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Protection of Personal Non-Property Rights of Spouses in the Practice of the European Court of Human Rights

Volodymyr Vatrás^{1,*}, Oleg Oksaniuk², Serhii Sabluk³, Roman Havrik⁴ and Zhanna Vasyliieva-Shalamova⁵

¹Doctor of Legal Science, Professor, Department of Civil Law and Process, Leonid Yuzkov Khmelnytskyi University of Management and Law, Khmelnytskyi, Ukraine.

²Candidate of Juridical Sciences, Advocate, Khmelnytskyi, Ukraine.

³Doctor of Science of Law, Law Professor, Vinnytskyi Citi Court of Vinnytsia Oblast, Vinnytsia, Ukraine.

⁴Candidate of Legal Science, Professor, Department of Constitutional, Administrative and Financial Law, Leonid Yuzkov Khmelnytskyi University of Management and Law, Khmelnytskyi, Ukraine.

⁵PhD in Law, Associate Professor, Educational and Scientific Institute of Law, Department of Civil Procedure, Taras Shevchenko National University of Kyiv, Kyiv, Ukraine.

Corresponding authors: (e-mail: vatrasy@gmail.com).

Abstract The protection of personal non-property rights is essential for the state since it demonstrates the ability to protect the rights and interests of a person. The study on the protection of spouses' non-property rights is based on the guarantee to married persons of their inalienable right to parenthood, which they may acquire while married, the right to personal development of spouses, to prohibition of discrimination against each other, to respect for their honor and dignity, to engage in certain activities which affect development and bring pleasure. The relevance of studying this issue is linked to the need to protect these rights in the international human rights body - the ECHR. The latter guarantees a person's rights and freedoms and helps restore the violated right that arose in local courts in the process of hearing cases and rendering decisions. This article aims to study the peculiarities of the non-property rights of spouses in the case law of the European Court of Human Rights. Results. Every state must guarantee security and stability for its citizens and protect them from various encroachments on their rights and freedoms. The issue of preserving the non-property rights of spouses is one of the main issues of family law that is under protection. However, while living together, spouses may occasionally encounter cases that must be resolved. If they cannot reach a consensus themselves, they turn to the courts to protect and restore their violated rights. The legislation of each state has its own specifics. Therefore, the resolution of issues related to the protection of personal non-property rights is a separate and essential category of family law cases that requires a thorough study and immediate resolution. The protection of non-property rights of spouses in Ukrainian and international courts has its own trial specifics. The ECHR, when considering certain categories of cases, identifies all the essential circumstances. The ECHR is guided by the Convention, which guarantees respect for private and family life. At the same time, the European Court of Human Rights recognizes human rights and human interests as the highest value. Following the Charter of the Council of Europe, each member of the European Council must acknowledge the rule of law and the principle that all persons under its jurisdiction enjoy fundamental human rights and freedoms. The article deals with the peculiarities of protecting spouses' non-property rights. The author determines which rights should be classified as "personal non-property" ones and how the rights of persons who have been violated are restored. The article analyzes the European practice of restoring violated non-property rights in certain situations related to the personal non-property rights of spouses. The author summarizes the importance of protecting personal non-property rights in Ukrainian courts and restoring the violated rights in the ECHR.

Index Terms spouses, marriage, personal non-property rights, ECHR, ways to protect family rights

I. Introduction

Marriage is the union of a man and a woman to create a family. The entry into marriage is the basis for the emergence of property and personal non-property rights, as well as obligations between spouses. The property rights of spouses arise from the joint use of jointly owned assets. Personal non-property rights of spouses are defined as relations regulated by family law regarding personal non-property benefits and interests of married persons. It is worth noting

that the personal non-property rights of spouses are a rather specific concept that requires a detailed analysis.

II. Literature Review

The issue of protecting the personal non-property rights of spouses in ECHR case law has not received enough attention. Currently, few studies would comprehensively and thoroughly cover this issue in modern legal doctrine. The current integration changes taking place in Ukraine necessitate the study

of this issue. Linyk [1] studies the personal non-property rights of persons living as a family without registering a marriage. The author compares the features of such a union with a registered marriage and determines which rights can be attributed to the personal non-property rights of spouses. He also points out the problems of recognizing the personal non-property rights of spouses in a registered and unregistered marriage.

