

Protection of Copyright through the Rule of Law Principle: the Practice of the European Court of Human Rights and Arbitral Institution

*Valerii Korchovyi*¹

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Annotation. The article examines the principle of the rule of law as a fundamental basis for ensuring copyright protection through the analysis of the European Court of Human Rights and the activities of arbitration institutions. The focus is on the dualistic nature of this principle, which is expressed through the dualistic combination of formal (procedural) and material (value-based) approaches, which together a balance between institutional order and the requirements of justice. It is noted that legal certainty ensures the predictability of legal regulation, the stability of judicial practice, and the reduction of risks of arbitrary interference in the field of copyright protection. Particular attention is devoted to the European human rights protection mechanism, which is shaped by the need to maintain a balance between the interests of authors, society, and the state, as well as by the principles of proportionality and fairness. The role of international commercial arbitration is identified as an effective instrument for resolving cross-border copyright disputes, combining legal certainty, flexibility, and adaptability to complex legal relationships. It is further emphasized that the combination of party autonomy and dispositive regulation with the stability and predictability of legal outcomes – especially important for the conclusion of long-term contracts in the creative industries – enhances the relevance of international arbitration in the field of copyright protection.

It is emphasized that the integration of the rule of law principle, the case-law of the European Court of Human Rights, and arbitral mechanisms forms a comprehensive model for copyright protection, ensuring legal accountability, effective restoration of violated rights, and a balanced consideration of the interests of all participants in legal relations.

Key words: Rule of law, copyright protection, European human rights protection mechanism, European Court of Human Rights, case-law, legal certainty, fairness, arbitration, international commercial arbitration, legal liability.

¹ Postgraduate Student at the Department of Theory of Law and Human
Yuriy Fedkovych Chernivtsi National University
orcid <https://orcid.org/0009-0001-3933-5380>

Захист авторських прав крізь призму принципу верховенства права: практика Європейського суду з прав людини та арбітражних інституцій

Анотація. У статті в контексті практики Європейського суду з прав людини та діяльності арбітражних інституцій досліджено принцип верховенства права як фундаментальної основи забезпечення захисту авторських прав. Зосереджено увагу на дуалістичній природі цього принципу, що виражається через дуалістичне поєднання формального (процедурного) та матеріального (ціннісного підходів), що в системі забезпечують баланс між інституційною впорядкованістю та вимогами справедливості. Зауважено, що правова визначеність забезпечує передбачуваність правового регулювання, стабільність судової практики та зменшення ризиків свавільного втручання у сферу авторських прав. Окрему увагу приділено європейському механізму захисту прав, який формується під впливом балансу між інтересами авторів, суспільства та держави, принципів пропорційності та справедливості. Встановлено роль міжнародного комерційного арбітражу як ефективного інструменту вирішення транскордонних спорів у сфері авторського права, що поєднує правову визначеність, гнучкість та адаптивність до складних правовідносин. Зазначено, що поєднання диспозитивності і автономії сторін зі стабільністю, а також передбачуваністю правових результатів, що особливо важливо для укладення довгострокових контрактів у креативних індустріях, актуалізує діяльність міжнародного арбітражу у сфері захисту авторських прав.

Підкреслено, що інтеграція принципу верховенства права, практики Європейського суду з прав людини та арбітражних механізмів формує комплексну модель захисту авторських прав, яка забезпечує юридичну відповідальність, ефективне відновлення порушених прав та баланс інтересів усіх учасників правовідносин.

Ключові слова: верховенство права, захист авторських прав, європейський механізм захисту прав, Європейський суд з прав людини, судової практика, правова визначеність, справедливість, арбітраж, міжнародний комерційний арбітраж, юридична відповідальність.

Introduction

The modernization of European mechanisms for the protection of rights, including copyright, correlates with the establishment of the principle of the rule of law as a basic principle and key democratic guarantee of the realization of human rights and freedoms. Its practical implementation creates the basic prerequisites for the formation of institutional instruments and procedural means of protecting the results of intellectual activity, while guaranteeing the stability and predictability of legal regulation and the fairness of judicial practice. The practice of applying regulatory provisions in the field of copyright protection demonstrates that even formal compliance with legislation is not always accompanied by their implementation in terms of compliance with the fundamental principles of the rule of law. This highlights the need for an even deeper scientific understanding of mechanisms for eliminating conflicts between legislative provisions and the requirements of fair legal protection, and also justifies the need to form effective and efficient legal instruments for restoring violated copyrights.

