

**Yelzaveta KUZMICHOVA-KYSLENKO, Galina
PALAMARCUK, Andrii HUSAK, Arzu HADZHIEVA, Maryna
TOPORKOVA**

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Secção I

Investigação Científica*

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The Impact of International Human Rights Standards on Ensuring Fair Criminal Proceedings

O Impacto das Normas Internacionais de Direitos Humanos na Garantia de Processos Penais Justos

Yelzaveta KUZMICHOVA-KYSLENKO¹
Galina PALAMARCUK²
Andrii HUSAK³
Arzu HADZHIIEVA⁴
Maryna TOPORKOVA⁵

ABSTRACT: The aim of the study is to compare the legal guarantees of ensuring human rights in criminal proceedings at the international and national levels and their actual compliance, as well as to identify of the main problems and solutions. The research employed doctrinal approach, comparative law, and statistical analysis. The study established that international and national regulatory acts form a solid framework for ensuring the observance of human rights in criminal proceedings. At the same time, statistics evidenced frequent cases of violations of such rights are observed. The results of the research gave grounds to make recommendations regarding the improvement of the state of ensuring human rights in criminal proceedings in Ukraine. These include the fight against corruption, strengthening the independence of the judiciary, improving the training of employees in the relevant field, using the practice of the European Court of Human Rights (ECHR), and finding alternatives to imprisonment. Further research should be focused on studying ways of using automated decision-making systems at certain stages of criminal proceedings and related risks.

KEYWORDS: human rights; international standards; criminal proceedings; presumption of innocence; right to defence; impartiality.

RESUMO: O objetivo do estudo é comparar as garantias legais dos direitos humanos no processo penal nos planos internacional e nacional e seu efetivo cumprimento, bem como identificar os principais problemas e soluções. A pesquisa utilizou a abordagem doutrinária, o direito comparado e a análise estatística. O estudo estabeleceu que os actos regulamentares internacionais e nacionais constituem um quadro sólido para garantir a observância dos direitos humanos no processo penal. Ao mesmo tempo, as estatísticas evidenciaram a existência de casos frequentes de violação desses direitos. Os resultados da investigação permitiram formular recomendações para melhorar a situação da garantia dos direitos humanos nos processos penais na Ucrânia. Estas recomendações incluem a luta contra a corrupção, o reforço da independência do poder judicial, a melhoria da formação dos funcionários neste domínio, a utilização da prática do Tribunal Europeu dos Direitos do Homem (TEDH) e a procura de alternativas à

¹ Interregional Academy of Personnel Management, Kyiv, Ukraine.

² Department of Criminal Procedure and Criminalistics, Odesa State University of Internal Affairs, Odesa, Ukraine.

³ Department of Criminal Law and Procedure, Lesya Ukrainka Volyn National University, Lutsk, Ukraine.

⁴ School of Political and Social Sciences, Faculty of Philosophy, Western Caspian University, Baku, Azerbaijan.

⁵ Department of Law, Faculty of Business and Technology, Utena University of Applied Sciences, Utena, Lithuania.

prisão. A investigação deve centrar-se no estudo das formas de utilização de sistemas automatizados de tomada de decisões em determinadas fases dos processos penais e dos riscos conexos.

PALAVRAS-CHAVE: direitos humanos; normas internacionais; processos penais; presunção de inocência; direito de defesa; imparcialidade.

1. Introduction

International norms enshrined in relevant acts^{6,7} contain basic human rights guarantees⁸ that ensure fair criminal proceedings. These guarantees concern impartiality and equality above all.⁹ They are detailed through the definition of a set of requirements and rules¹⁰ aimed at ensuring that human rights are not violated in criminal proceedings.

Such international documents as the Universal Declaration of Human Rights, the Convention on the Protection of Human Rights and Fundamental Freedoms, the International Covenant on Civil and Political Rights, etc. contain the main requirements and rules. However, human rights violations in criminal proceedings are not uncommon even with a comprehensive international legal framework.^{11,12} This can happen even where the national legislation is harmonized with international norms.¹³ In particular, the legislation of Ukraine provides a sufficiently thorough framework for ensuring human rights in criminal proceedings. The relevant provisions are enshrined in the Constitution of Ukraine, the Law of Ukraine “On Ensuring the Right to a Fair Trial”, the Criminal

⁶ MERRILLS, J. G., ROBERTSON, A. H. *Human rights in Europe: A study of the European Convention on Human Rights*. Manchester: Manchester University Press, 2022. Available from: <http://digital.casalini.it/9781526170590>

⁷ ZAVHORODNII, V. A., et al. (2022). Application of Article 5 of the ECHR to the detention of a person who has committed a criminal offense. *Brazilian Journal of International Law*, 2022, vol. 19, 337. <https://doi.org/10.5102/rdi.v19i1.7757>

⁸ ECKES, C. EU global human rights sanctions regime: Is the genie out of the bottle? In S. D'Amato, & A. Sachoulidou (Eds.), *Security in Transnational Spaces*. London: Routledge, 2023, pp. 59-73. <https://doi.org/10.1080/14782804.2021.1965556>

⁹ KUBARIEVA, O. Principles of access to justice and guarantees of its implementation in criminal proceedings. *Scientific Journal*, 2022, vol. 27, no. 4, 39. <https://doi.org/10.56215/0122274.40>

¹⁰ KOVALCHUK, S., et al. Standards of fair justice and their relationship to standards of proof in criminal proceedings. *Cuestiones Políticas*, 2021, vol. 39, no. 71. <https://doi.org/10.46398/cuestpol.3971.58>

