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Human Rights Protection under the European Convention on Human Rights and Eastern Europe: Ukraine[**]

ABSTRACT: This article is devoted to the study of the issue of human rights protection in Ukraine in accordance with the European Convention for the Protection of Human Rights and Fundamental Freedoms, as well as on the basis of the case law of the European Court of Human Rights. The author examines the historical development of human rights and their protection in Ukraine, based on the main legal acts in force in different historical periods of Ukraine's development. The relations between Ukraine and the Council of Europe in terms of human rights protection were studied. The author analyses international legal instruments, in particular, individual conventions of the Council of Europe on human rights to which Ukraine is a party (in particular, the main focus is on the European Convention for the Protection of Human Rights and Fundamental Freedoms) and their place in the system of Ukrainian legislation, and also examines the issues of national implementation (process and time of accession / succession / ratification) of the Council of Europe conventions on human rights. The author highlights how the obligations to protect human rights arising from the ECHR are reflected in the Constitution of Ukraine. The author analyses the main legislative processes in Ukraine due to the ECHR, as well as the most significant cases considered by the ECtHR against Ukraine, their main points, and how the decisions on the latter affected Ukrainian legislation and human rights and their protection in general. The author concludes that the Council of Europe conventions, in particular the Convention for the Protection of Human Rights and Fundamental Freedoms, have a significant impact on the protection of human rights in Ukraine, as they set common European standards that contribute to the improvement of national legislation and practice. In addition, the ECHR guarantees fundamental rights and freedoms such as the right to life, liberty and security of person,

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fair trial, freedom of thought, conscience and religion, and protection from torture and inhuman or degrading treatment. Ukrainian citizens have the right to apply to the European Court of Human Rights in case of violation of their rights guaranteed by the ECHR. This provides an additional level of protection when all national remedies have been exhausted. ECHR judgments against Ukraine often become the basis for changes in national legislation and court practice to bring them into line with the standards of the Convention. Ukraine's ratification of Council of Europe conventions and implementation of their provisions is an important tool for improving the human rights protection system, raising standards of democracy and the rule of law, and adapting national legislation to European norms.

KEYWORDS: human rights, Council of Europe, case law of the European Court of Human Rights, human rights protection mechanisms, Ukrainian legislation.

Human rights enshrined in the Constitution of Ukraine are the basis and foundation of the existence of the Ukrainian people. Without effective legal regulation and enforcement mechanisms, these rights cannot be recognized as valid in a state governed by the rule of law. If such mechanisms are lacking or do not function properly, rights and freedoms may remain a mere declaration without any real possibility of their application. Therefore, the state must create effective mechanisms that will enable every person and citizen to exercise their rights and freedoms. According to the general theory of law, human rights and freedoms are legal opportunities that are necessary for the existence and development of the individual. They must be inalienable, universal, and equal for all, and must be ensured and protected by the state consistent with international standards.[1] Human rights can be compared to armour that protects us; it is a framework that sets the rules for our behaviour and serves as an arbiter to whom we can appeal. Like emotions, human rights are abstract, but they cannot be ignored because they exist regardless of circumstances. Human rights are like nature, because they cannot be trampled on, and like spirit, because they cannot be destroyed. They apply to everyone without exception: rich and poor, old and young, white and black, tall, and short. The foundational concept of human rights is to provide us respect and, at the same time, demand respect for others. Like kindness, truth and justice,

[1] Tsvik, Petryshyn and Avramenko, 2009, C. 447.

human rights can have different interpretations, but their violations are easily recognizable.[2]

Although scholars often use terms such as "rights" and "freedoms" synonymously, they are not identical. Human rights are opportunities protected and guaranteed by the state to perform certain actions and satisfy needs that are essential for existence and development. Human freedoms include opportunities that are important for human existence and development, such as freedom of thought, conscience, religion, movement, and choice of residence. According to the Constitution of Ukraine, human rights and freedoms, as well as their guarantees, determine the direction and content of the state's activities. The state is responsible to its citizens for its actions. The main duty of the state is to ensure and affirm human rights and freedoms.[3] All persons legally staying on the territory of Ukraine have rights and freedoms in accordance with the current legislation, with certain peculiarities for specific categories of persons. In the modern world, human rights are taking on a new colour, constantly evolving, and new ones are emerging, which relates to the development of humanity and science. At the same time, it is quite expected that there are problems with the state creating an effective mechanism to ensure their implementation, restoration of violated rights, etc. New responsibilities, including those of a legislative nature, are constantly being imposed on the state to create appropriate conditions that enable everyone to properly exercise their rights and benefit from them. According to Article 21 of the Constitution of Ukraine, every person is free in his or her rights, which, among other things, means that he or she can exercise his or her rights at his or her own discretion, and all people have equal rights, that is, there can be no situation where one person has more rights than another. The same article of the Basic Law also affirms the fact of inviolability and inalienability of human rights.[4]

The historical development of human rights in Ukraine has been a long and difficult journey, covering various periods of statehood, occupation, foreign domination, and the modern period of the formation of an independent Ukrainian state. Since the declaration of independence in 1991, Ukraine has embarked on a course of democratic reforms and

[2] What are human rights? [Online]. Available at: https://www.coe.int/uk/web/compass/what-are-human-rights- (Accessed: 02 September 2024).

[3] Constitution of Ukraine: June 28, 1996. Article 141.

[4] Constitution of Ukraine: June 28, 1996. Article 141.

integration into the international community. The 1996 Constitution of Ukraine became the main document that enshrined human and civil rights and freedoms. Ukraine has also ratified several international human rights treaties, including the European Convention on Human Rights (ECHR). In the 21st century, following the Revolution of Dignity events in 2013–2014, the country embarked on a course of reforming its judicial system, decentralizing power, fighting corruption, and strengthening the rights and freedoms of citizens. In 2014, Ukraine signed and ratified the Association Agreement with the European Union that facilitated the implementation of European human rights standards. After Russia's military aggression began in 2014 and a full-scale invasion in 2022, Ukraine faced extensive human rights protection issues in the context of the military conflict. The protection of the rights of military personnel, internally displaced persons (IDPs), war victims, social protection, and the fight against war crimes is being strengthened, all of which requires further reforms in the areas of justice, law enforcement, social support, and protection of vulnerable groups. Ukraine is continuing to reform its human rights legislation to align with European standards, ensuring real protection of citizens' rights at the national and international levels. In this context, Ukraine's membership in the Council of Europe and other European and global international organizations is a positive development. Ukraine became a member of the Council of Europe on 9 November 1995, and the 37th member state of this organization. At the same time, the Permanent Mission of Ukraine to the Council of Europe was established. The Council of Europe actively supports Ukraine in its efforts to harmonize its national legislation, institutions, and practices with European standards in the field of human rights, rule of law and democracy, enabling Ukraine to fulfil its obligations as a member state. On 17 July 1997, the Verkhovna Rada of Ukraine ratified the ECHR, which entered into force for Ukraine on 11 September of the same year. This gave Ukrainians the opportunity to apply to the European Court of Human Rights (ECtHR) after exhausting all national remedies in the event of any violation of the rights and freedoms guaranteed by the Convention. To support the fulfilment of Ukraine's obligations as a member of the Council of Europe, Action Plans, which are strategic documents for a certain period, are being implemented since 2005. Currently, the Council of Europe Action Plan for Ukraine for 2023–2026 entitled "Resilience, Recovery and Rebuilding" is being implemented.[5] As part of this plan, projects are being implemented to

[5] Council of Europe Action Plans for Ukraine. [Online]. Available at:

support human rights, democracy, and the rule of law in Ukraine. The Action Plan envisages a four- year program of cooperation with the flexibility to adapt to changing conditions and needs. The document will be updated consistent with the situation in Ukraine to reflect new priorities. The assessment of risk and threat mitigation strategies will be conducted together with the Ukrainian authorities. The total budget of the four-year cooperation program is estimated at around €50 million.

