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The Impact of European Union`s Law and Judicial Practice on the Application of the Principles of Protection of Violated Civil Rights in the Ukrainian Judicial Proceedings

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Secção I

Investigação Científica*

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The Impact of European Union`s Law and Judicial Practice on the Application of the Principles of Protection of Violated Civil Rights in the Ukrainian Judicial Proceedings

O Impacto da Legislação e da Prática Judicial da União Europeia na Aplicação dos Princípios de Proteção dos Direitos Civis Violados nos Processos Judiciais Ucrânicos

Ivan IVANETS¹

ABSTRACT: The aim of the research is to study the impact of legislative and doctrinal sources of European Union (EU) law, as well as judicial practice of the EU Court of Justice of the European Union (CJEU) and the European Court of Human Rights (ECHR) on the application of the main principles of protection of violated civil rights in the Ukrainian judicial proceedings. The research employed a doctrinal approach, a comparative law, a sociological method, and a case study. The analysis revealed the principles of protection of violated civil rights contained in the European doctrine and legislative sources. It was emphasized that the application of European practice is valuable in terms of the need to solve the problems existing in the Ukrainian judicial system. They include: legal uncertainty, frequent disregard of the principles of good faith and fairness, lack of effective mechanisms for the protection of rights, which leads to unpredictable legal consequences, violation of the principle of legitimate expectations and the rule of law. It was noted that the adaptation of Ukrainian legislation to European requirements should correspond to national realities and take into account constitutional and social values.

KEYWORDS: civil rights; rights protection principles; judicial practice; doctrine; harmonization of legislation; European integration.

RESUMO: O objetivo da investigação é estudar o impacto das fontes legislativas e doutrinárias do direito da União Europeia (UE), bem como da prática judicial do Tribunal de Justiça da União Europeia (TJUE) e do Tribunal Europeu dos Direitos do Homem (TEDH) na aplicação dos principais princípios de proteção dos direitos civis violados nos processos judiciais ucranianos. A investigação utilizou uma abordagem metodológica doutrinária, usando o direito comparado, o método sociológico e um estudo de caso. A análise revelou os princípios de proteção dos direitos civis violados contidos na doutrina europeia e nas fontes legislativas. Foi salientado que a aplicação da prática europeia é valiosa em termos da necessidade de resolver os problemas existentes no sistema judicial ucraniano. Estes incluem: incerteza jurídica, desrespeito frequente dos princípios da boa-fé e da equidade, falta de mecanismos eficazes para a proteção dos direitos, o que conduz a consequências jurídicas imprevisíveis, violação do princípio das expectativas legítimas e do Estado de direito. Foi referido que a adaptação da legislação ucraniana aos requisitos europeus deve corresponder às realidades nacionais e ter em conta os valores constitucionais e sociais.

PALAVRAS-CHAVE: direitos civis; princípios de proteção dos direitos; prática judicial; doutrina; harmonização das legislações; integração europeia.

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1. Introduction

The effective mechanisms for the protection of violated civil rights is a necessary condition for the law-based democratic state. Civil legislation of Ukraine enshrines the basic principles of protection of violated civil rights (justice, good faith, reasonableness). However, cases when civil rights are violated due to certain objective and subjective reasons are not rare in practice. The main causes of violations are legal uncertainty, unpredictability of consequences, and ignoring the above-mentioned principles.² Identifying effective ways to protect violated civil rights will contribute, on the one hand, to the restoration of the citizens' legal rights and interests, and to faster integration of the national legal system into the European legal space on the other hand. At the legislative level, the main legal guidelines for cooperation in the field of civil law are enshrined in the Law of Ukraine "Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Ukraine, of the other part".³ The purpose of adapting national legislation to European standards is to bring the legal system in line with the *acquis communautaire*, taking into account the criteria established by the EU for the states that seek to become its members.⁴

An important area of research in the context of improving the protection of violated civil rights is the study of the case law of the CJEU and the ECHR. It is important to investigate how the principles of civil law enshrined in European legislation are implemented in practice. In Ukraine, execution of the ECHR judgements is regulated by a number of legal acts, in particular, the Convention on the Protection of Human Rights, the Civil Procedure Code of Ukraine, the Law

² ZHORNOKUI, Yurii. M. Freedom and obligatory performance of a contract in the civil law of Ukraine. *Bulletin of Kharkiv National University of Internal Affairs*, 2022, vol. 4, no. 99, pp. 69-80. <https://doi.org/10.32631/v.2022.4.06>.

³ ATAMANCHUK, I. V. The right to judicial protection of civil rights and interests in the light of European standards. In *Civil Law of Ukraine: New Challenges and Prospects for Development* Kharkiv: National Law University Yaroslav the Wise National Law University, 2020, pp. 75-78. Available at https://library.nlu.edu.ua/POLN_TEXT/SBORNIKI_2020/Sb_Maslov_2020.pdf#page=75, viewed in 06/12/2024.

