

**КРИМІНАЛЬНИЙ ПРОЦЕС ТА КРИМІНАЛІСТИКА;
СУДОВА ЕКСПЕРТИЗА; ОПЕРАТИВНО-РОЗШУКОВА ДІЯЛЬНІСТЬ**

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**PROTECTION OF HUMAN RIGHTS IN CRIMINAL PROCEEDINGS
IN THE CURRENT CONTEXT: EUROPEAN EXPERIENCE**

**ЗАХИСТ ПРАВ ЛЮДИНИ У КРИМІНАЛЬНОМУ ПРОВАДЖЕННІ
В УМОВАХ СЬОГОДЕННЯ: ЄВРОПЕЙСЬКИЙ ДОСВІД**

У статті розглянуто сучасний механізм захисту прав людини у кримінальному провадженні. Відмічено, що забезпечення прав та свобод людини є ключовим аспектом будь-якої демократичної держави, і Україна не виняток. Беручи на себе зобов'язання гарантувати права та свободи, визначені в Конвенції про захист прав людини і основоположних свобод 1950 року, та дотримуючись практики Європейського суду з прав людини, Україна прагне досягти світових стандартів щодо захисту прав людини.

Суспільна свідомість про права та свободи зростає, що викликає більш вимогливий підхід до ролі держави у їхньому забезпеченні. Особливо важливо, що громадяни України стають більш обізнаними про свої права, а також здатними вимагати їх захисту від державних органів.

Звернено увагу на те, що Україна також застосовує як індивідуальні, так і загальні заходи для виконання рішень ЄСПЛ. Це означає, що, крім вжиття конкретних заходів для відшкодування конкретних порушень, держава також приймає загальні заходи для уникнення подібних порушень у майбутньому та забезпечення відповідності внутрішнього законодавства стандартам ЄСПЛ. Отже, виконання рішень ЄСПЛ в країнах Європи, включаючи Україну, базується на комплексному підході, що включає як індивідуальні, так і загальні заходи для забезпечення захисту прав людини та верховенства права.

Доведено, що заходи, спрямовані на усунення системних проблем та їх першопричин, визначені в рішеннях Європейського суду з прав людини (ЄСПЛ), є критичними для забезпечення ефективного захисту прав людини та виконання міжнародних зобов'язань країни-відповідача.

Ці заходи включають, зокрема: внесення змін до чинного законодавства та практики його застосування для вирішення проблем, визначених у рішенні ЄСПЛ; внесення змін до адміністративної практики з метою усунення порушень прав людини; забезпечення юридичної експертизи законопроектів з питань вивчення Конвенції та практики ЄСПЛ; проведення професійної підготовки з питань вивчення Конвенції та практики ЄСПЛ для різних категорій працівників, чия професійна діяльність пов'язана з правозастосуванням; інші заходи, визначені за умови нагляду з боку Комітету міністрів Ради Європи, які спрямовані на усунення системних недоліків та забезпечення відшкодування наслідків порушень прав людини.

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Ключові слова: кримінальне провадження, кримінальний процес, засади кримінального провадження, злочин, кримінальне правопорушення, Європейський суд з прав людини.

The article examines the modern mechanism of human rights protection in criminal proceedings. It is noted that ensuring human rights and freedoms is a key aspect of any democratic state, and Ukraine is no exception. By committing itself to guaranteeing the rights and freedoms set out in the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 and following the case law of the European Court of Human Rights, Ukraine is striving to achieve international standards of human rights protection.

Public awareness of rights and freedoms is growing, which leads to a more demanding approach to the role of the state in ensuring them. It is especially important that Ukrainian citizens are becoming more aware of their rights and are able to demand their protection from state authorities.

It is noted that Ukraine also applies both individual and general measures to implement the judgments of the ECtHR. This means that in addition to taking specific measures to redress specific violations, the state also takes general measures to avoid similar violations in the future and to ensure that domestic legislation complies with the ECHR standards. Thus, the implementation of the ECHR judgments in European countries, including Ukraine, is based on a comprehensive approach that includes both individual and general measures to ensure the protection of human rights and the rule of law.

It is proved that measures aimed at eliminating systemic problems and their root causes identified in the judgments of the European Court of Human Rights (ECHR) are critical for ensuring effective human rights protection and fulfilment of the respondent country's international obligations.

