The article deals with the peculiarities of legal regulation of electronic commerce within the European Union. The author of the article has analyzed in detail the legal framework and the legal norms that regulate the implementation of e-commerce in the EU and which have the greatest impact on the implementation of foreign economic activity. These norms were grouped in three directions: 1) norms that set the country of origin principle; 2) rules that recognize the legal force of electronic contracts and regulate the procedure for their conclusion; 3) rules that limit the liability of third party content providers. For this research, an analysis of secondary law of the European Union governing the conduct of electronic commerce within the Union has been carried out. Particular attention is paid to the study of the provisions of Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information services, in particular e-commerce, in the internal market, namely, on the internal market, aimed at promoting the development of the EU information services market in the EU, on the principles of the conclusion of electronic agreements in the EU, a list of the minimum information that the information society service provider must give to the customer in the EU, as well as the provisions minimizing the Internet intermediaries liability for the actions of third parties related to the implementation of electronic commerce.

Key words: electronic commerce, European Union, Directive 2000/31/EC, information society services.

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THE PIVOTAL ROLE OF THE CASE LAW OF THE COURT OF JUSTICE OF THE EUROPEAN UNION (CJEU) IN PROTECTING CITIZENS' RIGHTS

Problems to solve. This article discusses the key issues in the case law of the Court of Justice of the European Union and the ways in which it uses direct and indirect effects, both vertical and horizontal, as a tool through which to protect EU citizens' rights. The rights discussed in this article involve equal pay without gender-based discrimination, equal tariffs and commercial policy as well as equal and fair access into the countries of the European Union as per the free movement of persons.

Analysis and Literature review. To answer the question of whether the Court of Justice of the European Union served a pivotal role in protecting citizens' rights, various scholars have been considered in this analysis; P. Craig, R. Dehousse, S. Drake, P. Pescatore, R. Schuman, C. Tobler, J. Beglinger, and others. Furthermore, an important role in this assessment of the case law play the cases themselves; most prominent examples include *Van Gend en Loos* (1963), *Defrenne* (1976), *Van Duyn* (1974), *Ratti* (1979), *Marshall* (1986), *Marleasing* (1990), *Simmenthal* (1978) among others.

Aims of the article. This article aims to shed light on the issues surrounding the projection of citizens' rights under the principle of indirect effect, as exemplified by the case law of the Court of Justice of the European Union, particularly in the absence of the horizontal direct effect of directives.

Content of the article. The European Union (EU) is an international organisation based on the highest source of law, which is the Treaty. This is made up of the Treaty on the European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU) with an equal legal value to each other. These treaties have stemmed from the development of the EU since 1951 under the European Coal and Steel Community (ECSC) Treaty which was derived from six original members creating an international organisation establishing a common market for coal and steel. This established a formal treaty in Europe that provided economic collaboration as a means of integration to eliminate conflict through a common market. However, 'Europe will not be made at one' (Schuman, 1950) and therefore, the creation of the Treaty of Rome (1957) followed with an objective of the creation of a common market. This would mean the complete removal of trade barriers, joint external tariffs, a common commercial policy and a series of common policies (for example, in agriculture, education and monetary policy) to be run by the European Commission. Through the development of various amendments such as the 1986 Single European Act (SEA) economic integration was under way with the aim of 'progressively establishing the internal market over a period expiring on 31 December 1992' (SEA, 1987) and creating 'an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured' (SEA, 1987). However, after the creation of the constitution the 'progress on ratification came to an abrupt halt when France and the Netherlands rejected the EU Constitution in their referenda' (Dehousse, 2006).

The Treaty of Lisbon, which formed the basis for the TEU, introduced the second component to complete the creation of the EU: political integration. This was established through a three-pillar structure; the European Community (EC) pillar and the introduction of rights to EU citizens (Tobler & Beglinger, 2007) common foreign and

security policy pillar allowing intergovernmental policymaking and finally, the justice and home affair pillar (TEU, 1992). This created the Lisbon Treaty which allowed a transfer of sovereignty between states through a political and economic integration, with an attached protocol Charter of Fundamental Rights (Charter of Rights, 2000). Since Treaty of Lisbon, the Charter has equal legal value as the Treaty meaning it is also a primary source of law which is able to 'provide the institutional foundations for the European Union to move forward' (Craig, 2008: 18). Therefore, the EU is based on this series of international agreements and the principle of unanimity through intergovernmental conferences. These treaties codify the protection of EU citizens' rights.

