

PECULIARITIES OF LABOUR RIGHTS PROTECTION IN THE CASE LAW OF THE EUROPEAN COURT OF HUMAN RIGHTS / Oleg M. Yaroshenko, Hanna V. Anisimova, Roman Ye. Prokopiev, Ivan P. Zhygalkin, Oleksandr A. Yakovlyev

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Abstract: *The practice of defence of labour disputes is quite dynamic. That is why the analysis of labour rights protection in the European Court of Human Rights (ECtHR) is quite relevant. The purpose of the study is to analyse the current case law of the European Court of Human Rights on the protection of labour rights; to analyse the ECtHR's interpretation of the concept of forced labour and the right to form trade unions; to summarise the problematic issues of the ECtHR's case law in the field of labour rights protection and ways to resolve them. The methodological basis of the study is general and special methods and techniques of cognition. The article substantiates that one cannot complain directly to the ECtHR about deprivation of the opportunity to work, denial of access to the workplace, or refusal to hire. The European Convention explicitly states only 2 rights: the right to form and join trade unions and the prohibition of forced and compulsory labour. The author explains the concepts of forced labour and the right to form trade unions and outlines the problematic issues of the European Court of Human Rights case law in the field of labour rights protection and ways to resolve them.*

Key words: *Forced Labour; Compulsory Labour; Discrimination; Interference with Privacy; Labour Rights; ECtHR*

Suggested citation:

Yaroshenko, O. M., Anisimova, H. V., Prokopiev, R. Ye., Zhygalkin, I. P., Yakovlyev, O. A. (2023). Peculiarities of Labour Rights Protection in the Case Law of the European Court of Human Rights. *Bratislava Law Review*, 7(2), 185-198. <https://doi.org/10.46282/blr.2023.7.2.347>

Submitted: 17 February 2023
Accepted: 23 November 2023
Published: 29 December 2023

1. INTRODUCTION

In modern international law, the case law of the European Court of Human Rights plays a leading role in setting labour standards at the regional level within the Council of Europe. This practice, which has been formed in the field of international law, is gradually being implemented in the systems of national labour law and labour legislation,

influencing the development of these systems. At the same time, labour law as a system of legal norms governing social and labour relations in different countries consists of many regulations: laws, decrees, governmental resolutions, various departmental acts, as well as local norms in force in specific production and non-production structures - among employers. All of them must comply with the Council of Europe's standards in the field of labour law, including the case law of the European Court of Human Rights.

Modern socio-economic conditions - diversity of ownership forms, market relations, the introduction of new management methods, freedom of entrepreneurship, and formation of the labour market - inevitably make significant changes not only to the content of labour relations but also to the legal status of its subjects, in particular, to the content of the category "right to work". From a scientific point of view, the relevance of the right-to-work issue is primarily due to the reform and dynamics of labour legislation. The absence of a clear legal concept of regulation of labour relations of employees who have binding rights about the employer reduces the level of guarantees of their labour rights.

At present, the realisation of the right to work is associated with several acute problems, such as discrimination against employees, restriction or infringement of labour rights, remuneration, unemployment, and labour migration. Since the right to work is a key issue in the field of labour relations, it is a fundamental human right that receives special attention at the national, including legal, social, and international levels. That is why this issue is urgent and should be comprehensively and fundamentally studied. The subject matter of the study is driven by the need for a scientifically based system of legal definition, realisation, and protection of the right to work and is a guarantee of harmonious labour relations.

It should be noted that in recent years, domestic and foreign scholars have been actively researching the problems of the European Court of Human Rights, but, unfortunately, much remains unknown about this phenomenon. In particular, for example, at the doctrinal level, the issues of labour rights protection in the European Court of Human Rights have not yet been sufficiently studied. Although there have been significant positive changes in the protection of labour rights in recent decades, this problem is still relevant today.

Labour rights have a complex nature, and therefore the question of their concept and normative content, the principles of their implementation have recently been actively studied and published by such jurists as O. Bakhanov (2020), N. Hetmantseva (2016), O. Kovalenko (2016), O. Yaroshenko (2016, 2020). V. Mantouvalou (2014) identified certain principles that underpin the right to work in the case law of the European Court of Human Rights, which can serve as guidance in the interpretation of existing provisions of the Convention. K. Kolben (2010) analysed Labour Rights as Human Rights. K. Lörcher and I. Schömann (2013) made their research on The European Convention on Human Rights and the Employment Relation.