¹¹ COSTELLO, C., MANN, I. Border justice: Migration and accountability for human rights violations. *German Law Journal*, 2020, vol. 21, no. 3, pp. 311-334. <https://doi.org/10.1017/glj.2020.27>

¹² CLIQUENNOIS, G., SNACKEN, S., VAN ZYL SMIT, D. Introduction: Human rights, prisons and penal policies. *European Journal of Criminology*, 2021, vol. 18, no. 1, pp. 3-10. <https://doi.org/10.1177/1477370820986010>

¹³ ZAROSYLO, V., et al. Comparative analysis of administrative and criminal punishments in Ukraine and some foreign countries and prospects for changes. *Social and Legal Studies*, 2023, vol. 6, no. 4, pp. 251-258. Available from: <https://dspace.oduvs.edu.ua/handle/123456789/6705>

Procedure Code of Ukraine, etc. In general, the norms enshrined in the national legislation are consistent with international norms. However, the number of human rights violations in criminal proceedings in Ukraine remains significant. Among other things, in 2023 Ukraine ranked second among European countries in terms of the number of the ECHR judgments, where at least one violation was found. The vast majority of such violations are related to the criminal proceedings.¹⁴

Corruption is one of the common reasons, especially in the context of insufficiently strong institutions in the country.¹⁵ Accordingly, ensuring the fairness of criminal proceedings may require a comprehensive interdisciplinary approach. This approach should, first of all, ensure the implementation of the principles of fair criminal proceedings. Such principles include the presumption of innocence, the equality of the parties, the universal and fair trial of the case, the right to defence, the right to appeal the court's decision.¹⁶

Development of an approach to ensuring compliance with human rights in criminal proceedings should involve a comprehensive study of the current state of the problem in terms of several aspects. First of all, it is a study of the existing international and national legal framework related to the provision of fair criminal proceedings. It is also necessary to determine the stages at which criminal proceedings violations most often occur and their types. Finally, it is important to study statistics on complaints of rights violations and determine the effectiveness of the response.

Aim and objectives

The aim of the study is to compare the legal guarantees of ensuring human rights in criminal proceedings at the international and national levels and their actual compliance with the identification of the main problems and solutions. The aim involved the fulfilment of the following research objectives:

¹⁴ EUROPEAN COURT OF HUMAN RIGHTS. 2024. Available from: <https://www.echr.coe.int/>

¹⁵ MELNYK, D. S., et al. Practice of the member states of the European Union in the field of anti-corruption regulation. *Journal of Financial Crime*, 2021, vol. 29, no. 3, pp. 853-863. <https://doi.org/10.1108/JFC-03-2021-0050>

¹⁶ AMELIN, O. Yu., et al. Independence of prosecutors and judges in criminal proceedings in Ukraine and foreign countries in the context of international practices. *Pakistan Journal of Criminology*, 2024, vol. 16, no. 3, pp. 191-207. Available from: <https://www.pjcriminology.com/wp-content/uploads/2024/05/12-Independence-of-Prosecutors-and-Judges.pdf>

- Analyse the international and national (using the example of Ukraine) legislative framework on ensuring the observance of human rights in criminal proceedings;
- Identify the main types of human rights violations depending on the stages of the criminal proceedings;
- Study statistics on the number of appeals regarding violations of human rights in criminal proceedings using the example of Ukraine;
- Provide recommendations for eliminating existing problems.

2. Literature Review

Many researchers dealt with the study of the impact of international law and the enshrined human rights standards on ensuring fair criminal justice. Kanwel et al.¹⁷ examine the relationship between human rights and criminal justice. The researchers have emphasized that human rights are a necessary condition for ensuring fair criminal justice. However, the realization of such rights is hindered by challenges, which the researchers describe in detail in the article. Eddyono¹⁸ examines the relationship between human rights and criminal justice using the case of Indonesia. Special attention was paid to the study of international science regarding the relationship between criminal law and human rights. Catan et al.¹⁹ examine the impact of the ECHR on the legal system of Moldova. The researchers considered the role of the ECHR in the transformation of criminal prosecution procedures. The researchers established that the activity of the ECHR contributes to the detection of human rights violations in the judicial practice of the country, which contributes to the implementation of relevant reforms. Such reforms contribute to ensuring the protection of human rights, so the ECHR has a significant impact on the national legal system. Liubavina and Pustovoi²⁰ focus on the aspects of the presumption of innocence as the main

¹⁷ KANWEL, S., KHAN, M. I., ASGHAR, U. Human rights at the crossroads: Navigating criminal justice challenges. *Pakistan Islamicus (An International Journal of Islamic & Social Sciences)*, 2024, vol. 4, no. 1, pp. 139-149. Available from: <https://www.pakistanislamicus.com/index.php/home/article/view/113>

¹⁸ EDDYONO, S. W. The relationship between human rights and criminal law: A human rights-based criminal justice system. In *International Human Rights and Local Courts*. London: Routledge, 2024, pp. 114-135. <https://doi.org/10.4324/9781003431350>

¹⁹ CATAN, A., et al. The role of the European court of human rights in the formation of the procedures of criminal prosecution in Moldova. *Pakistan Journal of Criminology*, 2024, pp. 805-820. <https://doi.org/10.62271/pjc.16.3.805.820>

²⁰ LIUBAVINA, V. P., PUSTOVOI, L. Y. The role of the presumption of innocence as a constitutional principle in the field of criminal justice. *Irpın Legal Chronicles*, 2024, vol. 1, no. 14, pp. 114-122. [https://doi.org/10.33244/2617-4154-1\(14\)-2024-114-122](https://doi.org/10.33244/2617-4154-1(14)-2024-114-122)

principle of fair criminal proceedings established by international norms. The presumption of innocence is designed to prevent alleged abuse and wrongful prosecution. Burra²¹ considers whether international criminal law protects human rights. The researcher believes that the mechanisms of international criminal law are necessary in view of the facts of large-scale violence and conflicts. Rabkin and Lerner²² explore the concept of “universal jurisdiction”, which is the existence of the possibility for every state to prosecute crimes against humanity committed even on foreign territory and against foreign nationals. The researchers note that this concept did not have tangible results. They question the effectiveness of international law because of the priority of national interests.

