



JUSTICE 24

Report on seeking justice for violations of the European Convention on Human Rights committed by the Russian Federation as a result of the military aggression against the sovereign territory of Ukraine in February 2022.

INTRODUCTION

It is undeniable that the ongoing, unprovoked full-scale invasion of Ukraine by the Russians started in February 2022 constitutes a grave breach of international legal order and is a source of an immediate human rights and humanitarian crisis for the Ukrainian residents.

Russia's military aggression has destroyed the lives of the Ukrainian people. According to the Office of the High Commissioner for Human Rights (OHCHR), there have been 21,793 civilian casualties in the country; 8,173 people were killed and 13,620 injured¹. It is, however, crucial to emphasize that the OHCHR believes these numbers to be understated and expects them to be significantly higher.

Consequently, as of today, millions of people were forced to leave their homes; over 5.4 million have been internally displaced across Ukraine², while around 13 million sought refuge in other European countries³. Those who stayed in the territory of Ukraine have their access to electricity, water and heat restricted, also in times of winter, due to the deliberate Russian shelling causing the destruction of critical infrastructure⁴.

In the face of the immensity of violence and cruelty of this war, we cannot forget that behind these numbers stand individuals – the victims of this ruthless aggression. They have the right to seek and demand justice for the violations of their rights, caused by the Russian invasion.

Until 16 January 2023, the victims of human rights violations caused by Russia were able to apply to the European Court of Human Rights (**"ECtHR"** or **"The Court"**). The Court has been competent to deal with applications against Russia concerning actions or omissions occurring up until 16 September 2022 and submitted up until 16 January 2023. This was confirmed by the ruling of the Court from 17 January 2023 in the case *Fedotova and Others v. Russia* (application number 40792/10 and two others) as well as by further rulings. The basis for this statement was Article 58 § 2 of the European Convention. Moreover, the Court pointed out that even though Russia had ceased to be a party to the Convention, it still has a duty to cooperate in the case as the events had occurred before the 16 September 2022 cut-off point⁵.

1 <https://www.ohchr.org/en/news/2023/03/ukraine-civilian-casualty-update-6-march-2023>

2 <https://dtm.iom.int/reports/ukraine-internal-displacement-report-general-population-survey-round-12-16-23-january-2023>

3 <https://data.unhcr.org/en/situations/ukraine>

4 <https://www.hrw.org/news/2023/01/12/ukraine-russian-invasion-causing-widespread-suffering-civilians>

5 <https://hudoc.echr.coe.int/eng-press?i=003-7559628-10388013>

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UKRAINE AND RUSSIA AS MEMBERS OF THE COUNCIL OF EUROPE

9 November 1995 – Ukraine becomes a member of the Council of Europe¹

28 February 1996 – Russia becomes a member of the Council of Europe²

11 September 1997 – Ukraine ratifies the European Convention on Human Rights; the Convention enters into force³

5 May 1998 – Russia ratifies the European Convention on Human Rights; the Convention enters into force⁴



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1 Chart of signatures and ratifications of Convention for the Protection of Human Rights and Fundamental Freedoms. <https://www.coe.int/en/web/conventions/full-list2?module=signatures-by-treaty&treaty-num=005>

2 Ibid.

3 Ibid.

4 Ibid.

MEASURES IMPOSED ON RUSSIA IN RESPONSE TO THE ILLEGAL ANNEXATION OF CRIMEA



late February – early March 2014

Invasion and illegal annexation of Crimea by Russia

18 March 2014

Signing of the Treaty on Accession of the Republic of Crimea to Russia

10 April 2014

The Parliamentary Assembly of the Council of Europe suspends the voting rights of the Russian Federation as well as its right to be represented in the Assembly's leading bodies, and its right to participate in election observation missions⁵

"The Assembly strongly condemns the violation of Ukrainian sovereignty and territorial integrity by the Russian Federation and considers that such a flagrant violation by a Council of Europe member State of its obligations and commitments requires a strong signal of disapproval."

"However, the Assembly believes that political dialogue should remain the most privileged way to find compromise, and there should be no return to the pattern of the Cold War."

30 June 2017

Russia suspends payment of its contribution to the budget of the Council of Europe until the full and unconditional restoration of its delegation's rights in the Parliamentary Assembly of the Council of Europe⁶

5 Resolution 1990 (2014)1 Reconsideration on substantive grounds of the previously ratified credentials of the Russian delegation. <http://www.assembly.coe.int/LifeRay/APCE/pdf/Communication/2014/20140410-Resolution1990-EN.pdf>

6 Rapporteur Group. (2017, September 21). Unpaid Contributions – Special Measures. <https://rm.coe.int/090000168074c2fd>

25 June 2019

The Plenary Assembly of the Council of Europe restores Russia's suspended rights to maintain the dialogue with the Russian Federation and hold it accountable for its actions⁷

"The Parliamentary Assembly constitutes the most important pan-European platform where political dialogue on the Russian Federation's obligations under the Statute of the Council of Europe can take place, with the participation of all those concerned and where the Russian delegation can be held accountable on the basis of the Council of Europe's values and principles."

"The Russian delegation must without any further delay return to co-operating with the Monitoring Committee, and all other committees of the Assembly, and engage in meaningful dialogue on the fulfilment of its commitments and obligations."



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⁷ Resolution 2292 (2019). Challenge, on substantive grounds, of the still unratified credentials of the parliamentary delegation of the Russian Federation. <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=28049>

REACTION OF THE COUNCIL OF EUROPE TO RUSSIAN MILITARY AGGRESSION



24 February 2022

Russian Federation initiates full-scale military aggression against Ukraine

25 February 2022

The Committee of Ministers suspends Russia's membership in the Council of Europe in accordance with Article 8 of the Statute of the Council of Europe⁸

"Any member of the Council of Europe which has seriously violated Article 3 may be suspended from its rights of representation and requested by the Committee of Ministers to withdraw under Article 7. If such member does not comply with this request, the Committee may decide that it has ceased to be a member of the Council as from such date as the Committee may determine."

28 February 2022

Ukraine submits its first request for the indication of urgent interim measures in regard to **"massive human rights violations being committed by the Russian troops in the course of the military aggression against the sovereign territory of Ukraine"**⁹

1 March 2022

The European Court of Human Rights grants urgent interim measures in the application submitted by the Ukrainian Government concerning Russian military aggression on Ukrainian territory. The Court indicates to the Government of Russia to refrain from military attacks against civilians and civilian objects, including residential premises, emergency vehicles and other specially protected civilian objects such as schools and hospitals, and to ensure immediately the safety of the medical establishments, personnel and emergency vehicles within the territory under attack or siege by Russian troops.¹⁰

8 Committee of Ministers. (2022, February 25). CM/Del/Dec(2022)1426ter/2.3. https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a5a360

9 <https://hudoc.echr.coe.int/eng-press?i=003-7272764-9905947>

10 The request was registered under application number 11055/22, Ukraine v. Russia (X) <https://hudoc.echr.coe.int/eng-press?i=003-7272764-9905947>

4 March 2022

The European Court of Human Rights indicates interim measures in individual applications concerning Russian military aggression on Ukrainian territory. The Court informs that it has already received a number of requests for interim measures from individuals against the Government of the Russian Federation. These persons include those taking refuge in shelters, houses and other buildings, fearing for their lives due to ongoing shelling and shooting, without or with limited access to food, healthcare, water, sanitation, electricity and other interconnected services essential for survival, in need of humanitarian assistance and safe evacuation. The Court decides that this interim measure, under Rule 39 of the Rules of Court, shall be considered to cover any request brought by persons falling into the above category of civilians who provide sufficient evidence showing that they face a serious and imminent risk of irreparable harm to their physical integrity and/or right to life¹¹

15 March 2022

The Parliamentary Assembly of the Council of Europe unanimously adopts an opinion finding Russia no longer eligible to be a Member State of the Council of Europe¹²

"The Assembly, therefore, is of the opinion that the Committee of Ministers should request the Russian Federation to immediately withdraw from the Council of Europe. If the Russian Federation does not comply with the request, the Assembly suggests that the Committee of Ministers determine the immediate possible date from which the Russian Federation would cease to be a member of the Council of Europe."