In an attempt to explain the meaning of the protection of citizens' rights it is important to acknowledge three main principles to determine whether a citizen has a particular right. There must be the initial existence of the right, secondly, the citizen must have access to this right, and finally, there must be a satisfactory enforcement of the right. These three components allow for citizens' rights to be protected. These rights must be protected by member states. However, when examining the primary sources of EU Law; the Charter and, in particular, the Treaty, the case of Van Gend en Loos (Van Gend en Loos, 1963) demonstrated the problem which occurs when member states do not follow directives. Here, the principle of direct effect became significant because there was no satisfactory enforcement of the right to the elimination of custom duties on behalf of the Dutch state. Van Gend en Loos were transporting chemical goods over member state borders and were charged custom duties, which should not have been imposed due to Article 30 (TFEU), which states that 'custom duties between states must be eliminated and no new custom duties can be introduced' (Article 30 TFEU). Therefore, as a result of judicial creation of the Court of Justice of the EU (CJEU) and its teleological interpretation of the objectives of the Treaty, 'direct effects' (Van Gend en Loos, 1963) were produced, with the rationale being that 'individual rights which national courts must protect' were created. It is important to note that direct effect is a doctrine and is therefore not codified in the Treaty. The case exhibited the significance of Vertical Direct Effect (VDE) in relation to an individual standing against the state before the Dutch National Court. The result was that Van Gend en Loos were refunded and from that point, there was a constitutionalisation of EU law and in particular EU rights, free movement rights, which then became a fundamental status of EU citizens. The case of Van Gend en Loos was pivotal as it proved to have a significant constitutional implication and be a case in which the individual was able to challenge the state under the international order for the first time.

Similarly, the case of Defrenne [1976] contributed to the development of Horizontal direct Effect (HDE), involving an individual standing against another individual before a national court. The TFEU laid out an important provision on gender pay and stated that 'men and women should receive equal pay' (Defrenne, 1976) and this is to be a guaranteed right of an individual. The result of the Defrenne case meant that female workers would be reimbursed for pay that they did not receive for equal work. Significantly the court limited the retrospective effect of the law meaning it was 'impossible in principle to reopen the question as regards the past' (Defrenne, 1976) thus women could not start legal action with hindsight. This was on the condition that the directive enforcing the principle of gender pay equality was 'clear, precise and unconditional' and therefore, there was HDE enforcing the idea of 'l'état c'est moi' (Pescatore, 1983: 185) as Defrenne was able to take action for her rights as an individual against a private employer on the basis of international law. Both concepts of VDE and HDE mean that EU law confers upon individuals' rights that national courts must protect under the condition that the directive in question is 'clear, sufficiently precise and unconditional' (Salgoil, 1968) (meaning its operation must not depend upon further action or discretion by national or EU authorities).

The effects of VDE and HDE are, however, different when applying them to secondary sources of EU Law used by 'the European Parliament acting jointly with the Council and the Commission which 'shall make regulations and issue directives, take decisions, make recommendations or deliver opinions' (Article 288, TFEU) through which Institutional power within the EU is enacted. The discussion will focus on the directives of institutions and their implementation. Directives are addressed to member states, meaning it is the states' obligation to implement them, and are binding as to the result to be achieved, meaning that they are binding until they have been successfully implemented. In addition, directives have a time limit in which they must be implemented and allow for discretion for member states on how they choose to implement the directive, for example, member states must implement the directive within the specified time limit, however, are able to decide what national law should be passed for successful implementation. The case of Van Duyn demonstrated that if the necessary criteria for direct effect are filled (that the directive is clear, precise and unconditional) then the CJEU will rule for the directive to be directly effective. Van Duyn was denied access at the United Kingdom (UK) border due to her association with the Church of Scientology 'in accordance with the policy of the Government and with Rule 65 of the relevant Immigration Rules for Control of Entry' (Van Duyn, 1974) as this was directed by the 'the Secretary of state' personally. However, the directive (Directive No 64/- 221/EEC) had successfully fulfilled the criteria and therefore the member State (the United Kingdom) had to take into account, 'as a matter of personal conduct of the individual concerned' despite the individuals' (Van Duyn, 1974) association 'with some body or organization the activities of which the Member State considers socially harmful.' Therefore, despite the Member State placing national restrictions upon Van Duyn entrance to the UK, the directive had to take precedence over national law.

