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TOPICAL ISSUES OF THE IMPACT OF AUSTERITY MEASURES ON HUMAN RIGHTS: THE CASE OF EUROPE

Abstract. The article deals with the issue of the impact of austerity during the economic crisis in the state on the observance of human rights on the example of European countries. The authors briefly analyze the concept of austerity and austerity measures. Three main types of austerity measures are examined. The key international documents and recommendations of international organizations on the impact of the economic crisis on the protection of human rights and the practice of the European Court of Human Rights on this issue are analyzed. In particular, the *N.K.M. v. Hungary* case (judgment of 14 May 2013), *Mamatas and Others v. Greece* case (judgment of 21 July 2016). It has been shown that in considering this category of cases, the European Court of Human Rights thoroughly analyzes all circumstances and facts when making judgments regarding the violation of certain articles of the European Convention on Human Rights in the course of the application of measures by the states of austerity. Recommendations on the implementation of necessary measures to overcome the crisis and the simultaneous observance of human rights and freedoms, especially economic and social ones, are necessary to maintain the dignified existence of the population in the state. The authors emphasize the need to define the universal guidelines that states should take into account when introducing austerity measures. Such principle should include *inter alia* taking into account the peculiarities of economic situation preceding from the austerity measures; the timeliness of the measures taken; their effectiveness and efficiency; measures should be as universal as possible, should not create conditions for discrimination; measures should be as proportional as possible in relation to human rights; there should be public control over the introduction of austerity measures. The author suggests to attach special attention to institutional guarantees of human rights, to increase the scope of the powers of the ombudsman and to strengthen judicial protection of human rights in the context of the implementation of the austerity policy.

Keywords: austerity, austerity measures, European court on human rights, human rights, social state, state policy.

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АКТУАЛЬНІ ПИТАННЯ ВПЛИВУ ЗАХОДІВ «СУВОРОЇ ЕКОНОМІЇ» НА ПРАВА ЛЮДИНИ: ДОСВІД ЄВРОПИ

Анотація. Розкрито питання впливу заходів режиму «суворої економії» під час економічної кризи в державі на дотримання прав людини на прикладі країн Європи. Автори коротко аналізують поняття «суворої економії», зміст заходів «жорсткої економії». Розкрито три основні типи заходів суворої економії. Проаналізовані основні міжнародні документи і рекомендації міжнародних організацій про вплив економічної кризи на захист прав людини, а також практика Європейського суду з прав людини з цього питання. Зокрема, справа *N.K.M. v. Hungary* (рішення від 14 травня 2013 р.), справа *Mamatatas and Others v. Greece* (рішення від 21 липня 2016 р.). Доведено, що при розгляді цієї категорії справ Європейський Суд з прав людини уважно аналізує всі обставини і факти при винесенні рішень стосовно порушення тих чи інших статей Європейської конвенції з прав людини в ході застосування державами заходів «суворої економії». Вироблено рекомендації стосовно запровадження необхідних для подолання кризи заходів та одночасного дотримання прав та свобод людини, особливо економічних і соціальних, потрібних для підтримки гідного існування населення в державі. Автори акцентують увагу на доцільності визначення універсальних керівних принципів, які держави повинні враховувати при введенні заходів «жорсткої економії». До таких принципів автори відносять: урахування особливості економічних явищ, що передують застосуванню таких засобів; тимчасовість ужитих заходів, їхня розумність та ефективність; заходи мають бути якомога більш універсально спрямованими, не повинні створювати умови для дискримінації; заходи мають бути максимально пропорційними щодо прав людини; громадський контроль за введенням заходів «жорсткої економії». Пропонується особливу увагу приділяти інституційним гарантіям прав людини, збільшити коло повноважень омбудсмена і посилити судовий захист щодо дотримання прав людини за умов запровадження політики «суворої економії».

Ключові слова: «сувора економія», заходи «жорсткої економії», Європейський суд із прав людини, права людини, соціальна держава, державна політика.

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АКТУАЛЬНЫЕ ВОПРОСЫ ВЛИЯНИЯ МЕР «СТРОГОЙ ЭКОНОМИИ» НА ПРАВА ЧЕЛОВЕКА: ОПЫТ ЕВРОПЫ

Аннотация. Раскрыты вопросы влияния мер режима «строгой экономии» во время экономического кризиса в государстве на соблюдение прав человека на примере Европы. Автор кратко анализирует понятие «строгой, или жесткой, экономии», а также обращается к практике Европейского суда по правам человека в этом узком вопросе. Выработаны рекомендации по внедрению необходимых для преодоления кризиса мер и одновременного соблюдения прав и свобод человека, необходимых для поддержания достойного существования населения в государстве.

