Case law of the European Court of Human Rights in cases against Ukraine as a determinant of the transformation of criminal procedural legislation*

La jurisprudencia del Tribunal Europeo de Derechos Humanos en casos contra Ucrania como factor determinante de la transformación de la legislación procesal penal

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Received: 11/01/2026
Accepted: 18/03/2026

How to cite:

Drozd, V., Korniienko, M., Chaplynskyi, K., Danylo, S., Lepei, M., & Plysiuk, N. (2026). La jurisprudencia del Tribunal Europeo de Derechos Humanos en casos contra Ucrania como factor determinante de la transformación de la legislación procesal penal. *Via Inveniendi et Iudicandi*, 22(1), 31-46.

https://doi.org/10.15332/19090528.12152

Abstract

The article addresses pressing issues concerning the protection of human rights through the application of the case law of the European Court of Human Rights in criminal proceedings in Ukraine. It outlines and systematizes the specific features of the Court's jurisdiction in the field of criminal justice. It also provides a theoretical analysis of the procedural mechanism for applying to the European Court of Human Rights. It is noted that violations of the Convention for the Protection of Human Rights and Fundamental Freedoms in

*Research article. This study was conducted as part of Ukraine's European integration process and takes into account the case law of the European Court of Human Rights in criminal proceedings.

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the practice of law enforcement bodies and courts in Ukraine are not merely isolated incidents or case-specific irregularities but rather stem from numerous recurring shortcomings in practice that are inconsistent with Convention standards. It is stated that one of the key innovations of the 2012 Criminal Procedure Code of Ukraine lies in Articles 8 and 9, which establish that the principles of the rule of law and legality in criminal proceedings must be implemented with due regard to the jurisprudence of the European Court of Human Rights. It is further emphasized that reliance on the Court's case law plays a central role in eliminating the underlying causes of human rights violations that have led to judicial review and the adoption of final judgments binding on every State Party to the Convention.

Keywords:
human rights, precedent, rule of law and legality, criminal proceedings, case law of the European Court of Human Rights.

Resumen

Este artículo aborda cuestiones apremiantes respecto a la protección de los derechos humanos a la luz de la aplicación de la jurisprudencia del Tribunal Europeo de Derechos Humanos en los procesos penales en Ucrania. Se destacan y resumen las particularidades de la jurisdicción del Tribunal Europeo de Derechos Humanos en materia penal. Además, se realiza un análisis teórico del procedimiento para recurrir ante dicho tribunal. Se observa que la violación de las normas del Convenio para la Protección de los Derechos Humanos y de las Libertades Fundamentales en la práctica de los organismos encargados de hacer cumplir la ley y de los tribunales en Ucrania no se limita a casos aislados ni a particularidades de los mismos, sino que es consecuencia de numerosas deficiencias en la práctica que son incompatibles con las disposiciones del Convenio. Se señala que las novedades del Código de Procedimiento Penal de Ucrania expedido en 2012 radican en las disposiciones de los artículos 8 y 9, que establecen que el principio del Estado de derecho y la legalidad en los procesos penales se aplica teniendo en cuenta la jurisprudencia del Tribunal Europeo de Derechos Humanos. Es importante considerar que la aplicación de la jurisprudencia del Tribunal Europeo de Derechos Humanos desempeña un papel fundamental en la eliminación de las causas que dieron lugar a la violación de los derechos humanos y que fueron objeto de análisis de los casos y de la emisión de una sentencia definitiva, cuya aplicación es obligatoria para cada Estado parte del Convenio.

Palabras clave:
derechos humanos, precedente, estado de derecho y legalidad, procesos penales, jurisprudencia del Tribunal Europeo de Derechos Humanos.

Introduction

In the modern democratic world, all people are born free and equal, regardless of their race, gender, or skin color. Accordingly, one of the state's primary responsibilities is to protect society from criminal offenses and to safeguard the rights, freedoms, and legitimate interests of every person within its jurisdiction (Nguindip et al., 2021; Sokurenko et al., 2023; Ablamskyi et al., 2023). Human rights serve as an integral guideline through which the "human dimension" is introduced into the state, law, ethics, and morality. They also constitute a specific normative framework for socio-cultural activity and, at the same time, are among the highest cultural values. The study of human rights theory inevitably intersects with numerous fields, including history and theory of state and law, as well as all sectoral and procedural legal sciences. Article 1 of the Constitution of Ukraine (Verkhovna Rada of Ukraine, 1996) declares Ukraine to be a democratic, social, and law-based state. In this regard, it assumes obligations grounded in the contemporary understanding of democracy as a form of legal protection of the rights and freedoms of every individual. It is on this basis that modern democracy differs from earlier historical stages, as it is characterized by greater balance and humanity. It should also be emphasized that democracy in society is based on two principles: the rule of law and the protection of human rights, freedoms, and legitimate interests.

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The literature on human rights protection in Ukraine consistently regards judicial protection as one of the most effective guarantees for the realization of human and civil rights and freedoms. This approach is grounded in the Constitution of Ukraine (1996), which provides that the jurisdiction of courts extends to all legal relations arising in the state and that the right to judicial protection cannot be restricted, even under martial law or a state of emergency. In this context, scholars emphasize that individuals may apply directly to a court to protect violated rights, regardless of whether extrajudicial remedies have also been used. At the same time, the literature places this national guarantee within a broader European framework, under which individuals may seek additional protection before the European Court of Human Rights after exhausting domestic remedies.

A major discussion in the literature concerns the status of the case law of the European Convention for the Protection of Human Rights and Fundamental Freedoms[1] (ECHR) as a source of law within the domestic legal order. Previous studies generally agree that, after Ukraine ratified the Convention on 17 July 1997, its system became an essential part of the national framework for the protection of human rights. However, the unresolved issue is not simply whether the judgments of the European Court of Human Rights (ECtHR) are binding, but how they should function within Ukrainian law: as a formal source of law, as an interpretive guide for national courts, or as a broader body of precedent that shapes legal reasoning beyond the specific cases delivered against Ukraine. This question is especially important because the Convention mechanism is based on subsidiarity: the ECtHR acts as a supranational judicial body that provides protection only after national remedies have been exhausted, which means that the effectiveness of Strasbourg standards depends heavily on their reception by domestic institutions.

