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TRENDS IN THE DEVELOPMENT OF LEGAL ASSISTANCE BETWEEN THE ECTHR AND MEMBER STATES: CHALLENGES AND PROSPECTS

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Abstract

The functioning of the European Court of Human Rights (ECtHR) is an important issue for legal interpretation. The purpose of the article is to analyse the trends in the development of legal cooperation and assistance between the ECtHR and the Council of Europe member states, to study the difficulties and opportunities for future challenges and prospects on the way to improving such cooperation. The main methods used for the study were systematic, comparative, and thematic analysis, which provided a comprehensive understanding of the functioning of the ECtHR and its impact on the legal systems of member states. The study examined individual documents on the functioning of the ECtHR, which became the basis for statistical calculations and qualitative assessments of judicial practices. The results of the study show that important challenges for the ECtHR are the politicisation of its work and the anti-democratic nature of certain countries, which complicates the implementation of judgments. Moreover, inconsistent application of ECtHR rulings at the national level reflects the complexity of aligning domestic legal systems with international human rights standards. It is also determined that the mechanisms of functioning of this international court require a more detailed interpretation for use in the judicial practice of countries. At the same time, the resolution of these challenges represents a prospect for the development of the ECtHR, since the establishment of legal cooperation between the Council of Europe countries is an important tool for ensuring justice and strengthening the rule of law across the region. The conclusions note that for the further implementation of the principles of international treaties, it is important that the ECtHR judgments are clearly and unambiguously interpreted at the national level.

Keywords: efficiency of justice, human rights, implementation of decisions, intergovernmental cooperation, legal reforms, protection of citizens' rights

Introduction

The adoption of the European Convention for the Protection of Human Rights and Fundamental Freedoms (known in professional literature and court decisions as the "European Convention on Human Rights") is an international treaty at the regional level that can be signed by member states of the Council of Europe (European Convention on Human Rights, 1950). The European Union also has the legal right to accede to the Convention. The Convention was intended to give effect to some of the rights enshrined in the Universal Declaration of Human Rights and to establish a supranational intergovernmental judicial institution, the European Court of Human Rights (ECHR), which has jurisdiction to rule against states that do not fully (or not at all) fulfil their obligations under the Convention. This document was signed in Rome on 4 November 1950 and entered into force on 3 September 1953.

In addition, certain Protocols have been added to the text of the Convention, which are international documents that supplement and clarify the original text of the Convention with one or more provisions or

amend certain provisions. Protocols that guarantee certain additional rights or obligations for countries are binding only if they are signed and duly ratified at the level of national legislation. If a Protocol is signed but not ratified, it is not binding and cannot be implemented.

The legal result of the adoption of the Convention and the formation of the structure of the ECHR was that this intergovernmental judicial institution was able to receive complaints from any individuals, non-governmental organizations or any group of individuals who have suffered legal oppression and have become victims of a violation committed by the judiciary of one of the Council of Europe member states (Hillebrecht, 2014). Accordingly, these categories of victims have the rights recognized in the Convention or further elaborated in its Protocols. In particular, in the case of Azerbaijan, the legal result was that the adoption and ratification of the Convention and the corresponding recognition of the jurisdiction of the European Court of Human Rights allowed citizens of the country to apply to the ECtHR for protection against violations of their rights enshrined in the Convention and its Protocols, if the reserves of domestic remedies are exhausted. Art. 32 of the Convention enshrines the right of the ECHR to give an official assessment and use the provisions of the Convention and its Protocols. At the same time, the ECtHR's judgments in the field of interpretation of the Convention cannot duplicate it, but only define the areas of specific legal application, and interpret certain guarantees of its observance. Interpretation of the Convention norms becomes a standard that the state authorities should be guided by in order to prevent violations of the Convention or its Protocols. This is enshrined in Article 46 of the Convention: ECtHR judgments are binding on countries that have approved the Convention and ratified its provisions in the appropriate manner.