15 March 2022

The government of the Russian Federation informs about its withdrawal from the Council of Europe and its intention to denounce the European Convention on Human Rights¹³

¹¹ <https://hudoc.echr.coe.int/eng-press?i=003-7277548-9913621>

¹² Parliamentary Assembly. (2022, March 15). Opinion 300(2022) <https://pace.coe.int/en/files/29885/html>

¹³ <https://www.coe.int/en/web/portal/-/the-russian-federation-is-excluded-from-the-council-of-europe>

16 March 2022

The expulsion of the Russian Federation from the Council of Europe as a consequence of military aggression against Ukraine in line with the procedure launched under Article 8 of the Statute of the Council¹⁴

„The Committee of Ministers, reaffirming that the aggression of the Russian Federation against Ukraine constitutes a serious violation by the Russian Federation of its obligations under Article 3 of the Statute of the Council of Europe... Decides, in the context of the procedure launched under Article 8 of the Statute of the Council of Europe, that the Russian Federation ceases to be a member of the Council of Europe as from 16 March 2022.”

22 March 2022

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 art. 58 of the European Convention on Human Rights¹⁵

1 April 2022

The European Court of Human Rights on the request made by Ukraine, expands the already indicated interim measures¹⁶

“The Court reiterates its interim measure of 1 March 2022 in which it indicated to the Government of the Russian Federation to refrain from military attacks against civilians and civilian objects, including residential premises, emergency vehicles and other specially protected civilian objects such as schools and hospitals, and to ensure immediately the safety of the medical establishments, personnel and emergency vehicles within the territory under attack or siege by Russian troops. The Court considers that this interim measure must be understood to cover any and all attacks against civilians, including with the use of any form of prohibited weapons, measures targeting particular civilians due to their status, as well as the destruction of civilian objects under the control of Russian forces. The Court thus concludes that this part of the request is already covered by the interim measure indicated on 1 March 2022 which remains in force.

14 Committee of Ministers. (2022, March 16). Resolution CM/Res(2022)2 on the cessation of the membership of the Russian Federation to the Council of Europe. https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a5da51

15 https://echr.coe.int/Documents/Resolution_ECHR_cessation_membership_Russia_CoE_ENG.pdf

16 <https://hudoc.echr.coe.int/eng-press?i=003-7300828-9953996>

The Court further recalls the interim measure already indicated on 4 March 2022 to the Government of the Russian Federation, under Rule 39, that, in accordance with their engagements under the Convention, notably in respect of Articles 2, 3 and 8, they should ensure unimpeded access of the civilian population to safe evacuation routes, healthcare, food and other essential supplies, rapid and unconstrained passage of humanitarian aid and movement of humanitarian workers. In the context of the present request and having regard to the current situation on the ground, the Court decides to indicate to the Government of the Russian Federation, under Rule 39, that the said evacuation routes should allow civilians to seek refuge in safer regions of Ukraine. The Court has also decided to give immediate notice of the above interim measure to the Committee of Ministers of the Council of Europe in accordance with Rule 39 § 2 of the Rules of Court”.

5 September 2022

Resolution of the European Court of Human Rights taking note that the office of the judge in the Court with respect to the Russian Federation would cease to exist on 16 September 2022¹⁷

16 September 2022

Russia ceases to be the party to the European Convention on Human Rights; actions or omissions occurring up until this day can become subject to applications to the European Court of Human Rights against Russia¹⁸

16 January 2023

The last day to submit applications against Russia to the European Court of Human Rights¹⁹

¹⁷ https://echr.coe.int/Documents/Resolution_ECHR_cessation_Russia_Convention_20220916_ENG.pdf

¹⁸ <https://hudoc.echr.coe.int/eng-press?i=003-7435446-10180882>

¹⁹ <https://hudoc.echr.coe.int/eng-press?i=003-7246733-9862594>

EXPERT'S OPINION

Was the Council of Europe's response to Russian aggression in February 2022 adequate? What does it say about the Council of Europe and its condition?

Dominika Bychawska-Siniarska, PhD, Poland



- The aggression of Russia against Ukraine demanded a twofold approach from the Council of Europe. On the one hand, the organization's reaction should have tackle Russia as the aggressor state and on the other, specific projects should aim at supporting Ukraine and its people.
- The Council of Europe has bent over backwards to accommodate Russia in recent years, arguing that its membership gives Russian citizens much-needed access to the Court. But this access is of little

value if its most important rulings can be ignored as the Russian government has been adopting systemic changes in order to oppose international obligations and the human rights protection system.

- It seems however, in the light of the severity of the Russian aggression, that the expulsion from the Council of Europe was the only option to take. For the majority of the 20th century it had been clear who belonged to this oldest European Human Rights institution and who did not. **Membership was open to democracies** committed to the pursuit of peace, to political liberty and to the rule of law. No communist people's democracy was a member of the Council of Europe. This also led to the departure from the organization of Greece after a military junta took over power in 1967.
- Some feared that Russia's expulsion from the Council of Europe would strip Russians of the protection of the European Court of Human Rights (ECtHR). In fact, already before Russia's expulsion its citizens challenging the regime were not getting any protection. It would be absurd to assume that under current conditions the implementation process of the ECtHR judgements would be anything but worse. Moreover, the ECtHR have the possibility to rule over applications that have been submitted before 16 September 2022. The value of such a solution, in the light of Russia's open denial of European human rights standards, remains doubts as to the legal force of those judgments and the possibility of their implementation. It should be recalled that on 11 June 2022 Russia adopted a law by which it is not required to comply with the Court's judgments given after 15 March 2022: no compensation awarded by the Court would be paid, no proceedings would be reopened. Nevertheless, the adjudication of judgments in light of the Russian attitude seems like art for art's sake.

