

Problems of enforcement of judgments of the European Court of Human Rights in Ukraine

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Abstract. The research relevance was determined by the need to create an effective mechanism for enforcing judgments of the European Court of Human Rights (ECHR) in the context of their systematic non-enforcement by Ukraine and the existing threat of weakening the guarantees of observance and safeguarding the fundamental freedoms and rights. Consequently, the research endeavour focused on examining the challenges and barriers present within the mechanisms responsible for implementing the rulings issued by the ECHR as well as the judgments rendered by domestic courts operating at the national level. The methods used in the study include historical, statistical, legal hermeneutics and others. The core findings and central conclusions drawn from the research investigation are to reveal the prerequisites for Ukraine's integration to the European supranational judicial protection system, the impact of this event in the context of guaranteeing basic human entitlements; focus on data regarding Ukraine's participation as a defending party in international legal disputes. The author examined which rights are most often violated in the context of lawsuits against the Ukrainian state before the ECHR, in particular, the right to free movement and personal integrity, as well as facts related to the duration of proceedings, fair trial, etc. The author also pointed to two major pilot judgments delivered by the Court – Case No. 40450/04 and Case No. 46852/13, which point to a systematic and structural issue of inaction to properly implement the judgments of the ECHR and national courts. This analysis delved into the underlying factors that contribute to the challenges in enforcing judgments, which include imperfect legislation and insufficient funding. The author pointed out the need for a comprehensive approach to improving this area through the development of effective remedies and alternative ways of paying compensation. This study's outcomes serve as a springboard for further research by sociologists, legal professionals, political scientists, and policymakers, paving the way for a more dependable court enforcement framework

Keywords: systematic violation; remedies; enforcement proceedings; just satisfaction; guarantees; legality

Introduction

Ukraine's membership in the European Convention on Human Rights (ECHR) system, established in 1950, necessitates compliance with Article 46, which compels the nation to implement judgments from the ECHR. Such enforcement does not depend on the will of the person in whose favour the judgment was delivered but rather creates an obligation for the state to comply with it. The ECHR is preeminent and highly influential judicial institution operating at the global level that safeguard and uphold fundamental human rights and liberties across the European continent, and the enforcement of judgments of this institution is a tool for restoring violated rights and performs a preventive function to prevent further violations. Given this provision, the research relevance is determined by the significance of guaranteeing inalienable human liberties in the conditions of the highest risk of their violation, and thus, the development of a robust system to ensure court orders are upheld. The problem of this research is the risks of deterioration of Ukraine's image in the international arena, a growing caseload for the ECHR

and undermining public confidence in the national system and government.

Ukraine's legal framework, with the 1996 Constitution at its core, outlines procedures for enforcing judgments from the ECHR. It also recognises Ukraine's various international obligations and the significance of incorporating the ECHR's case law. The Constitution provides the possibility for complainants who have fully utilised available national remedies to apply to international human rights institutions or organisations to which Ukraine is a party for the protection of their liberties and obligations (Kubarieva, 2023). Putting into effect the ECHR judgments involves the introduction of measures of both individual and general nature. N.V. Mishina (2023) notes that general measures include, for example, legislative changes, changes in administrative practice, additional review, and analysis of legal acts for constitutionality, creation of conditions for in-depth study of the provisions of the Convention and the Court's case law, as well as other measures aimed at ensuring respect for the inherent rights of

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all individuals. The study of A. Belikova (2023), who identified individual measures of enforcement of ECHR judgments, is noteworthy. First of all, such measures consist of compensation for moral or physical consequences, namely just satisfaction, termination of the violation and its negative impact, as well as restoration of the victim's previous position before the offence.