The problem of the ECHR has repeatedly attracted the attention of researchers. In particular, the conclusions on the correlation between different supranational legal institutions in the practice of protecting civil society are important (Harpaz, 2009). Special mention should be made of the study of the Convention and its interpretation by leading scholars (Szczekalla, 2015), the problems of extraterritoriality of application and implementation of the ECtHR judgments (Besson, 2012), and procedural features of the organization of proceedings in the ECtHR (Brems & Lavrysen, 2013). Research attention has also been drawn to the difficulties with the implementation and practical enforcement of ECtHR judgments (Stiansen & Voeten, 2020), including those related to political circumstances and opposition from the authorities of individual countries (Kubal & Mrowicki, 2024). Based on this brief overview, it can be concluded that the functioning of the ECHR is associated with overcoming a number of obstacles, since not all Protocols have been implemented in the national legislation of the signatory countries. In addition, the spread of authoritarian tendencies in some states that come into conflict with civil society also increases the workload of the relevant judicial body, and its decisions can be ignored for a long time. In addition to such large-scale obstacles, the ECtHR also faces smaller challenges, which, however, can also have a destructive effect. Accordingly, this issue will require additional interpretation and research.

The purpose of the article is to explore the trends in the development of legal cooperation and assistance between the ECtHR and the Council of Europe member states, and to trace the challenges and prospects on the way to improving such cooperation.

Methodology

The study attempts to identify the main aspects of the development of legal assistance between the ECtHR and its member states. For this purpose, a combined approach is used, which summarizes qualitative and statistical data.

Data Collection

Modern scientific and metric databases were used to collect literature. The literature search was carried out by entering the following keywords into the search databases: "Council of Europe", "human rights", "European Court of Human Rights", "reports of the European Court of Human Rights", "development of democratic institutions in Europe". After finding the relevant literature, the primary analysis of publications was carried out, based on a review of the abstract and references. After that, a critical analysis of the selected literature was carried out and the current list of sources was reduced to 35 items.

To collect the reports of the European Court of Human Rights, we used the organization's statistical reports posted on the official pages of the court. Information from the special profile on Azerbaijan on the website of the European Court of Human Rights was also used. Summing up the information obtained from such sources as: "Statistical reports by the European Court of Human Rights" (European Court of Human Rights, 2024), **"**Impact of the European Convention on Human Rights. Azerbaijan" (Council of Europe, n.d.)**, "**European Court of Human Rights profile for Azerbaijan" (Council of Europe, 2024)**,**

"National report submitted in accordance with Human Rights Council resolutions 5/1 and 16/21. Azerbaijan" (Human Rights Council, 2023).

Data Analysis

The article uses such methods of information processing as systematic, comparative and thematic analysis. Based on the systematic method, the phenomenon of the European Court of Justice is considered as dynamic and constantly evolving in response to current challenges and events. The thematic analysis was useful for identifying the main problems and topics most often found in the literature and reports of European organizations. Comparative analysis was used to compare the findings with those of contemporary scholars. Thus, this study, based on the principles of systematicity, tries to outline the main trends in the development of legal aid to the ECHR member states.

Results

The Council of Europe is an important supranational governing body that aims to promote cooperation among its member states on important issues such as human rights, conditions for democratic development, the rule of law, cultural development and intercultural communication among its member states. Azerbaijan has been a member of the Council of Europe since 25 January 2001 (Şahin, 2024). The Council of Europe plays an important role in the observance of human rights. The European Convention on Human Rights of 1950 established a comprehensive regional system for the protection of human rights and key civil liberties. All Council of Europe countries are members of the Convention. In Azerbaijan, the Convention and its protocols have been ratified and have been in force since April 2002.

