

Research Article

Administrative Legal Guarantees and Standards Arising from the Right to Respect for Private Life and to a Fair Trial in the Field of Public Service and Combating Drug Offenses

Yuliia Shestakova^{1*}, Volodymyr Dryshliuk², Alla Zhuravel², Viktor Konopelskyi³, Viktor Yarosh³

¹*Department of of Parliamentarism, Educational and Scientific Institute of Public Administration and Civil Service, Shevchenko National University of Kyiv, Ukraine*

²*Department of State Law Disciplines, Institute of Law and Security, Odessa State University of Internal Affairs, Ukraine*

³*Department of Criminal Law and Criminology, Odessa State University of Internal Affairs, Ukraine*

*Address Correspondence to: Yuliia Shestakova, E-mail: pasto@i.ua

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Abstract

Aim: The purpose of the article is administrative-legal guarantees and standards arising from the right to respect for private life and to a fair trial in the field of public service and combating drug offenses.

Methods: Using the method of analysis and systematic study of legal norms, as well as generalization and synthesis, the requirements for the compliance of civil service legislation as one of the elements of combating drug offenses, as well as the observance of the rights and fundamental freedoms of civil servants, as interpreted in the practice of the European court of human rights, have been identified.

Results: The rights and fundamental freedoms of civil servants in combating drug offenses, established in the 1950 European convention on human rights, will be examined in order to establish their relevance and applicability in the context of civil service issues, in particular those regulated by the norms and principles of administrative law.

Conclusion: The article provides excerpts from the precedent decisions of the European court of human rights, indicating the scope and justification of interference with the right to respect for private life in public-service relations in relation to countering drug offenses, as well as the features of determining the scope of subject-matter jurisdiction of national courts and control over legal remedies in employment-related cases involving civil servants, in accordance with the practice of the European court of human rights concerning the right to a fair trial.

Keywords: Administrative law rule; Civil service, Civil service law; Legal norm; Case law; European court of human rights; Illicit drug trafficking; Counteraction

Introduction

There is a widespread belief that the only difference between public officials involved in countering drug offences and private sector employees lies in their specific tasks related to ensuring the proper performance of public

functions and granting public officials a certain amount of official authority in this regard. In serving this lofty goal, the public official involved in countering drug offences remains an employee who expects full respect for his rights and fundamental freedoms, related, in particular, to adequate remuneration, stability of employment and self-realization with reliance on an indefinite appointment and guarantees of gradual promotion based on the achievement of professional development indicators, as well as related to the ability to combine official duties with private life with reasonable and unavoidable restrictions accompanying the status of a public official. At the same time, civil servants involved in combating drug-related offences, primarily in managerial positions, face hidden risks and vulnerabilities inherent in the civil service, arising from its high degree of sensitivity to changes in state policy (especially in its economic and ideological components), as well as from a higher level of susceptibility to abuses related to the management of state resources and the resolution of issues of power management with significant personal and financial consequences for society. In order to increase the resilience of civil servants involved in combating drug-related offences to manifestly unjustified or disproportionate measures that negatively affect their personal and official situation, the European Court of Human Rights (ECHR) is gradually developing its conclusions on ensuring the rights and fundamental freedoms of civil servants. However, even a key part of its case law on these issues is too fragmented and insufficiently researched and systematized in academic

sources to be a convenient reference for decision-makers.

The aim of this study is therefore to identify the key substantive and procedural standards and guarantees stemming from the right to respect for private life and the right to a fair trial, enshrined in the 1950 convention for the protection of human rights and fundamental freedoms (the convention), which apply to civil service matters related to combating drug offences governed by administrative law [1-5].

Materials and Methods

This study uses normative and legal analysis, complemented by comparative and jurisprudential approaches. The dialectical method allows for the exploration of the dynamic tension between evolving social norms and traditional legal structures, in particular when interpreting rights under constitutional and international law.

The evolving and dynamic interpretation of rights and fundamental freedoms of the ECHR in modern times has led to the extension of its scope to public officials who are involved in drug-related activities, despite some views that civil servants and government can be considered part and parcel of the whole and that public officials are “self-protecting”. It is generally accepted that they are the cornerstone of a “democracy that can protect itself” and in this regard, there is nothing to prevent the imposition of certain discretionary or restrictive duties on public officials who are involved in drug-related activities. In particular, it is now generally accepted that public service, like any other employment, is an extension of the private life of a public servant in relation to the State of employment, who in their work counteracts drug-related offences and is subject to protection under the provisions of the convention [6-11].

