

Determinants of Typical Errors in Interpretation of ECHR Provisions in the Jurisprudence of Ukraine

Svitlana Karvatska*

Abstract The article will examine the determinants of typical errors in the interpretation of ECHR provisions in the jurisprudence of Ukraine. It will prove that the ratification of the ECHR by Ukraine has begun the process of changing the dominant positivist paradigm of law, which has led to the emergence of legal theory and the implementation of the necessary for the further development of pluralism. At the same time, such a process immediately provoked lively discussions around the problem of interpreting the content of the requirements laid down in the Convention. Nevertheless, the problem is that there is no consensus among researchers on understanding the general question of the place of ECHR decisions in the Council of Europe member state's internal legal system. It can be stated that in the analyzed cases, the Ukrainian courts have interpreted the same ECtHR decision differently, resulting in a violation of one of the conceptual principles - the unity of interpretation and unambiguous application of ECtHR practice. It will be substantiated that a totality of these points leads to a logical conclusion. Despite the legislative consolidation of the status of ECtHR decisions as a source of law in Ukraine, the factors hampering the proper application of ECtHR practices are the lack of a systematic and valid methodology for formulating and motivating court decisions using an effective interpretative interpretation ECtHR regarding specific decisions.

Keywords: interpretation of international law, Vienna Convention on International Treaties of 1969, ECHR, national legal system of Ukraine.

Jel Classification: K33

Having ratified the ECHR, Ukraine has begun changing the dominant positivist paradigm of law, which has led to the emergence of legal theory and the implementation of the necessary for the further development of pluralism. At the same time, such a process immediately provoked lively discussions around the problem of interpreting the content of the requirements laid down in the Convention (Karvatska,

Svitlana Karvatska* (✉)

* LL.D., Doctor of Science in Law

Associate Professor, Department of European Law and Comparative Law Studies Yuriy Fedkovych Chernivtsi National University, Ukraine.

E-mail: svitlana.karvatska288822@gmail.com

2019). However, the problem is that there is no consensus among researchers on understanding the general question of the place of ECHR decisions in the Council of Europe member state's internal legal system. At the end of March 2006, the Law of Ukraine "On the Enforcement of Judgments and the Practice of the European Court of Human Rights" of 23.02.2006 came into force. In Art. Seventeen of the said Law states that "courts should apply the ECtHR Convention and practice as a source of law when considering cases." At the same time, the questions of what parts of the ECtHR's decisions can be considered a source of law, as scientists rightly admit, are unclear. In the scientific community, there are two positions on the status of the ECHR in Ukraine's legal system. The first is that the conclusions set out in the ECtHR's decisions are for guidance only. The second acknowledges the primacy of the Convention over the Constitution, referring to the Vienna Convention on International Treaties of 1969. The paradox of the legal situation is that the ECHR is recognized as an integral part of Ukrainian law, and the ECtHR's practice, under Art. 19 of the Convention is an integral part of it. That is, by establishing the fact that the ECtHR's practice is not applied or improperly applied, one can speak of a violation of the provisions of an international treaty.

The legislation stipulates that in the event of a conflict between the rules of national legislation of Ukraine and the Convention, the rules of the Convention as an international treaty are subject to priority application. In favor of this position, I. Ilchenko, Chief Specialist of the Expert and Methodological Section of the Secretariat of the Government's European Court of Human Rights, makes the following arguments: Article 8 of the Constitution of Ukraine, defined in particular in Article 26 of the Vienna Convention on the Law of Treaties, 1969 and Article 19 of the Law of Ukraine on the Treaties of Ukraine, 29 June 2004, which explicitly states: "... if an international treaty of Ukraine, which has entered into force following the established procedure, establishes rules other than those provided for in the relevant act of the legislation of Ukraine, then the rules of the international treaty are applied", second, in substantiating the priority of the norms. The Convention should focus on Article 22 (3) of the Constitution, according to which "the adoption and amendment of existing laws shall not restrict the content and scope of existing rights and freedoms" (Ilchenko).