⁴ SIADRISTA, Iryna I. and SIADRISTYI, Andriy O. (2024). The case law of the European Court of Human Rights as a source of civil law. In *Problems of Civil Law and Process: Abstracts of the Participants of the Scientific and Practical Conference, Devoted to the 99th Anniversary of the Birth of of Alexander Pushkin* Vinnytsia: KHNUA, 2024, pp. 217-221. Available at <https://dspace.univd.edu.ua/server/api/core/bitstreams/b263c098-bae5-496a-95e9-394c70a07f7f/content>, viewed in 06/12/2024.

of Ukraine “On the Execution of Judgments and Application of the Case Law of the European Court of Human Rights”, the Law of Ukraine “On Enforcement Proceedings”, etc. At the legislative level, Ukrainian courts use the aforementioned Convention and the ECHR practice as a source of law.⁵ However, at the doctrinal level, scholars do not agree on the use of such practice as a source of civil law.⁶ The aim of the research is to study the impact of legislative and doctrinal sources of the EU law, as well as judicial practice of the CJEU and the ECHR on the application of the main principles of protection of violated civil rights in the Ukrainian judicial proceedings. The aim was achieved through the fulfilment of the following research objectives:

- Examine the legislative and doctrinal sources of the EU to determine the principles of protection of violated civil rights contained in them;
- Investigate the practice of the CJEU and the ECHR regarding the implementation of the basic principles of protection of violated civil rights;
- Analyse the necessity and peculiarities of adapting Ukrainian legal norms to European ones.

2. Literature Review

Approaching the national practice of civil rights protection to European standards is a topical issue for many studies. Atamanchuk⁷ investigated the right to judicial protection of civil rights in the context of the implementation of European standards. Teremetskyi et al.⁸ investigated civil liability in the field of

⁵ SLOBODIANYK, T. M., BIHDAN, M. B., and TARAN, I. O. Application of the practice of the European Court of Human Rights in civil proceedings. *Scientific Bulletin of the Uzhhorod National University. Series: Law*, 2023, vol. 77, no. 1, pp. 159-163. <https://doi.org/10.24144/2307-3322.2023.77.1.25>.

⁶ SIADRISTA, Iryna I. and SIADRISTYI, Andriy O. (2024). The case law of the European Court of Human Rights as a source of civil law. In *Problems of Civil Law and Process: Abstracts of the Participants of the Scientific and Practical Conference, Devoted to the 99th Anniversary of the Birth of of Alexander Pushkin* Vinnytsia: KHNUIA, 2024, pp. 217-221. Available at <https://dspace.univd.edu.ua/server/api/core/bitstreams/b263c098-bae5-496a-95e9-394c70a07f7f/content>, viewed in 06/12/2024.

⁷ ATAMANCHUK, I. V. The right to judicial protection of civil rights and interests in the light of European standards. In *Civil Law of Ukraine: New Challenges and Prospects for Development* Kharkiv: National Law University Yaroslav the Wise National Law University, 2020, pp. 75-78. Available at https://library.nlu.edu.ua/POLN_TEXT/SBORNIKI_2020/Sb_Maslov_2020.pdf#page=75, viewed in 06/12/2024.

⁸ TEREMETSKYI, V., et al. Health care sector's financial, civil, criminal and administrative liability in EU member states and Ukraine: Results of comparative research. *Georgian Medical News*, 2020, vol. 302, pp. 160-167. Available at <https://europepmc.org/article/med/32672710>, viewed in 06/12/2024.

health care using the example of Ukraine and EU countries. Havrik⁹ studied some aspects of legal regulation of property ownership. The researcher considered peculiarities in the regulation of the protection of this right in relation to property acquired in marriage under the civil legislation of Ukraine and certain EU countries. Nekit¹⁰ investigated aspects of the protection of the right to ownership of intangible assets in the ECHR practice. Based on the provisions of Protocol No. 1 of the Convention on the Protection of Human Rights, the researcher outlined the range of relevant rights to be protected. Zdraveva¹¹ explores the balance between the right to privacy and freedom of expression. The work includes consideration of the mechanisms of protection of these rights in the Republic of North Macedonia, in particular, the imposition of civil liability. The study also examined the effectiveness of the application of ECHR case law. Shevchuk et al.¹² examined the legal aspects of restricting the right to freedom of opinion and religion for Ukrainian civil servants through the prism of the EU experience and the practice of the ECHR.

In some works, the emphasis is on the implementation of the principles of civil legislation in Ukraine and the EU. In particular, Shyshka et al.¹³ studied the quality standards of law in the EU as a tool for improving the effectiveness of updating civil legislation in Ukraine. The researchers noted that this process should be aimed at strengthening the value of the human personality, equality, democracy and freedom. Important principles are the priority of the person over the state, improvement of mechanisms for the protection of rights and freedoms, justice and equality before the law.

⁹ HAVRIK, Roman. Protection of property rights to property acquired family unions under legislation of Ukraine and States of the European Union. *University Scientific Notes*, 2021, vol. 1, no. 79, pp. 55-63. Available at <https://irlykhuml.univer.km.ua/handle/123456789/270> viewed in 06/12/2024.

¹⁰ NEKIT, K. H. Protection of property rights on intangible assets in the practice of the European Court of Human Rights. *Legal Novels*, 2020, vol. 10, pp. 101-107. <https://doi.org/10.32847/ln.2020.10.14>.

¹¹ ZDRAVEVA, Neda. Freedom of expression vs. Right to privacy: The role of ECHR in modelling civil liability for damage. *Iustinianus Primus Law Review*, 2021, vol. 11. Available at <http://hdl.handle.net/20.500.12188/14418> viewed in 06/12/2024.

¹² SHEVCHUK, O., FEDCHYSHYN, S. A., PROTSIUK, I. V., SAMOSHCHENKO, I. V., & SHAPOSHNYK, A. O. (2024). Restrictions on the right of civil servants to freedom of outlook and religion in Ukraine: EU experience and ECtHR practice. *Revista Jurídica Portucalense*, 57-81. [https://doi.org/10.34625/issn.2183-2705\(36\)2024.ic-3](https://doi.org/10.34625/issn.2183-2705(36)2024.ic-3).