When studying the issue of protecting the personal non-property rights of spouses in the ECHR case law, it is worth pointing out the study by [2]. The author reveals the peculiarities of the ECHR implementation in protecting family rights and interests in the context of law enforcement practice.

This study aims to describe the means of protecting the non-property rights of spouses in the ECHR practice.

The research methods are based on the integrated application of various methods of scientific knowledge. The historical and legal method reveals the peculiarities of the formation and development of legislation regulating marriage and family relations in Ukrainian and international practice. It shows the historical and cultural aspects that have significantly influenced the formation of legal norms. The method of comparative analysis makes it possible to clarify the peculiarities of legal regulation of personal non-property rights of spouses and the ways of their protection in international legal doctrine. The methods described above help to determine the content and peculiarities of protecting spouses' personal non-property rights in the ECHR case law.

III. Results

In Ukrainian legislation, personal non-property rights of spouses are regulated norms of family law relations arising between spouses regarding personal non-property goods and interests. It is worth noting that the Family Code of Ukraine does not contain grounds for the emergence of rights and obligations of spouses between an unregistered union of a man and a woman. The absence of such grounds in domestic legislation is not a reason for depriving such individuals of personal non-property rights established by the Constitution [1].

As correctly noted by [3], the basis of personal non-property rights and obligations are spiritual and non-material interests. This nuance is primarily reflected in the relationship between husband and wife. Meanwhile, in marriage, the personal non-property rights of spouses are determined by the specificity of family interests based on established moral values. Both elements complement the content of the non-property rights of spouses and manifest themselves in the process of their interaction and dispute resolution.

Following Article 32 of the Constitution of Ukraine, no one can interfere in personal and family life except in cases established by the Constitution of Ukraine: Law of Ukraine. Law no. 254K/96-BP of 28 June 1996. According to Part 2 of Article 26 of the Civil Code of Ukraine, individuals have all personal non-property rights established by the Constitution of Ukraine and other regulatory legal acts [4].

The need to study the features of protecting non-property rights is associated with the increase in the number of violations of personal integrity and psychological and moral needs related to non-material goods. Protecting the personal non-property rights of individuals forms a mandatory objective condition for the development of society as a whole, which is explained by the importance of the rights and goods of a person, a citizen [5].

The interpretation of the term "family life" depends on whether individuals are registered or lead a common household in an unregistered marriage. Chevychalova [6] points out that the term "family life" in Article 8 of the Convention is not always understood correctly. When considering a case, the ECHR does not always accurately determine the boundaries of positive and negative obligations arising from Article 8 of the Convention. At the same time, taking into account the specifics of the rights established by this article, when considering a specific case, it is necessary to determine and ensure a fair balance between the interests of a particular person and the interests of society, taking into account the interests of the state, not just the interests of the individual.

If, in Ukraine, the regulation of personal non-property rights of spouses has a civil-family character, then the regulation of personal non-property relations of spouses in EU countries is based on the principle of equality between men and women. Among the main non-property issues regulated by law are determining the place of residence, choosing the surname of the spouses, and participating in the resolution of the legal problems related to marital and family relations.

It is worth noting that EU legislation obliges spouses to decide all critical family and spiritual management issues jointly, requires them to live together, and freely choose each spouse's sphere of employment, occupation, profession, etc. However, the legislation of different European countries also contains other provisions regarding the personal non-property rights of husbands and wives. Some norms are more declarative, while others are characterized by family legal obligations, compliance with which is reinforced by certain sanctions or obliges the spouses to take certain actions. For example, some norms of European law obligate spouses to mutual fidelity. Failure to comply with this norm may be a reason for initiating divorce by the party who learned about the infidelity.

ECHR decisions are aimed at considering cases within its competence and taking measures aimed at eliminating violations committed by local courts during the consideration of cases and the issuance of decisions. The consideration of issues related to protecting the personal non-property rights of spouses constitutes a separate category of family cases. However, these issues should not be purely considered as family matters since, in this case, human personal rights are involved, which are not influenced by family relations.

