



UDC 342.7

DOI: 10.31548/law/4.2024.103

Constitutional rights and freedoms of human and citizen in Ukraine and EU countries

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Article's History:

Received: 28.07.2024

Revised: 29.10.2024

Accepted: 27.11.2024

Abstract

The purpose of this study was to substantiate the conceptual foundations and develop practical recommendations for improving the mechanisms for protecting human and civil rights and freedoms in Ukraine based on a comprehensive comparative interpretation of the constitutional legal provisions of Ukraine and the EU Member States. The study employed the methods of comparative legal and historical legal analysis, and a systematic approach. Using these methods, the study examined the nature and content of the rights and freedoms of Ukrainian citizens in the modern constitutional context. The study examined the fundamental constitutional rights and freedoms set out in the Constitution of Ukraine and the constitutions of the European Union member states. The scope of these rights, mechanisms of

Suggested Citation:

Yara, O., & Sologub, O. (2024). Constitutional rights and freedoms of human and citizen in Ukraine and EU countries. *Law. Human. Environment*, 15(4), 103-123. doi: 10.31548/law/4.2024.103.



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their implementation, and protection were compared. Particular attention was paid to common features and differences in approaches to ensuring human freedoms. The study analysed the compliance of Ukrainian human rights legislation with European standards and outlined the prospects for harmonising legal regulation in the context of Ukraine's European integration aspirations. Particular attention was paid to the analysis of legal provisions and protection mechanisms that guarantee the fulfilment of fundamental rights, including social, political, economic, and cultural rights. Comparison of Ukraine and the European Union revealed commonalities and differences in approaches to human rights protection, as well as highlighted problems and prospects for harmonising national legislation with European standards. The findings of this study revealed the need for further improvement of human rights protection mechanisms in Ukraine. The study can serve as a scientific basis for improving legislation and further implementation of international human rights instruments into national legislation

Keywords: legislation; democratic states; ombudsmen; rule of law; derogation; *erga omnes partes*

Introduction

The significance of human rights for modern European societies is the subject of intense academic debate. Such a question seemed unlikely to be raised in academic circles. Recent geopolitical and socioeconomic changes in Europe have necessitated a reassessment of the importance of rights in shaping social order and public policy. Recent trend analysis indicates the growing importance of rights issues in the contexts of European integration, migration dynamics, and national security. The study of this subject is of particular significance considering the transformation of social values and the challenges faced by European states in the 21st century. However, in the European Union and beyond, human rights systems have been under constant threat since then, being criticised as overly politically correct, as a tool to serve only the elite, or as an obstacle to prompt action. Human rights and freedoms have been a fundamental and universal value of civilisation for more than three centuries.

The significance and immediacy of the research topic are dictated by the necessity for harmonising constitutional human and civil rights and freedoms, which is particularly relevant considering Ukraine's ambitions for European integration.

Reforming Ukraine's legal system requires a detailed analysis and comparison of constitutional provisions relating to fundamental freedoms in Ukraine and the EU. Contemporary scientific literature extensively examines the comparative examination of constitutional rights in Ukraine and the European Union. O.V. Gigin *et al.* (2023) conclude that while Ukrainian legislation largely aligns with European standards, specific discrepancies in implementing and safeguarding rights systems necessitate additional harmonisation.

B. Custers (2023) revealed that the constitutional frameworks of numerous European nations inadequately address emerging forms of discrimination associated with data and algorithm usage, highlighting the necessity to update constitutional rights protections for the digital era. Y. Leheza *et al.* (2023) examined the function of international institutions, particularly the Venice Commission, in safeguarding human rights. The researchers concluded that the recommendations of these bodies significantly affect the formation of national legal systems, especially in countries seeking European integration. M.R. Ulrich (2022) examined the gun control problem and identified challenges in reconciling individual rights with public safety.

D. Guillery (2020) stated that a more sophisticated view of the relationship between governmental coercion and individual freedom is necessary.

M. Höpner and S.K. Schmidt (2020) identified a tendency to expand the scope of EU fundamental freedoms and suggested ways to reduce their restrictive impact on national social protection systems. A. Broderick (2019) examined a crucial element of the influence of digitalisation on the implementation of constitutional rights. The researchers focused on the rights of individuals with impairments pertaining to digital accessibility.

To achieve the objectives of this study, the subsequent tasks were delineated:

1. To conduct a comparative analysis of the fundamental constitutional rights of individuals and citizens as delineated in the Constitution of Ukraine and the constitutions of the European Union, with a focus on rights relevant to digitalisation and European integration.

2. The research endeavors to analyse the effectiveness of existing legal frameworks and institutional safeguards by scrutinising judicial decisions, statistical indicators of human rights compliance, and authoritative reports from recognised international organizations.

3. The investigation focuses on the comparative assessment of juridical approaches, institutional mechanisms, and legislative harmonisation processes undertaken in the context of Ukraine's European integration aspirations.

Materials and Methods

The methodology incorporated three primary analytical approaches: comparative legal analysis, systematic examination, and formal logical inquiry. Through comparative legal analysis, the study scrutinised constitutional provisions governing human rights across Ukraine and EU member states, enabling the identification of significant parallels and divergences in their respective legal frameworks. The systematic approach

facilitated the conceptualisation of constitutional rights and freedoms as an interconnected legal architecture, illuminating the complex interrelationships among various rights categories and their structural position within constitutional jurisprudence. Additionally, the formal logical method enabled precise analysis of juridical concepts and categorisations about human rights, thereby establishing clear taxonomic distinctions among various constitutional rights and freedoms while enhancing conceptual clarity in their theoretical formulation.

The efficiency of human rights protection mechanisms was evaluated through institutional analysis, focussing on the operations of principal entities responsible for safeguarding human rights, including constitutional courts and the European Court of Human Rights (ECtHR).