Most studies on the provision of human rights in criminal proceedings relate to the stage of judicial proceedings. Zavalniuk²³ studies the human right to a fair trial. The researcher defines this right as guaranteed by both national and international legal norms. The right to a fair trial is a set of procedural rights, the exercise of which depends on the persons and bodies considering the case. However, it is worth noting that injustice does not only occur during court proceedings. Uddin²⁴ studies the causes of human rights violations by the police using the example of Bangladesh. The researcher considers the enforcement of human rights by the police a difficult task, as various forms of such violations were recorded in the studied region.

Završnik²⁵ and Zakaria²⁶ study a separate direction of ensuring human rights in the field of criminal justice — the use of automation and artificial intelligence (AI). These technologies can be used by courts to determine the

²¹ BURRA, S. Is international criminal justice in the pursuit of human rights? In *Human Rights and International Criminal Law*. Leiden, Boston: Brill Nijhoff, 2022, pp. 23-48. https://doi.org/10.1163/9789004447462_003

²² RABKIN, J. A., LERNER, C. S. Criminal justice is local: Why states disregard universal jurisdiction for human rights abuses. *Vanderbilt Journal of Transnational Law*, 2022, vol. 55, 375. <https://scholarship.law.vanderbilt.edu/vjtl/vol55/iss2/4>

²³ ZAVALNIUK, I. V. International legal basis for the development of the right to a fair trial in the constitutional law of Ukraine. *Law Bulletin*, 2021, vol. 20, pp. 14-23. <https://doi.org/10.32850/LB2414-4207.2021.20.02>

²⁴ UDDIN, M. K. Human rights abuses and criminal justice in policing practices in Bangladesh. *Criminology & Criminal Justice*, 2022, 17488958221120915. <https://doi.org/10.1177/17488958221120915>

²⁵ ZAVRŠNIK, A. Criminal justice, artificial intelligence systems, and human rights. In *ERA forum*. Berlin/Heidelberg: Springer Berlin Heidelberg, 2020, Vol. 20, No. 4, pp. 567-583. <https://doi.org/10.1007/s12027-020-00602-0>

²⁶ ZAKARIA, M. G. AI applications in the criminal justice system: The next logical step or violation of human rights. *Journal of Law and Emerging Technologies*, 2023, vol. 3, no. 2, pp. 233-257. <https://doi.org/10.54873/jolets.v3i2.124>

likelihood of recidivism as well as the risk of absconding. The researchers conclude that the use of technology in a similar way can violate human rights. Imran et al.²⁷ agree with this view, noting the lack of transparency in automated decision-making. In this regard, the implementation of “digital” human rights, in particular, the right not to be the subject of an automatic decision, is considered in some works.²⁸ So, ensuring human rights in the field of criminal justice according to international norms should contain provisions on the proper use of technologies in this field, in particular, automation and AI.²⁹

The conducted literature review confirms that the majority of works on human rights violations in criminal proceedings refer to court proceedings. However, it should be assumed that a large number of rights violations also occur at other stages of criminal proceedings, in particular, at the stage of pre-trial investigation, during arrest and detention, in places of deprivation of liberty, during an attempt to file an appeal, etc. Therefore, it is appropriate to study how human rights can be violated and how they are ensured during the entire process of criminal proceedings.

3. Methods

3.1. Research design

The research design includes interrelated stages. The first stage involves the study of the international and national legal framework using the example of Ukraine. This involves identifying key legislative acts that enshrine human rights in the context of ensuring fair criminal proceedings. The work considered individual provisions of the documents containing the relevant rights and guarantees, as well as identified the differences in the provisions. The second stage involves defining the main principles of fair criminal proceedings, as well as describing its stages. According to these stages, the most common human rights violations that can occur in each of the stages were indicated. The third

²⁷ IMRAN, M., MURTIZA, G., AKBAR, M. S. The impact of artificial intelligence on human rights, democracy and the rule of law. *Journal of Politics and International Studies*, 2023, vol. 9, no. 1, pp. 15-29. Available from: <https://plantsghar.com/index.php/45/article/view/127/127>

²⁸ DROR-SHPOLIANSKY, D., SHANY, Y. It's the end of the (offline) world as we know it: From human rights to digital human rights – A proposed typology. *European Journal of International Law*, 2021, vol. 32, no. 4, pp. 1249-1282. <https://doi.org/10.1093/ejil/chab087>

²⁹ ULNICANE, I. Artificial Intelligence in the European Union: Policy, ethics and regulation. In *The Routledge Handbook of European Integrations*. London: Taylor & Francis, 2022, pp. 253-269. <https://doi.org/10.4324/9780429262081-19>

stage provides for the study of statistics of Ukraine regarding applications for human rights violations in the course of criminal proceedings and other indicators. The respective activities of the Ukrainian Parliament Commissioner for Human Rights and the ECHR were described at this stage.

3.2. Sample

The sample for the study consists of relevant international and national legislative acts. More than 30 relevant documents related to the provision of human rights in the process of criminal proceedings were examined. Special attention is paid to such international documents as the Universal Declaration of Human Rights, the Convention on the Protection of Human Rights and Fundamental Freedoms, the International Covenant on Civil and Political Rights (ICCPR). Such documents as the Constitution of Ukraine, the Law of Ukraine “On Ensuring the Right to a Fair Trial”, the Criminal Procedure Code of Ukraine were distinguished within the national legislative framework of Ukraine.

