

## **Optimisation of Ukrainian Legislation in Line with European Human Rights Standards**

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### **Abstract**

The study delves into the optimisation of Ukrainian legislation in line with European human rights standards to shed light on the best strategies for achieving this. Visual and graphical methods were employed in the study, and the number of applications to the European Court of Human Rights (the ECtHR) by EU candidate countries was compared. The result of the study is the identification of potential areas of optimisation of Ukrainian legislation in line with European human rights standards. By understanding these areas, we can work towards a more just and equitable legal system. The number of applications to the ECtHR for the protection of violated rights received from citizens of Ukraine, Georgia and Moldova in 2021, 2022, and 2023 is determined. The article analyses the status of bringing Ukrainian legislation into line with European human rights standards through the prism of applications to protect violated rights.

**Keywords:** optimisation, implementation of standards, compliance with legislation, European human rights standards, rights violations, state.

### **Introduction**

Ukraine's profound aspirations to become a member of the European Union (the EU) and the acquisition of the status of the EU candidate country are catalysts for several transformative processes in the country. The EU's requirement for a candidate country is to bring its national legislation into line with European human rights standards. This is not just a mere formality but a crucial step towards aligning with the values and principles of the EU. However,

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the state of their implementation in national legislation remains a poorly understood issue. Optimisation of national legislation in line with international human rights standards is an essential component of Ukraine's European integration process. In the European legal space, legal norms are binding on all EU member states. Such norms are permanent and cannot be changed or adapted to the realities of a particular state (Hooghe & Marks, 2019). The duration of the implementation of European standards in the country's legislation is individualised and depends on the level of the state's development, motivation and availability of qualified personnel (Manfriani et al., 2021). At the same time, the state's compliance with national legislation and European human rights standards affects the formation of the state's image at the international level.

It is essential to study and assess compliance with European human rights standards through the prism of applications to protect violated rights. When selecting countries for analysis, we considered whether the country is a member of the EU. After all, bringing national legislation into line with European human rights standards is a condition for a candidate country to join the EU. Georgia and Moldova were chosen because of their relative equality with Ukraine. In addition, Georgia and Moldova, like Ukraine, gained independence in 1991 and thus had similar starting points for their European integration.

### **Literature Review**

With the adoption of the Law of Ukraine "On the Principles of Domestic and Foreign Policy" in 2011 (Verkhovna Rada of Ukraine, 2011), Ukraine's integration into the European space to further acquire the status of a member of the EU was enshrined. Subsequently, Ukraine undertook the adaptation of its legislation to EU legislation, particularly in its compliance with European human rights standards.

This gave rise to many scientific studies on the EU legislation. Such research focused on analysing the responsibilities of legislative drafters and assessing the compliance of a legislative act with Ukraine's international legal obligations in European integration. Many scientific works aim to critically analyse European human rights standards in various spheres of public life.

Some studies are devoted to developing European human rights standards on freedom of expression and language and their application in Poland and Slovenia (Kapelanska-Pregowska & Pucelj, 2023). Others studied the application of European human rights standards in the sports sector. They investigated the issues of raising human rights standards by sports associations and the provisions for effectively combating discriminatory and other harmful or unfair sports practices (González, 2022).

Significant results were achieved in studying the correlation between European human rights standards and the right to a fair trial, presumption of innocence, access to legal representation, impartiality of the judiciary and protection of vulnerable groups (Lubis, 2023).

The study of compliance with European human rights standards and the use of artificial intelligence is worthy of attention. Despite its advantages, artificial intelligence may cause discrimination, violation of privacy, loss of jobs, and negative impact on access to public services (Lottie, 2022);

Several studies have focused on the following issues:

- compliance with European human rights standards in higher education, in the context of mass commercialising higher education. Uncritical use of digital technologies and generally limited state involvement in this type of education, which is a public good (Đukanović, 2021);

- compliance with European human rights standards and the obligation to vaccinate against COVID-19 for specific categories of persons, including prisoners, detainees and employees of penitentiary institutions (Marselinus & Budi, 2021);

- correlation of European human rights standards and international armed conflicts. Currently, armed conflicts are a source of the grim reality that primarily affects the population living in conflict zones, as the rights of these people are often violated (Mshvenieradze, 2022);

- the state of compliance with European human rights standards as a basis for shaping the state's image in the international arena (Mirzalieva, 2021).

