



Declassified*
AS/Jur (2023) 04
26 January 2023
ajdoc04 2023

Committee on Legal Affairs and Human Rights

The Implementation of judgments of the European Court of Human Rights – 11th report

Information note in preparation of a hearing in relation to Ukraine

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1. Introduction

1. According to the Annual Report 2021 on the Execution of Judgments, at the end of 2021, Ukraine had the largest number of cases pending execution (638 cases) of Council of Europe member States, with the largest number of repetitive cases (532 cases) and the second largest number of leading cases (106 cases).¹ Ukraine was 2nd in relation to numbers of cases closed during 2021 (126 cases). At the end of 2022, the case numbers had increased with 716 cases pending execution (99 leading cases and 617 repetitive cases) and 67 cases having been closed during 2022.

2. It goes without saying that the implementation of ECtHR judgments, as for other public functions, will necessarily face specific challenges in light of Russian's war of aggression against Ukraine. The Note is prepared conscious of the very difficult context and the huge challenges that Ukraine is currently facing in light of the unacceptable Russian war of aggression. Many of the human rights issues raised by the judgments date from before the 'revolution of dignity'. Ukraine faces many challenges, not least to help in preparing the way for reconstruction of the country, which will be greatly facilitated by ensuring respect for the rule of law and protections for human rights. In this light, it is positive that throughout 2022 the Ukrainian authorities have continued to collaborate closely with the Department of Execution of judgments and to make regular submissions to the Committee of Ministers on individual cases/groups of cases (over 50 action plans and reports were submitted) expressing their commitment to full compliance with the Convention.²

3. Given the numbers of cases involved, the complex and structural nature of some of the issues raised in those judgments, and the length of time taken to resolve many of these groups of cases, there are a significant number of outstanding issues that require additional attention, further measures and political will. It is also worth noting that a significant number of leading cases date from some time ago, before the "revolution of dignity" in February 2014, meaning that the political, legislative and administrative context has often significantly evolved since then, even if the underlying issues have not yet been entirely resolved.

4. Key groups of cases (see below) cover a very wide range of human rights issues, such as torture, hate crimes, unlawful pre-trial detention, or independence of the judiciary. However the effective functioning of the justice system and respect for the rule of law and common threads that are prevalent across many of these groups of cases. The Committee of Ministers has noted that a number of the outstanding groups (non-enforcement or delayed enforcement of domestic judgments against the State; independence of the judiciary;

* Document declassifié par le Comité le 25 janvier 2023.

¹ [Annual Report 2021](#).

² See for example : [Examination of the cases concerning Ukraine - Department for the Execution of Judgments of the European Court of Human Rights \(coe.int\)](#).

length of judicial proceedings) reveal major structural deficiencies adversely affecting the functioning of the justice system and the rule of law in Ukraine, depriving people of effective access to justice and thus eroding their trust in the judicial system.³ .

5. The developments in the *Lutsenko* and *Tymoshenko* cases are of particular interest given the Committee's focus for this Report on Article 18 cases relating to the abuse of power for politically motivated reasons. Also of potential interest to the Committee for its current work on the Report on systemic torture could be three groups: the *Kaverzin* Group relates to systemic use of torture and ill-treatment by the Ukrainian police in order to extract confessions; the *Yaremenko* group concerning the use of evidence obtained by torture; and the *Karabet* group on torture of prisoners by special forces either as punishment or during training exercises in prisons.

6. There seem to be a significant number of instances across different groups of cases where the Ukrainian authorities have been unable to pay just satisfaction due to an inability to obtain the bank details of the applicants. It might be useful to reflect on how to improve this situation – and in particular to ensure such money is available as and when the applicant is eventually located so that supervision of these cases can eventually be closed.

7. Another recurring theme is the lack of an effective domestic remedy for breaches of human rights including for structural problems that lead to multiple repetitive violations by the Court. The lack of such mechanisms and ensuing violations of Article 13 seem to be a regular feature of complex cases in Ukraine and should be a priority for the Ukrainian authorities to address.