Much of the difficulty is a derivative of the lack of a single judicial practice to date in applying ECtHR decisions as a source of law. The lack led the Verkhovna Rada Commissioner for Human Rights, Valery Lutkovskaya, to file an appropriate submission to the Constitutional Court of Ukraine. The author of the request requested an official interpretation of the provisions of the Constitution of Ukraine in the aspect of urgent issues. First, «should the requirements of the Convention be applied as a normative act of force majeure if the Convention, whose requirements have been interpreted in judgments of the European Court of Justice against both Ukraine and other states, set rules other than those laid down by national law?» In other words, «is the Convention a normative act of force majeure with respect to the provisions of legislation adopted by national authorities?» (Verkhovna Rada of Ukraine, 2018, Case No 1-77 / 2018 (4117/17). Furthermore, secondly, «is the decision of the European Court of Justice not in Ukraine

a source of law in Ukraine»? The questions remained open since the ruling of the Grand Chamber of the Constitutional Court of 31 May 2018, the applicant Valeria Lutkovskaya was denied the opening of the constitutional proceedings (Verkhovna Rada of Ukraine, 2018, Case No 1-77 / 2018 (4117/17).

The question of the application of case law in Ukraine, the decisions of the European Court of Human Rights in domestic jurisprudence, is actively discussed by scholars and practitioners. The Methodological Recommendations for Central Executive Bodies on the Application of the Convention on the Protection of Human Rights and Fundamental Freedoms in law-making, prepared by the Ministry of Justice of Ukraine, state that for 50 years the controlling body of the Convention - the European Court of Human Rights - has been in its decisions were accepted, each article of the Convention was explained in detail. These decisions constitute the case-law of the European Court of Justice (Ministry of Justice of Ukraine, 21 November 2000, no 40). For States Parties to the Convention, the knowledge and use of the jurisprudence that has arisen in the application of its rules is a prerequisite for compliance with the international legal obligations arising from this act. Specific court decisions are formally binding only on those States which are responding in specific cases. However, other countries are guided by them in assessing their domestic legal order's conformity with the requirements of the Convention. In some cases, these decisions have prompted States that were not parties to the case to improve their legislation and enforcement practices. Besides, as interpreted by the European Court of Human Rights, the Convention is not a fixed once and for all document, but a "living" treaty, which is subject to the interpretation given the current situation.

Based on the before mentioned arguments of the Guidelines, it emphasized that the decisions of the European Court of Human Rights can be used not only in law-making but also in the law-enforcement activities of the state. Moreover, it is a general conclusion that the very ratification of the Convention, and therefore its recognition as a part of national law, indicates recognition at the legislative level of case law in the State since the Convention itself is a sophisticated and complex legal mechanism for the protection of human rights, including ECtHR's judicial practice. Undoubtedly, the fact is that even indirect application, where the national Court does not directly refer to a specific ECtHR decision but uses its legal positions, concepts, interpretations of human rights conventions, and guarantees of those rights in its decision. The range of substantive content of the problem of judicial precedent in Ukraine's national legal system is wide enough, and this is confirmed by the heated discussions among theorists and practitioners. However, one of the critical questions remains: what source - main or additional - is ECHR practice. This question will stand in the domestic doctrine of both constitutional and international law as such, to which there is no clear answer.

To clarify these aspects, two main approaches should be pointed out: 1) recognition of such precedents as only decisions in cases against his state, and 2) recognition as precedents for national law enforcement practice of all ECHR decisions. Pursuant to Article 17 of the Law of Ukraine "On the enforcement of judgments and the application of the case-law of the European Court of Human Rights" of 23 February 2006, the courts