Despite numerous studies of the case law of the European Court of Human Rights, the issue of protection of labour rights by the Court is the least covered. Fundamental work in this context is the work of V. Lutkovskaya (2005), who paid attention not only to the problems of consideration of individual complaints in the European Court of Human Rights, but also to issues related to the organisation, activities, and process of the European Court of Human Rights. The judicial acts of the European Court of Human Rights in the field of labour and other relations directly related to them have not yet received sufficient theoretical study. In addition, the law enforcement practise of the European Court of Human Rights has revealed a number of problems that require a systematic analysis. That is why, in the framework of our research, it is

necessary to analyse, both theoretically and practically, the legal nature of the judicial acts of the European Court of Human Rights, in particular in the field of labour and other directly related relations.

The purpose of the study is to analyse the current case law of the European Court of Human Rights on the protection of labour rights; to analyse the ECtHR's interpretation of the concept of forced labour and the right to form trade unions; to summarise the problematic issues of the ECtHR's case law in the field of labour rights protection and the ways to resolve them.

2. MATERIALS AND METHODS

The methodological basis of the study was formed by a dialectical approach to understanding the protection of labour rights in the European Court of Human Rights. The study is also based on a systematic approach, which is to study the complex system of protection of labour rights in the European Court of Human Rights. Furthermore, the approach used in the research process has become integrated. The integrated approach has largely overcome the shortcomings of analytical jurisprudence, as it has made it possible to organically combine legal tools and basic legal ideas - deep principles of law. For example, during the writing of the article, such general scientific methods as analysis, synthesis, analogy, deduction, induction, and abstraction, were used as methods of achieving new knowledge.

The inductive method allowed one to generalise and formulate the approaches of scientists to the protection of labour rights in the European Court of Human Rights. The deductive method allowed the author to consistently argue the position. Other formal logical methods, such as analysis, synthesis, generalisation, and abstraction, were used to conclude. In addition, during the writing of the article, such a special legal scientific method as formal law was used. The formal-legal method is used for the generalisation, classification, and systematisation of research results, as well as for the correct presentation of these results.

The use of the above methods made it possible to investigate the issues considered in the study as deeply as possible and found that the issue was not only theoretical but also of great practical importance. The normative basis of the work was the European Convention on Human Rights. In the process of research, the materials of law-making, law enforcement, and interpretive practice were studied. In particular, the empirical basis of the study was the decisions of the European Court of Human Rights. The theoretical basis of the study was fundamental monographs, and scientific articles by domestic and foreign authors on the protection of labour rights in the European Court of Human Rights.

3. RESULTS

The right to work belongs to the second generation of rights – socio-economic rights – and is not reflected in the European Convention on Human Rights.¹ Thus, it is not possible to complain directly to the ECtHR about deprivation of the opportunity to work, denial of access to a workplace, or refusal to hire. The European Convention directly defines only 2 rights – the right to form and join trade unions and the prohibition of

¹ Council of Europe. Convention for the Protection of Human Rights and Fundamental Freedoms. *Council of Europe*, 4 November 1950. Available at: https://www.echr.coe.int/documents/convention_eng.pdf (accessed on 15 March 2022).

slavery, servitude, and forced or compulsory labour - while the rest are guaranteed at the international level (United Nations (UN), International Labour Organization (ILO)).

Labour rights are very specific, and their nature is the reason why states themselves set the limits within which they can guarantee them. First, labour law faces a variety of problems and situations. The list of specific rights may be too limited, as labour relations can be heterogeneous and vary by industry, region, and other factors. International instruments, such as ILO Conventions and UN Declarations, often establish the general principle of a minimum standard. This means that states are obliged to guarantee certain minimum rights, but they also have the freedom to expand these rights and provide additional guarantees according to their needs and realities.

Labour laws should adapt to changes in society, the economy, and technology. Predetermined rights may not be sufficient to address the new challenges and opportunities that arise in the modern world. Employee rights can be very specific and diverse, depending on the type of work and industry. Predetermined rights may not be sufficient to provide adequate safeguards in all areas.