2. Potential areas of inquiry

- What progress has been made in implementing ECtHR judgments?
- What barriers exist to timely and effective implementation of ECtHR judgments?
- What are the domestic systems for coordinating the implementation of ECtHR judgments and in particular pilot judgments? How are those systems working and could they be improved?
- What systems exist to ensure the involvement of civil society and accountability to Parliament for the implementation of ECtHR judgments? How are those systems working and could they be improved? In particular, how is the sub-Committee on the Execution of Judgments of the ECHR working in facilitating the implementation of ECHR judgments?
- To what extent has the Russian war of aggression affected the implementation of ECtHR judgments in Ukraine?
- What, if any, assistance might help with the work of implementing ECtHR judgments in Ukraine?
- What efforts might be made to improve the availability of funds to pay just satisfaction when applicants are eventually located, in order to be able to close these cases where just satisfaction is outstanding?

3. Specific Judgments

3.1. Access to justice

3.1.1. Non-enforcement of domestic judgments

8. The *Zhovner*, *Ivanov and Burmych*⁴ cases relate to long-standing major structural problem of non-enforcement or delayed enforcement of domestic judicial decisions, mostly delivered against entities owned or controlled by the State, and to the lack of an effective remedy in this respect (violations of Articles 6 § 1 and 13 of the Convention and Article 1 of Protocol No. 1). The Court set deadlines for action to be taken in the 2011 *Ivanov* pilot judgment, which were not complied with. As there were so many follow-up applications that were unduly affecting the ability of the ECtHR to manage its workload and given the absence of any progress, the Court struck them out in the 2017 *Burmych* judgment. The Committee of Ministers has adopted eight interim resolutions deeply regretting that the measures taken over the years are far from sufficient to fulfil Ukraine's obligations under Article 46, considering this problem to be related to the major structural deficiencies adversely affecting the functioning of the judiciary system and rule of law in Ukraine.

9. In 2021, the Committee of Ministers expressed serious concern at the lack of tangible progress or resourcing to address these issues and exhorted the Ukrainian leadership, at the highest political level, without further delay, to intensify their efforts to enable the adoption of the necessary measures.

³ See CM/Del/Dec(2021)1411/H46-44, CM/Del/Dec(2021)1411/H46-41, CM/Del/Dec(2021)1411/H46-42.

⁴ [Zhovner v Ukraine](#), Yuriy Nikolayevich [Ivanov v Ukraine](#) and [Burmych v Ukraine](#) – see here for [status of implementation](#).

3.1.2. *Independence and impartiality of the judiciary*

10. The *Oleksandr Volkov*⁵ group of cases relates to the independence of the judiciary. That case concerns violations of the applicant's right to a fair hearing on account of his unlawful dismissal from his post as a judge at the Supreme Court of Ukraine in June 2010 (Article 6). The issues included (i) dismissal proceedings before a body that was not independent or impartial, and lack of effective judicial review; (ii) absence of a limitation period for the proceedings against the applicant; (iii) various irregularities in the voting process before Parliament concerning the applicant's dismissal (absence of the majority of MPs, and those present deliberately and unlawfully casting multiple votes belonging to their absent colleagues); (iv) irregularities in the setting-up and composition of the special chamber of the High Administrative Court dealing with the applicant's case. The ECtHR held that reinstatement was required as an individual measure (this was done in 2015) and that reforms of the system of judicial discipline were required by way of general measures.

3.1.3. *Length of civil and criminal proceedings*

11. The *Svetlana Naumenko*⁶ group of cases, pending before the Committee since 2004 and 2005, concern the excessive length of civil proceedings (*Svetlana Naumenko* group) and criminal proceedings (*Merit* group) and the lack of effective remedies in this respect (violations of Articles 6 § 1 and 13).

12. A number of measures have been taken aimed at reducing the length of proceedings within the context of the judicial reform that has been ongoing since 2014. Little progress has been made however in the establishment of a remedy since the Court first established a violation of Article 13 of the Convention. In 2020 the Committee of Ministers adopted an interim resolution, expressing profound concern about the lack of tangible progress after so many years. In response, the authorities submitted an updated action plan on 5 July 2021. The judicial system continues to be understaffed.