Consequently, the study examined the subsequent international documents: Universal Declaration (1948), European Convention (1950), Charter of Fundamental Rights (2012), etc. Additionally, national legislative measures concerning the enforcement and safeguarding of rights were examined: Constitutions and fundamental statutes of European Union member states, including the Basic Law for the Federal Republic of Germany (1949), the Constitution of France (1958), etc. The ECtHR judgements were reviewed, specifically in such landmark cases as *Hirst v. the United Kingdom* (2005), *Burmych and Others v. Ukraine* (2017), *Hutchinson v. the United Kingdom* (2015), *Nechyporuk and Yonkalo v. Ukraine* (2011).

This study includes the period from 1948, the year the Universal Declaration was adopted, to 2023. This extensive timeframe facilitates the examination of the comprehensive evolution of constitutional freedoms within the international, European, and Ukrainian contexts, encompassing the establishment of standards, the progression of national constitutional frameworks in

post-war Europe, the formation and advancement of the European Union, and the inception and evolution of the constitutional system of independent Ukraine from 1991 to 2024.

The research was executed in multiple phases: (1) examination of the constitutional stipulations regarding human rights in Ukraine and EU nations; (2) investigation of the protection mechanisms; (3) comparative analysis of methodologies for safeguarding fundamental freedoms; (4) evaluation of the efficacy of human rights protection through judicial practices and statistical evidence; (5) result synthesis and conclusion formulation. To evaluate the efficacy of human rights protection systems, the following criteria were employed: the volume of applications to the ECtHR, the degree of enforcement of national court rulings, and evaluations by international groups.

Results

The essence and characteristics of constitutional rights in the EU countries. Since the conclusion of the 20th century, international relations have experienced significant shifts, mostly influenced by globalisation. The alterations encompass the political domain, the economy (heightened global interdependence), technology (the communications revolution), the legal framework, and the socio-cultural realm (escalation of intercultural interactions). In the realm

of human rights, these changes have fostered a worldwide comprehension and reinforced the procedures for their international safeguarding, although they have also introduced new obstacles in guaranteeing these rights within a globalised context. The developments have been equivocal, yielding both beneficial outcomes through enhanced international channels for rights protection and detrimental impacts by introducing new challenges to traditional human rights protection systems, particularly concerning fundamental rights. The role of international and supranational institutions in overcoming such destructive trends as transnational crime and human rights violations in armed conflicts has increased. M.P. Donnelly (2018) contends that the interval from 1945 to 2008 witnessed a notable augmentation in the role of organisations, particularly via the efforts of the United Nations (UN) and regional human rights frameworks, such as the Council of Europe (CoE) and the European Union (EU). Consequently, human rights issues have attained a global scope, transcending the authority of individual nations and becoming subject to international governance. Table 1 illustrates the historical evolution of interactions between states and supranational entities, depicting the progression from the initial phase to the gradual incorporation of the legal mandate for human freedoms within the EU.

Table 1. Advancement of human rights protections within the legal structure of the European Union (1950-2000)

Initial stage (1950s)	The European Communities did not have powers to protect human rights. Establishment of the European Coal and Steel Community (ECSC) (1951) without direct human rights protection powers.
	The signing of the Treaty of Rome establishing the European Economic Community (EEC) (1957), which also did not contain human rights provisions.
	The responsibilities for rights protection were assigned to the Council of Europe on a supplementary basis. The adoption of the European Convention (1950) established it as the primary instrument for safeguarding rights within the Council of Europe.

Table 1. Continued

Transformation period (late 1960s – early 1970s)	In the seminal decision <i>Stauder v City of Ulm</i> (Case 29/69) (1969) ECR 419, the European Court of Justice articulated, for the first time in its jurisprudence, the foundational principle that fundamental rights protection forms an integral component of the general principles of Community law.
	The ruling of the European Court in Case No. 11-70 (1970) affirmed that respect for basic rights constitutes an essential component of the general principles of law safeguarded by the Court of Justice.
	Development of the concept of human rights protection through unwritten EU legislation grounded in the foundations of Member States’ law. The 1977 Joint Declaration of the European Parliament underscored the need to safeguard basic rights throughout the operations of the European Communities.
Gradual integration of rights into the EU legal system (1980s – 2000s)	The Single European Act (1987) was the first to reference the protection of basic rights under the founding treaties. The Treaty on European Union (1992) established the respect for basic rights as a fundamental premise of EU law.
	The Treaty of Amsterdam (1997) enhanced the EU’s authority in rights protection and established a penalties mechanism. The adoption of the Charter (2012) established a comprehensive list of rights within the EU.

Source: N.A. Neuwahl and A. Rosas (2021), D.J. Harris *et al.* (2023)

The EU Charter (2000) represents a comprehensive codification of the protection of legal, political, economic, and social rights. This evolutionary process necessitated surmounting considerable initial resistance regarding the extension of human rights jurisdiction to EU supranational institutions, ultimately yielding to the recognition that effective rights protection demanded a coordinated European-level approach. Such institutional metamorphosis aligns with broader patterns of human rights globalization while illustrating the adaptability of supranational governance mechanisms in addressing contemporary challenges. The developmental phases of the European Union have each presented distinct obstacles that shaped this progression:

- 1 1950-1957 – the foundational treaties of the European Communities did not include measures for the protection of human rights.
2. 1969-1979 – there was a necessity to incorporate human rights into the EU legal framework despite the absence of governmental authority in this domain.
3. 1980-2000 – the necessity to establish an independent catalogue of EU rights and the mech-

anisms for their safeguarding. The hurdles were surmounted by the incremental enhancement of the EU’s authority in rights and the establishment of pertinent legal instruments that augmented and fortified national rights protection procedures.