Following the I. Sichkovska (2021), the implementation of ECHR judgments is a lengthy process. A decision is considered to be satisfied when national reports detail the actions undertaken by the government, after which the Committee of Ministers of the Council of Europe issues a resolution certifying that the decision is considered to be officially implemented. The author also points out that the hurdle of ensuring court verdicts in Ukraine may be the insufficient level of funding in this area due to the high level of costs for just satisfaction. Thus, according to the author, in 2018 alone, almost 33 million hryvnias were paid in respect of the conclusions of the ECHR on applications. It is also worth mentioning the enforcement of ECHR judgments, which, as noted by D. Minchenko (2023), is a procedure involving representatives of the state executive service. Enforcement applies to cases of recovery of compensation with a penalty. The author also noted the difference between the enforcement of decision both domestically and globally, which is that the initiator of the proceedings is not the person affected by the offence, but the state.

Despite considerable research into the institution of ECHR judgments, the problem of their systematic non-enforcement and its consequences for democracy and human rights protection requires a deeper study. Thus, the study aimed to analyse the main problems that exist in the area of enforcement of ECHR judgments.

Materials and methods

The study used a number of methods of scientific cognition. In particular, the historical method, which, through the study of the formation of objects in chronological order, clarified the processes and patterns of development and establishment of the ECHR and the process of accession of the Ukrainian state to this structure, the European Convention on Human Rights as the main document in the field of human liberties protection, as well as their impact on the state of human entitlements in the modern period.

It is also worth highlighting the method of legal hermeneutics, which was used to interpret and understand the legal aspects of the research object, their context, objectives, and significance, and to determine the content of legal provisions and the specifics of their application within the institution of enforcement of ECHR judgments by Ukraine. As such, the study object, adjusted for this method, included European Convention on the Protection of Human Rights and Fundamental Freedoms (1950), Law of Ukraine No. 1404-VIII "On Enforcement Proceedings" (2016), Law of Ukraine No. 3477-IV "On Execution of Judgments and Application of the Practice of the European Court of Human Rights" (2006), case of "Yuriy Ivanov v. Ukraine" (Application No. 40450/04) (2010), case of "Burmych and Others v. Ukraine" (2017), case of "Maymulakhin and Markiv v. Ukraine" (Application No. 75135/14) (2023), case of "Mayboroda v. Ukraine" (Application No. 14709/07) (2023), case of "Bogdan v. Ukraine" (Application No. 3016/16) (2024),

Law of Ukraine No. 4901-VI "On State Guarantees for the Execution of Court Decisions" (2012).

It is also worth mentioning the systemic-structural approach, which was used to characterise the mechanism of execution of ECHR judgments in Ukraine as an integral system and to point out the interrelationships between its elements, as well as to identify the range of entities that have powers in this area on a domestic and global scale. The systemic-structural method was also used to study what measures the state should take for the final judgment of the ECHR to be considered executed, as well as which Council of Europe (CoE) bodies are authorised to control and monitor the process. The statistical method, based on the collection and interpretation of statistical data, was used in the study of the human rights situation in Ukraine by examining the number of applications filed with the ECHR in 2022. The source of the relevant data was the ECHR website (Violations by Article..., 2022).

The analysis method was employed to identify the main issues related to a range of challenges and roadblocks of a legal, financial, and political nature in the area of implementation of rulings issued by domestic courts and the ECHR. The method was also used to describe the repercussions of failing to uphold judgments of ECHR judgments and the risks that arise in this case for the human liberties sphere and the guarantee of basic human entitlements by the state. The analysis method was also used to develop ways and means of solving the problem of non-enforcement of judgments in an extraordinary situation. Along with the method of analysis, the induction method was used to study the opinions of various authors and scholars on the general issues of ECHR functioning, which formed the study conclusions.

Results

The history of the establishment of the ECHR and the Convention for the Protection of Human Rights and Fundamental Freedoms is closely linked to the post-war development of Europe. After the Second World War, Europe faced a need to ensure the security of the legal status of citizens from the arbitrariness of state authorities. In this context, the leaders of European states decided to establish an international body that would be responsible for ensuring the observance of these rights and freedoms. In 1949, the Council of Europe was founded in London, which established itself as the leading international body to protect inherent rights and individual freedoms in Europe. In 1952, the Convention was signed, coming into legal effect in 1953 and contains a list of fundamental liberties and entitlements guarantee to the state's parties to the Convention.

