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## **Case Law and Judicial Lawmaking in the Law Enforcement Process of Ukraine and the European Court of Human Rights**

The article examines the concept of case law and judicial lawmaking as integral elements of the law enforcement process in Ukraine and the case law of the European Court of Human Rights. The importance of judicial precedent as a source of law, its role in the formation of legal norms, as well as the influence of judicial practice on the development of legislation are analyzed. Particular attention is paid to the interaction of the national judicial system with ECHR judgments, their legal nature, implementation in the legal system of Ukraine and ensuring the unity of judicial practice. The specifics of the mechanisms of application of judicial precedent in administrative, criminal, and civil proceedings in Ukraine are considered. The problems and prospects of adaptation of case law in the context of ongoing legal reform are identified. The issues of normative consolidation of judicial lawmaking, its impact on judicial independence, and ensuring the rule of law are also represented. Attention is focused on the need to improve the mechanisms for the implementation of court decisions of the ECHR, which will contribute to strengthening legal guarantees for citizens of Ukraine.

*Keywords:* Court; European Court of Human Rights; Judge's Legal Awareness, Judicial Practice, Judicial Reform, Law Enforcement, Rule of Law

## **Rechtsprechung und Rechtsetzung durch Gerichte - der Strafverfolgungsprozess der Ukraine und des Europäischen Gerichtshofs für Menschenrechte**

Der Artikel untersucht das Konzept der Rechtsprechung und der Rechtsetzung durch Gerichte als integrale Bestandteile des Rechtsdurchsetzungsprozesses in der Ukraine sowie die Rechtsprechung des Europäischen Gerichtshofs für Menschenrechte. Die Bedeutung der Rechtsprechung als Rechtsquelle, ihre Rolle bei der Bildung von Rechtsnormen sowie der Einfluss der richterlichen Praxis auf die Entwicklung der Gesetzgebung werden untersucht. Ein besonderes Augenmerk richten wir auf das Zusammenspiel des nationalen Rechtssystems mit den Urteilen des EGMR, deren Rechtsnatur, deren Umsetzung im Rechtssystem der Ukraine sowie auf die Gewährleistung der Einheitlichkeit der Rechtsprechung gelegt. Die Besonderheiten der Mechanismen zur Anwendung von Präzedenzfällen in Verwaltungs-, Straf- und Zivilverfahren in der Ukraine werden betrachtet. Es werden die Probleme und Perspektiven der Anpassung der Rechtsprechung im Rahmen der laufenden Rechtsreform aufgezeigt. Ebenfalls behandelt werden die Fragen der normativen Konsolidierung der richterlichen Rechtsetzung, ihrer Auswirkungen auf die richterliche Unabhängigkeit sowie der Gewährleistung der Rechtsstaatlichkeit. Im Mittelpunkt steht die Notwendigkeit, die Mechanismen zur Umsetzung der Urteile des EGMR zu verbessern, was zur Stärkung der Rechtsgarantien für die Bürger der Ukraine beitragen wird.

*Schlagwörter:* Europäischer Gerichtshof für Menschenrechte; Gericht; Justizreform; Rechtsdurchsetzung; Rechtsstaatlichkeit; richterliche Praxis; richterliches Rechtsbewusstsein

## 1. Introduction

Case law and the creation of judicial law are of pivotal importance in the shaping of the legal systems of modern states, particularly Ukraine, which is known to actively adopt European legal traditions. In the context of integration into the European legal space, the practice of the European Court of Human Rights (ECHR) is of particular importance, significantly affecting national proceedings and contributing to the development of law enforcement activities in Ukraine. The integration of elements of the case law approach into the Ukrainian legal system has not only a formal legal but also a doctrinal dimension. It is not a matter of mechanical borrowing of the Anglo-Saxon model, but a gradual transformation of the continental tradition by expanding the interpretive role of courts. It is in this area that judicial practice begins to perform stabilising and unifying functions that go beyond purely casual dispute resolution. Judicial precedent is one of the means of ensuring the unity and predictability of judicial practice. Notwithstanding the official recognition of a continental legal system in Ukraine that is dominated by a normative legal act, there has been an increasing use of judicial practice, particularly the decisions of the Supreme Court and the ECHR, as a source of law (Malyshev, 2004). In particular, the decisions of the ECHR have a special legal status since, in accordance with the Law of Ukraine “On the Enforcement of Decisions and the Application of the Practice of the ECHR”, they are mandatory for application by national courts.

At the same time, certain problems remain in Ukraine regarding the implementation of case law, in particular the lack of clear criteria for the application of decisions of domestic courts as mandatory precedents. This leads to differences in judicial practice and contradictions in law enforcement (Riabchenko, 2020). Scientists emphasize the need for greater formalization of judicial precedent in the legislation of Ukraine, which will contribute to increasing the level of legal certainty and the rule of law.

The problem is not only the absence of formal consolidation of precedent, but also the unclear functional status of precedent in the system of sources of law. Judicial practice already plays a quasi-normative role, but this role has no systematic methodological understanding. It is this conflict between the formal doctrine of normativism and the actual practice of law application that requires a comprehensive theoretical analysis.

Judicial lawmaking and case law represent significant components of an effective law enforcement process. These elements provide legal certainty, predictability of court decisions, and consistency of judicial practice. In Ukraine, which belongs to the continental legal system, legal acts are traditionally considered the main source of law, but practice shows an increasing use of court decisions as factual precedents. This is especially true of the impact of the decisions of the Supreme Court of Ukraine and the ECHR, which increasingly play a decisive role in the formation of judicial practice (Drozdovskiy, 2020).

A range of domestic and foreign scientists have considered the theoretical and practical aspects of judicial precedent and judicial lawmaking. Studies on judicial precedent emphasize its role in ensuring the unity of law enforcement, legal certainty, and stability of court decisions. The analysis demonstrates that, despite the absence of judicial precedent as an officially recognized

legal authority in Ukraine, its influence on the law enforcement activities of courts is considerable. In particular, the decisions of the Supreme Court and the ECHR are increasingly recognized as having the force of law with respect to the jurisprudence of national courts (Marmor, 2001).

Both, in Ukraine and in continental Europe during the twentieth century, the classical concept of legal positivism dominated, according to which the law was limited by the content of the current legislation. The aforementioned circumstances resulted in the courts' literal application of the law, without consideration of the principles underlying its formulation. Within the continental legal family system, the only recognized source of law was a normative legal act, which excluded the possibility of an expansive interpretation or the creation of new legal norms by judges. However, contemporary scientists from various fields of law, in particular civil, economic, and administrative law, as well as the theory and philosophy of law, are actively exploring the institution of judicial lawmaking. They propose new approaches and methodologies that allow courts to resolve cases effectively, even in the face of legislative gaps, contradictions, or archaic rules of law (Kroytor, 2017).

Legal doctrine identifies two main aspects of the law-making role of courts. The initial phenomenon is associated with the existence of legislative gaps, defined as the complete or partial absence of the necessary legal norms. The second aspect covers gaps in the law in the form of ambiguity, contradiction, or obsolescence of existing norms, which require new approaches to their interpretation. Continental law, including the Ukrainian legal system, is increasingly faced with situations where a gap arises between social development and existing norms. This phenomenon is evident not only in the presence of legal gaps but also in the necessity to address intricate legal incidents that necessitate a novel interpretation of the prevailing principles of law and legal principles (Kroytor, 2020).