The ratification of the Charter of Fundamental Rights (2012) and its immediate implementation signified a new phase in the evolution of supranational systems for safeguarding fundamental rights. The establishment of EU membership through the Treaty on European Union (1992) has significantly influenced the evolution of the EU’s involvement in rights protection. The EU has emerged as a collaborative ally of the Council of Europe in safeguarding rights, as the Charter (2012) has enhanced the protection framework created by the European Convention (1950). This collaboration generates a synergistic effect between the EU and Council of Europe systems, enhancing prospects for more effective human rights protection across Europe. The EU Court cites the case law of the European Court in its rulings, so enhancing the uniformity of human rights standards. The complementarity of the EU and the Council of Europe is seen in the reciprocal

enhancement of their rights protection institutions. This enables the creation of a multi-tiered rights protection structure, including:

1. National level (constitutional courts and other national institutions).
2. Supranational level of the EU.
3. International level (European Court, European Convention).

Constitutional human rights constitute the foundational basis of the European Union's legal framework. The Charter (2012) delineates an extensive array of rights for EU citizens. An analysis of the Charter reveals its comprehensive structuring of fundamental rights across six primary categories. The document begins with provisions concerning human dignity, encompassed within Articles 1 through 5, followed by an extensive section on freedoms delineated in Articles 6 to 19. The principle of equality is addressed in Articles 20 to 26, while solidarity rights are elaborated in Articles 27 through 38. The Charter proceeds to establish civil rights in Articles 39 to 46, concluding with justice-related provisions in Articles 47 to 50. A particularly significant aspect of the Charter's framework lies in its innovative integration of traditional civil and political rights alongside socio-economic entitlements within a unified legal instrument. This architectural decision reflects the European Union's sophisticated conceptualisation of rights protection, which recognises the fundamental interconnectedness of various rights categories and eschews artificial hierarchical divisions between different generations of rights.

In cases Nos. C-402/05 P and C-415/05 P *Yassin Abdullah Kadi and Al Barakaat International Foundation v Council of the European Union and Commission of the European Communities* (2008), the Court underscored that the safeguarding of fundamental rights is integral to the Union's legal framework, and that measures that contravene these rights are impermissible

within the EU. A comparative review of constitutional rights in the EU and Ukraine demonstrated that while both systems ensure a broad spectrum of rights, disparities exist in the procedures for their enforcement. For example, EU citizens possess the right to free movement and residence across the Member States (Article 45 of the Charter..., 2012), however in Ukraine, this right is confined to national borders. The Lisbon Treaty (2006) does not specifically use the term "right to security", yet it creates a framework for safeguarding the security of EU citizens. Article 67 of the Consolidated Versions of the Treaty and the Treaty on the Functioning of the European Union (2010) establishes a fundamental commitment to security within the Union's framework. The provision explicitly mandates that the Union pursue comprehensive security measures through multiple channels. These measures encompass preventive actions against various forms of criminal behavior, including acts motivated by racial prejudice and xenophobia. The Article further emphasises the significance of inter-agency coordination, specifically highlighting the necessity for collaborative efforts among law enforcement entities, judicial authorities, and other pertinent institutional bodies. The provision's emphasis on combating racism and xenophobia alongside general crime prevention demonstrates the Union's dual commitment to both physical security and social cohesion.

The safeguarding of individual liberty and personal security, as codified within Article 6 of the Charter (2012), constitutes a foundational pillar in the EU's comprehensive framework for protecting fundamental rights. This provision operates within a complex legislative framework that seeks to maintain an intricate balance between ensuring collective security and safeguarding individual liberties. The European Union has consistently emphasised that security measures must be calibrated to preserve essential

fundamental rights, with particular attention to privacy protections and data security protocols. The implementation of security provisions within the EU encompasses a multifaceted approach, incorporating inter-state law enforcement collaboration, specialised agencies such as Europol and Frontex, and comprehensive legislative frameworks designed to address contemporary security challenges, including terrorism and organised criminal enterprises. This integrated security architecture reflects the EU's commitment to maintaining public safety while respecting individual rights and freedoms.

The legal basis for the Freedom, Security and Justice Area (FSJA) is delineated in Article 67 of the Consolidated Versions (2010), which associates the diverse elements of the FSJA with the overarching aim of guaranteeing a robust degree of security inside the EU. Article 68 of the Treaty on the Functioning confers upon the European Council the authority to delineate strategic guidelines pertaining to legislative and operational planning within the area of freedom, security, and justice. In the post-Lisbon Treaty implementation phase, spanning 2009-2020, the Freedom, Security and Justice Area (FSJA) exhibited a marked prioritization of security-centric initiatives, demonstrating a notable shift in policy emphasis. This security-oriented trajectory reflected the broader geopolitical considerations and internal dynamics that characterised European governance during this period.

The European Convention and the national legislation of the member states. The stipulations of the European Convention (1950) are immediately enforceable under national legal frameworks. The United Kingdom enacted the Human Rights Act (1998), which integrates the provisions of the ECHR into domestic law. This statute mandates that courts interpret legislation by the Convention (1950) but prohibits them from nullifying parliamentary acts that conflict with

the Convention. In Ireland, the European Convention (2003) mandates that courts interpret and implement laws by the Convention (1950), however, it lacks direct applicability under Irish law. In Germany, the Federal Constitutional Court's ruling in Case No. 45, 187 (1977) establishes that the Convention (1950) holds the character of federal law and must be taken into account when interpreting the fundamental rights enshrined in the Constitution. Article 55 of the French Constitution (1958) asserts the precedence of international treaties above national legislation.