The prohibition of forced labour is enshrined in the national legislation of all countries of the world, and provisions on its prohibition are contained in such international legal acts as the Universal Declaration of Human Rights of 10.12.1948, Article 8 of the International Covenant on Civil and Political Rights of 16.12.1966, ILO Convention concerning the Abolition of Forced Labour, No. 105 of 25.06.1957. The latter, by the way, proclaims the absolute prohibition of forced labour and imposes, by Articles 1 and 2, an additional obligation on states that have ratified it to abolish forced or compulsory labour, to take effective measures for the immediate and complete abolition of the following types of forced or compulsory labour and not to resort to any form of it a) as a means of political influence or education or as a means of punishment for holding or expressing political views or ideological beliefs contrary to the established political, social or economic system; b) as a method of mobilizing and utilizing labour for economic development; c) as a means of maintaining labour discipline; d) as a means of punishment for participation in strikes; e) as a measure of discrimination on the grounds of race, social and national origin or religion (Gnatenko et al, 2020).

Quite interesting in this regard is the case of *Chowdury and Others v. Greece No. 21884/15*,² in which the Court expanded the interpretation of the concept of forced labour and human trafficking. It should be noted that in its legal positions, the ECtHR traditionally approaches the interpretation of the concept of forced or compulsory labour in a limited manner and is not inclined to expand it. For example, in the case of *Vnuchko v. Ukraine*, the Court considered that the dispute did not reveal any element of slavery, forced or compulsory labour and refused to recognise unpaid work as forced labour, and in *Stummer v. Austria*³ it ruled that compulsory work which the applicant performed as a prisoner without the right to participate in the old-age pension system, should be considered as "work normally required of a person in detention" within the meaning of Article 4, paragraph 3 (a) of the Convention, and not as part of "forced or compulsory labour (Bakhanov, 2020).

However, in several cases, the Court has departed from the established practice. In particular, in the aforementioned case of *Chowdury and Others v. Greece*, the Court ruled that the unpaid work of irregular migrants in Greece falls within the scope of forced labor and human trafficking. The application was filed by forty-two Bangladeshi nationals who worked on a farm picking strawberries under the supervision of armed guards. Their

² ECtHR, *Chowdury and others v. Greece*, app. no. 21884/15, 30 March 2017.

³ ECtHR, *Stummer v. Austria*, app. no. 37452/02, 7 July 2011.

employment was voluntary, they were provided with food and housing and could move freely around the territory. The employer did not pay for their work for six months and warned them that they would receive their salary only if they continued to work (Konopeltseva, 2017).

It should be noted that the Convention does not contain the concept of human trafficking. The Court in its earlier judgments, in particular *Rantsev v. Cyprus and Russia*, no. 25965/04,⁴ concluded that human trafficking falls under the prohibition of Article 4 and is a form of forced labour." In this case, the complexity of qualifying the actions of the "employer" was because the plaintiffs voluntarily agreed to perform work and had the opportunity to freely leave it. The court held that the initial consent to employment "is not sufficient to exclude the qualification of these relations as forced labour", and voluntary consent is only one of the factors to be taken into account in the context of all the circumstances of the case. The Court also drew attention to the vulnerable situation of the Bangladeshi workers, who, being illegal migrants, could not use legal remedies to protect their rights, as well as to the terrible working and living conditions set out in the Greek judgment (they lived in makeshift huts made of cardboard, nylon, and bamboo without a toilet and running water) (Hetmantseva, 2016).

In this case, the Court also analysed the provisions of the Council of Europe Convention on Action against Trafficking in Human Beings (ratified by Ukraine on 21.09.2010), as a result of which the Court came to the following important conclusion: "If an employer abuses its power or takes advantage of the vulnerability of its employees to exploit them, it means that they do not agree to work voluntarily."

Based on the foregoing, we can conclude that forced labour is currently interpreted by the ECtHR as including unpaid wage arrears to employees in a vulnerable position. The vulnerability of the employees in this case was established by the Court based on a combination of the following factors: 1) they were deprived of the opportunity to seek legal protection; 2) they were illegal migrants; 3) they had no money and no housing. In other words, in the absence of at least one of these factors, the Court could conclude that the employer's actions do not qualify as forced or compulsory labour. This means that the mere fact of non-payment of wages to employees is not sufficient evidence of the existence of forced or compulsory labour, for example, in cases against Ukraine such as *Vnuchko v. Ukraine* No. 1198/04,⁵ *Popov v. Ukraine* No. 23892/03,⁶ in which the applicants complained about the lack of wages and other benefits as a violation of Article 4 § 1 of the Convention (Kovalenko, 2016).