On 16–17 May 2023, at the Council of Europe Summit in Reykjavik, Iceland, the Heads of State and Government of the 46 member states decided to establish a Register of Damage Caused by the Aggression of the Russian Federation, as a first step towards an international Compensation Mechanism. Leaders agreed to strengthen the Council of Europe and its work in the areas of human rights, democracy and the rule of law by adopting a declaration on the principles of democracy, reaffirming commitments to the ECHR and developing tools to address new challenges in technology and the environment.[6] The main condition for countries to join the Council of Europe is recognition of the rule of law, the obligation to ensure the rights and fundamental freedoms of all persons under the jurisdiction of the state, as well as effective cooperation with other members of the Council to achieve its goals. Membership in the Council of Europe is a testament to the country's democratic choice and its consistency in implementing reforms aimed at protecting human rights and strengthening democratic institutions. For this reason, on 14 July 1992, Ukraine expressed its desire to join the Council of Europe.

Prior to its accession, Ukraine had already become a party to several of the organization's conventions, including the European Cultural Convention, the European Framework Convention on Transfrontier Cooperation between Territorial Communities or Authorities, and the European Convention on Information on Foreign Legislation. In September 1995, Ukraine acceded to six Council of Europe conventions in the field of crime. On 15 September 1995, the Framework Convention for the Protection of National Minorities was signed. During the same period, the Council of Europe, in particular the European Commission for Democracy through Law (Venice Commission), conducted a legal examination of drafts of

https://coe.mfa.gov.ua/spivrobitnictvo/plani-dij-radi-yevropi- dlya-ukrayini (Accessed: 02 September 2024).

[6] Council of Europe and Ukraine. [Online]. Available at: https://www.coe.int/uk/web/kyiv/the-coe/about-coe (Accessed: 02 September 2024).

certain articles of the new Constitution of Ukraine, the Family and Administrative Codes, and the draft Law of Ukraine on Local Councils of People's Deputies.

On 15 September 1995, the Council of Europe Information and Documentation Centre was opened in Kyiv based on the Ukrainian Legal Foundation. The Secretary General of the Council of Europe, D. Tarshis, attended the opening ceremony. The Centre for Information and Documentation promotes the core values of the Council of Europe among the population of Ukraine. Ukraine's accession to the Council of Europe confirmed the European community's recognition of the progressive political and economic reforms implemented in Ukraine in a relatively short time.

After becoming a member, Ukraine undertook to reform its national legislation in line with the Council of Europe's standards, adopt relevant laws, and accede to several conventions. The Council of Europe expressed its readiness to provide comprehensive expert assistance. The Council studies Ukraine’s problems in the process of democratic transformation, develops recommendations and engages European countries in solving them. For example, on 26 January 1996, the Parliamentary Assembly of the Council of Europe adopted Resolution 1078 (1996) on the economic situation in Belarus, Russia, and Ukraine, calling on European states to intensify trade and economic relations with these countries and avoid protectionism. Resolutions 1087 (1996) of 26 April 1996 and 1127 (1997) of 24 June 1997 were devoted to the problems of liquidating the consequences of the Chernobyl accident and preventing similar tragedies in the future. Resolution 1180 (1999) of 28 January 1999 addressed the consequences of the economic crisis in Russia and Ukraine in 1998. Recommendation 1455 (2000) of 5 April 2000 dealt with the repatriation and integration of Crimean Tatars in Ukraine.

So far, Ukraine has signed and ratified almost all international legal instruments envisaged by the Opinion of the Parliamentary Assembly of the Council of Europe No. 190 (1995).[7]

Applying the provisions of the ECHR and the case law of the ECtHR is extremely important issue for Ukraine, its authorities and society, as the course chosen for European integration, membership in the European Union, increasing its authority in the international arena, and eventually

[7] Ukraine and the Council of Europe. [Online]. Available at: http://kimo.univ.kiev.ua/MOrg/98.htm (Accessed: 02 September 2024).

strengthening the principles of the rule of law both within our country and in foreign affairs requires unconditional compliance with and implementation of the ECHR and enforcement of ECtHR judgments. In this context, it is necessary to establish the place of the ECHR in the hierarchy of national legislation. Thus, in accordance with Article 9 of the Basic Law of the Ukrainian State, international treaties in force, as ratified by the Verkhovna Rada of Ukraine, that is, ratified by the Parliament, are part of the national legislation.[8] Given that the Law of Ukraine 'On Ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950, the First Protocol and Protocols Nos. 2, 4, 7 and 11 to the Convention', the Verkhovna Rada of Ukraine has expressed its consent to be bound by it, the provisions of the ECHR are part of national legislation.[9] In addition, according to Article 19 of the Law of Ukraine "On International Treaties of Ukraine", part one of which is actually duplicated from the Basic Law, states that the international treaties of Ukraine in force, the consent to be bound by which has been given by the Verkhovna Rada of Ukraine, are part of the national legislation and applied in the manner prescribed for the norms of national legislation.[10]

The provision of part 2 of this Article indicates the legal force of international treaties and their place in the hierarchy of Ukrainian legislation. Thus, if an international treaty of Ukraine, which has entered into force in accordance with the established procedure, establishes rules other than those provided for in the relevant act of legislation of Ukraine, the rules of the international treaty shall apply,[11] which effectively means that international treaties ratified by the Verkhovna Rada of Ukraine have a higher legal force than the national legislation.

Regarding the ECtHR case law, it is worth noting that its role in the national legal system is also determined at the legislative level. Thus, in accordance with Article 17 of the Law of Ukraine "On Enforcement of Decisions and Application of the Practice of the European Court of Human

[8] Constitution of Ukraine: June 28, 1996. Article 141.

[9] The Law of Ukraine "On Ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950, the First Protocol and Protocols Nos. 2, 4, 7 and 11 to the Convention" of 17.07.1997, No. 475/97-BP. Bulletin of the Verkhovna Rada of Ukraine, 1997, N 40, p. 263.

[10] The Law of Ukraine "On International Treaties of Ukraine" of 29.06.2004 No. 1906-IV. The Bulletin of the Verkhovna Rada of Ukraine, 2004, No. 50, p. 540.

[11] The Law of Ukraine "On International Treaties of Ukraine" of 29.06.2004 No. 1906-IV. The Bulletin of the Verkhovna Rada of Ukraine, 2004, No. 50, p. 540.

