

ABUSE OF RIGHTS IN LEGAL THEORY AND PRACTICE OF THE EUROPEAN COURT OF HUMAN RIGHTS

Summary:

In the paper, the author analyzes the origin and development of the institute of abuse of rights in the legal theory and practice of the European Court of Human Rights. The Institute of Abuse of Rights was created when the legal theory accepted the position that subjective rights are given with the aim of realizing the social function of rights. Prohibition of abuse of rights is prescribed in the most important human rights documents. In the latter area, Article 17 of the European Convention on Human Rights, which contains a general clause on the prohibition of abuse of rights, is particularly important. In the practice of the European Court of Human Rights, there are four approaches of the application of this article: direct application of Article 17, indirect application of Article 17, failure to apply Article 17 in cases where the institute of abuse of rights could have been, but was not applied and inapplicability of Article 17 due to the fact that the factual circumstances were not serious enough in the specific case. Given that the range of abuse of rights has been significantly expanded in judicial practice, the paper will present the main criticisms regarding this approach of the Court. The lack of clear criteria for the application of Article 17 of the Convention leaves the possibility of an arbitrary assessment of the application of the institute of abuse of rights in specific cases, which is why the author proposes to define them more clearly in order to achieve legal certainty.

Keywords:

abuse of rights, subjective rights, human rights, European Court of Human Rights, European Convention on Human Rights