Ключевые слова: «строгая экономия», Европейский суд по правам человека, права человека, государственная политика.

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“People’s rights are ... threatened by the impact of the economic crisis and growing inequalities. ... European societies have suffered the effects of the recent economic crisis, which has deeply affected social cohesion in many member States, and which may eventually threaten both the rule of law and democracy¹.”

Thorbjørn Jagland [1].

Introduction. The global economic downturn that began in 2008 left many governments without sufficient tax revenues and revealed that, according to some, what could be defined as an unstable level of spending. Several European states, including the United Kingdom, Greece and Spain, were forced to introduce austerity policy as a way to partially solve the budget problems. The result of such measures (see below) is directly felt by the population of these and other countries, which, in particular, may be evidenced by such an interesting fact as the editorial office of the Merriam-Webster publishing house has chosen "The Word of 2010" the noun austerity (English – "strict economy ", " self-restraint "). Lexicographic project experts traditionally base their choice on the number of English user requests to Merriam-Webster.com according to one or another word. Accordingly, it seems relevant to analyze this phenomenon and consider the peculiarities of the impact of such a policy on the state of human rights.

Analysis of research and problem statement. In the study, the authors refer to the experience of European countries in implementing the policy of "severe economy" in terms of the impact on human rights, respectively, the main source of service was the practice of the European Court of Human Rights, the work of the Council of Europe, reports and recommendations of the Steering Committee on Human Rights, official positions on this issue of the European Court of Human Rights and the UN Human Rights Committee.

Research results. "Strict economy" is defined as a set of measures of economic policy, which the government can use to control the state sector debt. Austerity measures are a response to a government whose state debt is so large that the risk of default or failure to service the required payments on its debt obligations becomes a real opportunity. The default risk can quickly get out of control; to the extent that the individual, company or country's debt continues to increase, lenders increase the level of return on future loans, making it difficult for the borrower to raise capital [3].

"Rigorous savings" becomes almost mandatory during the global recession in Europe, where members of the Eurozone are not able to solve the problems associated with increasing debt through the printing of their own currency. Therefore, since their risk of default has increased, lenders are putting pressure on certain European countries to aggressively address issues with costs.

In general, there are three main types of "hard economy" measures:

- The first is revenue-generating (higher taxes), and it often even includes the possibility of maintaining higher government spending. The goal is to stimulate growth through expense and benefit from taxation.

- The second one is sometimes called the model of Angela Merkel, named after the Chancellor of Germany. It consists in focusing on raising taxes, while reducing non-essential state functions.

- The third involves reducing taxes and reducing public spending. This method is expected to be the best method in favor of free market supporters.

Rigid savings occur only when the gap between government revenues and state spending is shrinking. The only reduction in public spending is unlikely to fully implement the measures of austerity [4].

One of the opponents of such policy, Mark Blight gives his own interpretation of this phenomenon: "Austerity are a form of voluntary deflation, in which the economy is adjusted through lower wages, prices and government spending to restore competitiveness, which (supposedly) [our definition is O.V. ., O.L] is best achieved by reducing the state budget, debt and

¹ «Правам людей... загрожує вплив економічної кризи та зростаючої нерівності. ... Європейські суспільства постраждали від наслідків недавньої економічної кризи, яка суттєво вплинула на соціальну згуртованість у багатьох державах-членах і може поставити під загрозу як верховенство права, так і демократію».

deficit "[5, p. 2]. Among the advantages, the supporters of the regime of austerity argue that every dollar from increasing public spending should correspond to one dollar reduction in private spending. Jobs created at the expense of incentives are offset by jobs lost as a result of lowering private spending; roads can be built instead of factories, but fiscal incentives can not help build both those and the same time [6]. Indeed, we can say that automatic stabilizers are very useful in an economic downturn, as they support demand. A recession means that the private sector (individuals and companies) is trying to cut costs. At the same time, this may seem like the right decision at the individual level, but at the general level it can have a negative impact. The general demand falls and that puts the private sector in a worse position. State spending can mitigate the impact.

