

Effectiveness of European Human Rights Protection Mechanisms in the Context of Military Operations

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Abstract

It is important to have effective protection mechanisms that ensure that human rights are not violated in armed conflict. The aim of the study is to analyse the role and effectiveness of protective mechanisms used by European bodies and institutions to ensure human rights during military operations. The research employed formal logical, dialectical, logical semantic methods, as well as the method of comparative law. The study results show that the provisions of the Convention and international humanitarian law complement each other, providing comprehensive protection of persons during conflicts, not competing. The academic novelty is a thorough analysis of the relationship between the provisions of the Convention and international humanitarian law with an emphasis on the fundamental right to life in the context of military operations, using a historical analysis of the decisions of the ECHR in armed conflict.

Keywords: human rights, armed conflict, Convention, European institutions, military operations.

Introduction

The ongoing military operations create an extremely difficult environment for the protection of human rights. Violations of human rights, including the right to life, become particularly relevant and urgent in the context of conflicts, where violence and violations of international humanitarian law occur daily. In this context, the European Court of Human Rights and other European mechanisms for protecting human rights play an important role in ensuring justice and protecting the rights of persons facing armed conflicts. Grignon and Roos (2020) noted that

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challenges arising from conflicts make it crucial to analyse existing literature on this subject thoroughly.

Levytskyi (2023) suggests it's important to study how the Convention and international humanitarian law relate. This balance ensures human rights are protected during international armed conflicts without overly interfering with humanitarian law norms. In his writings, Steenberghe (2022) notes that the regime of international humanitarian law should prevail based on the *lex specialis*, which acts as a replacement tool rather than a simple interpretation mechanism.

In this study, we deepened our understanding of the role and effectiveness of the ECHR and other European mechanisms in ensuring the protection of human rights, including the right to life, in military operations.

Literature review

The topic of protecting human rights during military operations is becoming increasingly important and complex in Europe. This section aims to review literature to understand better how European human rights protection works during military operations. For example, Wallace (2024) examined how the Convention applies to military actions involving a state's armed forces. Park's (2018) study "The Right to Life in Armed Conflict" is noteworthy when examining how the right to life is protected during military operations. Park discusses the basics of international humanitarian law and the ECHR's rules regarding the right to life as outlined in Article 2 of the Convention.

Studying how human rights are protected during military operations also involves examining how the ECHR handles discrimination claims linked to armed conflict. Klocker and Casalin (2023) explore this in their research, focusing on non-discrimination norms and urging clear interpretations of Article 14 in such contexts. Additionally, it's important to consider the rights of displaced people during military operations. Tzevelekos (2018) investigates property and housing rights restitution if violated by forced displacement within the ECHR framework.

Grignon and Roos (2020) looked into how the ECHR applies during armed conflicts outside Council of Europe member territories. They mentioned the case *Hasan v. the United Kingdom*, where the Court dealt with facts about armed conflict for the first time. The Court decided that the ECHR might be overridden by international humanitarian law or interpreted alongside it. Wallace (2024) delved into recent ECHR rulings, noting they've made state obligations complex and uncertain. This includes addressing who is responsible for actions by non-state actors. We also turned to the work of Gallen (2019), who analyses the issue of transitional justice in the context of the norms of the ECHR. The author clarifies

the potential opportunities and difficulties associated with applying the Convention as an indispensable component of transitional justice.

As one of the elements of human rights protection during military operations is the actions of the European Union, one should turn to the studies by the researchers who have dealt with such issues. In particular, Zajączkowski (2021) focuses on protecting fundamental human rights provided for by international acts in international humanitarian law, international human rights law, and the ECHR.

The domestic researcher Mykhailichenko et al. (2022) made a significant contribution to the research of the selected topic, analysing the mechanisms of protection of the rights of citizens of Ukraine, as well as the violation of rights which arises in connection with the armed conflict between the Russian Federation and Ukraine, which has been ongoing since 2014.

Aim of research

The aim of the research is to study and analyse various aspects of human rights protection in the context of military conflicts. The aim involves the fulfillment of the following research objectives:

1. Analyse the role and activities of the ECHR in military conflicts, particularly the Court's decisions on human rights violations in the context of military operations and their impact on the development of international law.
2. Assess the effectiveness of protective mechanisms in the context of military operations, including violations of human rights, determine their effectiveness, and identify possible shortcomings.
3. Study the right to life in the context of war and its protection in a military conflict.
4. Review practical examples and cases, including the study of real situations in which human rights were violated in the context of military conflict, to understand specific challenges and opportunities for protecting rights.