States and their national judiciaries are responsible for the observance of human rights. At the same time, the European Court of Human Rights fills in the gaps and corrects the work of national human rights compliance mechanisms, appearing as a competent international judicial body to hear human rights complaints (Villiger, 2022) filed by individual applicants or states and is responsible for issuing judgments (see Figure 1).

Thus, according to the Convention, the responsibility for the implementation of the ECHR judgments is entrusted to the states themselves. They must implement and take all possible measures to overcome the negative results in the field of human rights violations and prevent them in the future. The implementation of these decisions by the state authorities is subject to strict international supervision. According to the Convention, the necessary functions are entrusted to the Committee of Ministers of the Council of Europe (CoE), the main decision-making body of the Council of Europe, which implements and solves various problems related to the work of the entire 21 organization, including monitoring the implementation of various ECHR judgments. An application to the European Court of Human Rights must meet certain admissibility criteria, including the absence of national remedies and a 4-month time limit for applying to the court (see Figure 2).

At the same time, the fact that the ECHR issues judgments that are binding on states, not individual companies or individuals, raises certain problems with the choice of mechanisms to monitor the implementation of its decisions. Sometimes, such decisions are quite complex and unfeasible for the Council of Europe member states. However, the Committee of Ministers of the Council of Europe has to choose the best way, which should take into account the interests of all parties, and find a way to implement and enforce the court's judgments. The Committee of Ministers of the Council of Europe consists of several governing bodies: the Ministers of Foreign Affairs of the member states, the Permanent Representatives (each country elects its own Permanent Representatives), the Bureau, and the Secretariat (Diver, 2014). It should be noted that the latter serves as the main governing body that holds all meetings.

As of 2024, the total number of applications filed with this court was over 67,000, with the largest number of applications coming from Turkey (35%), Ukraine (13%), and Russia (16%) (see Figure 3).

The Committee of Ministers of the Council of Europe receives a report on the actions of a country that violates the Convention on Human Rights and also monitors the Parliamentary Assembly of the Council of Europe. To date, such monitoring has been introduced in relation to Azerbaijan. The PACE, like the Secretariat, is analyzing the situation in this country, which has been found to be responsible for the protection of the rights of citizens of the ECHR. Contemporary researchers point out that recently there has been noticeable dynamics in the implementation of the ECHR judgments (Brems & Lavrysen, 2013). In particular, from 2018 to 2023, more than 100 judgments related to Azerbaijan and withdrawn from the control of the Committee of Ministers of the Council of Europe were implemented and enforced. Among them, 15 – in 2023, 35 – in 2022, 12 – in 2021. At the same time, since 2022, Azerbaijan has submitted more than 50 action plans and action reports covering more than 150 cases.