Nevertheless, there will be no direct effect in cases such as Ratti [1979] in which the time limit for the Member State to fulfil the directive is not yet expired.

The CJEU ruled that 'after the expiration of the period fixed for the implementation of a directive a Member State may not apply its internal law' (Ratti, 1979). The Italian state had not yet adapted the directive (Directive No 73/173/EEC) into compliance, however, the time limit for implementation of the directive had expired. This case

was significant as it demonstrated the importance of the time limit for implementation of directives, as in the case of *Ratti*, the CJEU established the enforcement of direct effect in the case of an expired time limit.

However, as demonstrated by the case of *Marshall*, there is an absence of an HDE in secondary sources of EU law. Directives are addressed to member states and therefore, *de facto*, cannot be on an individual basis, meaning that it is not possible for an individual to be held liable for a member state's failure to implement a directive. The CJEU stated that the 'purpose of the Directive is to put into effect in the Member States the principle of equal treatment for men and women as regards the various aspects of employment' (*Marshall*, 1986) meaning that both men and women must be 'guaranteed the same conditions without discrimination on grounds of sex' (*Marshall*, 1986). This was the case of *Marshall*, who was dismissed due to having 'passed the qualifying age for a State pension, which age is different under national legislation for men and women' (*Marshall*, 1986). The court ruled that the directive places Member States under the 'duty to take the necessary measures' enabling compensation for those pursuing claims of discrimination, and these must be 'sufficiently effective to achieve the objective of the Directive' (*Marshall*, 1986). Thus, the Member State was held liable for the case of 'discrimination on grounds of sex' (*Marshall*, 1986) as it was contrary to the Directive. It cannot be the private employer itself that is held liable for a Member State's failure to implement a directive, meaning there is an absence of an HDE in secondary sources of EU law.

The absence of an HDE signifies the pivotal role of indirect effect in protecting citizens' rights, and unlike the direct effect of directives, indirect effect applies in horizontal situations. Indirect effect is also known as the 'interpretative obligation' or the 'principle of harmonious interpretation' meaning national courts of Member States are to 'interpret the national law, wherever possible, in conformity with EU law' (*Von Colson*, 1984). Indirect effect is useful where the provisions of the EU measure are not sufficiently clear, precise and unconditional for direct effect to apply as demonstrated by the *Marleasing* [1990] case in which the CJEU ruled that 'in applying national law, whether the provisions in question were adopted before or after the directive, the national court called upon to interpret it is required to do so, as far as possible, in the light of the wording and the purpose of the directive in order to achieve the result pursued by the latter' (*Marleasing*, 1990). Article 4(3) TEU introduced the rationale of indirect effect declaring that Member States are to 'facilitate the achievement of the Union's tasks and refrain from any measure which could jeopardise the attainment of the Union's objectives' (Article 4(3) TFEU). This contains positive (implementation of the directive) and negative (refraining from jeopardising the objective of the directive) obligations of states. In extension, the Principle of Loyal Collaboration which means that once state become members of the union, they must implement EU law in good faith. The *Von Colson* case of harmonious interpretation demonstrated that when a directive is not implemented in an appropriate manner the judge would provide a teleological interpretation of EU law based on the objectives of the EU (including the achievement of a common market, free movement of goods and peoples and the protection of rights) (*Drake*, 2005).

Following the rationale of direct effect which focuses on the protection of citizens' rights, the CJEU introduced alternative ways in which this would be achieved in the absence of HDE. In some cases, not only indirect effect is valuable, but also the expansion of the vertical direct effect of secondary sources of EU law, known as the *Emanation* of the State. Individuals are able to seek alternative methods in the protection of their rights against private employers, in cases where the state does not implement the directives. Drawing on the case of *Foster v British Gas* [1990] the CJEU gave the 'state' the widest possible definition in order to reduce the rigour of the rule of no horizontal direct effect of directives. The new definition defines the state as a body made responsible by the state for providing a public service under state control and which possesses special powers exceeding those normally applicable to relations between individuals' (*Foster*, 1990). This was significant because it meant that any public employers, state authorities or private companies with special rights were to be considered representatives of the state and were therefore liable in court, which further aided the protection of citizens' rights. This alternative principle of the *Emanation* of the State significantly displays that indirect effect is not the only way in which citizens' rights can be protected in the absence of an HDE.