The judgment under consideration is no less interesting from the point of view of the respondent states' fulfilment of its own positive and procedural obligations in the applicant's situation. According to the ECtHR, to fulfil the positive obligation to criminalise and effectively prosecute those guilty of acts prohibited by Article 4 of the Convention, member states must establish a legislative and regulatory framework to prohibit and punish forced or compulsory labour, slavery, and servitude. The Court noted that Greece had a legal and legislative framework to combat human trafficking and had ratified the Council of Europe Convention on Action against Trafficking in Human Beings, but the measures taken by the national authorities to prevent it were insufficient (Sychenko and Chernyaeva, 2019).

In particular, the Court found that the local police were aware of employers' refusal to pay migrant workers, but did not take adequate measures to prevent human

⁴ ECtHR, *Rantsev v. Cyprus and Russia*, app. no. 25965/04, 7 July 2011.

⁵ ECtHR, *Vnuchko v. Ukraine*, app. no. 1198/04, 14 December 2006.

⁶ ECtHR, *Popov v. Ukraine*, app. no. 23892/03, 14 December 2006.

trafficking and protect the applicants. The local police department also believed that the fact that the applicants were free to move around indicated that there were no signs of forced labour. In turn, the ECtHR ruled that "a situation of human trafficking may exist despite the victim's freedom of movement". In addition, the national court interpreted the concept of human trafficking from a very narrow perspective, focusing on whether this situation was equated with slavery, which resulted in the acquittal of the defendants. Thus, the Court found a violation of the state's procedural obligations under Article 4(2) of the Convention (Mantouvalou, 2014).

Of course, this decision is very important for victims of human trafficking around the world. For Ukraine, the significance of this decision can hardly be overestimated, given that human trafficking in its various forms remains one of the national problems. In particular, according to the statistics of the Prosecutor General's Office of Ukraine, as of 2022, 133 criminal offenses in the form of human trafficking were registered, which is 91 criminal offenses less than in 2021 and 74 criminal offenses less than in 2020. Such a significant decrease in the number of registered criminal offenses in 2022 under martial law may indicate their latent form and therefore pose a serious threat. After all, among the cases of labour exploitation of Ukrainian citizens, 97% of all identified victims of human trafficking for sexual exploitation are women. As for victims of forced labour, 76% of victims are men.

As we noted above, the ECtHR judgment emphasised the need to create a legal framework for the prohibition and punishment of forced or compulsory labour, slavery, and servitude, referring specifically to the provisions of criminal law. In Ukraine, the criminal law regulation of combating human trafficking has gone through several stages of evolution and has been amended several times. Its latest version was adopted by the Verkhovna Rada of Ukraine within the framework of the Law of Ukraine "On Amendments to Article 149 of the Criminal Code of Ukraine to Bring it in Line with International Standards" of September 6, 2018. Thus, Ukraine has implemented positive obligations arising from Article 4 of the Convention, in particular the criminalization of forced labour and ratification of the Convention on Action to Suppress Trafficking in Persons, which will certainly contribute to the expanded interpretation of the provisions of Article 149 of the Criminal Code of Ukraine by national courts in the light of acts adopted by the Council of Europe (Kolben, 2010).

Another example of an expanded interpretation of the concept of "compulsory or mandatory case" is the ECtHR judgment in the case of *Chitos v. Greece*⁷, in which the Court concluded that the exception provided for in subpart. "(b) of Article 4, paragraph 3 of the Convention should be interpreted as applying only to compulsory military service (i.e., does not include contractual military service). The ECtHR ruled that the actions of the Greek authorities violated the prohibition of forced labour enshrined in Article 4, paragraph 2, of the Convention. This ruling demonstrates that the ECtHR emphasises the importance of the principle of proportionality in the relationship between the state (employer) and the military officer (employee), who is obliged to reimburse the costs incurred by the state for his training. In our opinion, the legal positions of the ECtHR expressed in this case can be applied in domestic practice, in particular to labour disputes on early termination of employment with a contract serviceman. Indeed, as can be seen from the case file, the established violation of Article 4 of the Convention is due to the shortcomings of the procedure for the early termination of a military contract and the imperfection of the current procedure for obtaining monetary compensation by the state for years not worked.

⁷ ECtHR, *Chitos v. Greece*, app. no. 51637/12, 4 June 2015.

