

# Ensuring Enforcement of Judgements through the Prism of Reforming Criminal Provisions

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**Abstract:** The problem of ensuring the enforcement of judgements is pressing both at the national and global levels. In some countries, judgments are often enforced only in part or with long delays, and sometimes not enforced at all. One of the consequences of non-enforcement of judgements is the application of penalties for the failure to fulfil international obligations. This study intends to identify the main aspects of non-enforcement of judgments in Ukraine and the world and to outline the prospects for criminal law provisions regulating enforcement of national and international judgements on the example of reforming Ukrainian legislation. The object of research is criminal law provisions regulating the enforcement of judgements. The research methodology is due to the specifics of the object, which requires a comprehensive interdisciplinary approach involving a set of general and special methods of scientific cognition. The results of the study are related to the confirmation and refutation of hypotheses on sufficiency of international mechanisms to effectively ensure enforcement of judgements; the need to take certain actions at the national level to ensure the enforcement of judgements; the need for the legislative authorities to take certain actions at the national level; the need for the executive authorities to take certain actions at the national level; reasonability of criminalization of non-enforcement of judgments. The article contains a novelty that has theoretical and practical significance. In particular, the theoretical significance of the obtained results is that it is an original comprehensive study of enforcement of judgements of national and international judicial institutions through the prism of reforming criminal law, and offers a new concept of criminal law enforcement of judgements. The practical significance of the obtained results is that the presented data can serve as a guide for future work in this area, as well as legislative initiatives on criminal law enforcement of judgements in Ukraine and the world

**Keywords:** Non-enforcement of judgements, Non-compliance with judgments, Enforcement, Criminalization, Criminal liability, European Court of Human Rights, National court.

## INTRODUCTION

The problem of ensuring the enforcement of judgements is pressing both at the national and global levels. In some countries, judgments are often enforced only in part or with long delays, and sometimes not enforced at all. This is one of the most common human rights problems identified by the European Court of Human Rights (ECHR). Let us note that the sad reputation for compliance with regional and international judgements generally correlates with an unsatisfactory state of affairs with human rights.

Non-enforcement or late enforcement of judgements is one of the systemic domestic problems, as evidenced by the increase in the number of appeals to the European Court of Human Rights (Legislation of Ukraine 1997). Failure to enforce judgments constitutes a violation of the right to a fair trial, as enshrined in Article 6 of the European Convention on Human Rights. In its judgment in *Hornsby v. Greece*, the Strasbourg Court confirmed that the right to a trial

would be illusory “Contracting State’s domestic legal system allowed a final, binding judicial decision to remain inoperative” (Legislation of Ukraine 1997).

We cannot overlook that the penalties applied by the ECHR for non-enforcement of judgments and violations of the right to a fair trial have a significant negative economic impact on the offending country.

Complaints to the Strasbourg Court, which has found and keeps finding numerous violations in this area, include a large number of different cases of non-enforcement of domestic judgments. The countries with reported violations include Albania, Bosnia and Herzegovina, Moldova, the Russian Federation, Serbia, Ukraine, and others (Hammarberg 2009).

Of particular concern is the fact that even high-level political decision-makers sometimes tend to look for reasons to ignore judgements and make public statements that show a lack of respect for the judiciary (Hammarberg 2009).

Moreover, we should note that the problem of non-enforcement of judgements is known not only to the legal system of European countries. For example, the rate of non-enforcement of criminal penalties in the

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People's Republic of China (hereinafter referred to as "the PRC") reaches 80% (Zhao 2020). There are also cases of non-enforcement of judgements in the United Arab Emirates (hereinafter – "the UAE") (Mattos & Vieira 2019).

In turn, the obligation to enforce judgements is crucial to the integrity of any legal system, whether domestic or international. Enforcement of judgements is important to increase the authority of the judiciary and trust in the system. No case law can be considered effective if it is not enforced. In this case, the legitimacy of the court itself may be called into question. Even the best case law cannot be considered effective if it is not enforced (Hammarberg 2009).

Ensuring the full and prompt enforcement of judgements is one of the distinguishing features of a democratic society. After all, there is convincing evidence that the court feels more independent when non-enforcement is unlikely (Mattos & Vieira 2019).

Given the above, inadequate response to domestic judgments in several countries should be considered as a structural problem that should require national authorities to take priority measures to prevent the recurrence of such violations. After all, the repeated disregard of judgements or rulings by the parties will inevitably harm the dignity of the court and call into question the judicial role that the court should play in the international community.

However, it should be noted that in international law the issue of non-enforcement of judgements has always been and is interesting and urgent due to significant differences with domestic systems. After all, the internal legal order of the state is, as a rule, completely based on the strength of the available means of enforcement of judgements. However, foreign scholars mostly studied the problem of non-enforcement of judgements of international courts, in particular, the ECHR, while ignoring the problem of non-enforcement of judgements of national courts. At the same time, the problem of non-enforcement of judgements, according to the case law of the European Court of Human Rights, is known not only to Ukraine. This urges our study not only for Ukraine, but also for the world scientific community. This article attempts to fill this doctrinal gap.