The methodological contradictions obstruct the formation of a hierarchy of legal norms, particularly the necessity to align national legislation with the Convention (1950). Defining the limits of application of the European Court case law by national courts. Addressing possible inconsistencies between national constitutional requirements and the stipulations of the Convention (1950). The scenario illustrates the complex interplay between international and national law within the European context, requiring a balance between respect for state sovereignty and conformity with collective European principles of freedom.

In executing the provisions of the 1950 Convention and applying the jurisprudence of the European Court of Human Rights (ECHR), it is essential that national legislative and judicial authorities possess a comprehensive understanding of the fundamental legal standards. The consistent interpretation of the essential sections of the Convention (1950) fosters the formation of coherent national notions of social order, which in the contemporary world must encompass the notion of fundamental rights.

Concrete examples of such interpretation and further harmonisation in the practice and legislation of European states include:

1. Germany: In case No. 45, 187 "Life Imprisonment" (1977), the Federal Court determined, citing the jurisprudence of the ECHR, that life

imprisonment without the prospect of release contravenes human dignity. This decision led to a change in German criminal legislation, which now prescribes the possibility of parole for life prisoners.

2. United Kingdom: Subsequent to the ECtHR ruling in *Hirst v. the United Kingdom (No. 2)* (2005) on inmates' voting rights, the British Parliament enacted amendments to the electoral legislation, granting voting rights to specific types of prisoners.

3. France: The Court of Cassation of France's ruling in Case No. 2010-14/22 QPC (2010) regarding pre-trial detention was informed by ECtHR jurisprudence and resulted in amendments to the criminal procedure rules, particularly with the right to legal counsel during interrogation.

Currently, the Convention (1950) actually serves to shape constitutional practices and institutions aimed at establishing public order. The ECHR serves as a "constitutional instrument of European public order" for rights (Judgment of the European Court..., 2005). The ECHR emphasised that constitutional courts must see the Convention (1950) as the primary regulator of European public order and the Court's distinctive and crucial position in European law.

States parties bear whole responsibility for activities that exceed their international legal commitments. In such circumstances, the importance of the Convention as a foundational text influencing the European legal framework may supersede the requirements of interstate collaboration. In *Hutchinson v. the United Kingdom* (2015), the ECHR underscored the duty of national authorities to acknowledge the obligatory nature of the Court's rulings on human rights protection, particularly when national standards fall short of ECHR benchmarks.

The integration of the Convention (1950) into the national legal systems of European countries demonstrates varied methodologies. In Ger-

many, the ECtHR holds the standing of federal law and serves as an ancillary tool for interpreting constitutional rights. These disparities influence the efficacy of constitutional rights protection. The Federal Court has determined that national courts must consider ECHR judgements when interpreting fundamental rights, provided this does not contravene constitutional principles (Headnotes to the Order of the Second Senate, 2004).

This resulted in the formulation of various provisions of the Convention (1950) throughout European nations. Two main models can be distinguished: the transformational model and the reception model. In countries that use the adoption model, the Convention takes precedence over national laws but is inferior in legal force to the national Constitution. This can lead to certain conflicts. Let us consider concrete examples:

1. The Netherlands: In *Kleyn and Others v. the Netherlands* (2003), the ECHR examined the independence and impartiality of the Dutch Council of State. Despite Dutch state legislation aligning with constitutional principles, the ECHR identified a violation of Article 6 of the Convention (1950). This judgment resulted in the restructuring of the Council of State, notwithstanding its adherence to the national Constitution.

2. Sweden: In the case of *Sporrong and Lönnroth v. Sweden* (1982), the ECHR found that the prolonged restriction of property rights without adequate compensation violated Article 1 to the Convention (1950). Although the Swedish expropriation legislation was constitutionally compliant, it was amended to meet the standards of the Convention (1950).

3. Spain: In *Ruiz-Mateos v. Spain* (1993), the ECHR acknowledged that the procedures of the Spanish Constitutional Court infringed upon the right to a fair trial. This led to changes in the procedure of the Constitutional Court, even though the previous procedure was in line with the Spanish Constitution.

Harmonising national legislation and law enforcement actions with the Convention (1950) improves mechanisms for safeguarding human rights:

1. In Cyprus, subsequent to the ECHR ruling in *Modinos v. Cyprus* (1993), criminal responsibility for consenting homosexual relations among adults was eliminated.

2. In Denmark, following the ECHR ruling in *Sørensen and Rasmussen v. Denmark* (2006), legislation regarding mandatory trade union membership was amended. This affected the practice of labour relations and the activities of trade union organisations.

3. In France, subsequent to a series of European Court rulings, notably the *Mazurek v. France* decision (2000), the French Civil Code was revised in 2016 to ensure equal inheritance rights for children born both in and out of wedlock. This changed not only legislation but also court practice in inheritance cases.

4. In Switzerland, following the ECHR judgement in *Kopp v. Switzerland* (1998), new legislation on wiretapping was introduced, which established a clear legal framework for such activities.

The Convention (1950) has significantly influenced Ukraine's legal system, serving as a key source of law and a framework for interpreting constitutional issues. By ratifying the Convention (1950) upon joining the Council of Europe, Ukraine acknowledged it and the judgements of the ECHR as integral components of its legal framework (Law of Ukraine No. 3477-IVb 2006). To exemplify this influence, it is pertinent to reference the Decision of the Constitutional Court of Ukraine in case No. 1-1/2016 (2016). The Constitutional Court, in its ruling, cited Article 5 of the Convention (1950) and relevant ECHR jurisprudence, notably the decision in *Stanev v. Bulgaria* (2012). The Constitutional Court ruled that the legislative provisions lacking judicial oversight for the hospitalisation of handicapped individu-

als in psychiatric institutions are unconstitutional.