The practice of the ECHR is mandatory in Ukraine, as stipulated in Article 17 of the Law of Ukraine "On the Execution of Decisions and the Application of the Practice of the European Court of Human Rights". Accordingly, national courts are obligated to consider the rulings of the ECHR when rendering their own decisions. This development contributes to the convergence of the Ukrainian legal system with a model that prioritizes the significance of case law. However, Ukraine still lacks a single mechanism for the implementation of ECHR decisions in national law enforcement practice, which creates a number of problems and contradictions.

This article considers the essence and features of the judicial precedent, its role in the law enforcement process of Ukraine, as well as the impact of the ECHR practice on the formation of court decisions. Particular attention will be paid to the analysis of mechanisms for the implementation of ECHR decisions in national judicial practice and the problems that arise in the process of their application. The issues of judicial lawmaking, its limits, and its impact on the legal system of Ukraine are also considered, as are possible ways to improve the mechanisms for using judicial precedent in the Ukrainian law enforcement process. In view of the aforementioned points, the study discusses the conceptual foundations of judicial lawmaking, the role of judicial precedent in the law enforcement process of Ukraine, the mechanisms for implementing the practice of the European Convention on Human Rights (ECHR), as well as the challenges that arise in connection with the reform of the legal system of Ukraine.

The scientific problem is to determine the limits of judicial law-making in the context of transformation of the legal system of Ukraine and to find out whether judicial precedent acquires

the features of an independent source of law or remains an instrument of argumentative influence. The article is based on the assumption that a mixed model of law application is being formed in Ukraine, in which court decisions actually perform a regulatory function.

The object of the study is the law enforcement process in Ukraine and the role of case law and judicial law-making in its formation. The objective of this study is to examine the theoretical and practical dimensions of the utilization of judicial precedent in the law enforcement operations of Ukraine, with a particular focus on the mechanisms for implementing the practice of the ECHR and their ramifications on the legal system. The purpose of this study is to analyze the features of judicial law-making and the application of judicial precedent in Ukraine to determine the role of ECHR practice in the formation of the national judicial system.

*Research hypotheses:* Judicial lawmaking and case law play an important role in shaping unified and predictable judicial practice in Ukraine, contributing to the rule of law and legal certainty. Despite Ukraine's official affiliation with the continental legal system, domestic courts are increasingly employing court decisions, including those of the Supreme Court and the ECHR, as factual precedents. Insufficient formalization of judicial precedent in the legislation of Ukraine leads to discrepancies in law enforcement and contradictions in court decisions. The implementation of the decisions of the ECHR in the Ukrainian legal system has significant potential for improving law enforcement but requires more effective implementation mechanisms.

## 2. Literature Review

Research on the issue of judicial lawmaking and case law in Ukraine and the practice of the ECHR has deep theoretical and practical foundations. This part of the article considers the main approaches to the understanding of judicial lawmaking, the analysis of the main scientific works, as well as the identification of gaps in the study of this topic. The analysis of scientific approaches shows that most studies focus mainly on describing the role of judicial precedent or stating its actual impact, but insufficient attention is paid to the systematic determination of its normative nature within the Ukrainian legal doctrine. The absence of a unified theoretical model for explaining judicial lawmaking leads to fragmentation of scientific approaches.

Judicial law-making is one of the key issues of modern legal science. Legal theorists emphasize that courts cannot be limited solely to the mechanical application of the rules of law but have a certain freedom in their interpretation. According to their research, the law enforcement process in the continental legal family has traditionally been based on normativism, but current trends indicate a gradual convergence with the Anglo-Saxon law, where judicial precedent plays an important role (Andronov, 2015; Muzynchuk, 2018; Podorozhna, 2018).

Other scholars note that judicial lawmaking is not only an exceptional means of overcoming gaps in the law but also a necessary mechanism for adapting legislation to modern social and legal realities. A close examination of the decisions rendered by the Constitutional Court of Ukraine and the Supreme Court reveals their pivotal role in establishing novel legal norms (Kryvytskyi, 2020). In the context of Ukrainian law, other scientific works have been identified as a contributing source of legal precedent. Despite Ukraine's official affiliation with the continental legal system, domestic courts are increasingly employing court decisions, including

those of the Supreme Court and the ECHR, as factual precedents. It has been noted by scientists that there is precedent for court decisions in Ukraine, even though this precedent has not been codified at the legislative level (Yuzheka, 2018).

The scientific discourse actually recognises the existence of a precedent element in Ukrainian law, but does not formulate a clear answer to the question of the degree of its binding nature and hierarchical place among other sources of law. This indicates the existence of methodological uncertainty that requires further research. Notwithstanding Ukraine's official affiliation with the continental legal system, domestic courts are increasingly employing court decisions – including those of the Supreme Court and the ECHR – as factual precedents. Judicial practice fulfills a quasi-normative function by ensuring the uniformity of court decisions and legal certainty (Nikitenko, 2016).

The practice of the ECHR increasingly affects the legal system of Ukraine. Scientists emphasize that court decisions of the ECHR have direct force for Ukrainian courts in accordance with the Law of Ukraine “On Enforcement of Decisions and Application of the Practice of the ECHR”. This means that national courts must take into account the legal positions of the ECHR when making their own decisions (Kaliuzhna, 2021a). The implementation of ECHR decisions in national judicial practice is a complex process since it requires changes in the legal awareness of judges as well as in the legal policy of the state. They emphasize that judges often use ECHR decisions selectively, which can lead to legal uncertainty and inconsistency in judicial practice (Hladenko, 2013).

Despite a significant amount of scientific research, a number of unresolved issues remain in the field of judicial lawmaking. In particular, the lack of formalization of judicial precedent as a source of law in Ukraine creates a situation where judges are forced to improvise in complex legal cases. Scientists note that it is necessary to improve the regulatory framework, develop mechanisms for mandatory consideration of decisions of the Supreme Court and the ECHR and establish clear criteria for enforcement. Currently, there is a misunderstanding about the definition of judicial precedent as a category of national legal doctrine, which is one of the main problems in jurisprudence. Therefore, scientists try to interpret this concept in different ways. In particular, Riabchenko (2020) defines the essence of judicial precedent as the application of legal norms in specific cases, wherein the application of norms constitutes the primary element, with the circumstances serving as a criterion for determining the similarity of future court decisions.

It is imperative to establish the conditions necessary for the effective utilization of legal positions within higher courts, particularly the Constitutional Court of Ukraine and the ECHR. In this context, the term *ratio decidendi* signifies a legal principle established by a higher court in a specific case, addressing a gap or ambiguity in legal regulation. This definition enables an accurate evaluation of the ECHR's judicial practice as precedent. Judicial lawmaking constitutes an integral component of the developing case law within Ukraine's judicial apparatus (Riabchenko, 2022).

Similar views were expressed by Yasynok (2023), who emphasized that lawmaking in the field of justice, especially under martial law, is becoming important due to the need for prompt decision-making to regulate social relations. The ECHR recognizes its practice as precedent-setting, as the court seeks to adhere to the approaches applied earlier, unless it considers it necessary to change them. For instance, the court may cite its prior deliberations in the previous section of the decision, while concurrently underscoring its autonomy and the right to modify its legal stances.