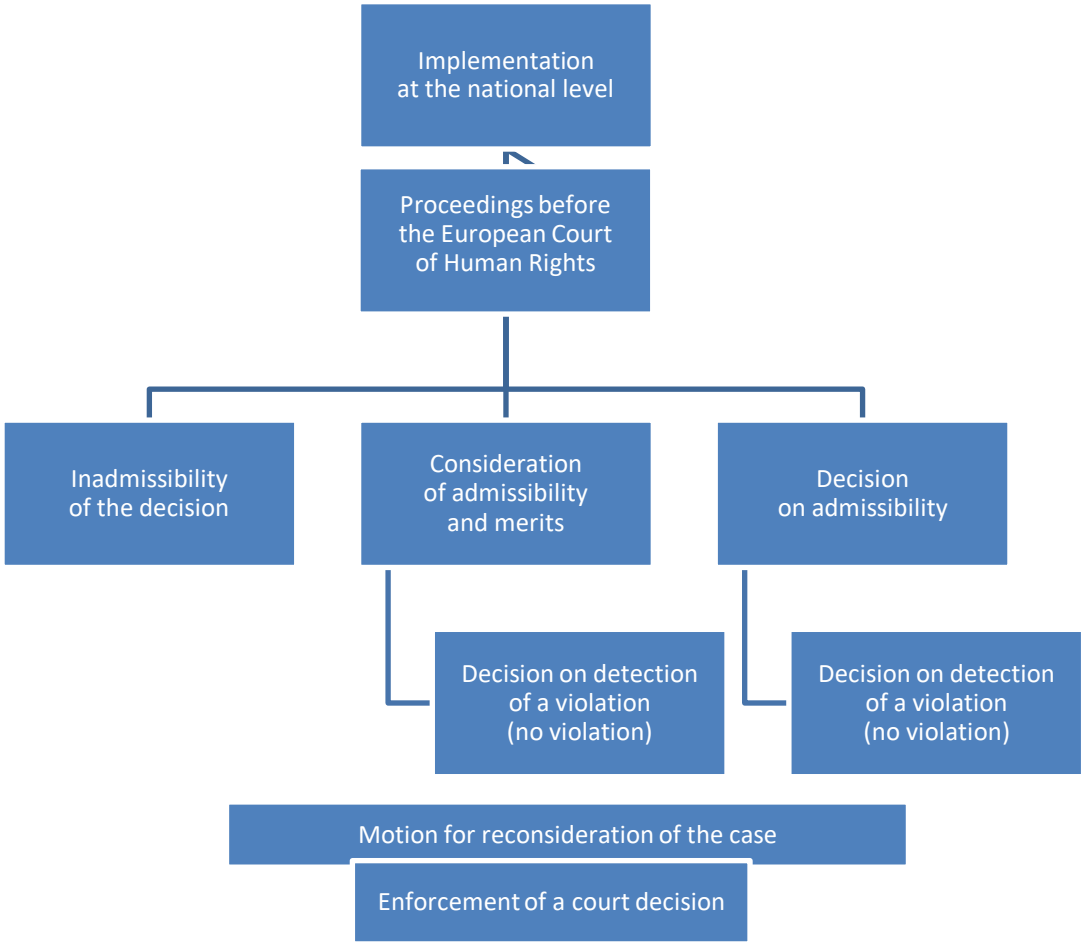

Fig. 1. The mechanism for processing applications to the European Court of Human Rights

Source: authors' elaboration

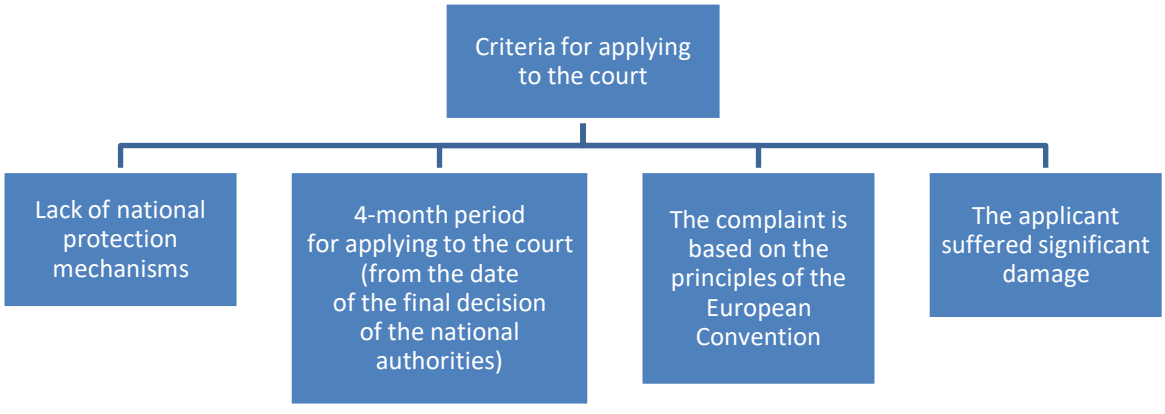

Fig. 2. Admissibility criteria for applications to the European Court of Human Rights