The cases reviewed by the ECHR in the study contain examples of such relations. For example, when a husband believes that his parental rights are violated because the woman wants to have an abortion without his consent. In this case, it is necessary to clarify all the available circumstances and deter-

mine whether the pregnancy threatens the future mother's life and health. Considering this, the issue of protecting personal non-property rights should be approached comprehensively, carefully studying the evidence collected during the court proceedings by local courts.

Yurkevich and Dutko [7], classify personal non-property rights as those rights that ensure the natural existence of a person and are prioritized among others. These norms have a comprehensive nature as they contain elements of civil, family, labor, and medical law. Additionally, the institute of personal non-property rights contains norms that ensure the social existence of the individual, distinguish them from others, individualize them, and provide social value and significance in society. The characteristic features of personal non-property rights are their non-material content associated with the right of intellectual property. When examining the personal non-property rights of spouses, it is worth noting first of all that this institute has a particular specificity, which is determined in conjunction with the norms of family, civil, and some other branches of law. Ukraine's approximation to the EU allows for revealing the state's civilization level, where human rights and interests are of the highest value.

According to the Statute of the Council of Europe, each member of the Council of Europe must recognize the principle of the rule of law, as well as the principle according to which all persons under its jurisdiction enjoy the fundamental rights and freedoms of the individual [8]. Since marriage is a union of a man and a woman - two self-sufficient and individual persons, each of them has inherent non-material values and rights that determine the extent of their possible behavior in the course of life, in social and public life, the existence of which is ensured by an exhaustive list of complex means in case of violations.

Since personal non-property rights are inherent to every person, belong to them, and are inseparable and indivisible, the Family Code enshrines the following:

- personal non-property rights and duties of spouses;
- personal non-property rights and responsibilities of parents and children;
- personal non-property rights and duties of other family members.

Considering the aforementioned, the personal non-property rights of spouses should be regarded in the context of their relationship with the personal non-property rights of the individual as a whole, indivisible. Each of the types of personal non-property rights defined by the legislation affects the spiritual and social development of the spouses. Thus, the right to motherhood and fatherhood is one of spouses' inherent personal non-property rights. Essentially, it is the natural right of a person to become a parent of a child and to have rights and obligations regarding them. This right is under special protection, including judicial protection.

At present, the most effective way to protect human rights and freedoms is to appeal to the ECHR. It is worth emphasizing that in the process of appealing to the ECHR, one should proceed from the guarantee provided by Article 8

of the Convention on Respect for Private and Family Life (1950). According to R. Havrik's statement [9], the subject of consideration of the ECHR includes various cases of violations arising between spouses during their cohabitation, including those who are officially married and those who cohabit but are not registered according to the law. Some researchers define the practice of the ECHR consideration to include issues of protecting children's rights, including the right to education, human rights and fundamental freedoms, freedom of conscience, freedom of expression, cruel treatment of children, protection against discrimination, etc. [10].

Prominent legal researcher points out another type of family relations falling within the competence of the ECHR. These relations are based on registered marriage, equality of spouses, parental rights/maternal rights, etc. (2021). It is worth noting that international law protects the rights and interests of the child regardless of whether they are born within or outside of marriage. Until the 1970s, the birth of a child outside of marriage was considered a violation, and the rights of such a child were discriminated against.

For example, in the case [11], a woman gave birth to a child outside of marriage. Under Belgian law, maternity is automatically registered from the moment of the child's birth. Still, special recognition was required for a child born out of wedlock - a declarative act (which formally recognized the woman as the child's mother), which was submitted to the civil status registration authority. To acknowledge a woman as the mother of a child, the state is obliged to initiate an adoption procedure.

Seeking protection for her violated rights, the applicant argued that such a system of child rights registration and recognition of maternity significantly violates her rights as defined by Article 8 and Article 14 of the Convention. After examining all the circumstances of the case, the ECHR established that the state must establish rules so that citizens can lead everyday family lives. In the opinion of the Court, the state must establish guarantees that would facilitate the integration of the child into the family from birth. At the same time, the state's goal is to create appropriate conditions for the normal development of family relationships, including for unmarried women. Therefore, the state should not allow any discrimination based on birth. This is precisely what Articles 8 and 14 of the Convention establish [12].