3.2. *Strengthening the efficiency and independence of investigations into deaths and ill-treatment*

13. The *Kaverzin* Group⁷ of cases concern physical or psychological torture and/or ill-treatment by the police, mostly in order to obtain confessions (substantive violations of Article 3); lack of effective investigations into such complaints (procedural violations of Article 3) and lack of effective remedies thereof (violations of Article 13). The systemic nature of the violations was confirmed by the Court in the *Kaverzin* judgment of 2012. Since then, the Court reiterated on many occasions, that these violations stemmed "from systemic problems at the national level, which allowed agents of the State responsible for such ill-treatment to go unpunished." Other cases relating to the police use of evidence obtained by torture include the *Yaremenko*⁸ group of cases.

14. Given the need for review and fresh investigations, work on individual measures is ongoing and is key to adequately addressing these failings. In relation to general measures, these issues have been pending for a long time and also remain a concern for the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment (CPT). There is a need for better safeguards against torture and ill-treatment and compensation of victims. This work has involved legislative reform (including updating the definition of torture, as well as lifting the statute of limitation for investigating torture), practical steps (such as ensuring early access to a lawyer), organisational measures (e.g. concerning the role of the police ombudsman and the National Preventive Mechanism), as well as cooperation with Council of Europe bodies (e.g. the Action Plan). There has also been a need for improved effective investigations into allegations of torture and ill-treatment by law enforcement officers.

15. The *Karabe*⁹ case concerns torture inflicted on detainees in a minimum-security prison in 2007 to stop a hunger strike by detainees to protest against the harsh detention conditions in prison. Given the violence and the lack of effective investigations, these involve both substantive and procedural violations of Article 3.

16. The *Khaylo* Group¹⁰ of cases concern procedural violations of Article 2 (the right to life) on account of the lack of effective investigations into suspicious deaths.

⁵ [Oleksandr Volkov v Ukraine](#) – see here for [status of implementation](#).

⁶ [Svetlana Naumenko v Ukraine](#) and [Merit v Ukraine](#) – see here for [status of implementation](#).

⁷ [Kaverzin v Ukraine](#) – see here for [status of implementation](#).

⁸ [Yaremenko v Ukraine](#) – see here for [status of implementation](#).

⁹ [Karabet and Others v Ukraine](#) – see here for [status of implementation](#).

¹⁰ [Khaylo v Ukraine](#) – see here for [status of implementation](#).

3.2.1. Safety of journalists

17. The *Gongadze*¹¹ case concerns the authorities' failure, in 2000, to protect the life of Mr Gongadze, a journalist known for his criticism of those in power. He had been threatened by unknown persons, before being abducted and found dead (violation of Article 2). The case also concerns the lack of an effective investigation into this abduction and death (violation of Article 2).

18. In relation to individual measures, after the European Court's judgment three police officers were convicted in 2008 for the abduction and murder of Mr Gongadze, and the criminal investigation into the instigation and organisation of the murder, is now with the State Bureau of Investigations (SBI), the Prosecutor General's Office (PGO) performing procedural oversight.

19. In terms of general measures, the key aspect that remains under the Committee of Minister's supervision is the protection of journalists' safety, notably through (i) measures to improve the effectiveness of investigations into crimes against journalists; and (ii) measures to ensure that journalists have immediate access to protective measures in the light of the Recommendation to member States on the protection of journalism and safety of journalists and other media actors ([CM/Rec\(2016\)4](#)). Concerns persist due to an unduly restrictive definition of the term "journalist" in the Criminal Code of Ukraine. The Information Security Strategy for 2022-2025 includes measures to improve the legislative framework for the status of journalists and responsibility for crimes against journalists. A series of actions have been undertaken in recent years to improve follow-up on investigating such crimes against journalists. Measures have also been taken to improve the safety of journalists. However, concerns persist at the use of force by police against journalists, ineffective investigations into crimes against journalists, and the protection of journalists in general.

