

The impact of the European Court of Human Rights judgements on the development and transformation of Ukrainian law

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Abstract. The relevance of this study lies in the fact that the European Court plays a considerable role in protecting the rights and freedoms of citizens, and the judgements delivered by the European Court of Human Rights (ECHR) reflect the interaction of Ukrainian jurisdiction with European human rights norms and standards, which is crucial in the context of strengthening democratic principles and the rule of law in Ukraine. The purpose of this study was to examine the impact of judgements of the International Court of Human Rights on the structure and content of Ukrainian legislation. The following methods were used in the study: historical, hermeneutical, statistical, and comparative analysis. The study showed the impact of the decisions of the international court that guarantees the observance of individual freedoms on the development and transformation of the Ukrainian legal space. The study analysed how Ukrainian courts react to the ECHR judgements. It was found that these decisions are often used as a basis for improving legislation and law enforcement practice in Ukraine. However, there are also cases of non-compliance with ECHR judgements, which indicates the need to further strengthen the mechanisms of influence of international law on internal legislation of the country. The study examined particular cases where the ECHR judgements helped to defend the rights of Ukrainian citizens before internal judicial authorities or state institutions, which demonstrates the important role of the European Court in guaranteeing the protection of human rights in Ukraine. These decisions not only point out problems and gaps in national legislation, but also contribute to improving law enforcement and protecting citizens' rights. The practical significance of this study lies in the fact that it will improve the practice of enforcement of the European Court's judgements in the country, and the analysis of such judgements may also serve as a basis for developing mechanisms for protecting the rights of citizens in the Ukrainian judicial process

Keywords: international standards; convention; law; precedent; international agreements; justice

Introduction

In the context of Ukraine's European integration process, one of the key tasks of state-building is to reform the institutions and institutional systems responsible for ensuring the rule of law and legitimacy in society. The academic interests of Ukrainian legal science are focused on the adaptation of national legislation to the norms and principles of the European Union (EU) legal order, as well as the transformations taking place in the enforcement proceedings system. The judgements of the European Court of Human Rights (ECHR) have an impact on the Ukrainian legal system, opening a new stage in the transformation of legislation in line with European standards. These standards set the legal context and serve as guidelines for improving national human rights mechanisms, which contributes to the comprehensive protection of citizens' rights and freedoms. Ukrainian jurisdictions face difficulties in interpreting and enforcing judgements of the ECHR, which requires harmonisation of legislation to meet European standards and requires significant efforts from legislative and law enforcement authorities.

J. Kapelańska-Pręgowska (2021) investigated the issue of balance in the ECHR. Based on the current case law in the ECHR, the researcher tries to predict the possible outcome of the applications recently filed with the ECHR by Polish women who were denied reproductive rights and to explore the relevant issue in national legislation. The researcher concludes that the ECHR factors in the development of universal standards and European consensus on reproductive rights to avoid criticism for activism and attempts to impose its own moral assessments. This is important for Polish law, especially in the area of abortion, where there are substantial differences in public opinion. This approach to the interpretation of international standards may influence the way the Polish justice system considers ECHR judgements and amends legislation to follow these standards.

In the context of the rule of law, the efficacy of legal protection in cases concerning freedom of expression was explored this theme by V. Milasiute (2022). The researcher concludes that the case law of the ECHR shows that the

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use of freedom of expression to uphold the rule of law is strongly protected. ECHR refrains from adopting a theoretical position on the rule of law or legal protection. However, the theoretical arguments that support the need for judicial protection are consistent with the philosophy of the international court. The interpretation of the judgements of the international human rights court incorporated into the European Convention on Human Rights shows that the requirements of the rule of law affect the essential results of their interpretation (Yara *et al.*, 2023).

A. Shulga *et al.* (2023) analyse theoretical approaches to the interpretation of the term “system of legal order” and, considering the legal opinions expressed by the ECHR, present their own attempts to define the “system of legal order” and institutional factors that influence the development of the legal order of the EU countries. The researchers conclude that the European legal order is complex and is shaped by a variety of factors, including the geopolitical situation and cultural characteristics. Ukraine’s growing European integration requires a study of the impact of the European legal system on the Ukrainian one, considering current needs and challenges.

The analysis of the impact of the judgments of the European Court of Human Rights on the construction of a system of supranational and internal human rights principles, as well as the challenges encountered in recognizing and ensuring the development of minimum standards in Europe, was conducted by O. Dufeniuk (2021). The study found that the ECHR faces challenges in the current environment, such as ambiguity and limited influence of interpretation of rules, which may affect the court’s effectiveness and the adaptation of universal values to the national legal environment.

M.E. Vasylenko (2023) analyses the general principles of judicial activity defined in international treaties and their impact on the consideration of commercial cases by Ukrainian courts. The researcher concluded that the practical guidance derived from the ECHR judgements contributes to the coherence of national legal systems in commercial proceedings and the development of new principles of justice. To improve the judicial system, it is important to systematise the principle of fairness and ensure that cases are heard within a reasonable time. Special attention is paid to ensuring compliance with fair trial standards.

The analysis of the interaction between law enforcement agencies of Ukraine and the EU, along with highlighting the tasks Ukraine needs to address regarding human rights protection during European integration, was conducted by T.O. Kamenchuk (2023). The researcher concluded that it is crucial to implement quality control practices for cooperation between Ukraine and the EU in the field of law enforcement. This will help to identify shortcomings and miscalculations in cooperation in a timely manner, develop recommendations to improve its effectiveness and adhere to the schedule of events and procedures. It is important that both governmental and non-governmental organisations monitor cooperation to ensure the most reliable results (Akhmetova, 2023).

