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IMPACT OF ECHR JUDGMENTS ON DEVELOPMENT OF NATIONAL LEGISLATION

MINCHENKO Daria,
National University "Odesa Law Academy" (Ukraine), PhD, LLM,
Attorney Associate Professor of the Department of Civil Law,
Head of International Relations Office

SUMMARY

The implementation of judgments from the European Court of Human Rights (ECHR) plays a crucial role in shaping national legislation and ensuring adherence to fundamental rights within Ukraine. Following its ratification of the European Convention on Human Rights, Ukraine committed to aligning its legal framework with ECHR standards. However, significant challenges remain in enforcing these judgments, particularly regarding the right to a fair trial and the non-enforcement of domestic court decisions. This article analyses the impact of ECHR rulings on Ukrainian legal reforms, highlighting key cases that have prompted legislative changes aimed at enhancing judicial independence, property rights, and accountability for human rights violations. Furthermore, the ongoing effects of martial law due to the russian aggression since February 2022 raise additional complexities for the implementation of ECHR judgments. The article emphasizes the importance of addressing systemic issues identified by the ECHR to support Ukraine's European integration aspirations and improve the protection of human rights.

Keywords: European Court of Human Rights, Ukraine, enforcement of judgments, human rights, judicial reforms.

One of the key challenges facing candidate countries on their paths to European integration is ensuring the effective implementation of European Court of Human Rights judgments.

By ratifying the European Convention on Human Rights (hereinafter - the Convention) and adopting the Law of Ukraine "On the Enforcement of Judgments and Application of the Practice of the European Court of Human Rights" of 23 February 2006, Ukraine recognised the jurisdiction of the European Court of Human Rights in order to create a homogeneous judicial practice in similar legal relations, consistent with the European legal system.

The European Court of Human Rights (hereinafter - the Court) is a judicial institution that was established by the Council of Europe in order to ensure the protection of fundamental rights and freedoms as outlined in the European

Convention on Human Rights. The Court provides a legal mechanism through which individuals, groups and states can bring cases of alleged human rights violations against member states of the Council of Europe.

The Court has developed a robust body of case law that has set binding human rights standards across Europe. These decisions taken by the Court as a result of considering the matters of violation of fundamental human rights influence national legal systems, creating a common legal framework that aim to reinforce human rights protection within each member state. The Court's judgments also serve to clarify the interpretation of the Convention's articles, providing specific criteria on rights such as the right to life, freedom from torture, right to a fair trial, privacy, freedom of expression, and more.

The jurisdiction of the Court extends over all Council of Europe member states that have ratified the Convention. Its authority to interpret the Convention provides the Court with significant influence over national legal systems. The member states are required to ensure that their laws, policies, and judicial practices conform to the rights outlined in the Convention, including rights related to fair trials, privacy, freedom from torture, freedom of expression, and non-discrimination.

The judgments of the European Court of Human Rights have a dual nature, however, they are not a source of law in themselves, although they are inextricably linked to the provisions and specify the application of the Convention for the Protection of Human Rights and Fundamental Freedoms [1]. According to Article 17 of the Convention, national courts may apply them as a source of law [2]. The relevant provision is also enshrined in the Law of Ukraine "On the Enforcement of Judgments and Application of the Practice of the European Court of Human Rights" [3].

It should be noted that Ukraine's enforcement of the Court's judgments is an important guarantee of the right to a fair trial. However, the lack of proper enforcement is recognised by the Court as a violation of the Convention. One of the biggest obstacles to the exercise of this right is the non-enforcement of court decisions, as in recent years the problem of Ukraine's failure to comply with ECHR judgments has been exacerbated, which is a challenge to the entire system of protection of human rights and fundamental freedoms built on the basis of the Convention [4, p. 50].

The legal positions of the European Court of Human Rights occupy a special place among the sources that national courts and other public authorities are

currently guided by in their activities. They are the result of the interpretation of the provisions of the Convention, as well as the attitude of the European Court to a particular legal issue [5, p. 30].