In addition to the regulatory documents, the work examines a number of statistical indicators, in particular, the most frequent topics of appeals by citizens regarding human rights violations through the hotline of the Ukrainian Parliament Commissioner for Human Rights in 2023, the number of prepared proposals for regulatory legal acts in 2023, the distribution of court decisions of the ECHR for Ukraine for 2023, the number of violations according to the ECHR data.

3.3. Methods

The work employed doctrinal approach to describe the main provisions of international and national legislative documents on ensuring human rights in criminal proceedings. One of the important research methods was statistical analysis used to study the structure of indicators of appeals to the Commissioner of the Ukrainian Parliament Commissioner for Human Rights and the ECHR, as well as other indicators. The method of comparative law analysis was also applied to identify the differences in the national and international legal framework.

4. Results

The principles of ensuring compliance with human rights during criminal proceedings are enshrined in both the national and international legal framework. Figure 1 shows some of the main legislative documents that ensure the

observance of human rights in the criminal proceedings at the international and national (using the example of Ukraine) levels.



Figure 1. Legislative documents ensuring the observance of human rights in the criminal proceedings at the international and national (using the example of Ukraine) levels

In the context of the role of international human rights standards in ensuring fair criminal proceedings, the following articles of the above-mentioned documents are important to note. Article 10 of the Universal Declaration of Human Rights enshrines the right of the accused person to a public hearing of the case with compliance with all necessary requirements. Article 11 of the same document enshrines the right that a person should be considered innocent until his guilt is established in a legal manner. At the same time, guilt or innocence must be established through a public trial, as well as with the provision of all appropriate means of protection.³⁰ In other words, we are talking about the presumption of innocence. In more detail, the rights of those accused of committing a criminal offence are specified in Article 6 of the Convention on the Protection of Human Rights and Fundamental Freedoms. In addition to the right to a public trial and the presumption of innocence, the document outlines the following minimum rights of the accused: to be informed about the reasons for

³⁰ UNIVERSAL DECLARATION OF HUMAN RIGHTS. 1948. Available from: https://zakon.rada.gov.ua/laws/show/995_015#Text

the accusation in an understandable language, to have adequate opportunities to prepare a defence and, in fact, the right to a defence, to question or demand the questioning of witnesses, to receive the free assistance of an interpreter (if necessary).³¹ In addition to the noted documents, some important provisions regarding the protection of the rights of individuals in the criminal proceedings are enshrined in the International Covenant on Civil and Political Rights.³² Article 14 of the document places a special emphasis on the equality of all before the court and the presumption of innocence, as well as on the guarantees of accused persons. Such guarantees include, in addition to the provisions already mentioned above, also enshrined in other regulatory documents, the guarantee of the implementation of court proceeding without undue delay and the right not to testify against oneself. Furthermore, Article 14 of the above-mentioned legislative act contains provisions on the implementation of the process in relation to minors, enshrines the right to compensation for a miscarriage of justice and the right of a person not to be convicted or punished a second time for a crime for which he has already been convicted or acquitted.

The study of the national legislation, in particular, constitutional provisions in various countries, reveals relevant articles enshrining human rights to a fair trial. In particular, Article 55 of the Constitution of Ukraine enshrines the rights to:

- court protection;
- appeal decisions, actions or inaction of authorized bodies in court;
- appeal for protection to the Ukrainian Parliament Commissioner for Human Rights;
- filing a constitutional complaint with the Constitutional Court;
- appeal to the relevant international institutions for protection in case of exhaustion of national methods of protection;
- protection of rights and freedom in any way not prohibited by law.³³

The foregoing gives grounds to conclude that the right to a fair trial in Article 55 of the Constitution of Ukraine is not fully revealed and needs to be

³¹ CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS. 2021. Available from: https://zakon.rada.gov.ua/laws/show/995_004#Text

³² INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS. 1973. Available from: https://zakon.rada.gov.ua/laws/show/995_043#Text

³³ CONSTITUTION OF UKRAINE, № 254к/96-BP. 2020. Available from: <https://zakon.rada.gov.ua/laws/show/254к/96-bp#Text>

supplemented, including the addition of the term “fair trial”. The Law “On Ensuring the Right to a Fair Trial”³⁴ is a separate document in force in Ukraine, and the basic rights of the accused are enshrined in Chapter 2 of the Criminal Procedure Code of Ukraine.³⁵ However, this does not eliminate the need to clarify the provisions established in the main state document.

The study of the documents noted above made it possible to distinguish the main principles of fair criminal proceedings, adopted by many states and enshrined in their legislative documents in a certain wording. These include the presumption of innocence, the equality of the parties, a public and fair trial, the right to defence, the right to appeal the court’s decision.

Therefore, according to international norms, justice must be ensured throughout the entire criminal proceedings. Despite the fact that in most studies the main emphasis is placed on the trial, criminal proceedings consist of a much larger number of stages. In general, they include: conducting a pre-trial investigation, presenting an indictment, court proceedings, filing an appeal (in case of disagreement with a court decision), execution of a sentence.

Table 1 lists some possible violations in the criminal proceedings that lead to human rights violations and may occur at one of the stages noted above. Such violations are quite common, especially in countries with insufficiently strong institutions.

