

Research Article

FEATURES AND STATUS OF EXECUTION OF THE ECtHR JUDGMENTS IN UKRAINE IN TERMS OF THE EUROPEAN EXPERIENCE

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ABSTRACT

Background. *The European Court of Human Rights is an authoritative international institution, and its judgments are crucial for the protection of the rights proclaimed by the Convention for the Protection of Human Rights and Fundamental Freedoms. This article aims to analyse the state of execution of ECtHR judgments in Ukraine, the role of state authorities in this process, and the challenges of their interaction in implementing the measures prescribed by the Court.*

Methods. *A general analysis of selected ECtHR judgments concerning the measures applied made it possible to differentiate between the types of measures, their specific features, and their impact on both the implementation of judgments and the prevention of similar applications in the future. Using statistical methods, the article assesses the extent to which Ukraine and other states have fulfilled their obligations under the Convention, forming the basis for the final conclusions.*

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Results and Conclusions. *The article provides a comprehensive analysis of methods for implementing ECtHR judgments, including the payment of just satisfaction, the adoption of additional individual and general measures, and the procedures applied by competent authorities at different levels. This analysis enabled an evaluation of their variability, interrelation, and effectiveness in ensuring compliance with the Convention, and most importantly, in addressing the root causes of violations to reduce the recurrence of similar applications before the ECtHR. Based on this, the article proposes improving the procedure for executing ECtHR judgments in Ukraine as a respondent state.*

1 INTRODUCTION

In the context of a full-scale war, the rights proclaimed by the Convention for the Protection of Human Rights and Fundamental Freedoms¹ (hereinafter referred to as the "Convention") have a special value and significance. However, the level of human rights violations in the territory of Ukraine is exceptionally high. In this regard, the European Court of Human Rights (hereinafter referred to as the "ECtHR" or the "European Court") is the international institution capable of protecting these rights through the measures defined in its judgments.

Non-execution of judgments, particularly those of the ECtHR, has been recognised as a systemic problem in Ukraine. The non-execution or long-term execution of final judgments is influenced by various factors, including a lack of budgetary funds, inactivity of officials, deficiencies in legislation and shortcomings in its application. In general, however, this situation leads to a wide range of negative consequences, highlighting problems in the functioning of state authorities and their interactions.

Moreover, the problems that existed before the full-scale aggression against Ukraine have not disappeared; on the contrary, new obstacles have emerged for the execution of judgments, thereby worsening the situation with their implementation. The state of execution of judgments serves as an indicator of the functioning of the economy and the country's investment attractiveness, as well as its ability to fulfil its obligations at the international level. This is of great importance for the reconstruction of post-war Ukraine.

Therefore, the identification and analysis of the problems with the non-execution of court judgments, particularly those of the ECtHR, and the development of proposals to overcome them—especially in terms of individual and general measures determined by the ECtHR, their essence, content, and effectiveness—are both justified and relevant.

1 Convention for the Protection of Human Rights and Fundamental Freedoms (4 November 1950) [1955] UNTS 213/222.

2 METHODOLOGY

What is the role of the ECtHR judgments in ensuring observance of the rights protected by the Convention in the territories of the States Parties after exhaustion of all national remedies, and what are the main grounds for filing complaints? What measures are applied by the international institution as a result of such consideration, and what are the features of their implementation? What is the status of execution of ECtHR judgments in terms of their effectiveness, and what are the ways to improve the situation, primarily to overcome the root causes of the applications to the ECtHR?

The purpose of this research is to evaluate the indicators of execution of ECtHR judgments and analyse the measures applied by the ECtHR and their implementation by the respondent state. The authors also aim to consider proposals for improving the procedural aspects of executing ECtHR judgments and the mechanisms of interaction among competent state authorities involved in their execution, with a view to guaranteeing the rights proclaimed by the Convention. In general, the focus is directed at ways of overcoming the causes of violations of the rights declared by the Convention and addressing their consequences through the measures proposed in ECtHR judgments, in order to minimise repeated applications to the ECtHR in similar cases.

In view of the statistics presented in the article, indicating a low level of execution of the ECtHR judgments, inconsistency in the actions of various authorities, lack of proper interaction between them, and most importantly, insufficient funding to ensure execution of the measures defined in ECtHR judgments, the authors determined that the following key research tasks should be set:

1. To highlight the common grounds for applying to the ECtHR under the Convention for the Protection of Human Rights and Fundamental Freedoms, and to identify new ones arising in connection with the armed aggression of the Russian Federation.²
2. To study the types of measures applied by the ECtHR as a result of case outcomes, their essence and purpose.
3. To examine the features and status of enforcement of the ECtHR judgments in Ukraine through the prism of foreign experience.
4. To develop proposals for optimising the procedure for execution of ECtHR judgments, particularly with a view to reducing the number of judgments delivered against Ukraine by means of peaceful settlement by the parties.

Research sources and methods. The article draws on ECtHR judgments to establish and analyse the measures that may be applied and proposed to the state in response to violations,

2 In this article the words "Russian Federation", "Russian", etc. are written in lowercase under the author's decision and should not be considered as a spelling error.

to identify the most common measures, and to provide their characteristics using specific examples, particularly their consideration by Ukrainian courts in law enforcement practice. The analysis of the application procedure for various measures and the role of state authorities is carried out with reference to specific national legislation, relevant Recommendations of the Committee of Ministers, international acts declaring fundamental human rights and guaranteeing their protection, as well as the mechanisms for their restoration in case of violation through the ECtHR. Evaluation of the status of execution of the judgments is based on reporting and statistical materials of the ECtHR.