T. Datsiuk *et al.* (2022) investigated the problem of determining the need to reform and improve human rights instruments in the light of current challenges in Ukraine. The researchers believe that human rights are of universal importance and should be protected by all. Modern globalisation processes and new challenges require transformation

and improvement of human rights protection mechanisms (Kitsak & Lylyk, 2023). The authors recommend further research to establish concrete mechanisms of protection, reform the human rights institution, factor in the current realities, and create international cooperation to prevent future mistakes. Some of the issues that have not been addressed in the cited studies include the lack of comparative analysis of the effectiveness of human rights mechanisms in different countries and problems related to human rights violations or abuses, as well as the lack of statistical information on the application of international practices.

The purpose of this study was to thoroughly examine and assess how the judgements delivered by the European Court in relation to human rights violations affect the judicial practice and law enforcement in Ukraine.

Materials and methods

The study of this topic using the historical approach made it possible to investigate how Ukrainian legislation and legal standards have changed as a result of the judgements of the ECHR in different historical periods. The study of historical data also helped to understand how Ukrainian society has interacted with European legal standards in the past and how this interaction has influenced the current state of the Ukrainian legal system. This approach has made it possible to identify concrete aspects of justice and human rights protection that have been transformed or improved through the historical implementation of European standards and practices.

The hermeneutical method allowed for a deep and comprehensive understanding of the issue under study and an assessment of the text of the court decision and its context. This approach considers not only the content of the court decision itself, but also its significance in the Ukrainian legal context, factoring in the influence of historical, cultural, and social factors. The relevant methodology made it possible to identify the nature of the impact of the EU Court’s judgement on the structure and content of Ukrainian legislation and to reflect its consequences. Furthermore, it helped to understand how these decisions are perceived and interpreted by Ukrainian law enforcement and how they are applied in practice.

The study also used statistical methods that involved the application of quantitative methods of analysis to investigate the problem. This approach allowed collecting statistical data on the ECHR judgements and their impact on Ukrainian legislation and to process this data to identify patterns and trends. Statistical methods included considering the number of court decisions on human rights, dividing these decisions into categories of rights and freedoms, and assessing certain aspects of their impact on Ukrainian legislation. Such an approach helped to obtain objective data on the consequences of the ECHR judgements, ensure the rights of individuals in the Ukrainian judicial system, and draw reasonable conclusions about its transformation and development.

The method of comparative analysis not only compared Ukrainian legislation and case law with the ECHR member states, but also analysed various aspects of the human rights protection mechanism, including human rights procedures and practices. Comparative analysis helped to find similarities and differences in approaches to human rights protection in different countries and to identify the most effective methods and strategies that Ukraine can use to improve its legal system. Analysing the legal systems of other countries

helped to understand how Ukrainian legislation has been modernised and improved to better protect human rights according to the generally accepted international practices and the standards of the ECHR.

A number of legal acts were used in the study. The Constitution of Ukraine (1996) provided the general context and legal basis for the study of human rights in Ukraine, as it contains principles and standards that must be observed to protect the rights and freedoms of citizens. The Law of Ukraine No. 1906-IV “On International Treaties of Ukraine” (2004) defines the procedure for ratification of international treaties, including the Convention for the Protection of Human Rights and Fundamental Freedoms, and provides a context for understanding and applying Ukraine’s international human rights obligations. In addition, the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950) was used, as it helped to compare the standards of human rights protection in Ukraine with international standards. Furthermore, statistics from the official website of the ECHR were used. These data provided objective information on the number and nature of cases concerning Ukraine, and the judgements of the ECHR concerning Ukraine. These judgements reflect the practice and approaches of the European Court to the consideration of cases related to human rights in Ukraine (European Court of Human Rights, 2024a). They served as a source for analysing and assessing the state of human rights in the country and the impact of court decisions on the national legislative and law enforcement system.

Results

The European integration process is a way of approaching democratic standards, developing civil society, strengthening the rule of law and its principles, and making choices aimed at protecting the legal norms of the individual. After declaring its independence, Ukraine began to form a democratic, legal system based on human rights and freedoms and their protection. Modern Ukraine is in the process of integrating into the European legal space. Given the need to harmonise national legislation with international norms and legal principles, the analysis of European legislation and European legal theory is an important task. The development of the rule of law and civil society in Ukraine requires

a review of the country’s role in the international community. The strengthening of relations between states leads to increased interaction between their legal systems. In recent years, the number of international norms intended to be implemented and applied by the Community Member States has been growing. States that are members of international organisations are obliged to bring their legislation in line with international standards. Considering the legal system of Ukraine in the current environment, it should be recognised that it is in a transitional stage, which is determined by both internal factors and external influences. This change reflects the real changes in the country’s life since independence. The evolution of national legal systems is complex and long-term and requires best international practices. Specifically, it is a legal regulation tool that is unknown in the Ukrainian legal field but is widely used in other countries.

Today, the ECHR is an accessible mechanism for guaranteeing human rights protection to citizens, including Ukraine. Since 11 September 1997, when the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950) came into force for Ukraine, the ECHR has received numerous complaints from Ukrainian citizens, and Ukraine is among the three countries with the largest number of filings to the ECHR. The ECHR is currently considering 10.4 thousand complaints against Ukraine, which is 14% of the total number. The Russian Federation ranks first with 20.1 thousand cases, which is 27% of the total number of cases. The second place goes to complaints from Turkey – 16.7 thousand, which is 22.4% (European Court of Human Rights, 2024b).

The study of the activities of the highest judicial bodies allows observing a gradual increase in the influence of international legal standards on the Ukrainian judicial system. By ratifying the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950) and adopting the Law of Ukraine No. 3477-IV (2006), Ukraine recognised the jurisdiction of the ECHR. Notably, the enforcement of court decisions in Ukraine is a key element of ensuring the right to a fair trial, and improper enforcement is recognised by the ECHR as a violation of the standards of the international convention. Notably, one of the biggest difficulties in ensuring this right is the non-enforcement of court decisions (Law of Ukraine No. 1906-IV, 2004). The procedure for implementing the ECHR judgement is presented in figure 1.

