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## Application of international humanitarian law by the European Court of Human Rights

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■ **Abstract.** The problem of human rights protection is particularly acute during armed conflicts, when the most widespread and serious human rights violations occur. International humanitarian law is a reliable tool for countering such violations, specifically through the implementation of its norms alongside the European Convention on Human Rights in the judgments of the European Court of Human Rights. The purpose of this study was to make some generalisations about the approaches of the European Court of Human Rights to determining the relationship and correlation between the European Convention on Human Rights and international human rights law, international humanitarian law, and the limits and conditions of application of international humanitarian law by the European Court of Human Rights. The study employed a combination of methods of cognition to collect, analyse, and interpret information, namely: documentary, statistical, legal, historical, and critical. The chosen methodology ensures the objectivity and reliability of the study. The study was based on the judgments of the European Court of Human Rights, which examine, analyse, and apply international humanitarian law, as well as on academic publications, recommendations and explanations of international institutions, experts, and human rights organisations regarding the relationship between international human rights law, the European Convention on Human Rights and international humanitarian law, and the possibility of their simultaneous application. The study summarised a range of legal positions of the European Court of Human Rights, which helped to identify the principal approaches and trends in the application of international humanitarian law in the consideration of complaints of human rights violations in armed conflicts, including the expansion of the practice of applying international humanitarian law, strengthening the protection of human rights in armed conflict, and attention to new challenges associated with armed conflicts. The practical significance of the study lies in the fact that it contributes to a better understanding of international humanitarian law and the legal positions of the Court, and to the development of additional mechanisms for ensuring respect for human rights and international humanitarian law

■ **Keywords:** European Convention on Human Rights; international human rights law; legal position; law enforcement; armed conflict

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## ■ Introduction

The European Court of Human Rights (the ECHR, the Court), as an international court that monitors compliance with the European Convention on Human Rights<sup>1</sup> (the Convention) by the States Parties, is one of the key institutions for the protection of human rights in Europe. The significance of the ECHR and its activities lies in the fact that the ECHR issues judgments that oblige states to perform their obligations under the Convention to respect fundamental human rights. The Court's judgments are an important source of international human rights law (IHRL), and the Court's activities contribute to the expansion of cooperation in the field of human rights protection between states and the development of strengthening democratic institutions, which is of particular importance in times of armed conflict. Such conflicts, posing a serious threat to human rights, lead to violations of a range of such rights, including those guaranteed by the Convention, which has led to a considerable number of interstate and individual applications to the Court, the consideration of which has prompted the Court to seek effective approaches that allow for the application of not only the Convention, but also international humanitarian law (IHL) governing the conduct of armed conflicts. Thus, the Court's practice has developed a relevant trend. This requires an investigation of the Court's position on the limits and conditions of application of IHL, the interpretation of its provisions, and the relationship between the IHRL, the Convention, and IHL. The Court's legal opinions in which IHL is applied reflect the further expansion of such application, which contributes to the strengthening of human rights protection in armed conflicts and contributes to the development of IHL practice and its interpretation. For national law and law enforcement, the significance of such legal positions cannot be overestimated considering the circumstances of the ongoing international armed conflict. The relevant provisions should be considered to expand the possibilities and prospects for human rights protection by the ECHR in the context of the Convention and IHL, and to introduce additional mechanisms for ensuring human rights in the context of armed conflict into national law.

The application of IHL by the Court has been investigated at various times primarily in the context of the relationship between IHL, IHRL, and the Convention. Investigating the harmonisation of the norms of International Counter-Terrorism Law and IHL, V. Saul (2021) concludes that they need to be

complementary. M. Sassòli (2019), focusing on the contradictions that affect IHL in practice, examined when IHL applies, its basic rules, how to ensure its observance, and covered the traditionally relevant issue of distinguishing between international and non-international armed conflicts. V. Saul & D. Akande (2020) propose an optimised approach to the mutual coherence between the International Counter-Terrorism Law and IHL, which is to recognise the legitimacy of both branches of law and minimise the negative mutual influence, which is fully supported by P. Askary (2022). T. Ferraro (2021) analyses the applicability of IHL in the context of counter-terrorism measures and operations, as well as the conditions for the effective joint application of IHL, the provisions of the International Counter-Terrorism Law and sanctions regimes.