In 1959, the European Commission of Human Rights (EC) emerged as the foremost institution tasked with reviewing claims of human rights violations guaranteed by the Convention. In 1998, following ratification of Protocol No. 11 to the Convention, the EC and the ECHR were merged into a single body – ECHR (Schmahl, 2022). The ECHR is a cornerstone institution for safeguarding fundamental rights, considering applications filed by both individuals and organisations of various forms of ownership who believe that the fundamental entitlements enshrined in the Convention have been breached by the state parties (Tyss *et al.*, 2023). If the Court finds a violation of the Convention, it may order that the respondent state must take measures to restore the violated rights.

Ukraine's accession to the European Convention was a significant step towards the development of a system based on the supremacy of law in Ukraine, in particular due to the availability of additional guarantees for Ukrainians in the area of ensuring adherence to the principles of justice and equality, and the fact of accession also determines the development of national legislation and court practice, as ECHR judgments must be considered in national courts. However, it should be noted that Ukraine has a problem of non-enforcement of judgments, as evidenced by the statistical data (Fig. 1).

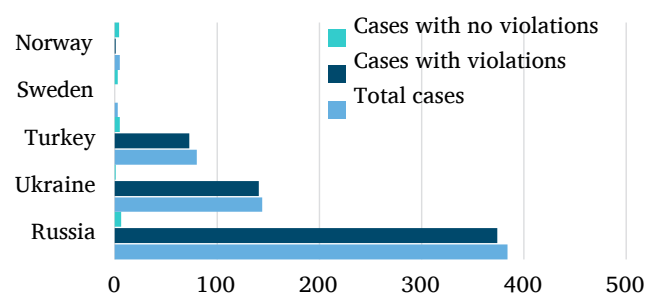


Figure 1. Number of open ECHR proceedings as of 2022
Source: Violations by Article and by State (2022)

The data indicate that the predominant amount of applications processed by the ECHR are from applicants from Russia, Ukraine, and Turkey; in comparison with other countries, the figures are much higher. It is also advisable to outline the violations of which rights Ukrainian applicants complain about following the provisions of the Convention: cruel, inhuman, or humiliating treatment (Article 3) – 51 open proceedings, the fundamental right to freedom and personal security (Article 5) – 114 open proceedings, the right to a fair trial (Article 6) – 21, lengthy proceedings (Article 6) – 45, the guarantee of legal recourse for rights violations (Article 13) – 64 (Violations by Article..., 2022). Thus, it is worth investigating the mechanism of enforcement of ECHR judgments in Ukraine. In particular, the Law of Ukraine No. 1404-VIII “On Enforcement Proceedings” (2016) states in Article 3 that ECHR judgments are subject to enforcement. The intricacies of this process are explored in greater detail in the Law of Ukraine No. 3477-IV “On Execution of Judgments and Application of the Practice of the European Court of Human Rights” (2006), Article 7 of which states that within ten days after receiving a notification from the ECHR on the final status of the case, the authorised body must send the plaintiff an information letter with a list of basic rights, including the right to apply to the executive service for compensation. In addition, it must also forward the translation and text of the final judgment to the state enforcement service, which, in turn, must initiate enforcement proceedings within ten days of receiving these documents. Compensation under the final judgment is paid within three months, but in case of violation of this period, interest is charged on the amount of compensation.

The provision of financial compensation is the most common measure of an individual nature. It aims to provide the applicant with financial recompense for the losses incurred as a result of the violation of rights. The amount of pecuniary compensation is determined by the Court (Madsen *et al.*, 2022). Along with the payment of compensation, an important measure is the restoration of rights, which can be

carried out through the invalidation of a decision of a public authority that violated the applicant's rights, or by amending administrative procedures that violated the applicant's rights. While compensation is determined by the Court, the state has the obligation to apply general measures. Such measures are necessary to establish safeguards that prohibit future violations of citizens' rights and freedoms, as well as to reduce the number of applications to the ECHR (Rosas, 2022). Thus, such measures may include changes in the regulatory framework, the practice of activities and responses of public authorities, and educational activities, in particular for civil servants and law enforcement agencies, on the importance of observing the human and civil rights guaranteed by law.