The text of the convention, which enshrines the right to respect for private and family life, states: 1) Everyone has the right to respect for his private and family life, his

home and his correspondence; 2) Any interference with the exercise of this right by a public authority must be in the interests of national security, public safety or the economic well-being of the state, disorder. The ECtHR in the Fernandez Martínez case ruled that certain aspects of professional life fall within the concept of private life, noting that private life includes the right of an individual to form and develop relationships with others, including professional or business relationships. After all, it is in the course of working life that most people have important opportunities to develop relationships with the outside world. In other words, professional life is part of an individual’s interactions with others, even in the public sphere, which may in certain circumstances fall within the concept of “private life”.

Furthermore, Article 8 concerns the protection of honour and reputation as part of the right to respect for private life. Guided by these considerations, as can be seen from the analysis of the information sheet prepared by the press service of the European court of human rights, the ECtHR has identified a number of employment-related scenarios relevant to Article 8, including dismissal from military service, dismissal from a judge’s position, dismissal from a judicial or administrative position, transfer from one position to another in the civil service and access to employment in the private sector.

The ECtHR has considered various types of cases concerning restrictions of access. In assessing whether the impugned measure in an employment dispute between a civil servant and his employer is a matter of private life within the meaning of Article 8 of the convention and whether it constitutes an interference with the right to respect for private life, the ECtHR recognises the nature and gravity of the impact of the impugned measure on the applicant’s private life in a broad sense. The article also used the method of statistics and analysis (Table 1).

Table 1: General trends in violations of the right to a fair trial in the area of the rights of public servants who combat drug offenses

Violation of the right to protection of public servants who combat drug offenses	• Limiting the time for familiarization with the materials
	• Against the wishes of the suspect/accused
	• Appointing a “state” lawyer against
	• The wishes of the person
	• Scheduling court hearings every other day
	• Placing the burden of proof on the defense
Violation of the right to access to court	• Consideration of appeals after the appealed decision has become invalid
	• Meetings are scheduled less often than once a month
Violation of legal certainty	• Divergence of judicial practice on similar
	• Issues
	• Violation of the rules of jurisdiction

Automatic extension of the preventive measure	• Initiation by the court of the extension of the preventive measure
	• Ignoring the practice of the ECHR in terms of reducing risks
	• Extending the preventive measure without changing the justification
Torture or degrading treatment of public officials who combat drug-related crimes	• Failure to provide proper medical care
Violation of the principle of reasonable time	• Inefficiency of pre-trial investigation
	• Scheduling of court hearings with a large
	• Interval

Cases of violation of the right to a fair trial: Main trends

In 2024, IAC ISHR continued to monitor the observance of the right to a fair trial. As a direction of human rights activities, monitoring not only increases the transparency of the administration of justice, but also becomes a unique tool for diagnosing the work of the judicial system. In the first half of 2024, we monitored 41 hearings and identified the following trends in violations of the right to a fair trial: Right to defense: 34% of hearings; automatic extension of a preventive measure: 27% of hearings; access to court: 22% of hearings; legal certainty: 14.6% of hearings; torture or degrading treatment: 14.6% of hearings; reasonable time limits: 12% of hearings [12-20].

Results and Discussion

The right to a fair trial and the limits of judicial review in employment-related cases involving public servants involved in countering drug offenses.

The protection of public officials against unjustified and disproportionate interference is also ensured by guaranteeing the right to judicial review of adverse decisions in important aspects of public affairs, in accordance with the principles and requirements of the civil part of article 6(1) of the convention: In determining civil rights and obligations, everyone is entitled to a fair and public hearing by an independent and impartial tribunal established on the basis of the principles and requirements of article 6 of the convention. The judgment shall be pronounced publicly, but the press and the public may be informed of the judgment if it is necessary in the interests of morals, public order or national security in a democratic society or in the interests of juveniles or for the protection of the private lives of the parties or in special circumstances where, in the opinion of the court, publicity would prejudice the interests of justice. The court may remove a person from the proceedings in whole or in part to the extent strictly necessary in accordance with the [21-25].

According to the development of ECtHR case law, exemplified by the decision in Denisov v. Ukraine, the “civil” part has been significantly expanded in relation to public labor disputes in terms of non-discriminatory considerations in relation to public employees as compared to private employees.

The ECtHR considers that direct effects on civil monetary or non-monetary rights with regard to effects, the ECtHR considers that public law disputes can give rise to civil provisions in which private Such direct civil rights impacts exist in “ordinary labor disputes” involving public officials, including judges. Ordinary labor disputes affect the scope of duties to be performed by the applicant as an employee and his remuneration under the employment relationship. Thus, Article 6 has been applied in labor disputes, for example, against judges who have been dismissed or suspended or public servants who have been transferred to other duties or positions against their will and whose salary has been reduced as a result. Given the well-established perception that fair trial principles and standards apply to public service disputes concerning private law aspects of a public servant’s scope of duties, remuneration and other terms and conditions of employment, particular attention is drawn to the institutional requirement that these principles and standards give the court full jurisdiction over the matters in dispute.