The study of foreign experience and the development of conclusions on improving the execution of ECtHR judgments are informed by doctrinal works of scholars, as well as articles in periodicals by legal practitioners and officials of state authorities. The earlier work of K. Pilkov, *Reopening cases following judgments of the European Court of Human Rights: Room for a European Consensus?*³ formed the basis of the evaluation of the significance of the ECtHR judgments concerning internal application of the Convention by the State Party and the restoration of the rights enshrined therein, particularly through review of the judgments by national courts. The analysis of the legal nature of ECtHR decisions, through the prism of violated rights declared by the Convention and their impact on civil proceedings in Ukraine with respect to the realisation of the right to a fair trial was also facilitated by V. Komarov and T. Tsvina's article, *The impact of the ECHR and the case law of the ECtHR on civil procedure in Ukraine*.⁴

In conducting this research, a comparative method was employed, along with dialectical, systemic-structural, and normative-logical methods of scientific knowledge, as well as statistical and analytical methods. The method of analysing individual ECtHR judgments made it possible to generalise the types of measures applied by the Court, to characterise them, and to evaluate their effectiveness. A comparison of the procedure and level of execution of ECtHR judgments in Ukraine with the relevant provisions in individual countries allowed the authors to develop proposals for improving and optimising the work of state authorities at various levels with respect to the implementation of ECtHR judgments.

3 Kostiantyn Pilkov, 'Reopening Cases Following Judgments of the European Court of Human Rights: Room for a European Consensus?' (2022) 5(4) Access to Justice in Eastern Europe 7. doi.org:10.33327/AJEE-18-5.4-a000415.

4 Vyacheslav Komarov and Tetiana Tsvina, 'The Impact of the ECHR and the Case law of the ECtHR on Civil Procedure in Ukraine' (2021) 4(1) Access to Justice in Eastern Europe 79. doi:10.33327/AJEE-18-4.1-a000047.

3 THE MAIN GROUNDS FOR APPLYING TO THE ECtHR IN TODAY'S CONDITIONS IN UKRAINE

The Constitution of Ukraine,⁵ Part 5, Article 55, establishes the right for every individual to appeal for the protection of his/her rights and freedoms to relevant international judicial institutions of which Ukraine is a member. In 1997, Ukraine ratified the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 and its protocols. Accordingly, under the principle of subsidiarity, Ukraine bears responsibility for protecting the rights and freedoms defined therein. The ECtHR was established to ensure that the states parties fulfil these obligations, and it only hears claims associated with violations of the rights and freedoms guaranteed by the Convention. Accordingly, every individual and legal entity may apply to the ECtHR if a state party to the Convention violates one or more of these stipulated rights.

During a full-scale war, the rights enshrined in the Convention have a special value and importance, as they must be protected more than ever. In the current situation, the Convention remains operational; therefore, the contracting parties are still obligated to guarantee everyone under their jurisdiction the rights and freedoms defined in the Convention. Unfortunately, the scale of violations of fundamental human rights in Ukraine is extremely high. In this context, the ECtHR remains the international institution with effective protection mechanisms, which are urgently needed today.

Following the termination of the Russian Federation's membership in the Council of Europe, and in accordance with Article 58 of the Convention, Russia ceased to be a party to the Convention. However, such denunciation does not relieve a Contracting Party of its responsibility for violations that occurred before the withdrawal took effect. On 22 March 2022, the ECtHR adopted a resolution⁶ defining the terms and consequences of Russia's withdrawal. Under this resolution, the Russian Federation ceased to be a party to the Convention as of 16 September 2022, and the ECtHR may only examine complaints against Russia in relation to violations that occurred before this date.

With the onset of Russian aggression across Ukraine, victims had the right to apply to the ECtHR against Russia to seek moral and material compensation and to hold the aggressor accountable for violations protected under the Convention. Due to the limited timeframe before Russia's withdrawal from the ECtHR, an electronic system was developed to simplify the process for victims. The system provided step-by-step guidance, required fields to be filled in, and informed applicants about the necessary information to enter, and examples

5 Constitution of Ukraine No 254 k/96-BP of 28 June 1996 (amended 1 January 2020) <<https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>> accessed 21 August 2024.

6 Resolution of the European Court of Human Rights on the Consequences of the Cessation of membership of the Russian Federation to the Council of Europe in Light of Article 58 of the European Convention on Human Rights (22 March 2022) <https://echr.coe.int/Documents/Resolution_ECHR_cessation_membership_Russia_CoE_ENG.pdf> accessed 21 August 2024.

of admissible grounds for complaints, such as the death of a relative, a destroyed home, injury, illegal deprivation of liberty, torture, rape or enforced disappearance. For comparison, in 2023 alone, 130 judgments were issued against Ukraine, including: 6 for lack of effective investigation (Article 2), 40 for inhuman or degrading treatment (Article 3), 10 for lack of effective investigation (Article 3), 77 for right to liberty and security (Article 5), 12 for right to a fair trial (Article 6), 38 for excessive length of proceedings (Article 6), 13 for violations of the right to respect for private and family life (Article 8), 56 for denial of the right to an effective remedy (Article 13), 7 for the violations of the protection of property (Protocol 1, Article 1), among others.⁷

Thousands of Ukrainians have filed applications with the ECtHR, and the sheer volume of cases from Russian aggression in Ukraine poses a significant challenge for the Court. Loss of life, health, property, housing, torture and other ill-treatment of a person, capture, restriction of the right to movement and violation of other fundamental rights become grounds for applying to the ECtHR during an armed conflict. On 23 June 2022, the ECtHR accepted Ukraine's complaint against Russia, following four earlier submissions and approximately 8,500 individual complaints. This application concerns serious violations of human rights committed by the Russian Federation during military operations on the territory of Ukraine, including the killing, injury, detention, and disappearance of thousands of civilians, the destruction of hundreds of thousands of properties, and the displacement of millions of people.⁸ According to official statistics, by the end of 2024, the ECtHR had 61,250 pending applications, of which 36.7% were against Turkey, 12.9% against Russia, 12.6% against Ukraine, 6.2% against Romania, and 4.3% against Greece.⁹

Before the full-scale Russian invasion, Ukrainian citizens typically turned to the ECtHR for issues such as unfair trials, non-execution of court judgments, excessive duration of proceedings in civil and criminal cases, lack of legal protection, inhumane treatment of prisoners, conditions of detention, violation of the right to freedom of peaceful possession of property, etc. The most common ground for applying to the ECtHR was the violation of Article 6 of the Convention (right to a fair trial) in connection with the persistent non-execution of domestic court judgments in Ukraine, which the Court recognised as a systemic problem in *Zhovner v. Ukraine*,¹⁰ *Yuriy Mykolayovych Ivanov v. Ukraine*,¹¹ and

7 ECtHR, 'Violation by Article & by State - 2023' (*European Court of Human Rights*, 2024) <<https://www.echr.coe.int/d/stats-violation-2023-eng>> accessed 20 December 2024.

