страждання, вчинення цих діянь у спосіб, небезпечний для життя чи здоров'я потерпілого, та їх тривалість [3, с. 232].

Насамкінець, визначальною ознакою, за якою треба розмежовувати склади цих кримінальних правопорушень, є їх суб'єктний склад. На відміну від кримінальних правопорушень, передбачених ст. 371 КК України, де спеціальними суб'єктами виступають службові особи відповідних правоохоронних органів, що використовують свої процесуальні повноваження, суб'єктами кримінальних правопорушень, передбачених ст. 146 КК України, є лише приватні особи, що виключає можливість використання задля досягнення протиправного результату службового становища.

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EXCEPTIONS TO THE IMPLEMENTATION OF THE PRINCIPLE OF PUBLICITY IN THE PRACTICE OF THE ECHR

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Article 6 § 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter – Convention) provides that everyone has the right to have his or her complaint heard in public and the absence of the

press and the public is justified by the need to protect the rights of minors in the interests of national security and the protection of the private life of persons in civil society.

The European Court of Human Rights (hereinafter – the Court or the ECHR) has repeatedly stated its position on exceptions to this principle and noted that a trial meets the requirements of publicity if the public can obtain information about its date and place and if the place is easily accessible to the public [5, p. 58].

If there are grounds for applying one or more of the restrictions listed above, then the public authorities are not obliged to do so, but have the right to request closed hearings if they deem such a restriction to be justified. Moreover, in practice the Court, in interpreting the right to a public hearing, applied the criterion of strict necessity, regardless of the justification for the lack of publicity.

In the case Vasil Vasilev v. Bulgaria (2021, § 115-118), the applicant complained that the law enforcement authorities had violated his right to privacy and correspondence by secretly eavesdropping on and transcribing his telephone conversations with a lawyer. In addition, by filing a complaint against the hearings, the domestic courts held closed hearings and did not make public the judgment in the case, arguing that it was necessary to protect the applicant's private information [4].

The court held that the complete lack of publicity could not be justified by the need to protect classified information – evidence obtained as a result of covert wiretapping of the applicant's telephone conversation, in addition, the applicant himself insisted on a public hearing. The Court therefore concludes that in the present case there has been a violation of Article 8 § 1 of the Convention on account of the public's exclusion from the hearings in the applicant's damages proceedings and the lack of publicity in the damages proceedings and ordered the respondent state to pay the applicant EUR 3,000 in damages.

Although the principle of publicity is essential in criminal proceedings, it may sometimes be necessary under Article 6 of the Convention to restrict the open and public nature of proceedings, for example, to protect the safety or confidentiality of witnesses or to facilitate the free exchange of information and views [5, p. 58].

In the case Frâncu v. Romania (Frâncu v. Romania, 2021, pursuant to Article 8), the applicant, who had been charged with corruption, complained that the domestic courts had refused to hold a closed hearing announcing confidential information about his state of health and the health of his son. This request was substantiated by the fact that the data announced during the trial damaged his reputation, violated the presumption of innocence of the accused, as well as provided purely private information about the medical records of his relatives [3].

The court concluded that the applicant's complaints were admissible concerning the disclosure of confidential medical information by his relatives and that there had therefore been a violation of Art. 8 of the Convention and ordered the respondent State to pay the applicant EUR 5,000 in respect of non-pecuniary damage.

Security concerns are a common feature of many criminal proceedings, but cases where only security considerations justify the removal of the public from trial are rare. Security measures must be narrowly adapted and in line with the principle of necessity. The judiciary should consider all possible alternatives to security in the courtroom and prefer less severe measures to more severe ones when they can achieve the same goal.

In Mraović v. Croatia (2020, § 35), the applicant accused of rape complained that the case had been heard in closed session and that his right to a public hearing had therefore been violated [1].

The court noted that the applicant had initially requested a closed hearing, but after he had been acquitted and the case remanded for further investigation, he had requested an open hearing, which was due to his intention to justify himself to the public. The Court concluded that the exclusion of the public in the criminal proceedings against the applicant was necessary to protect the privacy of the rape victim and that there had therefore been no violation of Article 6 § 1 of the Convention.