Table 1. Possible violations leading to non-compliance with human rights depending on the stages of criminal proceedings

Stage of criminal proceedings	Possible violations
Pre-trial investigation, including the arrest of a suspect	Failure to provide information regarding the grounds of detention and the rights of detained persons Search without appropriate permission (in cases established by law) Illegal interference in private and family life, correspondence Refusal of legal representation Illegal detention that violates the right to liberty Improper detention conditions Abuse
Court proceedings	Failure to ensure equality in access to justice Unjustified procedural delays or unreasonable prolongation of the process

³⁴ ON ENSURING THE RIGHT TO A FAIR TRIAL № 192-VIII. 2023. Available from <https://zakon.rada.gov.ua/laws/show/192-19#Text>

³⁵ CRIMINAL PROCEDURE CODE OF UKRAINE, № 4651-VI. 2024. Available from: <https://zakon.rada.gov.ua/laws/show/4651-17#Text>

	Violation of the right to defence (this includes access to a lawyer, failure to choose a defence lawyer, refusal of free legal aid) Lack of explanations regarding the reasons for accepting or rejecting the arguments of one of the parties Violation of freedom in providing and proving the persuasiveness of evidence Compulsion to testify against oneself or close relatives, family members Corruption Bias during the judicial process
Filing an appeal	Obstacles in the efforts to properly challenge the court decision
Execution of sentence	Inadequate conditions in places of detention

The list provided in the table contains only the most common violations and may be supplemented and extended. The relevance of the problem of non-compliance with human rights in the criminal proceedings can be demonstrated by the example of Ukraine through statistics. One of the indicative measures is the number of appeals regarding the violation of rights to the hotline of the Ukrainian Parliament Commissioner for Human Rights (Figure 2).

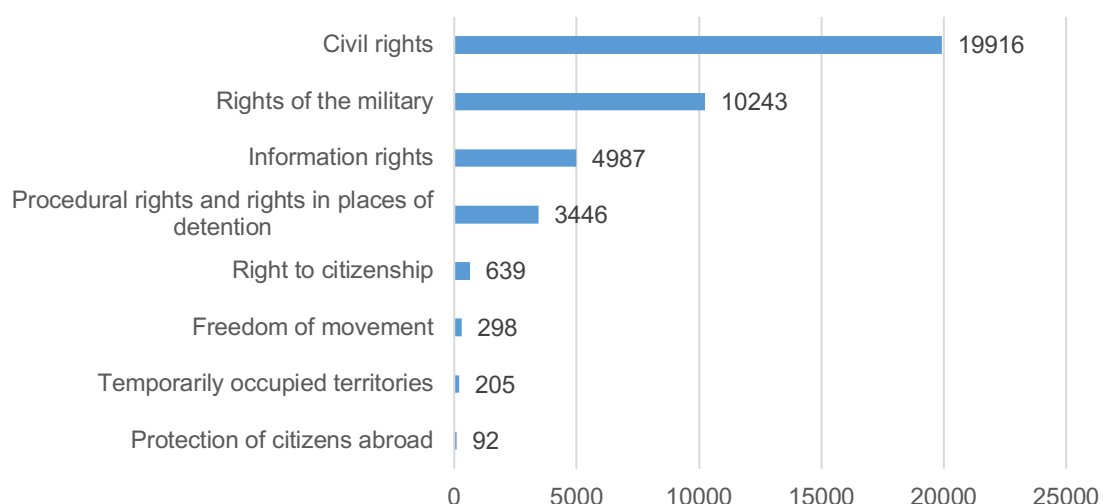


Figure 2. The most frequent subjects of appeals by citizens regarding the violation of human rights through the hotline of the Ukrainian Parliament Commissioner for Human Rights in 2023 (built by the author based on³⁶)

Figure 2 shows the number of appeals for violations of human rights, which are included in civil rights. In general, the number of appeals regarding the violation of civil rights in 2023 is 19,916, and the total number of appeals to the hotline of the Ukrainian Parliament Commissioner for Human Rights is 54,515. Appeals regarding the violation of procedural rights and rights in places of

³⁶ THE 2023 ANNUAL REPORT ON THE STATE OF OBSERVANCE AND PROTECTION OF HUMAN RIGHTS AND FREEDOMS IN UKRAINE. 2023. Available from: <https://ombudsman.gov.ua/report-2023/images/documents/annual-report-2023.pdf>

detention make up a significant share of the total volume of appeals – 3,446. In 2023, the Department of Monitoring Compliance with the Right to a Fair Trial and Procedural Rights opened 320 proceedings. A total of 37 proceedings are being processed.

The Annual Report on the State of Observance and Protection of Human Rights and Freedoms in Ukraine noted that 3,151 appeals regarding the violation of rights in criminal proceedings were considered during 2023. These reports contained information on 5,769 offences, of which 5,305 related to the violation of procedural rights during the pre-trial investigation, and 464 — to the violation of the right to a fair trial within a reasonable period of time. The Report notes that the last category of violations is primarily related to the lack of personnel in the court. However, it is worth noting that the majority of offences concern the stage of pre-trial investigation.

It is important to note that the problem of non-compliance with human rights in criminal proceedings does not go overlooked. Figure 3 shows the number of prepared proposals for regulatory legal acts, in particular, regarding the observance of the right to a fair trial and procedural rights. The figure shows that this category has the second largest number of propositions.