- However, the expulsion of Russia must mean continuous effort to support dissidents that struggle for human rights protection despite the situation, including human rights defenders. Some feared that Russia's expulsion would mark a definitive rupture. The day Russia becomes a democracy again (although it may take decades) it should be welcomed back with open arms. This is what happened to Greece after the fall of the Regime of Colonels. Russia had to be expelled for the sake of Council of Europe credibility, to which a different Russia might one day return.
- On the other hand the Council of Europe is constantly challenged by the situation in Ukraine and the consequences of the war. The Action Plan "Resilience, Recover and Reconstruction" (2023-2026) seems a reasonable complement to the regular cooperation between the organization and Ukraine. It also provides a strong support to rule of law development and the advancement of reforms bringing Ukraine closer to the European Union. A lot of focus and attention has been brought to political reassurances and demonstration of solidarity. It seems, however, that the Council of Europe could play a major role in monitoring and reporting human rights abuses during the conflict. Such a potential role has also been highlighted by the Secretary General one year after the aggression.
- Strong expectations rely on the Reykjavik summit planned in May 2023. The summit needs to result in a concrete action plan towards the Ukrainian situation, but also in the reinforcement of democratic values in the entire Council of Europe.



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AIM OF THE REPORT

This report presents the results of the “Justice24” project. Its objective was to document and address the violations of the European Convention on Human Rights by the Russian Federation with respect to the full-scale invasion of Ukraine on the 24 February 2022 as well as to provide the victims of these violations with legal assistance. It presents the overview of the project; its objectives, undertaken activities and attainments.

This report provides a perspective on the scope of protection awarded to the victims of war in Ukraine by the European Convention on Human Rights and its enforcement by the European Court of Human Rights.



JUSTICE 24

#WOLNE
SĄDY

INFORMATION ABOUT THE PROJECT JUSTICE 24

Why did we initiate the Justice 24 project?

While it is the mission of the legal community to uphold freedom, justice, and peace in the world, in the face of illegal military aggression, we felt the moral obligation to not only take a stance but also to act.

Our objection is an expression of moral veto and a call for solidarity with the Ukrainian people. We believe that it is our joint responsibility to stand up for freedom and human dignity. After the experience of the Second World War, we cannot allow the perpetrators of cruel crimes against humanity to go unpunished. The victims of this war deserve justice.

Hence, Justice 24 constitutes a response of lawyers to the human rights violations taking place due to Russia's invasion of Ukraine.²⁰

What is Justice 24 project?

The Justice 24 is an international project that aims to document the war crimes committed by the Russian state in Ukraine and assist victims in seeking justice before the European Court of Human Rights in Strasbourg.

The project has been initiated by the Free Courts Foundation (Fundacja Wolne Sądy) in cooperation with the Ukrainian Helsinki Human Rights Union (UHHRU) under the coordination of Olena Sotnyk, Ukrainian attorney-at-law and human rights defender. Project is funded by the National Endowment for Democracy (NED).

It consists of a team of professionals that unites Polish and Ukrainian lawyers.

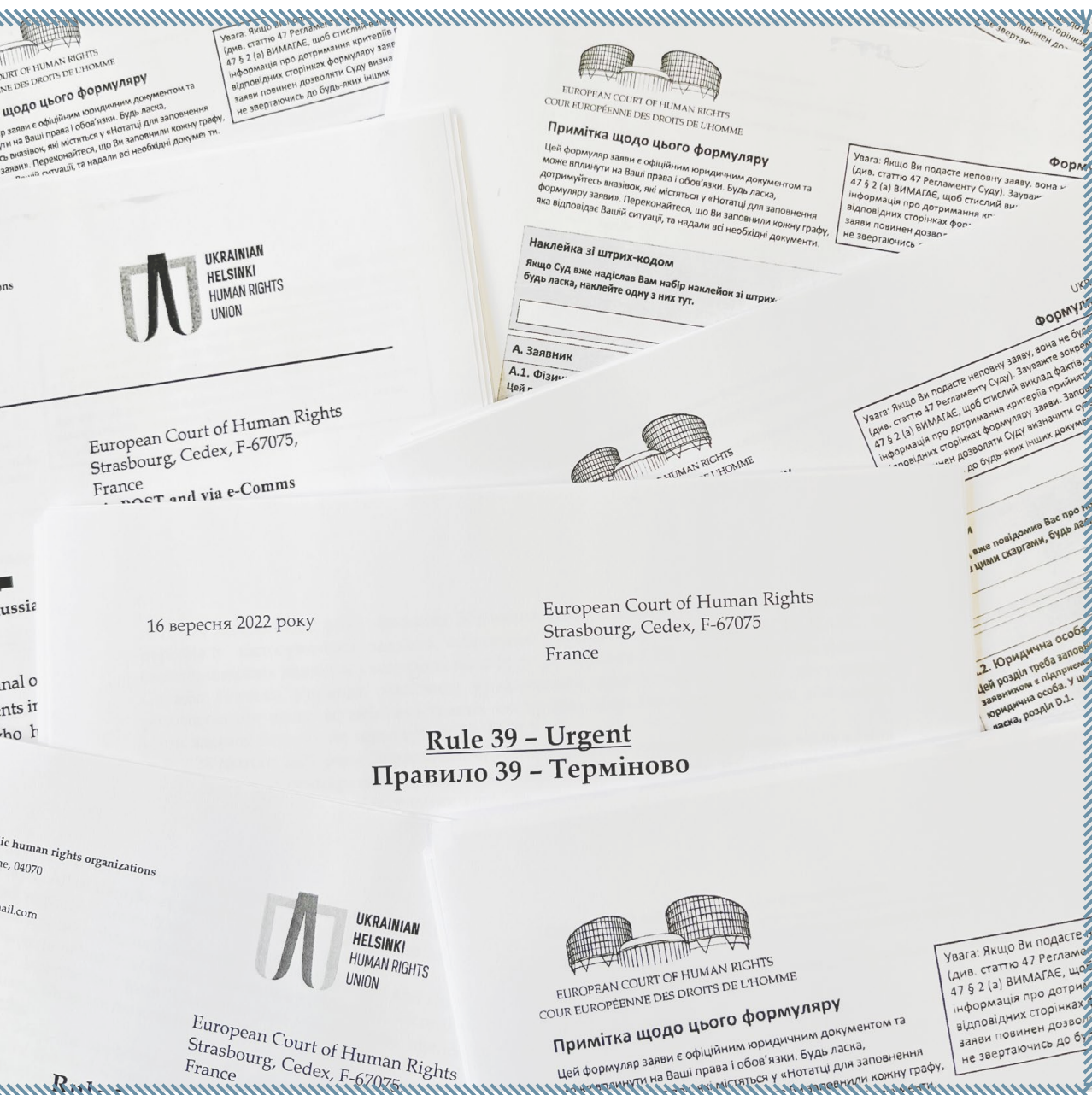
What kind of actions were undertaken within the Project?

- Provision of free legal aid to the victims of Russia's invasion of Ukraine
- Submission of interim measures requests to the ECtHR
- Submission of applications to the ECtHR on human rights violations committed by Russian Federation in Ukraine
- Collection of evidence on the breaches of the European Convention on Human Rights by Russia with ECtHR, which will result in triggering international accountability mechanisms

²⁰ <https://www.justice24.com.ua/en/>

What we want to achieve?