According to the Law of Ukraine No. 3477-IV “On the execution of decisions and the application of ECHR practice” (Verkhovna Rada of Ukraine, 2006), Ukrainian courts are obliged to take into account the decisions of the ECHR, in particular the final decisions confirming the violation of the Convention for the Protection of Human Rights and Fundamental Freedoms, as well as decisions relating to fair satisfaction and friendly settlement of cases. This confirms the need to apply the practice of the ECHR as a source of law in Ukrainian proceedings, even if the specific decision did not directly concern Ukraine. The analysis of the doctrinal positions suggests that the current state of scientific research on the issue is characterised by a transition from denial of the law-making role of courts to its actual recognition. The issue of institutionalisation of this phenomenon and development of clear criteria for distinguishing law-making from law interpretation remains open.

The States Parties to the Convention are obliged to consider not only the decisions that have been made with regard to them but also the decisions that have been made with regard to other countries. It is essential to note that this will contribute to the prevention of subsequent violations and the reformulation of both the legal framework and law enforcement practices, ensuring that human rights are not infringed and that legal decisions are not made in similar cases in the future (Nikitenko, 2023). There is a need to improve the regulatory framework to consolidate unified approaches to judicial lawmaking. Further research in this area may contribute to the development of national law and its adaptation to European standards of justice.

### 3. Methodology

The methodological basis of the study is a combination of general scientific and special legal methods of cognition which provide a comprehensive analysis of judicial law-making and case law in Ukraine. The empirical basis of the study is formed on the basis of the analysis of the Supreme Court decisions, in particular, the decisions of the Grand Chamber of the Supreme Court, and the case law of the European Court of Human Rights (ECHR) adopted in 2015-2023, which had an impact on the formation of legal positions in criminal, administrative and civil proceedings. The judgments were selected based on the criteria of the presence of a formulated legal position (*ratio decidendi*), references to previous case law, impact on changing or unifying law enforcement, and the use of ECHR case law in the reasoning part of the judgment. The main special research method used was a content analysis of the *ratio decidendi* of the selected court decisions, which allowed to identify the normative content of the legal positions of the courts and assess their regulatory function.

The content analysis included the identification of key legal arguments, determination of the method of interpretation of legal provisions (literal, systemic, teleological, evolutionary), analysis of references to previous decisions as an indicator of precedent and identification of signs of a new legal position. Formal legal method is used to analyse the legal acts regulating the application of the ECHR case law and the status of legal positions of the Supreme Court, comparative legal method to compare the continental model of law enforcement with elements of case law, systemic and structural analysis to determine the place of judicial law-making in the system of sources of law of Ukraine, and dynamic analysis of case law to identify trends in strengthening or transforming the role of judicial precedents in various types of legal proceedings.

A separate analytical section is devoted to the assessment of the effectiveness of the implementation of court decisions, taking into account the existing institutional mechanisms of Ukraine. In particular, the role of the Unified State Register of Court Decisions as a tool for systematising and providing access to the legal positions of courts, as well as the importance of the system of training and professional development of judges in the context of proper application of the ECHR case law, are analysed. The study focuses on the issues of analytical use of court decisions, their systematisation, generalisation of legal positions and impact on the unity of court practice.

The final stage was the modelling of areas for optimising the use of judicial precedents in law enforcement, based on a systematic summary of the Supreme Court's legal positions, a structured analysis of the ECHR case law with the identification of established standards, improvement of the analytical use of the Unified State Register of Court Decisions and enhanced methodological training of judges on the application of ratio decidendi as a normatively significant element of a court decision. This approach allows for greater methodological certainty of the study, transparency of the tools used, and increased scientific validity of the results.

#### **4. Results**

Case law and judicial lawmaking are important elements of law enforcement practice that largely determine the legal system at both the national and international levels. They contribute to the formation and development of legal practice through the use of court decisions as a source of law that interacts with other legal instruments, including legislative acts and international agreements. The role of case law is particularly important in common law systems, such as in the UK and the US, where court decisions can become obligatory for subsequent judicial bodies. At the same time, in continental law systems, such as in Ukraine and many European countries, precedents do not have formal legal force, but can nevertheless influence law enforcement, in particular in the context of judicial lawmaking (Butkevych & Nosenko, 2021).

Law enforcement is the process of implementing and applying the rules of law in specific legal situations. From the point of view of legal science, law enforcement is a category that combines various elements of legal practice, from the interpretation of legal norms to their practical application in court proceedings. However, this process is not automatic but involves a significant role for judges, who must carry out a qualified legal assessment of the facts and apply the relevant legal norms. In judicial practice, the application of precedents is important in countries where the law is based on the common law system, as well as in jurisdictions where judicial law-making and the application of international norms constitute an important part of law enforcement. In Ukraine's continental legal system, courts play a role in shaping judicial practice by clarifying or supplementing legal norms. However, their decisions do not have the binding force of precedent (Babin, 2020).

Judicial lawmaking in Ukraine is specific, as domestic courts do not create binding precedents, but can interpret laws and regulations and develop legal concepts that meet the needs of society. This process is especially important in the context of applying international law, in particular judgments of the ECHR, which affect the national legal system. In cases involving human rights violations, Ukrainian courts often refer to precedents established by the ECHR to ensure that national jurisprudence meets international standards.

The judiciary, as one of the branches of power, upholds law and order by resolving legal disputes and social conflicts, establishing legal facts, and applying liability measures to protect the rights, freedoms, and legitimate interests of citizens and other legal entities. Art. 5 of the Law of Ukraine “On the Judiciary and the Status of Judges” ensures that justice in Ukraine is carried out only by the courts, in accordance with the procedures of legal proceedings established by law. Delegation of judicial functions or their appropriation by other bodies or officials is not allowed. Persons who illegally perform the functions of a court are liable under the Law “On the Judiciary and the Status of Judges” (Verkhovna Rada of Ukraine, 2016).

Within the system of separation of powers, the judiciary serves to balance the legislative and executive branches, restraining them from unlawful actions and upholding the rule of law in the development of a legal state. Courts are obliged to apply the Constitution of Ukraine, laws, and other normative legal acts adopted by law-making bodies within their competence. The essence of justice lies in judicial enforcement, a jurisdictional activity in which courts resolve specific legal cases in accordance with established procedures and applicable legal norms, ultimately issuing state-sanctioned decisions (Andronov, 2018).

The formal result of judicial enforcement is the issuance of a judicial act, such as a decision, ruling, or verdict. The judiciary does not have legislative powers, but it is possible to see changes in the conditions of socio-political and legal reality, where organizational forms do not always coincide with the traditional understanding of the separation of powers. One such manifestation is the introduction of elements of normativity in court decisions, in particular within the framework of constitutional justice and the generalization of the judicial practice of the Supreme Court and courts of general jurisdiction (Kroytor, 2021). As a result of the activity of courts in the field of legislation, a judicial legislative act is created, which has priority over other legislative acts until its entry into force.