Although the international community increasingly considers ECHR judgments as part of the national law of many countries, in Ukraine law enforcement agencies do not always properly consider the general standards and principles of protection of freedoms set out in these judgments. These violations are contrary to the standards set out in numerous ECHR judgments, specifically in the cases of *Nechyporuk and Yonkalo v. Ukraine* (2011) and *Kvashko v. Ukraine* (2013), where the ECHR stressed the significance of procedural safeguards during detention. The primary issue resides not in the formal acknowledgment of the Convention as a legal authority, but in the practical implementation of its stipulations. The significance of the Convention (1950) is evidenced by the substantial volume of applications submitted to the ECHR by Ukrainian citizens. A considerable number of complaints concern the non-enforcement of court decisions. The case of *Burmych and Others v. Ukraine* (2017) is illustrative, where the ECHR considered 12,143 cases, emphasising the lack of progress on the part of Ukraine in addressing the systemic problems identified in 2009.

The impact of the Convention (1950) and ECHR jurisprudence transcends Europe, providing a framework for the formulation of similar instruments in other areas. For instance, the American Convention (1969) and the African Charter (1986) were developed based on the experience of the 1950 Convention. The American Convention (1969) demonstrates significant intertextual connections with preceding human rights frameworks through its explicit acknowledgment of the Convention (1950) in its preamble. The textual evidence demonstrating this recognition manifests in the preamble's declarative statement, which explicitly references the foundational codification of these principles within multiple

authoritative international frameworks, specifically the Charter of the Organisation of American States, the American Declaration of the Rights and Duties of Humans, and the Universal Declaration of Human Rights. Furthermore, the preamble acknowledges the subsequent reinforcement and expansion of these principles through diverse international legal instruments operating at both global and regional jurisdictional levels.

The European Convention (1950) occupies a complex position within domestic legal frameworks, with its status fundamentally determined by the constitutional arrangements of individual member states. Within the European legal landscape, many nations have established a hierarchical structure where the Convention supersedes domestic legislation while remaining subordinate to constitutional provisions. France exemplifies this approach through Article 55 of its Constitution, which explicitly establishes the primacy of parliamentary-ratified international treaties over national laws. The European Court has consistently reinforced the Convention's foundational role in European jurisprudence through its decisions, particularly emphasising its significance in shaping continental legal norms. This constitutional character of the Convention was most notably articulated in the landmark case of *Loizidou v. Turkey* (1995), where the Court explicitly recognised the Convention as a constitutional instrument of European public order, thereby cementing its distinctive position among international agreements in molding Europe's political, cultural, and legal framework.

In many jurisdictions, like the Netherlands, the Convention holds precedence over constitutional requirements, although in Austria, they are regarded as identical. Most European countries give precedence to the Convention over national legislation, but do not put them above constitutional provisions. This method is characteristic in Belgium, France, Portugal, Spain, and Switzerland.

Article 55 of the French Constitution (1958) stipulates those foreign treaties have precedence over domestic laws, but not over the Constitution itself. In the United Kingdom, Italy, Germany, and Turkey, the stipulations of the Convention (1950) hold equal authority to national legislation. The legal status of the 1950 European Convention within the German constitutional framework warrants careful examination. While the Convention holds the status of federal law rather than customary law in Germany, its interpretative significance extends beyond this formal categorization. The landmark *Görgülü* decision of 2004 (Headnotes to the Order of the Second Senate, 2004) by the Federal Court established a sophisticated doctrinal framework wherein both the Convention and the jurisprudence of the European Court function as authoritative interpretative instruments for constitutional rights adjudication. This judicial pronouncement exemplifies the intricate dialectic between international human rights obligations and domestic constitutional architectures. The Federal Court jurisprudential approach reflects a measured synthesis, wherein the Convention and its accompanying jurisprudential corpus, while not directly constitutionalising international human rights norms, substantively inform and enrich the interpretative scope of fundamental rights enshrined in the German Basic Law.

Despite lacking formal supremacy over German domestic law, the Convention's interpretative authority in constitutional rights matters significantly elevates its practical importance within Germany's legal hierarchy. The Ukrainian legal system, through its 1996 Constitution, including the European Convention of 1950, with Article 9 specifically providing for the integration of international agreements ratified by the *Verkhovna Rada* into the national legal framework. The implementation of European Court decisions within Ukraine's legal system is further governed by specialised legislation that establishes

comprehensive procedures for executing the Court's judgments and implementing remedial measures. This legislative framework notably includes mechanisms designed to address and eliminate the root causes of Convention violations, demonstrating Ukraine's systematic approach to fulfilling its international human rights obligations. Article 17 of this legislation mandates Ukrainian courts to utilise and the jurisprudence of the European Court as a legal basis. Consequently, under the Ukrainian legal framework, the European Convention and ECHR rulings constitute an essential component of state law.

The rights enshrined are directly enforceable, necessitating no supplementary actions by Member States for their implementation. This enables them to be regarded as having a direct effect (Part I – Protecting, n.d.). Article 2 enshrines the inviolable right to life, while Article 3 puts forth an absolute prohibition on torture, establishing a cornerstone of human dignity. Article 4 addresses human autonomy by proscribing slavery and forced labor in all forms. Personal liberty and security find protection under Article 5, complemented by Article 6's guarantee of fair trial rights, which forms the basis of judicial protection. Article 7 strengthens the rule of law by forbidding extrajudicial punishment, ensuring that justice operates within established legal frameworks. The Convention additionally protects private and family life under Article 8, acknowledging the sacredness of personal spaces and relationships. Articles 9 and 10 protect intellectual and expressive liberty, including freedom of thought, conscience, religion, and communication. Article 11 completes these protections by guaranteeing the collective exercise of rights via the freedoms of assembly and association. When examined alongside national constitutional frameworks, particularly the German Basic Law (1949), one observes substantial parallels in the enumeration of fundamental rights, though with notable variations

reflecting specific national legal traditions and historical contexts.