Another strand of the literature examines national judicial practice and asks to what extent Ukrainian courts actually rely on ECtHR case law in their adjudication. Previous research points to a tension between formal recognition and practical application. On the one hand, national courts are expected to integrate Convention standards into their reasoning; on the other hand, scholars note that this integration remains uneven and is often inconsistent. Thus, the key issue in the literature is not merely the existence of Strasbourg case law, but the quality of its use in domestic adjudication, including the depth of legal reasoning, the consistency of references to ECtHR judgments, and the extent to which such references influence the final resolution of cases. In this respect, national judicial practice becomes the central link between supranational human rights standards and their actual realization within the Ukrainian legal system.

The most acute issue concerns implementation, especially the enforcement of ECtHR judgments. The literature increasingly treats execution not as a secondary technical matter, but as a structural indicator of the effectiveness of the entire human rights protection system. As stated in the report of the Group of Wise Persons, the credibility of the European human rights system depends to a great extent on the full execution of the Court's judgments, since proper execution strengthens the Court's authority and reduces the number of repetitive applications (Lambert, 2008). Yet previous studies show that Ukraine continues to face a systemic problem in this regard. According to the European Enforcement Network, over the last decade Ukraine failed to comply with 67 % of leading judgments, while the Committee of Ministers of the Council of Europe has characterized non-execution as a fundamental dysfunction of the judicial system that undermines access to court, the rule of law, and public confidence in justice (Horchakova and Yaroshshuk, 2020, p. 446). Accordingly, recent scholarship concludes that the central unresolved problem is not the recognition of ECtHR judgments as binding in principle, but rather the absence of an effective domestic mechanism for their consistent implementation and enforcement, which creates a continuing risk of weakening guarantees of

[1]The Convention for the Protection of Human Rights and Fundamental Freedoms, better known as the European Convention on Human Rights (ECHR), was opened for signature in Rome on 4 November 1950 and entered into force on 3 September 1953. It was the first instrument to give effect to certain rights set out in the Universal Declaration of Human Rights and to make them legally binding. Further information is available at https://www.echr.coe.int/european-convention-on-human-rights

fundamental rights and freedoms in Ukraine (Spytska, 2024).

The original scientific contribution of this article lies in identifying a methodological dysfunction in domestic criminal proceedings, namely the absence of a procedurally enshrined obligation for lower courts to directly apply relevant ECtHR precedents. It also develops the author's typology of citation of decisions, based on the models of "precedents of interpretation" and "identical shortcomings", as a tool for overcoming latent defects in law enforcement. Through the prism of a hermeneutic approach, the article justifies the introduction of a strict procedural sanction, in the form of the cancellation of a judicial act by a higher court, where disregard for ECtHR case law is detected. This would ensure the transition from declarative approximation to the real institutionalization of international standards for the protection of human rights within the national legal system.

This article addresses the following questions:

1. What is the place of ECtHR case law within the system of sources of criminal procedural law in Ukraine, and should it be regarded only as an interpretative guideline or as a fully-fledged source of law for national courts?
2. How do Ukrainian courts apply ECtHR case law in criminal proceedings: as a substantive tool of legal reasoning or as a formal reference without a proper connection to the factual circumstances of a specific case?
3. What typical mistakes are repeated when applying ECtHR case law in national criminal proceedings? In particular, do they involve chaotic citation, the "blind" transfer of the text of ECtHR judgments, disregard for relevant precedents, or insufficient reasoning in references to them?
4. What doctrinal and procedural obstacles prevent the substantive implementation of ECtHR case law in criminal proceedings in Ukraine? In particular, is the key problem the lack of a directly enshrined obligation for lower courts to apply relevant ECtHR precedents in similar cases?
5. To what extent does the current criminal procedural regulation of Ukraine ensure the real, rather than merely declarative, implementation of Convention standards and ECtHR case law, and what legislative changes are needed to eliminate the identified defects in law enforcement?
6. Why should the systemic violations found by the ECHR in cases against Ukraine be associated not with isolated errors in specific cases, but with deeper flaws in national judicial practice, legislative technique, and mechanisms for implementing the Court's judgments?
7. What procedural consequences should follow from a national court's failure to take relevant ECtHR case law into account, and is it justified to introduce a sanction in the form of the annulment of a court decision by a higher instance in cases of such disregard?

This research should be characterized as doctrinal legal scholarship, as its focus lies in the theoretical understanding and normative and interpretive examination of the protection of individual rights through the prism of the ECtHR case law in criminal proceedings. Its methodological framework includes general scientific methods, namely analysis and synthesis, together with special legal methods, such as historical-legal, structural-functional, formal-legal, and comparative-legal approaches. The source base consists of regulatory and law-enforcement materials directly related to the subject matter, including the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms, the Constitution of Ukraine, the Law of Ukraine "On the Execution of Decisions and Application of the Practice of the European Court of Human Rights", the Criminal Procedure Code of Ukraine, and ECtHR judgments, especially in cases against Ukraine. It also includes scholarly works addressing the legal nature of precedent, the Court's jurisdiction, the scope of the binding force of its case law, and the mechanisms for implementing its judgments within the domestic legal order.

These materials were selected based on their normative importance, their direct relevance to criminal procedure, their interpretive significance in clarifying the status of ECtHR case law as a source of law, and their analytical usefulness for detecting systemic shortcomings in Ukrainian law enforcement. At the same time, the study does not include a properly described empirical dataset, a formalized data-coding procedure, or a reproducible socio-legal sample. Therefore, it is more accurate to classify it

as a doctrinal study rather than a fully empirical or socio-legal one.

Materials and methods

The purpose of this scientific article is to examine the main theoretical and practical issues related to the protection of individual rights through applications to the ECtHR.