Academic circles are beginning to think that a new legal phenomenon is emerging: judicial lawmaking. Some scholars support the idea of legislative empowerment of courts with legislative powers to improve the regulation of public relations, especially within the framework of the activities of higher courts, such as the Constitutional Court of Ukraine and the Supreme Court. According to the explanations of the Supreme Court and the High Specialized Courts, the generalization of judicial practice becomes mandatory for lower courts and indirectly for all participants in legal relations applying the relevant rules of law.

Judicial legislation is not the main function of the court, but it is reflected in the need to eliminate gaps or legal conflicts arising from judicial practice. At the same time, it is important to distinguish between judicial practice and judicial precedent. Judicial practice is the result of a generalization of decisions in similar cases, while precedent is a specific case. Thus, judicial lawmaking arises as a need to fill gaps in legislation and has a limited impact on the legal system, providing legal certainty in judicial practice. It should be implemented with caution and on the principle of self-restraint. Judges should make decisions only when the protection of human rights requires the creation of new legal norms to address specific situations. In general, judicial lawmaking is an important element of law enforcement, which allows solving legal issues arising in the process of applying the law, filling gaps, and clarifying legal norms, while ensuring the stability of the legal system (Riabchenko, 2022).

To enhance the scientific accuracy and practical relevance of the study, a systematic analysis of court decisions published in the Unified State Register of Court Decisions (USRCD) in 2013-2025 was conducted. The sample included decisions of district and appellate courts, as well as

the Supreme Court of Ukraine, relating to key categories of civil, administrative and commercial cases. The criteria of the parties to the dispute, the merits of the case, the court's reasoning and practical implications for further jurisprudence were analysed.

The systematisation of the materials made it possible to identify the main trends in court decision-making. The largest number of cases concerned contractual relations, labour disputes and administrative procedures. Court reasoning is mostly based on the precedents of the Supreme Court, but in a number of cases inconsistent interpretation of similar provisions was found. The use of the USRCD data makes it possible to identify recurring errors and provide recommendations for improving the consistency of court practice. An important aspect of the study was the consideration of institutional mechanisms that affect the quality of court decisions.

The system of training and internships for judges contributes to more informed decision-making, while the centralised data of the USRCD provides analytical processing and forecasting of case law trends. The analysis has resulted in practical recommendations that include improving the classification of cases in the USRCD to facilitate the search and analysis of precedents, developing tools for predicting the outcome of disputes and increasing the consistency of decisions between instances, as well as introducing internal standards for judges to justify their decisions and improving the exchange of practice between courts. These aspects contribute to the analytical accuracy, contemporary relevance and scientific contribution of the study, providing a reliable empirical basis for further study of Ukrainian case law.

One of the main aspects of the application of judicial law-making in Ukraine is the development of the human rights institution, in particular through the mechanism of implementation of ECHR decisions. Ukrainian courts may resolve specific legal issues with due regard to the requirements established by international judicial bodies, referring to the precedents of the ECHR, in case of vagueness or ambiguity of national legislation. This is an important element not only in the context of judicial lawmaking, but also in the context of respect for human rights, which are the fundamental principles of a modern legal society.

The case of *Oleksandr Volkov v. Ukraine* is of fundamental importance for the development of standards of judicial independence and disciplinary liability of judges (Verkhovna Rada of Ukraine, 2013). The applicant, a judge of the Supreme Court of Ukraine, was dismissed by a resolution of the Verkhovna Rada on the basis of a submission from the High Council of Justice and claimed that the procedure for his dismissal violated the guarantees of a fair trial under Article 6 of the Convention, as well as the principle of legal certainty. The ECHR found a violation of Article 6 of the Convention, noting that the composition of the High Council of Justice did not provide sufficient guarantees of independence and impartiality, the disciplinary procedure did not meet the requirements of due process, and the participation of the Parliament as a political body in the dismissal of the judge created a risk of influence on the judiciary. The Court also emphasised the unpredictability of the application of disciplinary grounds.

The ratio decidendi of the judgment is to formulate standards of institutional independence of judicial governance bodies, requirements for disciplinary procedures and limits of political bodies' involvement in the career of judges. The ECtHR ordered the state to reinstate the applicant in his position, which underlined the systemic nature of the violations found. The judgment became one of the factors behind the reform of judicial governance and constitutional amendments in 2016, demonstrating the law-making impact of the ECHR case law on the development of the national judicial system.

An illustrative example of the impact of ECHR judicial law-making on the development of national law is the case of *Zelenchuk and Tsytsyura v. Ukraine*, applications no. 846/16 and no. 1075/16, judgment of 22 May 2018 (European Court of Human Rights, 2018). The applicants, who were owners of agricultural land plots, challenged the effect of a long-lasting moratorium on the alienation of such land. They argued that the legal prohibition on land sales violated their right to peaceful enjoyment of their property guaranteed by Article 1 of Protocol 1 to the European Convention on Human Rights.

The ECtHR found that the state interference with the applicants' property rights was excessive and disproportionate. The Court recognised that although the state has a wide margin of appreciation in matters of land policy, the long-term extension of the moratorium without proper justification, without introducing alternative mechanisms for exercising property rights and without a proper balance between the public interest and the rights of owners constitutes a violation of the Convention. It is particularly important in the context of judicial law-making that the Court formulated criteria for assessing the proportionality of interference with property rights, defined standards for the admissibility of long-term legislative restrictions and outlined the limits of state discretion in the field of land reform. The ECtHR did not oblige Ukraine to immediately lift the moratorium, but clearly indicated the need to ensure a "fair balance" between the general interest and individual rights. In fact, the Court has formed a new regulatory guideline for the national legislator.

The Court formulated criteria for assessing the proportionality of interference with property rights, defined standards for the admissibility of long-term legislative restrictions and outlined the limits of state discretion in the field of land reform. The ECtHR did not oblige Ukraine to immediately lift the moratorium, but clearly indicated the need to ensure a "fair balance" between the general interest and individual rights. In fact, the Court has formed a new regulatory guideline for the national legislator.

The law-making effect of this judgment was manifested in the subsequent adoption of Law of Ukraine No. 552-IX of 31 March 2020, which introduced a phased opening of the agricultural land market (European Court of Human Rights, 2018). Thus, the ECtHR judgment became a catalyst for changing public policy and transforming legislation. In the context of the study of judicial lawmaking, this case demonstrates that an international court can formulate standards of interpretation of law that go beyond the scope of a particular case, these standards have a systemic impact on national legislation, and judicial practice can act as a mechanism for correcting legislative gaps and imbalances.

In countries with a common law system, such as the United Kingdom, the United States, or Australia, case law is an integral part of law enforcement practice. In these countries, the decisions of higher courts are binding on lower courts, and each new case is considered through the prism of previously adopted decisions, which contributes to the legal certainty and stability of the legal system. Such countries rely on the interpretation of the law by judges through precedents, which is the basis for further decisions. In common law systems, the role of evidence, proof, and standards of proof are also important, as judges must evaluate facts based on the principles of fairness and the principles of the presumption of innocence in both criminal and civil cases.

On the other hand, in civil law systems, such as in Germany, France, and Ukraine, precedent is not an official source of law, although courts may apply it in their practice. In such countries, more attention is paid to the codification of the law in the form of laws, codes, and other regulations. However, this does not mean that the courts have no influence on the development of

legal norms. Judicial practice in such countries can create effective interpretations of norms, which ultimately become the basis for the formation of new legal standards. For example, courts can interpret legislative acts in the context of specific cases, which allows for flexibility of enforcement in the face of changing social realities.