Source: authors' elaboration

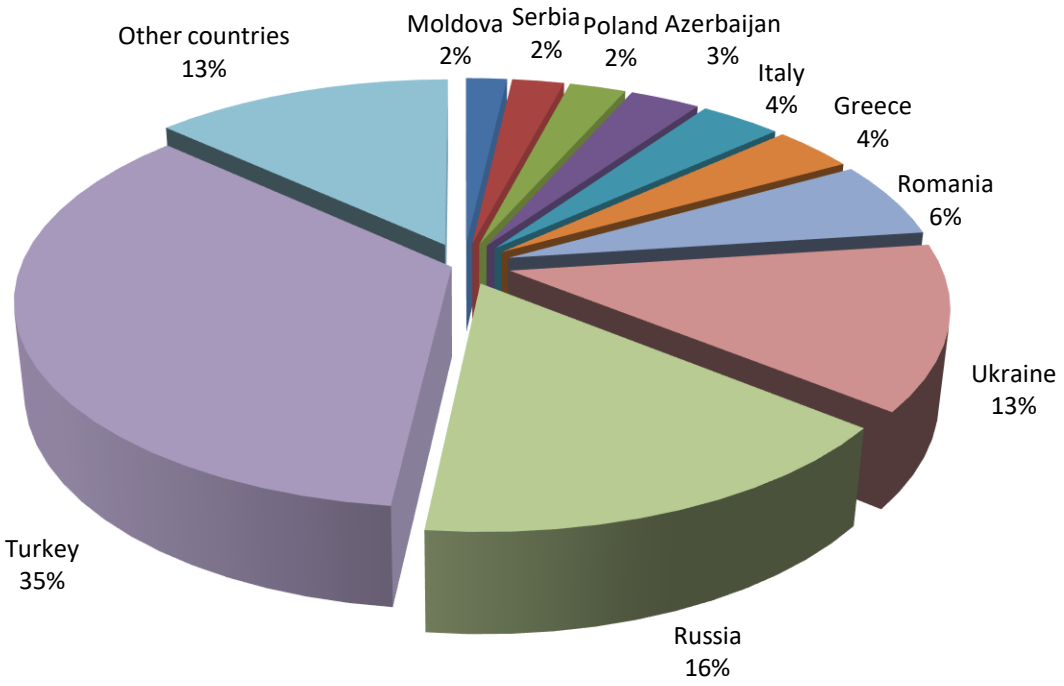

Fig. 3. Total applications by country

Source: European Court of Human Rights (2024)