In accordance with the purpose of the study, the following main tasks were formulated: to consider the specific features of the ECtHR's jurisdiction; to clarify the procedural rules for applying to the ECtHR; to examine ECtHR case law as an element of the system of sources of criminal procedural legislation; and to identify theoretical and practical problems in the application of ECtHR case law during criminal proceedings, as well as to formulate proposals for their elimination.

The methodological basis of the study, along with general scientific methods of cognition, such as analysis and synthesis, was formed by special legal methods, including historical-legal, structural-functional, formal-legal, and comparative-legal methods.

Results and discussion

In Europe, various legal instruments, including conventions, covenants, and charters, establish and ensure the functioning of a special mechanism for the protection of human rights in cases of violation. Among these instruments, the ECHR (Rome, 1950) provides one of the most effective and practical systems for the protection of human rights. It not only proclaims fundamental human rights but also establishes a specific mechanism for their enforcement and protection. The central element of this mechanism is the European Court of Human Rights (ECtHR) (Sydorenko, 2015).

The ECtHR is an international judicial body that operates on the principles and in the form established by the European Convention on Human Rights (ECHR), with the aim of ensuring the rule of law and legality, as well as protecting human rights and freedoms through the examination of individual or collective applications submitted by citizens of the States Parties to the Convention, as well as international cases. Its judgments have a precedential character (Kyrychenko, 2010; Marchenko, 2013). The jurisdiction of the ECtHR is defined by the provisions of the Convention. At the same time, the jurisdiction of the ECtHR was previously sometimes described as "derivative of the Commission's jurisdiction", since cases could be examined in the ECtHR only after the complaint procedure before the European Commission of Human Rights had been completed (Buromenskyi, 2000, p. 11). After the amendments to the Convention, the ECtHR became the sole judicial body, and its jurisdiction is no longer limited by the powers of other bodies of the Council of Europe.

According to Kononenko (2009), the Constitutional Court of Ukraine or the legislator should establish the relationship between European case law and the Constitution of Ukraine, as, for example, the Federal Constitutional Court of Germany did in one of its decisions, stating that the Court's case law serves as an auxiliary tool for interpreting and determining the content and scope of fundamental human rights and the principles of the Basic Law. We agree with this view, since the rule of law implies the stability and predictability of the legal system, which guarantees equality before the law for all citizens. Human rights protection is ensured through the fair resolution of disputes and the restoration of violated rights, which form the basis of public confidence in the judicial system.

Particularly important in this context is the implementation of judgments of the ECtHR, which are binding and have a significant impact on the national and international legal order. ECtHR judgments are aimed at protecting individual rights in accordance with the ECHR, which is binding on the member states of the Council of Europe (Paskar, 2024, p. 653). According to Paliuk (2005, p. 234), the Convention and the Court's decisions should not be applied in every case, but only under certain conditions, in particular: where national legislation is inconsistent with the provisions of the Convention and its protocols; where there are legal gaps in national legislation concerning human rights and fundamental freedoms defined in the Convention and its protocols; where a better understanding is required of those provisions of national legislation that were amended or supplemented on the basis of the Court's decisions; and where it is necessary to ensure the

practical implementation of such basic principles of the Convention as the "rule of law", "justice", "fair balance", and "just satisfaction", since these remain relatively new criteria in the legislation of Ukraine.

In accordance with Part 1 of Article 32 of the ECHR (1950), «the jurisdiction of the Court shall extend to all matters concerning the interpretation and application of the Convention and the Protocols thereto which are referred to it as provided in Articles 33, 34, 46 and 47».

In other words, the jurisdiction of the ECtHR consists in determining whether a State Party to the Convention has fulfilled its obligations imposed on it by ratifying the ECHR. This means that only a state that has made the provisions of the Convention binding within its territory may be a respondent before the Court, and only in relation to violations of the rights enshrined in the Convention and its Protocols. This follows from the fact that it is the state, together with its bodies and institutions, that must fulfill the obligations assumed within the framework of the Council of Europe. A defining and essential feature of the ECtHR's jurisdiction is that it does not include the power to amend or overturn decisions of domestic courts or national legislation, nor to interpret such legislation as a court of final appeal. The ECtHR should therefore not be regarded as a court of appeal in relation to national judicial bodies. Rather, it functions as a subsidiary mechanism for the protection of violated rights and fundamental freedoms.

It is also important to emphasize that the ECtHR itself does not supervise the enforcement of its judgments. This responsibility lies with the Committee of Ministers of the Council of Europe, which monitors the execution of the Court's judgments and the payment of the compensation awarded. In the event of a dispute concerning whether the Court has jurisdiction, that issue is resolved by the Court itself pursuant to Article 32(2) of the Convention. Accordingly, the state must not only establish adequate legislation that fully guarantees respect for and protection of the human rights and fundamental freedoms enshrined in the Convention, but must also adopt all necessary measures to ensure that this protective mechanism operates not merely on paper, but in a genuine, efficient, and effective manner. In other words, rights must be secured not only de jure but also de facto (Blazhivska, 2010, p. 83).

Procedural rules for applying to the European Court of Human Rights

The Criminal Procedure Code of Ukraine of 2012 introduced new provisions, in particular Articles 8 and 9, which stipulate that the principles of the rule of law and legality in criminal proceedings are to be applied with due regard to the case law of the ECtHR. However, in our opinion, for the practical implementation of these provisions in the Criminal Procedure Code of Ukraine, it would be advisable to establish a rule according to which, when issuing a ruling, an investigating judge or a court would be required to refer to a specific final judgment of the ECtHR that establishes a violation of a person's rights and legitimate interests in similar cases brought against Ukraine. At the same time, if such a gap is identified by a higher court, the latter should be required to set aside the previous decision and issue a new one with an appropriate reference to the relevant ECtHR judgment.

In addition, we support the opinion of Uvarov (2014, p. 18), who proposed supplementing Article 7 of the Criminal Procedure Code of Ukraine with an additional principle of criminal proceedings, defined as "direct reference to the norms and principles of international legal acts and decisions of the European Court of Human Rights". The essence of this principle should be disclosed in Article 9-1 of the Criminal Procedure Code of Ukraine (2012) and set out as follows:

> During criminal proceedings, each participant in criminal proceedings whose rights and legitimate interests have been violated shall have the right, when submitting a complaint, to refer to the relevant provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms, as well as similar provisions contained in decisions of the European Court of Human Rights concerning the violated right.

