



THE EUROPEAN COURT OF HUMAN RIGHTS' CASE LAW ON THE RIGHT AGAINST SELF-INCRIMINATION IN CRIMINAL PROCEEDINGS

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Purpose – The aim of this article is, according to the theoretical application principles of the right against self-incrimination, to give an overview of case law concerning infringements of this right in criminal proceedings as well as to give an overview of fields where the scope of this right can be limited and these limitations may be justified according to the principles set in case law of the European Court of Human Rights (hereinafter – ECtHR);

Design/methodology/approach – The theoretical basis of the topic is presented in the first part of the article. In this part, according to the analysis and comparative methods, principles, types of compulsory measures and criteria of the right against self-incrimination are excluded, as infringements of the right against self-incrimination are based on these grounds in the ECtHR jurisprudence. This part compares various scholarly approaches how the right of self-incrimination has emerged as well as it compares criteria for determining violations in different cases dealt by the ECtHR. The second part of the article, according to the document analysis method, examines the ECtHR jurisprudence on the right against self-incrimination. After an overview of relevant case law, examples of various infringements of this right and their legal assessment are presented. This part seeks to give an overview of the relevant case law of the ECtHR, which have impact to the issue of this article. Lastly, according to generalisation and alternative methods, the final part gives information on the justified limitations of the right against self-incrimination, this part also explains why such limitations do not infringe the European Convention on Human Rights (hereinafter – ECHR). Last part also presents examples of alternative practise of member states on the right against self-incrimination which is in line with human rights standards;



Findings – The right against self-incrimination has been in existence for more than 200 years and it is derived from a prosecutor’s obligation to prove the guilt of the accused (in this article only the expression “accused” is going to be used, as most infringements of the right are established after presentation of indictment to the accused). The ECtHR has developed forms and criteria for determining infringements of this right. The common basis for assessment of such infringements is the principle of reasonableness, however, in its case law the ECtHR additionally invokes compulsory powers and their extent in order to get some evidence; the extent of public interest in crime investigation and in conviction; the existence of relevant procedural measures and the assessment of evidence achieved according these measures. The ECtHR case law provides that it is prohibited to torture or intimidate a person in order to get his plea of guilt, it is also forbidden to conduct an intrusion into the body of the accused if such intrusion is against the will of the accused. Moreover, before presentation of the gravamen to the accused and assurance of proper rights of defence to the accused, it is prohibited to compel a person to admit of having committed an offence. Especially significant are those cases, when there is no obligation to prove the guilt, as the accused may get particularly vulnerable in these cases. Improper application of procedural averment measures and methods in order to get plea of guilt are not allowed in the ECtHR case law either. On the other hand, the right against self-incrimination is not absolute and member states are permitted to establish certain compulsory measures against the accused. In other words, it is allowed to use evidence, collected using compulsory powers when repetitive criminal acts were committed, in court, if such evidence are treated only as additional evidence in secondary proceedings and they do not conform the main basis of conviction. In criminal investigations of some offences (such as disposition of drugs or falsification of documents of vehicles) public authorities and officials are given a wider discretion to use compulsory powers and, as a consequence, limitation of the right against self-incrimination may be justified according to the ECHR in such cases. Such limitation may be justified by public safety, road safety and public interest protection objectives;

Research limitations/implications – This article analysis the right against self-incrimination of accused in the ECtHR jurisprudence. Following issues are analysed in the study: which compulsory powers do not infringe the right, which criteria are used to determine whether there was an infringement of the right, which actions are not consistent with the Article 6 and other provisions of the ECHR and, finally, which limitations of the right may be justified. According to the theoretical principles of the



right against self-incrimination, some practical suggestions are provided as well as it is presented how the assessment of the offence differs according to the nature of the offence (e.g. repetitive criminal acts, disposal of drugs, etc.) and the scope of the right;

Practical implications – This article presents relevant case law of the ECtHR on the right against self-incrimination and its limitations. In national criminal prosecution application and evaluation of formed criteria in the ECtHR gives an additional mechanism of law assessment. More importantly, the mere application of the principle of the reasonableness does not form a clear-cut case law and for this reason the content of the right against self-incrimination gets vague, not systematic and not effective. Consequently, issues dealt in this article are relevant for their practical nature, as this article suggests assessment criteria of legal situations, which have already been recognised on national and regional levels. Furthermore, this article is significant for its examination of proper application of the right against self-incrimination;

Originality/Value – This study provides relevant case law of the ECtHR on the right against self-incrimination in criminal proceedings. In Lithuania the right against self-incrimination derives from the Constitutional provisions. Article 31 expresses the right not to incriminate yourself, a family member and a close relative. The historical analysis and assumptions of formation of this right was examined in the article “Prohibition to compel the Persons to give Evidence against themselves as the Constitutional Guarantee in the Criminal Procedure” by professor Dr. R. Jurka. In detail this issue was presented in guide “Rights to a fair trial under the European Convention of Human Rights (Article 6)” by Dovydas Vitkauskas and Sian Lewis-Anthony. Foreign scholars as J. R. S. Forbes, R. Müller and other scholars have also analysed this issue, however, relevant case law of the ECtHR on the right against self-incrimination and its limitations have not been widely analysed in Lithuania. Issues analysed here are significant, as the assessment of the right against self-incrimination and its infringements are dynamic and changeable in the ECtHR jurisprudence, moreover, these issues raise problems in national criminal proceedings.

Keywords: right against self-incrimination, case law of the European Court of Human Rights, accused;

Research type: research paper.