Methodology

The theoretical and methodological framework of the research is a system of general scientific and special legal methods designed to obtain objective results. The dialectical method became the basis for revealing the unity and controversy of the approaches of norms of international humanitarian law, international human rights law and international justice from the perspective of ECHR decisions in the context of protection of human rights and freedoms in the context of military operations.

The doctrinal approach was used to analyse the normative component of the European mechanisms for protecting human rights in armed conflicts. In particular, we analysed the provisions of such international legal acts as the Convention for the Protection of Human Rights and Fundamental Freedoms with the relevant protocols, the European Social Charter, the Geneva Conventions and their Protocols, as well as customary norms of international humanitarian law (Geneva Convention Relative to the Protection of Civilian Persons in Time of War (ICRC, n.d).

The special focus of this study is the case law of the ECHR concerning human rights protection in the context of military operations. The cases *Güleç v. Turkey* (1998, July 28), *Ergi v. Turkey* (1997, May 20), *Ahmet Özkan and others v. Turkey* (2004, April 6), and *Akkum and others v. Turkey* (2005, June 24). Turkey was analysed for the purpose of in-depth analysis of the implicit application of the norms of international humanitarian law. The case underscores the importance of holding state authorities accountable for human rights violations committed during military operations. The ECtHR's ruling demonstrated the effectiveness of European human rights mechanisms in providing redress for victims of such violations and promoting accountability for state actions. Also, in these cases, the ECtHR's judgment emphasised the need for effective safeguards against torture and ill-treatment during such operations. It reaffirmed the role of European human rights mechanisms in upholding these standards (Wallace, 2024).

The cases of *Isayeva, Yusupova and Bazayeva v. Russia* (2005, July 6) and *Aslakhanova et al. v. Russia* (2013, April 29) were also examined during the application of the method of comparative law, in which the Court had to correctly apply the principles of necessity and proportionality. The cases of *Isayeva, Yusupova and Bazayeva v. Russia* (2005, July 6) underscore states' obligation to protect civilians during military operations and conduct prompt, thorough, and impartial investigations into alleged violations of the right to life. The ECtHR's judgment demonstrated the effectiveness of European human rights mechanisms in holding states accountable for human rights abuses committed during armed conflict (Kryshtanovych et al., 2022).

On the same page, the case *Aslakhanova et al. v. Russia* (2013) highlights the obligation of states to respect and protect the fundamental rights of individuals, including the prohibition of torture and ill-treatment, even in the context of counter-terrorism operations. The ECtHR's judgment underscored the importance of ensuring accountability for human rights violations committed by state actors during military operations and the role of European human rights mechanisms in providing redress for victims (Wallace, 2024).

The systematic and comprehensive use of the said research methods gave grounds to draw significant conclusions and make generalisations aimed at a deeper understanding of the European mechanisms for human rights protection, in particular, in the context of the ECHR’s approaches to the resolution of disputes regarding the protection of fundamental rights. The study’s findings led to practical recommendations for improving these mechanisms, emphasising the significance of specific ECHR court decisions and the need for further research to adapt to geopolitical shifts.

Results

Human rights have become extremely vulnerable in the context of military operations, and their protection is necessary for preserving the dignity and basic values of society. We note that Europe’s indicators are among the best regarding the number of armed conflicts; in particular, only 2 armed conflicts were identified during 2022, as reflected in Figure 1. It is appropriate to pay attention to the fact that the effectiveness of European human rights protection mechanisms is one element that guarantees a low number of armed conflicts in Europe’s territory.