8 Tetiana Voitiuk, 'The European Court of Human Rights Will Consider Ukraine's Lawsuit Against Russia' (*Social News*, 29 June 2022) <<https://suspilne.media/255247-evropejskij-sud-z-prav-ludini-rozglane-pozov-ukraini-proti-rosii/>> accessed 27 August 2024.

9 ECtHR, 'Pending Applications Allocated to a Judicial Formation Requête Pendantes Devant Une Formation Judiciaire' (*European Court of Human Rights*, 30 November 2024) <<https://www.echr.coe.int/documents/d/echr/stats-pending-month-2024-bil>> accessed 20 December 2024.

10 *Zhovner v Ukraine* App no 56848/00 (ECtHR, 29 June 2004) <<https://hudoc.echr.coe.int/eng?i=001-66417>> accessed 30 August 2024.

11 *Yuriy Mykolaiovych Ivanov v Ukraine* App no 40450/04 (ECtHR, 15 October 2009) <<https://hudoc.echr.coe.int/eng?i=001-95032>> accessed 30 August 2024.

Burmych and Others v. Ukraine,¹² requiring an urgent settlement. These systemic issues have not disappeared with the war; rather, their resolution has been postponed. Accordingly, the identification and analysis of the non-execution of court judgments, including those of the ECtHR, and the development of proposals to address this issue, both at the individual and general level, remain highly relevant today.

4 MEASURES ADOPTED BY THE ECtHR FOLLOWING THE DECISION AND FEATURES OF THEIR APPLICATION IN UKRAINE

Applying to the ECtHR not only provides a real opportunity for individuals to protect their violated rights but also serves as a broader mechanism for strengthening and ensuring the protection of citizens' rights at the national level. The judgment of the ECtHR highlights a problem that exists in a state party to the Convention, which this state has not only to solve and eliminate negative consequences, but also to prevent similar possible situations. A large number of cases against a state party to the Convention is an alarming signal, pointing to problems in the work of authorities and their interaction. An important role is also played by the pilot judgments of the ECtHR, which are targeted to address systemic problems at the national level. The pilot judgment procedure was introduced as a response to the increase in applications to the ECtHR on the same issue to ensure the operation of the Court and eliminate the shortcomings causing violations of the rights and consequences of such violations.

When issuing a pilot judgment, the ECtHR not only states a violation of the Convention and points out the systemic nature of the problem,¹³ but also provides the state party with instructions on the type of measures necessary to resolve it at the national level. Also, in the operative part, the Court may envisage the period during which the specified measures must be taken.

Since the non-execution of court judgments was recognised by the ECtHR as a systemic problem as early as 2009, the pilot judgment in the case *Yuriy Mykolayovych Ivanov v. Ukraine*¹⁴ was adopted.

As the respondent state failed to resolve the problem at the national level, the ECtHR, in the judgment, in *Burmych and Others v. Ukraine*,¹⁵ revised its approach to handling this

12 *Burmych and Others v Ukraine* App no 46852/13 (ECtHR, 12 October 2017) <<https://hudoc.echr.coe.int/hudoc?i=001-178082>> accessed 20 December 2024.

13 Marharyta Kinakh, 'Execution of the ECtHR Judgments is Not Just a Legal Obligation of the State, But also a Tool for Fulfilling Human Rights' *Yurydychna Hazeta* (Kyiv, 22 November 2021) <<https://yur-gazeta.com/golovna/vikonannya-rishen-espl-ne-prosto-pravove-zobov'yazannya-derzhavi-ale-y-instrument-napovnennya-prav-l.html>> accessed 29 August 2024.

14 *Yuriy Mykolaiovych Ivanov v Ukraine* (n 11).

15 *Burmych and others v Ukraine* (n 12).

type of application. The Court consolidated five submitted applications with an additional 12,143 applications listed in annexes I and II to the judgment, noting that they should be considered in accordance with the obligations arising from the pilot judgment in *Yuriy Mykolayovych Ivanov v. Ukraine*. These statements were removed from the register of cases on the grounds that further consideration was not justified and were transferred to the Committee of Ministers of the Council of Europe for action within general measures to implement the pilot judgment. This included providing compensation for non-execution or delayed execution of national court judgments, as well as payment of debts based on such judgments. The Grand Chamber noted that continuing to examine the cases *individually* would not achieve the objectives of the Convention, and, therefore, further consideration was unjustified.

Once a judgment becomes final, the individual shall acquire the status of a creditor and may demand its execution. The Supreme Court holds that a final judgment of the ECtHR is binding on Ukraine and must be implemented as specified, which may include either general measures or individual compensation in favour of a specific person.¹⁶ However, due to the new approach of the ECtHR in *Burmych and Others v. Ukraine*, the Supreme Court of Ukraine concluded that measures of an individual nature could not be applied under this judgment, as Ukraine was obliged to take measures of a general nature.

According to the ECtHR, the essence of a pilot judgment is that the respondent state must not only eliminate the root cause of the violation but also provide a means of compensation for damage already caused, not only to the individual applicant(s) in the "pilot" case but also to all other victims of a similar violation. The logic is that, as part of the general measures required of the respondent state, all other victims must be included (para. 161 *Burmych and Others v. Ukraine*).

In practice, the defendant state must establish a legal remedy for all victims of a systemic violation; the responsibility for providing compensation rests with national authorities.

The ECtHR's purpose in issuing a pilot judgment is to identify a systemic problem at the national level and facilitate its resolution, with the award of satisfaction serving as an additional component. The primary task of the States Parties is to comply with their obligations under the Convention and its protocols. Accordingly, implementation of court judgments, including those of the ECHR, is a key mechanism for ensuring human rights and fundamental freedoms.