Here's a noteworthy point that the statistical data indicate not only the imperfection of the mechanism of execution of ECHR judgments in Ukraine but also the insufficient effectiveness of national legislation that forms and determines the procedure for material and procedural actions. The ECHR also highlighted this in its pilot judgements of the case of “Yuriy Ivanov v. Ukraine” (2010) and the case of “Burmych and Others v. Ukraine” (2017). The pilot decision contains a statement of the underlying causes that contribute to the persistent issue and the steps that the respondent State should take. Among the most recent judgments, it is worth analysing the case of “Maymulakhin and Markiv v. Ukraine” (2023), where the applicants complained of discrimination by public authorities, as well as violations of privacy rights and lack of adequate remedies. The case of “Mayboroda v. Ukraine” (2023) emphasises the state's failure to take necessary steps to guarantee and protect the population within the healthcare sector, as well as the lack of a regulatory framework that would eliminate both material and procedural gaps in these issues. The case of “Bogdan v. Ukraine” (2024) emphasises unfair trials and lack of access to effective remedies.

In general, both in pilot judgments and in individual complaints, the ECHR emphasises and identifies several systemic problems: unacceptably long consideration of cases; lack of an effective system of investigation of offences; violation of the inherent right to life; inadequate conditions of detention; restrictions on access to medical care; lack of effective mechanisms of legal protection. The ECHR's position on these issues is that the state bears the ultimate responsibility for ensuring final judgments are enforced, as well as the obligations under the Convention, and that non-enforcement cannot be justified by lack of funds, resources, or neglect of duty by those entrusted with execution, and that gaps in domestic law are the sole responsibility of the respondent state. However, it is also worth mentioning additional factors that create obstacles in the system of enforcement of the Court's judgments. Thus, according to the Order of the Cabinet of Ministers of Ukraine No. 1218-p “On Approval of the National Strategy for Addressing the Problem of Non-Compliance with Court Decisions, Debtors of which are State Bodies or State-Owned Enterprises, Institutions, Organisations, for the Period up to 2025” (2020), the primary drivers for non-enforcement of ECHR judgments are legal gaps and prohibitions that impede the enforcement of debts, insufficient regulation of the system of social benefits, low level of automation of the enforcement process, insufficient efficiency of the regulatory framework for bankruptcy proceedings for state institutions, ineffective judicial control over enforcement proceedings, lack of available remedies for individuals, and insufficient financial security (Creamer & Godzimirska, 2023).

In general, as a result of the pilot judgement in the case of “Yuriy Ivanov v. Ukraine” (2010), the state took several measures involving the enactment of a series of legislative instruments: Law of Ukraine No. 4901-VI “On State Guarantees for the Execution of Court Decisions” (2012), which establishes guarantees for the execution of court decisions by the state, and Resolution of the Cabinet of Ministers of Ukraine No. 440-2014-p “On Approval of the Procedure for Repayment of Debts under Court Decisions Enforced by the State” (2014), which approves the procedure and mechanism for the execution of court decisions, as well as the inventory and repayment of debts under the relevant decisions. Although these legal acts were intended to improve the procedural component of the enforcement of judgments, the issues of moratorium and insufficient funding remained unresolved.

The further inefficiency of Ukraine’s judgment enforcement system is also evidenced by the case of “Burmych and Others v. Ukraine” (2017), which consolidates about 12 thousand cases filed with the ECHR in 2013-2017. All cases concern the non-enforcement of national court decisions, in particular regarding the payment of social security. The ECHR decided that all similar cases that will be decided after this judgment will be removed from the register and transferred to the Committee of Ministers of the Council of Europe for monitoring of implementation.