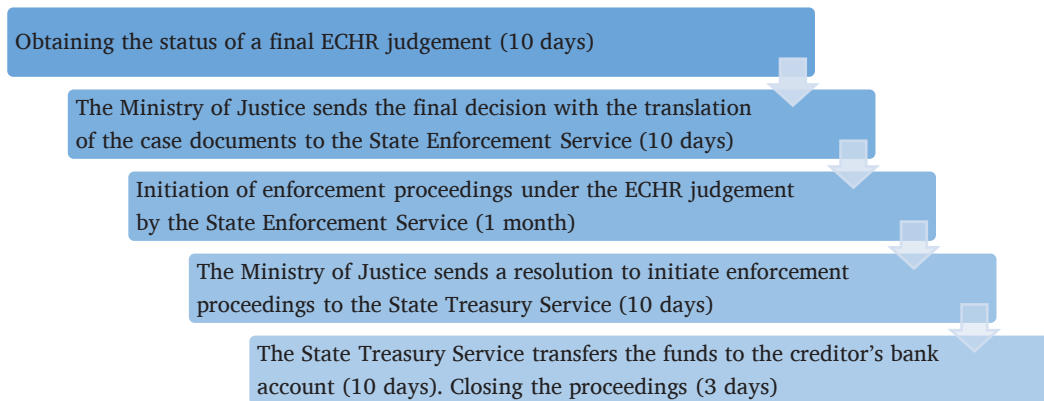


Figure 1. Procedure for enforcement of the ECHR judgement

Source: Enforcement of judgements of the European Court of Human Rights (2024)

The legal views of the ECHR on human rights are particularly important among the sources used by national courts and other national authorities in the exercise of their powers, as these are legal issues specific to the interpretation of the provisions of the Convention and the position of the court (Nalin, 2023). Examining the implementation of the ECHR's legal opinions in practice, e.g., the analysis of the Constitutional Court of Ukraine, it can be concluded that such legal opinions play an important role in the development of constitutional values and are of great legal importance. Notably, the Constitutional Court of Ukraine considers applications for the protection of various human rights and freedoms primarily following the generally recognised international standards.

Even though the judicial practices of district and appellate courts use the ECHR practices in their decisions, references to the ECHR case law are still rare. As a result, the ECHR case law is used to varying degrees in decision-making, slowing down the process of standardising human rights and freedoms. However, in rendering its judgement, it did not adapt the work of the first instance court to the correct and correct implementation of the legal perspective of the ECHR.

The above situation has not only substantially slowed down the European integration, but also substantially hampered the improvement of the Ukrainian legal system. The principal reason for this situation is the lack of clear methods for determining the legal impact of the ECHR's practice on national courts and the placement of its judgements in the system of sources of national law (Bobić, 2020). The academic community has different opinions on the mandatory application of the European Convention on Human Rights. The first opinion is that the experience of an international court guaranteeing the observance of individual freedoms is necessary for national courts, as it defines the basic legal protection of the individual, which is established and guaranteed by the ECHR. In explaining this approach, researchers and experts refer to the Vienna Convention on the Law of Treaties (1969), which prescribes that the text of an international treaty also includes the practice of its application and interpretation. Let us consider the amount of the invoice as agreed by the parties to the contract. However, this document focuses on the practice rather than their obligations.

Furthermore, the reference to Law of Ukraine No. 3477-IV (2006) is not sufficient to recognise the "binding nature" of the ECHR judgements. Pursuant to Article 17 of the Law, the Court considers the Convention and case law to be the fundamental documents establishing the rights and freedoms of an individual and factors in the Resolution of the Plenum of the Supreme Court of Ukraine "On Judicial Practice in Cases on Protection of Dignity and Honour of an Individual and Business Reputation of an Individual and Legal Entity" (2009) and Resolution of the Plenum of the Supreme Court of Ukraine "On Judgement in a Civil Case" (2009). However, these rulings only clarify the legal force of ECHR judgements as sources of law and do not answer the question of their role in the system of legal sources and the degree of legal force.

The alternative view reflects the opinion that the recognition of the compulsory jurisdiction of the ECHR does not necessarily mean that its case law is automatically binding. To substantiate this position, one can refer to the text of the Law of Ukraine "On the Judiciary and the Status of Judges" (2016), as well as to the relevant provisions of the procedural legislation of Ukraine. According to this legislative

act, ECHR judgements recognising Ukrainian court decisions as violating the European Convention on Human Rights may serve as a basis for review of these court decisions by the Supreme Court of Ukraine. The ECHR judgement may only serve as an impetus for the Supreme Court of Ukraine to initiate relevant court proceedings but will not lead to the replacement or cancellation of the ECHR judgements that stay under consideration. The results obtained allow drawing interim conclusions about the attitude of national legislators towards the ECHR judgements. The Supreme Court of Ukraine considers the ECHR judgements as a basis for reviewing the relevant court decisions but does not consider the legal positions set out in the ECHR judgements to be unconditionally binding. On the contrary, the decisions adopted by the ECHR in the case against Ukraine are binding on the Ukrainian state, and Ukraine should find ways to avoid similar situations in the future.

As for the ECHR itself, it is worth noting that it refers to its practices as a precedent. From a legal standpoint, a precedent is a court decision made in a particular case that, although not binding, is mandatory for subsequent courts in analogous cases or serves as a model for interpreting the law (Fichera & Pollicino, 2019; Petersen & Patrick, 2022). This is confirmed by the fact that the ECHR usually follows its previous decisions when deciding cases but does not necessarily repeat its reasoning. Notably, the ECHR has repeatedly stated that it is not bound by previous decisions.