Rights" of 23 February 2006 with subsequent amendments and additions, courts apply the ECHR and ECHR practice as a source of law when considering cases.[12] In addition, according to part 5 of Article 19 of the Law, ministries and other central executive bodies ensure systematic control over compliance with administrative practice within their departmental subordination that aligns with the ECHR and the ECtHR case law.[13] Article 32 of the ECHR states that the jurisdiction of the ECtHR extends to all questions of interpretation and application of the ECHR and its Protocols submitted to it for consideration in accordance with Articles 33, 34, 46, 47.[14]

Since the beginning of the full-scale aggression of the Russian Federation, the importance of the ECHR in the context of Ukrainian events has increased significantly. In the public space, as well as in professional legal circles, attention has increased to the jurisdiction of the ECtHR, which is considering several strategically important cases, including those related to the annexation of Crimea, the armed conflict in Donbas, and the seizure of Ukrainian sailors in the Kerch Strait, among others. These proceedings are not only legally important but also have symbolic significance for the restoration of justice and consolidation of Ukraine's international legal position.[15] The ECtHR judgments play an important role in recognizing human rights violations, formulating recommendations for member states to address the consequences of such violations, and standardizing the approaches of national courts to the consideration of similar cases. Ukrainian courts, in particular the Supreme Court and the Constitutional Court of Ukraine, are increasingly

[12] The Law of Ukraine "On the Execution of Judgments and Application of the Practice of the European Court of Human Rights" of 23.02.2006 No. 3477-IV. The Bulletin of the Verkhovna Rada of Ukraine, 2006, N 30, p.260.

[13] The Law of Ukraine "On the Execution of Judgments and Application of the Practice of the European Court of Human Rights" of 23.02.2006 No. 3477-IV. The Bulletin of the Verkhovna Rada of Ukraine, 2006, N 30, p.260.

[14] Convention for the Protection of Human Rights and Fundamental Freedoms (with Protocols) (European Convention on Human Rights). Protocol of 04.11.1950. [Online]. Available at: https://zakon.rada.gov.ua/laws/show/995_004#Text. 23 Convention for the Protection of Human Rights and Fundamental Freedoms (with Protocols) (European Convention on Human Rights). Protocol of 04.11.1950. [Online]. Available at: https://zakon.rada.gov.ua/laws/show/995_004#Text (Accessed: 02 September 2024).

[15] Test by war: Decisions, statements and challenges of the European Court of Human Rights. (n.d.). Yurydychna Gazeta. Retrieved July 20, 2025, [Online]. Available at: https://yur-gazeta.com/golovna/perevirkaviynoyu-rishennya-zayavi-ta-vikliki-evropeyskogo-sudu-z-prav-lyudini.html (Accessed: 20 September 2025).

considering the ECtHR case law in their judgments, which contributes toward strengthening the human rights culture and bringing national justice closer to European standards. It is worth emphasizing that the ECtHR maintains communication with national jurisdictions through joint events such as seminars, conferences, and training, creating a favourable environment for professional dialogue. During the proceedings, Ukrainian courts provide the ECtHR with responses to inquiries regarding the circumstances of the case, which allows the ECtHR to better understand the national context. This mechanism contributes to both the formation of proper procedural justification and strengthening confidence in European justice in Ukraine.[16]

Given the above, we believe that an important step towards further improvement to the human rights protection mechanism is the institutionalization of cooperation between the ECtHR and national courts. It is advisable to introduce a special advisory mechanism under the Supreme Court to analyse the ECtHR case law and develop standard recommendations for judges. At the same time, a national monitoring platform should be created to monitor the implementation of ECtHR judgments, and it should include representatives of the Ukrainian Parliament Commissioner for Human Rights, human rights organizations, and the academic community. This step will ensure systematic control and transparency of procedures.

Additionally, in the context of Ukraine's European integration and future EU membership, it is necessary to enshrine the commitment to the priority of ECtHR judgments in the national legal system at the legislative level, specifically the Law of Ukraine "On the Judiciary and the Status of Judges" and the Criminal Procedure Code. Thus, the ECtHR case law should serve not only as an indicator of Ukraine's compliance with its international obligations but also as an incentive for a qualitative upgrade of the judicial system. This will strengthen both trust in the courts and the overall legal culture in the country. According to scholars, and supported by us, among all the international legal mechanisms for the protection of human rights existing on the European continent, the ECtHR occupies a special place and is rightly considered the most effective tool for the protection of human rights and freedoms. Its effectiveness is primarily determined by the legally binding force of its judgments, which is unique among other international institutions. Unlike the advisory provisions of most international human rights bodies, the ECHR judgments are mandatory for

[16] Denysova and Sirko, 2024, p. 725.

all states that are parties to the European Convention on Human Rights and are subject to mandatory implementation in accordance with Article 46 of the Convention. In addition to its legal force, the ECtHR is distinguished by its dynamism and ability to adapt to the social and legal transformations occurring in the European space. It demonstrates openness to the evolutionary interpretation of legal norms, while considering the latest human rights challenges, such as armed conflicts, terrorism, information security, migration crisis, among others. Owing to its ability to adapt that the Court retains its relevance and authority in the European justice system. In this context, it can be argued that the ECtHR not only ensures the implementation of a specific mechanism for the protection of human rights but also serves as a catalyst for the evolution of human rights in the legal systems of the Council of Europe member states, including Ukraine. From this perspective, its functioning is not just legally significant, but strategically necessary for strengthening the rule of law in the region.[17] The ECtHR has experienced a significant institutional transformation since the turn of the twenty-first century in response to a sharp increase in the number of applications received for its consideration. Such a rapid increase in applications demonstrates the high level of confidence in the Court as an effective means of international protection of human rights and freedoms, which is confirmed by the practice of applications from citizens of different states.[18] At the same time, the ECtHR remains a supranational body with powers limited by the framework established by the Convention for the Protection of Human Rights and Fundamental Freedoms, considering respect for the sovereignty of member states. Accordingly, implementation of its judgments depends not only on the professional capacity of the Court, but also on the political will of states to ensure the implementation of these judgments. As Matyashova rightly notes, the implementation of the ECtHR judgments is a key prerequisite for its effectiveness: only if national authorities implement measures arising from the Court's judgments, can we discourse about the real elimination of violations and ensure fair satisfaction to victims.[19] Such dynamics requires states to continuously improve the mechanisms of implementation of the ECtHR judgments, including reform of

[17] Matyashova, 2015, p. 98.
[18] ECHR - Analysis of statistics 2014. [Online]. Available at: http://www.echr.coe.int/Documents/Stats_ analysis_2014_ENG.pdf (Accessed: 02 September 2024).
[19] Matyashova, 2015, p. 99.

national legislation, strengthening the role of domestic courts and raising awareness of law enforcement practice with the Court's precedents. Concomitantly, the international community should support the institutional capacity of the ECtHR by ensuring adequate funding and improving access procedures. Ultimately, it is the balanced interaction between the Court and member states based on the good faith enforcement of judgments, that is, a determining factor in the stability and effectiveness of the entire human rights protection system in Europe.

