

An aerial photograph of a city, likely Kyiv, Ukraine, showing a mix of residential and commercial buildings. A prominent red rectangular overlay is centered on the image, containing white text. The background shows a dense urban landscape with various building styles, including a tall, modern skyscraper and several older, multi-story apartment blocks. In the distance, a large body of water and industrial structures with tall chimneys are visible under a hazy sky.

# **IMPLEMENTATION OF THE JUDGMENTS OF THE EUROPEAN COURT OF HUMAN RIGHTS: UKRAINE**

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**European Implementation Network  
January 2021**



The European Implementation Network works with NGOs and others across Europe to promote the full and timely implementation of judgments of the European Court of Human Rights ("ECtHR").

The most successful work on implementation of ECtHR judgments combines advocacy at the national level with engagement with the supervision process at the Committee of Ministers of the Council of Europe.

EIN supports work at both levels through advocacy, training, and resources.

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2 allée René Cassin, F- 67000 STRASBOURG, FRANCE  
[contact@einnetwork.org](mailto:contact@einnetwork.org)

Author: Matteo Zamboni

Concept: George Stafford and Ioana Iliescu

Cover Photo: Eugene [via](#) Unsplash.com

Final Photo: Eugene Mykulyak [via](#) Unsplash.com

The statistics in this document are valid as of 27 November 2020. They were drawn on that date from the Council of Europe's implementation database, [HUDOC-EXEC](#)

Published January 2021

# FOREWORD

Judgments of the European Court of Human Rights are rightly celebrated for bringing justice to victims of human rights violations. However, they are only a first step towards human rights protections. Unfortunately, judgments can remain pending implementation for very long periods. This can mean that the human rights violations continue to happen. EIN aims to highlight examples of this, by assessing the implementation record of Council of Europe member states. In doing so, we hope to raise awareness and incentivize both governments and civil society to play a pro-active role in the implementation of judgments of the European Court of Human Rights.



This report examines the implementation record of Ukraine. The report identifies some positive aspects regarding the reporting conduct of authorities: in a majority of leading cases, the Government has fulfilled its reporting obligations to the Committee of Ministers. However, the report also shows that there is much room for improvement. There are 112 leading judgments are still pending implementation. Each of these represents a systemic and recurring human rights problem that has not yet been effectively addressed. Furthermore, the average time that leading cases have been pending is over seven years and eleven months (for more statistics, see page 6). This means opportunities to bring domestic legislation, policies and practices into line with European human rights standards are being lost, while human rights violations continue to reoccur. Prison conditions, protection of journalists and judicial impartiality and independence are some of the areas in which important reforms are called for.

In other member states of the Council of Europe, we have seen that systematic implementation of judgments of the European Court of Human Rights has been achieved through increased cooperation between the relevant national authorities on one side, and between national authorities and civil society, on the other. A stronger collaborative approach can give the opportunity to civil society to have its voice heard by decision makers, enabling them to turn judgments of the European Court of Human Rights into human rights protections. We hope that the dissemination of this report will serve as an informative basis for implementation efforts in Ukraine.

*Professor Başak Çalı,  
EIN Chair*

# WHY IMPLEMENTATION MATTERS

## *Gongadze v. Ukraine* and the Protection of Journalists

Georgiy Gongadze was a journalist who stood up to power and advocated for freedom of speech. Fearing for his safety, in July 2000 he wrote to the General Prosecutor Office (GPO) asking for protective measures, but his requests were denied. Shortly afterwards, **Mr Gongadze disappeared in circumstances that were never fully established**. An investigation was launched immediately, but soon the investigator in charge was replaced for no apparent reason. Around the same time, the **beheaded corpse of an unidentified individual was found**, but in spite of solid evidence the authorities stubbornly excluded that the body was that of Mr Gongadze. From that moment onwards, **the authorities began impeding the investigation** by rejecting and/or delaying all the requests filed by Mr Gongadze's wife, including to be recognised as a civil party, to participate in the identification of the corpse, and to access the case file. The case attracted the attention of many international organisations, but no progress was made. Finally, in July 2002 Mrs Gongadze applied to the European Court of Human Rights ("ECtHR") to seek justice for herself and her husband.



