

THE USE OF ECHR AND ECSR DECISIONS IN UKRAINIAN JUDICIAL PRACTICE

Purpose. The purpose of the article is to analyze the features of the application of the decisions of the ECHR and the ECSR in the national judicial practice of Ukraine, to clarify the level and mechanisms, as well as to identify problems and prospects for legal harmonization. In particular, the effectiveness of the integration of the standards of the ECHR and the conclusions of the ECSR by Ukrainian courts when considering cases related to human rights and social guarantees is investigated.

Methods. The work uses a complex of general scientific and special methods, in particular: the method of comparative analysis, the formal-legal method, the method of a systematic approach and the analysis of judicial practice. Empirical data from the decisions of the Supreme Court and national courts of general jurisdiction over the past five years are also used.

Results. The results of the study found that Ukrainian courts are increasingly turning to the practice of the ECHR as a source of interpretation of legal norms, which indicates an increase in the level of legal integration and implementation of European standards. In particular, the number of cases in which references to the decisions of the ECHR are crucial for making a reasoned court decision is increasing. At the same time, the use of the conclusions of the ECSR is still episodic and not systematic enough. The reasons for this are the insufficient level of legal awareness of judges regarding the provisions of the European Social Charter (revised), as well as the lack of clear regulatory provisions on the mandatory consideration of the practice of the ECSR in national law enforcement.

Conclusions. The main directions for improving the national mechanism for considering international human rights documents have been identified, including the development of methodological recommendations for judges, improving the system of training lawyers, and the regulatory consolidation of the status of the practice of the ECSR. The implementation of the practice of the ECHR in the decisions of national courts has a positive effect on the quality of justice and contributes to the establishment of the rule of law. Further research should be aimed at developing mechanisms for automatically taking into account the practice of international bodies in national law enforcement, as well as studying the impact of social standards on the judicial policy of Ukraine.

Key words: law enforcement, ECHR standards, ECSR conclusions, protection of human rights, case law, rule of law, incorporation of international law, Ukrainian courts, human rights in Ukraine, legal integration.

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Introduction. In the context of European integration and strengthening the rule of law, Ukraine has undertaken to ensure that its judicial system complies with the standards enshrined in the Convention for the Protection of Human Rights and Fundamental Freedoms. The practice of the European Court of Human Rights (ECHR) is an important guideline for national courts in the fair consideration of cases involving human rights violations. In addition, the conclusions and reports of the European Committee of Social Rights (ECSR) are of great importance for assessing the conditions of detention of persons and compliance with the standards of treatment of them. The relevance of this topic is due to the need for comprehensive implementation of international human rights standards in national law enforcement.

The purpose of this study is to clarify the level and mechanisms of application of the practice of the ECHR and the conclusions of the ECSR in the judicial activity of Ukraine, as well as to identify problems and prospects for legal harmonization.

The objectives of the study: to analyze the main trends in the judicial practice of Ukraine regarding the use of ECHR

decisions; to determine the level of application of the conclusions of the ECSR in civil and administrative proceedings; to identify legal gaps and propose ways to improve judicial practice; to summarize the conclusions in light of international experience.

The methodology includes a systematic analysis of court decisions, comparative legal analysis, interpretative and dialectical methods. The source base is the decisions of the ECHR on Ukraine, documents of the Council of Europe, as well as an analysis of the practice of national courts.

Literature review. In the process of Ukraine's European integration, the study of the application of the decisions of the European Court of Human Rights and the conclusions of the European Committee of Social Rights in national judicial practice is of particular relevance. Moskalenko O. (2025) examines the substantive fulfillment of the social function of labor law in the context of the implementation of European standards. The author focuses on the role of Ukraine's international obligations to the Council of Europe and provides practical guidelines on how courts can integrate relevant standards into the national interpretation of labor rights. Sirokha D., Volynets V. et al. (2024) consider the challenges for labor law in the light of new technologies. Although the emphasis is shifted towards artificial intelligence, the work clearly traces the connection between human rights in the field of labor and international standards, including those formed by the ECHR and the ECtHR. Shcherbyna V. I. (2021) investigated and revealed the mechanisms of normative implementation of the provisions of the European Social Charter into national legislation, in particular taking into account the legal positions of the ECtHR. At the same time, Sydorenko O. (2015) based on the results of the analysis of the mechanisms of influence of the ECtHR decisions on national legislation and judicial practice emphasizes that the ECtHR decisions are becoming an important source of law in Ukraine, contributing to the harmonization of national legislation with European standards. Spytyska L. (2024) investigated the contribution of the ECtHR decisions to the development and transformation of the Ukrainian legal space and notes that these decisions are used as a basis for improving legislation and law enforcement practice in Ukraine.