Importantly, among other things, the full-scale aggression against Ukraine had a significant impact on the human rights protection mechanism. Thus, the military aggression against Ukraine has clearly demonstrated the significant limitations of the current system of international humanitarian law, specifically its insufficient ability to effectively respond to the challenges of hybrid conflicts. The inability to ensure timely prosecution of the aggressor state indicates a crisis of international control instruments. In this regard, there is a growing need to update the treaty and legal norms of the international law to factor in the challenges of modern armed confrontation, including the latest forms of warfare – cyber operations, information and psychological influence, and the use of private military companies. The introduction of martial law in Ukraine was a necessary measure to protect sovereignty, but it also revealed several gaps in national legal regulation, particularly about ensuring human rights under conditions of limited freedoms. The improvement of Ukrainian legislation should be carried out through the implementation of international humanitarian law into the national legal system, considering the specifics of the ongoing armed conflict.[20] There is an urgent need for further development of an international specialized tribunal to try cases of aggression, war crimes, and crimes committed against humanity on Ukraine territory. In addition, amendments to the Rome Statute of the International Criminal Court should be initiated to extend its jurisdiction to cases of aggression in the form of hybrid wars. In the national context, the key task is to create an integrated system for recording and investigating violations of international humanitarian law (IHL), which involves coordination between law enforcement agencies, prosecutors, civil society representatives, and international experts. It is also advisable to develop and implement a single digital platform for documenting war crimes with an appropriate level of data protection. At the same time, judges, prosecutors, lawyers, and investigators should be

[20] Vasyliev, 2025, p. 841.

provided systematic training on IHL and international criminal law to increase the effectiveness of law enforcement under martial law. Thus, a comprehensive update of both international and national legal frameworks, factoring in new threats and wartime needs, is a prerequisite for ensuring effective human rights protection and the formation of a sustainable system of legal liability for aggressor states.

In the context of a full-scale war, and in the Ukrainian reality, the issue of ensuring human rights in the occupied territories is also extremely important. Currently, Ukraine lacks effective control over the temporarily occupied territories; objectively, this makes it impossible to implement the provisions of the Constitution of Ukraine and international laws on these lands. At the same time, as the occupying power, the Russian Federation systematically violates not only the norms of international humanitarian law but also numerous provisions of multilateral human rights treaties, demonstrating disregard for the international legal order.[21] The institution of prosecution for war crimes performs a key function in the system of human rights protection.[22] However, residents of the occupied territories face major restrictions on the exercise of their rights owing to a lack of access to national courts and international human rights institutions. Although the norms of international laws impose the obligation to protect human rights on the occupying power, the actual compliance with these obligations remains dependent on the political will of the latter. In the case of Russia, we are witnessing a deliberate disregard for international legal norms, which indicates a degradation of international legal responsibility by a permanent member of the UN Security Council. In this context, the ECtHR has a special role, as it remains one of the few effective institutions for the affected citizens of Ukraine. Since the beginning of Russia's aggression in 2014, thousands of Ukrainians have filed applications with the ECtHR, including those related to the events in Crimea and Donbas, illegal detention, torture, restrictions on freedom of movement, property rights, among others. The ECtHR has already found Russia liable for numerous violations of the ECHR, including freedom of expression, the right to a fair trial, prohibition of discrimination, among others. Although such judgments are critical for setting an international precedent, Russia's actual compliance with them remains problematic. In June 2024, the ECtHR unanimously confirmed systematic human rights violations in occupied Crimea, which was an

[21] Katerenchuk, 2022.
[22] Skrypniuk, 2022.

important signal to the international community. At the same time, however, the ECtHR is facing challenges: an excessive number of cases, delays in consideration, and problems with the implementation of judgments. This calls for reforms of the ECtHR: reduction of the terms of consideration, optimization of procedures, and increased capacity to monitor the implementation of judgements.[23] In our opinion, it is advisable to legislatively regulate the possibilities for class actions in international courts, which will unify the process of legal protection. This will primarily be an effective protection of human rights during times of war and will also raise the practices of the ECtHR and the ECtHR itself to a new level of law enforcement.

As we have already established, the ECHR is part of national legislation, and its provisions are binding on the territory of Ukraine. Therefore, the role of the ECtHR case law is also indicated by Article 46(1) of the ECHR, according to which the High Contracting Parties undertake to abide by the final judgments of the ECtHR in any case to which they are parties,[24] and this obligation indicates the binding force of decisions and their execution.

According to clause 5 of part 1 of Article 1 of the Law of Ukraine 'On the Execution of Judgments and Application of the ECtHR Practice', a judgment of the ECtHR is as follows:

- A final judgment of the ECtHR in a case against Ukraine, which recognizes a violation of the ECHR
- The final judgment of the ECtHR on just satisfaction in the case against Ukraine
- The judgement of the ECtHR on a friendly settlement in the case against Ukraine
- The judgment of the ECtHR on approval of the terms of the unilateral declaration in the case against Ukraine.[25] That is, these are the types of judgments delivered by the ECtHR that are subject to

[23] Tkachuk, Hryn and Mkrtchian, 2025, p. 405.
[24] Council of Europe. (1950, November 4). Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights), with protocols. [Online]. Available at: https://zakon.rada.gov.ua/laws/show/995_004#Text (Accessed: 02 September 2024).
[25] Law of Ukraine "On the Execution of Judgements and Application of the Practice of the European Court of Human Rights," No. 3477-IV, February 23, 2006, Bulletin of the Verkhovna Rada of Ukraine, 2006, No. 30, p. 260.

> mandatory execution. In addition, to fully understand the role of the ECtHR case law while interpreting the provisions of the ECHR, it is necessary to refer to the Vienna Convention on the Law of Treaties of 1969, to which Ukraine is a signatory (accession to the Convention in accordance with Decree of the Presidium of the Verkhovna Rada of the Ukrainian SSR 'On Accession of the Ukrainian Soviet Socialist Republic to the Vienna Convention on the Law of Treaties' of 14.14.04.1986 No. 2077-XI to the so-called general rule of interpretation, according to which '...along with the context (author's note - treaty), the following practice of application of the treaty, which establishes the agreement of the parties on its interpretation, shall be taken into account, among other things...'.[26]

It is also worth noting that the ECtHR 'provides the final authoritative interpretation of the rights and freedoms set out in Title I of the ECHR and will take into account whether the national authorities have sufficiently taken into account the principles arising from its judgments, even if they concern other states'.[27] Thus, the ECHR states parties are recommended to take into account the conclusions drawn in the ECtHR judgments on the establishment of violations of the ECHR even by other states. This practice, in our opinion, is appropriate, as it ensures uniform application of the ECHR by all its parties, as well as precise understanding of its provisions. At the same time, Ukraine should take into account such provisions, considering the Ukrainian context of the case and necessarily focus on the national legislation and the practice of its application. Given that the ECtHR makes different types of judgments, the question arises as to which judgment should be considered when applying the ECtHR case law? Ratio decidenti judgments should be considered. In addition, different bodies of the ECtHR may deliver the judgments. For example, judgments rendered by the Grand Chamber are public; have a precedential character; address key issues of interpretation and application of the ECtHR; and provide for extraordinary circumstances (for example, the ECHR judgment Burmych and Others v. Ukraine[28]). The Chamber's judgments are public, precedent-setting; they resolve standard issues of interpretation and application of the ECtHR (e.g.,

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[26] Decree of the Presidium of the Verkhovna Rada of the Ukrainian SSR "On the Accession of the Ukrainian Soviet Socialist Republic to the Vienna Convention on the Law of Treaties" of 14.04.1986, No. 2077-XI. Vidomosti Verkhovnoi Rady, 1986, No. 17, p. 343.
[27] *Case of Opuz v. Turkey*, App. No. 33401/02, 9 June 2009.
[28] *Case of Burmych and Others v. Ukraine*, App. No. 46852/13, 12 October 2017.