In terms of the status of judgements of an international court that guarantees the observance of individual freedoms in the system of legal sources of Ukraine, it should be emphasised that according to Article 9 Constitution of Ukraine (1996) and Article 19 Law of Ukraine No. 1906-IV (2004), the Verkhovna Rada of Ukraine, following Article 9 of the Constitution of Ukraine (1996), has adopted the judgements of the ECHR. The Verkhovna Rada of Ukraine has agreed to make it binding as part of internal legislation. Such international treaties shall be applied according to the procedures established by national law and shall take precedence over internal legislation if they prescribe different rules.

Thus, the legal force of ratified international treaties is higher than intrastate law, but lower than the Constitution of Ukraine. At the same time, according to the conclusions of the Advisory Committee of European Judges, national courts are obliged to apply European law following the European standards, especially the case law of the international court (Spano, 2021). In its turn, the ECHR's approach is based on previous practice and is not limited to the formation of the subject matter of particular precedents. When considering complaints against Ukraine, the European Court of Human Rights also referred to its practice in cases against other countries. This helps to increase the predictability of court decisions and provides legal certainty. To effectively protect fundamental human rights and freedoms and avoid future violations of the Convention, Ukrainian judges should factor in all the experience of the main courts on fundamental human rights, both in relation to Ukraine and in relation to other countries. It is important to ensure that Ukrainian judges have access to this approach to ensure its effective application.

In 2022, the ECHR considered 2,075 applications concerning Ukraine (European Court of Human Rights, 2024a). Of these, 1,703 were rejected or withdrawn. The Court delivered 144 judgements (on 372 filings), of which 141 were

found to have at least one violation of the European Convention on Human Rights (Table 1). In 2022, the implementation of many important judgements of the European Court of Justice also made certain achievements. The Committee of Ministers completed the supervision of the implementation of the group case of “Bochan v. Ukraine” (2015) (arising from this case). In connection with the problem of misinterpretation of the European Court’s opinions, the Supreme Court of Ukraine proposed to create a legal mechanism that would allow applications for amendment of final decisions

of national courts in civil and criminal cases, considering the determination of violations by the European Court. The Council of Ministers noted that Ukraine’s ratification of the Istanbul Convention is an important development in the judgement in the case of “Levchuk v. Ukraine” (2020) on domestic violence. This is a major step in the fight against domestic and gender-based violence and was ratified by the Verkhovna Rada of Ukraine on 20 June 2022. The Istanbul Convention was adopted and entered into force on 1 November 2022 (Council of Europe Convention..., 2011).

Table 1. ECHR judgements on Ukraine from 2021 to 2023

| Decision | 2021 | 2022 | 2023 (January-July) |
|---|------|------|---------------------|
| The decision on the appointment of the court was made | 3703 | 1911 | 1028 |
| Reported to the government | 677 | 353 | 299 |
| Accepted applications | 2665 | 2075 | 972 |
| Declared inadmissible or struck out (single judge) | 1963 | 1612 | 796 |
| Declared inadmissible or withdrawn (Committee) | 161 | 89 | 50 |
| Declared inadmissible or withdrawn (chamber) | 2 | 2 | 0 |
| Decisions ruled | 539 | 372 | 126 |

Source: European Court of Human Rights (2024a)

Germany is a good example of compliance with its obligations under the European Convention on Human Rights because throughout its history it has rarely faced serious difficulties in implementing the decisions of the European Convention on Human Rights. In this context, it is worth noting two principal factors that contribute to the successful fulfilment of Germany’s international obligations. The human rights and freedoms defined in the Constitution of the Federal Republic of Germany (1949) essentially correspond to the guarantees contained in the European Convention on Human Rights. These two legal documents establish analogous principles and standards for the protection of human rights and fundamental freedoms. The German constitution is similar to the European Convention and recognises and protects the right to life, personal integrity, freedom of expression, equality before the law, the right to a fair trial, freedom of religion, the right to education, and many other fundamental rights. Both legal instruments guarantee the rights essential to the dignity and justice of every human being. This demonstrates the importance and widespread recognition of these values at the German and international level (Walther, 2019). The text of this international document was already widely known in European countries when national legislation was being developed. Furthermore, the wording of the German Constitution is based on the text of the Convention, which means that the structure of the first part of the Constitution, which deals with fundamental rights, is remarkably similar to the provisions of the Convention.

Another important advantage of Germany in the European Court of Human Rights is the possibility to challenge the actions or inaction of the authorities through constitutional complaints. Anyone who believes that their fundamental rights under the constitution have been violated may apply to the Constitutional Court after exhausting all legal remedies following the usual procedures (Walther, 2019; Burchardt, 2020). Since the rights set out in the Constitution are consistent with the rights set out in the Covenant, citizens can use the same arguments when applying to the Constitutional Court as they do to the ECHR. The relevant agencies analysed the correctness of the decisions of the judges of the

German Constitutional Court, and the conclusions of most cases were consistent with the conclusions of the Constitutional Court. However, there are cases when the views of the two courts differ. For instance, in cases where the European Court’s judgements claimed that the Constitutional Court had violated the guarantee of the right to a fair trial within a reasonable time. For a long time, the German Constitutional Court has been considering many constitutional complaints for various reasons. However, the German constitution does not explicitly prescribe the right to consider constitutional complaints within a reasonable time, and due to the complexity of the German judicial system, courts tend to delay the resolution of cases to a certain extent (Küpper, 2011; Medvedeva *et al.*, 2020). In the pending case of “Sürmeli v. Germany” (2006), the European Court stated that Germany must properly organise its judicial system to effectively fulfil the requirements prescribed in Article 6 of the Convention. According to the European Court, even the Constitutional Court could not provide everything. The justice system is an example (Sieper, 2022). Notably, cases in which the fundamental court for fundamental human rights has identified delays in the research process are brought to the attention of the Constitutional Court itself, and this problem is reflected in practice with a view to reducing the timeframe for consideration of such cases.