Due to often violations of fundamental rights and freedoms of individuals, guaranteed by the Convention, the Parliament of Moldova in 2008 adopted the Resolution "On the hearings regarding judgments of the ECtHR regarding Moldova, enforcement of these resolutions and prevention of violation of human rights and fundamental freedoms", by virtue of which the Parliament of Moldova eliminated the most often violated rights and freedoms in courts of Moldova, the reasons of Moldova's losses in Court's cases and gave a list of recommendations to public authorities with the aim of shortening the quantity of cases against Moldova and real security of and protection of human rights and fundamental freedoms in Moldova. Apart from that, in the Resolution of Plenum of the High Judicial Chamber of Moldova, it was noted that the ECtHR case law became a component of the legal system of Moldova and acquired a priority towards other internal normative legal and judicial acts that contradict it [6, p. 45].

Through its case law, the Court plays a supervisory role, reviewing whether national legal frameworks and judicial systems adequately protect Convention rights. When the Court finds that a member state has violated the Convention, it can issue judgments that mandate changes in law or practice, thus ensuring compliance with the Convention. Moreover, the Committee of Ministers of the Council of Europe monitors the execution of the Court's judgments, supporting the implementation process to address systemic issues.

Ukraine ratified the European Convention on Human Rights in 1997, marking a significant step in its alignment with European human rights standards. Since then, Ukraine has become one of the most frequent respondents before the Court. The implementation of the Court's judgments has played a key role in shaping Ukrainian legal reforms, particularly in areas concerning human rights protections, the rule of law, and the judiciary's independence.

The Constitution of Ukraine, in Article 9, stipulates that international treaties, including the European Convention, are part of its national legal system, which further enforces the binding nature of the Court's decisions. However, while Ukraine is obligated to abide by the Court's judgments, the country has faced significant

challenges in both implementing specific decisions and addressing the structural issues raised by the Court.

There have been a wide number of judgments that highly influenced the development of Ukrainian legislation.

In case Merit v. Ukraine (application no. 66561/01, 30 March 2004) the Court found Ukraine in violation of the right to a fair trial due to excessive delays in legal proceedings. The Court's ruling underscored systemic inefficiencies within Ukraine's judiciary, prompting calls for reform to ensure timely justice [7]. This and other similar judgments have pushed Ukraine to address delays in its judicial system, resulting in the implementation of numerous judicial reforms aimed at streamlining legal procedures and ensuring the independence of judges.

The case of Zhovner v. Ukraine (application no. 56848/00, 29 June 2004) involved the failure of the Ukrainian government to enforce domestic court decisions concerning the right to property. The Court ruled that the non-enforcement of these decisions amounted to a violation of property rights [8]. As a result of such judgments, Ukraine initiated reforms to address the chronic problem of non-enforcement of domestic court decisions.

As noted by some scholars, the majority of complaints to the Court stem from a limited but significant number of structural problems in the implementation of fundamental rights in some member states [9]. This was one of the main reasons for the creation of the pilot judgments procedure when instead of dealing with the consequences of systemic problems in the legal systems of the member states, the Court focuses on identifying and eliminating the very root cause of their occurrence.

Resolution Res (2004) 3 of the Committee of Ministers on decisions disclosing a systemic problem underlying a violation recommends that the ECtHR, to the extent possible, indicate in its judgments on violations of the Convention what, in the opinion of the ECtHR, constitutes a systemic problem underlying the violation, and the source of the problem - in particular, where this problem may lead to an increase in the number of applications to the ECtHR - in order to assist states in finding an appropriate way to address the problem and the Committee of Ministers in supervising the implementation of judgments. Any judgment that indicates the existence of a systemic problem and its root cause should be separately communicated not only to the relevant states and the Committee of Ministers, but also to the Parliamentary

Assembly, the Secretary General of the Council of Europe and the Council of Europe Commissioner for Human Rights, and such decisions should be duly covered through the Court's database [10].