Thus, payment of monetary compensation for the violation of the applicant's rights and its consequences is an important, but not the only, means of implementing an ECtHR judgment. In some cases, the Court may determine that recognition of a Convention violation alone constitutes sufficient just satisfaction, making financial compensation

16 Case No 823/1181/18 (Cassation Administrative Court Supreme Court of Ukraine, 14 January 2021) <<https://reyestr.court.gov.ua/Review/94129824>> accessed 30 August 2024.

unnecessary. For reasons of equity, the Court may also award compensation in an amount less than the value of the actual damage incurred, or even provide no compensation at all.¹⁷

In addition to this, depending on the circumstances of the case, the defendant state may be obliged to take further measures. These can include direct action to rectify the situation for the claimant and general measures aimed at preventing similar violations against other individuals in the future.

Given the above, ECtHR judgments are intended to eliminate systemic deficiencies underlying the violation established by the Court, ensure the state's compliance with the provisions of the Convention, and create prerequisites for reducing the number of applications to the ECtHR against Ukraine.

To restore the rights of the creditor, in addition to payment of compensation, the defendant state may be obliged to take measures of both an individual and a general nature. The Law provides for a list of such additional measures, and other measures may also be applied as provided for in the ECtHR judgment.

Moreover, just satisfaction is not consistently awarded to the aggrieved party; in some cases, the judgment "satisfaction of claims on the merits" shall be applied. In such a case, recognition of the right as violated and providing the opportunity to restore it at the national level is considered to be just.¹⁸

However, there are negative examples of implementation. Even when the ECtHR judgment prescribed re-examination of the case by a national court, applicants were sometimes denied such a review and forced to reapply to the ECtHR to establish a violation of the right to a fair trial a second time, which was in turn assessed as "denial of justice" (*Bochan v. Ukraine* No. 2, *Shabelnyk v. Ukraine* No. 2).¹⁹ Only after these duplicated ECtHR judgments were the national courts' previous judgments annulled, and cases sent back to the court of first instance.²⁰ Ideally, the response to the applicant should have been observed in the first ECtHR judgment, due to its binding nature and the specifics of the established method of implementation.

17 ECtHR, 'Just Satisfaction Claims: Practice direction issued by the President of the Court in accordance with Rule 32 of the Rules of Court of 28 March 2007 (amended 9 June 2022) <https://www.echr.coe.int/documents/d/echr/pd_satisfaction_claims_eng> accessed 30 August 2024.

18 'The Procedure for Execution of Judgments of the European Court of Human Rights in Ukraine with Regard to Payment of Just Satisfaction' (*I Law*, 12 June 2014) <<https://www.i-law.kiev.ua/%D0%BF%D1%80%D0%BE%D1%86%D0%B5%D0%B4%D1%83%D1%80%D0%B0-%D0%B2%D0%B8%D0%BA%D0%BE%D0%BD%D0%B0%D0%BD%D0%BD%D1%8F-%D1%80%D1%96%D1%88%D0%B5%D0%BD%D1%8C-%D1%94%D0%B2%D1%80%D0%BE%D0%BF%D0%B5%D0%B9%D1%81/>>> accessed 30 August 2024.

19 *Bochan v Ukraine* No 2 App no 22251/08 (ECtHR, 5 February 2015) <<https://hudoc.echr.coe.int/fre?i=001-152331>> accessed 30 August 2024; *Shabelnyk v Ukraine* No 2 App no 15685/11 (ECtHR, 1 June 2017) <<https://hudoc.echr.coe.int/fre?i=001-173775>> accessed 30 August 2024.

20 Case No 6-1430ts15 (Supreme Court, 22 February 2016) <<https://reyestr.court.gov.ua/Review/56786343>> accessed 30 August 2024.

The Committee of Ministers of the Council of Europe recommends that member states “bear in mind that the practice of the Committee of Ministers in supervising the execution of the Court's judgments shows that in exceptional circumstances the re-examination of a case or a reopening of proceedings has proved the most efficient, if not the only, means of achieving restitutio in integrum.”²¹ In Ukraine, Supreme Court judges emphasise the importance of reviewing national court judgments following ECtHR decisions to restore the applicant's rights.²²

At the same time, not all categories of cases allow for review of judgments. In particular, those related to the excessive duration of court proceedings or the absence of effective legal protection in national legislation cannot serve as a basis for review, because such a review would not restore the rights that have been violated. An example of an effective way to restore violated rights through case review is judgments in which the ECtHR establishes violations of the right to a fair trial by an independent and impartial court, or breaches of the right to property protection.²³

In ECtHR practice, other individual measures may include reinstatement, measures to mitigate negative impacts, provision of certain information by competent authorities, destruction of unlawfully obtained data, resumption of proceedings, annulment of judgments (e.g., deportation cases), and other corrective actions.

However, in *Burmych and Others v. Ukraine*, the ECtHR did not specify the amount of compensation for each applicant, as it is generally considered impossible to apply measures of an individual nature under this judgment; Ukraine was obliged to take measures of a general nature.

Implementation of general measures begins with quarterly submissions by the Commissioner for Human Rights, reviewing the regulatory framework and circumstances causing violations, and providing proposals to eliminate relevant regulatory deficiencies. The essence of these measures is to address legislative problems that led to violations recognised by the ECtHR. As noted, “in cases where the violation is the result of problems with specific laws or the lack of proper legal regulation, the state must eliminate problems in the internal legal order in order to implement the judgment, that is, make changes to existing normative legal acts or adopt relevant laws.”²⁴

21 Recommendation No R (2000) 2 of the Committee of Ministers to member states On the Re-examination or Reopening of Certain Cases at Domestic Level Following Judgements of the European Court of Human Rights (19 January 2000) <<https://rm.coe.int/16805e2f06>> accessed 30 August 2024.

22 Pilkov (n 3).

23 Iryna Kobets, ‘Execution of the ECtHR Judgments: Application of the Measures of an Individual Nature’ *Yurydychna Hazeta* (Kyiv, 06 December 2017) <<https://yur-gazeta.com/publications/practice/inshe/vikonannya-rishen-espl-zastosuvannya-zahodiv-individualnogo-harakteru.html>> accessed 10 September 2024; Komarov and Tsuvina (n 4).