- Acquiring the reparations for the damages caused by Russia's human rights violations
- Compensating the victims
- Restoring justice
- Discussion on the effectiveness of the Council of Europe's response to the aggression against Ukraine and accountability of the perpetrators of grave breaches of international humanitarian law and gross violations of human rights



Rule 39 – Urgent Правило 39 – Терміново

OUR PROJECT IN NUMBERS

Requests for granting interim measures²¹

Interim measures were requested on behalf of **106** applicants

All requests concerned the immediate risk of violation of **Art. 2** (right to life) and **Art. 3** (prohibition of torture) of the European Convention on Human Rights by Russia

All requests for interim measures have been granted by the ECtHR

2 – 5 days – the average time required by the Court to grant interim measures

June 2022 – January 2023 – submission of interim measures requests to the ECtHR

Decisions on interim measures granted by the ECtHR considered:

- Non-execution of the death penalty imposed on the applicant
- Provision of appropriate conditions of detention
- Provision of necessary medical assistance and medication

²¹ Interim measures constitute urgent measures that the European Court of Human Rights may grant only in situations when an imminent risk of irreparable damage exists. They are applied in limited situations when the applicant may face a real risk of serious and irreversible harm, so primarily in cases when there is a threat to life or ill-treatment, falling respectively under Articles 2 and 3 of the ECHR. In such cases, the Court may indicate to parties any measures it believes to be suitable to properly address the situation. The process of indicating interim measures is regulated under Rule 39 of the Rules of the Court.

Applications to the ECtHR

125 victims of the Russian aggression have been assisted during the formal application process to the European Court of Human Rights by the Ukrainian lawyers

On their behalf **21 joint applications** have been submitted to the ECtHR

October 2022 – January 2023 – submission of applications to the ECtHR

Subject of the applications to the ECtHR²²

The Convention grounds on which the applications were filed:

- Right to life (Art. 2 ECHR) – 8 joint applications
- Prohibition of torture (Art. 3 ECHR) – 11 joint applications
- Right to liberty and security (Art. 5 ECHR) – 9 joint applications
- Right to a fair trial (Art. 6 ECHR) – 1 joint application
- No punishment without law (Art. 7 ECHR) – 1 joint application
- Right to respect for private and family life (Art. 8 ECHR) – 14 joint applications
- Right to an effective remedy (Art. 13 ECHR) – 20 joint applications
- Right to individual complaint (Art. 34 ECHR) – 7 joint applications
- Protection of property (Art. 1 Protocol 1) – 10 joint applications
- Unconditional prohibition of death penalty (Protocol 13) – 1 joint application



22 Applications have been based on multiple Convention Articles

Factual grounds on which the applications were filed:

- Captivity
- Death sentence
- Detention
- Torture
- Forcible transfers to the territory of Belarus and Russia
- Placement in locations not meeting radiation safety standards
- Death as a result of missile attack
- Injuries as a result of missile attack
- Displacement
- Lack of contact with family
- Absence of medical assistance
- Lack of food and drinking water
- Interrogations by the representatives of Russian Federation
- Constant moral and psychological pressure
- Destruction of the buildings
- Destruction of property



METHODS OF EVIDENCE COLLECTION AND ANALYSIS

During the preparation of applications to the European Court of Human Rights within the project, the following methods of evidence collection were used:

- interviewing applicants and witnesses
- monitoring of official websites of state bodies of Ukraine and Russia
- monitoring of Russian Telegram channels publishing information (photos and videos) on the detention of Ukrainian servicemen
- sending requests and appeals to the competent Ukrainian authorities (National Information Bureau, Joint Center for the Search and Release of Prisoners under the Security Service of Ukraine, Coordination Headquarters for the Treatment of Prisoners of War of the Main Directorate of Intelligence under the Ministry of Defence of Ukraine)
- sending requests to the International Committee of the Red Cross
- reviewing of reports by international governmental and non-governmental organisations.

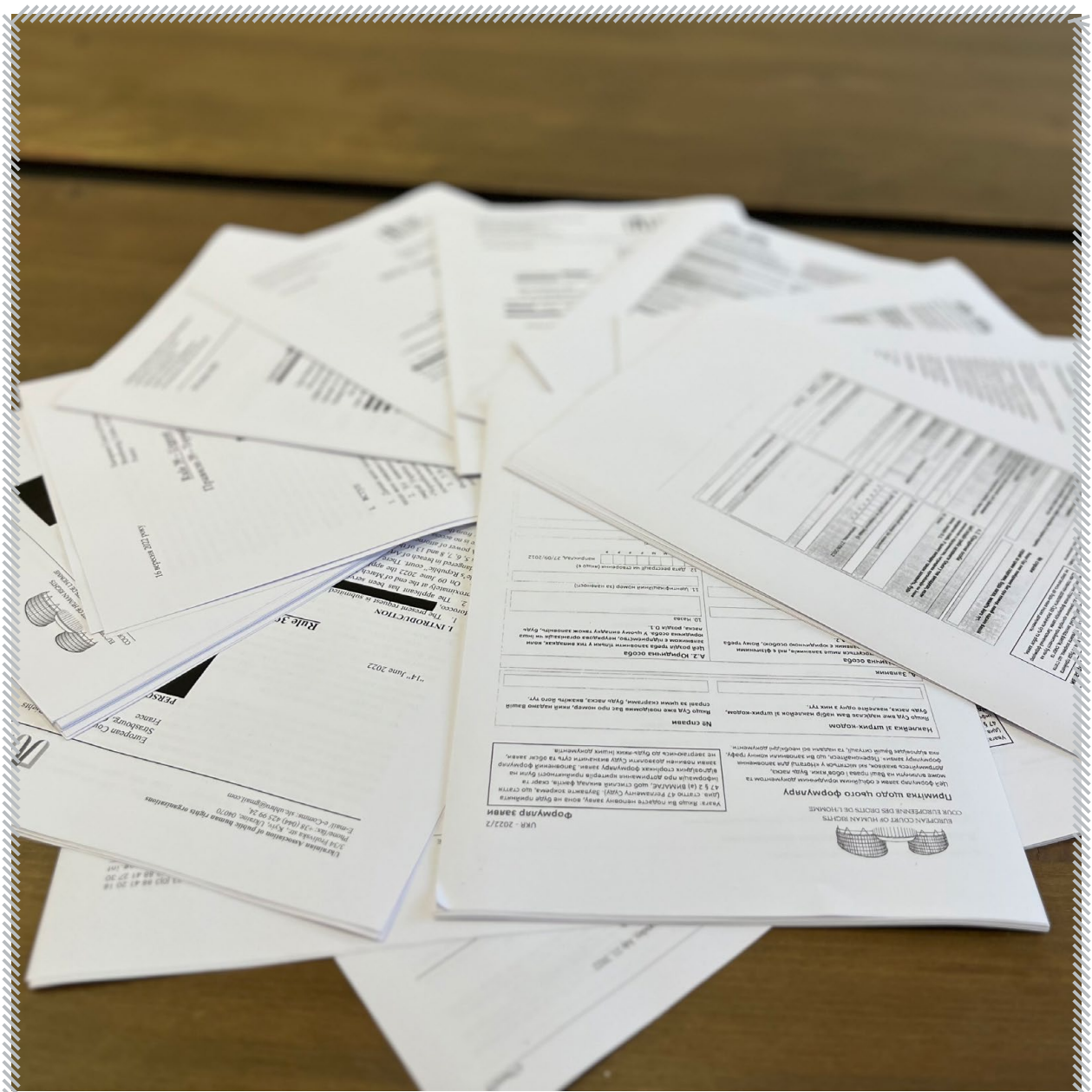
The evidence obtained during the preparation of the application in each case was analysed for sufficiency to prove the alleged violations and description of the facts of the case, as well as proving the responsibility of the Russian Federation (jurisdiction).