This article intends to identify the main aspects of non-enforcement of judgements in Ukraine and the world, and outline the prospects of criminal law

provisions regulating enforcement of national and international judgements on the example of reforming the legislation of Ukraine.

## **Research Objectives**

To achieve the above goal, the following objectives shall be achieved: 1) analyse the state of the problem of non-enforcement of judgements based on literature review, the study of statistics and case law; 2) consistently outline the possible negative consequences and risks of non-enforcement of judgements; 3) summarize key initiatives to address non-enforcement of judgements in Ukraine and the world; 4) develop proposals for reforming criminal law provisions on the example of the legislation of Ukraine in the form of a new version of Article 382 of the Criminal Code of Ukraine.

## **Scope of Application**

The results obtained in the article can be used in research (as a basis for further research in the related area), educational (during the study of topics related to criminal liability for non-enforcement of judgements by students and graduate students, delivering lectures) and legislative (to improve legislation) areas.

## **LITERATURE REVIEW**

The problem of non-enforcement of judgements is the subject of numerous studies, both in Ukraine and abroad, conducted by the representatives of various social sciences.

In particular, representatives of Ukrainian legal science have repeatedly studied the issue of criminal liability for non-enforcement of national judgements, including those of the Constitutional Court of Ukraine, the ECHR, as well as foreign experience of liability for non-enforcement of judgements.

The position of the countries where the legislation does not contain provisions on criminal liability for violation of the procedure for enforcement of judgements is criticized. In turn, the experience of Kazakhstan, Armenia, and Kyrgyzstan on the grounds for release from criminal liability for escaping from prisons is recognized as positive and worthy in terms of assimilating it by Ukraine (Bogonyuk 2015).

Several issues of qualification of non-enforcement of a judgement are analysed. Emphasis is placed on the importance of the duration of non-enforcement of

the judgement, the significance of the damage caused by non-enforcement of the judgement (on the example of ECHR judgements). Focus is on the problem of numerous instructions and regulations that allow officials to “legally” delay the enforcement of judgements (Horbachova 2017).

The issue of criminal liability in the field of enforcement of judgements, problematic aspects of legislative regulation of these issues are studied, and proposals for their elimination are provided (Dragan 2017).

The problem of criminal liability for non-enforcement of judgements of the European Court of Human Rights is studied. The need to amend the legislation that establishes criminal liability for this act is emphasized (Holovko & Shevchenko 2018).

The legal structure of the crime of non-enforcement of a judgement under the national legislation of Ukraine and the legislation of a number of EU Member States in terms of their comparison is analysed.

It is stated that sanctions for non-enforcement of judgements under the Criminal Code of Ukraine are more severe than sanctions for a similar rule in the criminal law of many EU countries (Nalutsyshyn 2019).

The issue of the importance of observance of judgements and the danger of their non-enforcement is investigated. Emphasis is placed on the obligation of public authorities to introduce general measures aimed at preventing the recurrence of violations in the aspect of observance of judgement in the future. It is noted that such measures may include legislative amendments, administrative or executive measures in policy areas (Voeten 2014).

At the same time, foreign scholars study the issues provided below.

The issue of the importance of compliance with judgements and the consequences of their non-enforcement is studied. It is emphasized that public authorities are obliged to introduce general measures aimed at preventing the recurrence of violations in the aspect of compliance with judgements in the future. It is noted that such measures may include legislative amendments and administrative or executive measures in the areas of state law and policy (Voeten 2014).

It is argued that the key to compliance with the requirements of the European Court of Human Rights

is strong national institutions. In particular, executive bodies are national institutions that enforce judgements (Hillebrecht 2014).

It is noted that non-enforcement of judgements is often a political and class problem, as in such cases there is always an element of discrimination against certain groups of the population (financial status, race or nationality, etc.) (ACLU 2018).

It is noted that, despite the efforts made in many reforms of the European Convention, non-compliance with ECHR judgements remains a major problem for the Council of Europe. It is considered how it is possible to influence the behaviour of the state, and what role satisfaction can play in this context. Scholars and judges argue that the ECHR should actively persuade states to enforce judgments and prevent future violations (Fikfak 2018).

The rates of enforcement of judgements of the European Court of Human Rights in different countries of the world are studied. Emphasis is placed on the fact that compliance rates vary from country to country. It is illustrated by specific cases showing how Britain and Germany enforced judgments, even in very difficult situations. It is argued that compliance with judgements is subject to regulatory obligations (Hawkins 2019).

It is examined how legislative changes affect compliance with judgements of the European Court of Human Rights. There are two ways in which legislative changes can affect policies of compliance with the obligations (Stiansen 2019).

The attitude of national courts to the case-law of the European Court of Human Rights and their role in achieving effective implementation of the European Convention on Human Rights at the national level is analysed. The typology of positions adopted is proposed to emphasize national strategies for compliance with judgements. A critical analysis of some unproven and untested assumptions that national courts act as puppets and cannot go beyond convention standards is provided. At the same time, it is illustrated that the interaction between national courts and the ECHR is not always harmonious, and some countries consistently mitigate the impact of the Convention, giving priority to domestic legislation (Giannopoulos 2019).