These measures include, in particular: amendments to the current legislation and its application practice to address the problems identified in the ECHR judgment; amendments to administrative practice to eliminate human rights violations; ensuring legal expertise of draft laws on the study of the Convention and ECHR case law; conducting professional training on the study of the Convention and ECHR case law for various categories of employees whose professional activities are related to law enforcement; other measures determined under the supervision of the Committee.

Key words: *criminal proceedings, criminal process, principles of criminal proceedings, crime, criminal offence, European Court of Human Rights.*

Problem statement. Ensuring human rights and freedoms is a key aspect of any democratic state, and Ukraine is no exception. By committing itself to guaranteeing the rights and freedoms set out in the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 and following the case law of the European Court of Human Rights, Ukraine is striving to achieve global standards of human rights protection.

Public awareness of rights and freedoms is growing, which leads to a more demanding approach to the role of the state in ensuring them. It is particularly important that Ukrainian citizens are becoming more aware of their rights and are able to demand their protection from state authorities.

The emphasis on the implementation of the Constitution of Ukraine, as well as relevant international standards on the rights and freedoms of citizens, reflects the growing attention to human rights issues in the country, especially under martial law. Ensuring the rights to privacy, private property, secrecy of correspondence and other rights are important aspects of any modern democratic society.

The Government of Ukraine has a great responsibility to ensure the effective realisation of these rights and freedoms, in particular by reforming the legal system, strengthening human rights mechanisms and promoting the development of a legal culture among citizens. Only through joint efforts of the government and the public can full protection of the rights and freedoms of every citizen of Ukraine be achieved [1, p. 197].

The state of the art of this issue. The problems of protection of individual rights in criminal proceedings have been analysed in the works of T.V. Varfolomeeva, E.I. Vyborno, Y.O. Gurdzhi, Z.V. Makarova, P.M. Malanchuk, M.A. Markush, A.V. Moldovan, V.O. Popelushka, A.M. Titov, G.I. Changuli, N.P. Cherniak, Y.P. Yanovych, O.G. Yanovska, I.V. Hloviuk, V.G. Goncharenko,

Y.M. Hroshevoi, O.P. Kuchynska, E.I. Makarenko, A.M. Melnyk, V.M. Tertyshnyk, O.I. Tyshchenko, V.M. Trofymenko, A.K. Chernova, etc.

The purpose of the article is to analyse and study the legislative sources and the practice of their application, in particular, the European one, with regard to the protection of human rights in criminal proceedings.

The main material is presented. Adaptation (unification, approximation, harmonisation, approximation, transformation) of national legislation to Ukraine's international obligations and universally recognised human rights standards is a necessary step to maintain the country's compliance with international human rights norms and standards, and to ensure its integration into the European community.

This process includes:

1) incorporating international human rights standards and principles into national legislation. This can be done by adopting new laws or amending existing legislation to ensure compliance with international standards.

2) improving the quality of law enforcement practice based on international human rights standards. This means, in particular, increasing the competence of law enforcement agencies and courts in applying international standards.

3) ensuring an effective mechanism for monitoring compliance with international human rights obligations. This includes the creation of independent controlling bodies that have the ability to intervene in situations where human rights are violated.

4) systematic monitoring and evaluation of the impact of the changes made on the level of human rights protection in the country. This allows for timely identification of problems and development of strategies to address them.

In general, the adaptation of national legislation to international human rights standards is a process that contributes to the improvement of legal protection of citizens and the strengthening of the rule of law [2, p. 42-43].

Therefore, given the need to bring Ukrainian law in line with the norms and principles of international law, it is important to study European legal experience and European legal doctrine [3].

The case law of the European Court of Human Rights (ECHR) plays a significant role in the process of adapting domestic legislation, including criminal procedure, to international standards.

In this regard, it is worth noting that Article 9 of the Criminal Procedure Code of Ukraine (CPC of Ukraine) establishes the principle of acceptance of international treaties ratified by the Verkhovna Rada of Ukraine as having priority over national legislation. This means that if the provisions of the CPC of Ukraine conflict with an international treaty to which Ukraine has given its consent, the provisions of the international treaty shall prevail.

In addition, according to Article 9(5) of the CPC of Ukraine, the criminal procedure legislation of Ukraine is applied taking into account the case law of the European Court of Human Rights. This means that the judgments and recommendations of the ECHR may be taken into account in the development and application of Ukrainian legislation in the field of criminal procedure.

According to scholars, this approach helps to ensure that national legislation complies with international human rights standards and strengthens the legal protection of citizens. The implementation of the ECHR case law in national legislation helps to ensure the observance of human rights during criminal proceedings and court hearings [4; 5].