¹³ SHYSHKA, Roman B., et al. Updating civil legislation in accordance with European quality standards: The example of Ukraine. *DIXI*, 2022, vol. 24, no. 1, pp. 1-27. <https://doi.org/10.16925/2357-5891.2022.01.11>.

At the same time, the European law itself is criticized in some works because of the inherent injustice. The study by Hrekul-Kovalyk et al.¹⁴ emphasizes the need to update international conventions in accordance with the requirements and challenges of modernity. The article by Hesselink¹⁵ criticizes the injustices that exist in the theory and practice of European private law. The researcher emphasized that the EU should be responsible for this state of affairs.

Foreign authors usually consider civil law within the framework of private law. A relevant issue of such works is the study of data protection legislation, in particular, the impact of the EU General Data Protection Regulation (GDPR) on national legal systems, including civil law. This direction can be important in the context of studying the impact of international law on national legislation and the harmonization of legal standards in different states. Thus, Molnár-Gábor et al.¹⁶ devoted research to an in-depth study of data protection legislation. Based on the provisions of the GDPR, scientists compared its implementation in different EU countries. Mišćenić and Hoffmann¹⁷ analysed the GDPR in view of the importance of the document for the process of harmonization and interaction between EU law and the national laws of EU members. Strzelecki and Rizun¹⁸ studied the impact of GDPR on e-commerce in two countries: Poland, which is a EU member, and Ukraine, which is not. Didenko et al.¹⁹ noted that despite Ukraine not having the status of a full EU member, the GDPR may apply to it in certain cases.

¹⁴HREKUL-KOVALYK, T., TSYMBALIUK, A., & HORDASH, A. (2024). International legal regulation of the protection of children's rights in armed conflicts: Declarations and reality. *Revista Jurídica Portucalense*, 340-358. [https://doi.org/10.34625/issn.2183-2705\(36\)2024.ic-15](https://doi.org/10.34625/issn.2183-2705(36)2024.ic-15).

¹⁵ HESSELINK, Martijn W. EU private law injustices. *Yearbook of European Law*, 2022, vol. 41, pp. 83-116. <https://doi.org/10.1093/yel/yeac005>.

¹⁶ MOLNÁR-GÁBOR, Fruszina, et al. Harmonization after the GDPR? Divergences in the rules for genetic and health data sharing in four member states and ways to overcome them by EU measures: Insights from Germany, Greece, Latvia and Sweden. *Seminars in Cancer Biology*, 2022, vol. 84, p. 271-283. <https://doi.org/10.1016/j.semcan.2021.12.001>.

¹⁷ MIŠĆENIĆ, Emilia and HOFFMANN, Anna-Lena. The role of opening clauses in harmonization of EU Law: Example of the EU's general data protection regulation (GDPR). *EU and Comparative Law Issues and Challenges Series (ECLIC)*, 2020, vol. 4, p. 44-61. <https://doi.org/10.25234/eclit/11895>.

¹⁸ STRZELECKI, Artur and RIZUN, Mariia Consumers' security and trust for online shopping after GDPR: Examples from Poland and Ukraine. *Digital Policy, Regulation and Governance*, 2020, vol. 22, no. 4, pp. 289-305. <https://doi.org/10.1108/DPRG-06-2019-0044>.

¹⁹ DIDENKO, Larysa, et al. (2022). Peculiarities of personal data protection according to European and Ukrainian legislation. *Cuestiones Políticas*, 2022, vol. 40, no. 74, pp. 585-606. <https://doi.org/10.46398/cuestpol.4074.32>.

The conducted review gives us grounds to conclude about the importance of harmonizing national legislation with international norms. At the same time, the issues of enshrining the principles of civil law in legislative documents and implementing them in practice remain poorly studied. This research direction is particularly important for Ukraine in the context of its European integration intentions and the corresponding reform of civil legislation.

3. Methods

3.1. Research design

In view of the aim of this research — is to investigate how the principles of civil law enshrined in European legislation are implemented in practice — our research consisted of two main stages. The first stage of the research provided for the analysis of principles of protection of violated civil rights which can be determined in doctrinal documents and legislative acts of the EU. These principles were compared with those contained in Ukrainian legislation, and the need to bring Ukrainian legislation in line with European standards was substantiated. The second stage of the research involved studying illustrative examples from the judicial practice of the CJEU and the ECHR. These examples included the implementation of certain principles of protection of violated civil rights in practice. The purpose of this stage was to show that the case law of the CJEU and the ECHR is a valuable tool for increasing the efficiency of the national judicial system and bringing it in line with European norms.

3.2. Sample

The sample of EU doctrinal sources for the study consists of the Principles of European Contract Law (PECL)²⁰ and the Draft Common Frame of Reference (DCFR).²¹ The sample of legislative sources includes the Civil Code of Ukraine (2024), Council Directive 93/13/EEC of April 5, 1993 on unfair terms in consumer contracts,²² Directive of the European Parliament and Council 2011/83/EU of

²⁰ BERGER, Klaus P. The principles of European Contract Law and the concept of the "Creeping Codification" of law. *European Review of Private Law*, 2001, vol. 9, no. 1, pp. 21-34. <https://doi.org/10.54648/335684>.