A range of publications are devoted to the investigation of individual cases and legal positions of the ECHR concerning armed conflicts and human rights violations during these conflicts. Thus, M. Longobardo & S. Wallace (2022), analysing the Court's conclusions in the 2021 case of "Georgia v. Russia (II)"<sup>2</sup> on the applicability of the Convention to the conduct of hostilities, summarise that the Court's conclusion is unconvincing, and the arguments are based on extra-legal considerations rather than on a correct interpretation of the concept of state jurisdiction under the Convention. The issue of the application of IHL in the context of the armed conflict in Ukraine is also currently widely discussed. O. Kaluzhna & K. Shuneych (2022) investigated the mechanisms of accountability for war crimes committed as a result of the Russian invasion of Ukraine in February 2022.

The topic of mutual influence of the Court's judgments and national legislation stays relevant for discussion within the framework of scientific research. Through an analysis of judicial practice and interviews with government officials, K. Dzehtsiarou (2023) examines the influence of third parties (states) on the Court's reasoning and concludes that the Court is aware of the objectives of national governments and considers them. W. Phelan (2021) investigated the role of the Constitutional Courts of Germany and Italy in the development of the Court's jurisprudence. Analysing its practice in cases based on applications of national judges, A. Demyda (2021) states that the Court's judgments are reflected in national legislation by amending them with due regard to the principles of justice.

<sup>1</sup> Convention on the Protection of Human Rights and Fundamental Freedoms. (1950, November). Retrieved from [https://zakon.rada.gov.ua/laws/show/995\\_004#n421](https://zakon.rada.gov.ua/laws/show/995_004#n421).

<sup>2</sup> Judgment of the of the European Court of Human Rights in the Case No. 38263/08 "Georgia v. Russia (II)" (2021, January). Retrieved from <https://rm.coe.int/georgia-v-russia-ii-gc-ukr/1680a58450>.

The purpose of this study was to summarise the Court's approaches to determining the relationship and correlation between the Convention (as the main legal instrument) and the IHRL, IHL, as well as the limits and conditions for the Court's application of IHL rules in judicial practice.

## ■ Materials and methods

The methodology for investigating the application of IHL by the ECHR comprises a set of methods and is an important component of such a study, as it ensures its objectivity and reliability. Among the methods of cognition used to collect, analyse, and interpret information was the documentary method, which involves the analysis of documents related to the application of IHL by the Court. Such documents include court decisions<sup>1,2</sup>, legal acts of the Court<sup>3,4</sup>. The legal method helped to analyse the legal norms and principles related to the application of IHL by the ECHR. This method was employed to determine how certain provisions of IHL and the Convention are interpreted by the ECHR. The historical method involved the investigation of the historical context to interpret information on the application of the IHL by the Court, and it was used to find out how the application of the IHL the Court has evolved over time. The critical method involved using a critical approach to interpret information on the application of the IHL by the ECHR, and helped to predict how the application of the IHL by the ECHR can be improved in the future. The theoretical framework of the study was based on publications that address the fundamental issues of the IHL concept and its application (Mégré & Swinden, 2019; Dzehtsiarou & Tzevelekos, 2022; Longobardo & Wallace, 2022).

The study analysed the provisions of the European Convention on Human Rights<sup>5</sup>, the Third Geneva Convention relative to the Treatment of Prisoners of War<sup>6</sup>, and the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War<sup>7</sup>, which were used in the analysed ECHR cases. To clarify the ECHR's approaches to the implementation of IHL, the Court's judgments in "Hassan v. The United Kingdom"<sup>8</sup>, "Ukraine and the Netherlands v. Russia"<sup>9</sup>, "Georgia v. Russia"<sup>10</sup>, "Banković and others v. Belgium and others"<sup>11</sup> were investigated. The analysed documents are the principal international instruments related to the protection of human rights and humanitarian norms in wartime. The specificity of their analysis lies in the study and determination of how each of these documents and their concrete provisions are applied in the judicial practice of the ECHR. The analysis included the study of court decisions in cases involving violations of these conventions, as well as the establishment of standards and precedents determined by the court following the requirements of these international documents, and the compliance of states' actions with the provisions of the Convention.