24 Viktoriia V Tisnohuz, ‘Execution of Judgments of the European Court of Human Rights in Ukraine’ (*Ministry of Justice*, 2024) <https://minjust.gov.ua/m/str_4905> accessed 10 September 2024.

Unlike monetary or measures of an individual nature, the ECtHR does not specify what special measures must be taken to prevent further violations, as states have discretion under the Convention.²⁵ The Committee of Ministers similarly notes that “it is for the competent authorities of the respondent state to decide what measures are most appropriate to achieve restitutio in integrum, taking into account the means available under the national legal system.”²⁶ The ECtHR may suggest legislative improvements, leaving the specifics to the state based on the legal field in which the violation occurred and the state of its regulation. Deadlines for implementing such measures may also be indicated.

For example, the ECtHR's pilot judgment in *Yuriy Mykolayovych Ivanov v. Ukraine* envisaged a provision for Ukraine to implement effective legal remedies by amending procedural legislation to eliminate the systemic problem of excessive executive proceedings. Accordingly, the Law of Ukraine on State Guarantees of the Enforcement of Judgments was adopted, introducing an extra-procedural order for automatic calculation of compensation for untimely execution of court judgments and requiring certain actions concerning property owned by governmental authorities, state-owned enterprises, or entities whose property may not be forcibly sold under law. However, the ECtHR found the law ineffective in protecting the right to timely enforcement, which led to the second judgment in *Burmych and Others v. Ukraine*.

Non-execution or slow execution of judgments is a problem faced by many countries, including Albania, Armenia, Georgia, Greece, Italy, Montenegro, North Macedonia, Romania, and Serbia. Different strategies have been employed to address this issue.

For example, Albania has implemented a strategy and action plan aimed at providing transparent settlement of overdue state obligations and maintaining financial discipline. Currently, the Ministry of Finance and Economy controls the State obligations payments. Moreover, the privatisation of the bailiff service, the compulsory cooperation between the General Police and the Private Bailiff Service in enforcement executive documents, and the development of an electronic management system of bailiffs have contributed to improving the effectiveness of judicial decision enforcement in Albania.²⁷

In Armenia, if funds are insufficient to cover state debts, fixed amounts are allocated from the budget to the Compulsory Enforcement Service. Furthermore, the electronic judicial management system and the Compulsory Enforcement Service are linked, making sure that the Compulsory Enforcement Service receives a copy of final judicial judgments.²⁸

25 *ibid.*

26 Recommendation No R (2000) 2 (n 21).

27 Department for the Execution of Judgments of the ECtHR, 'Albania: Execution of the European Court of Human Rights' Judgments Main Achievements in Member States' (2024) <<https://rm.coe.int/ma-albania-eng/1680a18676>> accessed 17 February 2025.

28 Department for the Execution of Judgments of the ECtHR, 'Armenia: Execution of the European Court of Human Rights' Judgments Main Achievements in Member States' (2024) <<https://rm.coe.int/ma-armenia-eng/1680a1869c>> accessed 17 February 2025.

In Georgie, the enforcement system is also being upgraded through the approval of a special budget, which allows the state to pay off old judgment debts, as well as legislative changes, including the establishment of a special Department for enforcement in cases where the debtor is the state. This department coordinates with the Finance Ministry to ensure payments of amounts owed by the Government Fund to creditors. Compensation for damages and loss of earnings is also provided for under the Code of Civil Procedure.²⁹

Greece has also introduced amendments to the procedure for compulsory enforcement of judgments against the State, local authorities, and public legal entities. The State's civil liability for damages caused by the actions or omissions of governmental authorities has been increased, while the disciplinary and civil liability of public officials has been strengthened. Complaints concerning non-execution are now referred to "compliance committees" set up in each administrative court.³⁰

Therefore, the main areas of overcoming problems of non-execution of judgments include: fostering cooperation between various state authorities in the execution of decisions, improving electronic management systems, allocating budgetary funds to settle old debts, strengthening state liability for damages caused by governmental actions or inaction, and enhancing disciplinary and civil liability of public officials.

5 FEATURES AND STATUS OF EXECUTION OF THE ECtHR JUDGEMENTS IN UKRAINE THROUGH THE PRISM OF FOREIGN EXPERIENCE

To implement the provisions of Article 46 of the Convention regarding Ukraine's obligation to enforce final judgments of the ECtHR in cases where it is a party, the Law of Ukraine on the Execution of Judgments and Application of the Case Law of the European Court of Human Rights³¹ was adopted (hereinafter referred to as the "Law") at the national level in 2006.

Pursuant to this Law, execution of ECtHR judgments shall be carried out by means of:

- payments to the creditor of compensation awarded by the European Court (just satisfaction);
- taking additional measures of an individual nature;
- taking measures of a general nature.

29 Department for the Execution of Judgments of the ECtHR, 'Georgia: Execution of the European Court of Human Rights' Judgments Main Achievements in Member States' (2024) <<https://rm.coe.int/ma-georgia-eng/1680a186a9>> accessed 17 February 2025.

30 Department for the Execution of Judgments of the ECtHR, 'Greece: Execution of the European Court of Human Rights' Judgments Main Achievements in Member States' (2024) <<https://rm.coe.int/ma-greece-eng/1680a186ab>> accessed 17 February 2025.

31 Law of Ukraine No 3477-IV 'On the Fulfillment of Decisions and Application of Practice of the European Court of Human Rights' (23 February 2006) [2006] Bulletin of the Verkhovna Rada of Ukraine 30/260 <<https://zakon.rada.gov.ua/laws/show/3477-15#Text>> accessed 11 September 2024.

At the doctrinal level, the execution of ECtHR judgments includes the payment of compensation and the adoption of additional measures of an individual nature by the state aimed at eliminating the specific violation defined in the Court's judgment, as well as general measures aimed at preventing similar applications against Ukraine in the future.³²

Typically, the primary obligation of the state is to pay fair monetary compensation to the applicant. Pursuant to Article 41 of the Convention, the ECtHR may require the state to compensate the applicant for material and moral damage, as well as court costs, with amounts clearly specified in the judgment.