The following are some of the principles and criteria that have been established by the court in the past. As stated in Ramos Nunes de Carvalho e Sa, the ECtHR emphasizes the autonomous definition of the “full jurisdiction” requirement. First, the court must have jurisdiction to consider all questions of fact and law relevant to the dispute. Second, such “full jurisdiction” implies that the court has exercised sufficient jurisdiction or has sufficiently considered the case in the proceedings before it. However, in its judgment in Sigma Radio and Television Limited v Cyprus, the ECtHR reiterated that it is aware that there are specialized areas of law in the legal systems of various Member States over which the courts have limited factual jurisdiction (e.g. urban and rural planning). It stated. In particular, it stressed that decisions taken by administrative authorities in the interests of expediency require deference, which often affects specialized areas of law [26-30].

However, in Bryan v. the United Kingdom, the ECtHR stressed that even if the administrative decision in question was the result of the exercise of an administrative discretion in a specialized area of law, the court should be entitled to assess whether the decision complies with the classic grounds of the ECHR, Even if the administrative decision in question was the result of the exercise of an

administrative discretion in a specialized area of law, whether the decision complies with the classic grounds of unlawfulness in English law (such as unlawfulness) is a question of whether the decision was unlawful. If the findings of fact were erroneous or unreasonable in a sense in which they would not have been. Furthermore, if the arguments of the appeal are upheld, the re-examining court should have the power to set aside the appealed decision and either issue a new decision or refer the case to the same or a different body.

In addition, the ECtHR considers that administrative decisions must be relevant to the subject matter of the dispute [31-37].

Thus, in *Ramos Nunes de Carvalho e Sa*, the ECtHR distinguished between disputes arising from the exercise of administrative discretion and disciplinary disputes. The charges brought against the applicant could have led to his suspension or removal from office. The judicial review undertaken must therefore be appropriate to the subject matter of the dispute.

For example, in its judgment in *Kula v Turkey*, the ECtHR was dissatisfied that the administrative court had confined itself to establishing the facts relating to the applicant's disciplinary misconduct and had not bothered to consider the need for his sanction in the circumstances of the case in the light of his specific rights. On the contrary, it concluded that the domestic court should not have confined itself to verifying formal compliance with the provisions of the Disciplinary Code, but should have made a broader assessment.

The imposition of sanctions or other adverse measures that infringe the right of a public official to respect for his private life may be justified if the applicable national legislation, in particular on combating drug offences, meets the requirements of foreseeability through legal precision, concrete and consistent interpretative practice and provides adequate protection against arbitrariness. For these reasons, the retention in disciplinary provisions of an offence such as "breach of oath", which entails dismissal or other exceptional measures of severity against a public official, is contradictory, given that by its nature "breach of oath" can cover any wrongful act by a public official in the absence of strict interpretative provisions.

Moreover, for a violation of a public official's right to respect for his or her private life to be considered lawful, the dismissal, demotion, adverse transfer or other adverse action must pursue one or more of the legitimate aims listed in Article 8 of the convention. Furthermore, adverse measures applied to public officials that are work-related and constitute an interference with the right to respect for private life must meet the strict requirement of a "pressing social need" and be balanced against the legitimate aims pursued.

Conclusion

While substantial protection against most of the negative consequences that may be imposed on public officials is achieved by providing them with standards and guarantees in accordance with Article 8 of the convention, procedural fairness and redress in cases involving public officials are achieved by complying with the principles and requirements of Article 6 of the convention applicable to disputes. Of particular importance is the institutional requirement that courts have full jurisdiction over these matters, including all questions of fact and law relevant to the dispute, including in the area of combating drug offences. Even if the measures at issue were taken within the scope of administrative discretion and concern questions of expediency, technical branches of law or questions of a technical nature, the court must be satisfied that all relevant factors and convincing evidence are reasonable and that a competent decision-maker, guided by proper considerations, would have reached a conclusion that is not unreasonable and erroneous to the extent that a competent decision-maker, guided by proper principles, would not have done so. Furthermore, where the legality of a disciplinary sanction is in question, the national court will consider the proportionality of the sanction without any limitations imposed by administrative discretion or other factors.

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Conflict of Interest

Authors have no conflict of interest to declare..

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