apply the Convention and the Court's case-law as a source of law when considering cases (Verkhovna Rada of Ukraine. Vidomosti of Verkhovna Rada of Ukraine, 2006, no 30). Ukraine is one of the few Council of Europe states that directly regulated the practice of implementing ECtHR decisions by a separate law. The ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms, and the recognition at State level of the bindingness of decisions of the European Court of Human Rights, indicate that the judicial component of the system of sources of domestic law is actually objectified in the system of legal regulation. The latter is conditioned by the fact that in today's realities an "image of law" is formed, which does not always correspond to the content of existing laws and which requires judicial legal interpretation, completion and, most often, the correction of defective ("obsolete") laws. There can be no doubt about the need for the courts of Ukraine to apply the Convention and the case-law of the European Court of Justice in order to prevent further violations by Ukraine of its obligations. However, in practice, many issues arise in the process of applying the provisions of the Convention and the case-law of the European Court of Justice. Thus, some of the provisions of the Law of Ukraine No. 3477-IV "On the Enforcement of Decisions and Application of the Practice of the European Court of Human Rights" of 23 February 2006 continue to be debatable: experts note that its provisions cause conflicts and have some gaps (Verkhovna Rada of Ukraine. Vidomosti of Verkhovna Rada of Ukraine, 2006, no 30). There is an urgent need (both in the doctrinal and practical dimensions) to understand two key positions. First, what place in the hierarchy of domestic law does the ECHR have? Second, can the provisions contained in ECtHR decisions taken in cases where Ukraine is not responsible be considered a source of Ukrainian law?

The situation is somewhat ambiguous with regard to ECHR decisions. Because of the entry into force of the above Law, ECtHR practice has acquired the status of a source of law and can be used by the courts of Ukraine as a source of law in the administration of justice; however, Law No. 3477-IV does not explicitly specify the application of ECtHR decisions in cases against Ukraine. On the other hand, the law also does not prohibit the use of references to ECtHR decisions taken in cases against other countries. In addition to the issue of defining clear procedures for the application of ECtHR practice in the domestic legal system, it should be noted that harmonizing the rules of national law and the provisions of the Convention, to bring to the common denominator all the diversity of European Court of Human Rights case-law is sometimes tricky. In particular, one of the problematic factors is emphasized by the authors of a new draft Council of Europe project, the compilation "National Jurisprudence on Internal Movement: Applying Council of Europe Standards" (project manager G. Khrystova), noting that the adoption by the Supreme Court, of course, is a positive aspect. International standards for many decisions that have become a signpost for the first instance and appellate courts. However, the authors note that, unfortunately, the sheer volume of jurisprudence has not been substantially reflected and influenced in the formulation and improvement of relevant legislation. Moreover, there has recently been a worrying tendency for non-enforcement of court decisions (National jurisprudence on internal displacement: application of standards of the Council of Europe, 2019, 20).

Furthermore, this is not an exception. Quite a formal mention, a simple listing in a court decision of one or another of the ECHR rulings or its individual positions without their analysis, often without citation and without relevant comparison to the specific circumstances of the case, established by the Court, indicate an ineffective, almost abstract way of using the ECHR practice in national case law. It has to be stated that quite often, in court decisions of such courts, such formal references are more likely to create the illusion of authority, reasoning, persuasiveness, or even merely “tribute to fashion.” All this is a subjective problem of applying the ECtHR’s practice in domestic justice. Nevertheless, today, in the unanimous opinion of the experts, the language barrier is an essential objective problem for the effective use of ECtHR practices in national courts. The practical absence of official translations raises even seemingly minor issues that are quite fundamental, such as the inability to use the ECtHR’s case-law by a majority of Ukrainian judges, or cases of unqualified interpretation of European Court decisions, non-professional translation of ECP decisions, from the context of the judgment of specific facts, beneficial to one or the other. It is advisable, in the not too distant future, to address this problem in two possible interacting ways: 1) modelling an effective mechanism for translation and publication of court decisions; 2) creation of a proper scientific and technical base for raising the general level of knowledge of English, first of all, judges, lawyers, lawyers in general. On the issue of bringing the contents of European Court decisions to the attention of citizens, it would also be resolved with the introduction of a translation and publication mechanism.

The new challenges posed by the aforementioned problems with the application of ECHR provisions and ECtHR decisions are being explored deeply by authoritative domestic scholars, both constitutionalists, and internationals. Thus, the authors of the Analytical report on the results of the study of the application of the ECHR by Ukrainian judges and the practice of the ECtHR conducted by the NGO “Institute of Applied Humanitarian Research” in December 2015 – November 2017, prof. Boromensky M.V. and prof. Serdyuk O.V. (2018, 57) in the Recommendation on Legislative Changes emphasize the need to “revise the plenum of high courts with regard to the application of international treaties, wherein separate sections an interpretation of the significance of such a source of law as the decisions of international courts should be given, with clear indications as to the status of those courts. whose jurisdiction extends to Ukraine”.