In addition to the *Emanation* of the State, the principles of Supremacy, State Liability and Preliminary References also act as alternatives to indirect effect, in the absence of an HDE, signifying that indirect effect does not always play the most pivotal role. These concepts are not codified in the Treaty, and thereby demonstrate the constitutional importance of the CJEU and its interpretative abilities in creating systems which will further protect citizens' rights in the absence of an HDE or as an alternative to indirect effect. The concept of Supremacy was first introduced by the case of *Costa v Enel* [1964] and was defined as the doctrine of EU Law (whether prior or subsequent) which confers upon individuals' rights that national courts must protect. This definition was significant as it meant that national courts of Member States had the obligation to set aside provisions of national law that were conflicting with the EU Law, due to direct effect, thereby creating a new legal order. It Supremacy enforced 'the integration into the laws of each Member State of provisions which derive from the Community, and more generally the terms and spirit of the Treaty, make it impossible for the States, as a corollary, to accord precedence to a unilateral and subsequent measure over a legal system accepted by them on a basis of reciprocity' (*Costa v ENEL*, 1964). Supremacy acts as a precondition to the existence of the community itself as 'the law stemming from the treaty ... could not be overridden by domestic legal provisions, however framed' (*Costa v ENEL*, 1964) they may be. The final wording demonstrates how *Costa v Enel* further set out the principle of precedence that EU law takes over constitutions of Member States, despite their significance as the highest source of national law. Constitutions of Member States are to be overridden by the supremacy of EU Law. It is important to note that the principle of Supremacy assumes that the directive in question is already implemented as judges must not interpret non-imple-

mented directives. This principle was further enforced by the ground-breaking case of *Simmenthal* [1978] which specified that ‘...any national court must apply Community law in its entirety’ to protect rights, ‘and must set aside any provision of national law which may conflict with it’ (*Simmenthal*, 1978) taking away all sanitary control taxes on all Member States. Moreover, the direct effect of Supremacy was established significantly meaning that if national judges, as organs of the state, were to not comply with the doctrine of supremacy of EU law, states would be liable for their actions. The *Simmenthal* case concluded that, ‘the validity of a Community measure or its effect within a Member State cannot be affected by allegations that it runs counter to fundamental rights as formulated by the Constitution of that State’ (*Simmenthal* 1978).

However, the case of *Factortame* raised the issue of the principle of parliamentary supremacy, which caused difficulties in the establishment of EU Law supremacy in the UK due to the absence of a written constitution. In this case the UK must set aside the Merchant Shipping Act and for the first time, it was established that if a parliamentary act is in breach of EU Law, it must set aside parliamentary supremacy. This was established on the condition that the House of lords established under the *Metric Martyrs Case*, stating that the UK is to ‘accept supremacy of EU law because there is a transfer of sovereignty from the parliament to the EU Law, however, there is supremacy not because the EU Law is actually supreme but because the UK gave away their supremacy’ (*Metric martyrs*, 2002). The case of *Internationale* [1970] further discussed the question of national constitutional supremacy versus supremacy of EU law. In this case the ‘Community levies were contrary to the German constitution and therefore inapplicable according to the German national court’ (*Internationale*, 1970). However, the judge ruled, upon the advice of the CJEU, that ultimately ‘it was in a position to declare supremacy over national constitutional law’ (*Internationale*, 1970) establishing the crucial supremacy of EU Law over constitutional provisions of Member States.

The principle of State Liability is another doctrine through which the CJEU mitigates the rejection of the HDE of directives in damages for non-implementation of a directive. Encompassing the further debate about the creation of effective remedies as an obligation upon national courts, the doctrine of State Liability is conditional upon the directive conferring rights for individuals, rights that are identifiable from the directive and containing a causal link between the damages suffered and the breach itself. This was established by *Francovich* [1991] in an attempt by the CJEU to introduce a compensation scheme when firing workers, in order to protect their rights. Due to an absence of an HDE in this case, the workers were not able to challenge the employer as the directive was not implemented, not sufficiently clear and had an expired time limit. Therefore, the court ruled that the state held liability for the failure to implement the directive in the first place due to their international obligation to the EU. The conditions for State Liability were demonstrated by the case of *British Telecommunications (BT)* in which despite the UK incorrectly transposing a Directive into national law the Court ruled that no serious breach had occurred as the Directive was unclear and thereby capable of interpretation by the British authorities. In this case, there was no obligation to compensate BT for any loss suffered, despite the State’s error. This indicates the crucial importance of the conditions for State Liability, as without a clear Directive a State is not liable (*R v HM Treasury*, 1996). The quintessence of State Liability is therefore the effective judicial protection of citizens’ rights, in the absence of an HDE or as an alternative to indirect effect.

