal aspects of the translation of such judgments in Ukraine remain incompletely disclosed. In particular, we are talking about unresolved problematic procedural issues that exist in translation activities. The above determines the relevance of this scientific research.

**Main part.** The European Convention of Human Rights, and its controlling system (The European Court of Human Rights, The Committee of Ministers of the Council of Europe) is considered as the most significant and most effective regional system of the protection of human rights, as compared with other human rights regional systems. It involves a supranational mechanism, which enables the individuals to achieve their right on the international level. This mechanism of individual applications should overcome the discrepancy between the goals of international protection of human rights and execution of human rights norms at the state and local level. Successful and fast implementation of its judgments on the national level is of great importance for the Court, because the credibility and legitimacy of this system of protection depends on it [2, p. 104].

The European Court of Human Rights oversees the implementation of the Convention [3] in the member states. Individuals can bring complaints of human rights violations to the Strasbourg Court once all possibilities of appeal have been exhausted in the member state concerned [4].

It is known that Ukrainian courts, in accordance with Article 17 of the Law of Ukraine «On Enforcement of Judgments and Application of the Case Law of the European Court of Human Rights» of February 23, 2006, № 3477-IV, apply the Convention and the case law of the ECHR as a source of law [1].

It is worth noting that the issue of applying to the ECHR became especially relevant during the large-scale Russian invasion of Ukraine in 2022. It is known that the ECHR is addressed in cases of the person against the state (regarding compliance with the human rights convention), or it may be conflicts between states. The ECHR cannot prosecute criminals directly. However, the ECHR can establish the violation of human rights and award compensation for moral and material damage.

In accordance with Article 18 of the aforementioned Law, the courts, referring in their activities to judgments of the ECHR, use the translations of the texts of these judgments, printed in the edition provided for in Article 6 of this Law. In the absence of a translation of the judgment of the ECHR, the court uses the original text. In the case of a linguistic discrepancy between the translation and the original text, the court uses the original text. In the case of a linguistic discrepancy between the original texts and/or in the case of the need for a linguistic interpretation of the original text, the appropriate case law of ECHR is used [1].

Article 6 of the Law of Ukraine «On Enforcement of Judgments and Application of the Case Law of the European Court of Human Rights» stipulates that, in order to implement measures of a general nature, the state ensures the translation and publication of the full texts of the judgments in Ukrainian by a legal publication specialized in the case law of the Court, which is distributed in the professional environment lawyers. The authenticity of the translation of the full texts of the judgments is certified by the Representation Body (stamped «Authentic»). The determination of the publication that will translate and publish the full texts of the judgments, as well as the order of the necessary number of copies of the publication in order to provide courts, prosecutor’s offices, justice, internal affairs, security services, penal institutions, and other interested entities are conducted on a competitive basis by the Representation Body. Providing judges with a published translation of the full text of the judgments is entrusted to the state body responsible for the organizational and material support of the courts [1].
The official electronic database of ECHR – HUDOC contains judgments in two official languages of the Council of Europe – English and/or French (only key, high-level judgments are executed in both languages, which is about 10% of the judicial practice).

Multilingual law in its most radical form is usually credited to the language regime of EU law. However, if one broadens one understands of multilingual law, the legal linguistic landscape of the European Convention on Human Rights and the European Court of Human Rights is extreme. Although the Convention text and the judgments of the Court exist only in two official languages (compared with – the impressive – 24 official languages of the European Union), the real number of languages involved in the making and shaping of European Human Rights law is much higher. The domestic legal orders of the 47 Member States of the Council of Europe operate in their own national languages when applying and interpreting the Convention and the judgments of the Court. Thus, it can be argued that the actual number of languages of European Human Rights law is 36 rather than only two (some languages are spoken in more than one Member State, e.g. English, French, German, Greek, Italian, Romanian, Spanish, and Turkish; hence the difference in the number of Member States and the number of languages) [5, p. 4].

Since 1995, Ukraine, as a member of the Council of Europe, carries out the official translation of only those judgments of the ECHR that have been adopted in relation to Ukraine. The Ministry of Justice of Ukraine is directly engaged in such translation as the main body in the system of central executive bodies, which ensures the formation and implementation of state legal policy, and state policy on the organization of enforcement of court judgments. On the official website of the specified department (https://minjust.gov.ua) the judgments of the ECHR, adopted regarding Ukraine, are posted. It should be noted that the Ministry of Justice of Ukraine does not translate all judgments of the ECHR regarding Ukraine, but only those in which the Court sees a violation of the Convention.