3.2.2. Hate Crimes

20. The *Fedorchenko and Lozenko group*¹² of cases concerns the lack of effective investigations into violent acts, including into the possible motives of racial or religious hatred behind the attacks. In *Fedorchenko and Lozenko*, the Courts found that the authorities failed to take thorough investigative steps on the deaths of five members of a Roma family, including three children, caused by an arson attack on their house in October 2001 with the alleged participation of a member of the local police force (procedural violation of Article 2 and of Article 14 combined with Article 2). The cases of *Burlya*, and *Pastrama*, similarly concerned the destruction of Roma homes and encampments; contrary to Articles 3, 14 and 8.

21. In *Grigoryan and Sergeyeva*, the Court found that the applicant, of Armenian origin, had been subjected to inhuman and degrading treatment by the police whilst in detention in 2010 and that the authorities failed to effectively investigate the applicant's complaints (violation of the substantive and procedural limb of Article 3, together with Article 14). In the cases of *Zagubnya and Tabachkova* and *Kornilova*, the domestic authorities had failed to properly investigate motives of religious hatred in attacks of Jehovah's Witnesses (procedural violation of Article 3 taken in conjunction with Article 14).

22. The Ukrainian authorities submitted updated action plans in 2021 and 2022 (DH-DD(2021)425 and DH-DD(2022)86). Individual measures have generally required the reopening of investigations. General measures have been taken to ensure that law enforcement authorities effectively investigate hate crimes and possible racist motives. However, concerns persist at the authorities' reluctance to institute investigations of racially motivated violence as well as to consider a possible hatred motive of crimes.

3.2.3. Abuse of power and abuse of pre-trial detention – Article 18 cases

23. The *Lutsenko and Tymoshenko*¹³ cases concern the pre-trial detention of opposition politicians for politically motivated purposes. Mr Lutsenko was one of the leaders of the opposition party and former Minister of the Interior. Ms Tymoshenko was the leader of the opposition party and former Prime Minister. The Court found violations of Article 18 taken in conjunction with Article 5, related to their arrest and detention in 2010 and 2011 respectively.

24. In the case of *Lutsenko*, the prosecuting authorities sought to punish the applicant for publicly disagreeing with accusations against him and asserting his innocence, which he had the right to do. The Court thus found that the applicant's liberty was restricted also for other reasons than those permissible under Article

¹¹ [Gongadze v Ukraine](#) – see here for [status of implementation](#).

¹² [Fedorchenko and Lozenko v Ukraine](#) – see here for [status of implementation](#).

¹³ [Lutsenko v Ukraine](#) and [Tymoshenko v Ukraine](#) – see here for [status of implementation](#).

5. In the case of *Tymoshenko*, the Court held that the actual purpose of her pre-trial detention was to punish her for alleged lack of respect towards the court.

3.3. Prison reforms

25. The *Nevmerzhitsky*¹⁴ group of cases concern inhuman and/or degrading treatment due to overcrowding, poor material conditions and inadequate nutrition in police establishments, pre-trial detention centres and prisons, as well as during transportation between detention facilities or to courts and lack of effective preventive and compensatory remedies in all these respects (violations of Articles 3 and 13).

26. In view of the scale of the problem and the lack of significant progress since the first related judgment against Ukraine in 2005, the Court delivered a pilot judgment in the case of *Sukachov*, which found that the recurrent structural problems of overcrowding and poor conditions of detention in pre-trial detention facilities remained unresolved and set a deadline of 30 November 2021 for Ukraine to take measures to reducing overcrowding and improve material conditions of detention, and to introduce preventive and compensatory remedies.

27. The Committee of Ministers last examined the group of cases in December 2021 when it adopted an interim resolution and expressed deep regret about the lack of concrete progress in the implementation of the pilot judgment within the deadline set by the Court. It strongly urged the authorities, at the highest political level, to overcome the current inertia and to hold to their commitment to resolve the problems and to adopt, as a matter of priority and without any further delay, the general measures required fully to comply with the pilot judgment.