The compliance of states with rulings by considering the status of court cases at a particular point in time is analysed. It is emphasized that this approach ignores

two important features of the compliance process. First, states often need a lot of time to enforce court rulings. Therefore, indicators are needed that reflect not only whether, but also when states enforce judgements. Second, conditions that facilitate or complicate compliance change over time (Pérez-Liñán, Schenonni & Morrison 2019).

Peculiarities of execution/non-execution of criminal punishments of property nature in the People's Republic of China are investigated, where the coefficient of execution of property punishment is low, and the coefficient of non-execution reaches 80%. It is argued that the complexity of enforcement has negatively affected the judicial community, objectively undermining the seriousness and authority of court rulings, and has become a serious failure of criminal justice (Zhao 2020).

As we can see, Ukrainian scholars have repeatedly studied the issue of criminal law support for the enforcement of national and international judgements.

In turn, foreign scholars did not pay due attention to the issue of criminal liability for non-enforcement of judgements. After all, their works mostly deal with the causes and consequences of non-enforcement of judgements. Besides, their research is based more on data on non-enforcement of judgements of regional and international courts, bypassing the judgements of national courts.

The review shows that as of today, the legal doctrine does not have exhaustive scientific research of criminal law support for enforcement of judgements that would take into account all relevant aspects of this topic. However, the considered data of existing researches can be a good reference point and basis for our research.

## **MATERIAL AND METHODS**

Most studies of non-enforcement of judgements used methods of statistical processing of results. Statistical research allows revealing the picture of the objective reality of non-enforcement of judgements in Ukraine and the world. When comparing statistics, more effective ways to enforce judgements can be found.

In conducting our research, we used the method of regression analysis. Based on the method of regression analysis, we developed two pie charts, which show the statistics in ECHR cases on non-

enforcement of judgments in Ukraine and some other foreign countries for 2011 to 2019. We selected statistics on non-enforcement of judgements in 10 countries for this study.

The baseline data for comparison were taken from statistics from the ECHR report (Supervision of the execution of ECHR judgments — Annual report 2019 shows significant progress, but challenges remain 2019), using the ratio of threshold data, in percentage, where 100% is equal to one. One is the maximum number relative to the threshold data. Thus, 100% of appeals to the ECHR are equal to one, 25% = 0.25, 10% = 0.1, respectively.

We put forward several hypotheses based on the data obtained during the study using the method of observation. Some of these hypotheses were later confirmed and some refuted. We made conclusions on this basis, which later became the ground for the developed proposals. The developed proposals were summarized in the conclusions in the form of a developed draft of a new version of Article 382 of the Criminal Code of Ukraine.

## **RESULTS**

A review of Ukrainian and foreign literature, case law, and statistics showed the scale of the problem of non-enforcement of judgement in Ukraine and the world. Moreover, there is still a positive trend in foreign countries for the most part, while the dynamics in Ukraine is the opposite.

For a better perception of the information and a clear confirmation of the severity of the problem, the results obtained for cases of non-enforcement of judgements are presented in the pie charts. In particular, we propose to consider the statistical indicators of the cases of the European Court of Human Rights against Ukraine for 2011-2019, as well as the statistics of the cases of the European Court of Human Rights against some foreign countries for 2011-2019 (Figures 1, 2).

As we can see, the situation in Ukraine regarding the enforcement of judgements has no positive dynamics. Ukraine remains one of the leaders in the number of appeals to the ECHR regarding violations of fundamental human and civil rights in the form of non-enforcement of judgements. This is even though the binding nature of judgements is established by law at the constitutional level, as well as at the level of individual laws and procedural codes.

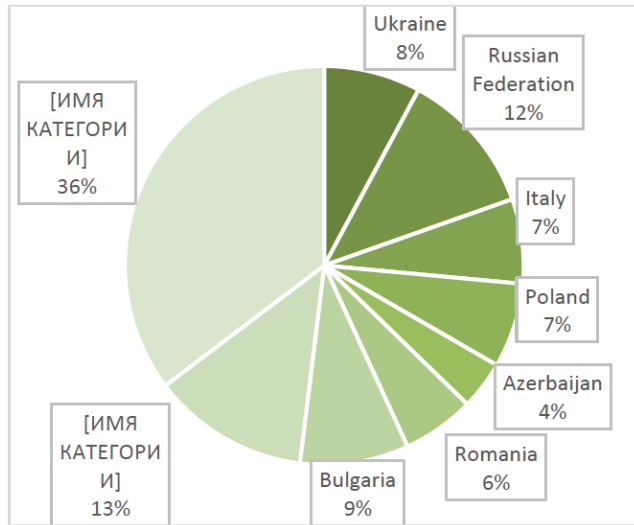


Figure 1: Statistics of ECHR cases on the example of some countries for 2011.