Nevertheless, in the absence of an unambiguous approach, as far as optimal and useful as a result of such measures are concerned, many governments in Europe that impose stringent measures sometimes forget about their human rights obligations, especially social and economic rights and freedoms of the most vulnerable populations, in particular, the need to ensure access to justice and the right to equality before the law. Moreover, international lenders also neglect human rights considerations in many of their aid programs [7]. Thus, a separate item on human rights was introduced on the agenda of regional and international human rights protection institutions in the context of the introduction of a policy of "strict economy". The said also became the subject of a study of leading international organizations, including the Council of Europe, which presented in 2013 the first important research paper on the impact of the economic crisis on human rights – "Safeguarding human rights in times of economic crisis" [8, p. 8].

At the same time, it is interesting to note that some domestic researchers analyze this phenomenon in the wider political-social context. Thus, O. Kharchenko argues that there is a genetic link between "hard economy" measures and the "policy of reducing" the social state, arguing that such measures lead to crisis phenomena in the state, as well as deepen socio-economic and political contradictions. As a result, there is political, government and socio-economic instability, which testify to the inability of the social state to perform its functions [9, p. 1].

In part, we agree with the aforementioned author on the emergence of social crisis phenomena, it seems important to turn to the practice of the European Court of Human Rights (ECHR or the Court), which has already made several key decisions in this area. At the same time, the fact of appealing to the Court on this line in itself indicates that the state should take more into account the aspect of observance of human rights in the implementation of its own "strict economy" policy, since a number of applicants in the European Court of Human Rights rely on the European Convention on Human Rights, which challenges the measures taken by the States parties in response to the economic crisis. These statements are, as a rule, based on Article 1 (property protection) of Protocol No. 1 to the Convention, which recognizes that the State has the right "to bring into force such laws as it considers necessary to exercise control over the use of property in accordance with the general interests or to secure the payment of taxes or other fees or fines" [10, p. 1]. The applicants also rely on some other provisions of the Convention.

Thus, one of the first important decisions of the ECHR on this issue is the case of *N.K.M. v. Hungary* (decision of May 14, 2013) [11]. This case concerned a civil servant who complained, in particular, that the imposition of a 98-percent tax on part of his retirement assistance under the legislation which came into force ten weeks before his dismissal constituted unjustified deprivation of property without any legal remedy. The court found that there had been a violation of Article 1 of Protocol No. 1. The court found also that the funds used were disproportionate to the legitimate aim of protecting the state treasury against excessive payment of retirement age. The applicant also did not have a transition period to adapt to the new scheme of payouts. Moreover, by depriving the acquired rights, which served a particular social interest in the reintegration of the labor market, the Hungarian authorities burdened the applicant with an excessive individual burden.

Unlike the above, another matter is *Mamatas and Others v. Greece* (decision of July 21, 2016) [12] (concerning the compulsory participation of applicants who are private individuals with Greek government bonds in reducing the public debt of Greece by exchanging their bonds for other debt instruments of a lower value) was marked by a lack of violations of the articles challenged by the applicants. In particular, the applicants complained that the exchange of their bonds, required by

Law No. 4050/2012 on the rules for making changes to government securities or guarantee securities, was de facto expropriation that deprived them of their property or, alternatively, interfered with their right to respect for their property. Some applicants also complained that they were discriminating against other lenders, in particular, major lenders with bonds of a total value of several billion euros.

Nevertheless, the Court ruled that there had been no violation of Article 1 of Protocol No. 1. He noted in particular that this involuntary involvement led to interference with the applicants' right to respect for their property in the light of Article 1 of Protocol No. 1. However, this intervention served the public interest, that is, the preservation of economic stability and the restructuring of public debt, at a time when Greece faces a serious economic crisis.

Thus, the Court held that the applicants did not suffer any particular or excessive burden, in particular in the wider discretion of the State in this area and the reduction of the commercial value of bonds that have already suffered from a reduction in the solvency of the state that would probably have been unable to fulfill its obligations under the articles included in the old bonds, before the entry into force of the new law. The court also considered that the provisions on collective action and the restructuring of public debt were a proper and necessary means of reducing public debt and saving to keep the state from bankruptcy, and that investing in bonds was never a risky business and applicants should have been aware of the particularities and "minuses" of the financial market and of the risk of a possible fall in the value of their bonds, taking into account the deficit of Greece and the country's high debt even before the crisis of 2009. The Court also found that there had been no violation of Article 14 (prohibition of discrimination) of the Convention in conjunction with Article 1 of Protocol No. 1 in the applicants case, on the basis that the procedure for the exchange of bonds was not discriminatory, in particular because of the complexity of placing bonds on such an unstable market, the difficulty of establishing precise criteria for the differentiation of bondholders, the risk of a threat to the entire operation, with catastrophic consequences for the economy and the need for rapid response to debt restructuring.