## ■ Results and discussion

Article 32 of the Convention stipulates that the Court has the power to examine all questions relating to the interpretation and application of the Convention and its Protocols as prescribed in Articles 33, 34, 46, and 47. In case of a dispute over jurisdiction, the Court shall independently resolve the dispute<sup>12</sup>. Thus, the principal legal instrument for the Court's activities is the ECHR and its Protocols, but the need to address the issues raised in complaints related to human rights violations during armed conflicts has

<sup>1</sup> Judgment of the European Court of Human Rights in the Case No. 38263/08 "Georgia v. Russia (II)". (2021, January). Retrieved from <https://hudoc.echr.coe.int/eng#%7B%22tabview%22:%5B%22document%22%5D%22itemid%22:%5B%22001-207757%22%5D%7D>.

<sup>2</sup> Judgment of the European Court of Human Rights in the cases Nos. 8019/16, 43800/14 and 28525/20 "Ukraine and the Netherlands v. Russia". (2022, November). Retrieved from <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-222889%22%5D%7D>.

<sup>3</sup> Convention on the Protection of Human Rights and Fundamental Freedoms. (1950, November). Retrieved from [https://zakon.rada.gov.ua/laws/show/995\\_004#n421](https://zakon.rada.gov.ua/laws/show/995_004#n421).

<sup>4</sup> The Vienna Convention on the Law of International Treaties. (1969, May). Retrieved from [https://zakon.rada.gov.ua/laws/show/995\\_118#Text](https://zakon.rada.gov.ua/laws/show/995_118#Text).

<sup>5</sup> Convention on the Protection of Human Rights and Fundamental Freedoms. (1950, November). Retrieved from [https://zakon.rada.gov.ua/laws/show/995\\_004#n421](https://zakon.rada.gov.ua/laws/show/995_004#n421).

<sup>6</sup> Geneva Convention on the Treatment of Prisoners of War. (1949, August). Retrieved from [https://zakon.rada.gov.ua/laws/show/995\\_153#Text](https://zakon.rada.gov.ua/laws/show/995_153#Text).

<sup>7</sup> Geneva Convention on the Protection of the Civilian Population during War. (1949, August). Retrieved from [https://zakon.rada.gov.ua/laws/show/995\\_154#Text](https://zakon.rada.gov.ua/laws/show/995_154#Text).

<sup>8</sup> Judgment of the European Court of Human Rights in the Case No. 29750/09 "Hassan v. the United Kingdom". (2014, September). Retrieved from <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-153724%22%5D%7D>.

<sup>9</sup> Judgment of the European Court of Human Rights in the Cases Nos. 8019/16, 43800/14 and 28525/20. "Ukraine and the Netherlands v. Russia". (2022, November). Retrieved from <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-222889%22%5D%7D>.

<sup>10</sup> Judgment of the European Court of Human Rights in the Case No. 38263/08. "Georgia v. Russia (II)". (2021, January). Retrieved from <https://hudoc.echr.coe.int/eng#%7B%22tabview%22:%5B%22document%22%5D%22itemid%22:%5B%22001-207757%22%5D%7D>.

<sup>11</sup> Judgment of the European Court of Human Rights in the Case No. 52207/99. "Banković and Others v. Belgium and Others". (2001, December). Retrieved from <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-22099%22%5D%7D>.

<sup>12</sup> Convention on the Protection of Human Rights and Fundamental Freedoms. (1950, November). Retrieved from [https://zakon.rada.gov.ua/laws/show/995\\_004#n421](https://zakon.rada.gov.ua/laws/show/995_004#n421).

prompted the Court to formulate its position on the possibility of applying IHL.

To substantiate this position, the Court refers to the case law of the UN Human Rights Committee<sup>1</sup>, the International Court of Justice<sup>2,3,4</sup>, the Vienna Convention on the Law of Treaties<sup>5</sup>, and the conclusions of academic institutions and human rights organisations (Hudoc. European Court of Human Rights, n.d.). In the case of “Banković and others v. Belgium and others”<sup>6</sup>, it was noted that the principles underlying the Convention cannot exist or be applied in isolation. The Court is also obliged to consider any relevant rules of international law when deciding on matters within its competence and, accordingly, to establish state responsibility following the basic principles of international law. The Convention is to be interpreted in harmony with the other principles of international law of which it is a part, to the extent possible. In “Hassan v. The United Kingdom”<sup>7</sup>, the Court notes that, according to the case law of the International Court of Justice, the European Court considers that even in the circumstances of international armed conflict, the guarantees provided by the ECHR are still applicable, albeit interpreted in the context of IHL. As a result of the coexistence of guarantees prescribed by IHL and the Convention during an armed conflict, the grounds for authorised deprivation of liberty set out in Article 5<sup>8</sup> should be consistent as far as possible with the detention of prisoners of war and civilians who pose a security risk under the third and fourth Geneva Conventions<sup>9,10</sup>.