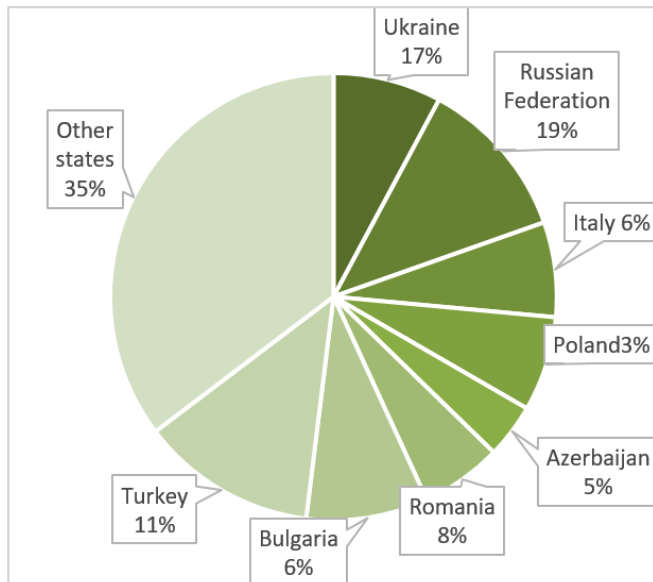


Figure 2: Statistics of ECHR cases on the example of some countries for 2019.

At the same time, it should be noted that compliance rates vary from state to state. Some of them, such as Ukraine and Russia, have very low compliance rates. At the same time, Romania, Azerbaijan, Poland, Italy, Bulgaria, and Turkey demonstrate much better practice. Moreover, Poland, Turkey, Bulgaria, and Italy have a positive trend in compliance with judgements, which manifests in the reduction of the number of lawsuits to the ECHR.

In March 2018, the Council of Europe published a report stating that of all the judgments rendered by the ECHR since its inception, more than half of the judgments remain unenforced. Despite the efforts

made through numerous reforms of the European Convention on Human Rights, non-compliance with the Court’s judgements remains a major problem for the Council of Europe (Fikfak 2018).

In our opinion, these data indicate a lack of efficiency to ensure a high level of enforcement of judgments at the level of individual countries of the existence of international mechanisms. After all, the introduction of the European Convention on Human Rights into domestic law has not led to a revolution in the approach of national judges to the case-law of the European Court of Human Rights and methods of their argumentation. This suggests that the binding nature of the main provisions of the Convention as such did not guarantee immediate and automatic compliance with the ECHR judgments. Many national courts continue to ignore, and in some cases even categorically reject ECHR judgements.

The ECHR and financial sanctions did not have a significant impact in the context of the positive results in the field of compliance with judgements. It is about the compensation to victims that the ECHR obliges the offending state to pay, and the obligation to take symbolic measures and make policy changes necessary to ensure that the violations do not recur. Unfortunately, the fear of an obligation to pay compensation does not yield the expected result. For example, in 2018 Ukraine was awarded € 794,586 as compensation for non-enforcement of judgements, while in 2019 it was € 1,675,140 (Council of Europe 2020). However, the situation with compliance with the judgements of the ECHR has not changed for the better.

In our opinion, the effectiveness of enforcement of judgements requires certain measures to be taken at the national level. Moreover, such measures should be comprehensively implemented at the legislative and executive levels. After all, the problem of non-enforcement of judgements is a challenge not only for the executive branch, which is directly responsible for their enforcement, but also a serious challenge for the legislature of each of the abovementioned countries. The effectiveness of ensuring real enforcement of judgements is directly dependent on the quality of legislation and the ability of the legislature to respond promptly, and take appropriate measures in the form of appropriate legislative changes. Accordingly, we propose to create a new concept of criminal law for the enforcement of judgements, which will be to improve the current version of Article 382 “Failure to Enforce a

Judgement” of the Criminal Code of Ukraine. This will take into account the data adjusted as a result of a review of Ukrainian and foreign literature, as well as an analysis of legislation and case law.

It should be noted that the legislation of Ukraine in terms of criminalization of non-enforcement of judgements is more progressive than the legislation of many foreign countries. Nevertheless, there is a need for further reform of the relevant criminal provisions. We mean the need to partially increase criminal liability. In particular, about law enforcement officers, given the relatively high social danger of such acts they commit. An important step in this direction is Draft Law “On Amendments to the Criminal Code of Ukraine to Establish the Liability of Law Enforcement Officers for Non-enforcement of Judgements” No. 3121 dated 02/24/2020, which proposes to supplement the Criminal Code of Ukraine with a new Article 382-1 “Failure of a Law Enforcement Officer to Execute a Judgement.”

In the search for research materials, we encountered the problem of the lack of any discussion about this Draft Law in scientific circles. As of the time of this study, there are no opinions of scholars on the Draft Law | On Amendments to the Criminal Code of Ukraine to Establish the Liability of Law Enforcement Officers for Non-enforcement of Judgements.”

However, this situation can be explained by an insignificant period from the moment of its publication to the moment of our research. In our opinion, this is in no way related to its perfection. In particular, the proposed option for implementing such changes does not seem appropriate. In our opinion, in the case of supplementing the Criminal Code of Ukraine with a new article, there is a risk of artificial expansion of the number of articles of the Special Part of the Code. In this connection, we consider it reasonable to supplement the already existing Article 382 of the Criminal Code of Ukraine with Part 5 of the relevant content.