The Court also pointed out that a persistent issue of unenforced judgments in Ukraine revealed a need for more comprehensive solutions. Also, the ECHR noted that it is not part of the national justice system in Ukraine, but only a subsidiary international remedy. However, the Ukrainian state did not stop fulfilling allocated duties under Article 46 of the European Convention. In particular, the Government of Ukraine provided the Committee of Ministers with information on the functioning of the judicial system, the situation in penal and pre-trial detention facilities, as well as changes in criminal procedure legislation (Mirkalaei & Mohammadzadeh, 2023). In 2022, there were also developments in the execution of some important cases, including the case of “Bochan v. Ukraine No. 2” (2015), which resulted in the creation of an effective remedy by applying for review of final decisions of national courts in civil and criminal matters based on a violation established by the ECHR. Supervision of the implementation of more than 60 ECHR judgments was also suspended, 16 of which had systemic or structural problems, mostly related to pre-trial detention, administrative matters and procedural issues of investigation and investigative actions, border crossing (Furramani & Bushati, 2022; Supervision of the execution ..., 2022).

It should be noted that despite certain progress in the enforcement of court orders, the Committee of Ministers of the Council of Europe still has about 700 cases against Ukraine under its control, some of which are key or guiding cases, the implementation of which depends on judicial reform, improvement of the mechanism of effective judicial review of cases and ensuring proper conditions of detention. Given this, the implementation of such decisions by Ukraine is impossible without comprehensive measures. For example, Ukraine should conduct a comprehensive assessment of its legislation for compliance with the Convention for the Protection of Human Rights and Fundamental Freedoms and gradually make the necessary changes in case of inconsistencies (Popović & Zdravković, 2020; Escobar Veas, 2023). Another important measure to be taken by Ukraine is to

improve judicial practice. Ukraine should ensure that its domestic courts properly consider the ECHR judgments in their practice. To this end, it is necessary to train judges and other judicial officers through the involvement of, for example, international experts and human rights defenders, and to develop appropriate methodological guidelines. It is also important to calculate the amount of debt that has arisen due to the lack of execution of domestic court orders in Ukraine. Given that the amount may be significant, steps should be taken to establish a system of payments that would allow for gradual compensation of damages, as well as to offer alternatives to proposals for ensuring the enforcement of a particular decision. The legal framework necessitates revision in order to determine the state budget of the country, in particular through fair distribution and enforcement of payments.

To ensure the effectiveness of these measures, Ukraine should adhere to the following principles: involvement of all stakeholders in the process of implementing the ECHR judgments, including representatives of the authorities, human rights organisations, and the public; consistency and systematic implementation of measures; monitoring the implementation of measures and making necessary adjustments if necessary. After all, the implementation of ECHR judgments is an important condition for ensuring human rights and freedoms in Ukraine.

Discussion

Ukraine ranks among countries with a high number of outstanding judgments from the ECHR, which indicates the systemic nature of the problem. Insufficient funding is only one of the factors that lead to the non-enforcement of ECHR judgments. However, other aspects must also be considered, including imperfections in national legislation and insufficient knowledge of ECHR case law and the main provisions of the European Convention by judges and law enforcement officers, which undermines confidence in the national judicial system as a whole and hinders the development of democracy and the rule of law.

To form a general vision and understanding of the peculiarities in this area, and to find additional ways to solve the problem it is beneficial to examine relevant academic literature. Thus, the affirmative duties of states under the Convention were aptly expressed by N. Mavronicola (2021). Traditionally, human rights protection has focused on negative obligations, preventing state interference with rights. The authors focus on positive obligations, which, on the contrary, require states to take active measures and intervene in human rights, including the use of criminal law to deter and punish violators. Thus, the concept of positive obligations of the state was formulated by the ECHR in the judgment in the case of “Osman v. the United Kingdom” (1998). In this judgment, the Court found that the state must not only refrain from situations that might lead to a deprivation of the right to life but also take measures to protect it, in particular: establish effective legal norms that ensure the protection of life; create effective mechanisms for investigating and prosecuting violations of the right to life; take measures to prevent violations of the right to life. Later, the ECHR introduced the principle of positive obligations in its judgments in the context of other rights guaranteed by the ECHR. Although the authors’ findings only partially confirm the results of this paper, it is advisable to take them into account and add the importance of positive obligations of the state in the context

of the implementation of ECHR judgments, which are manifested in general measures to prevent the recurrence of similar violations in the future. They may include amendments to legislation, development of judicial practice.