Another significant non-property personal right is the right to parenthood of same-sex partners. The case "X, Y, Z v. United Kingdom" (1997) raises socially essential issues such as the parental rights of transsexuals and homosexuals. While in a long-term stable relationship, one woman gave birth to a child through artificial insemination from a sperm donor. After carrying and giving birth to the child, the woman applied for its registration, but the state authority refused her, as according to the norms of the legislation, only the biological father of the child can be registered in the "father" column. After examining all the circumstances of the case, the ECHR delivered the following verdict: in such a case, the state must act carefully to avoid harming the child's rights

or provoking actions with irreversible consequences. The fact that according to the law, only the biological father of the child can be recognized as the father and cannot be a person of the female gender does not exclude the possibility of a woman marrying a man. According to the Court's decision, Article 8 of the Convention does not impose an obligation on the state to officially recognize a biological person who does not have the status of "biological father" as the child's father. The fact that people of the same sex cannot be married does not constitute a violation of Article 8 of the Convention.

The case [13] deserves sufficient attention where a woman decided to terminate her pregnancy despite her husband's objections. The applicant, the husband, appealed to the ECHR and requested that his wife's actions be recognized as unlawful and violating his personal non-property rights to parenthood. At the same time, the husband was upset by the fact that terminating the pregnancy gives the mother the right to decide whether to have an abortion, disregarding the father's interest in preserving the life of the unborn child. Furthermore, granting the woman the possibility of having an abortion deprives the father of the opportunity to create a family. The court, after examining the circumstances of the case, pointed out that the abortion was carried out per Italian legislation and aimed to protect the woman's health. Interference with rights under Article 8 of the Convention is justified because, in this case, it concerns the life and health of another person [14].

Therefore, the ECHR decisions regarding the protection of the personal non-property rights of couples to motherhood and parenthood indicate that all possible circumstances relevant to the decision-making process should be taken into account when considering this issue. However, it is essential to consider not superficial judgments but factual evidence.

Domestic researcher Plyushko [15], studying the development of legislation on the dissolution of marriage in Ukraine and certain EU countries, examines certain issues of divorce and the protection of their non-property rights. The author emphasizes that divergences between different legal systems of certain states are quite characteristic of family law and legislation. Considering this, the regulation of marital and family relations significantly affects the national, religious, and socio-cultural peculiarities and traditions of different countries worldwide. Since, according to ECHR practice, the priority of protection is the rights and freedoms of individuals, Article 8 of the Convention regulates relations between the state and the citizen, and Article 12 of the Convention governs relations arising between a woman and a man by guaranteeing them the right to marry, creating a family following the family law of the country where such legal relations are carried out.

The right to change one's surname is a personal non-property right of the couple, the protection of which is ensured by the ECHR. Therefore, the case "Tekeli v. Turkey" was brought on the demand of the applicant, who took her husband's surname upon marriage. Due to her professional activity, the applicant began to use her maiden name before her husband's surname. However, double surnames were prohibited on official documents. By turning to the court for the

protection of her violated rights, the applicant asked the local court to return her maiden name so that she could continue her professional activity. However, the local court rejected the claim, citing that according to the civil norms of Turkey, married women are prohibited from using their maiden names. Instead, they are obliged to use the marital surname of the husband. Turning to the ECHR, the applicant emphasized that according to Article 14 of the Convention and Article 8 of the Convention, discrimination was applied to her, as married men, unlike women, are allowed to use their surnames without restriction by legislation or moral norms. After considering the arguments, the ECHR noted that such actions regarding the maiden surname constitute discriminatory treatment based on sex. Based on the evidence and arguments, the Court reasoned, recognizing a violation of Articles 14 and 8 of the Convention, allowing the woman to take her maiden name while being married to her husband [16].

The right to personal inviolability, as one of the types of non-property rights of spouses, defines respectful treatment towards each spouse and respect for their honor and dignity. However, questions have arisen recently related to the application of domestic violence, the resolution of which must be immediate and irreversible. The issue of domestic violence is a subject of discussion at the international level since it is inherent in various European countries. For instance, in the case "Levchuk v. Ukraine" regarding the application of domestic violence, it was determined that one of the spouses may apply to the ECHR regarding the violated non-property right, even if they are not actually married but are raising common children together.