In general, there is no doubt that the changes proposed by the draft are necessary. Our position is based on the data of the Prosecutor’s Office regarding non-enforcement of judgements by police officers, case law, and identified legislative gaps. For example, the Rivne Regional Prosecutor’s Office conducted inspections for compliance with the law in the execution of criminal penalties in the form of imprisonment and arrest of persons who were not in custody at the time

the judgements entered into force. In particular, at the time of the Prosecutor’s inspection, it was found that of the 74 judgements rendered during 2017-2018, which sentenced people to imprisonment and arrest, 8 remained unenforced. The main reason for this is the failure of the police to take a set of measures to establish the whereabouts of convicts (Rivne Media 2019).

Another example: on January 1, 2019, the Melitopol City District Court received a complaint against the investigator’s actions (inaction), in which a person asked to recognize the investigator’s actions in refusing to satisfy the applicant’s petition on being a victim in the criminal proceedings. As a result of this offense, the complainant suffered non-pecuniary damage, as he was deprived of his constitutional right to a fair trial as a result of the investigator’s failure to comply with the investigating judge’s decision for 5 years. The investigating judge, after considering the complaint, concluded that the complaint should be upheld (Zakon Online 2019).

Failure to comply with the judgement by law enforcement officers in the above examples poses a greater public danger compared to the average citizen’s failure to comply with the judgement. However, there currently is a penalty only for intentional non-enforcement of a judgement (Article 382 of the Criminal Code). And it is almost impossible to prove such an intention in practice. Especially when it comes to officials. After all, their job descriptions are designed quite imperfectly. And it also requires an immediate response from the legislature.

## **DISCUSSION OF THE RESULTS**

There is a consensus among scholars that the effectiveness of the court can be measured by objective data, such as the level of compliance with judgments and the impact on the behaviour of the state (Bezerra n. d.). We fully agree, because, as some authors rightly noted in the scientific literature, the low level of enforcement of judgements is a serious obstacle to building trust in the judiciary, which negatively affects the rule of law and the legislation. Therefore, the priority task in the field of ensuring compliance with the principles of the rule of law is to develop an effective mechanism to ensure the enforcement of judgements.

In our opinion, such a mechanism may well be the institution of criminal liability for non-enforcement of

judgements. To substantiate this statement, we offer a few hypotheses, which we will try to confirm or refute in the course of our study:

1. the existence of international mechanisms is sufficient to ensure a high level of enforcement of judgments at the level of individual countries;
2. the effectiveness of enforcement of judgments requires the adoption of certain measures at the national level;
3. the effectiveness of enforcement of judgments requires the adoption of certain measures at the national level by the legislative authorities;
4. the effectiveness of enforcement of judgments requires the adoption of certain measures at the national level by the executive authorities;
5. the effectiveness of enforcement of judgments requires the criminalization of non-enforcement of judgments in national law.

Let us start with the first point. By ratifying the European Convention on Human Rights, its parties committed to respecting the rule of law. Ignoring the enforcement of judgements is incompatible with this principle. After all, in such cases, conventional guarantees lose their purpose (Hammarberg 2009). The Convention is designed to guarantee norms that are not theoretical or illusory but are practical and effective.

It is common practice for the ECHR to impose penalties on violating countries. For example, in *Vlastaris v. Greece*, the ECHR awarded € 20,000 as non-pecuniary damage (European Court of Human Rights, 2020) and € 12,500 in *Gubasheva and Ferzauli v. Russia* (European Court of Human Rights, 2017b), in the case of *Luzi v. Italy* — € 13,000 (European Court of Human Rights, 2019).

It should be noted that the Council of Europe (hereinafter referred to as “the CoE”) allows suspending the country’s membership due to non-compliance with ECHR judgements. However, according to statistics, these compulsive mechanisms have not proven their effectiveness.

However, as scientific literature rightly notes, the ECHR lacks the political will to put pressure on states to enforce its judgements. Also, first, the ECHR’s interference in the will of elected parliaments is controversial in several European countries. Such

controversy may increase the risk of violating judgements that require changes in legislation. Second, the greater number of veto actors required to enact legislation is likely to delay implementation (Stiansen 2019).

These data suggest that the existence of an international enforcement mechanism, which is, in particular, involves the ECHR, is not a sufficient means of ensuring compliance with judgments at the national level of individual countries. This once again confirms the need to introduce an effective national mechanism to ensure the enforcement of judgements. Therefore, this problem must be solved, first of all, at the national level.

Researcher in Council of Europe (2020) emphasizes that the state authorities are obliged to introduce general measures aimed at preventing the recurrence of violations in the aspect of compliance with judgements in the future. The scholar believes that such measures may include legislative (and in rare cases, even constitutional) amendments and administrative or executive measures in the areas of state laws and policies. Such allegations are based on the successful experience of the United Kingdom as the country with the best indicators of enforcement of judgements. In his work, the author demonstrates in detail how closely this success is associated with the activities of agencies endowed with strong political weight, and the ability to effectively intervene in legislation (Council of Europe 2020).

The fact that the key to compliance with the requirements of the European Court of Human Rights are strong national institutions is also evidenced by the results of an analysis conducted in (Hillebrecht 2014).