During this assessment, the lawyers' previous experience in working on applications to the ECtHR regarding violations during the armed conflict since 2014 was taken into account. In addition, the lawyers were guided by the existing practice of the Court in cases related to armed conflicts and the Court's approaches to evaluating the evidence provided by the parties (*Cyprus v. Turkey* [GC], no. [25781/94](#); *Ilaşcu and Others v. Moldova and Russia* [GC], no. [48787/99](#); *Georgia v Russia* (II), no. [38263/08](#); *Ukraine v Russia (re Crimea)*, nos. [20958/14](#) and [38334/18](#)). Namely, in assessing evidence the Court has adopted the standard of proof 'beyond reasonable doubt' laid down by it in two inter-State cases (see *Ireland v. the United Kingdom*, 18 January 1978, § 161, Series A no. 25, and *Cyprus v. Turkey* [GC], no. 25781/94, § 113, ECHR 2001-IV) and which has since become part of its established case-law.

Moreover, it is important to note that in many cases some evidence is within the exclusive competence of the respondent State (for example, deployment of troops, use of weapons at a specific time, etc.). In decision *Ukraine v Russia (re Crimea)* the Court established that the principle *affirmanti incumbit probatio* may not be applied where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities of the respondent State.

EVIDENCE GATHERED DURING PROCEEDINGS

- applicants' statements,
- statements of the applicants' relatives,
- witness statements,
- medical documents,
- documents from criminal proceedings,
- documents from the Ukrainian state bodies (national police, National Informational Bureau, Security Service of Ukraine, Ministry of Defence of Ukraine),
- advocate's requests,
- publications from Ukrainian and Russian media resources (mass media, Telegram channels, etc),
- official statements of Ukrainian and Russian state bodies (Ministry of Defence, Ombudsman, others),
- video and photo evidence,
- reports and decisions of international organisations (United Nations, Council of Europe)



CHALLENGES DURING LITIGATION BEFORE THE ECtHR (PERSPECTIVE OF THE LAWYERS)

Main challenge:

- Russian Federation did not respond to the ECtHR's decisions on the application of interim measures

Other challenges:

- lack of access to the official documents
- no contact with the applicant during captivity
- difficulties in communication with the applicants' relatives who lived abroad in relation to the collection of documents and interviews
- difficulties with interviewing the applicants
- delays in obtaining official documents
- communication with a big number of applicants
- systematization and processing of a large amount of information from different sources
- no credible information about the place of detention of the applicants
- access to the materials of pre-trial investigation provided by the Ukrainian enforcement bodies



EXPERT'S OPINION

What are the implications of the ECHR's decisions on interim measures in connection with Russian aggression? Are they only symbolic or practical? If only symbolic, why does the symbolism matter in this case?



Prof dr hab. Paweł Wiliński, Adam Mickiewicz University of Poznań, Poland

- On 1 March and 4 March 2022, the European Court of Human Rights (ECtHR) granted urgent interim measures at the request of the Ukrainian Government and individual requests. The scope of the interim measures was the obligation to refrain from the inhuman treatment of civilians and the destruction of civil structures.
- A great deal of evidence shows that the interim measures imposed on the Russian Federation had very limited, or even no direct effect on the Russian troops and Russian administration on the occupied territory of Ukraine between 1 March 2022 and 16 September 2022. It did not stop their military attacks on civilians and civilian structures, including housing, emergency vehicles and other specially protected civilian structures, such as schools and hospitals. Furthermore, Russia failed to immediately ensure the safety of medical establishments, personnel and emergency vehicles within the territory under attack or being besieged by Russian troops, refugees in shelters, houses and other buildings. Interim measures also did not stop them from shelling and shooting, restricting access to food, healthcare, water, sanitation, electricity and other related services that are necessary for survival, as well as other inhuman actions.
- The ECtHR has imposed interim measures on Russia in several cases in the past (including Aleksanyan, Shukaturov) in important, but certainly not so significant and extensive matters, and Russia generally refused to execute them, referring to the lack of obligation under Russian law or conflict with domestic law.
- A large number of reports, a great deal of testimony and evidence presented by the Ukrainian authorities, civilians, observers and refugees provide significant evidence and information about a large number of war crimes, crimes against humanity and other illegal acts committed in Ukraine by Russian troops, the Russian militia, private companies (Wagner's Group) and the state administration. Physical integrity and the right to life **are still being irreparably harmed**. The Russian state is presenting and will present this as a consequence of the Ukrainian government's wrongful decisions and as a measure to protect civilians (including Russian nationals) against Ukrainian

politics. The interim measure will not change this position from the Russian point of view until different political decisions are made within the country.

- The ECtHR has no power to execute (in the direct sense) the interim measures in this or any other situation. Its jurisdiction and competence are limited by its role as a Court and by the Convention. The obligation to respond to the situations referred to by the ECtHR, which fall within the scope of the interim measures, is of a legal nature, while the execution of the interim measures is the responsibility of the Committee of Ministers and the Council of Europe directly. Hence, it is predominantly political in nature.
- The effectiveness of the interim measures imposed on Russia is currently limited or even non-existent and we do not expect the direct withdrawal or discontinuation of the military aggression by the Russian troops, militia, other organisations and administration because of the issuance of interim measures.
- The personnel of the Russian military and administration are probably not very aware of the illegal nature of their actions, among other things, because of the information presented to them in the official propaganda. Only a small number of experts have this knowledge (about the real reasons and grounds for the interim measures), as its dissemination is forbidden and, just like the international community's other acts, is regarded as hostility against Russia (see Russia's action in the case of Transparency International).
- The interim measure imposed by the ECtHR was one of the legal arguments and instruments leading to the Russian Federation's decision to withdraw from the Council of Europe and the expulsion of the Russian Federation from the Council of Europe. As a negative consequence, Russia is no longer a party to the European Convention on Human Rights and has deprived Russian citizens of the protection granted by the Convention and remedies from ECtHR judgments. Interim measures will probably only exacerbate this effect for Russian citizens even further.
- The effectiveness of interim measures imposed by the ECtHR on Russia should also be seen from a broader perspective – internally, for all members of the Council of Europe, including Russia's traditional allies, and externally, among other countries and in the international community.



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Architect: Richard Rogers Partnership

- In the case of the former – members of the Council of Europe – there are direct and indirect consequences, as well as an impact on the cooperation with Russia (trading of goods from the occupied territories of Ukraine, transportation of the fruits of illegal acts and the transfer of technology and supplies to Russia) as well as cooperation with personnel involved in inhuman actions, their freedom of movement and travel.
- In the case of the latter, broader perspective – the international community and other countries – interim measures imposed by the ECtHR constitute a strong argument for impartial and unbiased prosecution for crimes that are punishable under the universal jurisdiction and defined in international criminal law as crimes against humanity, war crimes and primarily the crime of aggression (while genocide is more questionable).
- This can have a significant impact on Russia's standing in the international arena. And as is known, among other things, from UN positions or a statement of the International Criminal Court of 17 March 2023, it can be an effective argument for further decisions to protect individuals (civilians) in Ukraine, including economic, social and other forms of support from European countries.