Thus, the proposed amendments and additions to the Criminal Procedure Code of Ukraine would further ensure the effective protection of participants in

criminal proceedings, especially those whose rights and freedoms are subject to the most significant restrictions, including suspects, accused persons, and convicted persons.

As Chernenko (2015) observes, Ukraine faces a broader crisis of public trust in all state institutions, particularly in law enforcement bodies and the judiciary. Other scholars such as Parkheta (2013, p. 117) note that Ukraine ranks among the five states with the largest number of applications submitted to the European Court of Human Rights. For instance, in the case of Nechiporuk and Yonkalo v. Ukraine, the Court identified 14 violations of the Convention committed by Ukrainian public authorities within a single criminal proceeding involving the applicant. This indicates that Ukraine still has substantial work to do in order to strengthen its human rights protection mechanism. Article 34 of the Convention (1950) provides that:

> The Court may receive applications from any person, non-governmental organization or group of individuals claiming to be victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right.

The Court may only be approached with complaints whose subject matter falls within the responsibility of a public authority, such as a parliament, court, or prosecutor's office, of one of the States parties to the Convention. The Court does not consider applications against private individuals or non-governmental institutions. In addition, Article 33 of the Convention (1950) provides that "any High Contracting Party may refer to the Court any alleged breach of the provisions of the Convention and the Protocols thereto by another High Contracting Party". In Ukraine, the right to submit an application to the ECtHR is guaranteed by the National Constitution. Specifically, Part 4 of Article 55 states that, after exhausting all domestic remedies, every person has the right to seek protection of their rights and freedoms before the relevant international judicial institutions or the competent bodies of international organizations of which Ukraine is a member or participant (Verkhovna Rada of Ukraine, 1996). The Constitution of Ukraine also guarantees everyone the right to defend their rights and freedoms against violations and unlawful interference by any means not prohibited by law.

Since Ukraine ratified the ECHR on 17 July 1997 (Law of Ukraine No. 475/97-VR, 1997), the document has become part of the national legislation. Thus, the state has undertaken to guarantee and protect the rights and freedoms provided for in the Convention. In the event of violations by Ukraine of its obligations, its citizens and legal entities registered within its territory, after exhausting domestic remedies and within six months from the date of the final decision at the national level, have not only the right but also a real opportunity to apply to the ECtHR for the protection of their rights and freedoms proclaimed in the Convention and its protocols. The concept of "exhaustion of domestic remedies" should be understood as the applicant's recourse to all judicial instances of the state, including the cassation instance, namely the Supreme Court.

Case law of the European Court of Human Rights in the system of sources of criminal proceedings

The case law of the ECtHR is assuming an increasingly significant place in the legal practice of criminal proceedings in Ukraine. The Court describes its own jurisprudence as precedent-based, since it generally considers it necessary to adhere to the approaches developed in earlier judgments unless there are reasons to revise them. In particular, in the reasoning of a judgment, the Court may refer to considerations already set out in previous decisions rather than restating the same arguments in full.

At the same time, the ECtHR has repeatedly stressed that it is not absolutely bound by its earlier judgments and, in fact, occasionally modifies its legal positions. This approach is justified because, although the possibility of changing case law may weaken legal certainty, there is an inherent dialectical tension between legal certainty and the development of the law (Kononenko, 2009). The recognition of the direct effect of ECtHR judgments by the national legal systems of almost all European states is a distinctive phenomenon. In many European countries, it is often not the legislature, which requires time

to enact statutory changes, but rather the highest judicial authorities, namely the Supreme Courts or Constitutional Courts, that play the decisive role in removing the underlying causes of human rights violations in a specific case that later becomes the subject of an ECtHR judgment (Kyrychenko, 2010). It should also be noted that, in its practice, the Court does not follow precedent mechanically; instead, it formulates and resolves relevant legal questions while interpreting the Convention. The outcomes of this interpretive process cease to be disputable, acquire objective existence, and move to a qualitatively higher level as legal positions to which the Court refers in later decisions, designating earlier judgments as precedents. Therefore, there are sufficient grounds to speak of precedents of interpretation (Kononenko, 2009), and this view appears well-founded.

Blazhivska (2020) substantiated the existence of three models for the application of a judicial precedent: a) the model of exceptional analogy, according to which each judicial decision is considered as an example of the proper examination of a case on the basis of all the facts available to the court; b) the model of the affirmative rule, under which judicial decisions are perceived as acts that establish certain rules that are binding on lower courts when considering similar cases; and c) the fundamental model, according to which judicial decisions based on certain legal principles may be used when considering similar cases in the future, as well as for the further development and improvement of the legal system. The latter model is exemplified by the judgments of the ECtHR.

Attention should be paid to ECtHR judgment in *Golder v. The United Kingdom* (European Court of Human Rights, 1975), which is particularly significant for the interpretation of Article 6 § 1 of the Convention and is regarded as a classic precedent of the ECtHR. In this case, while addressing the issue of access to justice, the Court noted that it was called upon to determine, by means of interpretation, whether access to justice constituted a component or aspect of the right in question. Legal scholarship has repeatedly emphasized that the text of the Convention itself, due to the highly general nature of its formulations, cannot serve as a self-sufficient instrument of law enforcement and therefore requires interpretation through the case law of the ECtHR.

The ECHR, as an independent supranational judicial body at the European level, monitors the observance of fundamental human rights by all States parties to the Convention and ensures compliance with and implementation of its provisions. It carries out this task by examining and deciding specific cases brought before it on the basis of individual or collective applications submitted by citizens of States Parties to the Convention, as well as inter-State cases, and by awarding just satisfaction. The judgments of the ECtHR are binding and precedential in nature (Blazhivska, 2020, p. 119).