The supremacy of the European Convention (1950) over domestic legal frameworks is predicated upon dual foundational principles. First, the Convention recognises the intrinsic and inalienable character of the fundamental rights and freedoms it seeks to safeguard. Second, the Convention's preeminence derives from its instrumental role in fostering European integration and harmonisation among Council of Europe member states, an objective explicitly articulated in its preamble.

In the seminal judgement of *Loizidou v. Turkey* (Preliminary Objections) (1995), the European Court delineated essential interpretative principles concerning the application of the Convention. The Court underscored the unique character of the Convention as a legal instrument, particularly emphasising its primary objective of collectively safeguarding the rights of people and fundamental freedoms. This interpretative approach highlights the Convention's unique nature as a comprehensive framework for protecting individual rights within the European legal order, rather than simply a reciprocal agreement between states. The Court's emphasis on "collective safeguarding" particularly reinforces the notion that the Convention operates as a unified system of human rights protection, transcending traditional bilateral treaty relationships between contracting states. The Convention's purpose and goal as a protective tool for individuals need that its provisions be read and implemented to ensure that its assurances are realistic and effective".

An analysis of the fragmentation of law by the International Law Commission (2006) revealed a fine distinction between *erga omnes* obligations and *jus cogens* provisions. The report argues that the defining feature of *erga omnes* obligations is their "legal indivisibility". This aspect indicates that these obligations create legal responsibilities

that uniformly apply to all subjects of law, binding each particular subject. At the same time, *jus cogens* provisions are distinguished primarily by the weight of the interests they protect. In this context, the primary focus is on the significance of the values protected by these provisions, as opposed to the universality of their application.

There is a special area of obligations known as *erga omnes partes*. These commitments pertain to certain groups of states and are designed to safeguard their collective interests. The preamble to the Convention (1950) emphasises its role in creating a system of collective guarantees of fundamental freedoms. This means that each state party to the Convention (1950) is entitled to demand compliance with its provisions from other states parties, even if it has not directly suffered from a violation. One of the most striking examples of this principle is the case of Ireland v. the United Kingdom (1978). Ireland filed a complaint with the European Court against the United Kingdom, claiming that its use of certain interrogation methods against terrorist suspects constituted inhumane and degrading treatment prohibited. Although Ireland was not directly affected by these actions of the United Kingdom, the Court recognised that Ireland, as a Member State to the ECtHR, was entitled to lodge such a complaint.

Ukraine: current state and prospects for the development of constitutional freedoms. The constitutional human and civil rights in Ukraine are essential rights established and assured by the Constitution of Ukraine (1996). They serve to ensure the comprehensive development of the individual, satisfaction of their needs and interests. These rights are objective opportunities for every member of society to own, use, and dispose of certain social goods, as well as to obtain and protect them. The human and civil rights enshrined are founded on the principles established in international legal instruments approved by Ukraine.

The process of improving laws stays significant, since the state and the current government are constantly faced with new challenges. The principles governing the constitutional status of individuals and citizens serve as a legal mechanism for attaining these goals, so acting as catalysts for the advancement of constitutional law. The idea of legal equality led to amendments in the Constitution (1996) in 2019, setting Ukraine on a path towards EU membership and requiring the harmonisation of Ukrainian laws with European human rights standards. The advancements in constitutional law, constitutional processes, and contemporary Ukrainian constitutionalism have significantly enhanced both theoretical and practical dimensions. However, certain articles necessitate improvement, particularly those pertaining to the protection of rights, especially with armed conflict and societal digitalisation.

Notably, the issue of updating and improving the Constitution of Ukraine (1996) has long been discussed among government and civil society figures, political scientists, and lawyers. Some experts, specifically O.O. Boyarsky and B.Ya. Kofman (2020), believe that the constitutional regulation of human and civil rights, freedoms, and interests does not require urgent changes, as it generally follows international standards. However, it is difficult to agree with this in the current context. An examination of the existing principles on the constitutional status of individuals and citizens in the Constitution of Ukraine reveals that their phrasing frequently aligns terminologically with international legal standards, without substantive content. O.V. Gigin (2023) asserts that it is essential to enhance the constitutional legal framework governing rights in Ukraine amid European integration efforts.

To enhance societal and state conditions, it is imperative to explore avenues for refining the constitutional processes that safeguard human rights. This requires the analysis and

modification of the principles and regulatory frameworks established in the current legislation. Table 2 presents a comparison of fundamental freedoms between Ukraine and the European Union.

Table 2. Constitutional rights and freedoms in Ukraine and the EU

Comparison aspect	Ukraine	EU
Key sources of rights	Constitution of Ukraine (1996), international treaties	Charter (2012), constitutions of member states, ECtHR
Legal force	Direct effect of constitutional provisions	Binding nature of the EU Charter with the entry into force of the Lisbon Treaty (2006).
Catalogue of rights	The list is expanded in Section II of the Constitution of Ukraine (1996).	Systematic catalogue in the Charter (2012)
Socioeconomic rights	An extensive list, often declarative in nature	More limited list, emphasis on real security
Environmental rights	The right to a safe environment – Article 50 of the Constitution of Ukraine (1996)	Strong environmental protection – Article 37 of the Charter of Fundamental Rights of the European Union (2012)
Restrictions on rights	Based on the law, for a legitimate purpose	The idea of proportionality and the respect for the essence of rights
Protection mechanisms	Constitutional Court, courts of general jurisdiction	Court of Justice of the European Union, national courts of the Member States
Role of the ombudsman	Commissioner of the Verkhovna Rada of Ukraine	European Ombudsman
Citizenship	Single citizenship	EU citizenship as supplementary to national citizenship
Electoral rights	At both the national and local levels	The right to engage in elections and to be elected to the European Parliament
Freedom of movement	Within the state	Within the EU for EU citizens
Right to work	Guaranteed by the Constitution	Mobility of labour inside the European Union
Right to education	Free secondary education	Mutual recognition of diplomas, exchange programmes
Language rights	State and minority languages	Linguistic diversity as an EU value
Legal status of foreigners	Limited rights compared to citizens	Enhanced rights for EU citizens in other Member States
Collective rights	Rights of national minorities	Esteem for cultural, religious, and linguistic diversity
Principle of non-discrimination	Based on race, colour, gender, etc.	Expanded list of grounds, including sexual orientation
Right to a fair trial	Guaranteed by the Constitution	Entitlement to an efficacious cure and a just trial
Implementation of international provisions	By means of the ratification of international treaties	Immediate impact of EU legislation within national legal frameworks