Analyzing court decisions of domestic courts, the authors identified a number of typical errors and violations of the application of ECtHR practices, such as selectivity of ECtHR practices; references to general principles and interpretations, ignoring the ECtHR’s terms and conditions; confusion and unclear understanding of the legal position of the ECtHR: the problem of distinguishing between *ratio decidendi* and *obiter dictum*; justification for “excessive formalism” with reference to the interpretation of the ECtHR; a reference to the general provisions and interpretations of the ECtHR as a substitute for an analysis of the facts of the case; going beyond the legal position of the ECtHR: erroneous or irrelevant circumstances of interpretation of the decision; applying the ECtHR decision by analogy; the contradiction between the ECtHR’s legal

position and the decision.

Concerning the role of national judges in ensuring the useful application of international and European law, the Opinion of the Advisory Council of European Judges No 9 (2006) is of relevance to the Committee of Ministers of the Council of Europe, which states in particular that national law, including national jurisprudence, not only do they have to comply with the case-law of the European Court of Human Rights. Where appropriate, the case should be reopened after the European Court of Human Rights has found a violation of the ECHR or its protocols during the trial, and such violation cannot be reasonably remedied or compensated by any other means than through a new hearing. Thus, at present, there is no unity in domestic legal doctrine on understanding the general issue of the place of ECHR decisions in the legal system of Ukraine. As a consequence, the single domestic practice of applying ECtHR decisions has not been established, which complicates the application of ECHR provisions and ECtHR practices.

In most cases that are dealt with annually by the European Court of Human Rights, the issue of law is not open to debate. In most cases, disputes relate to the factual side of the case, as each party seeks to substantiate the similarity of the circumstances of the dispute under consideration with the factual circumstances in which the relevant court decision was taken. To determine the ratio decidendi of the judgment means determining «whether the case contains the answer to the question raised by the dispute.» The application of ratio decidendi is only possible where the essential factual components of the dispute or situation in question do not differ from the relevant circumstances of the case that has already been decided. Moreover, these facts should play a key role in justifying such a decision in the past. Therefore, domestic courts may conclude that a precedent of the European Court of Human Rights cannot be used if they find that the relevant cases differ in some critical factual circumstances, even if they appear to be very similar in external terms.

Analyzing the legal nature of the decisions of the European Court of Human Rights, their legal force, place in the system of sources of law in general and in the hierarchy of sources of law when applied by Ukrainian judges L. Moskvich states: «not only the decision of the Court acts as a source of law for Ukrainian courts, but only part of it - ratio decidendi containing a legal interpretation of a rule of the Convention. It is the inability of Ukrainian judges to distinguish amongst the Court's numerous rulings those relevant to its case-law and containing ratio decidendi, which concentrate the Court's doctrinal approaches to the interpretation of Convention's rights and freedoms is one of the key reasons for the Court's misapplication of national practice» (Moskvich, 2014, 27: 333.).

Besides, the specifics of interpreting the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms in domestic jurisprudence are often based on a particular situation. This is manifested in the “subordination” of the principle of dynamic interpretation, in the maximum deterministic interpretation of specific historical circumstances when implementing the relevant rules. In particular, in the case of the Constitutional Court of Ukraine on the constitutional appeal of citizen Soldatov G.I. regarding the official interpretation of the provisions of Art. 59 of the Constitution of Ukraine, Art. 44 of the Criminal Procedure Code of Ukraine,

Art. Art. 268, 271 of the Code of Administrative Offenses of 16 November 2000, taking the provisions of Art. 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms, Art. 2.14 of the International Covenant on Civil and Political Rights, “Basic Principles on the Role of Lawyers,” adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders in 1990 (Principles 1, 19), the Constitutional Court of Ukraine interpreted the provisions of Part One Art. 59 of the Constitution of Ukraine that “everyone is free to choose the defender of their rights” as the constitutional right of the suspect, accused and defendant in defense of the prosecution and of the person holding administrative responsibility, in order to obtain legal assistance to choose a person to defend their rights, who is an expert in the field of law and is legally entitled to provide legal assistance in person or on behalf of a legal entity.

