

Ukraine

EXECUTION OF THE EUROPEAN COURT OF HUMAN RIGHTS' JUDGMENTS

MAIN ACHIEVEMENTS IN MEMBER STATES

The present survey presents short summaries¹ of a selection of the main reforms and achievements reported in final resolutions since the Convention system was amended in 1998 by Protocol No. 11, with a clear focus on recent reforms referring, however, also to important earlier developments.

In view of the wealth of cases closed, the selection concentrates on those which have led to changes of legislation or government regulations or the adoption of new policies or general guidelines from superior courts. As a rule, the survey does not cover information on measures aiming at providing individual redress to applicants.

The presentation is organised country-by-country and reforms are, in principle, presented in the order corresponding to the thematic domains used in the Council of Europe's specialised database HUDOC EXEC and the Committee of Ministers' Annual Reports on the Supervision of the Execution of the European Court of Human Rights' judgments.

Many reforms address issues which appear to be on-going challenges in the member State. The effects of reforms adopted at one point in time may thus need to be monitored and possibly re-evaluated as conditions change.²

¹ The summaries are the sole responsibility of the Department for the execution of the judgments of the European Court of Human Rights.

² The presentation is limited to the information provided at the time of the adoption of the final resolution. It is recalled in this context that the Committee of Ministers has issued [Recommendation \(2004\)5](#) on the verification of the compatibility of draft laws, existing laws and administrative practice with standards laid down in the European Convention on Human Rights.

► **Conditions of detention**

The 1998 statutory “Instruction” and the 1999 “Temporary Provisions” on conditions of detention of persons sentenced to capital punishment extended the scope of the inmates’ rights, including the right to receive correspondence and visits from relatives. Following the abolition of the death penalty in 2000, this special regime of “death row” detainees ceased to exist.

The 2018 amendments of the Prison Rules laid down strict regulations for the conduct of strip searches: the presence of persons of other sex in these areas is prohibited; searches of several persons in one room at the same time is also prohibited; any examination of body cavities must be carried out by medical staff.

Aliev (41220/98+)

[Final Resolution
CM/ResDH\(2017\)198](#)

Malenko (18660/03)

[Final Resolution
CM/ResDH\(2019\)322](#)

► **Right to liberty and security**

▢ Lawfulness of detention

Amendments to the Law on the placement of children in juvenile holding facilities from 2010 provide for an exhaustive list of well-defined grounds for the placement of children in such facilities and the relevant procedural details.

▢ Detention for compulsory medical treatment

According to the new legislative framework (most recently amended in 2018), a court's decision concerning compulsory measures of a medical nature may be appealed independently by the person concerned or through their representative. It also provides a regular (every six month) judicial review of the lawfulness of that type of detention with a mandatory participation of the person concerned.

*Ichin and Others
(28189/04+)*

[Final Resolution
CM/ResDH\(2017\)357](#)

Gorshkov (67531/01)

[Final Resolution
CM/ResDH\(2020\)195](#)

► **Functioning of justice**

▢ Fairness of proceedings

According to the 2005 Code of Civil Procedure, the first instance courts no longer have the competence to filtering appeals against their decisions.

The Code also provided for a single procedure for the delivery of summonses, subpoenas or judicial notifications.

Furthermore, it included more detailed rules as to the evaluation and examination of evidence by domestic courts. Failure by courts to comply with these obligations gives rise to an appeal including an appeal on points of law. The Code on Administrative Offences was amended in 2008 to provide for the right to appeal against court decisions.

The 2012 Code of Criminal Procedure provided for new rules on the rights of suspects, accused or defendants, in particular regarding their access to legal counsel. Rules on the inadmissibility of evidence obtained through human rights violations were also introduced. A new free legal aid system was established by the Law on Free Legal Aid of 2011.

Volovik (15123/03)

[Final Resolution
CM/ResDH\(2010\)219](#)

Strizhak (72269/01)

[Final Resolution
CM/ResDH\(2008\)65](#)

Benderskiy (22750/02+)

[Final Resolution
CM/ResDH\(2018\)269](#)

Gurepka (61406/00)

[Final Resolution
CM/ResDH\(2010\)85](#)

Borotyuk (33579/04+)

[Final Resolution
CM/ResDH\(2017\)295](#)

This Code also enhanced guarantees of effective legal assistance by requiring that only duly licensed advocates included in the Unified Register of Advocates may participate in proceedings.

Zagorodniy (27004/06)
Final Resolution
CM/ResDH(2016)92

The Code of Commercial Procedure, amended in 2017, aimed at preventing arbitrariness and excessive formalism in the administration of justice. The Code introduced a 20-day time-limit for cassation appeals and established a formal procedure for reviewing applications for extension of time-limits, previously based on judicial practice only.

Frida, LLC (24003/07)
Final Resolution
CM/ResDH(2018)190

➤ Access to a court

Following amendments to the Code of Civil Procedure in 2017, legally incapacitated persons obtained direct access to courts to request the restoration of their legal capacity, including the right to challenge earlier court rulings. Moreover, the term of validity of a judicial decision declaring a person incapacitated cannot now exceed two years.