The main rationale used by the judges of the German Constitutional Court to justify the possibility of partial non-execution of the judgement of the Court of Justice of the EU was based on a unique legal approach. They emphasise the existence of situations where fundamental rights may conflict with each other and where state measures are aimed at protecting the rights of third parties (Tomuschat, 2010). Rules protecting individual privacy distinguish between the rights of individuals and the principle of media freedom. The main argument mentioned by the Constitutional Court is based on the principles of German sovereignty: the purpose of the Constitution is to integrate the Federal Republic of Germany into the legal community of peaceful and free states, but at the same time not to break away from sovereignty. This is consolidated in this document.

The ECHR judgement on fundamental rights has had a significant impact on the German judicial system. As a member state of the EU, Germany is obliged to follow the decisions and norms of the Convention for the Protection of Human Rights and Fundamental Freedoms, which is an important part of its legal system. Firstly, ECHR judgements are directly binding in Germany. This means that German courts must factor in and apply the judgements of the European Court of Justice in their practice. This imposes a legal obligation on Germany to follow the standards and principles set by the European Court of Human Rights. Furthermore, the judgements of the European Court are also an important means of monitoring the compliance of the German authorities with international human rights standards. In cases where human rights are violated by the German authorities or legislation, the ECHR can act as a body that ensures the protection of rights and make decisions on damages or legislative changes that are binding on Germany. ECHR judgements can influence the legislative process in Germany (Ploszka, 2023; Skuban-Eiseler *et al.*, 2023). The German authorities may be forced to revise their laws or procedures to address the issues identified by the ECHR or to ensure compliance with European human rights standards (Podszun & Overhoff, 2023).

Thus, the judgements of the ECHR play a significant role in the development and protection of legal standards in Germany and promote the observance of human rights and fundamental freedoms in the country. Observing how the system of enforcement of judgements of the ECHR works in Germany can provide guidance on how to improve an analogous system in Ukraine. One of the key components of this improvement is the improvement of Ukrainian legislation, which currently lags behind the standards set out in the international agreement.

Discussion

The results of the study confirm the important legal impact of the International Court of Human Rights on Ukraine. These decisions become an integral part of the international law governing relations between the countries that are parties to the relevant convention. They oblige Ukrainian legislation and the judiciary to consider international human rights standards in their activities, which contributes to the improvement of legal protection of citizens and increase confidence in the judicial system.

M.R. Madsen *et al.* (2022) showed that in five European countries (Denmark, France, Poland, Spain, and the United Kingdom), there is a high sensitivity to decisions of international human rights courts that have overturned decisions of national courts. However, this effect is less pronounced in Denmark and the UK. The main conclusion of the researchers is that public rejection of decisions made by international courts does not necessarily depend solely on the distribution of power, but also on the very content of these decisions, which reflects the political preferences of society. The authors provide an in-depth analysis of the functions of human rights courts and their role in protecting vulnerable groups and unpopular minorities from possible majority domination. They emphasise that, at the same time, decisions that are not accepted by society can undermine the legitimacy of the court and cause doubts about its authority. This demonstrates the need for a balanced approach to human rights protection, considering public opinion. Furthermore,

the researchers point out the importance of courts operating based on legal precedents and demonstrating independence from external influences. However, they acknowledge that courts may also respond to public sentiment to ensure greater legitimacy of their decisions, which may lead to compromises in the performance of their core functions. Although researchers consider other aspects of the problem, it is worth agreeing with them, as the study highlights the complexity of the relationship between international justice and society, as well as the need to maintain a balance between the protection of human rights and the consideration of public opinion and political realities. This is of great interest in academic discourse and may have a considerable impact on the development of international legal policy and practice.

The analysis of the European Convention on Human Rights system was conducted by S. Schmahl (2022), who noted it as one of the most stable, deeply rooted, and institutionally consolidated systems in the international sphere of human rights protection. The researcher briefly describes the history and evolution of the ECHR, and then analyses the key challenges the Court faces today. Specifically, the study examines the approach of the Federal Constitutional Court of Germany to the practice of judgements in the ECHR. This approach emphasises the fundamental importance of the openness of European human rights law, while it focuses on constitutional identity. The researcher concludes that when states delegate the interpretation of the Convention to an independent international body, they agree to limit their legal powers. However, they agree to do so only if the judicial interpretation of the ECHR stays consistent, clear, and plausible. The three principles – judicial restraint of the Court, the principle of subsidiarity, and the margin of appreciation – which are upheld by the Contracting States are crucial for the effective international protection of human rights (Pylypenko & Spahija, 2023). These principles are in line with the general and long-term recognition by participating States, as well as with the inherent needs of individuals to have their rights and freedoms protected from arbitrary state interference. The article also analyses the role of ECHR judgements in the constitutional field of Ukraine, focusing on the complexity of this role and considering ways to avoid possible conflicts between different legal bodies.

J. Haglund and R.M. Welch (2020) analyse the interaction of internal political and social actors in the context of reactions to negative judicial proceedings in the ECHR. The researchers point out that to ensure effective protection of human rights, district courts must go beyond simply reviewing individual cases of violations and work to ensure that such violations do not occur in the future. This requires the executive branch to actively intervene in the adoption, management, monitoring, and enforcement of human rights policies, despite possible obstacles. The study also concludes that the country's judicial system and legal environment should work on reforming society to create conditions that will reduce the number of offences. This requires not only a response to existing violations, but also the active involvement of the executive branch in shaping and supporting policies aimed at protecting human rights. However, various obstacles may arise, such as political, economic, and socio-cultural factors. Therefore, to achieve successful results, specific strategies and implementation mechanisms need to be developed.