**The convention system has the power to make a real difference to people's lives and to help bring about positive changes across the Continent**

(Secretary General of the Council of Europe, 4 September 2020, DC 106 (2020))



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After the application was submitted, the new prosecutor in charge of the investigation was arrested for negligence, a new forensic test unequivocally identified the corpse as that of Mr Gongadze, and a parliamentary committee established that high-ranking officials (**up to the former Interior Minister and the former President**) were involved. Yet, no further action was taken. The ECtHR found that the **authorities had been more preoccupied with proving the lack of involvement of high-level officials than with discovering the truth**. Ukraine has systemic problems as regards investigations and a very serious recurring issue with the protection of journalists. Legislative amendments to enhance the protection of journalists and foster the effectiveness of investigations have been passed. However, serious issues remain that require further legislative and practical reforms.

# HOW IMPLEMENTATION WORKS

The case of Gongadze can be taken as an example of the concerted efforts of local and international NGOs, together with CoE agencies and other international organisations and parts of government, in tackling an alarming human rights issue.

## The Judgment of the ECtHR

With the [judgment of 8 November 2005](#), the ECtHR found several violations of the right to life, due to the authorities' inaction after Mr Gongadze's requests for protection, and negligence in the investigation; a violation of the prohibition on ill-treatment for the suffering caused to the applicant; and a violation of the right to an effective remedy.

## International Pressure Surrounding the Case

SReporters Without Borders called for the taking of investigative steps in Ukraine and abroad, and built awareness with [public statements](#). Many other international groups were vocal on the case, including the [Committee for the Protection of Journalists](#) and the [International Federation of Journalists](#).

## The involvement of the CoE and other International Organisations

The CoE Parliamentary Assembly [passed several resolutions and recommendations](#) calling on the authorities to conduct "an expeditious, full and transparent investigation" and set out [general guidelines for the protection of journalists](#). This position was shared by the European Union, the [OSCE](#), and the [World Bank](#). Moreover, the CoE supported Ukraine with the project "[Strengthening freedom of media in Ukraine](#)".

## The measures enacted by the Government

The authorities engaged in the process by [transmitting multiple communications to inform](#) the CM of the [progress in the investigations](#) and [several action plans detailing the legal reforms taken](#), including the institution of the State Bureau of Investigations, the amendments to the criminal code and the code of criminal procedure. Further amendments to the legal definition of journalists are being discussed by Parliament.

## The Role of Local NGOs

While acknowledging some positive achievements, the [UHHRU](#) [pointed out](#) that the definition of "journalist" contained in the legislation lent itself to formalistic interpretations, and that there still existed serious shortcomings as regards investigations. The [Institute of Mass Information](#) also [intervened](#) in the process to express its concerns at the persisting impunity of perpetrators of crimes against journalists in Ukraine.

## The supervision process before the CoE Committee of Ministers

The CM has adopted [several resolutions and decisions requiring](#) the authorities [to take the necessary measures](#) to identify and bring to justice the instigators and organisers of the crime. While [welcoming the legislative reforms](#), in its [latest decision](#) the CM expressed its "profound concern that 20 years after Mr Gongadze's abduction and murder, proceedings have not yet [been] concluded and no tangible progress has been achieved", and prompted the authorities to strengthen their efforts to ensure that crimes against journalists are "thoroughly and promptly investigated".

**The supervision of this group by the Committee of Ministers will resume in June 2021.**

# EVALUATING THE IMPLEMENTATION PROCESS

## Key Figures (1)

Number of leading judgments pending implementation

112

As of December 2020, a very high number of leading ECtHR judgments against Ukraine are still pending implementation. This means that the **human rights problems identified by the judgments have not been resolved**, and are therefore likely to recur.

Average time leading cases have been pending

7 years  
11 months

The backlog of pending leading cases is due to the considerable amount of time needed on average to close each leading judgment, which causes **overload in the implementation process**.

**Leading judgments** are those that identify a **new significant or systemic problem** in a country. Each leading judgment therefore represents a human rights issue that needs to be resolved via the implementation process.

Assessing the **proportion of leading judgments being implemented** is a useful method to assess whether a country is carrying out general reforms to put into effect judgments from the European Court of Human Rights.