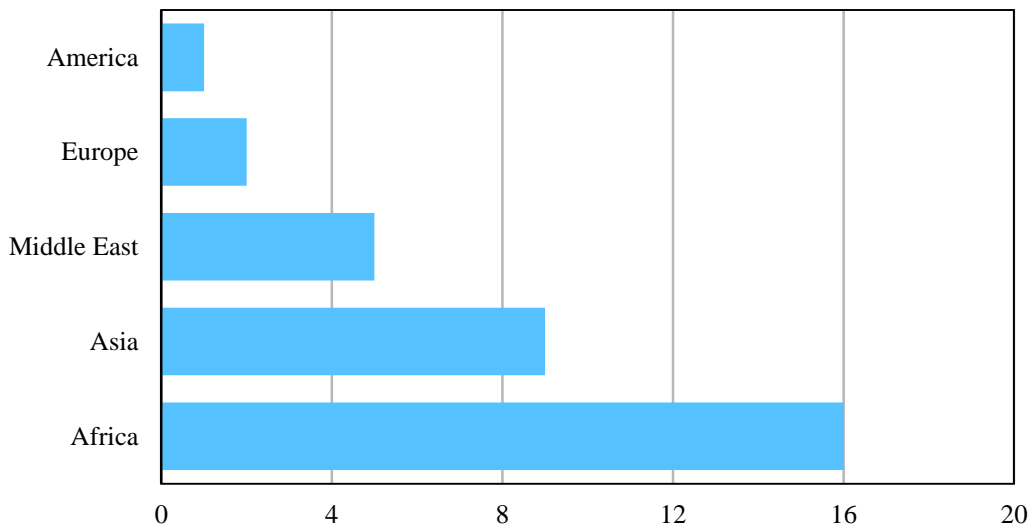


Figure 1. Number of armed conflicts in the world as of 2022

The Convention for the Protection of Human Rights and Fundamental Freedoms, together with its Protocols, is a key instrument that sets standards of conduct for member states. They provide human rights guarantees even in the most difficult circumstances of military operations. According to Article 2 of the Convention, everyone’s right to life shall be protected by law. No one shall be deprived of his life intentionally saved in the execution of a sentence of a court

following his conviction of a crime for which the penalty is provided by law (United Nations Treaty Collection, n.d.).

To obtain a more detailed understanding, we decided to investigate several cases in which the applicants claimed the violation of the right to life by the state. For example, in the case of *Ergi v. Turkey* (1997, May 20), the Court undoubtedly applies the norms of international humanitarian law, as it mentions the basic principles of hostilities. In another case — *Isayeva, Yusupova, and Bazayeva v. Russia* (2005, July 6), the Court also checked the proportionality of the use of force to the legitimate goal pursued by the armed forces, taking into account that there must be a fair balance between the pursued goal and the means used to achieve it (*Isaieva, Yusupova, and Bazaeva v. Russia*, 2005, July 6). However, despite the wording used, the decision does not directly mention the existence of an armed conflict. The Court reached a similar opinion in the case *Varnava and others v. Turkey* (2009, September 18). The theoretical analysis of these cases reveals the European Court of Human Rights' (ECtHR) engagement with international humanitarian law principles, particularly concerning the proportionality of force. Despite not explicitly acknowledging armed conflict, the ECtHR effectively considers its implications.

In case of *Sargsyan v. Azerbaijan* (2015, June 16), the ECHR applied the principles of customary international humanitarian law, in particular Rule No. 132, to interpret Article 8 of the Convention on the right to respect for private life. The analysis of this case highlights the ECtHR's examination of state actions concerning surveillance and intrusion into individuals' private lives, contributing to the jurisprudence on privacy rights within the European human rights framework. The Court considers the peculiarities of international humanitarian law and determines whether states ensure the standards provided by both conventions.

Generalised common and distinctive features of international humanitarian law (IHL) norms and the Convention are shown in the table below.

Table 1. Results of a comparative analysis of norms of international humanitarian law and the ECHR Convention

IHL norms	Convention and the ECHR case law
Common features	
<i>Common objectives:</i> As international legal instruments, both sets of norms aim to ensure the protection of human rights and the reduction of suffering during armed conflict and in peacetime.	
<i>Humanitarian nature:</i> Both types of law are designed to ensure humane and protective treatment of individuals during conflicts and in peacetime.	

Principles of universality: As international documents, they make their norms universal, that is, they are binding on all member states that have ratified them.

Distinctive features	
International humanitarian law usually applies to situations of armed conflicts	The Convention for the Protection of Human Rights and Fundamental Freedoms has a wider scope of application, including any situation where human rights are violated
International humanitarian law aims to protect persons in war zones	The Convention for the Protection of Human Rights and Fundamental Freedoms protects the rights and freedoms of every person, regardless of their status or place of residence.
International humanitarian law aims to reduce suffering from hostilities and to protect non-combatants	The Convention on the Protection of Human Rights and Fundamental Freedoms aims to protect the rights and freedoms of every person, regardless of the circumstances.