Several studies are devoted to analysing the activities of the European Court of Human Rights (from now on - the ECtHR), mainly using its judgments as an informal source of Ukrainian law. In recent years, Ukraine has increasingly turned to the ECtHR and used its case law in its internal affairs in connection with integration and globalisation, as adequate human rights protection is one of the main features of the rule of law (Bicknell, 2019). At the same time, the way to combat rights and freedoms violations is to seek protection in court and disseminate the facts and reasons for such violations in the media. Here, the media is a tool for preserving the integrity of the state, promoting unity of opinion among citizens, and raising the level of patriotism (Chekaliuk, 2018).

The European Convention on Human Rights has become a research area of interest for many scholars. This document is an international agreement through which the Council of Europe member states ensure certain human rights and fundamental freedoms to everyone under their jurisdiction (Leloup, 2020). This document provides the content and scope of human rights and a natural and

effective mechanism for holding the state accountable for human rights violations while defining the range of subjects that can apply to the ECtHR.

Adapting Ukrainian legislation to the EU *acquis* is a long process, and the number of newly developed legal acts is considerable. Therefore, optimising Ukrainian legislation in the context of compliance with European human rights standards requires additional research.

### **Research Objectives**

The study aims to analyse the state of compliance with European human rights standards and to identify the most successful ways to optimise national legislation to meet these standards.

1. To identify specific ways to bring Ukrainian legislation in line with European human rights standards;
2. To compare the ways to bring Ukrainian legislation in line with European human rights standards, highlighting common and distinctive features;
3. To analyse the status of bringing Ukrainian legislation in line with European human rights standards through the prism of applications to protect violated rights.

### **Methods**

The research procedure involves several stages, namely: (1) analysis of scientific research on ways to bring Ukrainian legislation in line with European human rights standards; (2) identification of specific ways; (3) comparative analysis of the ways to bring Ukrainian legislation in line with European human rights standards, highlighting common and distinctive features; (4) analysis of the state of bringing Ukrainian legislation in line with European human rights standards through the prism of applications for protection of violated rights.

The consequence of the inadequate compliance of Ukrainian legislation with European human rights standards is an application to the ECtHR to protect violated rights. At the same time, bringing national legislation into line with European human rights standards is a condition for a candidate country to join the EU. With this in mind, two more EU candidate countries were selected: Georgia and Moldova. Quantitative data were used as indicators to demonstrate the state of alignment of Ukrainian legislation with European human rights standards. Such data is the number of applications to the ECtHR to protect violated rights received from citizens of Ukraine, Georgia and Moldova in 2021, 2022, and 2023.

The results of these studies were aimed at assessing the state of compliance of the national legislation of the selected countries with European human rights standards. After all, if the number of appeals decreases, the number of grounds for appeal also decreases. The research methodology included

graphical comparison methods, which made it possible to display the number of applications to the ECtHR received from citizens of Ukraine, Georgia and Moldova in 2021, 2022, and 2023 as a percentage. Analysis of this situation is a prerequisite for further optimising national legislation and identifying priority areas of law.

When selecting the countries for analysis, we considered whether the country is a member of the European Union, as the alignment of national legislation with European human rights standards is a condition for a candidate country to join the EU. Georgia and Moldova were selected because of their relative equality with Ukraine. In addition, Georgia and Moldova, like Ukraine, gained independence in 1991 and thus had similar starting points for their European integration.