The so-called “structural rights” are interrelated with positive obligations, the concept of which was considered by M. Leloup (2020). The author identifies several rights under the ECHR that can be interpreted through a structural lens, in particular, the right to life (e.g., addressing systemic problems that lead to preventable death); the right to an effective remedy (ensuring access to justice for systemic violations); the right to education (combating systemic discrimination in access to education); the right to freedom of expression (overcoming structural obstacles to freedom of expression). Thus, the obligations arising from structural rights, if interpreted through the structural prism of the ECHR, are positive. They may consist of investing in resources to overcome social and economic inequality, addressing the root causes of human rights violations, ensuring effective and fair trials, guaranteeing protection from human rights violations (Shevchuk *et al.*, 2022). It is worth adding that the authors’ findings are a valuable contribution to understanding the importance of observing and guaranteeing human rights and freedoms, in particular in the context of the implementation of ECHR judgments. Thus, this contributes to ensuring the rule of law, setting precedents and minimum guarantees for the protection of human rights and freedoms, increasing the authority of the judiciary, and promoting democracy and development (Çifligü, 2023).

The ECHR judgments are based on several principles, among which the principle of proportionality is an important one. K. Trykhlil (2020) points out that the principle of proportionality, in the light of which the Court’s proceedings are conducted, ensures a fair balance between the rights of the individual and the legitimate interests of the state. The principle is a safeguard against arbitrary interference by the state with the rights of the individual enshrined in the ECHR. The ECHR assesses proportionality using several criteria: legitimacy of purpose, assessing whether the grounds for the state’s restriction of a right fall within the permitted grounds under the ECHR; necessity of the restriction, i.e. examining whether less restrictive measures have been considered and found insufficient; and fair balance, weighing whether the restriction is proportionate to the necessary aim of the state (Saliu, 2021). The author’s findings do not correspond to the results of this paper but reveal some aspects of the final judgment of the ECHR. However, it is worth noting that this may create grounds for abuse of the extraordinary situation and level the importance of solving the systemic problem of non-enforcement of judgments of national courts and the ECHR, so the Committee of Ministers of the Council of Europe should monitor the state’s activities in the enforcement of court decisions.

The issue of non-enforcement of ECHR judgments was discussed in more detail by D. Panke (2020). The STUDY identifies several factors that influence the failure of states to comply with ECHR judgments, including the domestic political context (low level of democracy), the nature of the violation, an imperfect enforcement mechanism, and the lack of strict measures by the ECHR in response to the systematic failure to comply with judgments. The author proposes improving the monitoring of the State’s activities in this area, as well as introducing reliable mechanisms of co-

ercion or sanctions in case of failure to fulfil its obligations. The author’s findings confirm the results of this paper, but it should also be added that the reasons for non-enforcement of judgments may include the financial aspect, i.e., insufficient funds to compensate for the damage caused or to pay fair satisfaction under the court decision, and non-enforcement of ECHR judgments may also be since the country’s legislation contains significant gaps or conflict of laws, which leads, for example, to an unfair trial or ineffective remedies. The issues of the general impact of the ECHR on legal practice and doctrine were considered by A. Donald and A.K. Speck (2019). The effectiveness of the ECHR depends not only on the issuance of judgments establishing violations but also on ensuring their proper implementation by member states. Although the Court may order just satisfaction as an individual measure, general measures and their adoption are left to the discretion of the state, which gives states a certain degree of discretion in choosing how to achieve the desired result. At the same time, factors such as political will, limited capacity, and entrenched systemic problems may hinder the achievement of the main goal of guaranteeing a safe space and protecting human rights and freedoms (Shkuratenko *et al.*, 2023).

Similar reasoning is present in a study of S. Cassella (2020). Thus, the ECHR has a significant impact on national legal systems, as the ECHR protects a wide range of rights, including the right to life, the right to liberty and security, the right to a fair trial, the right to privacy and the right to freedom of expression. The ECHR also has a significant impact on the way national courts operate, as many of them refer to ECHR case law in their judgments or change legislation as a result of the impact of a final judgment, such as the legalisation of aid in dying in France for people with terminal illnesses or the legalisation of same-gender marriage in the United Kingdom (Abdrasulov *et al.*, 2023). The authors’ findings partially correspond to the results of this study. Indeed, although the ECHR’s case law in the field of legal protection plays a crucial role in the promotion of human rights, the path from judgment to effective implementation depends not only on the Court but also on the respondent state. Continued efforts to remove constraints, promote dialogue and strengthen enforcement mechanisms are essential to ensure that the Court’s judgments are fully implemented.