Pursuant to Article 46 of the Convention (1950), respondent States are obliged to abide by the final judgments of the ECtHR. Depending on the circumstances of each particular case, the respondent State may be required to adopt specific measures: first, individual measures in favour of the applicant, aimed at terminating the unlawful situation and redressing its consequences; and second, general measures intended to prevent future violations of human rights and fundamental freedoms by public authorities and officials. A judgment is considered fully executed only after the Committee of Ministers of the Council of Europe adopts the corresponding resolution on its implementation. To avoid new violations of the Convention similar to those identified in an ECtHR judgment, the State is required to address deficiencies within its domestic legal system by introducing the necessary amendments to national legislation.

In some cases, the circumstances indicate that the violations result from shortcomings in specific laws or from the absence of relevant legislative provisions. In such cases, in order to implement an ECtHR judgment, the State must usually amend the relevant regulatory acts or adopt the necessary laws. It is often the most difficult form of execution, as it may require broad legal reforms and significant material and time resources.

The Law of Ukraine "On the Execution of Decisions and Application of the Practice of the European Court of Human Rights" of 23 February 2006 establishes several fundamental provisions for the Ukrainian legal system: 1) judgments of the ECtHR are recognized as binding; 2) courts must apply ECtHR case law as a source of law when considering cases (Article 17); and 3) the legislative body of the state must review and verify the compliance of current

laws and by-laws with the Convention and the case law of the ECtHR (Article 19). Accordingly, Part 5 of Article 9 of the Criminal Procedure Code of Ukraine determines that the criminal procedural legislation of Ukraine is to be applied with due regard to the case law of the ECtHR (Sevosianova, 2010, p. 310).

In Ukraine, courts frequently violate the time limits for the consideration of cases, as well as the right of a citizen brought to criminal responsibility and held in custody to a fair and public hearing of his case by an independent court within the period established by law. This right is enshrined in the Constitution of Ukraine and the provisions of the ECHR.

A problematic aspect of the Ukrainian justice system, in our opinion, is the conduct of legal proceedings within a "reasonable time". In practice, courts often unjustifiably delay the consideration of the cases, and such delays have unfortunately become systematic. Many applications submitted by Ukrainian citizens to the ECtHR concern unlawful detention, often in inhuman conditions. On this basis, both the legal institution of detention and legislation on pre-trial detention require reform. It is precisely in these areas that obvious conflicts and gaps can be observed, which should be avoided if Ukraine truly seeks to reach the European level.

In this regard, there is a need to humanize criminal legislation and limit the use of imprisonment as a form of punishment (Sevosianova, 2010, p. 311), a position that we support. The humanization of the current Criminal Procedure Code of Ukraine (CPC) is reflected in Article 209, which clearly defines the moment of a person's detention: a person is considered detained when, by force or through submission to an order, he or she is compelled to remain next to an authorized official or in premises designated by such an official. Unlike the current CPC, the previous version of 1960 did not contain such a provision. At the same time, it is necessary to determine, at the legislative level, the criteria for assessing the complexity of criminal proceedings and, depending on those criteria, to establish shorter terms of pre-trial investigation, for assigning a case for court consideration, and for the direct consideration of cases in court.

A fairly large number of applications filed with, and relevant decisions issued by, the ECtHR in respect of Ukraine indicates systemic violations of individual rights and freedoms by the state. Therefore, knowledge of the most important ECtHR judgments by lawyers, judges and employees of the criminal justice system, as well as their consideration in practical activities, is a priority in the field of human rights protection in Ukraine.

Supervision of the execution of ECtHR judgment is entrusted to the Committee of Ministers of the Council of Europe. If a state delays the execution of a Court judgment for more than six months, the Committee may take measures in response. In such a case, it may request an explanation from the state concerned. If the state continues to fail to execute the Court's judgment, the Committee of Ministers may adopt a resolution setting out information about the violation. Such measures primarily have a negative impact on the authority of the state. If the state continues to fail to execute the judgment, the Committee of Ministers may initiate the issue of suspending or terminating that state's membership in the Council of Europe (Kyrychenko, 2010).

The execution of any ECtHR judgment is financed from the State Budget of Ukraine. For the purpose of implementing general measures, the state ensures the translation and publication in Ukrainian of the full texts of ECtHR judgments through a specialized legal periodical circulated within the professional legal community. Translations of all final judgments of the Court concerning Ukraine are published in the *Official Gazette of Ukraine* and are also made available on the official website of the Ministry of Justice.

The right to court extends to a very broad range of matters, since it encompasses both institutional and organizational issues as well as the specific features of particular judicial procedures. ECtHR case law serves as a mechanism through which the Convention can be understood, interpreted, and applied. Considering that the right to a fair trial holds a central place in the system of universal values of a democratic society, the European Court has given it a rather expansive interpretation in its jurisprudence. Thus, in Delcourt v. Belgium (European Court of Human Rights, 1970), the ECtHR stated that:

> In a democratic society within the meaning of the Convention, the right to a fair administration of justice holds such a prominent place that a restrictive

> interpretation of Article 6 § 1 would not correspond to the aim and the purpose of that provision.

Conversely, in *Bellet v. France* (1995), the ECtHR observed that Article 6 § 1 of the Convention guarantees the right to a fair trial, one element of which is access to a court. The degree of access provided by domestic law must be adequate to secure an individual's right to a court, in line with the principle of the rule of law in a democratic society. For such access to be effective, a person must have a clear and genuine practical possibility to challenge measures that interfere with his or her rights.

As the Court's position in numerous cases demonstrates, the core element of the right to a court is the right of access to justice, meaning that an individual must be given the opportunity to bring a matter before a court for resolution, while the state must refrain from creating either legal or practical barriers to the exercise of this right. An analysis of ECtHR case law concerning Ukraine shows that the causes of human rights violations often stem either from deficiencies in national legislation or from the way it is applied in practice by state bodies and judicial authorities. It is important to stress that, under Law of Ukraine No. 3477-IV (Verkhovna Rada of Ukraine, 2006) "On the Execution of Decisions and Application of the Practice of the European Court of Human Rights," Ukrainian courts are required, when examining cases, to apply the Convention and ECtHR case law as a source of law.