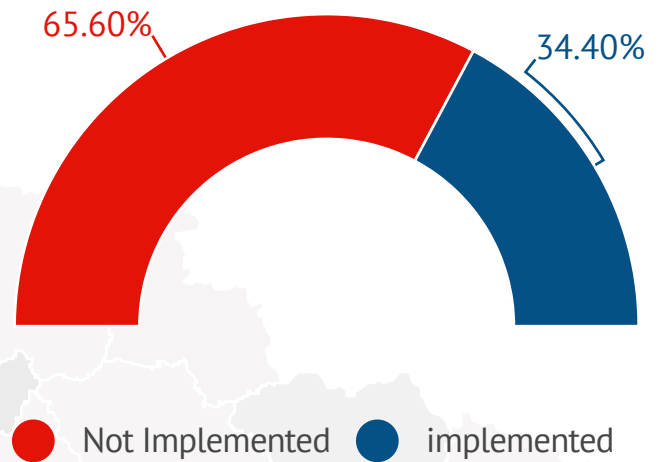
It is also necessary to look at the **overall number of leading cases pending**. The countries with the most serious non-implementation problem have both a high proportion of leading cases still pending **and** a high overall number of pending leading cases.

# EVALUATING THE IMPLEMENTATION PROCESS

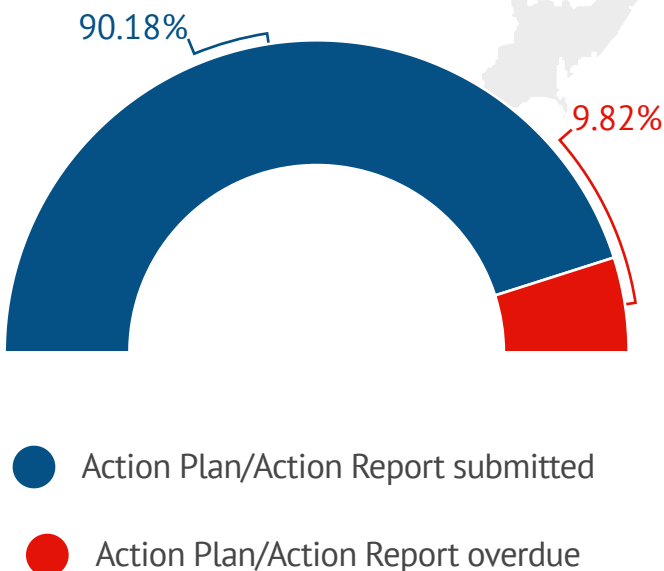
## Key Figures (2)

Less than one third of the leading judgments issued against Ukraine in the past 10 years have been implemented. This means that around 65% of cases (and the systemic human rights issues they identify) have not been dealt with by the authorities. These figures are all the more worrisome considering that, in the absence the **general legislative and/or policy reforms**, the violations are likely to recur.