Thus, the analyzed sources highlight both the theoretical principles of the implementation of European standards in labor law and practical examples of the influence of the ECtHR decisions. However, the coverage of the influence of the ECtHR conclusions on Ukrainian judicial proceedings is insufficient. The above allows us to create a sound methodological basis for further research into the integration of international case law into the national legal system.

The ECHR as a source of legal standards in national law enforcement. The impact of the practice of the ECHR on the national courts of Ukraine

The European system of ensuring human rights is based on the Convention for the Protection of Human Rights and Fundamental Freedoms, adopted in 1950, and its practical implementation takes place under the auspices of the Council of Europe. The consideration of violations of the rights provided for by the Convention is carried out by the ECHR through the mechanism of submitting individual and inter-state applications. The binding nature of the decisions of the ECHR and the control over their implementation by the Committee of Ministers of the Council of Europe ensure the high efficiency of this mechanism.

According to Article 9 of the Constitution of Ukraine, international treaties in force, the consent to which is binding by the Verkhovna Rada of Ukraine, are part of the national legislation of Ukraine (Verkhovna Rada of Ukraine (1996)).

On July 7, 1997, having ratified the Convention for the Protection of Human Rights and Fundamental Freedoms, Ukraine fully recognized on its territory the effect of Articles 25 and 46 of the Convention on the recognition of the jurisdiction of the European Court of Human Rights as mandatory and without the conclusion of a special agreement in all matters concerning the interpretation and application of the Convention (United Nations (1950)).

According to Article 17 of the Law of Ukraine "On the Execution of Decisions and Application of the Practice of the European Court of Human Rights" of 23.02.2006, courts apply the Convention and the practice of the ECHR as a source of law when considering cases (Verkhovna Rada of Ukraine (2006)). The influence of the practice of the ECHR on the Ukrainian legal system is manifested through various legal mechanisms, including rule-making activity, law enforcement, law implementation, as well as official interpretation of legal norms (Volik, V. V., & Shamara, R. P. (2024)).

The influence of the practice of the European Court of Human Rights (ECHR) on the national courts of Ukraine is significant and multifaceted. Ukrainian courts are actively integrating the standards

of the ECHR into their practice, increasingly referring to the precedents of the ECHR when considering cases concerning human rights, which contributes to the harmonization of national legislation with European legal norms. This indicates a growing trend towards the implementation of European standards in national law enforcement.

In order to ensure the unity of judicial practice, a working group has been established in the Supreme Court that meets the requirements of the ECHR regarding legal certainty and predictability of judicial decisions (Shylo, O. H. (Ed.) (2021)).

The principles of legal certainty and a fair trial are basic components of the rule of law, and are enshrined in both the Constitution of Ukraine and the practice of the ECHR. They are central to the implementation of human rights in the process of administering justice, as well as to ensuring citizens' trust in the judicial system. The principle of legal certainty establishes the predictability of law enforcement, the stability of legal norms, the prohibition of retroactive effect of laws that worsen the position of a person, and the binding nature of final judicial decisions.

The decisions of the ECHR have repeatedly emphasized that judicial decisions that have entered into legal force should not be reviewed solely for the purpose of achieving a different result (*Brumărescu v. Romania* (European Court of Human Rights (1999))). In the case of *Ryabykh v. Russia* (European Court of Human Rights (2003)). The ECHR noted that systematic review of final decisions contradicts the principle of legal certainty and undermines the authority of the judiciary. In the Ukrainian context, the Court expressed a similar position in the cases of *Tymoshenko v. Ukraine* (European Court of Human Rights (2013)), which also concerned the abuse of extraordinary review of decisions. In the current practice of the Supreme Court, there is a tendency to limit such mechanisms, which is consistent with the standards of the ECHR.

The Constitutional Court of Ukraine noted that the procedure for ensuring the execution of a court decision by the state, as defined in the law, must comply with the principles of the rule of law and justice, guarantee the constitutional right to judicial protection; failure by the state to fulfill its positive obligation to ensure the functioning of the system of execution of court decisions introduced by it leads to a restriction of the constitutional right to judicial protection and nullifies its essence (Bernazyuk, Y. O. (2020)).

The Grand Chamber of the Supreme Court in the Resolution of October 31, 2018 in case No. 202/4494/16-П emphasized that the principle of legal certainty implies the stability of legal regulation and the enforceability of court decisions (Grand Chamber of the Supreme Court of Ukraine (2018, October 31)).

Article 6 of the European Convention on Human Rights guarantees everyone the right to a fair, public and independent hearing within a reasonable time (United Nations (1950)). The ECHR forms a number of criteria by which the fairness of the trial is assessed: equality of the parties; adversarial nature of the process; justification of decisions; transparency of judicial procedures. In Ukrainian practice, the ECHR most often finds violations in connection with long terms of consideration of cases, restrictions on access to the court or inequality of procedural opportunities of the parties (*Ivanov v. Ukraine* (European Court of Human Rights (2009, October 15)), *Kuznetsov v. Ukraine* (European Court of Human Rights (2003, April 29))). Therefore, courts in Ukraine are gradually adapting their practice, in particular by indicating the principles of fair court in the motivational part of decisions and a reference to the relevant practice of the ECHR.