As for the role of the authorized bodies in enforcing judgments, some researchers argue that if the law enforcement body conducted a timely investigation and enforcement of the offender’s property on time after the judgment enters into force, the property judgement will not be left unenforced (Zhao 2020). This statement is quite correct and logical. However, it should be noted that the activities of the law enforcement agency are regulated by law, and therefore it is directly related to the adoption of appropriate measures at the legislative level. The executive authorities, of course, has taken the initiative, but the legislature can help improve the enforcement of judgements (Abdelgawad 2016).

Back in 2009, the Committee of Ministers of the Council of Europe adopted a second interim resolution

in response to several cases against Ukraine concerning non-enforcement or serious delays in enforcing final judgments of national courts against the state. In response, the Ukrainian authorities announced some initiatives aimed at solving this problem. However, no satisfactory results have been achieved so far. In this regard, the committee appealed to the Ukrainian authorities at the highest level again to adhere to its political commitment to resolving the problem of non-enforcement of judgements of national courts.

However, according to the ECHR statistics, the situation in Ukraine regarding the enforcement of judgements has not changed for the better so far. Following the Judiciary Development Strategy 2015-2020, approved by the Decree of the President of Ukraine No. 276/2015 dated 20.05.2015, the extremely low share of actual enforcement of judgements was stated, and the objective was set to reorganize the system of enforcement of judgements and increase the efficiency of enforcement proceedings, which requires the improvement of criminal law counteraction to intentional non-enforcement of judgements. The overall enforcement rate of national court judgements is 6-18%, and the overall enforcement rate of the ECHR judgements is no more than 5% (Legislation of Ukraine 2015).

The ECtHR's 2019 Report shows significant progress. The report shows that between 2010 and 2019, there were 2,120 new "leading" cases covering structural and/or systemic issues at the national level, and 2,287 such cases were closed, representing 108%. For comparison, 1,470 new leading cases were registered, and only 602 leading cases were closed, with a closing rate of 41%, between 2000 and 2010 (Council of Europe 2020).

But there are still many problems. For example, compared to 2011, the number of appeals to the ECtHR against Ukraine increased in 2019. Thus, if in 2011 the total number of appeals from the total number of complaints from all countries was 8%, this number was at 17% in 2019 (Council of Europe 2020).

Moreover, the ECHR judgements against Ukraine note consistent violations in the field of compliance with judgements. For example, in the case of "Burmych and Others v. Ukraine" of October 12, 2017 (European Court of Human Rights 2017a), it was established that the state had not taken measures to solve the systemic problem of non-compliance with judgements. And in

the case of "Yuriy Mykolayovych Ivanov v. Ukraine" of October 15, 2009 (Legislation of Ukraine 2009), the ECHR found that there was a practice incompatible with the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms, which consisted in systemic non-compliance by the respondent State with the judgements of the national courts for which it is responsible.

At the same time, there is, however, a certain impact of the ECHR judgements on the Ukrainian criminal law, which is evidence that Ukraine, as a state against which a decision was made on violation of the Convention, is taking measures to eliminate them by amending criminal law and law enforcement practice. Examples of such practices can be traced in the amendments to the criminal law of England, Belgium, Italy, France, Switzerland (Holovko & Shevchenko 2018).

It is important to note that not all countries with a high level of compliance with judgements criminalize their non-compliance and vice versa. Such conclusions are based on data obtained from the analysis of criminal law of different countries and statistics on the enforcement of ECHR judgements in these countries. For example, in Ukraine, which, as already noted, is one of the leaders in terms of violation of the enforcement of judgements, sanctions for non-enforcement of judgements under the Criminal Code of Ukraine are more severe than sanctions for a similar rule in criminal law in many EU countries, where judgements are enforced much more effectively. At the same time, Germany, whose legislation does not contain provisions on criminal liability for non-enforcement of judgements (Nalutsyshyn 2019), enforces judgements even in very difficult situations (Hawkins 2019). It follows that the establishment of criminal liability for non-enforcement of judgements does not guarantee the automatic high level of enforcement.

At the same time, the social danger of such behaviour, which encroaches on the authority of justice, testifies in favour of criminalization of non-enforcement of judgements. After all, the enforcement of a judgement is one of the guarantees of accessibility of justice. It is necessary to take into account the significant prevalence of such socially dangerous behaviour, which gave grounds for the ECHR to state the consistency of non-enforcement of judgements in Ukraine (Yusubov 2019).



Let us note that the literature finds some shortcomings of criminal law on liability for non-enforcement of judgements, both in Ukraine and abroad. However, in our opinion, the establishment of criminal liability for negligent non-enforcement or improper enforcement of a judgement by supplementing the Criminal Code of Ukraine with a separate article is not appropriate. It would be more reasonable to make appropriate changes to the already existing Article 382 of the Criminal Code of Ukraine by removing the word “intentional” from the text of the current version of the article.