### Number of leading judgments from the last 10 years still pending



### Percentage of leading judgments with overdue Action Plan/Action Report

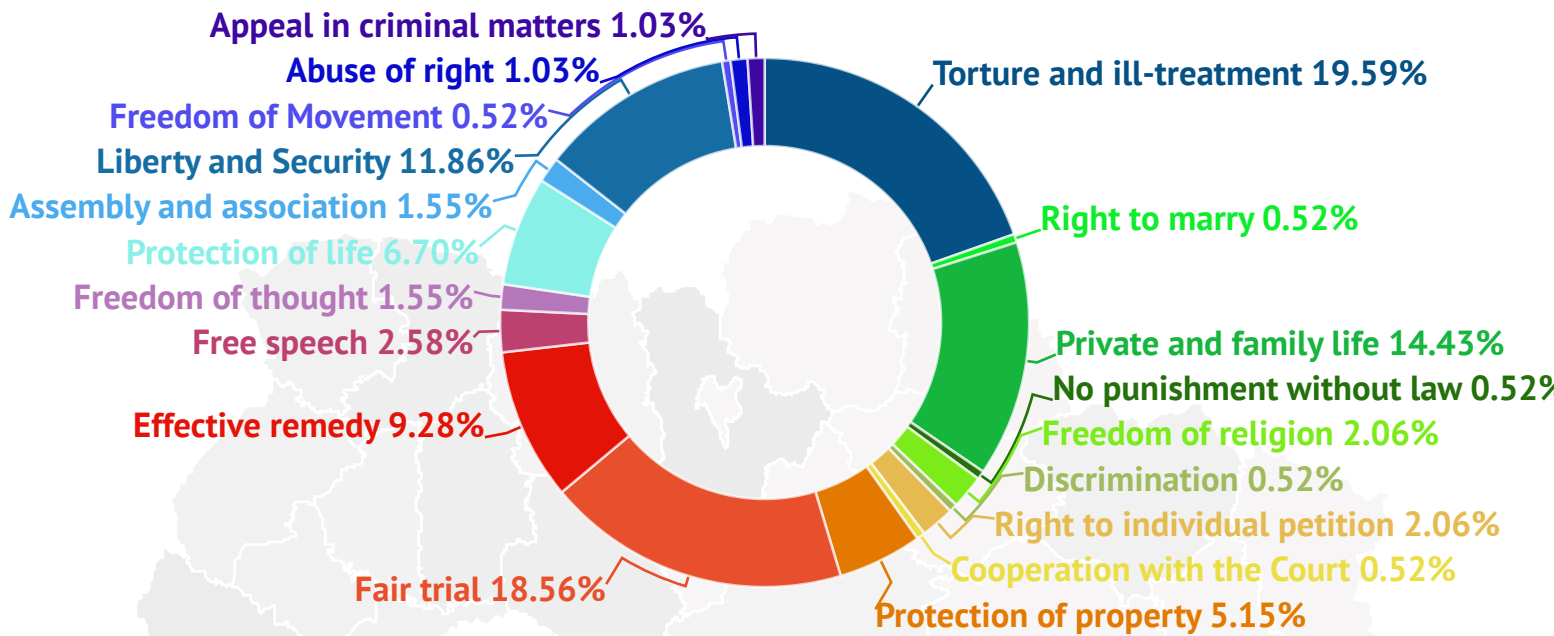


Looking at the pending leading judgments overall, it is encouraging to note that in the overwhelming majority of cases the authorities have submitted an **Action Plan** (i.e. the document setting out what steps are envisaged in order to implement the judgment) and/or an **Action Report** (i.e. the overview of the measures successfully taken). However, increased reporting to the Committee of Ministers is only as good as the effectiveness of implementation efforts carried out.

# EVALUATING THE IMPLEMENTATION PROCESS

## Type of Violation

Besides the percentage of implemented/non-implemented leading judgments, **the nature of the violation(s)** found by the European Court in leading judgments pending implementation is also worth noting.



## Recurring Violations



There are **38 findings of a violation of Article 3** in the leading judgments pending implementation. They mostly result from **dire conditions of detention** and **lack of appropriate medical treatment**, a problem which is dealt with in the Nevmerzhitsky group of cases.

**4 of the pending leading judgments** concern violations of the **right to individual petition** guaranteed by **Article 34** of the Convention. In addition to this, in 1 more leading case **the government was sanctioned for failing to cooperate with the ECtHR** under **Article 38** of the Convention.

The findings of violation of the **right to fair trial guaranteed by Article 6 (36)** and of the **right to an effective remedy protected by Article 13 (18)** reflect widespread problems in the domestic legal system in redressing human rights violations.



# ANALYSIS

## The State of ECtHR Implementation (1)

The statistics show that the situation as to ECtHR implementation in Ukraine is **in need of serious improvement**. Ukraine is the second-worst country in the region in terms of the overall number of pending leading judgments (after Russia).

This indicates that the authorities have a real problem with ECtHR implementation and the measures necessary to curb recurring human rights violations are not being adopted. The same is confirmed by the analysis of specific cases, which show that egregious human rights issues still affect the country many years after the delivery of the relevant judgments by the ECtHR.

The authorities are participating in the implementation reporting process, but it is not clear that the reporting is being reflected in tangible reforms.

The Ukrainian Helsinki Human Rights Union (**UHHRU**) and the Kharkiv Human Rights Group (**KHRG**) are two non-governmental organisations that carry out extensive work on the issue of non-implementation of ECtHR judgments in Ukraine. We asked them to set out what they perceive to be the reasons behind the absence of systemic ECHR implementation in the country. They provided the following responses:

The majority of ECtHR cases disclose long-lasting, systemic human rights problems, that require decisive and systematic actions in order to be addressed. In contrast, the authorities' approach is often too **cumbersome** and overly **formalistic**.

Many of these systemic problems relate to the judiciary, relating to **the right to a fair trial** and **the right to an effective remedy**. Since these rights are **instrumental to the protection of all other human rights**, their violation forces victims to turn to Strasbourg to seek justice, thus overloading the ECtHR.

”

**Whenever tough reforms are needed, the authorities create a commission, or, worse, several commissions, which then disagree on the best way forward.**

(Gennadiy Tokarev, Strategic Litigation lawyer at Kharkiv Human Rights Group)

**Limited co-operation between the authorities** in charge of taking the measures needed to fulfil the needs indicated in ECtHR judgments **and all the other stakeholders involved in the process** is another obstacle to implementation.