There is no definition of the concept of «official translation» in relation to judgments of the ECHR in the current legislation. However, in the Procedure for Official Translation of Multilateral International Treaties of Ukraine into the Ukrainian Language of March 17, 2006, No 353, it is determined that the concept «official translation» means an authentic presentation in Ukrainian of a multilateral international treaty of Ukraine drawn up in a language other than Ukrainian [6].

Therefore, the official translation of judgments of the ECHR means that the translated text must be authentic to the original language (English/French), as well as formal, that is, certified by a state-authorized body.

Analyzing the competence of the Ministry of Justice of Ukraine it was established that it is empowered to officially publish normative legal acts, current international treaties of Ukraine, the judgments of the European Court of Human Rights regarding Ukraine in the information bulletin «Official Gazette of Ukraine» [7]. Although, contrary to the above provision, as practice shows, not all judgments of the ECHR regarding Ukraine translated into Ukrainian are published in the «Official Gazette of Ukraine».

In addition, the HUDOC database can host not only official but also unofficial translations of judgments of the ECHR into Ukrainian, made by other institutions. However, the ECHR Secretariat does not check their accuracy or linguistic quality, these translations are published for informational purposes only, and the Court is not responsible for their quality or content. Moreover, several unofficial translations into the same language of individual court judgments may appear.

In Ukraine, the official translation is provided only for judgments in cases against Ukraine, which is logical. Firstly, the accuracy of the reproduction of the circumstances of the case, proper names, quotations from procedural documents, etc., can be ensured by the Ministry of Justice of Ukraine on the basis of original documents only in «Ukrainian» cases. Secondly, the translation of the operative part of the judgment performs the function of an executive document for the payment of just satisfaction awarded by the ECHR. And the translation of the judgment as a whole is used for the state to take measures of both a general and individual nature. In the context of the latter, the official translation is especially important for review by the Supreme Court of the case under exceptional circumstances in connection with the finding of a violation of the Convention [8, p. 410].

The ECHR faced challenges from the Member States in the early 2000s. It is
argued that the choice of language policy and considerations regarding translation into the national languages of the Member States indicate the institutional balance that exists at any given time in the interface between the national and European level of Human Rights law [5, p.2].

About the project «Bringing the Convention Closer to Home» (2012–2016). In 2012, the Court launched the project ‘Bringing Convention standards closer to home’ with the financial support from the Human Rights Trust Fund (HRTF). As explained above the HRTF was a private initiative established in 2008 by Norway, the Council of Europe, and the Council of Europe Development Bank. Later, Germany, the Netherlands, Finland, Switzerland and the United Kingdom also joined.

Unless otherwise indicated, translations into non-official languages are not produced by the Registry of the Court and the Registry does not check their accuracy or linguistic quality. These translations are published in HUDOC for information purposes only and the Court accepts no responsibility for their quality or content. Multiple translations into the same language of individual judgments or decisions may appear.

A critical component of the translation programme was the four-year project for translating key case law – mainly the leading cases selected by the Court’s Bureau – into twelve target languages spoken in Member States with weak democratic traditions. The Member States in question were: Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Georgia, the Republic of Moldova, Montenegro, Serbia, «The former Yugoslav Republic of Macedonia» (now North Macedonia), Turkey and Ukraine, all of which are either former Soviet republics or Balkan countries [5, p. 18–19].

First, the above-mentioned target states of the «Bringing the Convention Closer to Home» project have obviously benefited from the translations funded by the HRTF, though some much more than others (notably Turkey, Moldova, and Ukraine) [5, p. 20].

The «Bringing the Convention Closer to Home» – project formally ended in 2016. In its 2016 Annual Report, the Court estimated that the total funding of the project amounted to EUR 1.6 million, with the HRTF contributing a significant EUR 1,340,000. The Court once again stressed the need for Member States to take on more responsibility to translate its case law into nonofficial languages, at the same time referring to the budgetary constraints on the Court. As the Council of Europe member States concluded already at the very first Conference on the future of the Court (at Interlaken), it is first and foremost the responsibility of the State Parties to guarantee the application and implementation of the Convention [5, p. 21].

Thus, in Ukraine, there is the authentic translation of judgments of the ECHR regarding Ukraine. However, there is no clear mechanism for the application of judgments of ECHR by national courts in relation to other states. According to the law, in the absence of Ukrainian translation, judges must use the original text of judgments. In this case, there is an indirect obligation of the judicial system of Ukraine to use the original tests of judgments of the ECHR in English/French. However, not every judge has the necessary knowledge of foreign languages to understand such legal texts. This problem is partially solved by the operation of special divisions in the secretariats of the judicial bodies of the state (e.g., the Supreme Court of Ukraine, the Constitutional Court of Ukraine) and other institutions (the Office of the Council of Europe in Ukraine, public associations – bar associations, etc.) to translate judgments of the ECHR.