Considering the practical steps taken by Ukraine towards establishing the rule of law and the recent positive trends in the Ukrainian legal field, it may be hoped that the application of the provisions of the Convention and ECtHR case law by national authorities and courts will enable the Court to avoid finding violations of the Convention by Ukraine in the future.

Theoretical and applied problems of applying the case law of the European Court of Human Rights in criminal proceedings

In the course of this research, the question arises whether after the entry into force in 2006 of Law of Ukraine No. 3477-IV, the entire body of ECtHR case law acquired the status of a mandatory source of law in Ukraine. It is also necessary to determine whether judicial authorities have since then been obliged to apply and interpret the Convention only in the manner followed by the ECtHR in similar cases. A further question concerns which case law is at issue: only judgments concerning Ukraine, or the entire body of ECtHR case law; and whether this includes only precedents. Understood as judgments in specific cases, or as other forms of practice, including administrative and procedural decisions (Verbytska et al., 2018, pp. 56–57)

In this regard, attention should be paid to the different views that currently exist in legal scholarship on this issue. Some scholars argue that ECtHR judgments, including those delivered in cases in which the state is the respondent, are not directly binding on national law enforcement bodies solely by virtue of the Convention as a norm of international law (Kuchynska, 2012, p. 8). On the other hand, ECtHR case law may be regarded as an official form of interpretation of the fundamental and inalienable rights of every person, enshrined and guaranteed by the Convention, which forms part of national legislation. In this respect, it may be considered a source of legislative legal regulation and law enforcement in Ukraine (Konstantyi, 2012). Kononenko (2009, p. 126) expresses a distinctive view on this issue, concluding that ECtHR judgments create precedents for the interpretation of the Convention. The position of those authors who, in different ways, recognize the binding nature of the legal positions formulated in the Court's judgments for domestic courts when resolving similar cases is noteworthy (Parkheta, 2013, p. 131).

At the same time, none of the above scholarly positions is entirely convincing as a basis for denying that ECtHR case law may be regarded as a mandatory source of law for the national legal system. The adoption of a special law in Ukraine recognizing ECtHR case law as a source of law has not yet resulted in its sufficiently significant application by national law enforcement bodies. However, states that have acceded to the Convention and recognized the binding nature of ECtHR judgments must, in one way or another, accept its case law and regulate at the legislative level the legal form in which it is implemented within their legal systems. This also applies to the criminal procedural legislation

of Ukraine.

In Ukrainian judicial practice, there are known cases in which Ukrainian courts have referred to the Court's case law as a source of law when making decisions. Thus, the judicial panel of the Mykolaiv Court of Appeal was the first in Ukraine to be guided by the provisions of Article 10 of the Convention and by the ECtHR judgment in the case of *Lingens v. Austria* (1986). The Constitutional Court of Ukraine referred for the first time to an ECtHR judgment in the case of the death penalty (Buromenskyi, 2000).

In general, ECtHR judgments constitute today at least a doctrinal source for most member states of the Council of Europe. Moreover, given the authority of ECtHR judgments, they are increasingly becoming a basis for decision-making by other judicial instances, including courts of countries that are not members of the Council of Europe. Thus, there are numerous examples of appeals to the Court's judgments, including references by U.S. federal courts in the reasoning of their decisions (Sevosianova, 2010, p. 315).

One of the significant steps taken by the legislative body of Ukraine was the adoption of the current Criminal Procedure Code of Ukraine, Article 8 of which provides that the principle of the rule of law in criminal proceedings is applied with due regard to the ECtHR case law (Volodymyrivna Havryliuk et al., 2021; Galagan et al., 2021; Ablamskyi and Drozd, 2024).

Relevance of the application of the case law of the European Court of Human Rights

In their practice, judges should not apply ECtHR judgments chaotically or at their own discretion. Rather, they should understand the essence of the case examined in the relevant ECtHR judgment. In each specific case before a national court, the relevant ECtHR judgment should be applied, even where it concerns different legal relations. ECtHR case law should not become a tool for judicial manipulation or a simple mechanism for producing a formal judicial response. Therefore, when applying a particular judgment, a judge should clearly understand the substance of the ECtHR case, including the definitions and legal concepts used in that judgment. There should be no "blind" transfer of the text from an ECtHR judgment into the text of a national court decision. The judge should clearly identify the legal relations that formed the basis for the ECtHR's relevant judgment.

This study formalizes an empirical assessment of the validity and application of ECtHR case law by national courts. Its objective is to substantiate how the criteria of case similarity (case similarity degree), the degree of verbatim transfer from the text of ECtHR judgments (verbatim use), and the number of citations to ECtHR judgments (citations count) correlate with the extent to which the final decision of a national court is consistent with the content and legal logic of the relevant ECtHR judgment (outcome alignment), as well as with the likelihood of correct application of precedent (correct application). A simulated sample of $N = 250$ cases was used, with variables generated to reflect realistic dynamics, including the degree of similarity between cases (from 0 % to 100 %; the proportion of verbatim transfer (from 0 % to 100 %), the number of citations (integer), and the outcome alignment (measured on a scale from -1 to $+1$). The hypothesis is that greater comparability between cases and a greater number of meaningful references to ECtHR case law increase the consistency of national court decisions with ECtHR case law. However, excessive verbatim copying reduces the quality of application and is not equivalent to a well-reasoned use of precedent.