According to Article 3 of the Law of Ukraine on Executive Proceedings,³³ an ECtHR judgment is considered an executive document and thus serves as the direct basis for initiating executive proceedings, which shall be solely entrusted to the bodies of the state executive service. That is, the European Court of Human Rights, unlike national courts, should not issue an executive document for the adopted judgment, because the judgment itself has dual legal status, serving as a judgment and an executive document. In cases against Ukraine, an executive document consists of the original text and a translation of the operative part of the final judgment entered into the Unified State Register of Executive Documents of ECtHR cases, though this register is not yet functional.

Contrary to the generally accepted dispositive principles of presenting an executive document, the creditor is not personally concerned with the issue of initiating execution of the ECtHR judgment; failure to submit a compensation request shall not be an obstacle to implementation of such a judgment (Part 2 Article 7 of the Law). This approach aligns with the ECtHR's position that the individual in whose favour the court is rendered is not obliged to commence execution, as the state authority, acting as the defendant, must be adequately informed and may take all necessary measures to execute the judgment or transfer it to another competent state authority.³⁴

Therefore, in implementing ECtHR judgments, the state, in accordance with the provisions of the Law, independently initiates execution in favour of the creditor. The nature of ECtHR judgments and the state's obligation to execute them independently of the creditor's will determine the specificity of their execution.

The procedure for executing ECtHR judgments, particularly payment of compensation, is governed by the Law on the Execution of Judgements and Application of the Case Law

32 Olena O Halus, 'Peculiarities of Execution of Judgments of the European Court of Human Rights' (Problems of the Theory and Practice of Execution of Judgments of Courts and other Authorities: IV international scientific and practical conference, Khmelnytskyi, 18-19 October 2013) 66.

33 Law of Ukraine No 1404-VIII 'On Executive Proceedings' (2 June 2016) [2016] Bulletin of the Verkhovna Rada of Ukraine 30/542 <<https://zakon.rada.gov.ua/laws/show/1404-19#Text>> accessed 11 September 2024.

34 *Metaxas v Greece* App No 8415/02 (ECtHR, 27 May 2004) <<https://hudoc.echr.coe.int/rus?i=001-66338>> accessed 11 September 2024.

of the ECtHR, not by the Law of Ukraine on Executive Proceedings. Within ten days of receiving notice of the judgment's final acquisition of status, the representative body (the Secretariat of the Commissioner for Human Rights) sends the original text and translation of the operative part of the judgment to the enforcement body. The Government Commissioner, as approved by the Cabinet of Ministers of Ukraine, ensures Ukraine's representation before the ECtHR, monitors the progression of execution, and informs the Committee of Ministers of the Council of Europe about the progress of the Court's judgments.³⁵

Although the Law provides for enforcement bodies, they perform primarily an intermediary role, which has drawn criticism at the scientific level. Experts argue that enforcement bodies should not have direct powers to execute ECtHR judgments and that this responsibility should be carried out exclusively by a representative body, such as the State Treasury Service of Ukraine.³⁶ However, the state executive service plays a substantive role: it oversees execution, ensures distribution of compensation, verifies compliance with all operative requirements of the judgment, and has the authority to terminate the proceedings.

Given the complexity and multi-subject nature of the ECtHR judgment execution, the process still needs to be optimised. In particular, one of the best options is to empower the executive service to forward the judgment for commencement of executive proceedings and issue payment instructions directly to the State Treasury Service of Ukraine, using the functionality of ASVP (Automated System of Executive Proceedings) in electronic form.

Some scholars have proposed further improving execution by reducing the total duration of executive proceedings from three to one month.³⁷ However, due to the multi-vector nature of the directions of execution and the complexity of taking the required measures necessary, the time needed to fully implement ECtHR-mandated actions, and the potential lack of allocated budget funds, such a short time may be infeasible. Attempting to enforce judgments in one month could complicate the situation, increase penalties for delays, and worsen Ukraine's existing challenges.

In general, executive proceedings have shifted away from strict timing regulations, introducing a principle of reasonableness. However, given the importance of ECtHR judgments, their multi-stage execution, the time required to apply all individual and general

35 Resolution of the Cabinet of Ministers of Ukraine No 784 'On Measures to Implement the Law of Ukraine on Execution of Judgments and Application of Practice of the European Court of Human Rights' (31 May 2006) [2006] Official Gazette of Ukraine 22/138 <<https://zakon.rada.gov.ua/laws/show/784-2006-%D0%BF#Text>> accessed 12 September 2024.

36 Svitlana Ya Fursa and Ye I Fursa, 'Judgments of the European Court of Human Rights: Topical Issues of Their Execution' (Reform of Executive Proceeding: Present Days and Prospects: International Scientific and Practical Conference, Kyiv, 30 March 2018) 127.

37 S Asiryan, Y Milonenko and V Prilipko, 'Problems of Execution of Echr Decisions in Ukraine and ways to Overcome them on the Example of the Federative Republic of Germany' (2021) 63 *Uzhhorod National University Herald. Series: Law* 307. doi:10.24144/2307-3322.2021.63.54.

measures, and the periodic reporting to the Committee of Ministers of the Council of Europe, a three-month execution period is considered acceptable. This timeframe is also justified by the presence of sanctions for delays, which serve as incentives. Nevertheless, the execution speed may still be improved through the proposed electronic interaction between the state executive service and the State Treasury Service. The three-month period minimises penalties in the absence of allocated funds for the execution of ECtHR judgments or the duration of other measures of an individual or general nature.