Despite the increased interest in studying the structure of the rule of law principle and the significant achievements of scientists in this area, it should be noted that a number of aspects of this issue still remain insufficiently studied. Further doctrinal analysis of the role of the practice of the European Court of Human Rights and arbitration institutions is required, primarily in the context of ensuring effective protection of copyrights, as well as holding guilty persons legally liable. The effectiveness of the implemented legal mechanisms for protecting

the results of creative activity and the reality of restoring violated authors' rights significantly depend on the effective implementation of the decisions of these structures. In this context, the study of this issue is the key goal of the scientific analysis conducted.

Results

The rule of law is a relatively universal tool for ensuring legal order in society or as an independent legal phenomenon, which is of decisive importance for ensuring effective mechanisms for protecting human rights, in particular copyright. In scientific doctrine, the principle of the rule of law is interpreted and investigated through the prism of two interrelated approaches – formal and substantive. The first updates the procedural and institutional characteristics of the legal order, and the second links its content with the requirement to ensure justice, protect human rights, and outline the value orientations of the legal system [4, p. 41]. The principle of the rule of law in the field of copyright protection cannot be limited to a purely declarative enshrining in regulatory legal acts. Its content is determined through the existing system of effective legal mechanisms and instrumental institutional means aimed at ensuring effective protection of the rights of copyright holders.

Transforming the principle of the rule of law from a declarative idea into an effective legal result requires the introduction of appropriate special legal instruments capable of ensuring its practical implementation. Such a tool is primarily the principle of legal certainty, which provides for the clarity, precision, intelligibility and unambiguousness of legislative provisions, as well as the obligation of their strict compliance by all subjects of legal relations.

In the field of copyright protection, the requirement of legal certainty acquires special legal importance. Vagueness or contradictions in legislative formulations regarding the scope of authors' rights and the limits of permissible interference with their scope can create prerequisites for the violation of the rights of authors and other subjects of creative activity. Legal certainty in regulatory regulation ensures the stability and predictability of state policy in the field of intellectual property, minimizes the risks of potential abuses, and serves as a guarantee that guilty persons will be held legally accountable.

An analysis of the European mechanism for the protection of rights, in particular the practice of the European Court of Human Rights, indicates the establishment of the principle of legal certainty as a prerequisite for legitimate interference in the sphere of copyright, an important guarantee of the protection of such rights as a type of property rights. For example, in the case *Anheuser-Busch Inc. v. Portugal* European Court of Human Rights has emphasized that intellectual property rights are covered by the concept of “property” within the meaning of Article 1 of the First Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms [6]. The European Court of Human Rights has emphasized that intellectual property rights are covered by the concept of «property» within the meaning of Article 1 of the First Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms. Therefore, their protection must meet the requirement of predictability of legal regulation and stability of legal protection. In another decision *Melnychuk v. Ukraine* [7] the court emphasized that state intervention in the field of copyright must be «prescribed by law», which requires sufficient clarity and accessibility of legal norms for participants in legal relations.

In the field of the European copyright protection mechanism, all procedural actions and decisions related to the consideration of intellectual property disputes must be based on the requirements of the rule of law, ensuring a proper balance of the interests of authors, society and the state.

This primarily concerns situations that affect the scope of exercise of the rights of the subjects of the relevant legal relations, since any restrictions on the rights of authors from the standpoint of compliance with the principle of the rule of law must be justified, proportionate

and comply with national and international standards of legal protection. In its case law, the European Court of Human Rights has repeatedly emphasized the need to ensure a fair balance between the interests of rightholders, society, and the state in the field of intellectual property. For example, in the case *Ashby Donald and Others v. France* [8] the European Court of Human Rights has ruled that the application of sanctions for copyright infringement constitutes an interference with freedom of expression. Such interference may be justified provided that the principle of proportionality and a proper balance of interests are observed.

Fairness, as an integral component of the rule of law, is of fundamental importance in the formation of effective European copyright protection mechanisms. Its content in this area is manifested in ensuring an appropriate level of remuneration and reasonable compensation for the use of copyright objects. The content of fair remuneration involves establishing an adequate economic equivalent that is payable to the subject for the use of the results of his intellectual activity, taking into account their real value at a specific stage of social, cultural, and technological development of society. At the same time, when determining it, the degree of prevalence and nature of legitimate ways of freely using such results should be taken into account [5, p. 144].

