

Practice of the European Court of Human Rights as a Factor in the Development of Private Law*

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Abstract

The article examines the case law of the European Court of Human Rights (hereinafter referred to as the ECHR) as an important factor in the development of private law in the national legal systems of the member states of the Council of Europe. Particular attention is paid to the analysis of the decisions of the ECHR, which have a systemic impact on the improvement of legal mechanisms for the protection of rights in the field of private law relations. The expediency of using the construction "case law of the European Court of Human Rights", which has already been implemented in legislation of Ukraine (Civil Procedure Code, Commercial Procedure Code, Code of Administrative Procedure, Law of Ukraine "On the Execution of Decisions and Application of the Practice of the European Court of Human Rights") is substantiated, which emphasizes the normative legitimacy of such an approach. Changing the focus from "civil law" to the broader concept of "private law" allows expanding specialization, also covering aspects of economic, family and other related areas. The paper highlights the key areas of influence of the ECHR practice on law enforcement in matters of property rights protection, access to justice, fair trial and effective enforcement of court decisions. It also examines the problems of implementing ECHR decisions into the legal practice of Ukraine, conflicts between national and international law, as well as the role of the Court in forming a balance between public and private interests. In conclusion, the importance of the ECHR practice as a factor in the evolution of the doctrine of private law and the unification of European standards of human rights protection is emphasized.

Keywords: European Court of Human Rights; Case law; Private law; Property right; Access to justice

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A. INTRODUCTION

In the context of European integration and globalization of law, the case law of the European Court of Human Rights (hereinafter referred to as the ECHR) is of particular importance as a key factor in the development of private law in the national legal systems of the member states of the Council of Europe. The ECHR, interpreting the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms, forms modern standards for the protection of private rights, which are gradually implemented in the domestic legislation and law enforcement practice of states. In Ukraine, this is reflected in the normative consolidation of the construction of "ECtHR case law" in the Civil Procedure Code, the Commercial Procedure Code, the Code of Administrative Procedure, as well as in a special law on the implementation of ECHR decisions, which emphasizes the legitimacy of such an approach. This emphasizes the normative legitimacy of such an approach and the relevance of analyzing the impact of ECHR decisions on the development of private law institutions.

ECHR decisions are increasingly acting as a catalyst for doctrinal and legislative changes in the field of property rights protection, access to justice, fair trial and effective enforcement of court decisions. The transition from the narrow concept of "civil law" to the broader concept of "private law" allows us to cover not only classical civil-legal relations, but also economic, family and related areas, which strengthens the interdisciplinary nature of the study.

At the same time, in today's conditions, there are a number of unresolved problems in the development of private law in Ukraine and other countries that are in the process of harmonizing national legislation with European standards. Among the key challenges: Fragmentation and inconsistency of the implementation of the practice of the ECHR into national legislation, which leads to unequal application of human rights protection standards by courts of different instances; Collisions between national and international law, in particular in matters of priority of sources of law and binding nature of the execution of ECHR decisions; Lack of a single doctrine of the balance of public and private interests in private law relations, which complicates the application of the principle of proportionality and fair balance; Insufficient level of legal culture and awareness of judges and lawyers regarding the standards of the ECHR, as well as the lack of systematic training of personnel in this area; Problems of access to justice and the effectiveness of the execution of court decisions, which remain relevant even after the formal recognition of the practice of the ECHR as a source of law; Lack of an appropriate mechanism for the official translation and dissemination of ECHR decisions, which complicates their

practical application in national courts.

The study of the practice of the ECHR as a factor in the development of private law is extremely important for the formation of a modern doctrine of private law, the improvement of law enforcement activities and the provision of real protection of human rights. The analysis of the impact of the decisions of the ECHR allows not only to identify the main trends and problems, but also to suggest ways to solve them, contributing to the harmonization of national legislation with European standards.

In this context, the study of the role of the ECHR in the formation of European standards of human rights protection, the development of the principles of good faith, justice, proportionality and balance of interests in private law is of particular importance. The practice of the ECHR is considered as a dynamic factor in the evolution of the doctrine of private law, which contributes to the unification of legal approaches, increasing the effectiveness of human rights protection and the integration of national legal systems into the European legal space.