The article under investigation regarding the duration of non-enforcement of a judgement, which may be qualified as a crime under Art. 382 of the Criminal Code of Ukraine, needs to be detailed. This is evidenced by the case-law of the European Court of Human Rights. In particular, in the case of “Khvorostyanoy and Others v. Ukraine” dated July 25, 2013 (Legislation of Ukraine 2013), the ECHR found the complaints, in which the period of non-enforcement of the national court’s decision was 1 year and 2 months, inadmissible. And in the case of “Tsibulko and Others v. Ukraine”, in its judgement dated June 20, 2013 (Legislation of Ukraine 2013), the ECtHR declared cases, where non-enforcement of judgements lasted for 9 months, inadmissible. As we can see, it also follows from the ECHR judgements against Ukraine that there is a need to indicate the duration of non-enforcement, which can be qualified as a crime under Art. 382 of the Criminal Code of Ukraine. In particular, we propose to supplement the title of this article with the phrase “within a reasonable time.”

Besides, to eliminate the risk of avoiding liability for non-enforcement of immediately enforceable judgements, it is suggested to add the words “...or immediately enforceable” after the words “... which have entered into force”. It is expected that such additions will help to eliminate cases of escaping liability for non-enforcement of immediately enforceable judgements.

According to (Bogonyuk 2015), the provisions of the criminal legislation of those states, which do not have provisions regarding criminal liability for violation of the procedure for enforcement of judgements, should be considered unsuccessful. In support of such considerations, we should note a particular relevance of the introduction of liability in countries with a low level of enforcement of judgments.

Researcher in (Nalutsyshyn 2019) offers mitigation of criminal liability, noting that most often a penalty in the form of a fine is applied to persons who have committed a crime under Art. 382 of the Criminal Code of Ukraine. In our opinion, such a position is questionable given such considerations. The practice of linking “price” to human rights violations can be problematic, as it can have an unexpected negative impact on violators. Studies conducted by behaviour experts showed that people have cognitive biases. In case of applying purely financial sanctions, the violators may perceive the payment of fines as a way to pay for their offenses. In general, the fine should reduce the violation. However, empirical evidence suggests that fines free violators from concerns about social disapproval of their actions. The fine changes the perceptions of the violators about the nature of the obligation. In a famous experiment, Uri Gneezy and Aldo Rusticini showed that parents who are late to pick up their children from kindergarten feel guilty for their actions. But the application of a fine not only reduces disapproval for being late but has the effect that parents no longer consider being late a violation. Moreover, price setting conveys the message that social disapproval can be paid off (Fikfak 2018).

If we translate this into the context of human rights, we will conclude that the monetization of violations can allow potential violators to be exempt from social norms, forcing them to pay for violations. By paying for violations, their subjects are relieved of the discomfort or disapproval caused by their initial behaviour (Fikfak 2018).

Some researchers (Holovko & Shevchenko 2018) propose to exclude Part 4 of Article 383 of the Criminal Code of Ukraine, justifying this position by the fact that the principle of binding nature of judgements of national courts is one of the constitutional principles of justice, and has the highest legal force. Also, the legal consequences of non-enforcement of judgements rendered by national courts for individuals and legal entities are the same as in the case of non-enforcement of ECHR judgements (Holovko & Shevchenko 2018). We completely agree on this issue.

The scholars also rightly comment on the need to add the words “...or immediately enforceable” after the words “Intentional non-enforcement of a sentence, judgement, ruling, award that have entered into force...” and before the words “...or obstruction of their enforcement...” to eliminate the risk of escaping liability for non-enforcement of immediately enforceable

judgements (Dragan 2017). It is expected that such additions will help to avoid cases of escaping liability for non-enforcement of immediately enforceable judgements.

To consolidate the principle of binding nature and inevitability of judgements, it is also necessary to establish special sanctions for law enforcement officers in the form of imprisonment with deprivation of the right to hold certain positions and without alternative punishment in the form of a fine.

The provisions of Article 382 of the Criminal Code of Ukraine also need to be revised in terms of establishing the list of grounds for exemption from criminal liability. After all, the judicial system of both Ukraine and some foreign countries is familiar with such a negative phenomenon as a rendering of unjust, discriminatory judgements. However, in improving Article 382 of the Criminal Code of Ukraine in terms of determining the grounds for exemption from criminal liability, we consider it appropriate to take into account the fact that liability can occur only if the subject of the crime of "failure to enforce a judgement" is true judgement. According to the provisions of the legislation of Ukraine, an untrue judgement shall be subject to cancellation (Horbachova 2017). To avoid cases of conviction of subjects of non-enforcement of a judgement without their actual guilt, this circumstance must be taken into account by enshrining it in the list of grounds for exemption from criminal liability under Article 382 of the Criminal Code of Ukraine.

It is necessary to mention the cases of non-enforcement of judgements due to the imperfection of the legal framework. After all, to identify a significant violation of the law, it is necessary to establish a causal link between the act or omission and the violation of the law (Kamber 2020). For example, a detainee is not released from a detention centre upon presentation of a decision by an appellate court to lift a detention order. On the one hand - non-enforcement of a decision, which leads to a violation of rights, on the other hand - according to the provisions of the relevant departmental acts, a person shall be released from custody only upon receipt of the relevant court decision by special mail. As a result, we have to wait for release for months, but there is no corpus delicti of "non-enforcement of a judgment" (Horbachova 2017). This example must be taken into account during the establishment of the list of grounds for exemption from liability under Article 382 of the Criminal Code of Ukraine.