28. By a letter of 24 June 2022, the Ukrainian authorities informed the Committee of Ministers about the state of the penitentiary system in Ukraine during the period of the martial law due to the Russian Federation's invasion in Ukraine. Some penal institutions have been damaged during the conflict and others have been in territory temporarily out of the control of the Ukrainian authorities, requiring the evacuation of convicts to safer areas.

29. The *Logvinenko*¹⁵ and *Isayev* groups of cases concern the inadequacy of medical care in detention, and lack of effective preventive and compensatory remedies (violations of Articles 3 and 13). Cases also concern the authorities' failure to protect the lives of detainees due to inadequate medical care provided for complex medical conditions as well as ineffective investigations into the circumstances of the deaths (substantive and procedural violations of Article 2). Significant work is needed to ensure adequate medical provision to those in detention and there is a lack of adequate prevention and compensatory remedies for failings.

30. On 24 June 2022, the Ukrainian authorities informed the Committee of Ministers that due to military aggression of the Russian Federation against Ukraine and hostilities in many parts of the country, there was a real threat of deteriorating supply of medicines and medical devices, due to the reduction of production, loss of pharmaceutical products, as well as the extremely tense situation with the logistics, which could lead to failure to provide appropriate and timely medical care to convicts and detainees. Following an appeal to the International Committee of the Red Cross with a request to provide humanitarian assistance to the health care facilities within the penitentiary estate, and as of May 17, they were provided with sufficient medicines to provide medical care to convicts and detainees. The location of hostilities also affected the number and location of hospitals available to treat sick convicts.

3.3.1. Irreducible whole life sentences

31. The *Petukhov (No 2)*¹⁶ group of cases concern the systemic problem of the irreducibility of life sentences in Ukraine (violations of Article 3). A reform of the system of review of whole-life sentences is required, so that such reviews can consider whether detention is justified on legitimate penological grounds. It should enable whole-life prisoners to foresee, with some degree of precision, grounds to be considered for release and under what conditions.

32. On 15 December 2022, the authorities submitted an updated action plan (DH-DD(2023)56) which is currently under assessment. In November 2022, new laws came into force which introduced a mechanism of review of whole life sentences which may be commuted to a fixed-term imprisonment of fifteen to twenty years if the convicted person has served at least fifteen years of the sentence.

¹⁴ [Nevmerzhitsky v Ukraine](#) – see here for [status of implementation](#).

¹⁵ [Logvinenko v Ukraine](#) – see here for [status of implementation](#).

¹⁶ [Petukhov \(no 2\) v Ukraine](#) – see here for [status of implementation](#).

3.3.2. *Unlawful or lengthy pre-trial detention*

33. The *Ignatov*¹⁷ group of cases concern structural problems relating to domestic pre-trial detention practices, including (i) unregistered detention and administrative arrest without adequate safeguards, (ii) failure to bring a person promptly before a judge, (iii) lack of a procedure for review of the lawfulness of detention, and (iv) lack of a remedy to compensate for such unlawful pre-trial/administrative detention. Such concerns equally apply to children (see the *Korneykova* case).

34. Despite new legislation introduced through the 2012 Code of Criminal Procedure (CCP), which addressed many of the concerns, problems persist (the *Ignatov* judgment (2017) relates to actions since that legislation) and further legislative reform of pre-trial detention is required. On 28 March 2022 and 22 December 2022, the Ukrainian authorities submitted updated action plans (see DH-DD(2022)372 and DH-DD(2023)38).

3.4. *Freedom of expression and freedom of assembly*

35. The *Shvydka*¹⁸ case concerns a violation of the applicant's right to freedom of expression. She was convicted of the administrative offence of petty hooliganism for an act of political expression carried out during an official commemoration ceremony for a Ukrainian poet in Kyiv, in August 2011, and she was sentenced to ten days' detention. The Court found this to be a disproportionate interference with her right to freedom of expression (violation of Article 10). The non-suspensive effect of appeals in administrative offence proceedings in 2011-2013 violates Article 2 of Protocol 7 (right of appeal in criminal matters). On 6 October 2021 the authorities submitted a new action plan involving both legislative and administrative changes. Individual measures seem to have been largely addressed. Improved training for the courts aims to avoid sentences resulting in a violation of the freedom of expression (Article 10 ECHR). Since 2020 there has been a legislative distinction between crimes and misdemeanours.