Therefore, the Geneva Conventions constitute the main legal foundations of international humanitarian law, which determine the rights and obligations of states and parties to the conflict during hostilities. The Conventions define the status of persons who do not participate in hostilities (civilian population, prisoners of war, etc.) and establish prohibitions regarding torture, illegal capture, abuse during occupation, etc.

However, a more complex issue is the use of provisions of international humanitarian law in disputes between two states, one of which is not a party to the Convention. In the case of *Al-Skeini et al. v. the United Kingdom*, the European Court of Human Rights expressed its position on the duty of investigation that rests on States in case of a violation of the right to life. The Court also noted the difference in language, culture and ongoing hostilities in the area where the investigation was conducted. Despite this, the Court also considers that the respondent State has breached the procedural obligation provided by Article 2.

So, regarding the interaction and correlation of international human rights law and international humanitarian law, it can be noted that both areas of international law are important, especially in the context of armed conflicts. However, it is worth noting that there are significant differences between these two branches of law. As Hennebel and Tigroudja (2018) point out, the goal of international humanitarian law is to limit the suffering caused by armed conflicts and to protect those who do not or no longer participate in hostilities, always maintaining a balance between military necessity and humanitarian principles.

Therefore, we consider the case law of the ECHR and determine whether it is possible to protect human rights in the context of transitional justice following the Convention on the Protection of Human Rights using the example of a case related to the deaths caused by the opening of fire by the military and the police during the conflict in Northern Ireland. However, the Court did not single out the “right to the truth” as such.

In its decisions, the ECHR has several times considered the issue of amnesty as one of the aspects of transitional justice (*Al-Saadoon and Mufdhi v. the United Kingdom*, 2010; *Case of Jaloud v. Netherlands*, 2014, November 20). In *Yesil and Sevim v. Turkey* (2007, June 5), the Court determined that amnesties and pardons cannot be applied to criminal cases involving torture and ill-treatment. At the same time, in the cases of *Marguš v. Croatia* (2014) and *Esmukhambetov et al. v. Russia* (2011, September 15), the ECHR noted that the state’s ability to grant amnesty for serious human rights violations may be limited by international agreements that the state has ratified. On the one hand, the position of the Court supports the importance of various international resolutions, recommendations and practices related to reparations, which may include amnesty. The ECHR has clearly stated that granting amnesty to those who have committed war crimes and crimes against humanity is incompatible with States’ obligations under international law to investigate and prosecute war crimes (*Benzer et al. v. Turkey*, 2013).

As a result, the European mechanisms for protecting human rights have become a fundamental component of the modern legal system, which tries to protect dignity and basic human rights, even during military operations. Courts and conventions become a support for victims and hope for justice in complex international conflicts.

Discussion

Considering the issue of the correlation of mechanisms for the protection of the right to life during military operations following the Convention and the norms of international humanitarian law, we referred to and compared the norms of international humanitarian law and the norms of the Convention. In particular, we paid attention to how the ECHR applies the norms of international humanitarian law in its decisions. Park (2018) notes that the ECHR should consider other norms of international law, particularly international humanitarian law, when interpreting the Convention. The Court pointed to Article 31 § 3 (c) of the Vienna Convention, which establishes the criteria for the interpretation of international treaties. It emphasised that the Convention should be considered in

the context of other international norms that are an integral part of it, in particular international humanitarian law.

During the analysis of the fundamental right to life, we turned to the works of Longobardo and Wallace (2022), who note that the Court strictly adheres to the high standards provided for in the Convention and often, without explaining the reasons, rejects the inclusion of international humanitarian law in its assessment. Wallace and Mallory (2016) express the opinion that the Court should interact with international humanitarian law openly and transparently and determine the moments when it affects the norms of the Convention. In our opinion, such a position is justified, given that the problem of uncertainty in ECHR decisions may arise due to insufficient legal consolidation or incomplete consideration of acts of international humanitarian law in court decisions.