Conclusions

The conducted study revealed a deeper analysis of the issues related to the problems that exist in the field of implementation of ECHR judgments by Ukraine. Despite Ukraine’s accession to the system of international protection and the ECHR, the country is one of those against which most applications are filed by citizens with the ECHR. In particular, as of 2022, Ukraine was ranked third in terms of the number of registered claims. Citizens of Ukraine most often file applications with the ECHR concerning the length of court proceedings, inhuman treatment, torture, lack of effective remedies, violation of the right to liberty and security of person.

The ECHR issued a pilot judgment in “Ivanov v. Ukraine”, identifying a systemic problem of non-enforcement of judgments of national courts and the ECHR, and pointing to several factors that affect this situation: imperfect legislation, procedural issues, lack of sufficient funding. The pilot judgement resulted in the adoption of several legal acts by Ukraine that did not solve the problem and led to the

adoption of the “Burmych v. Ukraine” judgement, which combined 12 thousand applications relating to the non-enforcement of national court judgements. Ukraine should gradually take comprehensive measures to create an effective mechanism for the implementation of ECHR judgments, in particular through the provision of proper training for civil servants and judges, the development of legislation that complies with the provisions of the ECHR, and the creation of an effective system of enforcement proceedings.

For further research on related topics, it is proposed to clarify the following issues: the role of the Committee of Ministers

of the Council of Europe in ensuring the enforcement of ECHR judgments; the practice of enforcement of ECHR judgments in other countries; the impact of the political situation on the enforcement of ECHR judgments; the role of civil society in ensuring the enforcement of ECHR judgments.

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Conflict of interest

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Проблеми виконання рішень Європейського суду з прав людини в Україні

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Анотація. Актуальність дослідження зумовлена необхідністю створення ефективного механізму приведення рішень Європейського суду з прав людини (ЄСПЛ) у дію в умовах їх систематичного невиконання Україною та існуючої загрози послаблення гарантій дотримання та захисту прав людини. Зважаючи на це, метою даної науково-дослідної роботи постав аналіз перешкод, які існують в системі виконання рішень ЄСПЛ та національних судів. Методами, котрі були використані у дослідженні були наступні: історичний, статистичний, юридичної герменевтики та інші. Основні результати науково-дослідної роботи полягають у розкритті передумов приєднання України до системи європейського наднаціонального судового захисту, впливу даної події в контексті гарантування прав та свобод людини; виокремленні статистичних даних щодо кількості справ, в яких Україна виступає державою-відповідачем. Досліджено, які права найчастіше порушуються в межах позовів проти української держави до ЄСПЛ, зокрема це право на вільне пересування та особисту недоторканість, а також факти, що пов'язані із тривалістю провадження, справедливого судового розгляду тощо. Вказувались також і два основних пілотних рішення, котрі були винесені Судом – справа No. 40450/04 та справа No. 46852/13, в яких зазначено про систематичну та структурну проблему, котра полягає у невиконанні рішень ЄСПЛ, а також національних судів. Увага приділена і першопричинам такого стану у сфері виконання рішень, які полягають у недосконалості законодавства та недостатньому фінансуванні. Зазначається щодо необхідності комплексного підходу до вдосконалення сфери через розробку ефективних засобів правового захисту, а також альтернативних способів сплати відшкодування. Результати дослідження можуть бути використані для подальших робіт на дотичну тематику соціологами, правознавцями, а також політологами й законодавцями для формування нового підходу щодо створення надійного механізму виконання судових рішень

Ключові слова: систематичне порушення; засоби юридичного захисту; виконавче провадження; справедлива сатисфакція; гарантії; законність