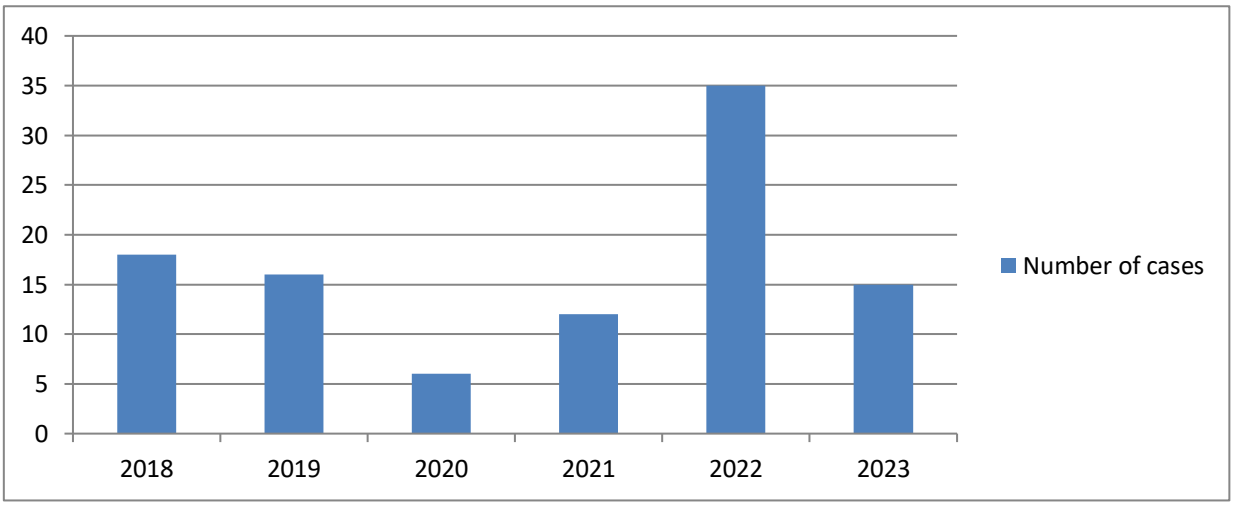

Fig 4. Dynamics of the execution of ECHR judgments in Azerbaijan

Source: Human Rights Council (2023).

As of 2023, the court has examined 732 applications against Azerbaijan. Of these, 655 were declared inadmissible. In 2023, 40 judgments were delivered (in respect of 77 applications), including almost 38 applications in which at least one or two violations of the European Convention on Human Rights (1950) were found.

Table 1

Statements concerning Azerbaijan

Statements.	2022	2023
Applications submitted to the court	389	438
Messages delivered to the Government	237	613
Applications inadmissible or rejected	320	732
Acceptance by the court	51	77

Source: Council of Europe (2024)

Therefore, given the frequent violations of rights and freedoms, the CCESCR may decide to strengthen monitoring of the measures taken. Often, ECHR judgments result in reform of domestic legislation that violates certain rights and freedoms of citizens.

Given the numerous references to ECHR case law and other issues, it should be emphasized that although it is mandatory, it requires a cautious approach. A cautious approach means determining the criteria under which the ECHR case-law and the provisions of the Convention should be used to resolve a legal issue. When assessing the expediency or necessity of applying the ECHR case law, it is necessary to take into account the extent to which certain controversial issues have already been regulated by national legislation, which meets the principle of legal certainty (Dzehtsiarou, 2013). The criteria for applying the ECHR case law may include:

1. The existence of a legal problem that cannot be resolved without using the legal mechanisms of the ECHR.
2. Identify gaps in existing national legislation.
3. Identification of conflicts among the norms of national legal systems.
4. Lack of legal capacity to properly implement certain aspects of the legislation that may violate the conventional rights of citizens.
5. The provisions of applicable national laws may be interpreted ambiguously.

In such circumstances, an appeal to the ECHR acts as an additional arbiter in resolving complex conflicts of national legislation. The use of the ECHR case law is intended to unify the case law for the protection of human rights, rather than to replace the reasoning part of court decisions.

The ECtHR judgments emphasize that the right to a fair trial includes the right to access to court, which may be restricted, but in such a way that the restriction has a legitimate aim and is proportionate (Fikfak, 2020). In ensuring the right of access to court, countries are left to choose their own methods, such as introducing systematic legal support or facilitating procedures. The right to legal aid can be analyzed as an elementary part of the right to a fair trial.

Although states have the freedom to choose the means of ensuring the right of access to court, they are obliged to adhere to the rules set out in the ECtHR judgments. Therefore, individuals are able to use legal aid if it is the only available way to exercise the right to a fair trial, when the law provides for the need for legal representation in certain cases or when the complexity of the case requires it (Biggar, 2020). The importance of the object of judicial protection, the possibility of personal representation and the prospects for a positive outcome are also taken into account when providing legal aid.

In practice, there are problems with the application of the ECHR case law against other states due to several factors. Firstly, there is a lack of official translations of the ECtHR case law in cases against other countries (Kaminska, 2014). Translations of ECtHR judgments against individual states are also not always available quickly, as the ECtHR passes judgments in English or French, and other states (including Azerbaijan) are usually obliged to translate only judgments passed against them. This makes it difficult for judges who do not speak these languages to correctly apply ECtHR judgments against other states.