B. METHODS

The study uses a set of modern scientific methods that provide a deep and comprehensive analysis of the impact of the practice of the ECHR on the development of private law: comparative law method: used to compare approaches to the implementation of ECHR decisions in different national legal systems, analyze the differences between monistic and dualistic models, and also to identify common trends in the reform of private law under the influence of European standards; systemic and structural analysis: allows us to consider the case law of the ECHR as part of a holistic legal system, determine its place in the structure of sources of private law and trace the relationship between the decisions of the Court, national legislation and case law; dogmatic (formal and legal) method: used to interpret the provisions of the Convention, Protocol No. 1, national procedural codes and special laws, as well as to analyze the legal nature and binding nature of the practice of the ECHR in the national legal order; method of case law analysis: involves the study of specific decisions of the ECHR concerning the protection of property rights, access to justice, fair trial, enforcement of court decisions, as well as the principles of good faith, fairness, proportionality and balance of interests; doctrinal analysis: is used to generalize the positions of leading European and Ukrainian scholars on the influence of the ECHR on the evolution of private law, as well as to critically reflect on current

trends in the field of harmonization and unification of legal standards; empirical approach: includes the analysis of statistical data on the implementation of ECHR decisions by Ukraine, examples of adaptation of procedural legislation, as well as practical problems that arise in the process of implementing ECHR standards into national judicial practice.

The use of these methods allows not only to identify the main directions and mechanisms of the influence of ECHR practice on private law, but also to formulate substantiated recommendations for the further harmonization of national legislation with European standards for the protection of human rights.

C. RESULTS AND DISCUSSION

1. The impact of the ECtHR's practice on key institutions of civil law

The concept of property rights in the ECtHR's practice is based on a broad interpretation of the notion of "possessions", which covers not only traditional property rights, but also a wide range of property rights and interests (Ziemele, 2018, p. 124). In cases against Ukraine, the ECtHR has repeatedly considered the issue of forced alienation of property, establishing standards of compensation and proportionality of interference (Case of Svitlana Ilchenko v. Ukraine: ECHR, 2019).

Article 1 of Protocol No. 1 to the Convention establishes three interrelated norms: the general principle of peaceful possession of property, the rules on deprivation of property, and the right of the State to control the use of property (Protocol No. 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, 1952). The practice of the ECtHR shows that property in the context of the Convention is recognized as existing property, including movable and immovable property, money, debts, securities and property rights (European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950).

A key principle of the ECtHR's practice is the requirement of a fair balance between the general interests of society and the requirements of protecting the fundamental rights of individuals. In the case of Zhovner v. Ukraine, the ECtHR emphasized that interference by state authorities in the exercise of the right to property requires a fair balance to be struck between the requirements of the general interest and the requirements of protecting the fundamental rights of citizens (Zhovner v. Ukraine: judgment of the European Court of Human Rights, 2004).

The principle of proportionality becomes the central criterion for assessing the legality of interference with the right to property. The ECtHR in the case of "Intersplav v. Ukraine" found the interference with the applicant's property rights disproportionate, stating a violation of the "fair balance" between the requirements of the public interest and the protection of the right to property (Intersplav v. Ukraine: decision of the European Court of Human Rights, 2007).

Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms enshrines the fundamental right of everyone to a fair and public hearing within a reasonable time by an independent and impartial tribunal (European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950). This right includes several interrelated components that expand and detail its content.

An important aspect of the right to a fair trial is the principle of proportionality of procedural measures. The ECtHR has established in its practice that the unconditional termination of court proceedings in the event of a participant making offensive statements is a disproportionate measure of interference with the right to judicial protection (Resolution of the Plenum of the Supreme Court of Ukraine No. 7, 2008). Of particular importance is ensuring a balance between the various rights and interests of the participants in the process. The court, applying the principle of proportionality, must proceed from the categories of "restriction" and "balance", which are the basic components of this principle. The definition of balance as a component of the principle of proportionality is reflected in taking into account both the wishes of the participants in the process and the need for a fair, impartial and timely consideration of the case (Luts, 2015, p. 46).