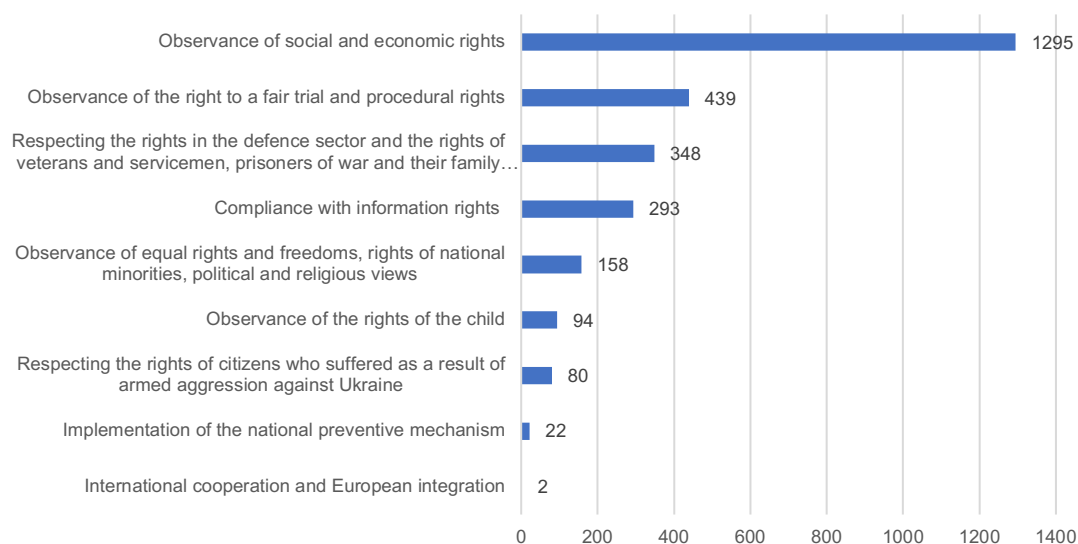


Figure 3. The number of prepared proposals for regulatory legal acts in 2023 (built by the author based on³⁷)

³⁷ THE 2023 ANNUAL REPORT ON THE STATE OF OBSERVANCE AND PROTECTION OF HUMAN RIGHTS AND FREEDOMS IN UKRAINE. 2023. Available from: <https://ombudsman.gov.ua/report-2023/images/documents/annual-report-2023.pdf>

If all domestic legal remedies have been exhausted, the person may appeal to the ECHR. Among other things, Ukraine ranks second in the number of court decisions according to the ECHR. The distribution of court decisions for Ukraine for 2023 is presented in Figure 4.

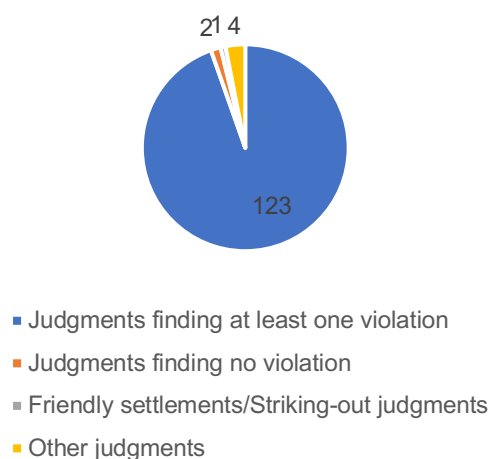


Figure 4. Distribution of ECHR judgments for Ukraine in 2023 (built by the author according to³⁸⁾)

Figure 4 shows that at least one violation was found in the majority of court decisions. Figure 5 shows violations depending on the corresponding article.

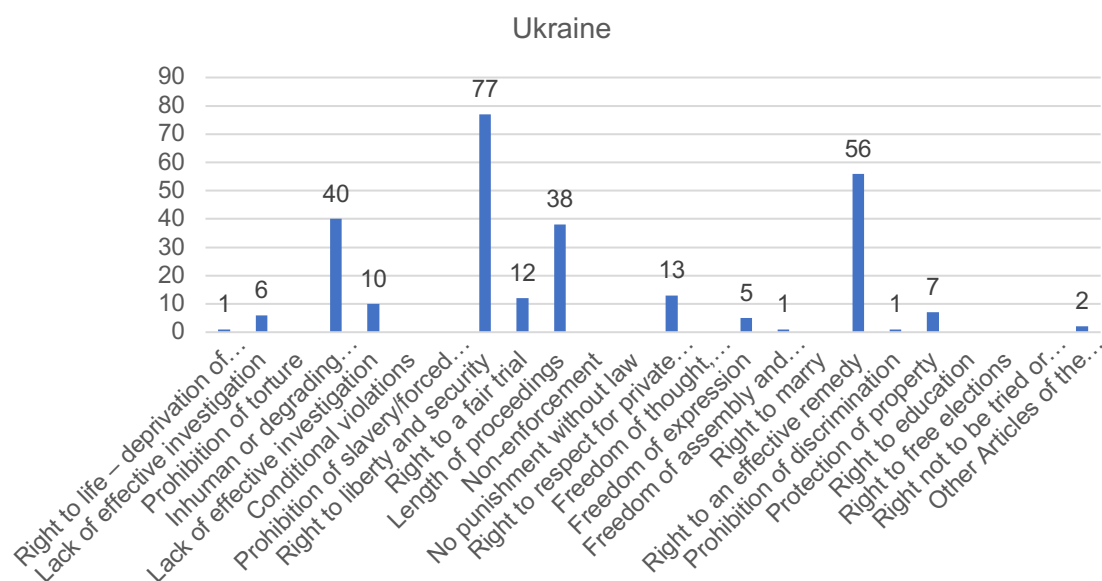


Figure 5. The number of violations by articles according to the ECHR (built by the author based on³⁹⁾)

Figure 5 presents such violations as the lack of effective investigation, violation of the right to a fair trial, violation of the length of proceedings, violation of the right to effective legal remedies. These violations make up a large share of

³⁸ EUROPEAN COURT OF HUMAN RIGHTS. 2024. Available from: <https://www.echr.coe.int/>

³⁹ EUROPEAN COURT OF HUMAN RIGHTS. 2024. Available from: <https://www.echr.coe.int/>

the total number of violations, so the problem of ensuring human rights during criminal proceedings is relevant for Ukraine.