Thus, as the analysis shows, in recent years there has been a tendency to gradually expand the interpretation of the Convention in the field of human rights in labour relations, including the prohibition of forced or compulsory labour. For labour law, the expansion of the content of the Convention by the European Court of Human Rights is of particular importance, as it allows to increase the list of issues on which it is possible to apply for the protection of labour rights. The European Court of Human Rights has a significant impact on the implementation of the prohibition of forced labour. The Court's judgments not only determine the directions of further improvement of labour legislation on social protection of employees, ensuring the right to a fair trial etc., but also generally affect the creation of an effective mechanism for the realisation and protection of labour rights by international standards and modern trends in the development of labour relations (Yaroshenko, 2016).

In its case law, the ECtHR has established standards for understanding the content and legal regulation of freedom of association and trade union activity. Since, according to the ILO Declaration of Fundamental Principles and Rights at Work, the right to freedom of association and trade union activity, the right to collective bargaining, the prohibition of forced labour and child labour, and the prohibition of discrimination in respect of employment and occupation are fundamental labour rights, the ECtHR additionally acts as a regional mechanism for monitoring compliance with fundamental labour rights by ILO member states (Sychenko and Perulli, 2023).

In addition, the legal positions of the ECtHR serve as the basis for the protection of labour rights of employees in national courts and, according to some scholars, should constitute the ideological and legal (value) basis for the administration of justice in Ukraine. ECtHR judgments serve as guidelines in resolving court cases similar to those considered by the ECtHR; they contribute to the rule-making of state bodies, thus bringing national legislation closer to the standards of the Council of Europe. Given the nature of the ECtHR judgments and observations, understanding them as a source of law should not only concern a particular case but also the development of proposals for measures to be taken by Ukraine to eliminate future violations (Lörcher and Schömann, 2013).

The proper functioning of independent trade unions is of great importance both for the protection of labour and socio-economic rights of human beings and citizens and for building an effective civil society. At the same time, a prerequisite for the establishment and, accordingly, the operation of trade unions is the exercise of the constitutional right to form trade unions by persons who have the right to do so under the law. This right is enshrined in key international legal acts in the field of human and civil rights. Under Article 11 of the Convention for the Protection of Human Rights and Fundamental Freedoms, everyone has the right to freedom of peaceful assembly and freedom of association with others, including the right to form and join trade unions to protect their interests. That is, among all forms of the right to association, the right to form trade unions is separately highlighted in the text of the convention. At the same time, as the case law of the European Court of Human Rights shows, different states parties to the Convention periodically face problems with both the realisation of the right to form trade unions and ensuring freedom of activity of already established trade unions (Sychenko, 2019).

First of all, it is necessary to define what is meant by the right to form trade unions. The legal literature notes that the right to form trade unions includes the right of citizens to form trade unions based on free expression of will, to join and leave them, the right to elect their employees to protect the interests of trade union members, to participate in the internal life of the organisation, as well as the right to freely carry out trade union activities. The right to form trade unions can be exercised through: the free

and unimpeded establishment of trade unions, joining already established trade unions, participation in the work of trade unions, free and unimpeded withdrawal from trade unions, refraining from joining trade unions, participation in the termination of trade union activities by the procedure established by applicable law. So, let us consider the peculiarities of the realisation of certain forms of the right to form trade unions in the ECtHR case law (Sicilianos, 2020).

In its judgments, the ECtHR has repeatedly emphasised that part 1 of Article 11 of the Convention considers freedom of trade unions as a separate form (special aspect) of freedom of association and part 2 of this Article does not exclude any type of profession from the scope of Article 11. Therefore, it is worth analysing the ECtHR's approaches to understanding freedom of association in general. The ECtHR defines freedom of association as the right to form and join a group or organisation for the pursuit of any common purpose. Freedom of association can be exercised by all citizens who wish to join an association for the achievement of common goals without interference from the state. It is noted that the right to successfully achieve such goals is not guaranteed by Article 11 of the Convention.

Freedom of association must be exercised without interference by the state. At the same time, part 2 of Article 11 of the Convention provides for the possibility of imposing restrictions on the exercise of these rights if they are provided for by law and are necessary for a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals, or the protection of the rights and freedoms of others. The ECtHR notes that pluralism and democracy are inherently based on compromise, which involves various concessions, both on the part of individuals and groups. Associations must sometimes be willing to limit their freedoms to ensure greater stability in the country as a whole. In its judgment in the case of *Gorzelik and others v. Poland*,⁸ the ECtHR concluded that the state's actions in restricting the right to association were justified, as they were taken to protect the state's electoral system, which is a necessary element of a democratic society as referred to in Article 11 of the Convention. At the same time, when considering cases on restriction of the right to association, the ECtHR finds out whether such interference by the state was proportionate to achieve the legitimate aim pursued by it (*Zuiderveen Borgesius*, 2020).