Compliance with reasonable terms of trial is a separate element of access to justice and a key requirement of Article 6 of the Convention. The ECtHR does not recognize specific time limits that could be considered reasonable or unreasonable, but the Court has developed certain criteria for assessing the reasonableness of such time limits (European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950). The ECtHR has identified the following as the main criteria for determining the reasonableness of the duration of a case: the complexity of the case, the conduct of the applicant and the relevant state authorities, and the importance of the issue for the applicant (Agarkov, 2016, p. 15).

An important factor in establishing compliance with reasonable time limits is not only the total duration of the proceedings, but also the justification of the time spent on each individual procedure. The ECtHR in the case of Lopatin and

Medvedsky v. Ukraine found a violation of the principle of reasonable time due to a period of inaction lasting more than a year (Lopatin and Medvedsky v. Ukraine: judgment of the European Court of Human Rights, 2010).

The enforcement of court decisions is considered by the ECtHR as an integral part of the right to a fair trial. In particular, in the case of *Hornsby v. Greece*, the Court emphasized that the right to a court would be illusory if the national legal system allowed a final, binding court decision to remain unenforced to the detriment of one of the parties (*Hornsby v. Greece: judgment of the European Court of Human Rights*, 1997). It is also worth pointing out the impact of ECtHR decisions on the interpretation of the concepts of good faith, fairness, and balance of interests in civil legal relations.

The principle of good faith, which was traditionally considered as a moral category, under the influence of the practice of the ECHR acquires a clear legal content and becomes one of the key tools for ensuring the balance of interests in civil legal relations (The Principle of Balancing (Chapter 5)). Good faith in the understanding of the ECHR is manifested through two criteria: objective, when good faith consists in the parties' compliance with reasonable rules of honesty in contractual relations, and subjective, which characterizes the mental attitude of a person to their behavior (Kovalyova, 2024, p. 12). The criterion of good faith allows us to conclude whether a person acted lawfully, whether he did not abuse his rights and did not violate the rights of others (The Principle of Balancing (Chapter 5)).

The concept of justice in the practice of the ECHR is closely related to the principle of proportionality and the idea of a fair balance of interests (Pavoni, 2021, p. 91). The Court has repeatedly emphasized that a fair balance implies a reasonable relationship between the goal pursued and the means used (Pavoni, 2021, p. 91). The balance of interests in civil law relations is considered by the ECHR through the prism of proportionality of interference with the rights of the individual. The criteria for maintaining a balance of public and private interests include an assessment of the legitimacy of the goal of the interference, the necessity of the means used, and their proportionality to the result achieved (Commentary on the Civil Procedure Code of Ukraine, 2018).

The principle of proportionality in civil law is aimed at ensuring a reasonable balance of private and public interests (Civil Procedure Code of Ukraine, 2004). As the practice of the ECHR notes, compliance with the principle of proportionality requires achieving a fair balance between the general interests of the whole society and the requirements of protecting the fundamental rights of individuals (Pavoni, 2021, p. 91).

The impact of the ECHR practice on the civil law of Ukraine occurs in the context of broader processes of harmonization and unification of European legal standards (Scientific and Practical Commentary on the Civil Procedure Code of Ukraine, 2018). Effective means of unification of legislation are model rulemaking and international treaties, while harmonization can be carried out in the form of adaptation or standardization (Scientific and Practical Commentary on the Civil Procedure Code of Ukraine, 2018).

The implementation of the ECHR practice into the national legal system requires a systematic approach and consideration of the specifics of the national legal order. Ukrainian courts make significant efforts to apply the ECHR practice and bring their practice into line with the decisions of the Strasbourg Court, but this process often remains formal (Constitution of Ukraine, 1996).

The role of the ECHR in the formation of international standards for the protection of human rights consists not only in interpreting the provisions of the Convention, but also in actively influencing the evolution of international law. The Court forms legal standards that are recognized and applied at the global level, ensuring the practical implementation of human rights standards (Gordeev, 2022, p. 226).

The main problems that arise when applying the practice of the ECHR in the process of considering cases by national courts are related to the inaccessibility of ECHR decisions due to the lack of their translations, the uneven understanding of the legal type of ECHR decisions, and the lack of an appropriate level of legal culture among judges (Gavrylyuk, 2018, p. 236).