Summing up the foregoing, it can be stated that international legal norms and the legislation of Ukraine, which, in general, is consistent with international law, provide a basis for the administration of a fair justice. However, in practice, human rights violations during criminal proceedings are not uncommon, which requires additional measures to ensure the observance of such rights.

5. Discussion

The study established that human rights are often violated in criminal proceedings, despite a fairly thorough national and international legal framework. Studying the problem of ensuring a fair trial, Zavalniuk⁴⁰ concludes about the mutual influence of international and national principles of law. This means that legal systems today develop not only in the context of the influence of international standards on national constitutions, but also vice versa because of the influence of constitutions on international norms. Such influence is exerted by states where the main value is human rights. Using the example of Ukraine, the researcher notes that the national mechanisms for monitoring the observance of the rights of participants in the legal process were strengthened by international judicial control thanks to the accession to the jurisdiction of the ECHR. However, as in the author's research, this work emphasizes the need for further improvement and harmonization of the national legal framework with international norms.⁴¹

At the same time, not all studies consider international justice as the only way to ensure equality and respect for human rights. Rabkin and Lerner⁴² point to repeated failures of transnational justice. The researchers explain these failures, first of all, by the close connection between criminal law and national priorities. However, successful examples of the participation of international

⁴⁰ ZAVALNIUK, I. V. International legal basis for the development of the right to a fair trial in the constitutional law of Ukraine. *Law Bulletin*, 2021, vol. 20, pp. 14-23. <https://doi.org/10.32850/LB2414-4207.2021.20.02>

⁴¹ ZAVERUKHA, V., et al. Administration of the process of rule-making activity in some countries of the European Union and Ukraine: A comparative analysis. *JUS Rivista di Scienze Giuridiche*, 2023, vol. 9, no. 2, pp. 263–271. https://doi.org/10.26350/18277942_000123

⁴² RABKIN, J. A., LERNER, C. S. Criminal justice is local: Why states disregard universal jurisdiction for human rights abuses. *Vanderbilt Journal of Transnational Law*, 2022, vol. 55, 375. <https://scholarship.law.vanderbilt.edu/vjtl/vol55/iss2/4>

bodies in ensuring fair justice testify to the need for such participation despite certain failures. In particular, Catan et al.⁴³ cite as an example a successful legal reform in Moldova that contributed to improved rights protection and fair trials. According to the researchers, the ECHR played a big role in this process, because the cases considered by the body, where violations of rights were found, initiated changes in the procedural legislation. The researchers recommend using Moldova's experience in improving criminal prosecution in states with European integration intentions, so it is also relevant for Ukraine.

The causes of human rights violations during criminal proceedings - both its individual stages and the entire process — take an important place in the studies. Eddyono⁴⁴ examines the relationship between criminal law and human rights in the following areas: regulation of criminal acts, criminal procedures, sentencing, protection of victims' rights. The researcher concludes that human rights significantly influence the development of the legal framework, although there are many shortcomings in the protection of such rights. Kanwel et al.⁴⁵ detail such shortcomings and problems that may hinder the enforcement of human rights in criminal justice. These include discrimination, police misconduct, abuse during pretrial detention, and inadequate conditions of detention. The researchers believe that solving the noted problems is possible through appropriate legal reforms, stimulating diversity and inclusion, improving the effectiveness of education, funding alternatives to imprisonment. These problems were also noted in the author's article. They may be solved by fighting against corruption and consideration of the possibilities of using automated systems to make individual decisions in certain cases.

⁴³ CATAN, A., et al. The role of the European court of human rights in the formation of the procedures of criminal prosecution in Moldova. *Pakistan Journal of Criminology*, 2024, pp. 805-820. <https://doi.org/10.62271/pjc.16.3.805.820>

⁴⁴ EDDYONO, S. W. The relationship between human rights and criminal law: A human rights-based criminal justice system. In *International Human Rights and Local Courts*. London: Routledge, 2024, pp. 114-135. <https://doi.org/10.4324/9781003431350>

⁴⁵ KANWEL, S., KHAN, M. I., ASGHAR, U. Human rights at the crossroads: Navigating criminal justice challenges. *Pakistan Islamicus (An International Journal of Islamic & Social Sciences)*, 2024, vol. 4, no. 1, pp. 139-149. Available from: <https://www.pakistanislamicus.com/index.php/home/article/view/113>

Lyubavina and Pustovoi⁴⁶ note that the provision of proof of guilt and the presumption of innocence cover all stages of criminal proceedings and guarantee fairness in the treatment of the accused or suspects. However, as noted in the author's article, compliance with this principle alone may not be sufficient for fair criminal proceedings. Justice must be ensured by the comprehensive application of at least the basic principles of fair criminal proceedings.

Focusing on the stage of judicial proceedings, some researchers pay special attention to the use of new technologies and their impact on ensuring human rights. Examining the use of automation and AI in the criminal justice system, Završnik⁴⁷, Imran et al.⁴⁸ and Zakaria⁴⁹ conclude that decisions made using these technologies may be less fair. Data from several European countries considered in the work indicate that the use of such systems is not sufficiently transparent. Therefore, this issue should be under increased control and occupy an important place in the system of international human rights law.^{50,51} At the same time, it was noted in the author's work that the use of automated systems can be considered as an alternative in certain situations if it contributes to increasing impartiality.