Thus, when deciding on the legality of restrictions on the right to organise by the state, the ECtHR, first of all, determines whether the restrictions applied by the state were proportionate and necessary in a democratic society, regardless of whether the provisions of the national legislation of the respective state provide for the possibility of applying such restrictions. The ECtHR judgment in the case of *Tüm Haber Sen and Çınar v. Turkey*⁹ is indicative in this regard. In this case, the ECtHR considered compliance with the Convention of the decision to compulsorily terminate the activities of a trade union on the grounds of a legal ban on the establishment of trade unions by civil servants. The ECtHR ruled that although part 2 of Article 11 of the Convention provides for the possibility of imposing legal restrictions on the exercise of the right to form trade unions by persons who are members of public authorities, in this case, the state did not provide adequate evidence that the establishment or functioning of a trade union formed by public servants poses or may pose a threat to society or the state (*Lutkovskaya*, 2019).

Article 11 of the Convention does not establish the right to refrain from joining trade unions, i.e., it does not enshrine the negative aspect of the right to form trade

⁸ ECtHR, *Gorzelik and others v. Poland*, app. no. 44158/98, 17 February 2004.

⁹ ECtHR, *Tüm Haber Sen and Çınar v. Turkey*, app. no. 28602/95, 21 February 2006.

unions. In one of the cases considered by the ECtHR, the defendant argued that Article 11 does not provide or guarantee any right not to be forced to join an association, and this right was deliberately not included in the provisions of the Convention. In this regard, the ECtHR noted that, unlike Part 2 of Article 20 of the Universal Declaration of Human Rights (no one shall be forced to join any association), the provisions of the Convention do not directly contain a negative aspect of the right to association. At the same time, the ECtHR emphasised that if we assume that these provisions are deliberately not included and therefore cannot be considered as enshrined in the Convention, and therefore the negative aspect of freedom of association falls completely outside the scope of Article 11 and any compulsion to join a particular trade union is compatible with the provisions of Article 11, the very essence of freedom of association is levelled and loses its meaning (Sauer, 2019).

Since the Convention must be interpreted in the light of modern conditions, Article 11 of the Convention should be considered as covering a negative right to association. That is, any compulsion to join a trade union contradicts the concept of freedom of association in its negative sense, and employees should be free to decide whether or not to join a trade union without being subjected to any sanctions or other negative consequences. In addition, the ECtHR takes into account the fact that the protection of freedom of expression and freedom of opinion guaranteed by Articles 9 and 10 of the Convention is one of the purposes of guaranteeing freedom of association and that such protection can be effectively ensured by guaranteeing both positive and negative rights to freedom of association (Merrills and Robertson, 2022).

We would also like to note the conclusions and interpretations provided by the ECtHR in the case of the United Union of Locomotive and Fire Engine Drivers v. the United Kingdom, which considered the legality of expelling an employee from the union. The trade union appealed to the ECtHR against the impossibility of excluding an employee who expressed and promoted views incompatible with the values of the trade union. At the same time, the legislation of the United Kingdom did not provide for such an exclusion and the national courts upheld the employee's claim that his expulsion from the union was unlawful (Yaroshenko et al., 2020a).

In considering the case, the ECtHR emphasised that the right to form trade unions includes, in particular, the right of trade unions to formulate their own rules and manage their affairs, and these rights are recognised in the International Labour Organization's Freedom of Association and Protection of the Right to Organize Convention. Based on the results of the case, the ECtHR ruled that there was a violation of Article 11 of the Convention since just as an employee must be free to join or refuse to join a trade union, the trade union must be free to choose its members. Art. 11 of the Convention cannot be interpreted as imposing an obligation on any of them to join. Thus, when considering the right of a person to form a trade union, the right of trade unions to establish their own rules on membership conditions and the right of trade unions to freely choose their members should be borne in mind and taken into account (Chernetska and Andriichenko, 2019).