Thus, in one of the decrees of the panel of judges of the court chamber in civil cases of the Court of Appeal of Lugansk region (08.04.2013, no 437/1753/13-c) stated: “Based on the principle of interpretation of the case-law of the European Court of Human Rights, the panel considers that according to the case file there is a case of restriction of the right of a party to the availability of justice, enshrined in Art. 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms, the proper enforcement of which, by its legal significance, is more important than the obligation of a party to be interested in pursuing its case, which is not governed by formal domestic procedural law”.

In Ukraine, a sufficient legal framework is in place for the proper application of the case law of the European Court of Human Rights and the interpretation of human rights provisions, taking into account the standards and approaches developed at the national level. At the same time, such legislative dynamics do not yet have the expected legal and social effect. Since the case-law of the Court is rarely applied by the courts of general jurisdiction in interpreting human rights, such application is often of a formal nature. In most cases, judges show a lack of understanding of the systematic nature of the Court’s legal positions on specific human rights, an inability to distinguish them from other provisions of the text of ECHR rulings, as well as due knowledge of the principles and doctrinal approaches underlying the jurisprudence of the Court. Ascertaining this order, I. Kretova (2015) expresses the opinion that the “ambiguity” of legislative regulation is practically eliminated today. However, it must be acknowledged that the absence of “certain instructions” regarding the application of the Court’s case-law in the context of an underdeveloped legal tradition of case law does complicate its practical impact on the national legal order. Undoubtedly, the role of courts and other bodies in these processes depends on the national legal framework, that is, on the legal status and, as a consequence, the role of the Convention in national law, and on the opportunities afforded by national law for the application of international human rights standards in the administration of justice. The Convention does leave the States complete discretion as to the means of implementing its provisions since, in international law, States are responsible for the ultimate result of implementation - the protection of human rights and the effectiveness of their protection (Khrystova, 2019, 20).

In situations where the Court finds that there is no European consensus on such debating issues as, for example, euthanasia (ECHR, 2011, Case of Haas v. Switzerland), medical and legal definitions of the beginning of life (ECHR, 2010, Case of A, B and C v. Ireland), possible restrictions on freedom to profess one's religion or belief, it declares subsidiarity and in matters of common policy concerning which in a democratic society, opinions may differ significantly, with a particular role for the national legislator, leaving states with wide discretion in these areas. Analyzing the decision in the case of SAAS v. France. Court has summarized and summarized in a separate section of its judgment the basic principles which is outlined in its precedents during its longstanding practice. The Court practically meant the creation of some general comment made by the Court itself, which in the future will be referred to as a basic list of rules and principles regarding the guarantee by States of the rights of the person. to freedom of thought, conscience and religion.

Therefore, effective implementation of the ECtHR case law, especially the Court's legal position on the content of the rights and freedoms guaranteed by the Convention, can only be achieved if the responsible persons of the State are adequately trained and constantly aware of the Court's case-law, adequate translation and publicity of the Court's case-law, including in other States, its systematization concerning the subject matter and systematic updating. Given the fact that the case-law of the European Court of Human Rights is exceptionally voluminous (more than a thousand decisions a year), in Ukraine, this practice should be systematized, for example, in the Official Classifier of precedents (legal positions) of the European Court of Human Rights. Although an official publication of the Court's judgments of significant importance has already been initiated at the state level, it does not replace the Official Classifier.

It is also advisable to create a terminology dictionary for European justice, which would define the main terms of the Convention on Human Rights, as well as the concepts used in the judgments of the European Court of Human Rights. In addition, the study of such decisions allows practitioners to analyze more deeply the legal principles and legal arguments that have been used in appropriate situations and to reach a more legally justified decision in this particular case. As a rule, the printed court rulings give a very detailed account of the circumstances of the court cases considered. These rulings present an almost complete version of the events that occurred before the case went to trial. Analyzing such collections, we can state affirmatively that the argumentation of each party's position with reference to the relevant decision of the ECtHR seems rather convincing and often causes, at least mentally, to question the opponent's opposite position. In order to enhance the capacity of national courts to apply the case-law of the Court, including the doctrinal approaches it has developed, in interpreting national human rights provisions, reference should be made to Opinion 9 (2006) of the Advisory Council of European Judges on the role of national judges in ensuring the effective application of international and European law. Paragraph 25 of this Opinion emphasizes that national courts are responsible for the application of European law. They are in many cases, required to apply it directly, as well as interpreting national law in accordance with European standards. On the other hand, the rules of the Convention are