36. The *Vyerentsov*¹⁹ group of cases concern various violations of the applicants' right to freedom of assembly due to the inability to legally organise a peaceful demonstration (violation of Article 11). *Vyerentsov* arises from a conviction (sentenced to three days administrative detention) for having organised, on behalf of a human rights NGO, a peaceful demonstration in 2010 (violations of Articles 7 and 11). As there was no clear and foreseeable law regulating the procedure for organising and holding demonstrations, the conviction for violating a non-existing procedure was incompatible with Article 7. Efforts have been made to improve the policing approach to facilitate demonstrations. The authorities submitted an updated action plan on 11 March 2022.

37. The *Shmorgunov*²⁰ group of cases concern multiple violations during the Maidan protests in Kyiv and other cities in Ukraine in 2013-2014, either by State or by non-State agents under police control, as part of a deliberate strategy of the authorities to hinder and put an end to the initially peaceful Maidan protest. Excessive force was resulted in escalation of violence leading to ill-treatment and, in some cases, arbitrary detention. The authorities failed to conduct effective investigations into the events. The Court found violations of Article 3 (substantive and procedural), Article 11, and Article 5. In 2022 the authorities submitted an action plan ([DH-DD\(2022\)184](#)).

3.5. *Domestic violence*

38. The *Levchuk*²¹ group of cases concerns the authorities' failure to ensure that the applicants can enjoy their homes free from domestic violence and harassment (violations of Article 8). Ms *Levchuk* and her children had to continue sharing their flat with her former husband, the perpetrator of domestic violence, for at least five years after the dissolution of the marriage, owing to the failure by the domestic court to strike a fair balance between the competing interests in the eviction proceedings. In *Irina Smirnova* and *Zhuravleva*, the applicants had to flee their homes due to harassment and violence from new co-owners of the flats who had obtained property rights without the applicants' consent. The domestic legal framework did not provide the applicants with safeguards.

¹⁷ [Ignatov v Ukraine](#) (ex Kharchenko) – see here for [status of implementation](#).

¹⁸ [Shyvudka v Ukraine](#) – see here for [status of implementation](#).

¹⁹ [Vyerentsov v Ukraine](#) – see here for [status of implementation](#).

²⁰ [Shmorgunov and Others v Ukraine](#) – see here for [status of implementation](#).

²¹ [Levchuk v Ukraine](#) – see here for [status of implementation](#).

3.6. *Unfair dismissal of civil servants – laws of lustration*

39. The *Polyakh*²² cases concern the applicants' right to respect for their private and family life (Article 8) which was violated as a result of lustration (purging of Government officials in Central and Eastern Europe) in which the applicants had been dismissed, banned from civil service positions for 10 years, and had had their names published in a publicly accessible online Lustration Register. The Court doubted whether the interference pursued a legitimate aim and noted that such measures had been based on a sort of collective liability for working under Mr Yanukovich, taking no account of any individual role or link to any antidemocratic developments. The authorities submitted an action plan 19 November 2020.

3.7. *Asylum procedures*

40. The *Kebe*²³ group of cases concerns various deficiencies in the procedures for the treatment of asylum-seekers in Ukraine in 2011-2020, including non-suspensive effect of border guard decisions, removal from Ukraine without an assessment of a claim of a risk of ill-treatment (Article 3), procedural barriers to submitting asylum applications from a detention facility, and various issues relating to immigration detention.

41. The authorities submitted an updated and consolidated action plan ([DH-DD\(2021\)771](#) and [DH-DD\(2021\)1001](#)) in October 2021. The Committee examined this group of cases most recently in December 2021.

²² [Polyakh and Others v Ukraine](#) – see here for [status of implementation](#).

²³ [Kebe and Others v Ukraine](#) – see here for [status of implementation](#).