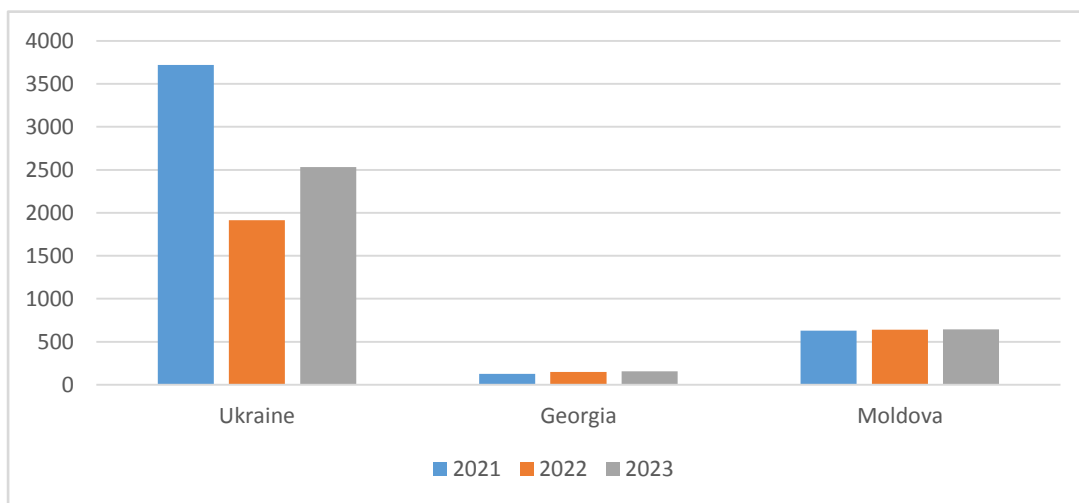
Based on the procedure and methodology of the study, a comparative analysis of ways to bring Ukrainian legislation into line with European human rights standards was carried out. These methods include adaptation, implementation, approximation, and harmonisation. In carrying out this study, several empirical methods were used, in particular, the visual and graphical method, which resulted in the creation of a graph - the number of applications to the ECtHR received from citizens of Ukraine, Georgia and Serbia in 2021, 2022, 2023 in percentage terms. The applied method of scientific observation made it possible to clearly define the aim and methodology and develop a research plan. Among other things, the methods of processing, comprehension and interpretation of the data obtained provided an opportunity for the theoretical definition of concepts in the topic under study; the application of the dialectical method contributed to the achievement of the research goal by analysing controversial issues; the formal logical method provided a qualitative analysis of the optimisation of Ukrainian legislation in line with European human rights standards.

## **Results**

After conducting analytical research, we will obtain relevant quantitative indicators demonstrating the state of alignment of Ukrainian legislation with European human rights standards. The indicators are the number of applications to the ECtHR for the protection of violated rights received from citizens of Ukraine, Georgia and Moldova in 2021 (European Court of Human Rights, 2021), 2022 (European Court of Human Rights, 2022), 2023 (European Court of Human Rights, 2023).

Based on the results (Figure 1), it should be noted that the number of applications in the analysed years was approximately the same in Georgia and

Moldova. At the same time, in Ukraine, the number of applications decreased in 2022 due to the war. Although the number of applications against Ukraine to the ECtHR is large, most are similar in content. In particular, the applications related to violations by Ukraine of the Convention for the Protection of Human Rights and Fundamental Freedoms in the areas of non-enforcement or delayed enforcement of national court decisions, violation of reasonable time limits and duration of pre-trial investigation in criminal cases; violation of reasonable time limits and duration of court proceedings in civil, criminal, commercial and administrative cases; lack of proper enforcement of the right to adequate judicial protection, inadequate conditions of detention and treatment of persons in custody.



