

7. Яремко О. М. «Дитяча порнографія» як самостійний склад злочину: необхідність законодавчого впровадження в Україні. URL: <http://www.spilnota.net.ua/ua/article/id-1363/>

Tsion Gamme,
student of the Law Faculty
of the Western Ukrainian National University
Head of scientific research:
PhD in law, Associate Professor,
Associate Professor of International Law and
Migration Policy of the WUNU
Oksana Yaremko

VIOLATION OF THE RIGHT TO DEFENSE: INTERNATIONAL LAW AND THE EXPERIENCE OF FOREIGN STATES

The right of a person to defense is one of the oldest independent social institutions, in the process of development of which the bar itself emerged as a separate human rights body, the task of which is to provide legal assistance to citizens. The further development of society has led to the combination of these social institutions due to the objective need and subjective desire of citizens to defend their legitimate rights and interests. The realization of the right of a person to protection is evidence of the democratic development of society, which in various forms implements the inalienable human right to qualified protection of their rights in the judicial process in which it is a party.

Everyone who has been charged shall be presumed innocent until proved guilty according to law. Respect for the rights of the defence of anyone who has been charged shall be guaranteed.

Giving a suspect or accused person the opportunity to defend himself or herself, as well as to receive qualified legal assistance from a lawyer, is part of modern human rights standards. Thus, Part 3 of Article 14 of the International Covenant on Civil and Political Rights of 16 December 1966 guarantees such entities sufficient time and opportunity to prepare their defense, to communicate with their chosen defenders, to provide opportunities to defend themselves personally or through an elected defender [1]. Similar provisions in the context of ensuring a fair trial are contained in Part 3 of Art. 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms of 04 November 1950 [2].

Article 48 «Presumption of innocence and right of defence» of the Charter of Fundamental Rights of the European Union of 07 December 2000 declares: «1. Everyone who has been charged shall be presumed innocent until proved guilty according to law. 2. Respect for the rights of the defence of anyone who has been charged shall be guaranteed» [3].

Article 48 is the same as Article 6(2) and (3) of the ECHR, which reads as follows:

«2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

3. Everyone charged with a criminal offence has the following minimum rights:

(a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

(b) to have adequate time and facilities for the preparation of his defence;

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court» [4].

International legal standards on the right to defense (into national constitutional, criminal and criminal procedure law) have been implemented in the national legislation of many modern states.

The Constitutions and Criminal Procedure Codes of modern states (for example, "post-Soviet countries" - the Republic of Azerbaijan, the Republic of Belarus, the Republic of Armenia, the Republic of Georgia, the Republic of Kazakhstan, the Kyrgyz Republic, the Republic of Lithuania, the Republic of Latvia, the Republic of Moldova, the Republic of Tajikistan, the Republic of Uzbekistan; Western and Eastern European countries) declare a person's right to defense as one of the principles of criminal justice. Many modern countries in their Criminal Codes provide for criminal liability for violating a person's right to defense.

Ukraine is one of the few post-Soviet states that has provided in the Criminal Code a special rule on criminal prosecution for violation of the right to defense (Article 374 «Violation of the right to defense») [5]. Other countries have taken a different path in the implementation of criminal law protection of the right to defense (guaranteed by international and national law). They established criminal liability for the commission (or non-commission) by officials (including government officials who are obliged to create conditions for the exercise of the right to defense - prosecutors, investigators, judges, etc.) of acts that involve significant violations of citizens' rights and freedoms. in the field of criminal justice (including the right of a person to defense).

The Sixth Amendment to the United States Constitution (entered into force on December 15, 1791 and was part of the Bill of Rights) guarantees the rights of criminal defendants, including the right to a public trial without unnecessary delay, the right to a lawyer, the right to an impartial jury, and the right to know who your accusers are and the nature of the charges and evidence against you. It has been most visibly tested in a series of cases involving terrorism, but much more often figures in cases that involve (for

example) jury selection or the protection of witnesses, including victims of sex crimes as well as witnesses in need of protection from retaliation [6].

The Sixth Amendment to the Constitution of the United States of America provides that: in all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favour, and to have the assistance of counsel for his defence [6].

References

1. International Covenant on Civil and Political Rights of 16 December 1966. URL: <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>
2. European Convention for the Protection of Human Rights and Fundamental Freedoms of 04 November 1950. URL: https://www.echr.coe.int/documents/convention_eng.pdf
3. Charter of Fundamental Rights of the European Union of 07 December 2000. URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012P/TXT>
4. Charter of Fundamental Rights of the European Union of 07 December 2000. URL: <https://fra.europa.eu/en/eu-charter/article/48-presumption-innocence-and-right-defence>
5. Criminal code of Ukraine of 01 April 2001. URL: <https://www.legislationline.org/documents/action/popup/id/16257/preview>
6. Sixth Amendment to the US Constitution. URL: https://www.law.cornell.edu/constitution/sixth_amendment