Nataliya Mikhaylenko (49069/11)
Final Resolution
CM/ResDH(2019)324

➤ Enforcement of judicial decisions

The supervisory review procedure was abolished in June 2001 following a legislative reform which set up a three-level court system.

Agrotehservis (62608/00+)
Final Resolution
CM/ResDH(2011)313

➤ **Protection of private and family life**

➤ Right to change one's name

In 2020, amendments to the Civil Code and to the Family Code were adopted by Parliament to secure the right to choose and change one's patronymic name and to provide a fair balance between the competing interests of the individual and of the society as a whole.

Garnaga (20390/07)
Final Resolution
CM/ResDH(2020)355

➤ Environmental protection

In addition to the ratification of the Protocol to the strategic ecological assessment to the Convention on Environmental Impact Assessment in a Transboundary Context in 2015, the Law on Environmental Impact Assessment entered into force in 2017. The obligation to carry out new European environmental impact assessments is assigned to the Department of Environmental and Natural Resources of the Regional State Administrations. The public concerned is involved at an early stage. The Ministry of Ecology and Natural Resources operates a hotline on the practical functioning of the environmental impact assessment.

Grimkovskaya (38182/03)
Final Resolution
CM/ResDH(2020)88

➤ Search and seizures

In 2017 and 2018, the Code of Criminal Procedure was amended to enhance the rights of participants in criminal proceedings and of other persons during pre-trial investigations, in particular with regard to the procedure and practical conduct of searches. In 2018, an Interdepartmental Commission was created, responsible for the implementation of those legislative changes.

Panteleyenko (11901/02)
Final Resolution
CM/ResDH(2021)137

➤ **Freedom of expression**

The Law on defamation was amended in 2003 exempting value judgments from a person's liability. State bodies and bodies of local self-government were prohibited to

Ukrainian Media Group (72713/01)
Final Resolution
CM/ResDH(2007)13

claim non-pecuniary damages for the publication of false information, although they may claim a right of reply. Officials acting in their personal capacity may still seek to protect their right to their honour and dignity through the courts. The law provided for a defence of “conscientious publication” if a journalist acted in good faith and verified the information published.

► Freedom of association

The 2013 Law on Civil Associations abrogated the excessively rigid and prohibitive requirements for the creation of non-profit organisations and provided increased opportunities for the creation, registration and work of civil associations. Registration can now only be refused on very limited formal grounds. Disputes with the authorities are henceforth amenable to judicial review.

Koretskyy and Others
 (40269/02)
 Final Resolution
 CM/ResDH(2017)377

► Protection of property

▢ Taxation/pension rights

The system of taxation was simplified and clear provisions on VAT exemptions were introduced in 2011, preventing earlier contradictory practices, together with a special mechanism for the collection of taxes and fees.

In 2009, the Constitutional Court declared the practice of depriving non-residents of their pension entitlement unconstitutional and invited Parliament to adopt legislation in conformity with this decision.

Serkov (39766/05)
 Final Resolution
 CM/ResDH(2017)21

Pichkur (10441/06)
 Final Resolution
 CM/ResDH(2016)36

In 2010, a new Tax Code was adopted and, in 2014, a new VAT reimbursement procedure, as well as an electronic system of VAT administration, was introduced to simplify VAT refunds. A 2017 amendment further simplified the VAT refunding procedure and introduced a Unified Public Register of all applications for VAT refunds enhancing the transparency and reactivity of the system. The Supreme Court developed in parallel a coherent approach as regards compensation for delays in VAT refunds.

A new procedure for the payment of compensation for, or the reimbursement of, misguided or erroneous custom levies was established by the Ministry of Finance in 2017. Taxpayers shall be rapidly informed of mistakes and repayments are to be made from the state budget with priority.

Intersplav (803/02)
 Final Resolution
 CM/ResDH(2019)321

▢ Right to compensation

The 2012 “Law on Transfer, Expropriation or Seizure under Martial Law or State of Emergency” as well as the 2009 “Law on the Expropriation of Private Land Plots and other Immovable Property for Social Needs” provided for sufficient legal safeguards to ensure complete compensation for expropriations. Moreover, compensation for unlawful actions of state officers and courts is also granted by the 2012 “Law on Compensation of Damage Caused by Unlawful Actions of Law-Enforcement Officers/Bodies, Prosecutor’s Offices and Courts”, covering also unlawful confiscation of property. The correct application of compensation rules under these laws is ensured by courts.

Ukraine-Tyumen (22603/02)
 Final resolution
 CM/ResDH(2021)183

► Electoral rights

The election law underwent multiple changes: The Parliamentary Elections Act, as amended in 2016, included a clear and exhaustive list of grounds which may give rise

Kovach (39424/02)
 Final Resolution
 CM/ResDH(2017)359

to a decision by a precinct election commission to invalidate the voting in a particular precinct.