Secondly, it is important to take into account the differences between theories and terms that are specific to different legal systems, such as Anglo-Saxon and Romano-Germanic (Greer, 2008). What may be applicable in one system may not be applicable in another. Therefore, the artificial transfer of concepts and concepts from one legal system to another may not be appropriate.

Thirdly, it is important for the national legal order not only to know individual ECHR judgments, but also to understand the Convention system of human rights protection, to have a conceptual framework and to be aware of the basic concepts of interpreting the Convention, taking into account all ECHR case law. The problem of accessibility of the ECHR case law and the culture of its application is key in this context and remains relevant for many states (Madsen, 2021).

In some countries, an additional challenge has emerged – irrelevant and non-constructive application of the decisions of the European Judicial Institution, lack of legal culture in the use of ECHR practices in action. Modern researchers have established that the issue of the correct position on the implementation of ECHR practices needs to be rethought (Antonopoulos, 2018). First of all, it is about certain aspects related to inappropriate references to the ECHR, since this process should be devoid of automation and used on the basis of logic. In particular, the researchers point out that in the national registers of court decisions, certain selected quotes with legal positions of the ECHR often travel from one decision to another. Based on this, it can be concluded that the recalls to the ECHR judgments are applied without analyzing the context of the European Convention and without taking into account the specifics of the context of the judgment. Therefore, presumably, the judges were not aware of the full texts of the primary sources, and covering their decisions with the authority of the ECHR does not contribute to the development of jurisprudence.

Several ways can be found in the academic literature to overcome these challenges. First of all, all ECHR member states should adopt national laws on the implementation of ECHR judgments, which will allow for clear regulation of procedures for their further implementation. The unconditional implementation of the ECHR judgments will open up opportunities for the formation and maintenance of uniform standards of human rights observance in the ECHR member states (Asoni, 2024). There is an urgent need for active translation and open publication of ECtHR judgments in the countries that are members of the Council of Europe. The work of the ECtHR will require greater application of legal norms and less politicization, which will contribute to the growth of the court's credibility among the Council of Europe member states. In addition, it is important that judges are interested in researching and working with ECHR judgments, rather than mechanically transferring individual phrases, which does not contribute to understanding the overall context of their adoption.

The CCJE should make the most of its expanding contacts with member states, ensuring timely monitoring and conciliation mechanisms, which will undoubtedly lead to an increase in the level of compliance with the ECtHR judgments. For this process, it is also important to clearly and correctly interpret the norms and principles of international human rights treaties and explain its decisions to other participating states in an accessible manner.

Discussion

The article demonstrates that the mechanism of the ECHR is an important tool for ensuring the implementation of the Convention on Human Rights. This tool has made it possible to protect the interests and rights of citizens of many countries that are signatories to the Convention and its Protocols. These conclusions confirm the arguments of researchers about the relevance of the existence of such a supranational mechanism, which allows solving problematic issues not regulated by national legislation (Diver, 2014; Kuijer, 2018).

The study agrees with Meinich (2019) and Petrescu (2016) that the constant growth of the role of human rights within the European space has led to the adoption of various legal norms in this area. In particular, Petrescu (2016) described the process of evolution of human rights regulation in primary European laws, pointing out certain points on the basis of which the European Union may accede to the Convention. At the same time, the author emphasized the points of rejection of the draft Agreement on the EU's accession to the ECHR, an important result of which is the inability to provide the EU legal system with an independent process of external control in the field of regulation of fundamental human rights. This problem has also been addressed by other scholars (Müller, 2020; Pergantis & Johansen, 2022).

The results of the study are in line with the proposals of Antonopoulos (2018) for a stricter definition of environmental rights in the ECtHR. This body resolves cases by bringing environmental issues into

the context of human rights protection, based on the provisions of international instruments, in particular the Aarhus Convention. Such situations are a manifestation of the link between the protection of nature and the realization of fundamental human rights.