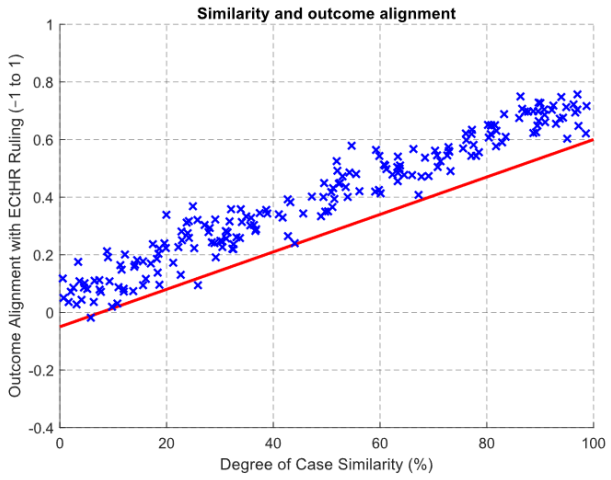
Based on the data presented in figures 1–4, the following summary conclusion may be drawn. The observed relationship between the degree of comparability of the cases under consideration and the consistency of the national court's final decision with the ECtHR's position confirms the central thesis that the correct application of case law is only possible through a thorough analysis of the factual circumstances and the legal substance of the ECtHR case, rather than through mere borrowing of text. The data also show that excessive use of verbatim wording from ECtHR judgments without conceptual understanding does not improve legal consistency and, in some cases, may even reduce the quality of the final decision. At the same time, a higher frequency of citations to ECtHR judgments is characteristic of the correct application group, indicating not a formal citation pattern, but rather a deeper and more meaningful integration of precedent into the

structure of judicial reasoning. Thus, the graphical and statistical analysis confirms that a judge claiming to correctly apply ECtHR precedent must:

1. Establish a substantial correspondence between the relevant factual circumstances;
2. Understand the legal logic and conceptual framework of the ECtHR judgment, rather merely reproducing its wording;
3. Use references to ECtHR judgments as structural elements of legal reasoning, rather than as symbolic markers of the decision's "correctness";
4. Remember that mechanical citation and external reference to precedent do not guarantee conformity with the ECtHR's legal position when rendering a national judgment.

Figure 1

Case similarity and outcome alignment with ECtHR ruling

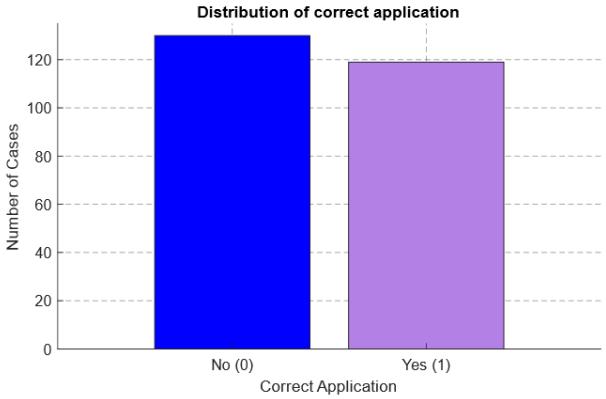


Source: own elaboration.

The scatter plot presented in Figure 1 demonstrates a positive relationship between the degree of case comparability and the degree of alignment of the final decision with the ECtHR's position. The linear fit indicates a weak to moderate positive trend. The dispersion of values shows significant variability, pointing to the influence of additional factors, such as the quality of the court's reasoning or the contextual legal circumstances of the case. The presence of a significant individual outlier demonstrates that high comparability alone does not ensure complete alignment. A qualitative analysis of the factual relationships on which the ECtHR's conclusion was based is therefore required. These observations support the thesis that the application of precedent requires an understanding of the substance of the case, rather than the mechanical transfer of text.

Figure 2

Distribution of cases by correct application



Source: own elaboration.

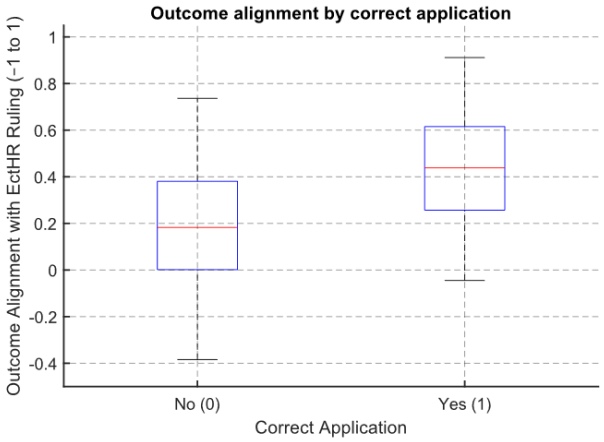
According to Figure 2, the distribution of the binary variable "correct application" shows a relative balance between the "correct" and "incorrect" group. This indicates the absence of a dominant practice of fully and reliably applying precedent in the simulated sample. The relative uniformity of the distribution highlights a practical problem: judges do not always apply precedent in a uniform manner, which is consistent with theoretical considerations regarding the risk of "chaotic" citation. This variability requires further study of factors that contribute to correct application, such as quality of reasoning, judges' qualifications, and the availability of methodological recommendations. It should be emphasized that the binary metric simplifies the complex nature of legal correctness and therefore serves as an indicator rather than an exhaustive measure.

Figure 3 demonstrates that median outcome alignment is significantly higher in the group in which the precedent was correctly applied compared with the incorrect-application group. The interquartile

VIeI
ISSN online: 1909-0528
Vol.22 Núm.1 (2026) | enero-junio
eISSN:1909-0528

Figure 3

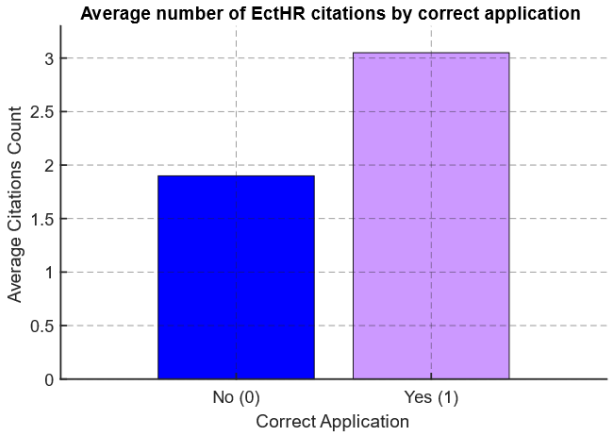
Outcome alignment by correct application



Source: own elaboration.