One of the important components of law enforcement practice is the standards of proof, which determine the requirements for evidence, their evaluation, and their reliability. In common law systems such as the UK and the US, courts often use standards based on the principles of preponderance of the evidence in civil cases and beyond a reasonable doubt in criminal cases. In these countries, proof is the main tool to ensure justice, and judges must carefully evaluate all the evidence provided in order to make an informed decision. In particular, in common law systems, great importance is attached to the role of precedents as evidence, which allows judges to build decisions on the basis of already established practice.

In continental legal systems, such as in Ukraine, standards of proof are also defined in regulations, but courts have more freedom in interpreting and applying these standards. Since precedents are not binding in Ukraine, courts may rely on law enforcement practice, particularly decisions of the ECHR, to develop legal conclusions in specific cases. In this context, case law and evidence-based practice are becoming important tools for achieving justice and due process.

Table 1 compares law enforcement practice in Ukraine with other countries (in particular, countries with a common law system, such as the UK and the US, as well as countries with a continental legal system, such as Germany and France).

Thus, the law enforcement practice of courts, evidence, and standards of proof are important tools in the legal system that ensure the proper application of law. Judicial law-making, especially in systems where there is case law, is a necessary element for the development of legal doctrine and the formation of a single legal space. In countries where enforcement is based on international precedents, such as the ECHR, courts actively use international decisions to interpret national law. The Ukrainian legal system, positioned at the intersection of continental law and international influence, actively incorporates judicial practice, particularly ECHR decisions, to develop legal norms and safeguard human rights. Judicial legislation is one of the most important tools for the development of the national legal system, allowing it to adapt to dynamic social changes and to integrate international standards, especially those established by the ECHR. In this context, the law-making of judges acts not only as a mechanism for the interpretation and application of existing norms but also as a process of creating new legal approaches that fill legislative gaps and meet the requirements of modern society. Judges, acting within their competence, analyze specific cases, taking into account both domestic legal norms and international standards, which allows for the formation of a flexible and adaptive system of law enforcement. This process is especially relevant in the field of human rights protection, where ECHR decisions serve as a benchmark for domestic courts, contributing to the harmonization of national law with international obligations and increasing the effectiveness of justice (Kiralfi, 2017).

A qualitative analysis of methodologies for the use of judicial precedent in law enforcement practice demonstrates that both Ukrainian courts and the ECHR actively apply a precedent approach to ensure the stability and predictability of the legal environment. In systems where case law is not formally binding, as is the case in Ukraine, courts increasingly look to the body of case law, particularly the ECHR judgment, to resolve legal inconsistencies and provide a single line of interpretation of the norms.

*Table 1.* The Main Differences between Law Enforcement Practice in Ukraine and Countries with Different Legal Systems

<b>Criteria</b>	<b>Ukraine</b>	<b>UK and US</b>	<b>Germany and France</b>
<b>Type of legal system</b>	Continental legal system	Common law (case law)	Continental legal system
<b>Role of precedents</b>	Precedents are not mandatory, but can affect judicial practice through the interpretation of norms	Precedents are binding on lower courts (stare decisis)	Precedents are not a formal source of law, but can affect the interpretation of norms
<b>Judicial lawmaking</b>	Possible, but not officially binding on other courts	Judicial law-making is the basis for the development of law; courts can change legal norms due to precedents	Judicial lawmaking is limited to the interpretation of laws; no new legislation is created
<b>Influence of international law</b>	High, in particular due to the decisions of the ECHR, which are implemented in the national legal system	The ECHR has less influence, but the decisions of international courts can be taken into account	The ECHR has a significant impact on enforcement through jurisprudence
<b>Law enforcement</b>	Use of international precedents to clarify national norms, especially in human rights matters	Application of precedents in practice and interpretation of laws based on past court decisions	Application of laws and codifications, greater dependence on written law, courts formulate decisions within the framework of existing norms
<b>Standards of evidence</b>	Evidence standards are determined by law; in practice, it is possible to use international standards	High level of proof, in particular “beyond a reasonable doubt” in criminal cases	Use of strict rules of evidence, focus on evidence and their interaction with legal norms
<b>Role of Judges</b>	Judges form law enforcement practice but cannot create precedents	Judges actively set precedents that are binding on other courts	Judges apply national laws but may influence their interpretation within the framework of the interpretation of norms
<b>Role of evidence</b>	Evidence is an important element, but more importance is given to the legal norms interpreted by the court	The importance of evidence is paramount; courts determine fairness through evidence	The approach to evidence is structured, with an emphasis on the legality and compliance of the evidence with the law

*Source: based on Kiralfi (2017)*

This approach allows preserving the principles of fairness and predictability, since the use of previous decisions contributes to the standardization of judicial practice and reduces the risks of ambiguous interpretation of legislation. Methodologically, courts analyze each case taking into account both general principles of law and the specifics of individual cases, which allows not only to effectively resolve legal issues, but also to gradually develop the system of law enforcement through the integration of new social and international requirements (Kiralfi, 2017). Thus, judicial lawmaking, both in the system of Ukraine and in the practice of the ECHR, is an important factor in adapting the legal system to modern challenges. It contributes not only to filling legislative gaps but also ensures the stability, predictability, and unification of judicial practice, which ultimately increases the level of human rights protection and the effectiveness of law enforcement in the context of globalization and the increasing integration of international legal standards.

According to Part 17 of the Law of Ukraine No. 3477-IV "On Enforcement of Decisions and Application of the Practice of the ECHR", the courts in the process of considering cases use the practice of the ECHR as a source of law (Verkhovna Rada of Ukraine, 2006). Ukraine is one of the leading respondent countries in cases before the European Court. Recently, legal issues related to the right to hope and forced feeding have been discussed, in particular in the case considered by the ECHR, which revealed discrepancies and shortcomings in the national legislation of Ukraine. In order to solve them, amendments were made to the relevant regulations.

On October 18, 2022, the Law of Ukraine "On Amendments to the Code of Ukraine on Administrative Offenses, the Criminal Code of Ukraine, and the Criminal Procedure Code of Ukraine on the Implementation of Decisions of the ECHR" was adopted (Verkhovna Rada of Ukraine, 2014). The purpose of the law was to fill the gap in national law with regard to the parole of persons with life sentences. Article 81 of the Criminal Code clarified that parole is possible only after the actual serving of at least three-quarters of the sentence for particularly serious crimes if life imprisonment is replaced by a term of imprisonment. Thus, persons sentenced to life imprisonment may be released on parole only if the life sentence is commuted to a fixed-term one.

This rule was considered by the ECHR in a case involving a prisoner sentenced to nine years' imprisonment. In 2016, following a hunger strike due to the unsatisfactory conditions of detention, force-feeding was used on a number of people. Then, in December 2018, the prisoner again refused food on the grounds that it was a violation of his constitutional rights. A medical examination in January 2018 confirmed the threat to his life, after which the court decided to force-feed him. This practice was regarded as a violation of Article 3 of the European Convention, since feeding was carried out by cruel methods without proper medical justification. The lack of clear national rules on this procedure has previously been noted by the ECHR in similar decisions, which also recognized human rights violations due to ill-treatment and lack of proper medical control (ECHR: Ukrainian Aspect, 2019b).

