

THE ROLE OF ECtHR DECISIONS WITHIN THE FRAMEWORK OF LAND LAW SOURCES IN UKRAINE

ВИЗНАЧЕННЯ МІСЦЯ РІШЕНЬ ЄСПЛ У СИСТЕМІ ДЖЕРЕЛ ЗЕМЕЛЬНОГО ПРАВА УКРАЇНИ

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This article explores in detail the role and significance of decisions made by the European Court of Human Rights (ECtHR) as a key source of land law that impacts the development of judicial practices in Council of Europe member states. The article examines how ECtHR rulings facilitate the harmonization of national legislation concerning land relations and uphold international human rights standards. Particular emphasis is placed on the protection of property rights, which is critically important within the framework of land legislation, as well as on the legal ramifications resulting from violations of Article 1 of the First Protocol to the European Convention on Human Rights. The paper notes that ECtHR decisions not only identify existing human rights violations but also play an active role in establishing new legal standards designed to prevent such violations in the future. The article presents a comprehensive analysis of the most significant ECtHR rulings related to land rights and their influence on national legal practices. Special attention is given to specific cases where the Court underscores the need for an appropriate state response to disputes regarding land ownership, as well as the environmental considerations that may affect land use. Additionally, the article highlights the necessity of aligning national legislation with ECtHR standards to ensure effective and equitable protection of the rights of all parties involved in land relations. The article argues for the enhancement of law enforcement practices in Ukraine, which could positively impact the protection of the rights of landowners and users. The conclusions drawn from this analysis indicate that ECtHR rulings can serve as a powerful tool for legal practitioners, lawmakers, and scholars in the advancement of land law, while also seeking to strike a balance between state interests, private rights, and environmental responsibilities. The study provides recommendations for further examination of ECtHR practices in the context of land law, which may aid in the deeper integration of European standards into the national legal framework.

Key words: ECtHR, ECtHR decisions, ECHR, land law, property rights, access to justice, state expropriation, national legislation.

У даній статті детально досліджується роль і значення рішень Європейського Суду з прав людини (ЄСПЛ) як одного з основних джерел земельного права, що впливають на формування правозастосовчої практики у країнах-членах Ради Європи. Авторами проаналізовано, як рішення ЄСПЛ сприяють гармонізації національного законодавства у сфері земельних відносин та забезпечують дотримання міжнародних стандартів у сфері прав людини. Особливо увага приділяється питанню захисту прав власності, яке є критично важливим у контексті земельного законодавства, а також правовим наслідкам, що виникають у випадках порушення статті 1 Першого протоколу до Європейської конвенції з прав людини. Стаття систематизує основні категорії земельних спорів, які аналізуються у контексті рішень ЄСПЛ, у тому числі: 1) спори, пов'язані з захистом прав власності; 2) спори, що виникають через помилки органів державної влади у сфері земельних відносин; 3) спори, пов'язані з доступом до правосуддя для захисту земельних прав; 4) спори, що стосуються права на повагу до приватного життя, а також пропонує кілька додаткових категорій, таких як питання компенсації за експропріацію, проблеми прав третіх осіб і екологічні аспекти. Зауважується, що рішення ЄСПЛ не лише вказують на наявні порушення прав людини, але й активно сприяють формуванню нових правових стандартів задля запобігання подібним порушенням у майбутньому. В межах дослідження проведено ґрунтовний аналіз найзначніших рішень ЄСПЛ у справах, що стосуються земельних прав, а також їхнього впливу на національну судову практику. Особлива увага приділяється специфічним випадкам, де суд зазначає необхідність адекватного реагування держави на спори, пов'язані з правом власності на землю, а також екологічними аспектами, які можуть впливати на використання земельних ресурсів. Стаття також підкреслює необхідність адаптації національного законодавства до стандартів ЄСПЛ з метою забезпечення ефективного і справедливого захисту прав усіх учасників земельних відносин. Обґрунтовано доцільність вдосконалення правозастосовчої практики в Україні, що може позитивно вплинути на рівень захисту прав земельних власників та користувачів. Висновки, сформульовані у статті, вказують на те, що рішення ЄСПЛ можуть стати потужним інструментом для правників, законодавців і науковців у розвитку земельного права, а також у досягненні балансу між інтересами держави, приватними інтересами та екологічними вимогами. Дослідження надає рекомендації щодо подальшого вивчення практики ЄСПЛ у контексті земельного права, що може сприяти глибшій інтеграції європейських стандартів у національну правову систему.

Ключові слова: ЄСПЛ, рішення ЄСПЛ, ЄКПЛ, земельне право, земельні правовідносини, право власності, доступ до правосуддя, державна експропріація, національне законодавство.