²¹ VON BAR, Christian, CLIVE, Eric and SCHULTE-NÖLKE, Hans. Principles, definitions and model rules of European private law. *Draft Common Frame of Reference (DCFR)*, 2009, vol. 1, pp. 300-308. Available at <https://sakig.pl/wp-content/uploads/2019/01/dfcr.pdf>, viewed in 06/12/2024.

²² COUNCIL DIRECTIVE 93/13/EEC OF 5 APRIL 1993 ON UNFAIR TERMS IN CONSUMER CONTRACTS. In Sands, Ph., & Galizzi, P. (Eds.), *Fundamental Texts on European Private Law*.

October 25, 2011 on consumer rights,²³ Regulation (EU) No. 1215/2012 on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters,²⁴ Charter of Fundamental Rights of the European Union,²⁵ Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on protection of intellectual property rights.²⁶

The sample of court cases for this study was: case C-415/11 Mohamed Aziz v. Caixa d'Estalvis de Catalunya, Tarragona and Manresa (Catalunyacaixa),²⁷ case C-168/05 Elisa María Mostaza Claro v. Centro Móvil Milenium SL,²⁸ case C-40/08 Asturcom Telecomunicaciones SL v. Cristina Rodríguez Nogueira,²⁹ case C-489/07 Pia Messner v. Firma Stefan Krüger,³⁰ case 68490/01 Stankov v. Bulgaria,³¹ case No. 757/5351/21-ts.³²

London: Cambridge University Press, 1993, pp. 555-564.
<https://doi.org/10.5040/9781472559500.0006>

²³ DIRECTIVE OF THE EUROPEAN PARLIAMENT AND COUNCIL 2011/83/EU ON 25 OCTOBER 2011 ON CONSUMER RIGHTS, AMENDING COUNCIL DIRECTIVE 93/13/EEC. 2011. Available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32011L0083>, viewed in 06/12/2024.

²⁴ REGULATION 1215/2012 ON JURISDICTION AND THE RECOGNITION AND ENFORCEMENT OF JUDGMENTS IN CIVIL AND COMMERCIAL MATTERS (RECAST). 2018. Available from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32012R1215>.

²⁵ EUROPEAN UNION. Charter of fundamental rights of the European Union. *Office for Official Publications of the European Communities*. 2000. Available at <https://europa.eu/european-union/about-european-union/fundamental-rights>, viewed in 06/12/2024.

²⁶ ALLEN, Frances, et al. Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004. In *Immigration Law Handbook* Oxford: Oxford University Press, 2023, 11th Edn., pp. 2253-2273. <https://doi.org/10.1093/oso/9780192896292.003.0079>.

²⁷ MOHAMED AZIZ V CAIXA D'ESTALVIS DE CATALUNYA, TARRAGONA I MANRESA (CATALUNYACAIXA). Court of Justice of the European Union, 14 March 2013, C-415/11, Court reports – general, ECLI identifier: ECLI:EU:C:2013:164 (European Union). 2013. Available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62011CJ0415>, viewed in 06/12/2024.

²⁸ ELISA MARÍA MOSTAZA CLARO V. CENTRO MÓVIL MILENIUM SL. Court of Justice of the European Union, 26 October 2006, C-168/05, European Court Reports 2006 I-10421, ECLI identifier: ECLI:EU:C:2006:675 (European Union). 2006. Available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62005CJ0168>, viewed in 06/12/2024

²⁹ ASTURCOM TELECOMUNICACIONES SL V CRISTINA RODRÍGUEZ NOGUEIRA. Court of Justice of the European Union, 6 October 2009, C-40/08, European Court Reports 2009 I-09579, ECLI identifier: ECLI:EU:C:2009:615 (European Union). 2009. Available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62008CJ0040>, viewed in 06/12/2024.

³⁰ PIA MESSNER V. FIRMA STEFAN KRÜGER. Court of Justice of the European Union, 3 September 2009, C-489/07, European Court Reports 2009 I-07315, ECLI identifier: ECLI:EU:C:2009:502 (European Union). 2009. Available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=ecli%3AECLI%3AEU%3AC%3A2009%3A502>, viewed in 06/12/2024.

³¹ STANKOV V. BULGARIA. European Court of Human Rights. 12 July 2007, 68490/01 (European Union). 2007. Available at <https://hudoc.echr.coe.int/rus?i=001-81606>, viewed in 06/12/2024.

³² DECISION DATED 04.10.2023 NO. 757/5351/21-TS. Supreme Court. Civil Court of Cassation, 757/5351/21-ts (Ukraine). 2023. Available at https://verdictum.ligazakon.net/document/114020813?utm_source=jurliga.ligazakon.net&utm_medium=news&utm_content=jl01, viewed in 06/12/2024.

3.3. Methods

The research employed a doctrinal approach to conduct a detailed analysis of doctrinal and legislative sources and to identify the main principles of protection of violated civil rights that they contain. The method of comparative law was used to compare the relevant principles contained in Ukrainian legislation and EU documents. This method in combination with the sociological method also identified problems characteristic of the Ukrainian judicial proceedings. Another important method in the research was the case study used to analyse the case law of the CJEU and the ECHR. This method was used to investigate how the principles determined as a result of the application of the doctrinal approach are implemented in European practice.

4. Results

4.1. Principles of protection of violated civil rights in Ukraine and the EU

Article 3 of the Civil Code of Ukraine contains general principles of national civil legislation. They include:

- 1) inadmissibility of arbitrary interference in personal life;
- 2) inadmissibility of deprivation of property rights (with the exception of cases specified by law);
- 3) freedom of contract;
- 4) freedom of entrepreneurial activity not prohibited by law;
- 5) judicial protection of civil law and interest;
- 6) justice, good faith, and reasonableness.³³

The last item contains general principles of civil law that must be followed in any legal relationship, guaranteeing a balance of rights and interests of the parties. The corresponding principles are contained in doctrinal sources and legislative documents of the EU. Table 1 contains examples of EU documents and the relevant principles that can be derived from their content.