Kaverzin v. Ukraine[29]). Decisions issued by the Committee are public; they are not precedent setting; they resolve issues that are the subject of established practice. Finally, judgements delivered by a single judge are not public. While considering the ECtHR judgments, it should also be understood that the ECtHR is a "living instrument", which means that as society develops, so does the ECtHR and the ECtHR's positions, and therefore there may be cases when the Court, at the beginning of its activity, interpreted and applied the ECHR based on the circumstances of the time, and today the same rule may be applied differently, based on the current circumstances. For example, in the case of Tyrer v. the United Kingdom (1978), the ECtHR, for the first time, noted that the ECHR is a living instrument that should be interpreted in the light of modern conditions.[30]

The next issue that is important for our study is the enforcement of ECtHR judgments. Article 1 of the Law of Ukraine "On the Enforcement of Judgments and Application of the ECtHR Case Law" provides that there are two types of enforcement of ECtHR judgments:

- payment of compensation to the claimant, and taking additional measures of an individual nature; and
- taking measures of a general nature.[31]
- Accordingly, individual measures may include:
- Reimbursement of court costs, compensation for moral and material damage, effective investigation (Case "Kaverzin v. Ukraine")
- Prohibition of extradition or deportation (Kabulov v. Ukraine[32])
- Reinstatement in office (case of Oleksandr Volkov v. Ukraine[33])
- Review of the case (Shabelnyk v. Ukraine[34])
- Resettlement to a safe place (Dubetska and Others v. Ukraine[35])
- Release from custody (Case "Assanidze v. Georgia"[36])
- General measures may include:

[29] *Case of Kaverzin v. Ukraine*, App. No. 23893/03, 15 August 2012.
[30] *Case of Tyrer v. the United Kingdom*, App. No. 5856/72, 25 April 1978.
[31] The Law of Ukraine "On the Execution of Judgments and Application of the Practice of the European Court of Human Rights" of 23.02.2006 No. 3477-IV. The Bulletin of the Verkhovna Rada of Ukraine, 2006, N 30, p. 260.
[32] *Case of Kabulov v. Ukraine*, App. No. 41015/04, 19 November 2009.
[33] *Case of Oleksandr Volkov v. Ukraine*, App. No. 21722/11, 9 January 2013.
[34] *Case of Shabelnyk v. Ukraine*, App. No. 16404/03, 19 February 2009.
[35] *Case of Dubetska and Others v. Ukraine*, App. No. 30499/03, 10 February 2011.
[36] *Case of Assanidze v. Georgia*, App. No. 71503/01, 8 April 2004.

- Amending the current legislation and practice of its application
- Providing professional training on the Convention and ECtHR case law
- Amending administrative practices
- Providing legal expertise of draft laws.

According to Article 3 of the Law of Ukraine "On Enforcement Proceedings", decisions subject to enforcement include judgments of the European Court of Human Rights, taking into account the specifics provided for by the Law of Ukraine "On the Enforcement of Judgments and Application of the Practice of the ECtHR ", as well as judgments of other international jurisdictional bodies in cases provided for by an international treaty of Ukraine.[37]

Having concluded that the ECtHR judgments are of great importance for Ukraine, it is important to focus on specific judgments that required implementation of general measures. As there are several such judgments, we will try to group them together and analyse those judgments that have had a significant impact on Ukrainian legislation separately.

The Kaverzin group of judgments in the ECtHR concerns systemic problems with torture and ill-treatment practiced by Ukrainian law enforcement agencies. Its name originates from the 2012 judgment in the case of Kaverzin v. Ukraine, where the ECtHR found a violation of Article 3 of the ECHR, attributable to the ill-treatment of prisoners and ineffective investigations into these cases. The ECtHR emphasized that these problems are systemic and require urgent reforms to prevent torture, ensure proper investigation, and protect human rights in Ukraine.

Kaverzin's case illustrates the ongoing practice of using force to extract confessions, which the court recognized as inhuman treatment. In a broader context, this group encompasses other cases of violations, including ineffective investigations and deficiencies in the legal system. Despite certain reforms, such as the creation of the State Bureau of Investigation (SBI) and the adoption of the new Criminal Procedure Code of Ukraine in 2012, implementation of the ECtHR judgments remains incomplete, and the process continues to be monitored by the European Committee of Ministers.[38]

[37] Law of Ukraine "On Enforcement Proceedings" of 02.06.2016 No. 1404-VIII. Bulletin of the Verkhovna Rada, 2016, No. 30, p. 542.
[38] *Case of Kaverzin v. Ukraine*, App. No. 23893/03, 15 May 2012.

The Hailo group of judgments concerns human rights violations in Ukraine, in particular inadequate conditions of detention and lack of proper medical care in places of detention. Its name originates from the judgment in the case of Hailo v. Ukraine, where the ECtHR found that Ukraine had violated Article 3 of the ECHR, which forbids torture and inhuman or degrading treatment. In its judgment in the case of Hailo v. Ukraine (2015), the court pointed to the systemic problems in the Ukrainian penitentiary system, including poor detention conditions, lack of access to adequate medical care for prisoners, and ineffective investigation of complaints of such violations. The ECtHR stressed that such issues should be addressed at the systemic level through appropriate reforms.[39] This group of cases can be identified with other similar groups, such as the Kaverzin, concerning the conditions of detention, general attitude towards prisoners, and the effectiveness of the human rights protection system in Ukraine.

The Petukhov No. 2 group of ECtHR judgments addresses the systemic problems in the Ukrainian penitentiary system, especially the conditions of life imprisonment and access to justice for those sentenced to life imprisonment. This group is named after the case of Petukhov v. Ukraine (no. 2), in which the ECtHR found serious violations of Article 3 of the ECHR. In the case of Petukhov No. 2 (2019), the ECtHR stated that the conditions of serving a life sentence in Ukraine do not meet European standards, as there is no possibility of reviewing the sentence or parole. The Court noted that this problem is systemic and requires legislative reform. The main criticism was that the system of life imprisonment in Ukraine did not actually allow for a realistic prospect of release, which contradicts international standards on the rights of prisoners.[40] This judgment highlights the need for changes in the national legal system with regard to access to a fair trial and the possibility of reviewing life sentences to ensure humanity and compliance with the ECHR.