Resolving these problems requires the creation of a special register of officially translated decisions of the European Court, explanatory work on the use of the practice of the ECHR by higher judicial instances and further optimization of procedural legislation (Gavrylyuk, 2018, p. 238).

The practice of the ECHR has a transformative impact on key institutions of Ukrainian civil law, forming new standards for the protection of human rights and fundamental freedoms. The decisions of the Strasbourg Court not only interpret the provisions of the Convention, but also actively influence the evolution of national civil law.

The concept of "possessions" expands the traditional understanding of property rights, including a wide range of property rights and interests. The principle of a fair balance between public and private interests becomes the central criterion for assessing the legality of state intervention. The right to a fair trial is specified through requirements for accessibility of justice, compliance

with reasonable deadlines and ensuring effective enforcement of court decisions. These standards form a new quality of procedural guarantees in civil proceedings. The principles of good faith, fairness and proportionality under the influence of the practice of the ECHR acquire a clear legal content and become effective tools for ensuring the balance of interests in civil legal relations. The process of implementing European standards requires a systematic approach, further development of national legislation and raising the level of legal culture of law enforcement officers. Only under these conditions will the practice of the ECHR be able to fully realize its potential in transforming national civil law in accordance with European standards for the protection of human rights.

2. Harmonization of national civil legislation with the practice of the ECHR

According to Art. 46 of the Convention for the Protection of Human Rights and Fundamental Freedoms, the participating states are obliged to implement the final decisions of the ECHR (European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950). This obligation includes both individual measures (redressing the harm to a particular applicant) and general measures (redressing systemic violations) (De Schutter, 2010, p. 138).

The theoretical basis of the implementation process is the principle of subsidiarity, which means that the ECtHR intervenes only when national human rights mechanisms prove ineffective. As Laurence Helfer points out, the principle of “embeddedness” implies that ECtHR decisions should be integrated into national legal systems, not replacing national courts, but strengthening human rights mechanisms at the domestic level (Helfer L. R. International Court Authority, 2018).

It is worth pointing out Pilot Decisions as a specific tool for systemic transformation. The pilot decision procedure was introduced by the ECtHR to address systemic or structural problems at the national level (Keller, 2008, p. 60). The main objectives of this procedure are: to assist European states in resolving systemic problems; to enable faster redress for the persons concerned; and to assist the ECtHR in managing its workload more effectively (ECtHR Report on the Application of the Pilot Procedure, 2023).

A key feature of the pilot procedure is the possibility of suspending the consideration of such cases for a certain period, provided that the government promptly takes the necessary national measures to comply with the judgment (Keller, 2008, p. 103). However, the Court may resume the consideration of suspended cases when the interests of justice so require.

A striking example of the application of the pilot procedure in the environmental field was the recent case of *Cannavacciuolo and Others v. Italy*, where the ECtHR first applied the procedure in the context of large-scale environmental pollution in the Tierra del Fuego region (Pavoni, 2021, p. 94; Pavoni, 2023, p. 14, 15). The Court ordered Italy to develop a comprehensive strategy within two years to address the problem of illegal dumping of toxic waste.

It should be noted that the reform of the civil procedural legislation of Ukraine in 2017 was a direct result of the influence of the practice of the ECHR, in particular on ensuring the right to a fair trial (Article 6 of the Convention) (Civil Procedure Code of Ukraine, 2004). The new edition of the Civil Procedure Code of Ukraine introduced fundamentally new institutions (Scientific and Practical Commentary to the Civil Procedure Code of Ukraine, 2018).

The adversarial principle was reformatted to strengthen the active role of the parties in providing evidence while maintaining the auxiliary role of the court (Commentary on the Civil Procedure Code of Ukraine, 2018). This reflected European standards of fair trial.

The principle of reasonableness of time became one of the fundamental principles of civil trial (Court Practice on Reasonable Time Trials, 2020). This met the requirements of the ECHR for the consideration of cases within reasonable time, which were repeatedly violated in decisions against Ukraine.

Simplified proceedings were introduced to increase the efficiency of trial and reduce the burden on courts (Civil Procedure Code of Ukraine, 2023). This included the possibility of considering cases without summoning the parties and without holding court sessions in written proceedings.