Regarding this matter, Romovska [17] notes that since the marital union of a woman and a man exists without official state registration, such a union is not considered a marriage. However, in some cases (especially after separation when there is effectively no marriage), the state should accommodate the woman and the man who live together without marriage by endowing them with certain rights and obligations typical of spouses. These rights include the right to alimony, compensation for the loss of a breadwinner, inheritance rights, and others [17]. Safonchuk [18] adds that there are few differences between a formalized and non-formalized marriage.

Continuing the discussion in the case "Levchuk v. Ukraine, [19]" it is worth noting that the local court dismissed the applicant's claim regarding the systematic application of violence by her former husband. Failing to find support in domestic courts, the applicant turned to the ECHR to establish the fact of violence and seek compensation for moral damages. After examining the circumstances of the case, the ECHR recognized the fact of the violation of the applicant's right to respect for private life by the state of Ukraine, indicating that national authorities should have investigated the severity of the situation and responded appropriately. As a result, the ECHR issued a reasoned decision awarding moral damages for 4500 euros and 1150 euros in court costs. Therefore, concerning the discussed decision, it is worth mentioning that regardless of whether the couple is actually married, their non-

property rights and interests must be protected from interference. In this case, the ECHR is a guarantor of safeguarding such rights.

Yanchuk [20] notes that Ukrainian legislation is guided by international legal norms ratified by the state in resolving family disputes. Over the past thirty years, approaches to the application of legislation regarding the consideration and resolution of family disputes have changed repeatedly. The reasons for such changes primarily lie in the results of ECHR decisions, including those regarding the consideration of issues related to the protection of non-property rights of spouses.

IV. Discussions

According to the classical liberal interpretation, the state must refrain from interfering in private life under any circumstances. To some extent, article 8 of the Convention serves as a guarantor of freedom from any state intervention in personal life. According to V.I. Truba [21], the Human Rights Convention provides an effective mechanism for democracy and the rule of law. To support these principles, it is essential for each state to act in the interests of the state, not violating them and not discrediting them, guided by ECHR decisions in addressing certain issues.

Exploring the characteristics of personal non-property rights and obligations of spouses, it is worth noting that most of them operate following the principles of family construction. It is worth mentioning that subjective right is inseparably linked with legal duty, so there is no right without duty and vice versa. Non-property duties are marked by the obligation of spouses to treat each other with respect and not to hinder the exercise of personal non-property rights. Among these duties are the right to motherhood, fatherhood, respect for one's own individuality, the right to personal development, and so on.

The institution of marriage regulates all issues related to marital and family relations, including the birth and upbringing of children. When exercising personal non-property rights, one must refrain from actions that may harm the other spouse [22].

According to Punda [23], personal non-property relationships arising from exercising personal non-property rights aim to meet personal needs and constitute the content of personal non-property goods.

When considering specific cases, the ECHR considers all the circumstances that were established during the proceedings in local courts. When considering family cases in Ukraine, national courts rely on domestic legislation, superficially acquainting themselves with newly adopted ECHR decisions. Considering the absence of clear rules and recommendations regarding the application of ECHR practice in domestic legal proceedings, domestic courts incorrectly interpret its content, hence the need to seek protection of violated rights not in their own country but in the ECHR (Pavlyukovets, [24]).

V. Conclusions

The right to protect the personal non-property rights of spouses is guaranteed not only at the national level but also at the international level. The European Court of Human Rights takes into account all relevant circumstances when considering cases and issues reasoned decisions guided by the Convention. Since the main principle of the ECHR is the restoration of the violated right, this international organization is top-rated. Moreover, the cases on the protection of personal non-property rights of spouses are precedents in local courts. When considering a similar case, Ukrainian courts may take the ECHR judgment as a basis for future similar cases.