The Fedorchenko and Lozenko group of judgments concern violations related to racial discrimination and ineffective investigations by the Ukrainian state authorities. The case of Fedorchenko and Lozenko v. Ukraine was decided by the ECtHR in 2012. This case concerns the murder of five members of a Roma family following an arson attack on their home in 2001. The applicants accused a local police officer of organizing the crime, but the investigation did not lead to the prosecution of the perpetrators. The

[39] *Case of Hailo v. Ukraine*, App. No. 52985/09, 18 December 2015.
[40] *Case of Petukhov v. Ukraine (No. 2)*, App. No. 41216/13, 12 March 2019.

ECtHR found a violation of Article 2 (right to life) and Article 14 (prohibition of discrimination) of the ECHR, as the Ukrainian authorities failed to ensure an effective investigation of the crime and did not take consider the racial motive of the murder.[41] This case highlighted the problem of racial discrimination against Roma in Ukraine and revealed systemic shortcomings in the work of law enforcement agencies to protect minorities from violence and discrimination.

The Ignatov group of ECtHR judgments concerns violations related to unjustified detention and non-compliance with the right to a fair trial. The main case is the judgment in the case of Ignatov v. Ukraine, delivered by the ECtHR in 2016. The core issues raised in this group of judgements are:

- Prolonged detention: The ECtHR found a violation of Article 5 (right to liberty and security of person) based on the applicant's prolonged pre-trial detention without proper justification for the need for detention. In this case, the Ukrainian courts did not provide justifiable reasons for the extension of the preventive measure, and this was recognized as human rights violation.
- Insufficient justification of court decisions: The ECtHR noted that domestic courts often use general wording to justify a decision to detain a person in custody, without a detailed analysis of the individual circumstances of the case.
- Violation of the right to a hearing within a reasonable time: The ECtHR stressed that prolonged detention without proper judicial control violates the right to a speedy trial, which is also a violation of Article 5 of the ECHR.[42] This group of judgments revealed significant problems in the Ukrainian judicial system, particularly abuse of detention and the formal approach to justify decisions on detention, which needs to be reformed to ensure fair trial.

The Nevmerzhytskyi group of judgements concerns systemic human rights violations in Ukraine, including ill-treatment, torture, prolonged detention, and inadequate conditions of detention. The main issues raised in this group are:

Ill-treatment and torture: In the case of Nevmerzhytskyi v. Ukraine (2005), the ECtHR found a violation of Article 3 of the ECHR, which prohibits torture and inhuman or degrading treatment. The case concerned the

[41] *Case of Fedorchenko and Lozenko v. Ukraine*, App. No. 387/03, 20 September 2012.
[42] *Case of Ignatov v. Ukraine*, App. No. 40583/15, 15 December 2016.

applicant being tortured and denied access to adequate medical care in detention.

- Prolonged detention and conditions of detention: In this group of judgments, the ECtHR examined the applicants' prolonged pre-trial detention without sufficient justification, in violation of Article 5 (right to liberty and security of a person) of the ECHR. The conditions of detention in places of detention also did not meet international standards, which was the basis for numerous decisions.
- Lack of adequate medical care: One of the key issues raised in this case was the lack of adequate medical care for prisoners, which was also recognized by the ECtHR as a violation of Article 3.[43] This group of judgments emphasizes the need to reform the detention system and improve detention conditions in Ukraine.

The group of judgments of the ECtHR "Yaremenko" deals with human rights violations in criminal proceedings in Ukraine, specifically violations related to the right to a fair trial and ill-treatment during interrogations. In this group, the ECtHR found that trials did not comply with Article 6 of the ECHR (right to a fair trial). In the case of Yaremenko v. Ukraine, the ECtHR found that the applicant was deprived of the right to a fair trial. The case was considered in violation of the requirements for the collection and use of evidence, which affected the outcome of the proceedings. In addition, torture and ill-treatment: The ECtHR also found a violation of Article 3 of the ECHR (prohibition of torture) during the applicant's detention. The case concerned the use of physical force against the applicant during interrogations, which violated the standards on the prohibition of torture and inhuman treatment. The ECtHR also found that unlawful evidence had been used, meaning that confessions obtained under pressure or ill-treatment could not be the basis for conviction. The applicant's guilty plea was obtained through pressure and abuse during the pre-trial investigation, which led the court to declare the evidence illegal.[44] These judgements highlight the systemic problems in the Ukrainian judicial system, particularly with respect to human rights during criminal proceedings and pre-trial investigations.

Another group of ECtHR judgments is the Merit group. *The Merit group of judgments* concerns systemic problems in Ukraine related to the

[43] *Case of Nevmerzhytskyi v. Ukraine*, App. No. 54825/00, 5 April 2005.
[44] *Case of Yaremenko v. Ukraine*, App. No. 32092/02, 12 June 2008.

conditions of detention in places of detention, ill-treatment, and violation of prisoners' rights to a fair trial. The main case, which gave the group its name, is the judgment in the case of Merit v. Ukraine (2004). In this case, the ECtHR found that Ukraine had violated Article 3 of the ECHR, which prohibits torture and inhuman or degrading treatment, due to the appalling conditions of the applicant's detention in the pre-trial detention centre, as well as insufficient medical care. The main problems of the Merit group are poor conditions in places of detention, which often include overcrowding, unsanitary conditions, poor nutrition and inadequate medical care; physical and psychological violence, specifically during interrogation or detention; lack of adequate protection and procedural guarantees for detainees, specifically lack of access to adequate legal assistance.[45] This group of judgments indicates the need for serious reforms in Ukraine's penitentiary system and the observance of human rights in places of detention.

In our opinion, the most striking example of Ukraine's successful implementation of ECtHR judgments is the Balytskyi group of judgments. The ECtHR raises issues related to violations of the rights to a fair trial and the right to defence in criminal proceedings. In these cases, the applicants complained of ill-treatment by law enforcement agencies, insufficient guarantees of the rights of suspects, and the lack of effective legal mechanisms to protect their rights. The main problems and issues raised in the judgement were:

Violation of Article 6 of the ECHR – the right to a fair trial: unlawful conviction or detention of the applicants; lack of adequate legal assistance and violation of the right to defence; falsification of evidence or improper procedure for its collection.

Violation of Article 3 – prohibition of torture and ill-treatment: Ill-treatment in detention, torture to extract confessions; lack of proper investigation by the authorities in cases of complaints of torture.

The judgments stated systemic problems with Ukrainian legislation. The ECtHR judgments highlighted systemic shortcomings in Ukraine's law enforcement system that required immediate reform, particularly in terms of ensuring the rights of suspects and their protection during the investigation and trial. As a result of such decisions, the legislation was amended, and the following steps were taken to reform the judicial and law enforcement systems.

[45] *Case of Merit v. Ukraine*, App. No. 66561/01, 30 March 2004.