Therefore, the analysis of the ECHR case law in the context of protecting the right to life during military operations revealed that the ECHR case law in terms of applying the norms of international humanitarian law, is still not stable. At the same time, one cannot fully agree with the position of Kucher (2024) in the context that the Vienna Convention gives the unconditional right to direct application of the norms of international humanitarian law in the practice of the ECHR. In our opinion, the norms of international humanitarian law should be applied in the practice of the ECHR regarding armed conflicts and military operations as *lex specialis* principle. This, in particular, was confirmed in the case *Sargsyan v. Azerbaijan* (2015, June 16).

In the context of an armed conflict, the right to return home or the right to return property is always a relevant issue. The right to return home in the case law of the ECHR is defined in the context of Article 8 of the Convention. This article guarantees the right to respect for private and family life. In turn, Klocker and Casalin (2023) argue that the right to return home (i.e. restitution of property/housing) is the main means of protection against occupation and should be chosen as the main form of compensation. In our opinion, in some cases, for example, when returning home becomes impossible for technical, political or other objective reasons, there may be more effective or realistic alternatives for compensation, such as financial compensation or the provision of other housing.

As already analysed, one of the most active armed conflicts on the territory of Europe in recent years is the war between Russia and Ukraine. We consider the position of Ukrainian researchers Mykhailichenko et al. (2022) to be well-grounded, who believe that the ECHR continues to apply the guarantees under the Convention even in situations of international armed conflict. However, they are interpreted against the background of the provisions of international humanitarian law.

So, it is appropriate to note that in the context of military operations, European human rights protection mechanisms play an important role in ensuring the basic rights and freedoms of persons who are in the conflict zone. At the same time, it is necessary to consider the specific aspects of the conflict and military actions when applying mechanisms for the protection of human rights, particularly the peculiarities of international humanitarian law.

Conclusions

The relevance of this research is determined by modern geopolitical and humanitarian challenges. Human rights violations become a particularly serious problem in armed conflicts, as these conflicts lead to massive rights violations, including illegal use of force, looting, violence, mass destruction, violations of the right to life, slavery, sexual violence, bombings, attacks on civilians, and others. In these conditions, the effectiveness of human rights protection mechanisms, particularly the work of the ECHR, becomes of great importance.

In the course of the conducted research, it was established that there is considerable ambiguity in applying the norms of international humanitarian law and the Convention on Human Rights in the context of armed conflicts. This ambiguity can lead to different interpretations and decisions, complicating human rights protection in military operations. It was found that there is a need to harmonise the interpretation of norms of international humanitarian law and the Convention on Human Rights to ensure their compliance in the context of armed conflicts. This will increase the consistency and effectiveness of human rights protection in the context of military operations.

The obtained conclusions' importance is determined by the tension between the preservation of human rights and security and defence needs during armed conflicts. Studying the relationship between the norms of international humanitarian law and the Convention on Human Rights will help to find out how to balance these goals and protect human rights even during military operations. In addition, the study will help determine to what extent international human rights standards are respected in armed conflicts and how cooperation between different human rights mechanisms can be improved to ensure their implementation.

In our opinion, it would be appropriate for other researchers to pay attention to the decisions of the ECHR, which resolve the issue of violation of fundamental human rights related to situations of armed conflicts. It is important to consider the specifics of each armed conflict, as each situation may have its own characteristics and require an individual approach to protecting human rights. Further research on the effectiveness of European human rights protection mechanisms in the context of military operations may focus on studying the decisions of the ECHR related to

situations of armed conflicts to reveal trends and features of human rights protection in these conditions, as well as an analysis of how member states implement ECHR decisions in the context of armed conflicts, will help to understand the effectiveness of these mechanisms and the existing problems in their implementation.

Recommendations

1. To create independent oversight bodies to monitor military activities and ensure they follow international human rights laws. These bodies should have the power to investigate claims of abuse and hold those responsible accountable.
2. To provide for military personnel training on human rights and international humanitarian laws. This training should emphasise respecting human rights and provide practical advice for applying these principles in real-world situations.
3. Prioritise the safety of civilians in military planning and operations for European countries. This means establishing clear rules to protect civilians, reducing harm to civilian populations, and providing aid to those affected by conflict.
4. Governments work closely with human rights groups and civil society to improve human rights protections during military operations. Collaboration can help share information, increase transparency, and find ways to enhance protection mechanisms.
5. European nations must ensure their military actions comply with international human rights laws and are conducted openly. This includes following legal standards set by international agreements, sharing information about military activities, and allowing independent monitoring by human rights groups and the media.

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