At the same time, para. 13 of the Annex to Recommendation Rec (2004) 6 of the Committee of Ministers of the Council of Europe to Member States on the improvement of national remedies of 12 May 2004 establishes that 'where a judgment has already been delivered pointing to structural or general deficiencies in national law or practice (a "pilot case") and a large number of applications raising the same problem (similar cases) are already pending or are likely to be brought before the Court, or are likely to be lodged, the respondent State should, if necessary, provide potential applicants with an effective remedy which will enable them to apply to the competent national authority and which can also be used by those applicants who have already applied to the Court. Such a prompt and effective remedy would enable their rights to be restored at the national level in accordance with the principle of subsidiarity of the Convention system [11].

N.E. Blazhivska outlined two cases when the pilot judgment procedure is appropriate: 1) such a procedure should be applied in situations where the ECtHR has concluded that other means of persuasion will not be effective; 2) this procedure may be useful in situations where the supporters and opponents of the solution of the problem in accordance with the Convention are at a deadlock in the state. Therefore, the ECHR judgment may serve as an additional argument and shift the 'balance' in the right direction [12, p. 23].

However, it should be emphasised that in order for the pilot judgment to have all the above-mentioned positive effects, it must be properly implemented by the respondent State. As rightly noted by L.R. Glas, if a state party fails to implement the pilot judgment, this not only imposes a significant burden on the European Court of Human Rights, but also on the Committee of Ministers, whose task is to oversee the implementation of the ECHR judgments by states [13].

A striking example of the unsuccessful enforcement of the pilot judgment is the case of Yuriy Nikolayevich Ivanov v. Ukraine (application no. 40450/04, 15 October 2009 [14]) (hereinafter - the Ivanov judgment). It concerned the systemic problem of prolonged non-enforcement of final court decisions.

As the ECHR noted in paragraph 184 of the judgment in Burmych and others v.

Ukraine (Application no. 46852/13 and others, 12 October 2017) (hereinafter - the Burmych judgment), since the Ivanov judgment, after postponing consideration of further similar cases, the Court has twice resumed consideration of such cases. It has resolved around 6,000 cases by adopting enforceable judgments finding a violation of the Convention and awarding just satisfaction, or by accepting the Government's admission of a violation and its offer to pay the applicants just satisfaction. However, such repetitive adjudication was not useful and did not lead to any satisfactory changes in the enforcement process. The implementation process, which has been stimulated by a number of Court's judgments, remains ineffective, despite the Committee of Ministers' supervision under the enhanced procedure, a tool designed to address the most serious and systemic violations of the Convention [15].

An additional confirmation of the lack of tangible progress on the part of Ukraine in implementing effective measures to enforce the judgment in the Ivanov case is the fact that at the time of the ECHR judgment in the Burmych case, 12143 pending cases similar to the Ivanov case were pending before the Court. All of them were excluded from the register by the Court's judgment in the Burmych case.

The prospects for the implementation of another pilot judgement delivered by the Court in the case against Ukraine, namely the judgement of 30 January 2020 in the case of Sukachov v. Ukraine (Application 14057/17) [16], in which the Court emphasised the need to reduce overcrowding and improve detention conditions, as well as to introduce effective preventive and compensatory remedies for improper conditions of detention in our country. After all, despite the Concept of Reforming (Development) of the Penitentiary System of Ukraine approved by the Cabinet of Ministers of Ukraine by Resolution No. 654-r of 13 September 2017 [17], such reform is far from being implemented, and the draft Law of Ukraine "On the Creation of a Dual System of Regular Penitentiary Inspections" [18], submitted to the Verkhovna Rada of Ukraine, even if adopted by the Parliament, is unlikely to fundamentally improve the current situation.

The influence of the ECHR on Ukraine's legal development has been profound, particularly in the areas of judicial independence and fair trials, torture prevention and police accountability, enforcement of judgments, freedom of expression and media freedom, protection of property rights and many more.

ECHR judgments, particularly regarding Article 6 violations, have driven reforms aimed at ensuring the impartiality and independence of the judiciary. Legislative

changes include laws that limit political influence over judicial appointments and disciplinary actions.