In the context of the analysis of European legislation, the legal position of the Court of Justice of the European Union deserves attention, which in many decisions interprets exceptions and limitations of property rights to objects of copyright and related rights as the rights of users of these objects. Analyzing the concept of «fair remuneration» payable in cases of private copying using appropriate equipment in the case «*Padawan*» [9] and guided by the provisions set out in Article 5 of Directive 2001/29/EC of the European Parliament and of the Council [1] on the harmonization of certain aspects of copyright and related rights, the Court confirms the possibility for users of works and objects of related rights to use these objects without the permission of the persons who own the exclusive rights to them. The decision confirmed the Court's view that there is no need to prove harm to the author of a protected product in the case of private copying using appropriate equipment in order to establish the obligation of persons providing such equipment to pay fair remuneration. At the same time, the Court noted that it is legitimately presumed for private individuals who have access to such equipment to take advantage of some degree of access to such equipment.

The absence of a universal list of elements of the rule of law principle that could effectively ensure an adequate level of human rights protection indicates the impossibility of its formalized, template application in law enforcement activities. A particular manifestation of this order of things is reflected in the field of copyright protection, where legal relations are often characterized by complexity, in particular in the context of the dynamic development of digital technologies, the imbalance of interests of authors and society, and the latest forms of use of creative activity. As a consequence of such innovative processes, the use of the rule of law principle cannot be carried out from the perspective of a formal and mechanical analysis of its content. An effective and efficient tool in the field of copyright protection is international commercial arbitration. It cannot objectively be limited to individual national mechanisms, since it is built, first of all, on the basis of unified procedural rules and standards, as well as international practice, which successfully combine such features as legal certainty, flexibility and adaptability to complex cross-border legal relations.

An analysis of the current practice of resolving private law disputes in the intellectual and creative sphere proves that most of them are of a cross-border nature, and therefore are quite often resolved in international commercial arbitration. Such practice, which comes into contact with the legal systems and experience of various foreign countries, brings certain exclusive aspects to the procedure. That is, international arbitration as an effective and efficient tool in the field of copyright protection cannot objectively be limited to individual national mechanisms, since it is built, first of all, on the basis of unified procedural rules and standards, as well as international practice, which successfully combine the following features: legal

certainty, flexibility and adaptability to complex cross-border legal relations. Such specific features, which at the same time convey the significant advantages of arbitration, are of key importance when choosing a method of resolving cross-border disputes. The parties, especially experienced ones, by concluding an arbitration agreement exclude the jurisdiction of the state court and choose the most suitable arbitration center for them, taking into account the high level of qualification of the arbitrators in a specific field of knowledge and the confidentiality of the procedure [2]. For example, in cases that were widely discussed in the media (the so-called "Hollywood cases") - Kevin Spacey vs. the production company «House of Cards» [10] and *Scarlett Johansson vs. Disney* [11] – the parties preferred arbitration because of the confidentiality and highly specialized nature of the arbitrators.

Different jurisdictions, by adapting the above arbitration rules to the specificities of their domestic legal systems, make it possible for arbitrators to resolve disputes more effectively, both regarding contractual breaches and regarding intangible aspects in the field of copyright. For example, this may concern royalties, cross-border licensing regimes, and collective rights in general, where national courts, as a rule, are quite limited due to the framework of their territorial law. A significant part of international arbitration institutions in the field of intellectual property protection generally allow the parties, when concluding an arbitration agreement or by mutual consent during the consideration process, to agree on the application of special professional standards in the field of evidence, expert assessments, as well as relevant procedures that take into account the technological nature of content and the market in the intellectual and creative sphere. In the field of copyright protection, this ensures maximum adaptability of the procedure to the specifics of disputes. Principle «*kompetenz-kompetenz*» [3, p. 73] allows the arbitration panel to independently determine its jurisdiction without prior intervention by a state court, increases the efficiency and, in some cases, predictability of the process, and also prevents procedural abuse by the parties.

Conclusions

In the light of the practice of the European Court of Human Rights, the attributive effect of the principle of the rule of law in the field of copyright protection is manifested through the interaction of its key components – legal certainty and fairness, stability and predictability of regulatory regulation, ensuring a proper balance between the interests of copyright holders and the public need for free access to cultural and information resources.

The principle of the rule of law finds its manifestation through the establishment of legal certainty, the predictability of judicial practice, as well as the real ability of legal institutions to promptly and adequately respond to violations of intellectual property, ensuring the timely restoration of the rights of authors and copyright holders.

The combination of dispositivity and autonomy of the parties with stability, as well as predictability of legal outcomes, which is especially important for maintaining and strengthening potentially long-term business relationships and, accordingly, concluding long-term contracts in the creative industries, actualizes the activities of international arbitration in the field of copyright protection. International arbitration integrates domestic systems into a global universal network of alternative dispute resolution methods, providing a combination of flexibility, legal stability in resolving contradictions, which turns it into an effective and predictable mechanism in the modern world of cross-border copyright.

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