Besides, it would be appropriate to legislate a special basis for exemption from criminal liability for non-enforcement of the ECHR judgements, which follows from the provisions of the European Convention on Human Rights. After all, the Convention established a threshold of protection that States parties must comply with and, if provided for by national law, may violate.

The position of national courts concerning the ECHR judgment can be summed up in the famous statement of Lord Bingham, who notes that "National courts must keep pace with the Strasbourg jurisprudence as it evolves: no more, but certainly no less." In other words, national courts must use genuine ECHR interpretations to close national justice loopholes, especially when domestic law is silent (Giannopoulos 2019).

At the same time, we should note the doubtfulness of the statements of Ukrainian scholar (Bogonyuk 2015) regarding the reasonability of borrowing the experience of Kazakhstan, Armenia, and Kyrgyzstan by Ukraine on the grounds for release from criminal liability for escape from prisons, and their implementation in Article 382 of the Criminal Code. After all, criminal liability for escaping from prisons is established by Art. 393 of the Criminal Code of Ukraine, not Article 382.

Also, given the problems of numerous instructions and regulations that allow officials to "legally" delay the enforcement of a judgement, amendments to the Criminal Code of Ukraine should be made simultaneously with amendments in other regulations. This is because a judgement may not be enforced or delayed due to the imperfection of the legislation independent of the person authorized to enforce it. That is, a procedural violation may be due to legislative defects that have led to a lack of prevention and effective deterrence of the type of human rights violations under consideration.

## CONCLUSIONS

Based on the above data, we can come to the following conclusion: the issue of criminal law provisions regulating enforcement of judgements is relevant not only for Ukraine but also for many foreign countries. Nevertheless, there is almost no achievements of foreign scholars in this regard, and the research of Ukrainian scholars does not take into account recent legislative initiatives.

The results of the study confirm the need to revise the concept of enforcement of judgements.

The results of this study are important for scholars who will conduct further research in this area, as well as public authorities that determine public policy to ensure enforcement of judgements. Public authorities should review the results of this study to ensure awareness of the development of effective enforcement mechanisms.

Although we failed to prove the interdependence of the institution of criminal liability and a high level of compliance with judgements, the paper fully justifies the reasonability of criminalizing non-enforcement of judgements of national, regional and international courts. Accordingly, we proposed a new vision of the concept of criminal law compulsion to enforce judgements.

Taking into account the above considerations, we propose to enshrine a new version of Article 382 in the Criminal Code of Ukraine, saying as follows:

“Article 382. Non-Enforcement or Improper Enforcement or Evasion of Enforcement of a Judgement within a Reasonable Time”.

1. Non-enforcement or improper enforcement or evasion of enforcement of a sentence, judgement, ruling, award that has entered into force or is immediately enforceable, as well as judgements of the European Court of Human Rights, decisions of the Constitutional Court of Ukraine, and obstruction of their enforcement and non-compliance with the decree of the Constitutional Court of Ukraine shall be punishable by a fine of five hundred to one thousand non-taxable minimum incomes or imprisonment for up to three years.
2. The same actions committed by an official shall be punishable by a fine of seven hundred and fifty to one thousand non-taxable minimum incomes or imprisonment for a term up to five years, with deprivation of the right to hold certain positions or engage in certain activities for up to three years.
3. Actions provided for in part one or two of this Article committed by an official holding a responsible or especially responsible position, or a person previously convicted of a crime provided for in this Article, or if they have caused

significant harm to the rights and freedoms of citizens protected by law, or public interests or the interests of legal entities - shall be punishable by imprisonment for a term of three to eight years with deprivation of the right to hold certain positions or engage in certain activities for up to three years.

4. The actions provided for in part one or two of this article, committed by a law enforcement officer - shall be punishable by imprisonment for a term of five to eight years with deprivation of the right to hold certain positions for up to three years with confiscation of property.
5. A person shall be released from criminal liability for actions provided for in parts one to four of this Article, provided that the sentence, judgement, ruling, award are established to be untrue, as well as established inconsistency of the judgement of the European Court of Human Rights with national law, and under Part 4 also for reasons of regulatory imperfection”.

Our conclusions are important for issues related to the mechanism of criminal law support for enforcement of judgements. It is expected that the proposed legislative changes, if adopted, will increase the efficiency of enforcement of judgments in Ukraine and, as a consequence, reduce the number of appeals to the ECHR due to non-enforcement of judgments by our state, primarily judgements rendered by national courts.

The obtained results can be integrated into international practice.

Our proposed new concept of enforcement of judgments may be valuable not only for Ukraine but also for other countries with a low level of enforcement of judgements.

At the same time, we should note that the proposed model has no proven universality of implementation, and depends on the specifics of the legal system of each country.

The article presents best practices and data that can serve as a guide for future research in this area, as well as legislative initiatives on criminal law support for the enforcement of judgments in Ukraine and the world.

Finally, we should note that the issue of criminal law support for enforcement of judgements requires further

scientific research in the direction of identifying the shortcomings of criminal liability for non-enforcement of judgements, as well as finding ways to eliminate them.

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