norms of direct effect, so the case-law of the European Court of Justice is created and operated within its provisions and protocols, based on the interpretation and application of its rules. The judgment of the European Court is like a “shadow” of an interpreted article of the Convention, which is inextricably linked to it. The format of the European Convention and the mechanism that ensures the functioning of its provisions - the case law of the European Court of Justice - create a kind of legal circle - the Convention cannot exist without its interpretation by the European Court, and the European Court cannot create without the Convention.

With regard to the Ukrainian judiciary, there are many serious difficulties in applying the ECtHR decision in practice. Considering ECHR decisions as part of national legislation, we face the problem of bringing these decisions in accordance with the requirements of the Constitution of Ukraine to the public. One of the main problems is to ensure that national judges have a published translation of the full text of ECtHR decisions. According to Art. Eighteen of the Law of Ukraine “On the Enforcement of Judgments and the Practice of the European Court of Human Rights” (hereinafter amended), courts should use the official translation of the Court’s judgment, published in the official edition, or, in the absence of translation, the original text. The performance of this function is entrusted to the state body responsible for the organizational and financial support of judges. Official translation and publication of the full version of the ECHR rulings The Law of Ukraine “On the Enforcement of Judgments and the Practice of the ECtHR” of 23.02.2006 is a “specialized legal issue in the Court’s practice, which is widespread in the legal profession” (Part 1 Article 6). However, in the domestic legal field, there is no information on the state of provision of courts, respectively, other lawyers, with official translations of court decisions. This is the main reason for the inefficiency and inconsistency in the application by the European Courts of the case-law of the European Court of Human Rights and its interpretation at its discretion.

To illustrate the above, let us consider a rather typical situation that occurred in the application and interpretation of one of the fundamental European values, such as the right to property, that is, the “right to peaceful possession of one’s property”, defined in Art. 1 of Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms. In particular, this article states that every natural or legal person is entitled to the peaceful enjoyment of his possessions and that no one may be deprived of his property except in the public interest and under the conditions provided for by the law of a State Party and by the general principles of international law. In considering the case of the Industrial-Financial Consortium “Pridneprovya” on 1 February 2003, the Supreme Economic Court of Ukraine issued a Decree recognizing the ownership and obligation to take specific actions (Unified register of court decisions). In the instant case, the High Commercial Court of Ukraine found it necessary to uphold its legal position and apply ECtHR jurisprudence in national law as an instrument of the ECHR’s functioning, which is part of Ukraine’s national law. In particular, the Supreme Economic Court of Ukraine referred to the ECtHR judgment of 4 June 2003, “Stretch v. the United Kingdom of Great Britain and Northern Ireland”. The essence of the aforementioned decision of the Court is that the invalidation of the contract according to which the buyer received

property from the state, and further deprivation of this property (on the ground that the state body violated the law when concluding the contract) is inadmissible.

In the process, the ECtHR's decision was cited as an argument used by one of the defendants' attorneys. However, the Supreme Economic Court of Ukraine did not consider this argument, stating that "... the application by the courts of the first and appellate instance of Art. 1 of Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms and the judgment of the European Court of Human Rights of 24 June 2003 on *Stretch v. United Kingdom* is groundless, since this article of the Protocol deals with the protection of the property rights of the owner, and in the said decision of the European Court of Human Rights states that the local administration has been exceeded the powers to deprive a citizen of the right to extend (prolong) the land lease...".