These provisions define the conceptual framework for the Court’s application of IHL and are reproduced in judgments to substantiate the Court’s position on the list of applicable law in cases of human rights violations in armed conflict. Notably, the growing number of scientific publications (Korniienko, 2022; Levchenko, 2022; Biloskurska & Fedorchuk, 2022) on the regulation of human rights restrictions in the context of armed conflict is evidence of the urgent need to address such issues, specifically in Ukraine.

The Court’s approach to referring to IHL as a separate area of law enforcement in the structure of judgments is common, but not constant. When determining the normative basis of a decision, specifically IHL, the Court in some cases provides for such a section. See, for instance, “Relevant International and National Law and Practice” in the case of “Hassan v. The United Kingdom”<sup>11</sup>, which states as follows: the provisions of the Third Geneva Convention of 12 August 1949<sup>12</sup> relative to the Treatment of Prisoners of War and the Fourth Geneva Convention of 12 August 1949<sup>13</sup> relative to the Protection of Civilian Persons in Time of War, which are directly relevant to the issues raised in the present case (para. 33); the practice of the UN International Court on the relationship between IHL and IHRL (paras. 35-37); Report of the Study Group of the International Law Commission on the Fragmentation of International Law: Challenges posed by the Diversification and Expansion of the Field of International Law, adopted by the International Law Commission at its 58<sup>th</sup> session in 2006

<sup>1</sup> General Comment of the Human Rights Committee No. 36(2018) “On article 6 of the International Covenant on Civil and Political Rights, on the Right to Life. Advanceunedited version CCPR/C/GC/36”. (2018, October). Retrieved from [https://www.ohchr.org/Documents/HRBodies/CCPR/CCPR\\_C\\_GC\\_36.pdf](https://www.ohchr.org/Documents/HRBodies/CCPR/CCPR_C_GC_36.pdf).

<sup>2</sup> Advisory Opinion of the International Court of Justice No. ICJ226 “Legality of the Threat or Use of Nuclear Weapons”. (1996, July). Retrieved from <https://www.icj-cij.org/sites/default/files/case-related/95/095-19960708-ADV-01-00-EN.pdf>.

<sup>3</sup> The Legal Consequences of the International Court of Justice No. 131 “Construction of a Wall in the Occupied Palestinian Territory International Court of Justice”. (2004, July). Retrieved from <https://www.icj-cij.org/sites/default/files/case-related/131/131-20040709-ADV-01-00-EN.pdf>.

<sup>4</sup> Judgment of the of the International Court of Justice in the Case “Concerning Armed Activity on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)”. (2005, December). Retrieved <https://casebook.icrc.org/case-study/icj-democratic-republic-congouganda-armed-activities-territory-congo>.

<sup>5</sup> The Vienna Convention on the Law of International Treaties. (1986, June). Retrieved from [https://zakon.rada.gov.ua/laws/show/995\\_118#Text](https://zakon.rada.gov.ua/laws/show/995_118#Text).

<sup>6</sup> Judgment of the European Court of Human Rights in the Case No. 52207/99. “Banković and Others v. Belgium and Others”. (2001, December). Retrieved from <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-22099%22%5D%7D>.

<sup>7</sup> Judgment of the European Court of Human Rights in the Case No. 29750/09. “Hassan v. the United Kingdom”. (2014, September). Retrieved from <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-153724%22%5D%7D>.

<sup>8</sup> Convention on the Protection of Human Rights and Fundamental Freedoms. (1950, November). Retrieved from [https://zakon.rada.gov.ua/laws/show/995\\_004#n421](https://zakon.rada.gov.ua/laws/show/995_004#n421).

<sup>9</sup> Geneva Convention on the Treatment of Prisoners of War. (1949, August). Retrieved from [https://zakon.rada.gov.ua/laws/show/995\\_153#Text](https://zakon.rada.gov.ua/laws/show/995_153#Text).

<sup>10</sup> Geneva Convention on the Protection of the Civilian Population during War. (1949, August). Retrieved from [https://zakon.rada.gov.ua/laws/show/995\\_154#Text](https://zakon.rada.gov.ua/laws/show/995_154#Text).