Decisions of the European Court of Human Rights (ECtHR) play a crucial role in shaping legal norms and domestic practices, particularly in the area of land disputes. These decisions not only identify violations of human rights and freedoms at the national level but also contribute to addressing the root causes of these violations. As a result, the use of ECtHR decisions has become a vital tool for protecting human rights, and analyzing these decisions is immensely beneficial for legal practitioners.

In the context of reforming Ukraine's land law to align with European standards that promote the rule of law, recognizing the ECtHR's jurisprudence as a source of law is particularly relevant for both theoretical research and practical law enforcement. This article aims to assess the role of the ECtHR's jurisprudence within the framework of land law in Ukraine.

Even today, ECtHR decisions significantly influence the formation and development of land law in the member states of the Council of Europe, as the Court not only reviews cases of human rights violations but also clarifies fundamental principles governing land relations.

It's important to note that, under the principle of good faith in fulfilling international obligations, States Parties to the European Convention on Human Rights (ECHR; formally the Convention for the Protection of Human Rights and Fundamental Freedoms) [1] cannot disregard the rulings of the ECtHR. When the Court identifies one or more violations of the Convention, the respondent state has two primary obligations. The first is to urgently address the violation and its consequences, restoring, whenever possible, the situation to what it was before the breach occurred. The second obligation

requires the state to implement effective measures to prevent similar violations of the Convention in the future.

Fulfillment of the second obligation includes adapting national legislation and law enforcement practices in line with the legal positions established by the ECtHR. Ensuring compliance with the Convention and preventing new violations necessitates strict adherence to these legal interpretations (norms) both in judicial application and legislative processes.

In Ukraine's law on the enforcement of ECtHR decisions (Law No. 3477-IV), Article 17 establishes that courts are required to utilize the Convention and the jurisprudence of the ECtHR as sources of law when deciding cases [2]. This provision is dynamic, as courts, including higher instances, regularly reference ECtHR jurisprudence to support their legal arguments. Article 18 of the same law outlines how the Convention and the Court's practice should be invoked. Notably, this "practice of the Court," defined in Article 1, encompasses all ECtHR decisions as well as the practice of the European Commission on Human Rights, not limited solely to cases involving Ukraine.

However, this legal framework appears insufficient, as the place of the ECtHR's practice in Ukraine's legal system remains a topic of lively debate among scholars and practitioners. Achieving consensus on this matter is complex, given that the jurisprudence of the ECtHR can be broadly categorized into three main groups: 1) decisions on specific cases involving Ukraine, which contain norms regulating the relationships between the parties in dispute; 2) legal positions expressed by the ECtHR in decisions concerning Ukraine; and 3) legal positions contained in decisions regarding other countries.

Taking into account the specific nature of land law and to facilitate the examination of ECtHR decisions, we can reference the classification proposed by T. A. Kovalenko, JD [3, pp. 82–88]:

Land disputes concerning the protection of property rights (in violation of Article 1 of the First Protocol to the Convention). Notable examples include the cases of *Ostapenko v. Ukraine* (June 14, 2007) [4] and *Dovzhenko v. Ukraine* (October 11, 2003) [5].

Land disputes arising from errors made by state authorities in the realm of land relations. A pertinent example is the case of *Risovsky v. Ukraine* (October 20, 2011) [6].

Land disputes regarding access to justice in the protection of land rights. For instance, the case of *Bochan v. Ukraine* (July 7, 2008) [7].

Land disputes pertaining to the right to respect for private life. An example of this is the case of *Grymkovskaya v. Ukraine* (July 21, 2011) [8].

Considering the ongoing scientific, technical, and social developments, we believe it is essential to expand this classification. Additional categories could provide a more comprehensive analysis of specific aspects of land disputes and their legal ramifications:

Land disputes concerning expropriation compensation – these involve cases where land has been seized from owners for state purposes, raising questions about adequate compensation. Examples include *Dacia S.R.L. v. Moldova* [9] and *Jahn and Others v. Germany* [10].

Land disputes related to environmental issues – these cases involve scenarios where land rights may be complicated by the necessity of protecting the environment or adhering to environmental regulations. Relevant cases include *Guerra and Others v. Italy* (Application No. 14967/89, decision dated February 19, 1998) [11] and *Dubetska and Others v. Ukraine* (Application No. 30499/03, decision dated February 10, 2011) [12].

Land disputes concerning the rights of Indigenous Peoples – these cases highlight situations where the land rights of indigenous populations may be overlooked or compromised due to historical or contemporary factors. A significant case in

this context is *Cyprus v. Turkey* (Application No. 25781/94, decision dated May 10, 2001) [13].