The results of the study do not support the thesis of Gumirov (2023) that although the member states of the Convention reaffirm their commitment to the European values enshrined in the Convention, they are often skeptical about the ECtHR's attempts to give a sufficiently broad interpretation of those rights. However, the results of this study have demonstrated that not all countries have this attitude towards the ECtHR. In particular, as shown in the results, the positive dynamics of the implementation of ECHR judgments in Azerbaijan has been noticeable in recent years. At the same time, at the international level, the state presented 3 national reports for the period up to 2030 on sustainable development goals at political forums in 2017, 2019, 2021 (Human Rights Council, 2023). These views are also confirmed in other works, including Şahin (2024), which analyses the development of Azerbaijan's partnership with the EU.

At the same time, some scholars accuse ECtHR judges of overly creative interpretation of rights, while others are annoyed that the court does not protect the rights of applicants who expect the ECtHR to implement decisions in their favor, taking into account the realities that are not sustainable (Marochini, 2012; Nesprava, 2018; Tulkens, 2022). In this regard, the thesis of Letsas (2009) is quite important, noting that calls to limit the overly creative interpretation of the Convention's provisions are based on specific arguments about the legitimacy and effectiveness of the court, whose powers should be fully dependent on the will of the countries party to the Convention.

Thus, despite the differences in the opinions of international scholars on certain cases of the Court, the results of this study confirm that the ECtHR's case-law on freedom of association in its main parts can be considered commonplace, and therefore does not cause exceptional complaints, although sometimes it continues to cause certain problems in law enforcement at the national level.

Thus, the novelty of this study lies in a comprehensive outline of the main trends and aspects of legal aid to the members of the ECHR. Based on the analysis of the Council of Europe's reports, the author describes the dynamics of adoption or non-adoption of judgments in the Court on human rights and outlines the mechanism for implementing these judgments in Azerbaijan. At the same time, the study has certain limitations. In particular, the study uses only relevant modern literature from 2009, while previous fundamental works were omitted due to the availability of more modern and relevant data in the selected works. Another limitation is that the main focus of the study is on the practice of Azerbaijan, while in some aspects the analysis of other countries is omitted. Nevertheless, the study contributes to the general understanding of the work of the ECtHR and the establishment of legal cooperation between countries.

Conclusions

Thus, the mechanism of the ECHR functioning ensures the implementation of the Human Rights Convention and its Protocols. The balanced use of this supranational instrument allows to take into account human rights violations that may be based on conflicts of national legislation or other problems related to the interpretation of legal norms and their observance.

At the same time, the functioning of cooperation between the signatory states to the Convention and the ECHR has some difficulties. First of all, it is difficult to access the texts of judgments of this international body, as not all of them are translated into languages accessible to judges. For this reason, there is a certain selectivity in the use of ECHR judgments at the national judicial level. This creates a conflict in the formal use of ECHR judgments, when different judgments refer to the same ECHR verdict without taking into account the circumstances of its delivery and other details related to the overall course of the case. The fashion for formal use of ECHR judgments must be overcome, as the essence and purpose of the verdicts is different, and not to give more authority to the documents of national judges. Another important obstacle is the politicization of the ECtHR's work, as some countries with authoritarian systems of government may ignore its jurisdiction. In addition, as demonstrated in the study, there is a problem with the recognition of certain Protocols that may be signed but not approved at the level of national legislatures. For this reason, there is a certain vacuum of trust and, accordingly, enforcement of the ECHR judgments.

Obviously, a promising way to overcome these challenges is to improve the work of the ECHR, which will require greater application of legal norms and less politicization. It is important to expand contacts

with member states to implement monitoring and conciliation mechanisms. It is necessary that ECHR judgments are clearly and unambiguously interpreted at the national level. This will make it possible to explain the principles of international human rights treaties to other signatory states.

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