Table 1. Principles of protection of violated civil rights in EU documents

Document	Purpose	Principles
Doctrinal sources		
Principles of European	Contract law is one of the areas of private law. The PECL is a set	The following principles can be derived from the text of the document: Freedom of Contract (Article 1:102), Mandatory

³³ CIVIL CODE OF UKRAINE. 2024. Available at <https://zakon.rada.gov.ua/laws/show/435-15#Text>, viewed in 06/12/2024.

Contract Law (PECL) ³⁴	of model rules aimed at explaining the basic rules of contract law.	Law (Article 1:103), Good Faith and Fair Dealing (Article 1:201), the Duty to Cooperate (Article 1:202), Reasonableness (Article 1:302), etc.
Draft Common Frame of Reference (DCFR) ³⁵	The DCFR contains uniform standards of private law expressed through key principles and concepts.	Freedom, security, justice and effective protection of human rights (Underlying principles); promotion of solidarity and social responsibility, preservation of cultural and linguistic diversity, protection and promotion of well-being, promotion of the internal market (Overriding principles)
Legislative documents		
Council Directive 93/13/EEC of 5 April 1993 on Unfair Terms in Consumer Contracts ³⁶	The document is intended for harmonization of laws and other regulatory documents of member states regarding unfair terms in contracts	fairness, good faith (Article 3)
Council Directive 93/13/EEC of 5 April 1993 on Unfair Terms in Consumer Contracts	The document is intended for harmonization of laws and other regulatory documents of the member states regarding consumer contracts in order to achieve a high level of consumer rights protection	fairness, good faith, transparency
Regulation 1215/2012 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters (recast), 2018 ³⁷	The purpose of the document is to ensure the effectiveness of jurisdiction, facilitate the recognition and enforcement of decisions in civil and commercial cases	predictability, legal certainty, access to justice

³⁴ BERGER, Klaus P. The principles of European Contract Law and the concept of the "Creeping Codification" of law. *European Review of Private Law*, 2001, vol. 9, no. 1, pp. 21-34. <https://doi.org/10.54648/335684>.

³⁵ VON BAR, Christian, CLIVE, Eric and SCHULTE-NÖLKE, Hans. Principles, definitions and model rules of European private law. *Draft Common Frame of Reference (DCFR)*, 2009, vol. 1, pp. 300-308. Available at <https://sakig.pl/wp-content/uploads/2019/01/dfcr.pdf>, viewed in 06/12/2024.

³⁶ COUNCIL DIRECTIVE 93/13/EEC OF 5 APRIL 1993 ON UNFAIR TERMS IN CONSUMER CONTRACTS. In Sands, Ph., & Galizzi, P. (Eds.), *Fundamental Texts on European Private Law*. London: Cambridge University Press, 1993, pp. 555-564. <https://doi.org/10.5040/9781472559500.0006>.

³⁷ REGULATION 1215/2012 ON JURISDICTION AND THE RECOGNITION AND ENFORCEMENT OF JUDGMENTS IN CIVIL AND COMMERCIAL MATTERS (RECAST). 2018. Available from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32012R1215>.

Charter of Fundamental Rights of the European Union ³⁸	The document contains the fundamental political, social and economic rights of EU citizens	effective legal protection, fair trial
Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on protection of intellectual property rights ³⁹	The document establishes uniform rules for the protection of intellectual property in the EU	efficiency, proportionality

Therefore, the legal systems of Ukraine and the EU are based on common principles of justice, good faith, reasonableness, etc. However, practice shows that these principles are often not observed in Ukraine, which can be confirmed by the high level of distrust in the judicial system - 59%.⁴⁰ Possible reasons for non-observance of the principles may be legal uncertainty, ignoring the principles of good faith and fairness in some cases, lack of effective rights protection mechanisms. This can lead to unpredictability of legal consequences, violation of the principle of legitimate expectations and, ultimately, weaken the principle of the rule of law.

4.2. The case law of the CJEU and the ECHR regarding the clarification of the application of the principles of the protection of civil rights by the courts of the EU member states

The case law of the CJEU contains very illustrative examples of the implementation of the above-mentioned principles of civil rights protection. In particular, the observance of the principle of *justice* can be demonstrated using the following example from the CJEU practice.

³⁸ EUROPEAN UNION. Charter of fundamental rights of the European Union. *Office for Official Publications of the European Communities*. 2000. Available at <https://europa.eu/european-union/about-eu/charter-of-fundamental-rights>, viewed in 06/12/2024.

³⁹ ALLEN, Frances, et al. Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004. In *Immigration Law Handbook* Oxford: Oxford University Press, 2023, 11th Edn., pp. 2253-2273. <https://doi.org/10.1093/oso/9780192896292.003.0079>.

⁴⁰ CITIZENS' ASSESSMENT OF THE SITUATION IN THE COUNTRY AND THE ACTIONS OF THE AUTHORITIES, TRUST IN SOCIAL INSTITUTIONS (February-March 2023). *Razumkov Centre*. 2023. Available at <https://razumkov.org.ua/napriamky/sotsiologichni-doslidzhennia/otsinka-gromadianamy-sytuatsii-v-kraini-ta-dii-vlady-dovira-do-sotsialnykh-institutiv-liutyi-berezen-2023r>, viewed in 06/12/2024.