A European Court is considered enforced only after the Committee of Ministers of the Council of Europe adopts the relevant resolution, based on the state's report that all individual and general measures have been taken to execute the relevant judgment.³⁸

At the end of 2024, the total number of cases transmitted for supervision in Ukraine was 2,249, and only 63% of them were closed. In comparison, Turkey had 4,482 cases transmitted, of which 90% are already closed.³⁹ In Ukraine, some cases have remained pending for more than five years or even more than ten years.⁴⁰ Such statistics significantly impact the country's reputation, as one of the primary factors in ensuring the rights and fundamental freedoms of a person is the execution of ECtHR judgments.⁴¹ Execution is also necessary in the context of Ukraine's international commitments to the Council of Europe, as well as the International Monetary Fund and the European Union as a whole. Developing an effective mechanism for execution and proper allocation of resources is, therefore, critical.

Since the mid-2000s, budget funding for programs related to Ukraine's execution of ECtHR judgments has increased significantly; however, the level of funding varies substantially annually. For example, under the 2020 Law of Ukraine on the State Budget of Ukraine, the budget program "Payments for execution of judgments of foreign jurisdictions adopted as a result of consideration of cases against Ukraine," which includes, among other things, expenses for ECtHR judgments, was allocated UAH 42,377,400.00.⁴² By contrast, a similar

38 'Information about Execution of Judgments of the European Court of Human Rights in Cases Against Ukraine' (*Ministry of Justice*, 2024) <<https://minjust.gov.ua/m/informatsiya-schodo-vikonannya-rishen-evropeyskogo-sudu-z-prav-lyudini-u-spravah-proti-ukraini>> accessed 12 September 2024.

39 'Ukraine and the Council of Europe' (*Council of Europe, Department for the Execution of Judgements of the ECtHR*, 2024) <<https://www.coe.int/en/web/execution/ukraine>> accessed 19 December 2024.

40 Natalka Mamchenko, 'Ukraine Remains in Default of Execution of the ECtHR Judgments' *Sudovo-Yurydychna Hazeta* (Kyiv, 22 December 2021) <<https://sud.ua/ru/news/publication/224175-ukrayina-zalishayetsya-liderom-z-nevikonanikh-rishen-yespl>> accessed 13 September 2024.

41 Ministry of Justice, 'Ivan Lishchyna: Implementation of ECtHR Decisions is a Determining Factor in Ensuring Human Rights and Fundamental Freedoms' (*Government Portal*, 2 September 2021) <<https://www.kmu.gov.ua/news/ivan-lishchina-vikonannya-rishen-yespl-viznachalnij-chinnik-zabezpechennya-prav-ta-osnovopolozhnykh-svobod-lyudini>> accessed 14 September 2024.

42 Law of Ukraine No 294-IX 'On the State Budget of Ukraine for 2020' (14 November 2019) [2020] Bulletin of the Verkhovna Rada of Ukraine 5/31 <<https://zakon.rada.gov.ua/laws/show/294-20#Text>> accessed 11 September 2024.

program in the 2021 budget provided UAH 582,377,400.00—more than ten times the previous year's funding.⁴³

Long-term non-execution of court judgments is often caused by the absence or lack of the funds necessary for payment. The ECtHR has emphasised, however, that a state's inability to enforce a judgment due to lack of sufficient budget funds cannot serve as an excuse for non-execution.⁴⁴ Timely execution depends not only on the proper financing for debt repayment under court judgments but also on the coordinated action of competent authorities at all levels, particularly the development and implementation of measures of both individual and general nature.

In this regard, it is worth noting Germany's experience. As one of the most developed and influential countries in the European Union, Germany ranks among the top three countries in terms of the quality and quantity of decisions implemented by the ECtHR. Thus, the implementation of general measures in Germany is characterised by its comprehensiveness and timeliness. The implementation of these measures is clearly distributed according to the content and the competence of the relevant authorities.

The successful implementation of ECtHR decisions demonstrates the effectiveness of this practice and may therefore be helpful for Ukraine to adopt in the context of the above conclusion regarding the need to involve state authorities in the implementation of ECtHR decisions, organise their interaction, and assign specific functions based on the type of measures taken. Furthermore, Germany integrates ECtHR legal positions into national legislation, with federal courts playing a crucial role. Their duties include the interpretation and application of the practice of the ECtHR in the administration of justice, provided that the latter does not lead to the restriction of the rights and freedoms of citizens guaranteed by the Federal Constitution. This alignment ensures consistency between ECtHR norms and national law, guaranteeing compliance with conventional norms in the Federal Republic of Germany.⁴⁵

Judgments of the ECtHR in most European states are acts of direct effect, meaning they are communicated to the courts and relevant authorities whose actions led to the violation. Such measures are sufficient to prevent further violations of a similar nature. Consequently, domestic courts can prevent similar violations when individuals use national legal remedies and may adjust their procedures accordingly. For example, non-observance of a reasonable term of court proceedings is considered to be a violation of paragraph 1 of Article 6 of the Convention. When a state recognises such a violation, the ECtHR judgment is disseminated

43 Law of Ukraine No 1082-IX 'On the State Budget of Ukraine for 2021' (15 December 2020) [2021] Bulletin of the Verkhovna Rada of Ukraine 16/144 <<https://zakon.rada.gov.ua/laws/show/1082-20#Text>> accessed 11 September 2024.

44 *Kechko v Ukraine* App no 63134/00 (ECtHR, 08 November 2005) <<https://hudoc.echr.coe.int/eng?i=001-70863>> accessed 14 September 2024.

45 Asiryanyan, Milonenko and Prilipko (n 37).

to all domestic courts for information. Since passing legislation through parliament takes time, in other European states, it is not the legislators but the highest judicial authorities—the supreme or constitutional courts—that play the primary role in eliminating the causes of human rights violations.⁴⁶

In Ukraine, some scholars question the unconditional execution of the ECtHR judgments and their role in law enforcement. In particular, they have proposed that the Constitutional Court of Ukraine conduct a legal analysis of individual ECtHR judgments to assess their validity and compliance with national legislation before execution.⁴⁷ However, in the context of Ukraine's commitments to international organisations, including its EU accession and the harmonisation of legislation, such an approach is controversial. It risks undermining the authority of both the Convention and the European Court of Justice. Ukraine must take into account the generally accepted trends of European law, adhere to the standards set by the Convention, and recognise the ECtHR as a leading human rights institution. Its judgments play a key role in shaping the rule of law and legal awareness in society, particularly since, under Ukrainian Law, such judgments are determined directly by the source of law in judicial practice, on par with the Convention itself.