Simplified judicial procedures, considered through the prism of the case-law of the European Court of Human Rights, become a tool for harmonizing national procedural models with the standards of access to justice and effective protection of rights in private law disputes. The Court consistently emphasizes that the procedural form cannot become a barrier to the exercise of the right to a fair trial, guaranteed by Article 6 of the Convention; accordingly, the institutions of simplified proceedings in cases of minor complexity or cost are legitimate, provided that the criterion of proportionality of procedural resources and ensuring consideration within a reasonable time are met. In this way, the guidelines developed by the Court legitimize simplified models, outlining their admissibility and limits in view of the need to preserve the fundamental procedural rights of the parties. At the same time, the implementation of

simplified mechanisms requires a delicate balance between procedural economy and the inherent guarantees of a fair trial. Even in summary procedures, equality of parties, adversarial nature and proper reasoning of decisions must be ensured; therefore, simplification of the stages of the proceedings is permissible only to the extent that it does not eliminate the real possibilities of the parties to protect their rights. Under such conditions, simplified proceedings function as a harmonization tool compatible with European standards, which increases the efficiency of judicial proceedings and at the same time contributes to the doctrinal evolution of private law in the direction of strengthening human rights protection mechanisms.

The constitutional reform of justice, introduced in Ukraine in 2016, was a turning point in bringing the Ukrainian judicial system into line with European standards. The reform was aimed at strengthening democracy and upholding the rule of law in Ukraine (Constitution of Ukraine, 1996). Key changes in the reform included: depriving the Verkhovna Rada of Ukraine of the right to appoint, hold to disciplinary responsibility and dismiss judges (Constitution of Ukraine, 1996); limiting the immunity of judges and applying a functional approach to ensuring judicial immunity; creating a new Supreme Court instead of four cassation courts; reforming judicial self-government bodies in accordance with European requirements (On the Judicial System and the Status of Judges: Law of Ukraine, 2016).

This reform had a direct impact on civil law, as it created institutional prerequisites for the effective application of ECHR standards by national courts when considering civil cases.

3. The role of the ECHR in the transformation of the doctrine of civil law

Traditionally, the civil law of continental Europe was based on the principle of the rule of law, where judicial precedent had only an auxiliary meaning. However, under the influence of the practice of the ECHR, the role of precedent in civil law has been significantly transformed.

The French researcher Jean Viljanen points out that the practice of the ECHR forms a "constant judicial practice" (*jurisprudence constante*), which is binding on national courts (Viljanen, 2019, p. 53-54). This leads to a gradual evolution of doctrinal approaches in civil law, where the decisions of the ECHR become a source of law along with national legislation.

The mechanism of influence of the case law of the ECHR: interpretative influence – the decisions of the ECHR affect the interpretation of national civil law norms; constitutive influence – the creation of new legal institutions under

the influence of the practice of the ECHR; corrective influence - changing the established approaches of national law in accordance with the standards of the ECHR.

In Ukraine, this process was formalized by the adoption of the Law of Ukraine "On the Execution of Decisions and the Application of the Practice of the European Court of Human Rights", according to which courts apply the Convention and the practice of the ECHR as a source of law in cases (On the Execution of Decisions and the Application of the Practice of the European Court of Human Rights: Law of Ukraine, 2018).

The ECtHR has repeatedly stressed in its decisions the need for a "fair balance" between the protection of private rights and public interests (Greer, 2006, p. 118). This approach has fundamentally changed the traditional understanding of the interaction of private and public law.

Key principles of the new approach:

Proportionality of interference – any restriction of private rights must be proportionate to the legitimate aim pursued (Greer, 2006, p. 122-124). The ECtHR has developed a detailed proportionality test, which includes an assessment of the necessity, adequacy and proportionality of the measures.

Procedural guarantees – even lawful interference with private rights must be accompanied by adequate procedural guarantees (Sever, 2020, p. 305). Tina Sever has shown in her research how the ECtHR has extended the concept of "civil rights" to administrative procedures affecting the private rights of citizens (Sever, 2021, p. 208).

Positive obligations of the state – the state must not only refrain from violating private rights, but also actively protect them. This has been particularly evident in environmental cases, in particular in the recent decision in the case of "Cannavacciuolo and Others v. Italy" (Cannavacciuolo and Others v. Italy, 2023).