Thus, various aspects of the right to freedom of association in trade unions are widely reflected in the case law of the ECtHR. Since the ECtHR considers freedom of trade unions as a separate form (special aspect) of freedom of association, when studying the ECtHR case law on the exercise of the right to form trade unions, one should take into account the relevant positions of the ECtHR on the understanding of freedom of association in general. The ECtHR case law is important for the realisation of the right to organise in the States Parties to the Convention. Thus, the absence of a provision in Article 11 of the Convention that no one shall be forced to join any association gave

grounds to argue that this provision was deliberately not included in the text of the Convention, so the right not to be forced to join an association is not guaranteed by it, and on this basis, individual employees were obliged to be a member of the relevant trade union to keep their jobs. However, the ECtHR concluded that such an approach negates the very essence of freedom of association, so any compulsion to join a trade union contradicts the concept of freedom of association in its negative aspect.

4. DISCUSSION

In the field of labour rights protection, the European Court of Human Rights may face several problems in its law enforcement practice. Let us summarise the main problems that arise. Timing of cases – the ECtHR has a significant workload, and cases can take a long time to be considered. A long waiting period can be a problem for those seeking justice in the field of labour rights, especially in situations where the case requires immediate consideration, for example, in the case of dismissal on illegal grounds.

Lack of effective enforcement – the ECtHR may rule in favour of applicants on labour rights, but sometimes the enforcement of these decisions is delayed or ineffective, especially when states do not follow the ECtHR recommendations. Limited competence – the ECtHR may be limited in resolving certain labour cases, especially if the case concerns national aspects and does not involve a violation of the Human Rights Convention. Differences in interpretation – the interpretation of the Convention's articles may differ, and this may lead to differences in the ECtHR judgments, especially in labour cases.

Limited impact – ECtHR judgments are binding, but may not always force states to make the necessary changes to national legislation and practice to protect labour rights. Inequality before the law – there may be a problem of inequality before the law in labour cases. Some complainants may have more resources and opportunities to lodge complaints with the ECtHR, while others, especially members of vulnerable groups, may be less represented. Restrictions on the ability to express their position – some applicants may be limited in their ability to express their position or provide relevant evidence to the ECtHR, which may affect the objectivity of the proceedings. Dependence on national courts – the ECtHR usually assigns the first level of review to national courts. In some cases, national courts may incorrectly apply international labour standards, which may lead to inaccuracies in the resolution of the case at the ECtHR level (Yaroshenko et al., 2020b).

Limitations of the Convention – the ECtHR may be limited to considering cases in situations where states indicate the existence of a "set of circumstances" that limit their ability to fulfil certain obligations under the Convention. These problems in the field of labour rights protection in the context of the ECtHR emphasise the importance of continuous monitoring and improvement of law enforcement practice and reform of national labour rights protection systems to ensure greater efficiency and fairness.

Solving the problems of the European Court of Human Rights case law in the field of labour rights protection requires a comprehensive approach and cooperation between various stakeholders, including the state, judicial authorities, applicants, and civil society organisations. In our opinion, the following points may help to address these challenges.

Strengthening internal reform – the ECtHR could undertake internal reform to improve the efficiency and speed of case processing. This could include increasing the number of judges, simplifying procedures, and improving the court's operations. Raising awareness – States and civil society organisations could work to raise awareness and education about human rights and the procedures for filing complaints with the ECtHR.

This will help citizens better understand their rights and options. Increase resources – states can allocate more financial and human resources to improve the work of the ECtHR.

This will reduce the time for reviewing cases and improve the quality of decisions. Involvement of civil society organisations – Civil society organisations can play an active role in monitoring and analysing cases, supporting claimants, and influencing policy decisions on labour rights reforms. International cooperation – States can cooperate internationally to share experiences and improve labour rights practices.

Reform of national legislation – states can reform their national legislation to address issues related to the protection of labour rights and ensure that national courts are in line with international standards. For example, the problem of international and national labour law in Ukraine is the correlation of the European Court of Human Rights judgments with the national labour law system. According to Art. 17 of the Law of Ukraine "On the Execution of Judgments and Application of the Case Law of the European Court of Human Rights", national courts apply the case law of the ECtHR as a source of law. However, this law does not define the place of the respective source of law in the system of law, does not outline its legal force, and does not indicate whether it will be applied only as a normative or descriptive part (Pudzianowska and Korzec, 2020).

Nor do the relevant provisions in other legislative acts. Therefore, it can be concluded that there is a legal gap in this regard. Although simple logic still suggests that the narrative part of the judgment will also apply, as it sets out the position of the ECtHR, there is no specific guidance on the legal force of such an act and its place in the system of court decisions. legal acts in the hierarchy. Therefore, it is unclear how national courts should act if the ECtHR case law contradicts Ukrainian law or international treaties ratified by Ukraine and is considered to be the national law of Ukraine.