Thus, the Supreme Court in its Resolution of March 14, 2018 in case No. 917/1503/17 noted: the defining element of the principle of legal certainty is the unambiguity and predictability of law enforcement, and, therefore, the systematicity and consistency in the activities of the relevant bodies. Legal norms and judicial practice are subject to application in the manner in which they are most obvious and predictable for participants in civil turnover in Ukraine (Verkhovny Sud Ukrainy (2018, November 15)).

Therefore, the adaptation of the above principles into the national legal system requires not only formal recognition, but also a sustainable implementation mechanism. This involves a comprehensive strengthening of the role of motivated court decisions and consolidation of the ECHR case law in methodological recommendations and training programs for judges.

ECSR: the significance of the conclusions

Unlike the ECHR, the European Committee of Social Rights supervises the implementation of the provisions of the European Social Charter (revised), in particular in the part of labor rights related to protection from exploitation, occupational safety, the right to fair remuneration, the right to organize work and social dialogue (Verkhovna Rada of Ukraine (1996)).

The document enshrines a wide range of social rights, including the right to safe working conditions, the right to rest, unemployment insurance, pensions, equal pay for women and men, the right to strike, the right to social assistance and others (Cherevko, N. O. (2025)). The Charter also provides for mutual obligations between social partners, contributing to ensuring the rights of workers and harmonizing the interests of the parties in labor relations. Its provisions have become a reflection of the ideals of the European social democratic movement. Unlike the European Convention on Human Rights, member states of the Council of Europe can accede to the Charter, but refuse to approve individual provisions. This à la carte approach has led to some states choosing which rights obligations they prefer and, consequently, to inconsistent and uneven protection of social and economic rights across Europe. This reinforces their perceived inferior status compared to civil and political rights, which is contrary to the principles of universality, indivisibility and interdependence of all human rights. The High-Level Conference should promote the commitment of member states to accept the maximum number of provisions of the Charter. Ukraine regularly reports on the implementation of its obligations under the Charter, and in a number of cases the Committee has noted non-compliance with the Charter's provisions. Thus, in its conclusions on Ukraine, in particular from 2018, 2020 and 2021, the ECtHR has pointed to problems with the respect for the right to safe working conditions (Article 3), limited representation of trade unions in dialogue with the state (Article 5), inequality in access to labor rights between certain categories of workers, including youth, women and people with disabilities (Article 20).

Let's look at examples from Ukrainian case law on the application of the norms of the European Social Charter (revised). Mechanisms for improving judicial practice in the light of Council of Europe standards.

Table 1

Year	Administrative Justice (number of references)	Civil Justice (number of references)	Economic justice (number of references)	Cases on administrative offenses (number of references)	Common amount
2020	1904	369		1	2274
2021	2238	403	8		2269
2022	2027	340	2	1	2370
2023	2754	247	8		3009
2024	3059	228	11		3198

Source: compiled by the author based on data from the Unified State Register of Court Decisions <https://reyestr.court.gov.ua/>

With the beginning of Russia's full-scale invasion of Ukraine in 2022, the application of international social protection standards has undergone significant changes. The European Social Charter, which guarantees fundamental social and labor rights, has become an important tool in resolving legal disputes related to pensions, payments to internally displaced persons (IDPs), labor rights of mobilized citizens, and compensation for military personnel. The dynamics of the application of the Charter's norms demonstrates a trend towards an increase in the total number of references to its provisions: from 2,274 cases in 2020 to 3,298 cases in 2024. This trend indicates the increased attention of the judicial system to social protection issues, which is especially relevant in the context of war.

Analyzing the dynamics of the application of the Charter's norms during wartime, several key trends can be identified. First, courts are increasingly turning to international norms in cases where national legislation does not contain comprehensive mechanisms for protecting social rights. Secondly, the application of the ESC is correlated with the general increase in social disputes that arose in connection with the war, in particular regarding compensation for damage, payments for IDPs, social guarantees for military personnel and their families. Thirdly, the use of the ESC in commercial and civil courts remains episodic, which may indicate the need to increase the level of awareness of judges and lawyers regarding its application.

At the same time, the results of the analysis of the Unified State Register of Court Decisions revealed the presence of references in decisions to articles that have not been ratified by Ukraine. For example, in 2024, out of 3,059 decisions, 166 had references to Article 12 of the Charter, in which the state undertakes to establish a social security system and maintain its functioning. However, this article has not been ratified by law. This confirms the lack of an adequate level of awareness among judges about the legal nature of the European Social Charter (revised).