<sup>11</sup> Judgment of the European Court of Human Rights in the Case No. 29750/09. “Hassan v. the United Kingdom”. (2014, September). Retrieved from <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-153724%22%5D%7D>.

<sup>12</sup> Geneva Convention on the Treatment of Prisoners of War. (1949, August). Retrieved from [https://zakon.rada.gov.ua/laws/show/995\\_153#Text](https://zakon.rada.gov.ua/laws/show/995_153#Text).

<sup>13</sup> Geneva Convention on the Protection of the Civilian Population during War. (1949, August). Retrieved from [https://zakon.rada.gov.ua/laws/show/995\\_154#Text](https://zakon.rada.gov.ua/laws/show/995_154#Text).

(para. 38)<sup>1</sup>. The case of “Georgia v. Russia (II)”<sup>2</sup> contains sections on the “Relationship between the provisions of the Convention and international humanitarian law” and “Relevant international humanitarian law”. In this case, the Russian Federation claimed that the ECHR did not have jurisdiction over its compliance with IHL. The Court rejected these arguments using the rationale given above (conceptual basis).

The Convention contains the words “war” and “martial law” (Article 15: Derogation from obligations in time of public emergency)<sup>3</sup>. According to O.V. Taran (2023), this rule concerns the specifics of the application (rather than complete termination) of the Convention in the context of the lawful derogation of states from their obligations under the Convention. The conditions under which the retreat is possible, according to the said article, are war or other public danger that threatens the life of the nation (emergency situation). The limits of derogation are determined by the severity of the situation and the condition that the restrictive measures do not contradict other obligations of the state under international law. This or other rules do not regulate the application of the Convention exclusively in peacetime.

The cases in which human rights violations related to non-compliance with IHL were the subject of consideration concerned armed conflicts (international and non-international), e.g., the conflict between Turkey and Cyprus<sup>4</sup>, Georgia and the Russian Federation over Abkhazia and South Ossetia<sup>5</sup>, Armenia and Azerbaijan over Nagorno-Karabakh<sup>6</sup>, Northern Ireland and the United Kingdom<sup>7</sup>, the conflict in Chechnya regarding violations of IHL by the Russian authorities<sup>8</sup>, etc. They determined the formation of the Court’s practice of extending its jurisdiction to consider complaints of human rights violations that occurred in the context of armed conflicts. This practice is considered to be well-established.

Currently, the Convention applies not only in peacetime, but also during armed conflicts (international and non-international), which are regulated by

IHL. This is not to say that the permissible acts, prohibitions, and restrictions prescribed by IHL and the Convention coincide, on the contrary, there is sometimes a substantial difference between them, which is conditioned by the very purpose and basic conditions of their application. However, the obligation to follow the minimum human rights standards stays in the context of armed conflict, with its scope and conditions determined in each case by its own legal basis (the Convention, IHL), as the absence of any legal regulation in emergency situations caused by hostilities will lead to an even greater crisis and may contribute to arbitrariness, cruelty, and abuse. It is the cases where the scope of protection under the Convention and IHL is different that pose a particular challenge in resolving such cases by the ECHR. In such cases, the law of the Court and IHL are correlated according to the general rule of *lex generalis* to *lex specialis* (Buromenskyi, 2023). Therefore, the Court applies an approach that allows it to “divide” the situation in dispute into components and considers these components in the light of the relationship between the Convention and IHL, with the criterion of the permissibility of the restriction being determined according to IHL *lex specialis*, considering the circumstances of derogation under Article 15 of the Convention.

As for the delineation of competence of the Court and other international courts in the context of IHL application, it stems from jurisdiction and international instruments, i.e., the Court, in case of a human rights violation that occurred in the context of an armed conflict (as a basis for the application of IHL) and the party’s affiliation with a Council of Europe member state, may consider such cases according to its competence to protect human rights under the Convention. International courts specialise in hearing cases related to violations of IHL, including war crimes and human rights violations during armed conflicts, their jurisdiction extends to all persons regardless of their nationality, and they have special rules and procedures for hearing such cases.

<sup>1</sup> European Court of Human Rights in the Case No. 29750/09 “Hassan v. the United Kingdom”. (2014, September). Retrieved from <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-153724%22%5D%7D>.

<sup>2</sup> Judgment of the European Court of Human Rights in the Case No. 38263/08 “Georgia v. Russia (II)”. (2021, January). Retrieved from <https://hudoc.echr.coe.int/eng#%7B%22tabview%22:%5B%22document%22%2C%22itemid%22:%5B%22001-207757%22%5D%7D%7D>.