Consideration of public order and security issues may justify the exclusion of the public from public hearings in the case of disciplinary proceedings in prison against convicts.

The conduct of a trial in ordinary criminal proceedings in a prison does not necessarily mean that it is not public. However, in order to overcome the obstacles associated with holding a trial outside the ordinary courtroom, the state must take compensatory measures to ensure that the public and the media are properly informed and effectively accessible.

However, the availability of classified information in the case file does not automatically mean that the trial should be closed to the public without balancing openness with national security concerns. Before removing the public from criminal proceedings, courts must make specific conclusions that closure is necessary to protect compelling public interests, and must limit secrecy to the extent necessary to preserve that interest [5, p. 58].

The Court's usual approach in such cases is to analyze the reasons for the decision to hold a closed session and to assess, in the light of the facts of the case, whether those reasons are justified. However, the application of the criterion of strict necessity can create a particular problem when the basis for conducting part of the trial indoors concerns national security.

The «sensitive» nature of the national security problem means that the very reasons for the exclusion of the public may in themselves be covered by confidentiality arrangements, and the respondent governments may be

reluctant to disclose the details of this Court. Such «sensitivity» is, in principle, legitimate, and national judicial authorities may take the necessary measures to protect classified information disclosed by the parties during the proceedings. However, in some cases, even such confidentiality guarantees may be considered insufficient to reduce the risk of serious harm to fundamental national interests.

In Yam v. The United Kingdom (2020, §§ 54-57), the applicant was charged with theft, which resulted in the death of the victim and a number of other crimes. At one of the hearings, the national court decided to hold a closed hearing to protect the national security and safety of one of the prosecution witnesses. The applicant complained that the testimony of the witness heard in closed session had to be refuted by the defense. His requests for an open hearing were rejected and, in the applicant's view, the trial was generally unfair. In addition, by submitting an individual application to the Court, the State refused to provide the materials heard in closed session [2].

The Court concluded that, for reasons of national security, the State had held a closed hearing on the grounds that there had been no violation of Article 6 of the Convention. The court ruled that there had been a violation of Art. 34 of the Convention (right of individual application) due to the fact that the United Kingdom has not fulfilled its obligations under this article.

Thus, the Court may be required to assess whether the exclusion of the public and the press met the criterion of extreme necessity without having access to the material assessed at national level [5, p. 59].

In this connection, the Court does not have adequate capacity to appeal against the decisions of the domestic authorities which were brought on grounds of national security. However, even where national security is at stake, measures affecting fundamental human rights must be subject to some form of competition before an independent body competent to consider the reasons for such a decision. Where the Court does not see the national security material on which decisions restricting human rights are based, it will carefully examine the national decision-making process to ensure that it includes appropriate safeguards to protect the interests of the person concerned. It is also important for the Court to determine whether the decision to conduct closed criminal proceedings was compatible with the right to a public hearing under Article 6 of the Convention, whether public interest considerations were balanced with the need for openness, whether all evidence was disclosed to the defense and the proceedings were generally fair.

Finally, summarizing all of the above, we can conclude that in deciding to hold a closed hearing, national courts must provide sufficient reasons for their decision, which demonstrates that closure is strictly necessary within the meaning of Article 6 of the Convention.

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ПОНЯТТЯ ЗАБОРОНА ЯК ВИЗНАЧАЛЬНИЙ ЧИННИК ПРАВОВОГО ДИСКУРСУ

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У сучасній гуманітаристиці, на жаль, уніфіковане трактування ключового терміна «заборона» відсутнє. Не сформована й досі різноспрямованість характеристик. Їхня неуніфікованість хоча й ґрунтується на концепті «недозволеності», «табуювання», все-таки увідповіднює ті сфери і галузі, в яких у правовому відношенні і досі існують недогляди щодо уніфікованості та диференційованості кримінальної, адміністративної, цивільної чи міжнародно-правової заборон на етапі унормування трудових відносин.

Наприклад, із духовної сфери термін «брехня» чи «крадіжка» набуває розширеної семантизації заборони скажімо, в кримінальному праві. Чи