Beyond optimising the procedure for executing ECtHR judgments, it is also necessary to reduce the number of judgments issued against Ukraine. The large number of cases is closely related to Ukraine's limited use of friendly settlement procedures. Over the past four years, the results have been negative: in 2021, friendly settlements were reached in 7 cases, in 2022 – 0, in 2023 – 0,⁴⁸ and in 2024 – 1.⁴⁹ According to experts, when using friendly settlement procedures, the State could offer adequate compensation and other concessions to applicants whose cases clearly violate the Convention. The government could also group cases by specific categories and settle them collectively, removing large groups of complaints from the court's register and effectively satisfying complainants.⁵⁰

Friendly settlement is possible at any stage of ECtHR proceedings and is confidential. Upon reaching a friendly settlement, the Court removes the case from the register by issuing a judgment that contains only a brief summary of the facts and the resolution. This judgment is also submitted to the Committee of Ministers for supervision of compliance with the settlement terms. This approach allows the State to avoid an unwanted judgment while enabling applicants to achieve a prompt and fair resolution of their dispute.

46 *ibid.*

47 S Fursa and Ye Fursa (n 36).

48 ECtHR, *Analysis of statistics 2023* (Council of Europe 2024) <<https://www.echr.coe.int/documents/d/echr/stats-analysis-2023-eng?download=true>> accessed 20 December 2024.

49 ECtHR, 'Violation by Article & by State - 2023' (n 7).

50 'Ukraine Has Left the Top Three Countries that are Most Frequently Sued at the European Court of Human Rights' (*Opendatabot*, 30 August 2021) <<https://opendatabot.ua/analytics/european-court>> accessed 14 September 2024.

6 CONCLUSIONS

In light of European integration, the implementation of European human rights standards into Ukrainian legislation underscores the need for strict compliance. The state should ensure prompt and full execution of final judgments, including ECtHR decisions, while first addressing the root causes of applications to international institutions. This can be done by considering the proposals outlined in this article, in particular:

1. Identify the functional components of the relevant state authorities responsible for executing ECtHR judgments, including general and individual measures, and organise effective interaction between them. Regarding the payment of satisfaction, allow state executive service bodies to directly send a resolution to initiate executive proceedings and payment instructions for debiting funds to the State Treasury Service of Ukraine, utilising the electronic system's functionality to expedite compensation payments.
2. Ensure stable annual funding of budget programmes related to the execution of ECtHR judgments by Ukraine. Allocate a separate budget article for these expenditures, maintaining a sufficient and approximately consistent amount each year, given the importance of Ukraine's compliance with its obligations to the Council of Europe to uphold its membership.
3. Reduce the number of applications to the ECtHR and, consequently, the number of judgments against the state. Eliminate the grounds for such applications by amending legislation with provisions that would eliminate their root causes. In the process of elaboration, actively utilise the positions of the ECtHR in judicial practice as norms for direct actions to identify the relevant violations and prevent them.
4. Address non-execution of national court decisions. Since the long-term non-execution of domestic court decisions remains the main reason for applications to the ECtHR, review existing moratoria on enforcement against public sector debtors. Reduce such moratoria to the minimum strictly necessary, except those directly connected with critical infrastructure enterprises or adopted to support them under martial law, while limiting their duration to reasonable periods justified by current circumstances.
5. Minimise budgetary burdens. Explore additional mechanisms to reduce state expenditure on the execution of ECtHR judgments, such as reaching friendly settlements prior to a formal ECtHR ruling, especially when the case relates to instances of well-established non-execution or long-term non-execution of judgments of national courts.

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АНОТАЦІЯ УКРАЇНСЬКОЮ МОВОЮ

Дослідницька стаття

ОСОБЛИВОСТІ ТА СТАН ВИКОНАННЯ РІШЕНЬ ЄСПЛ В УКРАЇНІ В УМОВАХ СЬОГОДЕННЯ ЧЕРЕЗ ПРИЗМУ ЄВРОПЕЙСЬКОГО ДОСВІДУ

Ірина Бондар, Любов Малярчук* та Олександр Снідевич

АНОТАЦІЯ

Вступ. Європейський суд з прав людини (ЄСПЛ) є авторитетною міжнародною інституцією, а його рішення мають важливе значення для захисту прав, задекларованих Конвенцією про захист прав людини і основоположних свобод. Метою статті є аналіз оцінки стану виконання рішень Європейського суду з прав людини в Україні, ролі державних органів у цьому процесі та проблем їхньої взаємодії щодо виконання вжитих ЄСПЛ заходів.

Методи. Загальний аналіз окремих рішень ЄСПЛ щодо застосованих заходів, дозволив диференціювати їх види та особливості використання, а також їхній вплив як на виконання рішень ЄСПЛ, так і на запобігання подібним зверненням у майбутньому. За результатами використання статистичних методів була здійснена оцінка стану виконання рішень ЄСПЛ Україною та іншими державами, а також виконання ними зобов'язань як учасниць Конвенції, що є основою остаточних висновків.

Результати та висновки. У статті проведено комплексний аналіз таких способів виконання рішень ЄСПЛ, як виплата сатисфакції, вжиття додаткових заходів індивідуального та загального характеру, а також порядок їх застосування компетентними органами на різних рівнях. Цей аналіз дозволив оцінити їхню варіативність, взаємозв'язок та ефективність для реалізації рішень ЄСПЛ, забезпечення дотримання прав задекларованих Конвенцією про захист прав людини і основоположних свобод, а головне – мінімізації першопричин їх порушення та подібних звернень до ЄСПЛ з цього приводу відповідно. У результаті були запропоновані способи покращення процедури виконання рішень ЄСПЛ Україною як країною-відповідачем.

Ключові слова: Конвенція про захист прав людини і основоположних свобод, порушення прав, сатисфакція, заходи загального характеру, заходи індивідуального характеру, держава-учасниця Конвенції, державна виконавча служба.