Source: compiled by the authors

The constitutional framework governing human and civil rights in Ukraine is fundamentally anchored in internationally recognised standards, as codified in various legal instruments to which Ukraine is a signatory. This alignment with global democratic norms enhances the efficacy of these constitutional provisions in safeguarding

fundamental liberties. The Ukrainian Constitution undergoes periodic modifications to enhance the implementation and protection mechanisms for constitutional rights, reflecting the state’s imperative to address emerging challenges through legislative adaptation. These constitutional reforms are predicated upon foundational principles

governing the constitutional status of individuals and citizens, encompassing concepts such as egalitarianism, the inviolability of rights, and the supremacy of international legal frameworks. Notwithstanding the considerable progress achieved in both theoretical discourse and practical application of constitutional law in Ukraine, there remains a compelling need for further refinement of constitutional legislation. These focal areas will significantly influence the evolutionary trajectory of constitutional principles pertaining to individual legal status within the Ukrainian jurisdiction.

Discussion

The examination of constitutional rights in Ukraine and EU nations disclosed a multifaceted interplay in the evolution and execution of these rights amid Ukraine's European integration. The study demonstrated that although Ukraine has made considerable progress in harmonising its legislation with EU provisions, there were still substantial challenges and discrepancies that needed to be addressed.

The comparative review of the constitutional provisions of Ukraine and EU countries indicates that the fundamental rights enshrined in the Constitution (1996) typically align with European standards. Fundamental rights, including life, liberty, personal security, freedom of thought and expression, are codified in Ukrainian law and the Charter (2012) and its member states' constitutions. Nevertheless, the analysis disclosed certain discrepancies in the real execution of these rights. For example, as shown in the findings, Ukraine encounters difficulties in implementing rulings from the European Court, as demonstrated by the Court's judgements in Cases Nos. 46852/13, 47786/13, 54125/13, among others (2017). A complicated interplay of constitutional human rights regarding their evolution and execution within the framework of European integration was unveiled.

T. Altwicker's study (2020) on non-universal arguments within the European Convention and the foundational work by P. Craig and De G. Búrca (2011) on EU law underscored the importance of a contextual approach to rights interpretation and the intricacies of the interplay between national and supranational legal frameworks. This is particularly relevant for Ukraine, which seeks to adapt European standards to its specific national features, balancing the universality of rights with their local interpretation.

The research conducted by B. Custers (2023) regarding discriminatory factors in the digital economy, with G. De Gregorio's (2021) examination of the emergence of digital constitutionalism in the EU, initiates a substantial discourse on the influence of technological advancement on the legal framework. These studies emphasised the need for Ukraine not only to harmonise its legislation with conventional EU provisions, but also to consider new legal concepts that arise in response to technological change.

M.P. Donnelly (2018) and A. Efrat and A.L. Newman (2020) examined the intricate interaction among democracy, sovereignty, and international human rights, a matter of particular significance for Ukraine in reconciling national interests with international commitments. Their research emphasised the importance of perceiving human rights not merely as legal stipulations, but also as essential principles that underpin international collaboration. This validates the conclusions of N.A. Neuwahl and A. Rosas (2021) regarding the development of the EU's strategies for rights protection. The table also disclosed variations in the catalogue of rights. The EU exhibits superior progressiveness in this domain, including the right to personal data protection and bioethical rights, while Ukraine provides scant recognition of these rights. This validates the findings of O.V. Gigin *et al.* (2023) regarding the imperative to modernise the constitutional

legal framework governing rights and freedoms in Ukraine within the scope of European integration.

It was found that the mechanisms for protecting inalienable individual rights in Ukraine are not well established. The study by O.V. Gigin *et al.* (2023) confirmed the constitutional legal regulation of rights in Ukraine within the framework of European integration. The findings were linked to H.V. Zubenko's (2015) conclusions concerning the correlation between constitutional freedoms and the advancement of civil society in Ukraine. The analysis revealed a tendency to broaden the definition of human rights in response to emerging challenges, such as environmental issues and technological progress. This aligns with the conclusions of B. Custers (2023), which investigated the basis for discrimination in the digital economy through a comparative analysis of the national constitutions of EU nations.

The study's significant contribution was the examination of the European Court decisions regarding the evolution of constitutional rights. This validates the findings of L.R. Helfer and E. Voeten (2020) examined the function of civil society in safeguarding constitutional rights. In Ukraine, like in several EU nations, non-governmental groups are assuming an increasingly pivotal role in the oversight of rights and the promotion of reform. This aligns with A. Koula's (2024) conclusions regarding the increasing significance of rights defenders in Europe and beyond.

The investigation revealed that harmonising Ukrainian legislation with EU rights standards is complex and multifaceted. It requires both legislative reforms and a transformation in legal culture and law enforcement methods. This validates W. Schroeder's (2023) conclusions concerning the rule of law as a constitutional imperative for the EU. A key element of the study was the comparison of the procedures for safeguarding socio-economic rights in Ukraine and the EU. The findings revealed that Ukraine has

analogous constitutional guarantees. This aligns with S. Garben's (2020) findings regarding the equilibrium of social and economic fundamental rights under the EU legislative framework.