The analysis of European Court of Human Rights cases concerning the restriction of human rights during the

COVID-19 pandemic was conducted by S. Jovičić (2021). The researcher argues that in these cases, governments have used emergencies in bad faith to restrict human rights and obstruct the work of human rights defenders. The researcher emphasises the need for a strict interpretation of human rights restrictions during emergencies and warns of the importance of preserving fundamental rights in times of crisis, namely during the COVID-19 pandemic. The researcher also calls for a continuous assessment of the situation and the measures taken to prevent human rights violations, which must be guaranteed in both normal and emergency periods. This opinion is significant because it emphasises the importance of strict adherence to human rights, especially during emergencies such as the COVID-19 pandemic. This demonstrates the need for constant monitoring of governments' actions in times of crisis to avoid human rights restrictions becoming instruments of political pressure or repression. The importance of international human rights court decisions lies in the establishment of precedents and standards that define the limits of permissible restrictions on human rights in emergency circumstances (Kubarijeva, 2023). These decisions help to prevent abuse of rights by states and contribute to the stability and progressive development of the legal system. They serve as a guide for national courts and law enforcement officials in resolving analogous cases and encourage governments to follow international human rights standards.

L.R. Helfer (2021) also holds a similar opinion. The researcher argues that many governments have responded to the COVID-19 pandemic by declaring a state of emergency and imposing restrictions on personal freedoms guaranteed by international law. However, more states have taken extraordinary measures than have officially withdrawn from human rights conventions. The pandemic has highlighted problems in the way states use derogations from human rights: measures that were previously considered temporary have become standard, and some of them are still in place after the immediate threat has passed. The problem is that states do not always adhere to the temporality of restrictions. Often, emergency measures become permanent, violating human rights even when there is no urgent need. The terms of the restrictions are often not clearly defined, which creates opportunities for abuse and manifestations of authoritarianism (Tengilimoğlu & Pentassuglia, 2023). It is worth agreeing with the researcher's opinion, even though the researcher has considered different aspects of the problem. Court decisions that define human rights standards and principles can be used to assess the legality and validity of measures taken in a state of emergency. The judgements of the European Court can serve as a benchmark for assessing whether measures taken by governments follow international human rights standards (Khablo & Svoboda, 2024). This may encourage states to improve their legal mechanisms and legislation to ensure compliance with international human rights norms and standards, even in extraordinary

circumstances. Thus, the legal influence of the international court of fundamental human rights on the development and transformation of law is manifested in ensuring the protection of human rights in emergency situations, which underlines the urgency of reforms and the constant need to always follow international human rights standards.

Conclusions

The ECHR judgements are not only an important legal document, but also a powerful tool that has a considerable impact on legislation and court practice in Ukraine. These decisions not only serve as a source of law, but also stimulate changes in legislation and court practice to ensure compliance with international human rights standards. The impact of ECHR judgements is manifested in several ways. They set precedents that reflect the basic principles and standards of human rights that all parties to international agreements must respect. Ukraine, as a signatory to the Convention, has an obligation to take these precedents into account in its legislation and judicial practice. Furthermore, ECHR judgements are binding on Ukrainian courts and other authorities within the framework of their international obligations to the Council of Europe. Failure to follow these decisions can lead to sanctions, such as financial penalties and a deterioration in the country's international status.

Despite certain achievements of Ukraine in the implementation of international court decisions, there are serious human rights issues that need to be addressed immediately. For the further development of the human rights protection system in Ukraine, it is necessary to strengthen the mechanisms for monitoring the enforcement of court decisions and ensure broad access to justice. One of the main problems concerns the inefficiency of the system of enforcement of international justice decisions in Ukraine. Court decisions are often ignored or delayed, which undermines trust in the judicial system and limits the ability of citizens to protect their rights. To ensure the effective implementation of the ECHR judgements, an effective control mechanism should be established to guarantee prompt and full implementation of the ECHR judgements. Therefore, for the further development of the human rights protection system in Ukraine, it is important to strengthen the mechanisms for monitoring the enforcement of court decisions and ensure broad access to justice for all citizens of the country.

Based on the conducted study, several promising areas for further research can be identified: analysis of the mechanisms for monitoring and enforcement of court decisions, identification of factors affecting their effectiveness, and development of ways to improve these mechanisms.

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Conflict of interest

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References

- [1] Akhmetova, A. (2023). Open coordination method as a European integration and governance mechanism. *European Chronicle*, 8(4), 26-35. doi: 10.59430/euch/4.2023.26.
- [2] Bobić, A. (2020). Constructive versus destructive conflict: Taking stock of the recent constitutional jurisprudence in the EU. *Cambridge Yearbook of European Legal Studies*, 22, 60-84. doi: 10.1017/cel.2020.9.
- [3] Burchardt, D. (2020). Backlash against the court of justice of the EU? The recent jurisprudence of the German constitutional court on EU fundamental rights as a standard of review. *German Law Journal*, 21(1). doi: 10.1017/glj.2020.16.