This case highlights the importance of bringing national legislation into line with international standards to ensure the effective protection of human rights. The implementation of ECHR decisions is of key importance for the country's legal system. For example, in another case, the Court pointed to the need to establish a legal mechanism for parole for persons sentenced to life imprisonment. This remark became the basis for legislative changes, in particular through relevant draft laws (ECHR: Ukrainian Aspect, 2019a).

Ensuring compliance of national laws with international standards improves the country's legitimacy in international relations, increases the effectiveness of justice, and strengthens the protection of human rights. Harmonization of legislation with international norms makes it possible to ensure consistency and harmony in the legal field, contributing to internal stability and strengthening confidence in justice. In addition, it allows countries to better cooperate on global human rights issues (Kaliuzhna, 2021b).

The analysis of the mechanisms for the implementation of ECHR decisions in national legislation opens up important aspects of harmonization of international standards with domestic legal norms. This includes the adoption of amendments to laws, the use of ECHR decisions as precedents, and the creation of bodies to monitor the implementation of these decisions. A comparative analysis between national and international legislation is critical to maintaining a balance between national sovereignty and international obligations (Fenych, 2022).

*Table 2. Comparison of the Use of Case Law in Ukraine and EU Countries*

Country	Characteristics of the Application of Case Law	Role of the Supreme Court
<b>Ukraine</b>	Courts are not obliged to follow precedents, but Supreme Court decisions are highly influential	Supreme Court decisions provide legal guidance but are not binding on lower courts
<b>United Kingdom</b>	Precedents are binding for all courts; court decisions establish general rules of law	The Supreme Court's decisions set mandatory precedents for lower courts
<b>France</b>	The legal system is primarily based on codified law, but higher court decisions influence interpretation	The Supreme Court of Cassation ensures uniform interpretation of laws
<b>Germany</b>	Judicial practice is important, but precedents are not formally binding	The Federal Court of Justice shapes legal interpretation but does not create binding precedents

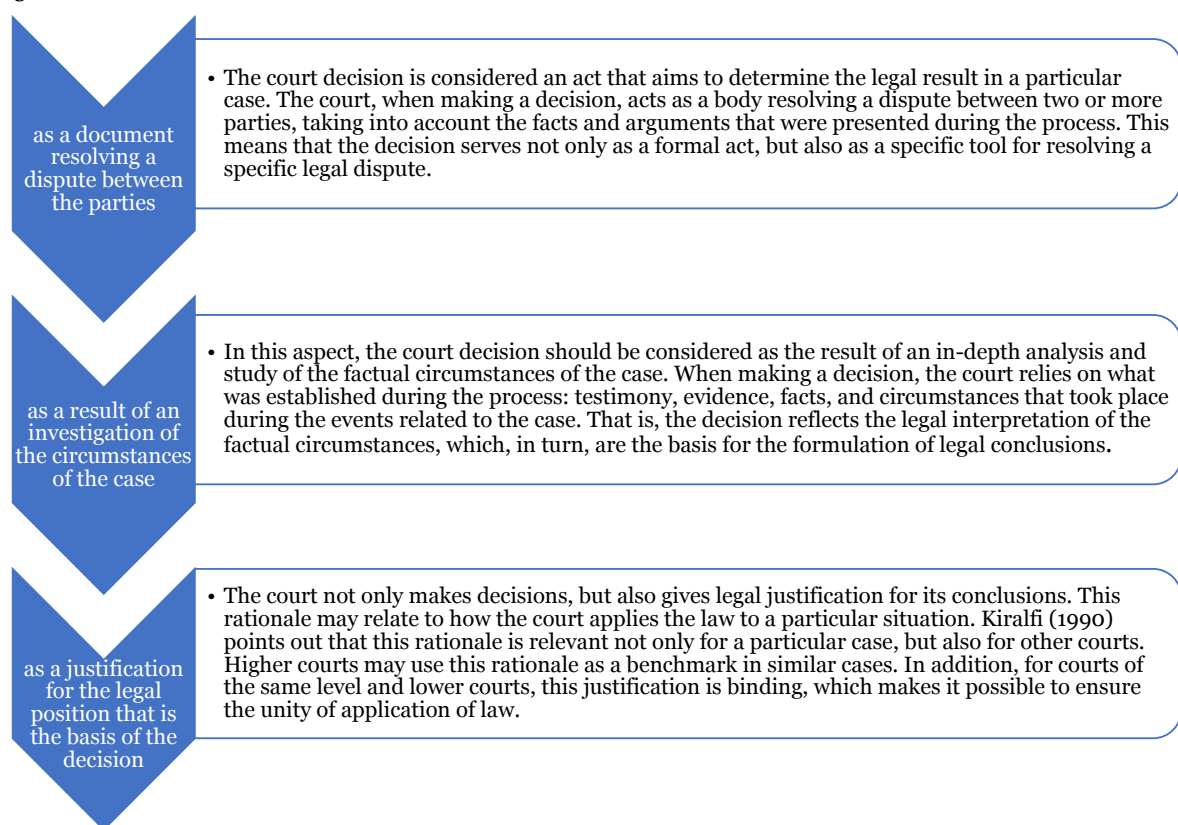
*Source: based on Fenyh (2022)*

The implementation of the ECHR decisions has many positive consequences, including improving the protection of citizens' rights, improving legislation, increasing confidence in justice, and reducing the number of human rights violations. Decisions of the ECHR can serve as legal precedents to prevent violations of rights in the future, as well as promote reforms in the legal system.

Despite numerous advantages, the ECHR's implementation process faces certain challenges, such as striking a balance between international obligations and national sovereignty, possible conflicts of interpretation, and political and social resistance. In some cases, contradictions between domestic legislation and ECHR decisions may lead to the need for adjustments (Fenyh, 2017). Proposals for the implementation of ECHR decisions in Ukrainian legislation in particular relate to amendments to the Criminal Code to ensure compliance of national norms with international human rights standards. Legislative reform aims to ensure legal stability, increase the effectiveness of justice, and avoid conflicts in the interpretation of legislative norms.

As a result, the implementation of the ECHR decisions is important for the development of the legal system of Ukraine, ensuring human rights and improving justice, which will contribute to the formation of a just and stable society. Kiralfi (1990) provides a more detailed definition of judicial precedent. He notes that the court decision should be considered in three aspects (Fig. 2).

Figure 1. Consideration of the Court Decision



Source: based on Kiralfi (1990)

This rationale is useful for higher courts and binding for courts of the same level as well as for lower courts because of its legal status (Kiralfi, 1990). Therefore, on the basis of these theoretical approaches, to define judicial precedent in civil litigation as a judicial decision that was made in the course of justice in a particular case and formulate a rule that is binding on lower courts in resolving similar issues. Such a decision is the result of the activities of the judiciary and is created during the implementation of justice. A precedent is formed by a higher court and acquires the status of a judicial precedent when it is referred to by another court when considering a similar case.