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Architect: Richard Rogers Partnership

CASES

The applicants in the cases supported by the project are victims and witnesses of war crimes and human rights violations in the context of an international armed conflict. Their personal data is confidential information, which is protected by the Constitution of Ukraine, the Law of Ukraine "On Personal Data" and which is covered by attorney secrecy, provided for by the Law of Ukraine "On the Bar and Practice of Law" (contracts on provision of legal services were concluded with all clients).

Case of A

On 24 February 2022 between 12.00 and 13.00, a 45-year-old man and his children went to the metro station as instructed by the Ukrainian Army. On 24 September 2022, they left the metro station in order to access the humanitarian corridor.

During the evacuation from the metro, Russian troops launched a missile attack. The applicant was injured. His son Alexander, despite two operations, died due to his injuries.

Art. 2 ECHR – Right to life

1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:
 - (a) in defence of any person from unlawful violence;
 - (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
 - (c) in action lawfully taken for the purpose of quelling a riot or insurrection.



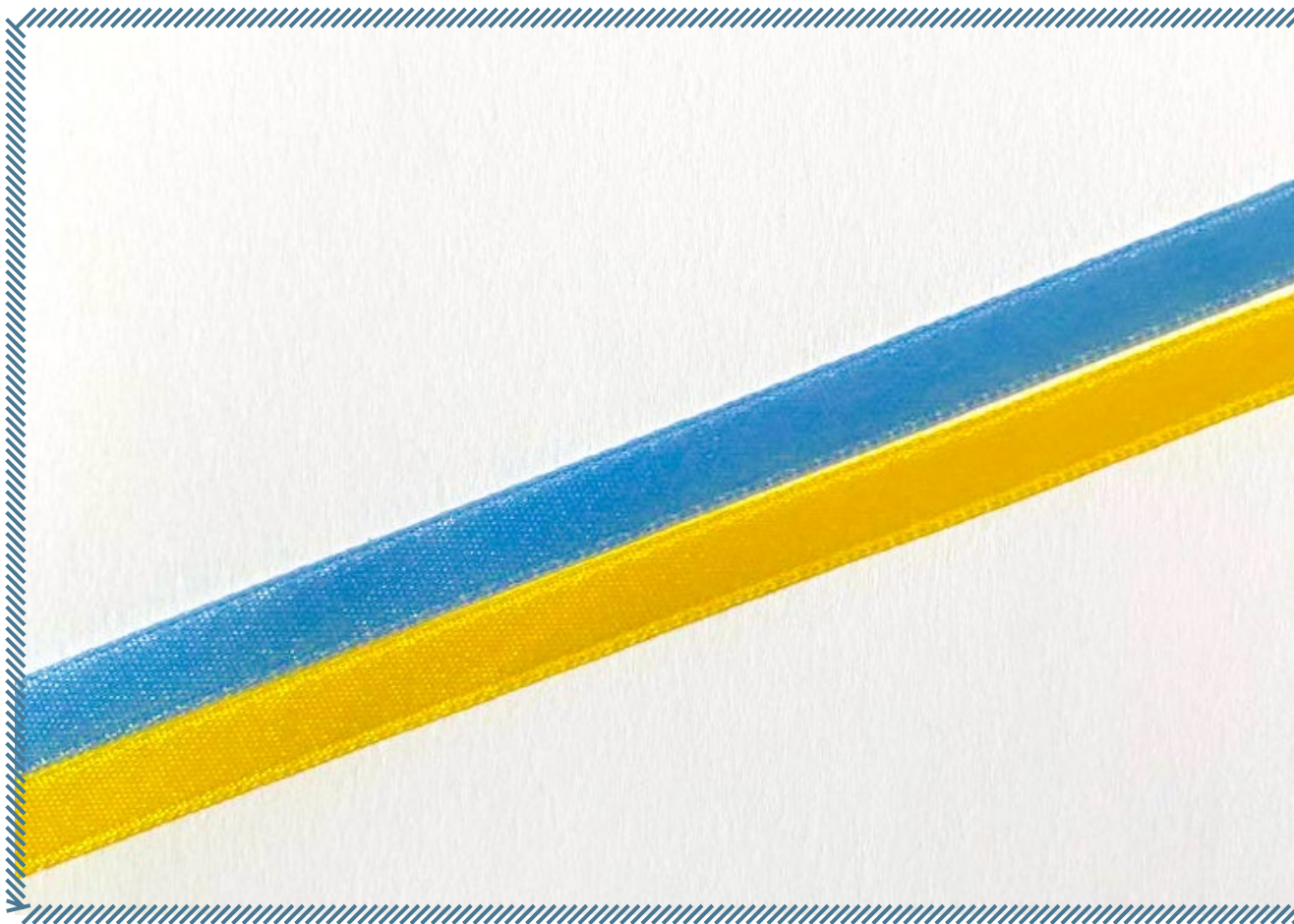
Case of B

The applicant is a citizen of Morocco and a serviceman of the Armed Forces of Ukraine. From 17 April to 21 September 2022 he was held captive by the Russian Federation.

During this period, the applicant was subjected to torture, cruel and degrading treatment and sentenced to death for participating in hostilities on the side of Ukraine in violation of the immunity of a lawful combatant.

Article 1 of Protocol 13 – abolition of death penalty

The death penalty shall be abolished. No one shall be condemned to such penalty or executed.



Case of C, D, E, F, G

The applicants' relatives are medical workers of a military hospital that was destroyed by the Russian heavy weapons in March 2022. Medical workers had to relocate to the territory of the metallurgical plant, where they continued to provide medical assistance to servicemen of the Armed Forces of Ukraine. On 12 April 2022 they were captured by representatives of Russia. Five male military medics were held on the territory of "Donetsk People Republic" in Olenivka Donetsk region. One of them was released on 3 November 2022, others remain captured. Four female medics were detained in the "DPR" and later were transported to the territory of the Russian Federation. They were transported five times and were held in five different places of detention. On 17 October 2022 all of them were released. According to the collected data of witnesses and competent authorities of Ukraine, military medics were kept in inadequate conditions and there were cases of ill-treatment and torture.

Case of H, I, J, K, L, M

Six applicants are the servicemen of the special purpose unit. Since 24 February 2022 they were on duty in Mariupol, Donetsk Oblast and their unit was located at the Azovstal plant. On 18 May 2022 the applicants were detained by the representatives of the Russian armed forces and transported to Russian-controlled territory. The applicants were detained in inadequate conditions, as both food and drinking water was lacking, medical assistance was absent and they were forbidden to contact their relatives. All of the applicants were interrogated by the representatives of Russian Federation several times. They were ill-treated and suffered from constant moral and psychological pressure. On the night of 29 July 2022 on the territory of the former penal colony an explosion occurred, destroying the building in which the applicants were kept. As a result, 53 Ukrainian prisoners of war were killed and the applicants were seriously injured. According to collected evidence and results of different investigations (the Institute for the Study of War, CNN, Bellingcat, Washington Post) Russian forces were responsible for the explosion at a Russian-controlled prison in Olenivka. On 21 September 2022 the applicants were released from captivity.