Article 1 of Protocol No. 1 to the Convention guarantees the right to peaceful possession of possessions and has become one of the most influential provisions in the field of civil law (Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms of 20 March 1952). The ECtHR has developed a detailed doctrine on the right to property, which includes three separate rules (Ziemele, 2018, p. 124): the general principle of peaceful possession of property (first sentence of the first paragraph); the rule on deprivation of property (second sentence of the first paragraph); the rule on control of the use of property (second paragraph).

The concept of "property" in the case law of the ECtHR has an autonomous meaning and covers not only physical objects, but also a wide range of property rights (Mowbray, 2004, p. 54). The ECtHR includes in the category of "property": shares in companies; patents and other intellectual property; business reputation; legitimate expectations of material benefits; social benefits in certain cases.

This expanded interpretation has significantly influenced national doctrines of property, forcing states to reconsider traditional approaches to regulating property relations.

The significance of the case law of the ECtHR in the context of legal integration should be noted. The practice of the ECtHR plays a key role in the process of European legal integration, creating common standards of human rights protection for all 46 member states of the Council of Europe (Helfer, 2018). Laurence Helfer developed the concept of "embeddedness" to explain how ECtHR decisions are integrated into national legal systems (Helfer, 2018).

Mechanisms of legal integration through ECtHR practice:

Horizontal harmonisation – Member States borrow from each other best practices in implementing ECtHR decisions. This creates the effect of "legal diffusion", when successful reforms in one state spread to other jurisdictions.

Vertical integration – national courts directly apply the principles and standards developed by the ECtHR. This creates a single European area of justice, where citizens can count on the same standards of protection of rights regardless of their country of residence.

Cross-court dialogue – national courts increasingly refer to the practice of the ECHR in their decisions, and the ECHR, in turn, takes into account the development of national judicial practice (Gordeev, 2022, p. 226).

Thus, we note that the practice of the ECHR has become a powerful incentive for reforming the judicial systems of European states. The decisions of the ECHR have revealed systemic problems in many national judicial systems and have prompted comprehensive reforms.

The main areas of reform include:

- Independence of the judiciary – the ECtHR has repeatedly stressed the need to ensure the real independence of courts from the executive and legislative branches. This has led to reforms in many countries, including Ukraine, where the 2016 constitutional reform limited the influence of

political authorities on the appointment and dismissal of judges (On the Judiciary and the Status of Judges: Law of Ukraine, 2016).

- Efficiency of judicial proceedings – the ECtHR's requirements for the consideration of cases within reasonable time have encouraged states to modernize judicial procedures, implement electronic systems and simplified proceedings (ECtHR Case Law on Reasonable Time of Proceedings, 2020);
- Accessibility of justice – the ECtHR's case law has contributed to expanding access to legal aid, reducing court fees for low-income categories of the population, and introducing alternative dispute resolution methods.

4. Peculiarities of bringing national legislation into line with the requirements set out in the practice of the European Court of Human Rights

As M. Bossart notes, there is no universal model for implementing ECHR decisions – each state chooses its own path, taking into account its legal tradition (Bossart, 2017, p. 133). The fundamental difference lies between monistic and dualistic systems. In monistic systems (e.g., the Netherlands, France), international treaties automatically become part of national law after ratification. ECHR decisions can be directly applied by national courts without additional legislative acts. In dualistic systems (e.g., Germany, the United Kingdom before Brexit), international law requires a special transformation into national legislation. The implementation of ECHR decisions often requires the adoption of special laws or amendments to existing legislation.

Switzerland demonstrates an interesting example of gradual adaptation to the requirements of the ECHR (OECD. Anti-Bribery Convention, 2022). In 2000, Switzerland ratified the Convention on Human Rights and has been systematically working to bring its national legislation into line with the standards of the ECHR since then.

Key features of the Swiss approach: preventive control – checking draft laws for compliance with the Convention at the development stage; federal coordination – creating special bodies to coordinate the implementation of ECHR decisions at the federal and cantonal levels; judicial training – systematic training of judges in ECHR standards and their application in domestic practice.