<sup>3</sup> Convention on the Protection of Human Rights and Fundamental Freedoms. (1950, November). Retrieved from [https://zakon.rada.gov.ua/laws/show/995\\_004#n421](https://zakon.rada.gov.ua/laws/show/995_004#n421).

<sup>4</sup> European Court of Human Rights in the Case No. 25781/94 “Cyprus v. Turkey”. (1996, June). Retrieved from <https://hudoc.echr.coe.int/eng?i=001-3213>.

<sup>5</sup> Judgment of the of the European Court of Human Rights in the Case No. 38263/08 “Georgia v. Russia (II)”. (2021, January). Retrieved from <https://hudoc.echr.coe.int/eng#%7B%22tabview%22:%5B%22document%22%2C%22itemid%22:%5B%22001-207757%22%5D%7D%7D>.

<sup>6</sup> Application to the European Court of Human Rights No. 42521/20 “Armenia v. Azerbaijan”. (2021, March). Retrieved from <https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=003-6927916-9310877&filename=Receipt%20of%20application%20forms%20in%20two%20inter-State%20cases%20related%20to%20Nagorno-Karabakh%20conflict.pdf>.

<sup>7</sup> Judgment of the of the European Court of Human Rights in the Case No. 5310/71 “Ireland v. the United Kingdom”. (2018, March). Retrieved from <https://hudoc.echr.coe.int/fre#%7B%22itemid%22:%5B%22001-181585%22%5D%7D>.

<sup>8</sup> Judgment of the of the European Court of Human Rights in the Case No. 40165/07 and 2593/08. “Adzhigitova and Others v. Russia”. (2021, June). Retrieved from <https://hudoc.echr.coe.int/eng?i=001-210754>.

Thus, these courts have different jurisdictions, but there is an overlap in jurisdiction over human rights violations in armed conflict or related situations. The UN International Court of Justice has noted that some rights may be exclusively the prerogative of IHL<sup>1</sup>; others may be exclusively matters of IHRL; but some may be subject to regulation by both of these branches of international law.

The above, admittedly, does not exhaust the problems of application of IHL by the ECHR, and some of the Court's formulations do not contribute to the predictability of its decisions and the definition of important concepts in the context of armed conflicts and the application of IHL. For instance, in the case of "Georgia v. Russia (II)"<sup>2</sup> mentioned above, the Court emphasises that the very fact of hostilities between the enemy's armed forces to establish control over the territory in chaos is important, as it indicates not only the absence of "effective control" over this territory, but also the absence of any form of "power and control of a state agent" over individuals. Such an approach effectively leaves the Court's legal assessment of possible violations by the parties to the conflict outside the scope of its review. In this case, the respondent country actually formulated the thesis of the "context of chaos" (para. 86) and tried to apply it in the case of Ukraine and the "Netherlands v. Russia"<sup>3</sup>. Despite the Court's rejection of such arguments in the present case (paras. 703-704), one cannot deny the existence of the problem of vagueness of concepts and lack of predictability of the Court's position in such circumstances. This is particularly relevant for Ukraine, as the Court is awaiting cases related to the armed conflict since 2014.

## ■ Discussion

The study, which aims to summarise the Court's legal positions on the application of IHL, contributes to the development of scientific knowledge and practical approaches to the correlation between the IHRL (the Convention) and IHL, developed in such studies as M. Sassòli (2019) and E. Lush (2023), as different branches of law that can be applied simultaneously to protect human rights in armed conflicts. This helps to strengthen and reinforce such protection and the development of democratic institutions in general. Prospects and needs for scientific development of knowledge on the relationship between IHL and IHRL (the Convention) are determined by the fact that IHL and

IHRL must evolve according to modern challenges. or IHL, the issues of its application in non-international armed conflicts, its role in the protection of civilians and the search for ways to improve the effectiveness of this protection, and the mechanisms of interaction between IHL and IHRL (the Convention) and international criminal law stay relevant. For the IHRL, the prospects for development lie in exploring new ways to ensure its enforcement and observance in situations of armed conflict, more effective alignment with IHL, and strengthening the significance of human rights law in ensuring peace and security. In the Court's practice, the interpretation and application of IHL provisions is of particular importance, which is combined with the Court's interaction with other international judicial bodies and the need to ensure the consistency of such interpretation and application.