However, in a number of cases, especially in disputes about reinstatement, overtime pay or violation of trade union rights, courts are beginning to point to international instruments, in particular the Charter, as a source for interpreting provisions of national legislation. This trend indicates the gradual implementation of the ECtHR standards into the legal position of Ukrainian courts, although it has not yet become systematic.

At the same time, the EUSR does not contain references to the practice, legal positions and interpretation of the ECtHR of a particular provision of the ESC. Consequently, the practice of the European Committee of Social Rights is not applied by national courts in Ukraine. Its analysis and application will contribute to improving the situation with the protection of social rights in Ukraine as a whole.

Although the ECtHR conclusions do not have direct legal force for courts, their importance as a source of interpretation of social protection standards is steadily growing. To further develop this practice, we consider it appropriate to include an analysis of the ECtHR's conclusions in methodological materials for judges, develop standard legal positions with reference to the Charter, and introduce modules dedicated to social rights and Council of Europe mechanisms into human rights curricula.

Empirical results. Improving judicial practice is a key factor in strengthening the rule of law and ensuring effective protection of human rights. Council of Europe standards play an important role in the formation of uniform and consistent judicial practice in member states. One of the priority mechanisms is the systematic training and advanced training of judges in accordance with European standards. Training programs for judges should include an analysis of the case law of the European Court of Human Rights. The practical orientation of judicial education contributes to the unification of the interpretation of national legislation in accordance with international obligations. In addition to educational activities, it is important to introduce standardized methodological recommendations and instructions for courts. Such documents ensure the consistency of the application of law and reduce legal uncertainty. Methodological materials should be based on the decisions of international judicial bodies and the legal positions of the Venice Commission. Coordination between national courts and judicial self-government bodies is critically important for the exchange of best practices.

Conclusions. The study shows that the practice of the ECHR is already an integral part of the Ukrainian legal space, but its application requires systematization and methodological support. At the same time, the conclusions of the ECHR are used at the national level much less often, which reduces the effectiveness of the implementation of human rights standards in places of deprivation of liberty. To further improve judicial practice, it is necessary to ensure the obligation to take into account international standards, to strengthen the training of judges and to create legal mechanisms that integrate international practice into the daily activities of Ukrainian courts. Thus, improving judicial practice requires a comprehensive approach that combines training, methodological support and orientation towards Council of Europe standards.

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ВИКОРИСТАННЯ РІШЕНЬ ЄСПЛ ТА ЄКСП В УКРАЇНСЬКІЙ СУДОВІЙ ПРАКТИЦІ

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Мета. Метою статті є аналіз особливостей застосування рішень ЄСПЛ та ЄКСП у національній судовій практиці України, з'ясування рівня та механізмів, а також виявлення проблем і перспектив правової гармонізації. Зокрема, досліджується, ефективність інтеграції стандартів ЄСПЛ та висновків ЄКСП українськими судами при розгляді справ, що стосуються прав людини та соціальних гарантій.

Методи. У роботі застосовано комплекс загальнонаукових і спеціальних методів, зокрема: метод порівняльного аналізу, формально-юридичний метод, метод системного підходу та аналізу судової практики. Також використано емпіричні дані рішень Верховного Суду та національних судів загальної юрисдикції за останні п'ять років.

Результати. За результатами дослідження встановлено, що українські суди дедалі частіше звертаються до практики ЄСПЛ як до джерела тлумачення норм права, що свідчить про зростання рівня правової інтеграції та імплементації європейських стандартів. Зокрема, зростає кількість справ, у яких посилання на рішення ЄСПЛ мають вирішальне значення для винесення обґрунтованого судового рішення. Водночас використання висновків ЄКСП поки що є епізодичним і недостатньо системним. Причинами цього є недостатній рівень правової обізнаності суддів щодо положень Європейської соціальної хартії (переглянутої), а також відсутність чітких нормативних приписів щодо обов'язковості урахування практики ЄКСП у національному правозастосуванні.

Висновки. Визначено основні напрями удосконалення національного механізму врахування міжнародних правозахисних документів, серед яких – розробка методичних рекомендацій для суддів, вдосконалення системи підготовки правників, а також нормативне закріплення статусу практики ЄКСП. Впровадження практики ЄСПЛ у рішення національних судів позитивно впливає на якість правосуддя та сприяє утвердженню верховенства права. Подальші дослідження мають бути спрямовані на розробку механізмів автоматичного врахування практики міжнародних органів у національному правозастосуванні, а також на вивчення впливу соціальних стандартів на судову політику України.

Ключові слова: правозастосування, стандарти ЄСПЛ, висновки ЄКСП, захист прав людини, судова практика, верховенство права, інкорпорація міжнародного права, українські суди, права людини в Україні, правова інтеграція.