Case C-415/11 Mohamed Aziz v. Caixa d'Estalvis de Catalunya, Tarragona and Manresa (Catalunyacaixa) concerns the protection of consumer rights as regards unfair terms in credit agreements.⁴¹ Mr. Aziz entered into a loan agreement with the bank, the terms of which included those that allowed the bank to evict the borrower from his home in case of non-payment. At the same time, according to Spanish law, the court could not delay the eviction process even when the borrower considers certain terms of the loan agreement to be unfair. Accordingly, Mr. Aziz did not have a chance to properly defend his rights in court.

The court ruled that provisions that allow a bank to evict a borrower without a proper trial are contrary to Directive 93/13/EEC on unfair terms in consumer contracts. The Court also stated that national legislation should provide for the temporary protection in the event that there are grounds to consider the terms of the credit agreement unfair. In this particular case, temporary protection is supposed to mean the suspension of the process of eviction from the house.

This example illustrates the possibilities of applying the principle of justice in the protection of civil rights by the EU. National legislation in this context did not provide the consumer with adequate protection against unfair terms in the credit agreement. The legislation of Spain, as a member of the EU, did not allow the court to assess the unfairness of the terms of the loan agreement and provide the borrower with adequate temporary protection. Accordingly, such provisions are contrary to the aforementioned Directive 93/13/EEC and should be ignored in favour of EU norms that ensure justice.

Case C-168/05 Elisa María Mostaza Claro v. Centro Móvil Milenium SL⁴² can be another example of the observance of the principle of *justice*, as well as *good faith*. The consumer concluded a contract with the company for the purchase of a mobile phone. The contract contained an arbitration clause, and when there was a disagreement over the terms of the contract, the case was

⁴¹ MOHAMED AZIZ V CAIXA D'ESTALVIS DE CATALUNYA, TARRAGONA I MANRESA (CATALUNYACAIXA). Court of Justice of the European Union, 14 March 2013, C-415/11, Court reports – general, ECLI identifier: ECLI:EU:C:2013:164 (European Union). 2013. Available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62011CJ0415>, viewed in 06/12/2024.

⁴² ELISA MARÍA MOSTAZA CLARO V. CENTRO MÓVIL MILENIUM SL. Court of Justice of the European Union, 26 October 2006, C-168/05, European Court Reports 2006 I-10421, ECLI identifier: ECLI:EU:C:2006:675 (European Union). 2006. Available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62005CJ0168>, viewed in 06/12/2024.

submitted to arbitration. The injustice was that the arbitration clause was added to the contract unilaterally, so the consumer had no way to influence it.

The Court ruled that even where unfair contract terms were not challenged in arbitration, national courts must be able to revise arbitral awards. In other words, arbitral awards can be appealed in case of unfair terms in consumer contracts. The Court reached similar conclusions in the case C-40/08 Asturcom Telecomunicaciones SL v. Cristina Rodríguez Nogueira,⁴³ which also concerned arbitration clauses in consumer contracts.

The decisions in both above-mentioned cases emphasize the importance of applying the principles of fairness and good faith. Another important principle - *reasonableness* - can be revealed through Case C-489/07 Pia Messner v. Firma Stefan Krüger.⁴⁴ The consumer remotely ordered certain goods from the company, but later decided to return the goods, using the right to withdraw from the contract. The company believed that the consumer should be reimbursed for the cost of using the goods, to which the consumer objected.

The court ruled that Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts excludes certain provisions of national legislation. In particular, this applies to the provisions that provide for the need to compensate the user for the cost of using the goods during the withdrawal period. This case demonstrates the observance of the principle of reasonableness by the Court. Being able to return the product within a specified withdrawal period gives the consumer time to properly assess whether the product is suitable for him/her and return it without explanation if necessary. At the same time, the Court noted that if the consumer used the goods in a manner incompatible with the principles of civil law, in particular, good faith, or for the purpose of unjust enrichment, compensation may be demanded from the consumer. So, the principles of civil law in the EU should

⁴³ ASTURCOM TELECOMUNICACIONES SL V CRISTINA RODRÍGUEZ NOGUEIRA. Court of Justice of the European Union, 6 October 2009, C-40/08, European Court Reports 2009 I-09579, ECLI identifier: ECLI:EU:C:2009:615 (European Union). 2009. Available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62008CJ0040>, viewed in 06/12/2024.

⁴⁴ PIA MESSNER V. FIRMA STEFAN KRÜGER. Court of Justice of the European Union, 3 September 2009, C-489/07, European Court Reports 2009 I-07315, ECLI identifier: ECLI:EU:C:2009:502 (European Union). 2009. Available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=ecli%3AECLI%3AEU%3AC%3A2009%3A502>, viewed in 06/12/2024.

be applied to all participants in legal relations, which, among other things, emphasizes the observance of the principle of *equality*.