In February 2010, the Kyiv Commercial Court of Appeal, in considering the case for the recognition of a right and the transfer of rights and obligations under the contract, also applied the aforementioned ECtHR judgment in the case of *Stretch v. United Kingdom of Great Britain and Northern Ireland* dated 24.06.2003. In deciding the case, the Kyiv Commercial Court of Appeal referred to the decision in the case of *Stretch v. United Kingdom of Great Britain and Northern Ireland*: a lease was concluded between the claimant and the local authority. After the expiration of the lease, the plaintiff tried to exercise his right to continue the lease, but the local government body informed that the preliminary decision had been made with an excess of powers and did not allow the applicant to realize the right under the lease of the land plot to continue this right to continue. Thus, the Economic Court of Appeal did not take into account that in considering *Stretch v. The United Kingdom of Great Britain and Northern Ireland*, the ECtHR assumed that the tenant's right to extend the lease was a leaseholder. The Court also unreasonably interpreted the ECtHR's legal position on the fact that the tenant's property right under the lease was "property" within the meaning of Art. 1 of Protocol No. 1 to the ECHR and is applicable to the protection of property rights.

Analyzing all of the above, it can be stated that in the analyzed cases, the Ukrainian courts have interpreted the same ECtHR decision differently, resulting in a violation of one of the conceptual principles - the unity of interpretation and unambiguous application of ECtHR practice. After a large number of judgments against Ukraine at the European Court of Human Rights, which were the logical consequence of the position of inconsistency in the application of ECtHR practices by the Ukrainian courts, interpretation of its rights at its own subjective discretion, the issue of correct interpretation of international treaties finally became especially relevant, and on 19 December 2014 The Plenum of the High Specialized Court of Ukraine for Civil and Criminal Cases approved the Resolution "On the application of international treaties by the courts in Justice" which provided clarification to the courts to ensure the correct and uniform application of international treaties. In particular, the High Specialized Court of Ukraine emphasized that part of the national legislation is not only international treaties ratified by the Verkhovna Rada, but also those whose consent to bindingness is given in another form by which the state expresses its consent to the binding treaty

for it. The aforementioned Ordinance also states that a court's misapplication of the rules of international law may be the basis for the annulment or change of judgment, and the decisions of international organizations, some specialized bodies, may be used to interpret such rules. Adoption of this resolution may have the effect of raising the level of Ukrainian justice, bringing it closer to European legal standards and giving the parties to the dispute additional opportunities to protect their rights by applying international law more effectively.

Conclusions

The totality of these points leads to a logical conclusion. Despite the legislative consolidation of the status of ECtHR decisions as a source of law in Ukraine, the factors hampering the proper application of ECtHR practices are the lack of a systematic and valid methodology for formulating and motivating court decisions using an effective interpretative interpretation ECtHR with reference to specific decisions.

References

- Babin, I., & Karvatska, S., (2018). Interpretation of the Convention about human rights protection principles in Ukraine's court practice on tax disputes. *Studia Iuridica Toruniensia*. T. 22: 11–24. DOI: <http://dx.doi.org/10.12775/SIT.2018.001> (in English)
- Buromensky, M.V., & Serdyuk, O.V., (2018). Analytical report on the results of monitoring court decisions on the application in Ukraine of the provisions of the ECHR and the practice of the ECtHR. Coordinator of the OSCE projects in Ukraine and the NGO «Institute for Applied Humanitarian Studies» within the project «Ensuring the observance of human rights in the administration of justice» for the financial support of the Ministry of Foreign Affairs of Canada, (in Ukrainian).
- Consultative Council of European Judges for the Committee of Ministers of the Council of Europe (2006, Conclusion No 9) of the Consultative Council of European Judges for the Committee of Ministers of the Council of Europe on the role of national judges in ensuring the effective application of international and European law. Approved at the 7th meeting of the CCJE (Strasbourg, 8-10 November 2006), document № CCEJ (2006). https://court.gov.ua/userfiles/vism_9_2006.pdf (in Ukrainian)
- Council of Europe; Khrystova, G (Project Manager), Tralo, Y., & Buryakovska K. (2019). National jurisprudence on internal displacement: application of standards of the Council of Europe: Council of Europe Project «Internal displacement in Ukraine: development of long-term solutions» (in Ukrainian)
- European Court of Human Rights (20 January 2011). Case of Haas v. Switzerland (Application no. 31322/07). Judgment. Strasbourg. Council of Europe. European Court of Human Rights. 2011. <https://hudoc.echr.coe.int/fre?i=001-102940>
- European Court of Human Rights (16 December 2010). Case of A, B and C v. Ireland (Application no. 25579/05). Judgment. Strasbourg. Council of Europe. European Court of Human Rights. 2010. <https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=001-102332&filename=001-102332.pdf>
- European Court of Human Rights (1 July 2014). Case of S.A.S. v. France (Application