- [4] Constitution of the Federal Republic of Germany. (1949, May). Retrieved from https://www.1000dokumente.de/?c=dokument_de&dokument=0014_gru&object=translation&l=ru.
- [5] Constitution of Ukraine. (1996, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>.
- [6] Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence. (2011, May). Retrieved from https://zakon.rada.gov.ua/laws/show/994_001-11#Text.
- [7] Datsiuk, T., Kuznetsova, Z., & Nikolenko, K. (2022). Transformation of the human rights protection mechanism at the current stage. *Academic Visions*, 14. Retrieved from doi: 10.5281/zenodo.7431715.
- [8] Decision of the European Court of Human Rights in Case No. 17496/19 “Levchuk v. Ukraine”. (2020, December). Retrieved from https://zakon.rada.gov.ua/laws/show/974_f92#Text.
- [9] Decision of the European Court of Human Rights in Case No. 22251/08 “Bochan v. Ukraine”. (2015, February). Retrieved from https://zakon.rada.gov.ua/laws/show/974_a43#Text.
- [10] Decision of the European Court of Human Rights in Case No. 75529/01 “Sürmeli v. Germany”. (2006, August). Retrieved from <https://hudoc.echr.coe.int/rus#%7B%22itemid%22:%5B%22002-3291%22%5D%7D>.
- [11] Dufeniuk, O. (2021). The impact of the ECHR on the formation of the supranational and national paradigm of human rights (Ukrainian context). *Ideology and Politics Journal*, 17(1), 232-250. doi: 10.36169/2227-6068.2021.01.00011.
- [12] Enforcement of judgements of the European Court of Human Rights. (2024). Retrieved from https://minjust.gov.ua/m/str_4324.
- [13] European Convention for the Protection of Human Rights and Fundamental Freedoms. (1950, November). Retrieved from https://www.echr.coe.int/documents/d/echr/convention_ukr.
- [14] European Court of Human Rights. (2024a). *Country profile: Ukraine*. Retrieved from https://www.echr.coe.int/web/echr/d/cp_ukraine_eng?p1back_url=https%3A%2F%2Fwww.echr.coe.int%2Fsearch.
- [15] European Court of Human Rights. (2024b). *Statistical reports*. Retrieved from <https://www.echr.coe.int/statistical-reports>.
- [16] Fichera, M., & Pollicino, O. (2019). The dialectics between constitutional identity and common constitutional traditions. Which language for cooperative constitutionalism in Europe? *German Law Journal*, 20(8), 1097-1118. doi: 10.1017/glj.2019.82.
- [17] Haglund, J., & Welch, R.M. (2020). From litigation to rights: The case of the European Court of Human Rights. *International Studies Quarterly*, 65(1), 210-222. doi: 10.1093/isq/sqaa089.
- [18] Helfer, L.R. (2021). Rethinking derogations from human rights treaties. *American Journal of International Law*, 115(1), 20-40. doi: 10.1017/ajil.2020.92.
- [19] Jovičić, S. (2021). COVID-19 restrictions on human rights in the light of the case-law of the European Court of Human Rights. *ERA Forum*, 21, 545-560. doi: 10.1007/s12027-020-00630-w.
- [20] Kamenchuk, T.O. (2023). [Protection of human rights, interaction between Ukraine and the European Union](#). In *Materials of the III all-Ukrainian scientific conference “Actual discourses of variety art: Traditions and European integration”* (pp. 391-396). Kyiv: Kyiv National University of Culture and Arts.
- [21] Kapelańska-Pregowska, J. (2021). [The scales of the European court of human rights](#). *Health and Human Rights Journal*, 23(2), 213-224.
- [22] Khablo, O., & Svoboda, I. (2024). International standards for the application of the presumption of innocence in criminal proceedings. *Scientific Journal of the National Academy of Internal Affairs*, 29(1), 55-65. doi: 10.56215/naia-herald/1.2024.55.
- [23] Kitsak, T.M., & Lylyk, M.V. (2023). Institutional support of intercultural communication in Ukraine in the context of implementation of its European integration vector. *Democratic Governance*, 1(31), 52-62. doi: 10.23939/dg2023.01.05.
- [24] Kubarieva, O. (2023). Judicial proceedings within a reasonable time: European experience and Ukrainian realities. *Law Journal of the National Academy of Internal Affairs*, 13(4), 31-39. doi: 10.56215/naia-chasopis/4.2023.31.
- [25] Küpper, H. (2011). The decisions of the European Court of human rights and their implementation in Germany. *ICL Journal*, 5(2), 200-210. doi: 10.1515/icl-2011-0207.
- [26] Law of Ukraine No. 1402-VIII “On the Judiciary and the Status of Judges”. (2016, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/1402-19#Text>.
- [27] Law of Ukraine No. 1906-IV “On International Treaties of Ukraine”. (2004, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/1906-15#Text>.
- [28] Law of Ukraine No. 3477-IV “On the Execution of Judgments and Application of the Case Law of the European Court of Human Rights”. (2006, February). Retrieved from <https://zakon.rada.gov.ua/laws/show/3477-15#Text>.
- [29] Madsen, M.R., Mayoral, J.A., Strezhnev, A., & Voeten, E. (2022). Sovereignty, substance, and public support for European Courts’ human rights rulings. *American Political Science Review*, 116(2), 419-438. doi: 10.1017/S0003055421001143.
- [30] Medvedeva, M., Vols, M., & Wieling, M. (2020). Using machine learning to predict decisions of the European Court of Human Rights. *Artificial Intelligence and Law*, 28, 237-266. doi: 10.1007/s10506-019-09255-y.
- [31] Milasiute, V. (2022). Interpretation of the right to an effective remedy in freedom of expression cases in the light of the rule of law principle. *Archives of Philosophy of Law and Social Philosophy*, 2(31), 7-21. doi: 10.36280/AFPiFS.2022.2.7.
- [32] Nalin, E. (2023). Conflicts and dialogue between national constitutional systems and international law. In *Encyclopedia of contemporary constitutionalism* (pp. 1-11). Cham: Springer. doi: 10.1007/978-3-319-31739-7_204-1.
- [33] Petersen, N., & Patrick, W. (2022). [The primacy of EU law and the Polish constitutional law judgment, study requested by the European parliament’s committee on civil liberties](#). Brussels: European Union.
- [34] Ploszka, A. (2023). It never rains but it pours. The Polish constitutional tribunal declares the European Convention on Human Rights unconstitutional. *Hague Journal on the Rule of Law*, 15, 51-74. doi: 10.1007/s40803-022-00174-w.
- [35] Podszun, R., & Overhoff, N. (2023). Beyond ECN directive – empirical study mapping judicial review of national competition law decisions – national report: Germany. SSRN. doi: 10.2139/ssrn.4384839.
- [36] Pylypenko, D., & Spahija, D. (2023). Historical significance of Germany, France and Belgium in the creation of the European Union. *Foreign Affairs*, 33(1), 8-15. doi: 10.46493/2663-2675.33(1).2023.8-15.