Thus, it can be said that the Court carefully analyzes all circumstances and facts when making decisions regarding the violation of certain articles in the course of states' application of "strict economy" measures.

Despite the fact that these decisions indicate that the Court does not always see the violator of fundamental rights and freedoms in the state, it has a clear position on this issue as a whole. So, in his welcoming speech at the seminar "Observance of the European Convention on Human Rights during the economic crisis" in January 2013, Mr. Dean Schpilmann, then the President of the European Court of Human Rights, expressed the following opinion: "I must say that those who are most affected by the crisis, are vulnerable, for example, prisoners (and in difficult times for the economy it is really difficult to bear high charges for the detention of prisoners), migrants who are not waiting for open arms, pensioners who receive lower pensions are exactly those categories of persons that our court must defend in many of its affairs" [13, c. 5].

The problems generated by the policy of "severe economy" are being addressed by states and international organizations at the international and regional levels (for the purpose of this study, the authors have focused on the European region). It is worth highlighting, in particular, the so-called "Turin Process" aimed at "strengthening the normative framework of the European Charter of Human Rights within the framework of the Council of Europe and its links with the legislation of the European Union", as it follows from at least the above-mentioned Court practice – often standards on human rights do not coincide with the standards of the European Union. The purpose of this process is to improve the implementation of fundamental social and economic rights, along with the natural and political rights enshrined in the European Convention on Human Rights, at the continental level [14].

Taking into account the peculiarities of economic phenomena preceding the use of such means, as well as the principles that we believe should accompany such remedies, the practice of the ECHR and the recommendations of international organizations, it is possible to distinguish certain universal guidelines that states may take into account despite that they have a wide range of powers on their own economic policy.

Thus, when introducing a policy of "strict economy" it is necessary to take into account the following:

1. The need for the objective need to introduce such measures, generated by the dominant interest of the state.

2. Measures of "severe economy" should be temporary, reasonable, and effective (in fact, as much as possible «thought over» by the state and accordingly disclosed. All citizens should be properly informed about them and have enough time to adapt to them.

3. In all circumstances, discrimination based on any grounds should be avoided. At the same time, in our opinion, the economic crisis and the accompanying measures of the state can create a favorable atmosphere for discrimination on various grounds, such as gender (for example, the Parliamentary Assembly adopted resolutions 1719 (2010) and 1911 (2010) on "Women and the Economic and financial crisis, in which it noted that economic crises have a worse impact on women than men), race (cases of refugees, migrants, especially from the East), etc. Measures should be as universal as possible.

4. Measures should be as proportional as possible to the promotion of human rights. In fact, the balance should include the effectiveness, duration and public interest of such measures - on the one hand, and important human rights such as property rights, the right to respect the private life, and the right to a fair trial on the other.

5. It would be desirable to engage the general public and all interested people as well as those who are potentially most exposed to such "severe savings" measures to discuss and make such decisions.

In the context of the interaction of States with the population in the implementation of such special measures, particular attention should be paid to the activities and contributions of national human rights bodies, such as ombudsmen, human rights commissions, security institutions equal rights and so on. As the independent human rights defenders and the principle of equality, such bodies have enormous potential to ensure compliance with relevant human rights structures, with the means of responding to the crisis and protection; tracking discriminatory measures that lead to inequality. They can take an active part in assessing policies and budgets in line with human rights standards, and create platforms for dialogue and discussion of tight austerity measures with the participation of civil society and government. Due to the simplified procedure for applying to such bodies, they can consider complaints and protect people from violations of their rights as a result of "severe savings" measures. The authors consider it desirable, under all circumstances, that the government should do everything possible to increase the effectiveness and independence of the activities of such structures, to give them a key role in ensuring human rights during the economic crisis [8, c. 8–15].

Conclusions. The economic crisis is the stage of testing the state and its population for strength. Despite the need to introduce "strict economy" measures, in order to overcome the crisis, the government should not neglect people's rights.

The authors insist on the need to intensify the European social model based on the principles of human dignity, humanity, inter-sectoral solidarity and access to justice for all, even in times of crisis. Governments should take care that the severity of the measures does not obscure the future for both young people and other categories of people. Effective access to justice for all should be guaranteed during the economic crisis by supporting the judicial system and the legal aid system. In addition, governments should systematically evaluate the impact of such factors on human rights and equality, social and economic policies, state and local budgets, especially on vulnerable groups. Also, when developing the necessary measures as the only alternative to overcoming a serious economic crisis, states must adhere to the principles of proportionality, non-discrimination, transparency and broad public involvement in decision-making.

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