In response to a series of the Court's rulings concerning non-enforcement of domestic court decisions, Ukraine has reformed its legal and institutional framework for executing court judgments. Reforms have included creating the private bailiff system to support state enforcement agents, though full compliance with the Court's standards remains a challenge.

A separate issue is the implementation of the Court's judgments in the context of martial law, which Ukraine has been under since 24 February 2022 due to the full-scale invasion of the russian federation.

Martial law does not relieve Ukraine of its obligation to pay just satisfaction and other types of compensation awarded by the European Court of Human Rights as an individual measure. The fact that, according to the annual report on the execution of judgments of the European Court of Human Rights, published in April 2023, in 74 cases in 2022, Ukraine registered full payment of just satisfaction awarded by the Court [19, p. 83], and according to the annual report on the execution of judgments of the European Court of Human Rights, published in April 2024, in 103 cases in 2023, Ukraine registered full payment of just satisfaction awarded by the Court [20, p. 112], indicates that Ukraine is gradually fulfilling its obligations to implement the Court's judgments in terms of payment of compensation even during martial law.

The martial law does not in any way prevent Ukraine from taking the general measures envisaged by the Court's judgments. For example, the Verkhovna Rada of Ukraine already during the martial law period adopted the Law of Ukraine "On Amendments to Certain Legislative Acts on the Execution of Judgments of the European Court of Human Rights" of 18.10. 2022 No. 2689-IX [21], which, according to the information provided in the explanatory note to the draft law, is aimed at implementing the judgments of the Court in the cases of Petukhov v. Ukraine (no. 2) (application no. 41216/13), Vasyl Ivashchenko v. Ukraine (application no. 760/03), and Nayden v. Ukraine (application no. 16474/03), 'Veniamin Tymoshenko and others v. Ukraine (application no. 48408/12) and in order to bring certain legislative acts in line with European standards, as well as the Law of Ukraine 'On Amendments to the Code of Ukraine on Administrative Offences, the Criminal Code of Ukraine and the Criminal Procedure Code of Ukraine on the Execution of Judgments of the European

Court of Human Rights' of 18. 10. 2022 No. 2690-IX [22], which, according to the information provided in the explanatory note to the draft law, is aimed at implementing the judgments of the ECHR in the cases of Shvydka v. Ukraine (application no. 17888/12), Petukhov v. Ukraine (no. 2) (application no. 41216/13), Kharchenko v. Ukraine (application no. 40107/02), 'Chanev v. Ukraine (application no. 46193/13), Kushch v. Ukraine (application no. 53865/11), Vasyl Ivashchenko v. Ukraine (application no. 760/03), Nayden v. Ukraine (application no. 16474/03) and with a view to bringing certain legislative acts into line with European standards.

The imposition of martial law on the territory of Ukraine due to the full-scale invasion of the Russian Federation did not result in Ukraine's renunciation of its obligations to comply with the judgments of the European Court of Human Rights. On the contrary, the proper and timely execution of the judgments of the European Court of Human Rights is in the interests of our country, given the course taken to accelerate European integration [23].

Although Ukraine has ratified the European Convention on Human Rights and established relevant national laws and practices, it still faces significant challenges in translating the Court's judgments into practical and positive legal reforms.

Notably, cases such as Ivanov and Burmych highlighted the need for urgent action to rectify ongoing violations and ensure compliance with established human rights standards. While recent legislative measures indicate a commitment to align national practices with the Court's findings and requirements, the effectiveness of these reforms remains to be seen.

By effectively addressing the systemic issues identified by the European Court of Human Rights, Ukraine can pave the way for a more resilient legal system that aligns with European standards, ultimately reinforcing its aspirations for accessing the European Union. At the same time, certain amendments to the legislation regulating certain procedures in the process of enforcement of court judgments may lead to complications in the enforcement of ECHR judgments in terms of imposing an obligation on the state to execute the final judgment of a national court as an additional individual measure.

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