According to the latest OECD report, Switzerland has fully implemented 11 recommendations of the Working Group on Anti-Corruption, partially

implemented 18 recommendations and has not implemented 17 recommendations (OECD Anti-Bribery Convention, 2022). This indicates a gradual but systematic approach to European integration.

Slovenia presents an interesting example of a small European state that is actively adapting its administrative and civil justice to the standards of the ECHR (Sever, 2021, p. 208-209). T. Sever has shown in her research how Slovenian courts apply an autonomous interpretation of the ECHR's "civil rights". The specifics of Slovenian practice include the extension of the guarantees of Article 6 of the ECHR to administrative procedures that affect the private rights of citizens (Sever, 2020, p. 311). This includes procedures for issuing permits, licensing, social security.

Influenced by the practice of the ECHR, Italy demonstrates a particularly interesting experience in the field of balancing environmental and property rights. The recent pilot decision in the case of "Cannavacciuolo and Others v. Italy" was the first case in which the ECHR applied the pilot procedure in an environmental case (Cannavacciuolo and Others v. Italy, 2023).

Key aspects of the Italian experience include the recognition of the right to life in an environmental context – the ECtHR for the first time recognized a violation of Article 2 of the Convention (right to life) in connection with large-scale environmental pollution (Pavoni, 2023, p. 10). This created a new precedent for European case law.

Positive obligations of the state to protect the population from environmental threats. The ECtHR recognized that the state must actively take measures to protect the life and health of citizens from industrial pollution. Pilot decision in the environmental sphere – Italy was given two years to develop a comprehensive strategy to address the problem of illegal dumping of toxic waste in the Tierra del Fuego region. As R. Pavoni notes, the practice of the ECtHR forms a new balance between economic interests and environmental safety (Pavoni, 2024, p. 1-29).

The American perspective on European integration is noteworthy, as L. R. Helfer has argued, for example, that embeddedness is a key principle of the European human rights system (Helfer, 2016, p. 372). This concept explains how the decisions of the ECtHR are integrated into national legal systems, without replacing national courts, but rather enhancing their capacity to protect human rights. Key elements of the embeddedness concept: Subsidiarity principle – the ECtHR intervenes only when national mechanisms for the protection of rights are ineffective (Helfer, 2018, p. 68). This creates incentives for states to develop

their own systems for the protection of human rights. Dialogue between courts - national courts and the ECtHR engage in a constant dialogue through mutual references in decisions (Madsen Christoffersen, 2011, p. 41). This creates a dynamic system of mutual influence and development of European case law. Institutional support – effective embeddedness requires not only legal but also institutional changes (Helfer, 2018, p. 74). This includes the creation of special bodies for the implementation of ECHR decisions, training of judges, and reform of procedures.

Scholars also point to a “backsliding” in human rights protection in Europe (Helfer, 2016, p. 376), analyzing whether the ECHR is weakening the standards of rights protection under pressure from member states. His empirical research has shown that such concerns are largely exaggerated, and the ECHR continues to effectively fulfill its role as a human rights defender.

5. Regarding the clarification of terminology

The use of the construction “case law of the European Court of Human Rights” in the national legislation of Ukraine has a clear normative basis and reflects current trends in the integration of European standards in the field of human rights protection. In particular, this construction is enshrined in key procedural codes – the Civil Procedure Code of Ukraine (Articles 10, 17, 263), the Commercial Procedure Code of Ukraine (Articles 2, 13, 236), the Code of Administrative Procedure of Ukraine (Articles 6, 9, 242), as well as in the Law of Ukraine “On the Execution of Decisions and Application of the Practice of the European Court of Human Rights” (Articles 17, 18). The legislator directly obliges courts to apply not only the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms, but also the practice of the ECHR as a source of law when deciding cases falling within the jurisdiction of this Convention. Such regulatory consolidation ensures not only the formal legitimacy of the use of the practice of the ECHR in the national legal order, but also creates the prerequisites for the unification of judicial practice in accordance with European standards. As a result, the practice of the ECHR becomes mandatory for consideration by courts of all instances, which contributes to improving the quality of judicial protection of human rights, the formation of unified approaches to the interpretation of legal norms and the harmonization of national legislation with pan-European trends.