The European Court of Human Rights (ECHR) is an important international judicial body that operates to protect human rights and freedoms. It considers individual or collective complaints from citizens of states parties to the Convention for the Protection of Human Rights and Fundamental Freedoms. The ECtHR's judgments are binding not only on the parties to a particular case, but also on all states that have ratified the Convention. This means that all states parties are obliged to comply with the judgments of the ECtHR and take the necessary measures to implement them. ECHR judgments also have a precedential character, which means that they can become the basis for similar decisions in future in similar cases. This helps to ensure stability and progress in the protection of human rights in Europe and beyond [6, p. 57].

Ukraine, unfortunately, is one of the three leading applicants to the court, which indicates a systematic violation of the Convention. In this regard, as D.O. Lukianenko and I.M. Bilodid rightly point out, a thorough and complete study of the ECHR judgments is a necessary, even mandatory part of the correct application of national legislation and ensuring strict implementation of the Convention. At

the same time, the prosecution should be aware of the ECHR case law to prevent violations of the rights of participants in the process and to defend its position [7, p. 117].

At the same time, the statement of Ull Kvarnstrom on the application of the ECHR practice is also worthy of attention, in which he emphasises that the issue of using the ECHR practice is complex and difficult.

Ulla Kvarnstrom's statement emphasises the complexity and complexity of the issue of applying ECHR case law in the national legal system. Raising legal awareness among human rights defenders and other participants in the justice system is a key element of successful implementation of this practice.

Sweden's experience confirms that the defence is usually active in using the ECHR case law. This stimulates the development of expertise among lawyers and human rights defenders in their work. It is important not only to have knowledge of international norms, but also to have the skills to apply them effectively in specific cases.

Sweden has developed guidelines for prosecutors on how to fulfil their obligations under the Convention on Human Rights. These guidelines are practical and provide prosecutors with specific advice on their activities, including communication with the media. This helps to avoid situations where the actions of prosecutors can be interpreted as human rights violations or pressure on the accused [8].

Thus, the use of the ECHR case law in the national legal system requires not only knowledge of the theoretical aspects of international law, but also practical skills and understanding of how to apply these principles in specific situations.

It means that appropriate recommendations should be developed on the use of the ECHR, taking into account the specifics of the activities of defence counsels, law enforcement agencies and the court. At the same time, it is worth borrowing the experience of foreign countries in effectively ensuring the application of ECHR case law in the administration of justice.

The Federal Republic of Germany seeks to implement not only the judgments of the European Court of Human Rights (ECHR) concerning it, but also to integrate judgments passed in other countries into its own legal system. Procedures for the implementation of ECHR judgments in Germany are formalised in legislation and regulations that define the competence and procedure of various authorities.

In Germany, general measures for the implementation of ECHR judgments include:

- 1) interpreting ECHR judgments and applying them in the context of national laws, taking into account their content and meaning.
- 2) drafting legislation and administrative measures necessary for the implementation of ECHR judgments. This may include amending existing legislation or adopting new laws.
- 3) Adoption of relevant legislation that ensures the implementation of ECHR judgments and takes into account their requirements.

This approach ensures the effective implementation of ECHR judgments and takes into account their impact on the German national legal system. This helps to ensure the protection of human rights and strengthen the rule of law in the country. [6, c. 60-61].

In the Czech Republic, the implementation of general measures for the implementation of judgments of the European Court of Human Rights (ECHR) is carried out by various authorities. The representative of the state at the ECtHR is responsible for developing recommendations on the necessary general measures. These recommendations are usually developed with the participation of various authorities and civil society organisations, such as trade unions, lawyers' associations, etc.

Additionally, the Czech Republic has established a mechanism aimed at bringing laws and law enforcement practice in the country in line with ECHR standards. This mechanism may include drafting and implementing the necessary laws and regulations, reviewing the practice of judicial application and developing appropriate recommendations to improve the human rights situation in the country.

These measures are aimed at ensuring that Czech laws and law enforcement practice comply with international human rights standards established by the European Court of Human Rights and at strengthening the protection of human rights in the country.

In European countries, the implementation of ECHR judgments is usually carried out through individual and general measures. Among the general measures that have become widespread are the adoption of relevant laws in accordance with the ECHR case law, interpretation of ECHR judgments and development of relevant recommendations for the judiciary, law enforcement agencies and human rights organisations. These measures are aimed at systematic and effective implementation of the ECHR judgments and ensuring compliance of domestic legislation with international human rights standards [9, p. 7].