- no. 43835/11). Judgment. Strasbourg. Council of Europe. [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001145466#{«itemid»:\[«001-145466»\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001145466#{«itemid»:[«001-145466»]}).
- High Specialized Court of Ukraine for Civil and Criminal Cases (19 Desember 2014, No 13). Plenum. On the application by courts of Ukraine provisions of treaties in the administration of justice: the decision. <https://zakon.rada.gov.ua/laws/show/v0013740-14> (in Ukrainian)
- Judicial Chamber for Civil Cases of the Court of Appeal of Luhansk region (April 08, 2013. No 437/1753/13c/). Decision of the board of judges of the Unified register of court decisions. <http://reyestr.court.gov.ua/Review/30503732> (in Ukrainian)
- Karvatska, S., (2019). Interpretation and implementation of European standards of human rights and fundamental freedoms protection in Ukrainian court practice: Problems and Prospects. *STUDIA IURIDICA Cassoviensia*: elektronický vedecký čas. 1(7): 39–47. DOI: <https://doi.org/10.33542/SIC2019-1-04> (in English)
- Kretova, I.Y. (2015). Interpretation of law: doctrines developed by the European Court of Human Rights. PhD Thesis. V.N. Kazarin Kharkiv National University (in Ukrainian)
- Ilchenko I. Some issues of application of the ECHR and the practice of the ECtHR in Ukraine / Ministry of Justice of Ukraine. https://minjust.gov.ua/m/str_14103 (in Ukrainian)
- Ministry of Justice of Ukraine. Center for Legal Reform and Law-Making Activities. (21 November 2000). Methodical recommendations for central executive authorities on the application of the ECHR in legislative activity: approved by the resolution of the board of the Ministry of Justice of Ukraine. № 40 /. <https://zakon.rada.gov.ua/laws/show/v0040323-00> (in Ukrainian)
- Moskvich L.M. (2014). The impact of the case law of the European Court of Human Rights on the case law of national courts: text of the report. Issues of fight against crime. Kharkiv: Law. 27: 333. (in Ukrainian)
- Rulling of the Supreme Commercial Court of Ukraine of February 1, 2007 in case № 2/168/ Unified register of court decisions. URL: <http://www.reyestr.court.gov.ua/Review/662926> (in Ukrainian)
- The Verkhovna Rada of Ukraine (2018). Order of the Grand Chamber of the Constitutional Court of Ukraine on the refusal to open constitutional proceedings in the case on the constitutional application of the Commissioner of the Verkhovna Rada of Ukraine for Human Rights Valeria V. Lutkovska regarding the official interpretation of the first part of Article 9 of the Constitution of Ukraine 31(5) 2018 : 28. Case № 1-77 / 2018 (4117/17). <https://zakon.rada.gov.ua/laws/show/v028u710-18/sp:max25> (in Ukrainian)
- The Verkhovna Rada of Ukraine (16 November, 2000, No 13 rp /). Decision of the Constitutional Court of Ukraine in the case on the constitutional appeal of citizen Soldatov G.I. on the official interpretation of Article 59 of the Constitution of Ukraine, Article 44 of the Criminal Procedure Code of Ukraine, Articles 268, 271 of the Code of Administrative Offenses (case on the right to free choice of defence counsel). <https://zakon.rada.gov.ua/laws/show/v013p710-00> (in Ukrainian)
- Unified register of court decisions. <http://www.reyestr.court.gov.ua/Review/662926> (in Ukrainian).
- Verkhovna Rada of Ukraine (2006). Law of Ukraine “On the execution of decisions and application of the case law of the European Court of Human Rights”, 23.02.2006 № 3477IV/. Vidomosti of Verkhovna Rada of Ukraine. No 30. <https://zakon.rada.gov.ua/laws/show/3477-15> (in Ukrainian)