Focusing on police misconduct in criminal proceedings, Uddin⁵² identifies the key causes of human rights violations by the police in Bangladesh. These reasons include the militarization of the police, corruption, and impunity culture. The researcher believes that one of the possible ways to solve the problem is the

⁴⁶ LIUBAVINA, V. P., PUSTOVOI, L. Y. The role of the presumption of innocence as a constitutional principle in the field of criminal justice. *Irpil Legal Chronicles*, 2024, vol. 1, no. 14, pp. 114-122. [https://doi.org/10.33244/2617-4154-1\(14\)-2024-114-122](https://doi.org/10.33244/2617-4154-1(14)-2024-114-122)

⁴⁷ ZAVRŠNIK, A. Criminal justice, artificial intelligence systems, and human rights. In *ERA forum*. Berlin/Heidelberg: Springer Berlin Heidelberg, 2020, Vol. 20, No. 4, pp. 567-583. <https://doi.org/10.1007/s12027-020-00602-0>

⁴⁸ IMRAN, M., MURTIZA, G., AKBAR, M. S. The impact of artificial intelligence on human rights, democracy and the rule of law. *Journal of Politics and International Studies*, 2023, vol. 9, no. 1, pp. 15-29. Available from: <https://plantsghar.com/index.php/45/article/view/127/127>

⁴⁹ ZAKARIA, M. G. AI applications in the criminal justice system: The next logical step or violation of human rights. *Journal of Law and Emerging Technologies*, 2023, vol. 3, no. 2, pp. 233-257. <https://doi.org/10.54873/jolets.v3i2.124>

⁵⁰ DROR-SHPOLIANSKY, D., SHANY, Y. It's the end of the (offline) world as we know it: From human rights to digital human rights – A proposed typology. *European Journal of International Law*, 2021, vol. 32, no. 4, pp. 1249-1282. <https://doi.org/10.1093/ejil/chab087>

⁵¹ ULNICANE, I. Artificial Intelligence in the European Union: Policy, ethics and regulation. In *The Routledge Handbook of European Integrations*. London: Taylor & Francis, 2022, pp. 253-269. <https://doi.org/10.4324/9780429262081-19>

⁵² UDDIN, M. K. Human rights abuses and criminal justice in policing practices in Bangladesh. *Criminology & Criminal Justice*, 2022, 17488958221120915. <https://doi.org/10.1177/17488958221120915>

demilitarization and depoliticization of the police in the region. These methods are, however, difficult from the perspective of their practical implementation, as they require serious measures and reforms, as well as the proper development of the movement for the human rights protection.⁵³ The problem of impunity both on the part of the police and on the part of criminals has been considered in other studies. Burra⁵⁴ notes that punishing criminals and combating impunity is often seen as human rights protection. Although the researcher expresses doubts about equating the punishment of those guilty of crimes with the human rights protection, it should be recognized that this is the most effective measure in the fight against impunity. Impunity, in turn, gives rise to new crimes that violate human rights. Accordingly, the punishment of criminals is actually one of the most important mechanisms for ensuring human rights, but it must be realized in accordance with the law and with due respect for rights.

6. Conclusions

Human rights must be ensured on the basis of equality and impartiality, in particular, in the criminal proceedings. Fair criminal proceedings require compliance with such principles as the presumption of innocence, the equality of the parties, a public and fair trial, the right to defence, the right to appeal the court's decision.

The study of the international and national (using the example of Ukraine) legislative framework gave grounds to testify that the regulatory acts are a sufficiently sound framework for ensuring human rights in criminal proceedings. In general, Ukrainian legislation is consistent with the provisions of such international regulatory acts as the Universal Declaration of Human Rights, the Convention on the Protection of Human Rights and Fundamental Freedoms, etc. Despite the completeness and coherence of the legislative provisions, cases of violation of human rights in criminal proceedings occur quite often at all its stages. This is evidenced, among other things, by the study of statistics on the number of appeals to the Commissioner of the Verkhovna Rada of Ukraine for human

⁵³ ANTOSHKINA, V., et al. The practice of legal interpretation by judicial authorities in Ukraine: Theoretical and organizational principles. *Relacoes Internacionais no Mundo Atual*, 2023, vol. 3, no. 41, pp. 506–523, e-6403. <http://dx.doi.org/10.21902/Revrima.v3i41.6403>

⁵⁴ BURRA, S. Is international criminal justice in the pursuit of human rights? In *Human Rights and International Criminal Law*. Leiden, Boston: Brill Nijhoff, 2022, pp. 23-48. https://doi.org/10.1163/9789004447462_003

rights and the ECHR. It is worth noting that the majority of telephone appeals to the Ukrainian Parliament Commissioner for Human Rights concern the violation of procedural rights during the pre-trial investigation. The number of such appeals reaches 5,305, while the number of appeals about the violation of the right to a fair trial within a reasonable period of time is 464.

6.1. Recommendations

The results of the analysis give grounds to offer a number of recommendations:

- the fight against corruption and abuses — both at the legislative level and through the formation of an appropriate culture of intolerance to corruption;
- increasing the independence of the judiciary;
- improving the training of workers in the field of implementing the norms of the Criminal Procedure Code, in particular, using a people-cantered approach;
- implementation and use of the ECHR case law, which will avoid repetition of certain violations;
- study of alternatives to imprisonment for certain (non-serious) types of crimes and the practice of their application in developed countries;
- research into the possibilities of developing systems of automated decisions at certain stages of criminal proceedings with the aim of reducing bias and ensuring equality in view of the need for transparency of such systems and human supervision.

The areas of further research may relate to the study of possibilities for the introduction of automated decision-making systems at certain stages of criminal proceedings and the associated risks.

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Rua Dr. António Bernardino de Almeida, 541 - 4200-072 Porto

Email: upt@upt.pt