1. Reform of the police: the structure and activities of law enforcement agencies were reformed to reduce the number of human rights violations during pre- trial investigations. The Law of Ukraine on the National Police was adopted on 2 July 2015. This was an important step in reforming Ukraine's law enforcement system. After the Euromaidan and the Revolution of Dignity, Ukraine needed to reform its law enforcement agencies. Corruption, lack of efficiency, and distrust in the police became serious problems. In addition, the armed conflict in the east of the country has also highlighted the need to strengthen the rule of law and increase the effectiveness of law enforcement agencies. International organizations and Ukraine's partners also called for reform of law enforcement agencies. As a result, the law replaced the militia with the National Police, which became a new, independent structure designed to ensure public order and security. It also introduced requirements for the education and professional skills of candidates. The reform also aimed to improve the public image of law enforcement and restore trust in them. The law enforcement officers introduced new approaches to combat corruption and abuse. The police reform also included decentralization and increased efficiency of local police work. Since 2015, positive developments have been recorded, including improved public service and fewer cases of corruption. At the same time, the reform has faced several challenges, including resistance from old structures, funding, and resource issues. Overall, the new police received positive feedback from the public for its professionalism and transparency, although some problems remain to this day. The reform of the National Police was an important step in Ukraine's overall reform process, but further steps and support from the state and society are needed to achieve long-term results.

2. Adoption of the new Criminal Procedure Code of Ukraine: The Criminal Procedure Code of Ukraine (CPC) was adopted on 13 April 2012. This code was an important part of the legal reform in Ukraine and was aimed at modernizing the criminal justice system. Prior to 2012, Ukraine was governed by the Soviet criminal procedure law, which did not meet modern requirements of justice and human rights. The need to update the procedural rules became urgent. Ukraine sought to integrate into the European Union and comply with European standards of justice, particularly the requirements for procedural rights and freedoms, which resulted in the update of legislation. The need to fight corruption and abuse

in the law enforcement system was one of the important reasons for reforming the criminal procedure legislation. Civil society and human rights organizations also demanded reforms to increase the transparency and fairness of the judiciary. The adoption of the CPC of Ukraine in 2012 introduced new guarantees of individual rights and freedoms in criminal proceedings, including the right to a defence, the right to free legal aid for those who cannot afford a lawyer, and other rights. The principle of the presumption of innocence was enshrined, which means that a person is presumed innocent until proven guilty in court. The Code strengthened the role of judicial control at all stages of the criminal process, which was aimed at reducing abuses by law enforcement agencies. New rules and procedures for investigative (detective) actions were introduced to increase their legality and transparency. The Code provided for simplification of procedural procedures to hasten the consideration of criminal cases and reduce delays. While the 2012 CPC was an important step, further improvements and adaptations are required to ensure its effective functioning. Overall, the adoption of the CPC in 2012 was an important step towards the modernization of criminal proceedings in Ukraine and compliance with modern standards of justice.

3. Establishment of the State Bureau of Investigation: The State Bureau of Investigation (SBI) was established in Ukraine as part of the reform of the law enforcement system to ensure independent investigation of criminal cases, especially offences committed by law enforcement officers (police, prosecutors, judges) and high-ranking officials. The relevant Law on the establishment of SBI was adopted by the Verkhovna Rada of Ukraine on 12 November 2015. The main purpose of its creation was to ensure effective and independent investigation of crimes committed by law enforcement officials, as well as to reduce corruption and abuse. The SBI investigates offences committed by law enforcement officers and other high-ranking officials. Since its inception, the SBI has gradually taken over the pre-trial investigation function from the Prosecutor's Office, which has finally established the latter's status as a judicial body under the Constitution of Ukraine. The legal status of the SBI is quite complicated, given that it is a central executive body with a special status. At the same time, this state body is a law enforcement agency, as it has law enforcement functions. Thus, according to Article 1 of the Law of Ukraine "On the State Bureau of Investigation", ‘the State Bureau of Investigation

is a state law enforcement agency entrusted with the tasks of preventing, detecting, stopping, solving and investigating criminal offences within its competence'.[46] The law enforcement orientation of the SBI is also evident in its tasks, as stated in Article 5 of the Law.[47] The place of the newly established SBI in the system of public authorities expands the scope of power of this body in terms of anti-corruption policy and may have negative aspects in terms of achieving specific results of the SBI's activities.[48] The establishment of the SBI was envisaged by the Transitional Provisions of the Constitution of Ukraine back in 1996. However, almost 19 years have passed since then until its creation! Within the scope of its competence, the SBI may, during the investigation of crimes, interfere in the activities of senior officials, judges, law enforcement officers, and other persons who have committed crimes. These persons may influence the course of criminal proceedings, so the law contains broad guarantees of the independence of this body.

It is also worth focusing on the foreign experience of the effectiveness of the ECtHR's human rights protection. Thus, according to Gerards & Fleuren, expressed in «Implementation of the ECHR and of the judgments of the ECtHR in national case law», specifically in the chapter "The European Court of Human Rights and the national courts - giving shape to the notion of 'shared responsibility'", national constitutional and administrative courts play a key role in the implementation of the ECtHR case law in the domestic system. In countries where ECtHR judgments are analysed at the constitutional level, their implementation is more efficient and law enforcement practices are consistent with European standards.[49] This approach shows that the principle of "shared responsibility" increases the effectiveness of protection when constitutional courts become a guarantor of compliance with national law. The authors of the article «The Aggression Against Ukraine and the Effectiveness of Inter-state Cases in Case of War, ECHR», highlight the experience of Ukraine's interstate applications to the ECtHR. The author expresses the position that although such applications have symbolic and legal potential, their effectiveness is limited by the lack

[46] On the State Bureau of Investigation. Law of Ukraine of 12.11.2015 No. 794-VIII. Bulletin of the Verkhovna Rada (VRU), 2016, No. 6, p. 55.
[47] On the State Bureau of Investigation. Law of Ukraine of 12.11.2015 No. 794-VIII. Bulletin of the Verkhovna Rada (VVR), 2016, No. 6, p. 55.
[48] Ilchenko, 2017, pp. 281–283.
[49] Gerards and Fleuren, 2014, pp. 13–94.

of an effective mechanism for the enforcement of judgments (especially compensation), based more on international pressure than on the enforcement of the judgment.[50] This option is indeed capable of generating an international outcry, but remains primarily theoretical without enforcement mechanisms, and therefore its effectiveness for victims is uncertain. Jeton Shasivari, in his article «The constitutional complaint in North Macedonia», which is an effective legal instrument with narrow effects analyses the mechanism of constitutional complaint in North Macedonia. The author demonstrates that although this instrument has the potential to be an effective remedy, its operation is limited by narrow jurisdiction, low court activity, and procedural barriers.[51] We believe that a constitutional complaint can become an important domestic remedy, but only if its priority competence is expanded and is accessible to applicants. According to Jerzy Jaskiernia, in his article «Actual challenges for the implementation of judgments of the ECtHR», the key problem with the implementation of ECtHR judgments in Poland is delays, long-term failures in the implementation of such judgments, particularly under Article 3 ECHR (conditions of detention), which is confirmed by the statistics of the Committee of Ministers of the Council of Europe.[52] The author insists on a more active role of civil society, the Ombudsperson, and the Venice Commission to strengthen control over the implementation of decisions.[53] According to the authors of the publication «Assessing the Implementation of ECtHR Judgments by Poland and Moldova», both countries demonstrate structural failures, that is, lack of political will in the executive branch of the government leads to public distrust of domestic justice and massive appeals to the ECtHR.[54] The authors point out that even with a relatively well-established control mechanism, the Committee of Ministers faces a number of cases without execution.[55] Indeed, the weakness of domestic judicial and administrative institutions reduces confidence in national justice, stimulating applications to the ECtHR, which creates an additional burden on the ECtHR and reduces its productivity. The report of the Secretary

[50] Dzehtsiarou and Tzevelekos, 2022.
[51] Shasivari, 2024. pp. 77–92.
[52] Jaskiernia, 2022.
[53] Jaskiernia, 2022.
[54] Assessing the Implementation of ECtHR Judgments by Poland and Moldova, Przegląd Konstytucyjny, 2020, Issue 3, pp. 20–38.
[55] *Assessing the Implementation of ECtHR Judgments by Poland and Moldova, Przegląd Konstytucyjny,* 2020, Issue 3, pp. 20–38.