The practice of the ECHR also has many examples of effective observance of the principles of civil law. Case No. 68490/01 Stankov v. Bulgaria can be used as an illustrative example.⁴⁵ According to the national legislation, in case of full or partial rejection of the claimant's claims, he/she had to pay a court fee of 4% of the amount of claims that were not satisfied. At the same time, the amount did not depend on the judge's discretion or considerations of justice. So, Mr. Stankov's claim for damages caused by illegal arrest was granted, but the court fee amounted to approximately 90% of the recovered amount. The plaintiff claimed that such a fee is a limitation of his right to access to justice, which is a violation of the Convention on the Protection of Human Rights and Fundamental Freedoms. In addition, there was a violation of the principle of proportionality in this case. The absence of an upper limit to the court fee and the impossibility of determining the amount due to judicial discretion may be considered as a disproportionate restriction of the right to access to justice. The ECHR decision recognized the violation of the plaintiff's rights by Bulgaria. The court ruled that the excessive amount of the court fee restricted the right to access justice and was disproportionate. Mr. Stankov was awarded EUR 2,000 in compensation for moral damage. This example clearly demonstrates compliance with the principles of *justice* and *proportionality*.

The latest example from the ECHR practice was recently used by the Supreme Court to substantiate the conclusions in Case No. 757/5351/21-ts.⁴⁶ Therefore, the above-mentioned and other examples of the practice of the CJEU and the ECHR are important for Ukrainian realities, because they contribute to bringing the level of compliance with the principles of civil law and bring the Ukrainian judicial system closer to European standards.

⁴⁵ STANKOV V. BULGARIA. European Court of Human Rights. 12 July 2007, 68490/01 (European Union). 2007. Available at <https://hudoc.echr.coe.int/rus?i=001-81606>, viewed in 06/12/2024.

⁴⁶ DECISION DATED 04.10.2023 NO. 757/5351/21-TS. Supreme Court. Civil Court of Cassation, 757/5351/21-ts (Ukraine). 2023. Available at https://verdictum.ligazakon.net/document/114020813?utm_source=jurliga.ligazakon.net&utm_medium=news&utm_content=jl01, viewed in 06/12/2024.

5. Discussion

This work confirmed the effective implementation of the principles of justice, good faith, reasonableness, and proportionality in European practice. It was also found that legal uncertainty, non-observance of the principles of good faith and fairness in individual cases is a particularly urgent problem for Ukraine. This leads to unexpected results for the parties to the process and may affect compliance with the principle of the rule of law.

The work of Teremetskyi et al.⁴⁷ confirms the author's thesis about the insufficient level of compliance with the principles of civil law in Ukraine. The researchers conducted an analysis of civil liability in the field of health care in Ukraine and the EU. The researchers have found that Ukraine significantly lags behind European standards in the realization of patients' right to compensation. They emphasized the need to harmonize Ukrainian legislation with the European Charter of Patients' Rights.

The analysis of European legislation conducted by Atamanchuk⁴⁸ identified a number of basic standards that ensure the right to judicial protection of civil rights. In the researcher's opinion, these principles should be implemented in the field of procedural and legal regulation of civil justice in Ukraine. These include: access to justice, a fair and independent court, effective judicial protection, as well as enforcement of court decisions. The rule of law is the absolute principle of reforming the judicial system. Having studied the important directions of the process of harmonization of national legislation with EU norms, Shyshka et al.⁴⁹ placed a special emphasis on compliance with the principles of legitimate expectations and legal certainty. The first principle involves not only the unconditional observance of the law by the state authorities, but also the fulfilment

⁴⁷ TEREMETSKYI, V., et al. Health care sector's financial, civil, criminal and administrative liability in EU member states and Ukraine: Results of comparative research. *Georgian Medical News*, 2020, vol. 302, pp. 160-167. Available at <https://europepmc.org/article/med/32672710>, viewed in 06/12/2024.

⁴⁸ ATAMANCHUK, I. V. The right to judicial protection of civil rights and interests in the light of European standards. In *Civil Law of Ukraine: New Challenges and Prospects for Development* Kharkiv: National Law University Yaroslav the Wise National Law University, 2020, pp. 75-78. Available at https://library.nlu.edu.ua/POLN_TEXT/SBORNIKI_2020/Sb_Maslov_2020.pdf#page=75, viewed in 06/12/2024.

⁴⁹ SHYSHKA, Roman B., et al. Updating civil legislation in accordance with European quality standards: The example of Ukraine. *DIXI*, 2022, vol. 24, no. 1, pp. 1-27. <https://doi.org/10.16925/2357-5891.2022.01.11>.

of promises and compliance with the citizens' expectations. The second principle establishes the need for clear, stable and predictable legal norms. Furthermore, the analysis of the ECHR case law gave the researchers grounds to confirm the thesis about the need to improve the quality of norms regarding acts of causal interpretation of legal norms. The conclusions in the above-mentioned studies are consistent with the author's work and extend the results of the latter in view of the definition of key principles to be strengthened in Ukrainian practice — the rule of law, legitimate expectations, legal certainty, etc.

The need for harmonization of national legislation in the field of civil law was confirmed in the works of other researchers. For example, a study by Nekit⁵⁰ demonstrated how the principles of property rights protection in the EU adapt to new realities through the implementation of mechanisms for the protection of rights to intangible assets. National legal systems should take into account similar experiences, which will allow them to be more flexible and meet modern requirements.

A number of researchers focused on the aspects of harmonization using the example of GDPR implementation. Having examined the data sharing rules of individual EU member states, Molnár-Gábor et al.⁵¹ found significant discrepancies. The researchers are sure that these differences relate, first of all, to the legal qualification of GDPR provisions. It follows that even within the EU, imperfect harmonization of legal provisions can cause difficulties in the process of harmonizing law enforcement. Therefore, it is an important task for Ukraine to protect itself from such problems in the process of harmonization for effective integration into the EU legal space. Didenko et al.⁵² emphasized the urgent problem of harmonizing Ukrainian legislation with EU requirements, including in the field of personal data protection (with reference to GDPR). Considering the

⁵⁰ NEKIT, K. H. Protection of property rights on intangible assets in the practice of the European Court of Human Rights. *Legal Novels*, 2020, vol. 10, pp. 101-107. <https://doi.org/10.32847/ln.2020.10.14>.