Finally, when discussing the protection of citizens’ rights, it is crucial to not only focus on the principles of direct and indirect effect, supremacy and state liability, but also the way in which these principles give individuals the legal structures to protect their rights. Preliminary References involve the process of constitutionalisation of the Chapter of the Fundamental Rights of EU citizens. Preliminary References are the procedural structures made to reach direct effect, state liability and supremacy with the rationale of protecting citizens’ rights. Introduced by Article 267 (TFEU), the CJEU ‘shall have jurisdiction to give preliminary rulings concerning the interpretation of the treaties; and the validity of acts of the institutions of the Union’ (Article 267 TFEU) thereby covering all sources of EU law. Preliminary References have not only opened the channel for litigation before the CJEU, independent of the Commission thereby taking away political pressure from it, but also have enhanced the position of the individual within the system of EU law with the creation of access for individuals to the CJEU. The significance of preliminary references is that it gives legitimacy to the CJEU whilst allowing national courts to enforce EU law through the already available sanctions within the national systems, further ensuring a uniform interpretation of the laws set out by the Community.

Conclusions. EU law aims to protect rights of individuals and provide uniformity of the rule of law (Drake, 2005) and in cases where there is an absence of horizontal direct effect, the principle of indirect effect plays a pivotal role in achieving this aim. The CJEU has ‘consistently held the that the community is based upon the rule of law’ (Drake, 2005) meaning that in order to protect individuals’ rights in all cases, indirect effect plays a significant role. EU Law is constantly subject to interpretation, as the context changes the interpretation of the principles change (Drake, 2005). Therefore, the development of EU Law is incremental requiring a case-by-case analysis, as demonstrated above by the cases of indirect effect. Indirect effect facilitates ‘the achievement of the Union’s tasks and refrain from any measure which could jeopardise the attainment of the Union’s objectives’ (Article 4(3) TFEU). Thus, it can be concluded that amongst other methods that the CJEU developed as an alternative to direct effect, the principle of indirect effect plays a pivotal role in protecting citizens’ rights.

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Резюме

Смірнова С.М. Основна роль прецедентної практики Суду Європейського союзу (СЄ) у захисті прав громадян.

У статті розглядається прецедентна практика Суду Європейського Союзу (СЄ) з метою вияснити способи, які наочно ілюструють принцип опосередкованої дії. Стверджується, що непрямий ефект відіграє ключову роль у захисті прав громадян, особливо за відсутності прямого, горизонтального впливу директив. Досліджені випадки дозволили показати принципові, важливі шляхи розвитку права Європейського Союзу, оскільки воно постійно піддається необґрунтованому тлумаченню. На прикладі ряду досліджуваних ситуацій пропонуються важливі, принципові шляхи розвитку права ЄС, оскільки вони складаються з великої кількості критеріїв і нерідко підлягають спотвореному тлумаченню. Поетапний характер дії права ЄС, як на етапі початкового комунікування скарги властям, так і на наступному етапі розгляду, вимагає ретельного аналізу та певних висновків у кожному конкретному випадку.

Насамперед, важливо зрозуміти та пояснити значення захисту прав громадян, для чого потрібно визнати три основні принципи, чи має громадянин конкретне право. По-перше, має бути початкове існування права, по-друге, громадянин повинен мати доступ до цього права, і, нарешті, повинно бути належне здійснення права. Ці три компоненти забезпечують захист прав громадян. Права повинні бути захищені державами-членами ЄС. Однак, при дослідженні першоджерел права ЄС (Хартія і, зокрема, Договір) справа Ван Генд ен Лоос (Van Gend en Loos, 1963) виявилась проблемою, яка виникає, коли держави-члени не дотримуються директив. Тут принцип прямого ефекту набув певного значення, оскільки не було задовільного застосування права на скасування митних зборів від імені голландської держави. Ван Генд ен Лоос перевозив хімічні товари через кордони держав-членів ЄС, що стягували митні збори. Однак, це суперечило статті 30 (ДФЕС), за якою митні збори між державами

повинні бути усунені, і жодних нових митних зборів не має бути запроваджено. Таким чином, у результаті прийняття судового рішення Судом ЄС (СЕС) були визнані «індивідуальні права, які повинні захищатися національними судами».