According to E. Lush (2023), much of the debate on International Humanitarian Law (IHL) and International Law for the Protection of Persons in Armed Conflict (IHRL) in recent years has focused on the potential for convergence between the two regimes to enhance the protection of individuals during hostilities. At the same time, there are serious human rights violations during armed conflicts, specifically in Ukraine, Yemen, Ethiopia, Afghanistan, and other countries. Although IHL and IHRL have different objectives, both contain rules that are intended to protect individuals in such situations. By incorporating IHL norms into the IHRL framework, the protection of individuals in armed conflict can be enhanced. This mutual complementarity will allow treaty bodies to interpret and comment on the implementation of IHL by states parties, which will contribute to increased respect for such norms, including related enforcement and communication mechanisms.

F. Mégret & C. Swinden (2019), K. Dzehtsiarou & V.P. Tzevelekos (2022) and M. Longobardo & S. Wallace (2022) have investigated concrete situations of application of IHL by the ECHR. They highlight both the Court's general approach to the grounds for application of IHL and the specifics, limits, and conditions of application of IHL to certain persons and circumstances. Thus, F. Mégret & C. Swinden (2019) cover the problems of applying IHL and competition with IHRL using the example of the regulation of the return of the remains of combatants in international armed conflicts and the regime of such actions in

<sup>1</sup> The Legal Consequences of the International Court of Justice No. 131 "Construction of a Wall in the Occupied Palestinian Territory International Court of Justice". (2004, July). Retrieved from <https://www.icj-cij.org/sites/default/files/case-related/131/131-20040709-ADV-01-00-EN.pdf>.

<sup>2</sup> Judgment of the of the European Court of Human Rights in the Case No. 38263/08 "Georgia v. Russia (II)". (2021, January). Retrieved from <https://hudoc.echr.coe.int/eng#%7B%22tabview%22:%5B%22document%22%2C%22itemid%22:%5B%22001-207757%22%5D%7D>.

<sup>3</sup> Judgment of the European Court of Human Rights in the Cases Nos. 8019/16, 43800/14 and 28525/20 "Ukraine and the Netherlands v. Russia". (2022, November). Retrieved from <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-222889%22%5D%7D>.

non-international armed conflicts, if the state considers members of armed groups to be terrorists and refuses to return them to their families. It appears that the experience of solving such problems may be useful in cases in the context of Ukraine's conflict with Russia. D. Thym (2020) analyses the controversial judgments of the Grand Chamber of the ECHR on migrants and refugees in Spain, which, according to the researcher, mark a turning point, indicating a temporary end point of the period of dynamism of interpretation by the ECHR, which played a substantial role in the progressive evolution of international law on refugees and human rights. The authors of the present study support the researcher's position that the Court has contributed to the dynamic development of IHL, specifically by expressing its willingness to broadly interpret the range of sources of this branch of law to clarify the provisions of the Convention in concrete cases. S. Wallace (2019) conducted a detailed analysis of how the Convention is applied in the context of military operations of all kinds and found relativism in the standards applied by the ECHR in such cases, which to some extent coincides with conclusions presented in this study about the existence of the problem of uncertainty of concepts and lack of predictability of the Court's position in such circumstances. Interesting are the conclusions of M.V. Buromenskyi (2023), who also used the method of analysis and generalisation of individual ECHR judgments on the application of IHL in cases related to armed conflicts. Thus, the researcher differentiates the ECHR's interpretation of the Convention in the light of IHL into clear (the judgment in the case contains references to concrete IHL norms or principles) and unclear (the judgment in the case does not contain concrete references to IHL norms or principles). Evidently, in the second case, the Court interpreted the Convention in the broadest international legal context, specifically, considering international judicial practices.

The study of the Court's legal positions using this approach (individual cases) helped to gain an objective understanding of how IHL is applied by the Court in concrete situations, including its interpretation. According to Ukrainian researchers O. Kaluzhna & K. Shunevych (2022) and O. Taran *et al.* (2022), it is also of particular importance to national law enforcement in the context of creating and improving accountability mechanisms for war crimes. It is difficult to disagree with this position, as bringing the Russian military to justice for crimes committed in Ukraine is currently a priority for legal researchers.