Given the context outlined above, it is evident that lawyers have begun to increasingly rely on decisions from the European Court of Human Rights (ECtHR) to substantiate their positions, making this approach a standard practice. This trend underscores the significance of the European legal order in shaping national legal systems, assisting in the maintenance of a balance between universal principles and the unique characteristics of each country. Each case not only highlights specific aspects of land-related legal relationships but also contributes to a legal framework that profoundly influences the interpretation of legislation and the application of legal norms. Therefore, the decisions of the ECtHR should be examined through the lens of precedent.

According to legal theory, a precedent comprises two primary components: *ratio decidendi* and *obiter dictum* [14, p. 91–100]. The *ratio decidendi* refers to the portion of a court's decision that articulates the legal principles that served as the foundation for the ruling in that particular case. This component outlines the fundamental legal standards upon which the court based its decision, which may stem from a specific legal norm or another legal rationale that courts must reference in their rulings. It is this aspect of the decision that should be binding on all subsequent court judgments related to similar situations.

For instance, in cases involving expropriation compensation, such as *Dacia S.R.L. v. Moldova*, the Court elucidates essential principles regarding the adequacy of compensation that must be considered in future disputes of a similar nature. This illustrates how the *ratio decidendi* in such cases shapes legal precedents and norms. The *ratio decidendi* creates a normative legal framework that should not only apply to the parties involved in a specific case but also extend to other relevant entities. Thus, the *ratio decidendi* functions as a norm within the context of case law.

Conversely, the remaining portion of the judgment, known as *obiter dictum*, includes the court's remarks on issues that are not directly pertinent to the judgment's core content. Unlike the *ratio decidendi*, these statements do not establish new legal principles nor do they provide justification for the court's final decision. It is important to emphasize that the legal significance lies specifically in the norms or principles articulated in the court's resolutions. This can be understood as a logical chain of law enforcement: legal norms and principles acquire substantive meaning, constituting the *ratio decidendi*, which is articulated in a judicial ruling. Consequently, the assertion that the decisions of the European Court of Human Rights (ECtHR) provide new interpretations and activate legal norms indicates that the leading role in this process is played by the *ratio decidendi* – the foundation of the legal decision.

To further comprehend the specific nature of ECtHR decisions as sources of law, it is useful to reference a classification of legal sources (or forms) of law. This classification identifies primary sources as legal texts in which legal norms are first officially formulated, while secondary sources are derived from these primary sources. Secondary sources include official legal documents that interpret the content of primary sources, clarify legal norms, and formulate what are known as "secondary norms." In this framework, the European Convention for the Protection of Human Rights and Fundamental Freedoms serves as the primary source of law, containing "primary norms." In contrast, the decisions of the European Court of Human Rights are considered secondary sources of law, as they embody "secondary norms."

The concepts discussed above clarify the role of ECtHR decisions within the system of legal sources. The legal positions established by the ECtHR function as *ratio decidendi* within the structure of its decisions, as they express the court's stance on specific legal issues, with answers rooted in the individual articles of the European Convention. Therefore, whenever

the ECtHR articulates its legal position on particular matters, these decisions become sources of legal authority – effectively setting precedents.

It can be concluded that the acts of the European Court of Justice are not solely focused on law enforcement; they also encompass a norm-setting component embedded in the court's legal positions. These positions adapt the European Convention for the Protection of Human Rights to the social and legal realities of member states of the Council of Europe. The norms within the Convention often contain declarative language that requires further development and specification to effectively regulate public relations. The European Court of Justice plays a crucial role in this development; by utilizing its legal tools, the court establishes new rules of law based on the provisions of the Convention and its protocols (interpretative rules). These new rules provide essential guidance for the subjects of law in the member states.

This in-depth analysis of the European Court of Human Rights (ECHR) as a source of land law in Ukraine reveals that this international institution plays a decisive and significant role that extends beyond merely supervising the observance of human rights. The ECHR profoundly influences the development of national land legislation. Specifically, its decisions provide important legal positions that embody the principles of fairness, proportionality, and due process

in matters related to land rights. These rulings assist national judicial authorities in understanding the boundaries of their decisions and compel states to adhere to international standards, thereby enhancing the protection of citizens' rights.

Furthermore, recommendations for aligning national legislation with the standards established in ECHR decisions are crucial. This process should be viewed not merely as a technical adjustment but as a strategic step toward Ukraine's integration into the European legal community. Given that land relations are at the forefront of socio-economic and political discourse in Ukraine, it is vital for legislators, judges, and lawyers to leverage the experience and legal positions articulated by the ECHR to implement fair and transparent mechanisms for resolving land disputes.

Overall, the findings of this study affirm that the ECHR's practice represents a vital source for the development and enhancement of land law in Ukraine. This, in turn, holds significant promise for improving the protection of citizens' rights and establishing effective law enforcement practices that align with European standards. Achieving this will necessitate the active involvement of scholars, practitioners, and legislators in the process of harmonizing national norms with international standards, which will undoubtedly foster greater legal confidence and stability in Ukraine's land relations.

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