The feasibility of terminological expansion: from “civil” to “private” law.

The replacement in scientific research and legislative practice of the term

“development of civil law” with the broader concept of “development of private law” is fully justified from a methodological and practical point of view. The traditional division into “civil law” limits the scope of analysis only to relations regulated by the Civil Code, while the construction of “private law” also covers economic, family, labor and other related areas, which are based on dispositivity, equality of parties and autonomy of will.

Such an expansion allows us to take into account the interdisciplinary nature of the influence of the practice of the ECHR, since the decisions of this Court have a systemic impact not only on civil law, but also on economic, family, corporate, labor and other private law relations. In particular, the practice of the ECHR on the right to property, protection of honor, dignity, business reputation, the right to a fair trial, and effective enforcement of decisions concern a wide range of private law issues that go beyond the boundaries of classical civil law. Therefore, the use of the term “development of private law” in scientific discourse and legislation not only expands the analytical framework of the study, but also corresponds to modern trends in European legal science, contributing to a deeper understanding of transformational processes in the field of protection of human rights and fundamental freedoms.

D. CONCLUSIONS

The conducted study allows us to formulate a number of fundamental *theoretical conclusions* regarding the influence of the practice of the ECHR on key institutions of civil law.

First, the practice of the ECtHR has radically transformed the traditional understanding of the sources of civil law in the continental legal tradition. The decisions of the ECtHR have acquired the status of a source of law, standing alongside national legislation and influencing the interpretation and application of civil law norms. This has created a new model of “multi-level” civil law, where national norms must be consistent with European standards of human rights protection.

Secondly, the concept of a “fair balance” between private and public interests, developed by the ECtHR, has become a new paradigm for regulating civil law relations. This concept has overcome the traditional dualism of private and public law, creating a single system for assessing the legality of state interference in private rights based on the criteria of proportionality, necessity and legitimacy of the goal.

Third, the autonomous interpretation of "civil rights and obligations" and "property" in the practice of the ECtHR has expanded the scope of fair trial guarantees far beyond traditional civil law disputes. This led to the convergence of procedural standards in various areas of law and the formation of uniform European standards of procedural law.

Fourthly, the principle of "embeddedness" of ECHR decisions in national legal systems created a new mechanism of European legal integration, which is based not on the unification of legislation, but on the harmonization of judicial practice and standards of rights protection. This allows preserving national legal identity while ensuring uniform European standards of human rights protection.

Fifthly, the use of the construction "jurisprudence of the European Court of Human Rights" in national legislation is normatively legitimate and ensures the integration of European standards into the sphere of protection of private rights. Replacing the term "development of civil law" with the broader concept of "development of private law" allows for a more complete reflection of the interdisciplinary impact of ECHR decisions on all areas of private law relations and contributes to the unification of human rights standards in the modern European legal space.

Based on the analysis, the following *practical recommendations* can be formulated for Ukraine and other Council of Europe member states. For legislative activities: preventive control of conventionality – introduction of mandatory examination of all draft laws for compliance with the Convention and the practice of the ECHR at the stage of their development; systematic codification – the need for systematic review of current legislation for its compliance with the established practice of the ECHR; special procedures – development of special procedures for prompt amendments to the legislation in the event of the adoption of ECHR decisions that reveal systemic problems.

For the judicial system: training of judges – systematic training of judges in ECHR standards and the methodology for their application in national practice; electronic systems – creation of electronic databases of ECHR practice with the ability to search for relevant decisions by subject matter of the case; motivation of decisions - increasing the requirements for motivation of court decisions with mandatory consideration of relevant ECHR practice. For executive authorities: coordination body - creation of a specialized body to coordinate the implementation of ECHR decisions at the national level; monitoring of implementation – introduction of systematic monitoring of the status of implementation of individual and general measures under the decisions of the ECHR; statistical reporting – keeping detailed statistics on the

implementation of the decisions of the ECHR with regular publication of reports. Thus, the impact of the practice of the ECHR on key institutions of civil law is a multidimensional and dynamic process that continues to shape the face of modern European law. Further research into this phenomenon is necessary to understand the trends in the development of law in a globalized world and to ensure effective protection of human rights at the national level.

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