Art. 3 ECHR – Prohibition of torture

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

Case of N

The case concerns a servicemen of the National Guard of Ukraine (POWs) captured by the Russian Federation on the territory of the Chornobyl NPP on 24 February 2022. He was first detained on the part of the station until 31 March 2022 in violation of radiation safety standards. Subsequently, he was taken to the territory of Belarus and then to the territory of Russia. He was the subject of torture and degrading treatment.

Art. 5 ECHR – Right to liberty and security

1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

- (a) the lawful detention of a person after conviction by a competent court;
- (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
- (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
- (d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
- (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
- (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

Case of O

The applicant's husband is a serviceman of the Ukrainian Armed Forces. Since 24 February 2022, he was on duty in Mariupol Donetsk Oblast and his unit was located at the Azovstal plant. From that time until 7 May 2022, the applicant had constant telephone contact with her husband.

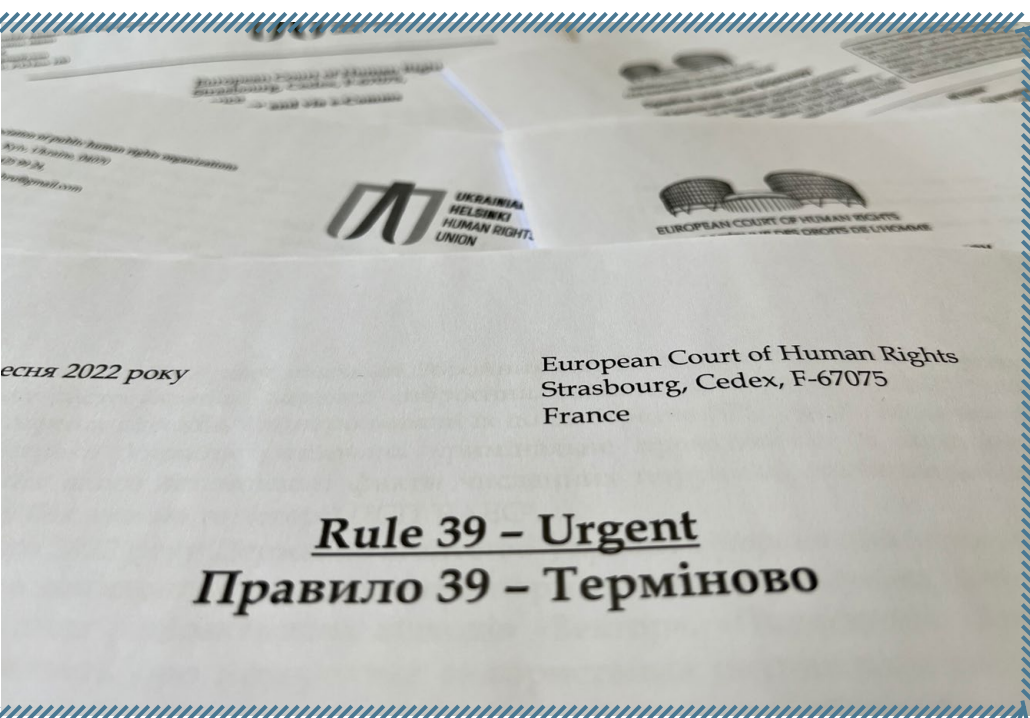
On 16 May 2022 the applicant got to know from the mass-media that the defenders of Azovstal had to surrender themselves as prisoners of war. Thus, Ukrainian servicemen, including the applicant's husband left the territory of the plant, and representatives of the Russian armed forces took them prisoner. All of them were transported to Russian-controlled territory in the Donetsk region.

The International Committee of the Red Cross confirmed that he is held in captivity under Russian control. The applicant has reasonable grounds to claim that her husband may be subjected to torture or other ill-treatment that poses a risk to his life and health.

The Russian Federation did not respond to the ECHR's decision on application of interim measures and did not provide any information about the applicant's husband.

Art. 34 ECHR – Individual applications

The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right.



Case of P

The applicant is a citizen of Ukraine and a former resident of Mariupol in the Donetsk region. After the commencement of hostilities in Mariupol on 24 February 2022, the applicant quickly collected the necessary belongings from her house and left the city with her family. Nevertheless, many valuable possessions of hers as well as money remained in the apartment since the applicant planned to return to her home. However, Mariupol was closed for entry and exit, which prevented her from doing so.

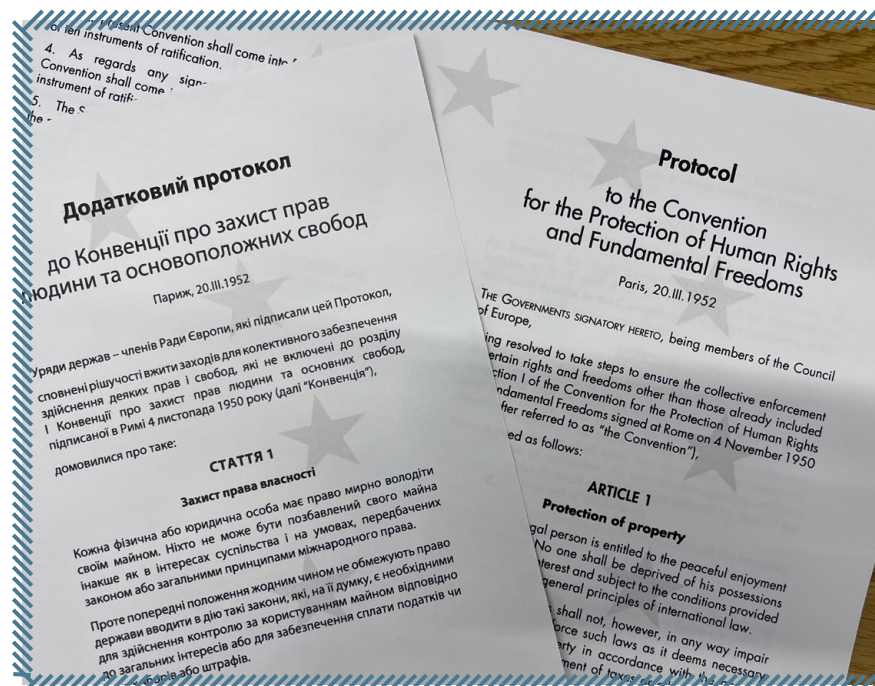
In April 2022, the applicant learned, from the chat of the building's residents that her apartment was completely destroyed due to the bombardment. She also acquired a video, posted on one of the Telegram channels, as well as a photo proving the destruction of the house.

In June, the applicant drew up a statement stating that the apartment was entirely destroyed and unsuitable for further utilisation due to the destruction of the roof, the intermediate floors, walls, windows, interior doors and interior walls. Consequently, she also lost furniture, domestic equipment, and the garage, as well as personal belongings such as utensils, clothing, documents, and photos.

Article 1 of Protocol 1 to the Convention – Protection of property

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.



EXPERT'S OPINION

What is the relationship between the proceedings before the European Court of Human Rights and the International Criminal Court? Why are they conducted in parallel? Do they have different objectives? What can be their consequences and what do they give to victims of human rights violations?



**Aleksandra Gliszczyńska-Grabias, PhD,
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Academy of Sciences, Poznań, Poland**

→ First, it should be noted that both systems: the system of international criminal justice, represented by the International Criminal Court (ICC), and the European system of human rights protection, with the European Court of Human Rights (ECtHR), have the same **fundamental goal, as well as shared legal and moral foundations, based on the idea of pro-**

tecting and offering redress to victims of various types of human rights violations.