It was found that although the legislative provision of rights in Ukraine was in line with European standards, their practical implementation faced certain challenges. This corroborated the conclusions of P.N. Thomas (2018) regarding the interconnection of information, communications, rights, and freedoms. The research identified a discernible inclination to augment the inventory of constitutional rights in Ukraine and EU nations. This aligned with D. Marrani's (2014) study regarding the interplay of the constitution, rights, and the environment.

Ukrainian legislative rules and practices are progressively aligning with EU standards. This was consistent with the findings of I. Tolkachova and I. Pushchuk (2017) on the role of the European Court in ensuring the protection of the rights of Ukrainian citizens. However, this process was not linear and faced certain obstacles. Specifically, there were cases when legislative changes were not accompanied by corresponding changes in law enforcement practice. This confirms the observation of M. De Visser (2015) regarding the complexity of internal constitutional reform processes. The study revealed an increasing impact of international tribunals, especially the European Court, in protecting the rights of Ukrainian citizens. This corresponds with the findings of D.J. Harris *et al.* (2023) and M. Krennerich (2024) concerning the development of the European Convention.

The study concluded that, although Ukraine has made substantial advancements in the establishment of rights in alignment with EU standards, it continues to encounter enormous problems and deficiencies. These findings were significant for understanding the prospects of Ukraine's further European integration and improving human rights protection mechanisms.

Conclusions

The comparative analysis of constitutional human rights frameworks in Ukraine and the European Union illuminates significant parallels and distinctions in their respective approaches to civil liberties protection. While both jurisdictions ground their fundamental rights provisions in internationally recognised standards, notable variations emerge in their constitutional codification and practical application. The member nations of the European Union exhibit a broader definition of developing rights categories, especially those addressing technology and social advancements. In contrast, the Ukrainian constitutional framework places heightened emphasis on socioeconomic entitlements, reflecting distinct historical and political trajectories. Though the foundational catalogues of rights exhibit substantial convergence between these legal systems, nuanced differences manifest in both the textual formulation and substantive scope of specific protections. This comparative examination reveals how different legal traditions and sociopolitical contexts shape the constitutional entrenchment of human and civil rights, even when derived from shared international human rights principles.

The research demonstrates that while both jurisdictions maintain comprehensive legal frameworks for safeguarding human rights and fundamental freedoms, their operational efficacy exhibits marked differences. The European Union's judicial system demonstrates superior effectiveness in human rights protection, as evidenced by empirical data from European Court proceedings and subsequent enforcement rates of judicial decisions. Although Ukraine has created necessary legislative frameworks and has committed to international rights norms, the effective

application of these protections encounters significant obstacles in the domestic sphere. These limitations primarily stem from systemic deficiencies in law enforcement practices and incomplete integration of international normative standards into domestic judicial processes. A systematic examination of the fundamental approaches to rights protection reveals that both Ukraine and EU member states maintain theoretical commitments to rule of law principles and acknowledge the primacy of international rights jurisprudence. The European Union operates under the doctrine of direct effect, whereby EU law maintains immediate applicability within national legal frameworks. In contrast, Ukraine's legal system requires explicit ratification and domestic legislative incorporation of international provisions, potentially creating additional procedural barriers to effective implementation. The study also found that the harmonisation of Ukrainian legislation with EU human rights standards is complex and multifaceted. It requires not only changes in legislation, but also the transformation of legal culture and law enforcement practices.

Thus, although Ukraine has made great strides in developing the system of constitutional rights and freedoms and bringing it closer to EU standards, major challenges and gaps still exist. The enhancement of human rights protection mechanisms in Ukraine and their alignment with European norms remain critical objectives to guarantee the effective safeguarding of citizens' constitutional freedoms.

Acknowledgements

None.

Conflict of Interest

None.

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Конституційні права і свободи людини і громадянина в Україні та країнах ЄС

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Анотація

Метою дослідження було обґрунтування концептуальних засад та розробка практичних рекомендацій щодо вдосконалення механізмів захисту прав і свобод людини і громадянина в Україні на основі комплексної порівняльної інтерпретації конституційно-правових положень України та держав-членів ЄС. У дослідженні використано методи порівняльно-правового та історико-правового аналізу, а також системний підхід. За допомогою цих методів було досліджено природу та зміст прав і свобод громадян України в сучасному конституційному контексті. Предметом дослідження стали основні конституційні права і свободи, закріплені в Конституції України та конституціях держав-членів Європейського Союзу. Порівнювався обсяг цих прав, механізми їх реалізації та захисту. Особливу увагу було приділено спільним рисам та відмінностям у підходах до забезпечення свобод людини. У дослідженні проаналізовано відповідність українського законодавства у сфері прав людини європейським стандартам та окреслено перспективи гармонізації правового регулювання в контексті євроінтеграційних прагнень України. Особливу увагу було приділено аналізу правових норм та механізмів захисту, які гарантують реалізацію основоположних прав, включаючи соціальні, політичні, економічні та культурні права. Порівняння України та Європейського Союзу дозволило виявити спільні та відмінні риси у підходах до захисту прав людини, а також висвітлити проблеми та перспективи гармонізації національного законодавства з європейськими стандартами. Висновки цього дослідження виявили необхідність подальшого вдосконалення механізмів захисту прав людини в Україні. Дослідження може слугувати науковим підґрунтям для вдосконалення законодавства та подальшої імплементації міжнародних документів у сфері прав людини в національне законодавство.

Ключові слова: законодавство; демократичні держави; омбудсмени; верховенство закону; дерогація; *erga omnes partes*