## ■ Conclusions

The study of the application of IHL by the ECHR necessitated the elaboration of the Court's legal positions formulated in the consideration of complaints

on human rights violations in armed conflicts, the investigation of scientific sources on the correlation between IHL and IHRL (the Convention), the problems of interpreting IHL, the possibilities of its application by the Court, and the analysis of concrete judgments of the Court in which it refers to IHL.

Based on the findings of this study, some generalisations were offered regarding the Court's approach, namely that it rules on cases involving human rights violations within the scope of the Convention regardless of whether the violation occurred during an armed conflict or in peacetime. The grounds for the application of IHL in such cases are as follows: simultaneous force of the Convention and IHL; relevance to a concrete situation; and binding on the actors in that situation (usually parties to an armed conflict). Thus, even though the ECHR is not a specialised court for the application of IHL, like other courts, since IHL does not directly regulate this issue, in cases of proceedings on complaints related to the context of armed conflict, it considers and refers to the relevant provisions of IHL, since there is no other way to analyse the relevant legislation, which is a mandatory component of the judgment and is necessary for the court's reasoning and conclusions. The review and analysis of legislation (a matter of law) cannot be limited to the statement of the existence of relevant IHL rules; it always requires interpretation and clarification of the specific features of its impact and relevance to a concrete situation. The specific features of the simultaneous application of IHL and the Convention by the Court are that in each situation it examines the presence or absence of possible contradictions between the rules of IHL and the Convention and determines the rules of IHL *lex specialis*, if they apply to a concrete situation and regulate the relevant legal relations. These provisions can be defined as a relatively well-established legal position of the Court regarding the legality of the application of IHL by the Court, the conditions and limits of such application.

Promising areas for national law and law enforcement include improving legislation on the protection of human rights during armed conflict, increasing the effectiveness of legal regulation of issues related to armed conflict, effective application of IHL by courts (which requires the development of clearer criteria for determining when IHL is applicable) and human rights law and relevant ECHR judgments. Further research in the context of the study of the application of IHL by the ECHR may focus on solving the problems of law enforcement in the context of competition between the norms of the Convention and the IHL, the specifics of IHL application in non-international armed conflicts, and the development of legal instruments for the application of IHL in the context of the Convention.

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## ■ Conflict of Interest

The author of this study declares no conflict of interest.

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## Застосування міжнародного гуманітарного права Європейським судом з прав людини

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■ **Анотація.** Проблема захисту прав людини гостро постає під час збройних конфліктів, коли відбуваються наймасовіші та найсерйозніші їх порушення. Міжнародне гуманітарне право є надійним інструментом протидії таким порушенням, зокрема шляхом реалізації його норм поряд з Європейською конвенцією про захист прав людини в рішеннях Європейського суду з прав людини. Метою статті є здійснення окремих узагальнень щодо підходів Європейського суду з прав людини до визначення зв'язку та співвідношення Європейської конвенції з прав людини та міжнародного права прав людини, міжнародного гуманітарного права, меж та умов застосування міжнародного гуманітарного права Європейським судом з прав людини. Під час дослідження застосовано сукупність методів пізнання для збирання, аналізу й інтерпретації інформації, а саме: документальний, статистичний, юридичний, історичний, критичний. Обрана методологія дає змогу забезпечити об'єктивність і достовірність дослідження. Підґрунтям роботи є рішення Європейського суду з прав людини, у яких досліджено, проаналізовано й застосовано міжнародне гуманітарне право, наукові публікації, рекомендації та роз'яснення міжнародних інституцій, експертів і правозахисних організацій, що стосуються співвідношення міжнародного права прав людини, Європейської конвенції з прав людини й міжнародного гуманітарного права, можливості їх одночасного застосування. За результатами дослідження узагальнено низку правових позицій Європейського суду з прав людини, що дає змогу виокремити основні підходи та визначити тенденції застосування міжнародного гуманітарного права під час розгляду скарг про порушення прав людини в умовах збройних конфліктів, зокрема розширення практики застосування міжнародного гуманітарного права, посилення захисту прав людини в умовах збройного конфлікту й уваги до нових викликів, пов'язаних зі збройними конфліктами. Практичне значення дослідження полягає в тому, що воно сприяє кращому розумінню міжнародного гуманітарного права та правових позицій Суду, напрацюванню додаткових механізмів забезпечення дотримання прав людини й міжнародного гуманітарного права

■ **Ключові слова:** Європейська конвенція з прав людини; міжнародне право прав людини; правова позиція; правозастосування; збройний конфлікт