According to the provisions of domestic legislation, in particular in the Civil Procedure Code of Ukraine, the courts are obliged to take into account the conclusions of the Supreme Court when applying the rules of law contained in its resolutions. This is the basis for the formation of a unified practice in the judicial system, which ensures legal certainty and unity in justice. It is proposed to supplement Article 10 of the Civil Procedure Code of Ukraine, clearly stating that the courts should be guided by the legal opinions of the Supreme Court when considering the case. This should also apply to the mandatory application of judicial precedents by lower instances, which will provide more informed and consistent decisions in judicial practice.

In addition, given the importance of the application of judicial precedents, it is necessary to consider the creation of a separate rule in the Civil Procedural Code of Ukraine, which will determine the specifics of the application of the practice of the Supreme Court, in particular, regarding the cancellation of decisions of courts of first and appellate instance, if they do not take into account the preliminary conclusions of the Supreme Court in such cases. In general,

judicial precedent in civil proceedings is essential to ensuring legal certainty and fairness in court decisions. It is imperative to engage in the active implementation of judicial practice, particularly in cases pertaining to compensation for damages resulting from international conflicts. In such instances, the position of the Supreme Court assumes significant importance as a benchmark for lower instances (Supreme Court of Ukraine, 2020).

The study of the dynamics of the development of judicial law-making in the context of European human rights standards is extremely important for analyzing how the practice of the ECHR affects the law enforcement activities of national courts, especially in human rights issues. This issue covers not only the theoretical aspects of justice but also practical changes in the legislative system of the countries that are members of the Council of Europe. In the context of this study, it is worthwhile to consider how ECHR decisions affect the national legal system, as well as the tools and mechanisms employed to implement European human rights standards in national legislation. The ECHR is the main body that ensures compliance with the European Convention on Human Rights on the territory of the member states of the Council of Europe. While not bearing the weight of legislative acts, these decisions play a pivotal role in shaping judicial practice. They determine the interpretation of rights and freedoms enshrined in the Convention and establish precedents that national courts can subsequently cite.

The ECHR not only decides individual cases but also develops general principles for the application of human rights. This applies in particular to the rights to a fair trial, the right to liberty and security of person, the right to protection from torture and ill-treatment, the right to privacy, etc. (Hladenko, 2013). One example of the impact of ECHR practice on national courts is a case where the ECHR found a violation of the right to liberty and security (European Court of Human Rights, 2023). The court's deliberations centered on two primary inquiries: first, whether the plaintiff's detention was legally justifiable; and second, whether the plaintiff had been accorded the rights stipulated by the ECHR. Proceeding from this, the national courts should have taken these standards into account in their decisions on similar cases.

The practice of the ECHR has a significant impact on national courts, in particular in Ukraine, where questions often arise regarding the compliance of domestic legislation and judicial practice with European standards. The ECHR issues decisions that serve as benchmarks for the courts of the Member States, and therefore national courts should take these decisions into account, especially if they relate to human rights violations (Pavliukovets, 2024). In Ukraine, the Constitutional Court of Ukraine plays an important role in the application of ECHR decisions by applying them when interpreting the Constitution of Ukraine (Constitutional Court of Ukraine, 2022). The Supreme Court of Ukraine also uses ECHR decisions as guidelines in resolving cases where issues of human rights violations arise.

The ECHR found a violation of Article 8 of the European Convention on Human Rights (the right to respect for private and family life) in a case where the domestic court did not take into account established international standards when considering the issue of unlawful search of the plaintiff's home (European Court of Human Rights, 2005). As a result, the national court reconsidered its decision, relying on European legal norms. According to the Constitution, international treaties, in particular the ECHR, are part of national legislation. Consequently, changes in the law enforcement practice of the ECHR may necessitate the adjustment of national laws or approaches to their implementation. (Verkhovna Rada of Ukraine, 2016).

In this case, the ECHR found a violation of the right to a fair trial (Art. 6 of the ECHR), in particular in terms of the right to proper legal representation. The ECHR decision prompted amendments to the Ukrainian legislation, particularly with regard to the regulation of access

to legal aid and the more precise delineation of the criteria for safeguarding citizens' rights within the judicial process.

*Table 3.* The Impact of the Decisions of the European Court of Human Rights on National Enforcement in Ukraine

<b>Indicator</b>	<b>Overview</b>
Enforcement of ECHR decisions	Evaluation of the effectiveness of ECHR decision implementation in Ukraine
Interrelation of national and European jurisprudence	Analysis of how national courts incorporate ECHR rulings
Specificity of application of precedents	Examination of how ECHR precedents influence national judicial practice
Changes in legal practice after the ECHR decisions	Identification of reforms and adjustments in Ukrainian law following ECHR rulings

The dynamics of the development of judicial law-making in Ukraine reflect the process of gradual integration of European human rights standards into national practice. Initially, this was only a formal stage, when the national courts copied the decisions of the ECHR without a deep understanding of their context. However, over time, courts began to take into account more aspects of European judicial practice, and the law enforcement activities of national judges acquired a higher quality.

In this case, the ECHR reminded the national courts of the need to apply European standards in resolving cases of violation of the rights to privacy and freedom of a person. Subsequently, the Supreme Court of Ukraine and the Constitutional Court of Ukraine began to take these standards into account when resolving such cases at the national level. Thus, the dynamics of the development of judicial law-making in the context of European human rights standards show that the decisions of the ECHR have a significant impact on the law enforcement activities of national courts. Since national courts must comply with European human rights standards, their activities are gradually adapted to the requirements defined by the ECHR. This process is an important stage in the development of the legal system of the Council of Europe member states, in particular Ukraine, and ensures greater protection of human rights within the framework of national legislation (Pavliukovets, 2024).

The decisions of the ECHR serve as a guide for national courts on the correct interpretation of human rights, as well as stimulate legislative changes that meet modern European requirements. As a result, national courts and law enforcement agencies are more consistent with European human rights standards. Creating a model for optimizing the use of judicial precedents in law enforcement is an important task for ensuring more effective and fair justice in Ukraine and other European countries. Judicial precedent is an important element of the legal system, as it allows for stability and predictability in law enforcement. In countries where the law is based on judicial precedents, such as the United Kingdom and the United States, courts usually rely on previous decisions to resolve new cases. In Ukraine, in the context of the continental legal system, the use of judicial precedents requires improvement and integration into law enforcement practice (Huliam, 2022).

One of the key stages of optimization is the identification of precedents that should be relevant for enforcement. In order to accomplish this objective, it is imperative to establish a comprehensive system of classification for court decisions. This system must include binding precedents, which are to be applied by lower courts; recommended precedents that carry weight for

enforcement but are not binding; and regulatory precedents relating to significant legal principles or alterations in the interpretation of laws. These regulatory precedents may necessitate amendments to legislation. It is important to define the role of higher courts in setting precedents, since in many European countries the Supreme Court is the main body that sets precedents for lower courts. In Ukraine, this issue needs to be improved, since the creation of precedents through the resolutions of the Grand Chamber of the Supreme Court of Ukraine will ensure the unity of judicial practice (Veraxa, 2024).

In addition, it is necessary to create a system for collecting and storing court decisions, which will allow judges to have access to the necessary materials for the application of precedents in new cases. This can be achieved through the creation of a centralized platform where judicial practice will be gathered, which will allow effective analysis of previous decisions. It is also important to use technologies such as artificial intelligence to automatically analyze court decisions and ensure their application in law enforcement.