Ключові слова: захист прав громадян, пряма дія, непряма дія, прецедентне право Суду Європейського Союзу (СЄУ), директиви.

Резюме

Смирнова С.М. Основная роль прецедентной практики Суда Европейского союза (СЕС) в защите прав граждан.

В статье рассматривается прецедентная практика Суда Европейского союза (СЕС) и делается попытка показать, каким образом она наглядно иллюстрирует принцип косвенного воздействия. Утверждается, что косвенный эффект сыграл ключевую роль в защите прав граждан, особенно при отсутствии горизонтального, прямого, директивного воздействия. На примере ряда исследуемых ситуаций предлагаются принципиальные, первостепенной важности, пути развития права Европейского союза, поскольку оно постоянно заключается в собственном представлении, складывается из большого числа критериев и зачастую, как известно, подлежит искаженному толкованию. Поэтапный характер действия права ЕС, как на этапе первоначального коммуницирования жалобы властям, так и на последующем этапе разбирательства, требует тщательного анализа и определенных выводов в каждом конкретном случае, особенно при косвенном воздействии. Рассматривать прецедентное право Европейского Союза следовало бы в каждом конкретном случае, ибо с изменением контекста изменяется и толкование принципов.

Ключевые слова: защита прав граждан, прямое действие, косвенное воздействие, прецедентное право Суда Европейского Союза (СЄУ), директивы.

Summary

Sofia Smirnova. The pivotal role of the case law of the Court of Justice of the European Union (CJEU) in protecting citizens' rights.

The article examines the case law of the Court of Justice of the European Union (CJEU) and aims to exemplify the ways in which it clearly illustrates the principle of indirect effect. The article would argue that indirect effect has played a pivotal role in protecting citizens' rights, particularly in the absence of the horizontal direct effect of directives. The main cases explored in the article examine the ways in which the law of the European Union has been developing as it is constantly subject to interpretation. It is important to examine the case law of the European Union on a case-by-case basis, as with contextual change, changes the interpretation of the principles. The development of EU Law is incremental requiring a careful case-by-case analysis, as demonstrated in the article above by the cases of indirect effect.

Key words: protection of citizens' rights, direct effect, indirect effect, case law of the Court of Justice of the European Union (CJEU), directives.

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ПРОБЛЕМНІ ПИТАННЯ ЗАСТОСУВАННЯ НАЦІОНАЛЬНИМИ СУДАМИ ПРАКТИКИ ЄВРОПЕЙСЬКОГО СУДУ З ПРАВ ЛЮДИНИ ЯК ДЖЕРЕЛА ПРАВА

Постановка проблеми. Відповідно до ст. 9 Конституції України чинні міжнародні договори, згода на обов'язковість яких надана Верховною Радою України, є частиною національного законодавства України¹.

17 липня 1997 р., ратифікувавши Конвенцію про захист прав людини і основоположних свобод (далі – Конвенція), Україна повністю визнала на своїй території дію ст. ст. 25 та 46 Конвенції щодо визнання обов'язковою і без укладення спеціальної угоди юрисдикцію Європейського суду з прав людини (далі – Суд) в усіх питаннях, що стосуються тлумачення і застосування Конвенції².

З метою врегулювання відносин, що виникають у зв'язку з обов'язком держави виконати рішення Суду у справах проти України, з необхідністю усунення причин порушення Україною Конвенції і протоколів до неї, із провадженням в українське судочинство та адміністративну практику європейських стандартів прав людини, зі створенням передумов для зменшення числа заяв до Суду проти України було прийнято Закон України від 23 лютого 2006 р. № 3477-IV «Про виконання рішень та застосування практики Європейського суду з прав людини».

Відповідно до ст. 17 Закону України «Про виконання рішень та застосування практики Європейського суду з прав людини» суди застосовують при розгляді справ Конвенцію та практику Суду як джерело права³.

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