References

- [1] Linyk, E. P. (2022). Personal non-property rights of persons living in the same family without marriage and spouse: a comparative legal aspect. *Uzhhorod National University Herald. Series: Law*, 1(72).
- [2] Logvinova, M. V. (2017). Activity of the European Court of Human Rights in the field of protection of family rights and interests protected by law in the context of law enforcement practice of Ukraine. In *Legal positions of the European Court of Human Rights in the law enforcement practice of Ukraine: A Collection of Scientific Works*, 93-132.
- [3] Kroitara and Yevko Bukhanevich Marx v. Belgium case, European Court of Human Rights, 13 June 1979. <https://ips.ligazakon.net/document/ES005089>
- [4] Civil Code of Ukraine No. 435-IV. (2003, 16 January). <http://bit.ly/2w1seVb>
- [5] Bukhanevich, O. (2019). Civil law protection of personal non-property rights that ensure the privacy of an individual. *Irpın Legal Journal: scientific journal*, 2, 21-30.
- [6] Chevychalova, Zh. (2015). The understanding of the term "family life" in the context of Art. 8 of the Convention for the Protection on Human Rights and Fundamental Freedoms. *Theory and practice of jurisprudence*, 2(8).
- [7] Yurkevich, Yu. M., & Dutko, A. O. (2021). Personal non-property rights of an individual. Lviv: Lviv State University of Internal Affairs.
- [8] Statute of the Council of Europe. Law of 5 May 1949. Permanent Representation of Ukraine to the Council of Europe, 22 July 2022. <https://coe.mfa.gov.ua/en/pro-radu-yevropi/statute-council-europe>
- [9] Havrik, R. (2021). Protection of the right of ownership of property acquired in family unions under the legislation of Ukraine and the countries of the European Union. *University Scientific Notes*, 1(79), 55-63.
- [10] Krasyska, L. V. (2011). Protection of family rights of the child by the European Court of Human Rights. *Bulletin of the Donetsk National University. Economy and Law Series*, 2, 263-267.
- [11] Kroitara and Yevko Bukhanevich Marx v. Belgium case, European Court of Human Rights, 13 June 1979. <https://ips.ligazakon.net/document/ES005089>
- [12] European Convention on Human Rights, 4 November 1950. https://zakon.rada.gov.ua/laws/show/995_004#Text
- [13] Chevychalova Boso v. Italy case (2020). European Court of Human Rights. <https://hudoc.echr.coe.int/fre?i=001-23338>
- [14] The right to parenthood in the decisions of the European Court of Human Rights. (2013). *Legal Weekly*. <http://legalweekly.com.ua/index.php?id=16061&show=news&newsid=122042>
- [15] Plyushko, D. S. (2023). Legal consequences of termination of marriage under the legislation of Ukraine and certain EU states (p. 237). Odesa: National University "OYUA". <https://dspace.onua.edu.ua/items/a7605eb5-bee9-40b9-b8b2-083a0fefa191>
- [16] Tekeli v. Turkey case (2004). European Court of Human Rights. [http://hudoc.echr.coe.int/eng#%7B"itemid":%7B"001-67482"%7D](http://hudoc.echr.coe.int/eng#%7B)
- [17] Romovska, Z. V. (2003). *Family Code of Ukraine: Scientific and practical commentary*. Kyiv.
- [18] Safonchik, O. I. (2017). Certain aspects of the termination of marital and family legal relations in Ukraine and some EU countries. The current state and prospects for the development of family law in Ukraine in the context of adaptation to European law (pp. 19-21). Odesa: Phoenix. <http://hdl.handle.net/11300/8002>
- [19] Levchuk v. Ukraine case (2020). European Court of Human Rights. <https://hudoc.echr.coe.int/eng?i=001-203931>
- [20] Yanchuk, A. A. (2023). Practice of the European Court of Human Rights as a source of law in resolving family disputes. *Juris Europensis Scientia*, 4, 23-27.

- [21] Truba, V. I. (2021). The influence of the practice of the ECtHR on the development of the Family Legislation of Ukraine. In *Tenth Legal Disputes in Memory of E. V. Vasylkovsky*, 32-39.
- [22] Dutko, A. O. (2018). Family law of Ukraine. Lviv: LvDUVS, <https://dspace.lvduvs.edu.ua/handle/1234567890/2605>
- [23] Punda, O. (2018). Administrative and legal regulation of ensuring the exercise of personal non-property rights. Doctor's thesis. Irpin. <http://surl.li/rujri>
- [24] Pavlyukovets, T. V. (2022). The role and place of ECtHR decisions in the Ukrainian judicial system. *Legal Newspaper Online*, 22(728).

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