- [37] Resolution of the Plenum of the Supreme Court of Ukraine No. 1 “On Judicial Practice in Cases on Protection of Dignity and Honour of an Individual and Business Reputation of an Individual and Legal Entity”. (2009, February). Retrieved from <https://www.viaduk.net/clients/vs.nsf/81b1cba59140111fc2256bf7004f9cd3/6cc3c5489fa411cec2257578003002d9?OpenDocument>.
- [38] Resolution of the Plenum of the Supreme Court of Ukraine No. 14 “On Judgment in a Civil Case”. (2009, December). Retrieved from https://zakononline.com.ua/documents/show/312521_312586.
- [39] Schmahl, S. (2022). The European Court of Human Rights – can there be too much success? A comment. *Journal of Human Rights Practice*, 14(1), 191-203. doi: 10.1093/jhuman/huac024.
- [40] Shulga, A., Perederii, O., & Hryhorenko, Y. (2023). Factors of forming and transformation of law and order of European Union: Theoretical legal aspect. *Bulletin of Mariupol State University*, 23-24, 69-75. doi: 10.34079/2226-3047-2023-13-25-69-75.
- [41] Sieper, M. (2022). Between parental responsibility and state guardianship: Child endangerment as reflected in the case law of the Federal Constitutional Court and the European Court of Human Rights. In *Institutional and professional approaches to child protection* (pp. 169-200). Wiesbaden: Springer. doi: 10.1007/978-3-658-35097-0_9.
- [42] Skuban-Eiseler, T., Orzechowski, M., & Steger, F. (2023). Access to healthcare for disabled individuals: An analysis of judgments of the European Court of Human Rights from an ethical perspective. *Frontiers in Public Health*, 10, article number 1015401. doi: 10.3389/fpubh.2022.1015401.
- [43] Spano, R. (2021). The rule of law as a lodestar of the European convention on human rights: The Strasbourg court and the Independence of the judiciary. *European Law Journal*, 27(1-3), 211-227. doi: 10.1111/eulj.12377.
- [44] Tengilimoğlu, D., & Pentassuglia, G. (2023). Legislation and practice of observing of human rights in Turkey in terms of European integration processes in the country. *European Chronicle*, 8(2), 38-46. doi: 10.59430/euch/2.2023.38.
- [45] Tomuschat, C. (2010). The effects of the judgments of the European Court of Human Rights according to the German Constitutional Court. *German Law Journal*, 11(5), 513-526. doi: 10.1017/S2071832200018678.
- [46] Vasylenko, M.E. (2023). The principles of justice and reasonable period in commercial procedure: The impact of the provisions of the European Convention on Human Rights and the decisions of the European Court of Human Rights on their implementation. *Scientific Bulletin of Uzhhorod National University*, 79, 260-265. doi: 10.24144/2307-3322.2023.79.1.44.
- [47] Vienna Convention on the Law of Treaties. (1969, May). Retrieved from https://zakon.rada.gov.ua/laws/show/995_118#Text.
- [48] Walther, M. (2019). *Fundamental rights united in diversity*. Retrieved from <https://verfassungsblog.de/in-vielfalt-geeinte-grundrechte/>.
- [49] Yara, O., Golovko, L., Kapplová, O., Medvedska, V., & Funta, R. (2023). Legal regulation of the protection of women from domestic violence in Western Europe. *Law. Human. Environment*, 14(4), 79-91. doi: 10.31548/law/4.2023.79.

Вплив рішень Європейського суду з прав людини на формування та трансформацію українського права

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Анотація. Актуальність дослідження полягає у тому, що Страсбурзький суд відіграє значну роль у захисті прав та свобод громадян, а рішення ухвалені Європейським судом з прав людини (ЄСПЛ), відображають взаємодію української юрисдикції з європейськими нормами і стандартами прав людини, що є надзвичайно важливим у контексті зміцнення демократичних принципів та правової держави в Україні. Метою дослідження було вивчення впливу судових рішень міжнародного суду з прав людини на структуру та зміст українського законодавства. Під час дослідження були використані наступні методи: історичний, герменевтичний, статистичний методи та метод порівняльного аналізу. У результатах дослідження наведено вплив рішень міжнародного суду, який гарантує дотримання індивідуальних свобод, на формування та трансформацію українського правового простору. Було проаналізовано, як українські суди реагують на рішення Страсбурзького суду. Виявлено, що нерідко, ці рішення використовуються як підстава для вдосконалення законодавства та практики правозастосування в Україні. Проте, існують і випадки недотримання рішень ЄСПЛ, що свідчить про необхідність подальшого зміцнення механізмів впливу міжнародного права на внутрішнє законодавство країни. Досліджено конкретні випадки, коли рішення ЄСПЛ допомогли у відстоюванні прав українських громадян перед внутрішніми судовими органами або державними установами, що свідчить про важливу роль Європейського суду у гарантуванні захисту прав людини в Україні. Ці рішення не лише вказують на проблеми та прогалини в національному законодавстві, але й сприяють удосконаленню правозастосування та захисту прав громадян. Практичне значення дослідження полягає у тому, що воно дозволить удосконалити практику правозастосування рішень Європейського суду в країні, а також, аналіз таких рішень може стати основою для розробки механізмів захисту прав громадян в українському судовому процесі

Ключові слова: міжнародні стандарти; конвенція; закон; прецедент; міжнародні угоди; юстиція