General of the Council of Europe states that the decisions of the Constitutional Tribunal of Poland during 2021–2022 undermine the application of Article 6 of the ECHR and challenge the jurisdiction of the ECtHR. This situation leads to violations of the right to a fair trial and raises serious concerns of the Committee of Ministers.[56] When national constitutional bodies oppose the interpretation of the ECtHR, it undermines the institutional basis of the rule of law and compliance with human rights standards in the country. Poland's experience with freedom of speech demonstrates that even individual articles of the Convention can become a driving force for legislative reform and increase the effectiveness of rights protection.[57]

The following key conclusions can be drawn from the analysed sources. First, the integration of the ECtHR case law into national legislation and judicial practice through the participation of a constitutional or similar body increases the implementation of judgments.[58] Second, inter-state applications, although of strategic importance[59], require additional enforcement mechanisms – without which their potential remains unrealized. Third, the effectiveness of a constitutional complaint as a domestic instrument depends on its accessibility, jurisdictional coverage, and ease of use.[60] Therefore, it is advisable for Ukraine to:

- Enshrine the priority of ECHR norms in national legislation and establish advisory mechanisms under the Constitutional Court or the Supreme Court to analyse ECtHR judgments.
- Develop a legislative institution of inter-state applications with an international fund for the enforcement of judgements.
- Introduce or expand the institution of constitutional complaint and remove procedural barriers to its effective application. These steps will help transform the experience of the ECtHR into a real protective potential of the national justice system.

At the same time, an analysis of the scientific literature leads to the conclusion that not all reforms in Ukraine are implemented properly or lead to the expected results. Thus, the article by Iurii Bedratyi, Serhii Khaliuk, and

[56] Council of Europe, Report of the Secretary General: PACE Initiative, Doc. 15741, Strasbourg, November 2022, section 2.2.9, pp. 36–39.
[57] Dziurda, Gołąb and Zembrzuski, 2024, pp. 1–50.
[58] Gerards and Fleuren, 2014.
[59] Dzehtsiarou and Tzevelekos, 2022.
[60] Shasivari, 2024; Saveski, 2018

Oleksandr Savka. « Judicial Reform in Ukraine: Results and Further Steps» presents a systematic analysis of the judicial reform in Ukraine, describes the key stages during 2014–2025, results of the High Anti-Corruption Court (HACC) establishment, introduction of the e-court, and outlines the main problems, such as low level of trust (only 14% trust the judiciary), corruption risks, staffing shortages, administrative inefficiency, and the preservation of political influence on the court. The authors argue that the success of the reforms depends not only on legislative initiatives, but also on the active participation of the public in restoring trust in the justice system.[61] This is a very relevant and empirically based material as it emphasizes that without public support and proper staffing, judicial reform risks remain formal. Other scholars have studied how the active role of Ukrainian civil society acts as an informal institution in the judicial reform process. The authors show that civil society organizations and experts control the reform, especially in the context of constitutional control through the Constitutional Court of Ukraine. Monitoring, analysis, and public reports of civil society have a significant impact on reforms, despite the lack of formal participation status.[62] In the article «Guarding the guardians: Ukraine's security and judicial reforms under Zelensky» European Council on Foreign Relations (ECFR) describes the failures in the reform of security agencies (SBU, Office of the Prosecutor General), their stagnation since 2016, weakness of qualification assessment, political influence on courts, personnel abuse and sabotage of reforms by judicial and law enforcement institutions. The authors express concern that without high-quality personnel, reforms remain declarative.[63]

The analysed sources unanimously show that the key to successful implementation of reforms in Ukraine is active participation of civil society as an informal but influential monitoring mechanism; transparency in the adoption of laws and personnel procedures, especially in the judiciary; consistent implementation of laws and decisions of institutions, including the Anti-Corruption bodies and the Constitutional Court; no use of war as a tool to delay reforms; ensuring real independence of the judiciary

[61] Bedratyi, Khaliuk and Savka. 2025.
[62] Lashyn, Leshchyshyn and Popova, 2023.
[63] European Council on Foreign Relations (ECFR), Guarding the Guardians: Ukraine's Security and Judicial Reforms under Zelensky (2024), Finnish Institute of International Affairs (FIIA). [Online]. Available at: https://ecfr.eu/publication/guarding_the_guardians_ukraine_security_and_judicial_reforms_under_zelensky/ (Accessed: 05 July 2025).

through personnel policy and institutional guarantees. In view of this, important recommendations are as follows: legislate the role of public in monitoring reforms; ensure transparency of appointments to the Higher Qualification Commission of Judges of Ukraine; introduce internal control over the implementation of decisions (for example, a monitoring group); avoid regulatory adoption of reforms without a practical mechanism for their implementation.

Thus, summing up the results of our research, it is worth emphasizing that it is the duty of each state to create an effective legal mechanism to ensure proper implementation and protection of human and civil rights and freedom on its territory. During different historical periods of its existence, the state of Ukraine and its authorities provided these guarantees in various ways, more during some periods more and less during others. A landmark event was the ratification of the ECHR. At the same time, this process intensified after Ukraine gained independence in 1991. An important factor in this process was Ukraine becoming a member of the Council of Europe and adopting a course of European integration. The various institutions of the Council of Europe institutions are effective in influencing member states to respect human rights. One of these institutions is the ECtHR. Its case law is of great importance in ensuring human rights. This is, of course, confirmed by changes in the state legal mechanism because of the ECtHR judgements in relation to Ukraine and other states. In addition, we would like to note that the implementation of human rights and its mechanism remain controversial issues, despite the large number of ECtHR judgments in which the court finds violations and directs the state to correct these violations, including through amendments to legislation, which we have analysed in this study. An important factor in the these decisions is the implementation of reforms across various spheres of public life. As stated above, not all reforms are effective, which is due to various reasons. We believe that the implementation of the recommendations outlined in this paper will help to remedy this situation in human rights protection through the mechanism of the ECtHR. Implementation of our recommendations into the mechanism itself, we believe, will contribute to increasing its effectiveness. The challenges of martial law greatly complicate the situation but should not hamper the establishment of the rule of law. Moreover, the proposed mechanisms for protecting human rights in occupied territories are aimed at safeguarding people, their life and health, honour, and dignity, regardless of the authorities exercising power in a particular territory.

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