**Figure 1.** Indicators of the number of applications to the ECtHR received from citizens of Ukraine, Georgia and Moldova in 2021, 2022, and 2023

The growth in the number of Ukrainians' applications to the ECtHR is due to the dissemination of information about the activities of the ECtHR among Ukrainian citizens, intensification of the ECtHR's work on applications concerning Ukraine, inconsistency of specific provisions of Ukrainian legislation with the Convention for the Protection of Human Rights and Fundamental Freedoms; the impossibility of enforcement of court decisions; particular problems of law enforcement practice. At the same time, the results of the ECtHR's consideration of court cases significantly impact the optimisation of national legislation in line with international human rights standards. The ECtHR judgments are not a source of law in themselves. However, they are inextricably linked to the provisions and specify the Convention for the Protection of Human Rights and Fundamental Freedoms application. The emergence of new, exemplary

judgments forms new precedents, filling the gaps in national legislation in compliance with the European human rights standard.

Using the comparative analysis method, let us characterise the areas of optimisation of national legislation with European human rights standards, namely adaptation, implementation, approximation, and harmonisation, and identify standard and distinctive features of such areas.

**Table 1.** Areas of optimisation of national legislation in line with European human rights standards

<b>The area of optimisation</b>	<b>Content of the area</b>
Adaptation	Adapting existing domestic norms to new international obligations of the state without making any changes to its legislation is based on the principles of systemic-functional and comparative legal cognition of state legal phenomena and the formation of an appropriate system of legislation.
Implementation	A state's purposeful organisational and legal activity, carried out individually, collectively, or within an international organisation, aims to timely, comprehensively, and fully implement obligations assumed by international law.
Approximation	The process of bringing a national legal system closer to the laws of international institutions or other countries through eliminating or transforming differences in national legislation.
Harmonisation	Replacement of various national policies with a standard Union policy in the relevant area; substantive approximation of national legal prescriptions to the EU standards by eliminating differences in national legislation.

Several areas of national legislation optimisation can be identified based on the study's results. These areas are targeted activities and long-term processes with both general and specific natures.

Optimisation of national legislation in line with international human rights standards is an essential component of Ukraine's European integration process. In the European legal space, legal norms are binding on all EU member states. Such norms are stable and cannot be changed or adapted to the realities of a particular state. The remarks made by the European Commission to Ukraine as a candidate for membership in the EU were mainly related to the approximation of national legislation to EU law. Such areas as occupational health and safety, labour inspection system, gender equality, social protection, informal employment, and others require optimisation of national legislation in line with international human rights standards.

The ratification of the fundamental conventions of the International Labour Organization will be a facilitating factor in creating optimal models for improving working conditions and establishing minimum social standards. There is a need to develop and implement specific control and supervision mechanisms to ensure compliance with the optimised implementation of European human rights standards in national legislation. Such actions will prevent individual actors from abusing the duty of optimisation in general and specific areas in particular.

Additional research could include an analysis of the actual capacities of each entity obliged to implement European human rights standards into national legislation and use such areas of optimisation as adaptation, implementation, approximation and harmonisation. Such entities carry out specific activities, which include researching the EU regulatory framework and sectoral legislation, their comparative assessment, and formulating conclusions and proposals for the stages of their adoption through rulemaking. It is worth studying the use of these areas of optimisation by a particular entity that must implement European human rights standards into national legislation.

### **Discussion**

The research procedure involved a comparative analysis of ways to align Ukrainian legislation with European human rights standards, identifying common and distinctive features. The study's results confirm the existing data, which are widely discussed in the scientific literature, particularly regarding the need to align national legislation with European human rights standards.

Many scholars state that ensuring the compliance of national legislation with European human rights standards impacts the formation of a modern legal culture (Shevchuk et al., 2023). Researchers (Shannon et al., 2020) agree that ensuring the coherence and consistency of national legislation with European legislation is essential for successfully managing the present and future. According to scholars (Yusoff, 2021), global development is affected by compliance with European human rights standards.