One of the main elements of this model is the training and professional development of judges in the application of judicial precedents. In order to accomplish this objective, it is imperative to organize periodic training sessions, seminars, and other events. During these educational opportunities, judges should be presented with practical examples of the utilization of precedents and the methodologies employed in their implementation. In addition, it is important to establish a presumption of the legality of precedents, which will allow judges to use them more effectively in their decisions. At the same time, courts should be able to adjust the application of precedents depending on the specific circumstances of the case, which will preserve the balance between the stability of the law and its flexibility in conditions of change (Kozyubra, 2016).

An important aspect is also the interpretation of precedents, which should be flexible and adapted to changes in the legal field and social conditions. Since the legal system must respond to new challenges, the courts have the right to adjust the interpretation of existing precedents, thus ensuring the adaptability of enforcement. To show the practical application of this model, one can refer to the decision of the ECHR in the case of Okueva v. Ukraine (2023), where the Court found a violation of the right to a fair trial due to the failure of national courts to apply the precedents determined by the Supreme Court of Ukraine in similar cases (Verkhovna Rada of Ukraine, 2023). This decision underscores the imperative for enhancing the mechanisms that govern the utilization of judicial precedents within the Ukrainian judicial system. The courts must adhere more rigorously to the established practices of higher courts. Another pertinent example is the case of Grubnyk v. Ukraine (2020), in which the ECHR identified a violation of the right to liberty and security of person due to the non-compliance of national courts with the standards defined in the ECHR decision. This decision also underscores the significance of integrating European standards into national practice (Verkhovna Rada of Ukraine, 2023).

Thus, the creation of a model for optimizing the use of judicial precedents in law enforcement includes not only the introduction of technologies for collecting and analyzing court decisions, but also improving the qualifications of judges, determining the role of higher courts, and ensuring flexible interpretation of precedents. The implementation of this model will increase the efficiency of justice in Ukraine and other European countries, providing fairer and more stable solutions in legal cases.

## 5. Discussion

The first hypothesis argues that judicial lawmaking and case law have an important role in shaping uniform and predictable judicial practice in Ukraine. Indeed, in the context of the democratic development of the legal system, judicial practice becomes an important element for achieving the rule of law and legal certainty. In Ukraine, where the legal order is constantly being reformed, the resolution of court cases on the basis of a common practice of judges contributes to the creation of stability and predictability for citizens and legal entities. In addition, case law avoids situations where the same problem is resolved by different judges in different ways, which in turn maintains trust in justice and ensures the same application of the law (Fulei, 2015).

The second hypothesis concerns the change in the practice of domestic courts, which are increasingly turning to court decisions, in particular the practice of the Supreme Court and the ECHR, as factual precedents. This phenomenon confirms the evolution of judicial practice in Ukraine and the need to adapt to European standards. This may be indicative of progress in the development of the Ukrainian judicial system. Conversely, it raises concerns about the stability of the continental legal system in the country (Verkhovna Rada of Ukraine, 2014). The use of decisions of the Supreme Court as precedents is gaining popularity due to its increased role in law-making, and increased attention to ECHR decisions guarantees compliance with international human rights standards, which is important to ensure the right of everyone to a fair trial (Martin, 1997).

The third hypothesis emphasizes the problem of insufficient formalization of judicial precedent in the legislation of Ukraine, which leads to discrepancies in law enforcement and contradictions in court decisions. This is a serious problem for the development of the country's judicial system. Insufficient legal certainty regarding judicial precedent leads to the fact that the decisions of one court may be opposite to the decisions of another, even in similar cases (Schauer, 1988). In addition, the lack of clear formalization of precedents can lead to difficulties in the application of law and the emergence of legal uncertainty. The task of the legislator in this context is to create a clear regulatory framework that will define the role of precedent and provide judges with tools for the uniform application of legal norms (Mazur & Benitsky, 2024).

The fourth hypothesis concerns the implementation of the decisions of the ECHR in the Ukrainian legal system. Ukraine, as a member of the Council of Europe, is obliged to comply with the ECHR decision, which has great potential for improving law enforcement in the country. However, the effectiveness of implementation depends on the availability of appropriate mechanisms for the implementation of these decisions in national judicial practice. To date, there is a certain lack of effective tools for the implementation of ECHR decisions in practice, as well as a lack of legal culture regarding these decisions among judges. However, the further development of such mechanisms and the integration of international human rights standards into national legislation is an important step towards the formation of a truly independent and effective judicial system that ensures the protection of human rights.

Thus, each of these hypotheses emphasizes the importance of developing and improving judicial practice in Ukraine, especially in the context of integrating international experience and improving legal norms to create a more predictable, effective, and fair justice.

## 6. Conclusion

Case law and judicial law-making are important tools for the formation of a unified and predictable judicial practice in Ukraine, contributing to the observance of the rule of law and legal certainty. In the conditions of modern development of the legal system of Ukraine, where reforms and integration with international standards are constantly taking place, precedents of court decisions become an important element in achieving legal stability and uniformity in the application of laws. One of the main aspects of the development of the Ukrainian judicial system is the active use of the practice of the Supreme Court and the decisions of the ECHR as factual precedents. This testifies to the desire to adapt the Ukrainian legal system to European human rights standards, but also raises the issue of ensuring the sustainability of the continental legal system characteristic of Ukraine.

A common problem remains the lack of formalization of judicial precedent in national legislation, which leads to legal uncertainty and contradictions in court decisions. In order for the judicial system to become more effective and predictable, it is necessary to improve the mechanisms for the enforcement of precedents, in particular, by legislatively consolidating their role and ensuring uniform practice.

The implementation of the decisions of the ECHR into the national legal system has great potential for improving law enforcement in Ukraine. However, for the effective implementation of these decisions, it is necessary to develop appropriate mechanisms and raise the legal culture among judges regarding international human rights standards. The impact of judicial lawmaking on the national legal system cannot be underestimated. Judicial practice in Ukraine, in conjunction with the ECHR, has been instrumental in facilitating the dynamic development of law, thereby reflecting novel social realities and international standards, especially in the field of human rights. Judges, through their decisions, create legal benchmarks, which makes it possible to ensure the harmonization of national legislation with international requirements.

In addition, a qualitative analysis of methodologies for the use of judicial precedent in law enforcement shows that courts in Ukraine and the ECHR use precedents to resolve new legal issues arising in the process of applying the rules of law. This makes it possible to ensure the stability of the legal system, although it is a challenge for law enforcement practice due to the lack of clear formalization of case law in national legislation. The relationship between the level of application of judicial precedents and the effectiveness of law enforcement is important to achieve a high quality of justice. The introduction of precedents into national legal practice contributes not only to the effective resolution of specific legal cases, but also to the improvement of general legal certainty and fairness in the judicial process.

The dynamics of the development of judicial law-making in the context of European human rights standards is an important direction for improving law enforcement in Ukraine. The decisions rendered by the ECHR have been shown to exert a considerable influence on the legal practices of national courts, notably in human rights matters, thus contributing to the integration of international standards into the national legal system. In this regard, it is necessary to develop a model for optimizing the use of judicial precedents to ensure more effective justice. The proposed methodology for improving the implementation of case law will contribute to the harmonization of the national legal order with European standards and improve the quality of justice both in Ukraine and in other European countries.

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