Figure 4

Average number of ECtHR citations by correct application



Source: own elaboration.

range in both groups indicates considerable within-group variability, showing that even in cases of formally correct application, significant differences may exist in the actual degree of compliance with the ECtHR outcome. The variability observed in the incorrect-application group is higher, reflecting the greater heterogeneity of "unreasonable" use of ECtHR judgment. Thus, the mere presence of a formal citation or reference does not necessarily amount to a high-quality legal use of precedent.

According to Figure 4, the average number of citations to ECtHR judgments is higher in the correct-application group, supporting the assumption that meaningful and reasoned recourse to precedent is accompanied by more frequent citations to relevant decisions. However, a higher number of citations does not exclude the possibility of incorrect application, as shown in Figures 1–3. Therefore, the number of citations should be considered a supplementary, rather than a standalone, indicator of quality.

Consequently, the empirical results indicate that the methodological approach to citation, namely its reasonableness and reliance on the substantive content of ECtHR case law, is more important than the sheer number of citations. In practice, this implies the need to strengthen quality criteria in judicial guidelines and methodological training on the application of case law. Thus, the results obtained confirm that the valid application of ECtHR case law involves not only citing the relevant case, but also thoroughly understanding its context, the content of the legal position, and the structural connection between the circumstances of the national case and the ECtHR's findings.

The doctrinal and practical flaws identified in the article justify the need for a comprehensive reform of criminal procedural legislation, primarily in three interrelated areas. First, it is necessary to establish normatively the direct obligation of investigating judges and courts to provide reasons for procedural decisions by referring to specific final ECtHR judgments in cases that are similar, in both factual and legal terms, to the national dispute. The current wording of Articles 8 and 9 of the CPC only generally requires taking the Court's practice into account, but does not create an appropriate procedural mechanism for its mandatory and uniform application. This gives rise to declarative, selective, and heterogeneous judicial reasoning.

Second, the introduction of a clear procedural sanction, in the form of the mandatory annulment of a court decision by a higher instance where relevant ECtHR case law has been ignored, is justified. The absence of negative procedural consequences for such disregard turns international standards into an optional argument, while the article itself qualifies

this situation as a methodological dysfunction of national criminal proceedings and links it to latent defects in law enforcement.

Third, it is justified to supplement Article 7 of the CPC with a separate principle of direct recourse to the norms and principles of international legal acts and ECtHR judgments, and to specify this principle in a new Article 9-1 by enshrining the right of participants in criminal proceedings to refer directly, in their complaints, to the provisions of the Convention and to the relevant judgments of the Court.

Such a change would eliminate not only the normative uncertainty regarding the place of ECtHR case law within the system of sources of criminal procedural law, but also the practical problem of the weakened procedural subjectivity of participants in proceedings when upholding Convention guarantees. This is especially significant for suspects, accused persons, and convicted persons in the context of systemic violations, as confirmed both by the large number of applications against Ukraine and by examples such as *Nechiporuk and Yonkalo v. Ukraine*, in which the Court found multiple violations of the Convention.

Conclusions

This article substantiates that the case law of the European Court of Human Rights in cases against Ukraine should be treated not merely as an auxiliary interpretive resource, but as a substantive driver of the transformation of Ukrainian criminal procedural legislation and judicial practice. The analysis shows that the decisive problem is not the formal recognition of ECtHR judgments as binding, which is already entrenched in Ukrainian law, but the absence of a sufficiently structured domestic mechanisms for their consistent and reasoned implementation in criminal proceedings. In this respect, the article contributes to the field in three interrelated ways:

1. It clarifies the doctrinal status of ECtHR case law within the system of sources of criminal procedural law of Ukraine;
2. It demonstrates that recurring violations found by Strasbourg case law stem from systemic defects in legislation and law-enforcement practice rather than from isolated judicial errors;
3. It identifies a methodological dysfunction in domestic adjudication, namely the absence of an explicit procedural obligation for lower courts to engage directly with relevant ECtHR precedents in similar cases.

On this basis, the article advances a more precise understanding of how Convention standards should operate in national criminal proceedings: not through abstract references to European values, but through concrete precedent-based reasoning, mandatory judicial engagement with relevant Strasbourg jurisprudence, and procedural consequences for disregard of such jurisprudence. Accordingly, the study's central contribution lies in shifting the discussion from the general declarative recognition of ECtHR case law toward its institutional, doctrinal, and procedural internalization as a binding component of fair criminal justice in Ukraine, thereby linking the humanization of criminal procedure with a more coherent model of judicial reasoning, rights protection, and execution-oriented compliance with European human-rights standards.

The ECHR is an international judicial body that is called upon to ensure that participating States observe the rights and freedoms guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms. It is authorized to examine applications from individuals alleging violations by participating States of the rights and freedoms provided for in the Convention.

ECtHR case law should be regarded as a source of criminal procedure law in Ukraine. Within the hierarchy of sources of criminal procedural law, it should rank immediately after international treaties approved by the Verkhovna Rada of Ukraine. The use of ECtHR jurisprudence during pre-trial investigations in criminal cases strengthens the existing mechanism for safeguarding rights and legally protected interests in accordance with European standards. Recognizing the Court's case law as a source of law is an inevitable part of harmonizing Ukraine's domestic legislation with European legal standards through the adoption of legislative acts grounded in relevant legal norms. An important step toward the humanization of Ukrainian legislation was the incorporation into the current Criminal Procedure Code of the requirement to take the case law of the ECtHR into account.

In Ukrainian criminal justice practice, ECtHR case law is becoming increasingly significant. It has been emphasized that the text of the ECHR, largely because of the broad and general nature of its wording, cannot function as a fully self-sufficient instrument of law enforcement and therefore requires interpretation through the ECtHR case law. The ECtHR does not replace national courts, but its judgments require the adoption of individual and general measures. The latter are aimed both at changing national judicial practice and at amending legislation. The execution of ECtHR judgments is a complex process that should lead to an improvement in the legal environment in Ukraine. The process of reforming criminal legislation is gaining new prospects in light of international standards and the ECtHR case law.

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