An essential step in ensuring the compliance of national legislation with European human rights standards is the legal expertise of regulatory legal acts. An integral part of such an examination is to check the legal act for compliance with the *acquis communautaire* - EU norms (Komarov & Tsvina, 2021). It is necessary to introduce a systematic approach to ensuring human rights and freedoms to the actions of government and local self-government bodies, civil society institutions, and other actors. Applying this approach will eliminate systemic shortcomings and optimise legislation compliant with European standards (Lavery & Schmid, 2021). Ensuring human rights and freedoms is a



determining factor in formulating and implementing public policy and a driving force behind Ukraine's accession to the EU (Kwilinski et al., 2022). The scholarly position is quite controversial: by requiring future member states to meet the accession criteria, the EU allows them to move along the integration path with only partial compliance, weakening its ability to initiate significant reforms (Dudley, 2019).

Other scholars take the opposite view and claim that successful legislation optimisation is not determined by the compatibility of national and European procedures and practices of implementing standards (Valliřová & Dvořková, 2018).

Applying to the ECtHR for the protection of violated rights is an essential and effective way to speed up the process of ensuring compliance of national legislation with European human rights standards. According to Bicknell (2019), the ECtHR judgments should encourage states to improve their national mechanisms for protecting human rights and fundamental freedoms. The ECtHR case law has already become an element of the national legal system, serving as a basis for reducing the gaps in legislation and a high-quality precedent (Maher, 2021). At the same time, the implementation of ECtHR judgments is directly related to several measures, including economic ones, based on strict compliance with the requirements of ratified international instruments (Duić & Jambrešić, 2022).

Karvatska (2019) states that it is challenging to implement the ECtHR case law in Ukrainian courts. However, this points to the need to develop separate conceptual approaches, methods, and recommendations to ensure European standards in Ukrainian courts. At the same time, the emphasis should be on adequacy and a unified approach to applying the ECtHR case law in the administration of justice.

Giannopoulos (2019) thinks the interaction between national courts and the ECtHR is not always harmonious. At the same time, the author's position that national courts act as puppets and cannot go beyond European standards and international acts is controversial.

Researchers offer a new perspective on diagnosing the European human rights crisis (Cali, 2021), particularly by focusing on national audiences' diversification of attitudes towards the ECtHR. At the same time, the author's position that the ECtHR cannot be characterised as a body that provides general support for human rights in Europe needs to be clarified.

Additional research is required to introduce effective mechanisms for ensuring and protecting Ukraine's critical human rights and freedoms. It would be

advisable to consider implementing European law principles and European identity in Ukraine.

### **Recommendations**

- to study the experience of countries that effectively implement effective mechanisms for the protection of human and citizen rights and freedoms;
- select for analysis specific categories of ECHR cases in terms of violated rights;
- apply a comprehensive approach to the study of issues related to the optimisation of national legislation.

### **Conclusions**

Through a multidimensional analysis of the complex process of bringing Ukrainian legislation into line with European human rights standards, the author demonstrates the multifaceted nature of these relations. In particular, the study identifies the areas of optimisation of national legislation, namely, adaptation, implementation, approximation, and harmonisation, and examines such regions' standard and distinctive features. It is established that these areas are targeted activities and long-term processes, have both general and specific natures, and vary in scale and scope.

The study examines the state of compliance with European human rights standards through the prism of applications to protect violated rights, choosing Georgia and Moldova for comparison.

Although the number of applications against Ukraine to the ECtHR is large, most are similar in nature and content. In particular, the applications relate to Ukraine's violation of the Convention for the Protection of Human Rights and Fundamental Freedoms in specific areas.

A direction for further research could be:

- analysis of the actual capacities of each entity that is obliged to implement European human rights standards into national legislation to use the mentioned areas of optimisation;
- analysis of the use of the optimisation areas by a specific entity that is obliged to implement European human rights standards into national legislation;
- the introduction of effective mechanisms to ensure and protect critical human rights and freedoms in Ukraine;
- problems of implementing European principles of law and European identity in Ukraine.

In further research, applying a comprehensive approach to studying the optimisation of national legislation would be advisable. This is due to the large

number of actors involved in this process, which is not adequately qualified, time-consuming, and has other problems and obstacles.

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