⁵¹ MOLNÁR-GÁBOR, Fruszina, et al. Harmonization after the GDPR? Divergences in the rules for genetic and health data sharing in four member states and ways to overcome them by EU measures: Insights from Germany, Greece, Latvia and Sweden. *Seminars in Cancer Biology*, 2022, vol. 84, p. 271-283. <https://doi.org/10.1016/j.semcancer.2021.12.001>.

⁵² DIDENKO, Larysa, et al. (2022). Peculiarities of personal data protection according to European and Ukrainian legislation. *Cuestiones Políticas*, 2022, vol. 40, no. 74. <https://doi.org/10.46398/cuestpol.4074.32>.

findings of Strzelecki and Rizun,⁵³ the implementation of GDPR is important not only from the perspective of harmonization, but also for improving the security and consumers' trust in e-commerce.

At the same time, it is worth noting that many researchers criticise European legislation, as well as the use of its practice in the national context. For example, while investigating the issue of the relationship between the right to privacy and freedom of expression, Zdraveva⁵⁴ checked whether the national legislation of the Republic of North Macedonia is in line with the ECHR practice. The researcher pointed out the insufficiency of the reference to the provisions of the European Convention on Human Rights and the case law of the ECHR to establish a proper balance. The researcher concluded that national courts should clearly understand the essence of not only the protection of rights, but also the consequences caused by the imbalance. Mišćenić and Hoffmann⁵⁵ concluded that due to the numerous non-binding provisions and minimum harmonization clauses, EU regulations may exacerbate differences between legal systems. Hesselink⁵⁶ identifies unfairness in European private law. This concerns, first of all, the consumerism of private law and constitutional market functionalism. The researcher also noted excessive Eurocentrism, the problem of doctrinal and judicial expert government, ignoring intersectoral dominance.

So, it can be concluded that the national legislation should not be harmonized through the blind implementation of European norms. These norms should be adapted to local realities, taking into account constitutional and social values. The work of Havrik⁵⁷ can be cited as an example of adaptation of international norms to national customs. The researcher found differences in the

⁵³ STRZELECKI, Artur and RIZUN, Mariia Consumers' security and trust for online shopping after GDPR: Examples from Poland and Ukraine. *Digital Policy, Regulation and Governance*, 2020, vol. 22, no. 4, pp. 289-305. <https://doi.org/10.1108/DPRG-06-2019-0044>.

⁵⁴ ZDRAVEVA, Neda. Freedom of expression vs. Right to privacy: The role of ECHR in modelling civil liability for damage. *Iustinianus Primus Law Review*, 2021, vol. 11. Available at <http://hdl.handle.net/20.500.12188/14418>, viewed in 06/12/2024.

⁵⁵ MIŠĆENIĆ, Emilia and HOFFMANN, Anna-Lena The role of opening clauses in harmonization of EU Law: Example of the EU's general data protection regulation (GDPR). *EU and Comparative Law Issues and Challenges Series (ECLIC)*, 2020, vol. 4, p. 44-61. <https://doi.org/10.25234/eclit/11895>.

⁵⁶ HESSELINK, Martijn W. EU private law injustices. *Yearbook of European Law*, 2022, vol. 41, pp. 83-116. <https://doi.org/10.1093/yel/yeac005>.

⁵⁷ HAVRIK, Roman. Protection of property rights to property acquired family unions under legislation of Ukraine and States of the European Union. *University Scientific Notes*, 2021, vol. 1, no. 79, pp. 55-63. Available at <https://irlykhuml.univer.km.ua/handle/123456789/270>, viewed in 06/12/2024.

regulation of the protection of the right to property acquired in marriage in Ukraine and some EU countries. These differences are related to the type of family union. For example, in France, the principles of protection of property rights apply to civil partners, in particular, de facto spouses. In Germany, the application of such principles is limited to de facto marriages.

6. Conclusions

The analysis carried out in the study revealed that the European doctrine and legal documents contain the following (non-exhaustive) list of principles of protection of violated civil rights: freedom of contract, obligation of law, good faith and fairness, duty to cooperate, reasonableness, freedom, security, justice and effectiveness, protection of human rights, promotion of solidarity and social responsibility, preservation of cultural and linguistic diversity, protection and promotion of well-being, promotion of the internal market, transparency, predictability, legal certainty, access to justice, fair trial, efficiency, and proportionality. The implementation of the main of these principles (justice, good faith, reasonableness, proportionality) in European practice was demonstrated by analysing cases from the judicial practice of the CJEU and the ECHR.

It was determined that the application of the case law of the CJEU and the ECHR in the Ukrainian judicial proceedings can be useful in view of the existing problems that need to be addressed as soon as possible. Such problems include legal uncertainty, disregard of the principles of good faith and fairness in some cases, lack of effective rights protection mechanisms. These problems lead to the unpredictability of legal consequences, violation of the principle of legitimate expectations and cause violation of the principle of the rule of law.

At the same time, Ukrainian legislation cannot be adapted to European requirements through the blind implementation of relevant norms. Such norms should correspond to national conditions and peculiarities, taking into account constitutional and social values. Further areas of research should be aimed at identifying aspects of civil law that should be adapted to European standards, taking into account national peculiarities.

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