Thus, there is a gap in the legislation regarding the relationship between international and national labour law, namely, the place of the European Court of Human Rights case law in the national legal system in the field of labour law. Solving the problems of law enforcement practice requires the time and effort of all stakeholders. It is important to ensure access to fair and effective protection of labour rights in all countries and at all levels.

5. CONCLUSION

In today's world, in the era of globalisation, the interdependence of citizens and states is becoming increasingly objective and inevitable, which is manifested, among other things, in the growing mutual influence of international and national law. Of particular importance in these processes is the case law of the European Court of Human Rights, which establishes standards and principles, in particular in the field of labour law, as they not only promote the development of international cooperation in the field of labour but also play an important role in protecting the labour rights and legitimate interests of citizens of the Council of Europe.

The judgments of the European Court of Human Rights not only determine the directions for further improvement of labour legislation on social protection of employees, ensuring the right to a fair trial, etc. but also generally affect the creation of an effective mechanism for the implementation and protection of labour rights by international standards and modern trends in the development of labour relations.

The right to work as a socio-economic right is not included in the European Convention on Human Rights. The Convention only guarantees the right to form and join trade unions and prohibits slavery, servitude, and forced and compulsory labour. Other

labour rights are regulated by international documents, such as ILO Conventions and UN declarations. Labour rights have their specifics and require restrictions that may be imposed by states. International standards establish a minimum of rights that must be ensured, but states have the freedom to expand these rights according to their needs. Labour laws should be ready to adapt to changes in society, economy, and technology, as the rights of workers can be very diverse depending on the industry and type of work.

In addition, the ECtHR's positions on labour rights are the basis for the protection of these rights in national courts and are the ideological and legal foundations that some researchers recognise as the valuable basis of judicial proceedings in Ukraine. ECtHR judgments become guidelines for resolving similar cases in national courts; they contribute to the development of legislation by public authorities, which brings national legislation closer to the standards of the Council of Europe. Taking into account the content of the ECtHR judgments and observations, they should be considered as a source of law relating not only to a particular case but also as a source of proposals for measures to be taken by Ukraine to prevent further violations of legal norms.

The analysis shows that in recent years, there has been a gradual expansion of the interpretation of the European Convention on Human Rights in the field of labour rights, including the fight against forced or compulsory labour. The expansion of the interpretation of the Convention by the European Court of Human Rights is of particular importance for the field of labour law, as the range of issues that may be aimed at protecting labour rights is expanding. The Court's judgments affect the development of labour legislation, social protection of employees, and the right to a fair trial and generally contribute to the creation of an effective mechanism for the protection of labour rights by international standards and modern trends in the development of labour relations (Schmahl, 2022).

Various aspects of the right to join trade unions are widely represented in the case law of the European Court of Human Rights. Since the ECtHR considers trade union freedom as a separate aspect of freedom of association, it is important to take into account the relevant positions of the ECtHR on the general understanding of freedom of association when analysing the ECtHR case law on the right to participate in trade. The ECtHR case law is of great importance for the realisation of the right to join trade unions in the countries party to the Convention. For example, the absence of a provision in Article 11 of the Convention prohibiting coercion to join any association led to the argument that this provision was deliberately excluded from the text of the Convention, and therefore the right to refuse compulsory membership in an association is not guaranteed, and on this basis, individual employees may be obliged to join a trade union to keep their jobs. However, the ECtHR concluded that such an approach violates the very essence of freedom of association, so any compulsory membership in a trade union contradicts the concept of freedom of association in its negative aspect.

In the area of labour rights protection, the European Court of Human Rights faces numerous problems in law enforcement practice. The main ones include the length of case consideration, ineffective enforcement of judgments, limited competence, differences in interpretation, limited effect of the Convention, inequality before the law, limited ability to express its position, dependence on national courts, and limited ability to express its position. provisions. Addressing these issues requires a comprehensive approach and cooperation between states, courts, applicants, and civil society organisations. Measures may include internal reform of the ECtHR to increase efficiency, raise awareness of human rights, allocate additional resources, engage civil society organisations, international cooperation, and reform national legislation. Addressing

these issues is essential to ensure fair and effective protection of labour rights in all countries and at all levels.

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