However, the international criminal justice system focuses on thwarting the impunity of perpetrators of the most serious crimes (genocide, crimes against humanity and war crimes), while the system centered around the ECtHR is primarily concerned with assessing and preventing further human rights violations caused by the actions (or inactions) of the state. **There is also a common pedigree of both systems**, as human rights and humanitarian law are inseparably linked with the legal prohibition of genocide, crimes against humanity and war crimes. The regional – European experience of the mass human rights abuses committed during WWII has been translated into the prohibition of the above-mentioned crimes. At the same time, holding states and individuals responsible for their crimes and other human rights violations is not the only role of both the ICC and ECtHR. There is also an equally important goal shared by both systems, namely, **the preventive effect of their functioning**, which includes the public manifestation of the fact that genocide, crimes against humanity and war crimes do not go unpunished and that human rights violations will cause legal responsibility and consequences for these responsible.

→ Second, **both systems complement each other and do not „compete” or contradict each other.** The ICC deals with the criminal liability of individuals for severe crimes under its jurisdiction. The ECtHR rules over the responsibility of states for violations of the rights and freedoms of individuals and groups, enshrined in the European Convention on Human Rights and its additional protocols. In fact, a state can be held responsible for human rights violations caused by the conduct of individuals acting on behalf of that state. At the same time, such actions, conducted in particular

by individuals – especially those in high government positions, may also fall under the jurisdiction of the ICC. Therefore, **there is no conflict of jurisdiction** between the scope, type and subject of liability. On the one hand, we have a **perpetrator-centred criminal justice system**, on the other hand, a **victim-oriented human rights protection system**.

- At the same time, **the ICC and other criminal tribunals are distinct from human rights courts, including the ECtHR**. ICC focuses solely on individual criminal liability for certain gross human rights violations that may qualify as international crimes, seeking to ensure accountability for the individual perpetrators of these crimes, whether they are state or non-state actors. The ECtHR concentrates on states' responsibility for human rights violations. Thus, even if the same acts are being subject to **investigation by the ICC** and **examination by the ECtHR, their legal implications and consequences differ**. The recent arrest warrants against Vladimir Vladimirovich Putin and Maria Alekseyevna Lvova-Belova issued by the ICC, if they lead to the trial and conviction of these individuals, may result in long years of imprisonment of these individuals as they are allegedly responsible for the war crime of unlawful deportation of the population (children) and that of unlawful transfer of population (children) from occupied areas of Ukraine to the Russian Federation. At the same time, these children, as well as their families (with the provision that individual instances of deportations took place within the time limit under which ECtHR still holds jurisdiction to examine cases against the Russian Federation), have the right to submit individual complaints to the ECtHR, claiming multiple violations of their rights, as stipulated in the European Convention on Human Rights. These proceedings, initiated before the ECtHR, may result in stating the responsibility of the Russian Federation for particular human rights violations.



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CONCLUSIONS

Justice 24 has been an expression of objection of the legal community to the crimes committed by Russia on the territory of Ukraine. We believe that we as lawyers have a special responsibility to react and address the violations of human rights currently taking place as a result of military aggression.

While the Justice 24 project has reached its ending point, the endeavour to achieve justice for the crimes and human rights' violations committed by the Russian Federation in Ukraine continues. Due to our efforts, 125 victims have filed 21 joint applications to the ECtHR, and now await the decision of the Court. Moreover, all 106 applicants, who had requested interim measures, had them granted. This proves that the Court recognized that the applicants have faced a real risk of serious and irreparable harm. We, therefore, believe that the actions taken by the Court constitute the first step towards the restoration of justice for the victims of war.

We are aware that these and future decisions are more than unlikely to be executed due to current state of affairs and Russia's disregard for the Court's jurisdiction. Nevertheless, we believe that it does not mean that the process of filing applications and requesting interim measures is redundant. On the contrary, as argued by the experts, they are of great importance.

First, they provide recognition to the wrongdoings suffered by the victims and constitute a basis for their compensation in the future. Moreover, as stated by Prof. Paweł Wiliński, both the imposition of interim measures and the judgements of the Court provide a source of objective information needed for the determination of violations of international criminal law. Dr Dominika Bychawska-Siniarska also concurs with this opinion and adds that the Council of Europe, as a whole, plays a major role in monitoring and reporting human rights abuses during this military conflict. Hence, each application constitutes a valuable addition in a process of documentation of the crimes and violations committed by the Russian state. Such documentation is vital for international tribunals such as the International Criminal Court, as it provides valuable information needed for the investigation of crimes committed during this war. As clarified by Dr Aleksandra Gliszczyńska-Grabias, this shows that the two systems do not compete but in fact complement each other.

Taking all of that into account, we look into the future with hope. Our common responsibility is to continue the efforts to put an end to the violations taking place and to hold accountable those responsible for them. The Reykjavik Summit taking place in May 2023 makes a step in this direction. However, as emphasized by experts, it is crucial that it results in a concrete action plan towards the Ukrainian situation as well as reinforcement of the Council of Europe values to strengthen the effectiveness of its system of human rights protection.

FREE COURTS FOUNDATION

The Free Courts is a non-governmental organisation founded by a group of Polish lawyers: Maria Ejchart – Dubois, Sylwia Gregorczyk – Abram, Paulina Kieszkowska – Knapik and Michał Wawrykiewicz in July 2017. As professionals, realizing the significance of harmful changes introduced in the Polish legal system, leading to the politicization of the independent courts, they undertake numerous activities aiming to legally educate their fellow citizens on the rule of law. Attorney Katarzyna Wiśniewska, PhD became a new member of the #FreeCourts in October 2022. Also, 5 junior lawyers are part of the team.

The Initiative is constantly working on ensuring that the courts are independent, by preparing films, infographics and live reports, as well as organizing protests, demonstrations, debates and conferences. The Foundation has extensive experience in handling strategic litigation before the ECtHR. It already handles nearly 100 cases on behalf of Polish judges. The lawyers from the Free Courts have obtained several landmark judgments, which have an impact on the functioning of the whole legal system. The measures obtained by the Foundation's lawyers before the European Court of Human Rights have slowed down further suspensions and the lifting of immunity of Polish judges.

UKRAINIAN HELSINKI HUMAN RIGHTS UNION – UHHRU

The largest association of human rights organizations in Ukraine, which unites 29 human rights NGOs. The purpose of UHHRU is the protection of human rights. Among the UHHRU efforts to protect human rights are the ongoing monitoring of human rights situation in Ukraine and informing the public about facts of their violation, provision of legal assistance to victims of human rights violations, including supporting strategically important cases, protection of human rights and fundamental freedoms in courts, authorities and bodies of local self-movement. Moreover, the UHHRU conducts human rights research and analysis, including regular monitoring of draft laws and legal acts, as well as preparing and advocating own legislative initiatives. The association also conducts awareness-raising campaigns, educational seminars and trainings on human rights. Since the beginning of armed conflict in Ukraine in 2014 the UHHRU has provided free legal aid to the victims of human rights violations at national and international levels. The UHHRU also monitors and documents human rights violations and violations of international humanitarian law at the territories temporarily occupied by the Russian Federation.

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