Ukraine also applies both individual and general measures to implement the ECHR judgments. This means that in addition to taking specific measures to redress specific violations, the state also takes

general measures to avoid similar violations in the future and ensure that domestic legislation complies with ECHR standards.

Thus, the implementation of ECHR judgments in European countries, including Ukraine, is based on a comprehensive approach that includes both individual and general measures to ensure the protection of human rights and the rule of law.

Measures aimed at eliminating systemic problems and their root causes, as identified in the judgments of the European Court of Human Rights (ECHR), are critical to ensure effective human rights protection and fulfilment of the respondent country's international obligations.

These measures include, in particular:

1) amending the current legislation and its application to address the issues identified in the ECHR judgment.

2) amending administrative practice to eliminate human rights violations.

3) providing legal expertise of draft laws on the Convention and ECHR case law.

4) conducting professional training on the Convention and ECHR case law for various categories of employees whose professional activities are related to law enforcement.

5) other measures, determined under the supervision of the Committee of Ministers of the Council of Europe, aimed at eliminating systemic shortcomings and ensuring redress for human rights violations [10].

When it comes to the application of the ECHR case-law in domestic criminal proceedings, this activity should be carried out in a comprehensive manner, covering the following main areas

1) legal education of the population, which includes explaining to citizens and other residents of Ukraine their rights, mechanisms of protection, including through applying to the ECHR (holding legal events, informative programmes on radio, television, online resources, dissemination of posts via social networks, etc.)

2) raising the standards and quality of legal training for judges, law enforcement officers and other legal professionals, during which they study the ECHR case law and how to apply it, and acquire skills to apply it in their professional activities to prevent violations of human rights and freedoms.

3) official interpretation of ECHR judgments, provisions of the Convention and criminal procedural legislation in order to develop a unified law enforcement practice.

4) ensuring the examination of draft legal acts for their compliance with the Convention and the ECHR case-law in order to bring national legislation, including criminal procedure, in line with international and European human rights standards.

5) development of methodological recommendations on the application of ECHR case law in the activities of courts, law enforcement agencies, and legal aid providers.

6) taking into account the ECHR practice when developing certain forensic techniques, as well as recommendations on the tactics of conducting and technical and forensic support of certain investigative (detective), covert investigative (detective) and other procedural actions.

The application of the ECHR case-law in domestic criminal proceedings today can be achieved mainly through the implementation of ECHR judgments in the application of individual measures, as well as through certain amendments to the national criminal procedure legislation and scientific events dedicated to the application of international and European human rights standards, including the ECHR case-law. Despite certain steps towards bringing domestic criminal proceedings in line with international human rights standards, not all of the above areas are actually implemented in full. This leads to frequent violations of human rights and fundamental freedoms at all stages of criminal proceedings, including the detection of criminal offences, their pre-trial investigation and trial, as well as the enforcement of court decisions.

Adopted in 2012, the CPC of Ukraine caused a change in the model of criminal proceedings, moving from the idea of «crime control» to the development of a model of criminal justice centred on human rights principles. The amendments to the CPC take into account the rule of law and are interpreted through the prism of the ECHR case law. These amendments are aimed at ensuring compliance with the principle of presumption of innocence, competitiveness and equality of parties in criminal proceedings. Thus, Art. 2 and Art. 8 of the CPC of Ukraine define the basis of the proceedings with due regard to international standards, which allows to direct criminal proceedings to protect human rights and observe the principles of justice [11, p. 146-147].

Accordingly, the introduction of mechanisms and legislative changes to ensure these rights are necessary steps to improve the level of human rights protection in the country:

1) the formation of effective mechanisms for the protection of human rights and freedoms includes the development of the justice system, support for civic institutions that help citizens solve

their legal problems, and ensuring the accessibility and transparency of the legal system;

2) improving legislation, in particular in the field of human rights, is a key element of this strategy. This includes not only the adoption of new laws, but also the review and improvement of existing regulations to ensure their compliance with international human rights standards and best practices;

3) strengthening the principles of civil society and the legal system contributes to building a democratic country where the rights and freedoms of every citizen are the key to the development of society and the prosperity of the state;

4) raising the level of legal culture and legal awareness of citizens also plays an important role in ensuring the protection of human rights. This means conducting information campaigns, educational events, including the subject of jurisprudence in the curriculum and ensuring access to legal information for all segments of society.

All of these tasks and strategies will help Ukraine to ensure that human rights and freedoms are adequately protected, which is essential for its further development as a democratic and rule-of-law country.

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