One should agree with the opinion of O. Havrylyuk, Ukrainian judges often do not consider this practice of arguing their position precisely because of the lack of official translation of such judgments even if the party or his representative speaks English and/or French and tries to justify his position by referring to the case law of the ECHR. In addition, in many cases of application of the case law of the Court with the artificial transfer of concepts of the Anglo-Saxon legal system, interpreted in cases against the respective countries, may be completely inapplicable in the countries of the continental legal system and vice versa. In this connection, there is a need to develop and implementation of the mechanism of provision and guarantee of standards by the state, thanks to which it will be the possible implementation of effective protection of convention rights [9, p. 234].

More effective application of the case law of the ECHR by Ukrainian courts is possible only when the problem of establishing
 unhindered access of judges to such practice will be solved. This can be ensured, for example, by regular production of directories in the Ukrainian language in paper and/or electronic form [10, p. 38].

It should be emphasized that the text of judgments of the ECHR is an official written document, which is clearly distinguished by the social conditioning of the use of linguistic means and the presence of a complex structural composition. This document can be considered one of the most important in the framework of judicial discourse because it is the result of the work of all participants in pre-trial and judicial proceedings [11, p. 116]. The quality of the translation of such court judgments mostly depends on the level of the translator’s qualifications. Translators-linguists must understand the relevant field – It is about the specifics of legal terminology, and even better – to have a legal education. Achieving high quality, identity, and adequacy of the translation is the primary task of the translator [12, p. 80–81]. The question of creating a really high-quality translation is undoubtedly quite important because the case law of the ECHR is used in their activities by Ukrainian judges who decide people’s fates.

One of the main tasks of the translator is to create an adequate translation of the text of the judgment of the ECHR by reproducing the unity of the content and form of the original by means of the Ukrainian language. An adequate translation takes into account both substantive and pragmatic equivalence, without violating any norms, is accurate, and without any unacceptable distortions [13, p. 177].

After the Russian Federation’s large-scale invasion of Ukraine on February 24, 2022, the issue of human rights protection in Ukraine has become more urgent. War leads to incredibly terrible consequences – deaths, injuries, material and moral damages. We are convinced that the prospects for the research of the issues under consideration should be the translation of judgments of the ECHR against Russia into the Ukrainian language, which will relate to the Russian-Ukrainian war. It will be very important to research the translations of judgments of the ECHR regarding the human right to life, which is the core of humanity [14, p. 349]. In particular, the following judgments of the ECHR are relevant on issues related to the human right to life: Case of Lambert and others v. France of 5 June 2015 [15], Case Hristov and others v. Bulgaria of 13 November 2012 [16], Case G. N. and others v. Italy of 1 December 2009 [17].

Conclusions. The main regulatory legal act that regulates relations related to the translation of judgments of the ECHR in Ukraine is the Law of Ukraine «On Enforcement of Judgments and Application of the Case Law of the European Court of Human Rights» of February 23, 2006, № 3477-IV. According to it, Ukrainian courts apply the Convention and the case law of the ECHR as a source of law when considering cases. However, in practice, the issue of acquainting judges with judgments of the ECHR in the original language remains incompletely resolved, as not every judge has the required level of knowledge of English and/or French. Therefore, a more effective application of the case law of the ECHR by Ukrainian courts is possible only when the problem of establishing unimpeded access of judges to such practice is resolved. This can be ensured, for example, through the regular production of directories in the Ukrainian language in paper and/or electronic form. Despite the fact that in order to search for court judgments, every judge must have the skills to use the official electronic database of the ECHR – HUDOC.

In accordance with the legislation of Ukraine, the Ministry of Justice of Ukraine carries out the official translation of judgments of the ECHR regarding Ukraine. The unofficial translation is carried out by other institutions (court secretariats, public associations, etc.).

In order to achieve a high-quality authentic translation, the translator must have not only linguistic knowledge and experience in translation but also understand legal terminology. In this case, the best option for the translator would be to have a legal education. After all, as you know, legal translation, in particular judgments of the ECHR, is considered one of the most difficult types of translation, and in this case, any distortions of terminology are unacceptable.

Thus, the obligation of Ukraine to carry out only the official translation of the judgments of the ECHR, adopted against Ukraine, negatively affects the possibility of participants in court proceedings and judges who do not speak the original languages of the ECHR’s judgments successfully applying the practice of the ECHR.
The prospects for the research should be the translation of judgments of the ECHR against Russia into the Ukrainian language, which will relate to the Russian-Ukrainian war (on issues related to the human rights).

References:


Список використаних джерел:
1. Про виконання рішен та застосування практики Європейського суду з прав людини : Закон України від 23 лютого 2006 р.
ПРАВО


Стаття надійшла до редакції 18 червня 2022 р.