Sometimes state officials, bureaucrats and judges, especially at the lower level of hierarchy, seem to **lack expertise in the ECHR** system of human rights protection.

# ANALYSIS

## The State of ECtHR Implementation (2)

Ukrainian NGOs also provided the following ideas as recommendations to improve implementation in the country:

■ Many problems concerning implementation stem from a **lack of resources**, which prevents the authorities from taking the concrete steps that are needed in order to put reforms in place. To address this, it is crucial to have **additional support of the Council of Europe and the European Union**, which could help bear the cost of developing a human-rights-compliant framework in terms of institutions as well as infrastructure in the country.

”

**Many failures in implementing ECtHR judgments depend upon a lack of resources, in terms of both government actions and civil society's opportunities to be heard**  
(Gennadiy Tokarev, Strategic Litigation lawyer at Kharkiv Human Rights Group)

■ Some obstacles to implementation may be overcome by the establishment of an **inclusive procedure at the domestic level** allowing all the parties involved in the execution of a given group of cases to advance their views and make their voices heard.

■ The introduction of **Parliamentary oversight on the execution of the ECtHR judgments** is an important achievement, even though it is still too early to assess its effectiveness.

”

**National and international advocacy, as well as support from public opinion, are crucial to the implementation process**  
(Maksym Scherbatyuk, Program Director of UHHRU)

■ Legal capacity at the domestic level should also be enhanced, so to make sure that the **victims** and their lawyers, as well as **local NGOs**, are able to deploy all the possibilities offered by the CoE mechanism of human rights protections, including **participation in the supervision process before the CM**.

# CASE STUDY (1)

## The rights of detainees to humane conditions of detention and proper medical care

Mr Nevmerzhtsky was charged with white collar crimes and served more than 2 years of pre-trial detention, where he was [detained in poor hygiene conditions](#), either in an overcrowded cell or in solitary confinement. Moreover, when he went on hunger strike, he was force-fed but denied access to proper medical treatment. The ECtHR [found](#) that this violated the prohibition of ill-treatment.

The case was by no means unique. As highlighted by [International Organisations](#) and [NGOs](#), inadequate conditions of detention are a recurring problem in Ukraine. This was reflected in the implementation process, for the purpose of which the Nevmerzhtsky cases was [included](#) in a group with more than 50 other judgments. In its [action plans](#), the government recognised the “structural nature” of the problem and vowed to take general measures in the framework of [several projects](#) in [partnership](#) with the [CoE](#), in order to (i) reduce prison overcrowding, for example by expanding access to probation; (ii) improve conditions of detention by building new facilities and refurbish old ones; (iii) enhance medical assistance for detainees; (iv) amend the legislative framework on forced feeding; and (iv) establish effective remedies in domestic law. In [further submissions](#), the government argued that many issues, including overcrowding and access to medical care, were resolved. The Committee of Ministers disagreed, holding that [structural problems](#) still existed, and noting that the information submitted [did not demonstrate concrete results](#).



**“the State must ensure that a person is detained under conditions which are compatible with respect for human dignity, and that [...] the person’s health and well-being are adequately secured with the provision of the requisite medical assistance and treatment”**

*(Nevmerzhtsky v. Ukraine, 5 April 2005, § 81)*



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In [several replies](#), the government insisted on some positive achievements, such as the draft law on probation (prepared in line with [Recommendation \(2010\)1](#) and with the support of the [Pravo Justice project](#)). However, these claims were countered by the UHHRU, which, relying on the [2017 report](#) of the CPT and the [2018 report](#) of the national ombudsman, [held](#) that the situation “remained unchanged”. The authorities replied by [acknowledging](#) the “large-scale” nature of the issue and by [noting](#) that some prison inspections and construction works had been carried out. A [recent report of the CPT](#) highlights a “**positive trend towards a reduction in prison population**”. However, as pointed out in the [joint submissions](#) of the European Prison Litigation Network and the KHRGP, other [reports](#) demonstrate that the reforms enacted by the authorities are “a “shaky compromise” which did not lead to significant changes in prisons and may even have “worsened the situation”. These problems were [increased](#) by Covid-19. Such concerns are reflected in the [latest decisions](#) of the CM, which prompt the authorities to find a **lasting solution to the long-standing problems** and recalled the importance of “**promoting alternative sanctions**” in compliance with the [CPT principles](#) in the context of Covid-19.

# CASE STUDY (2)

## Judicial impartiality and independence

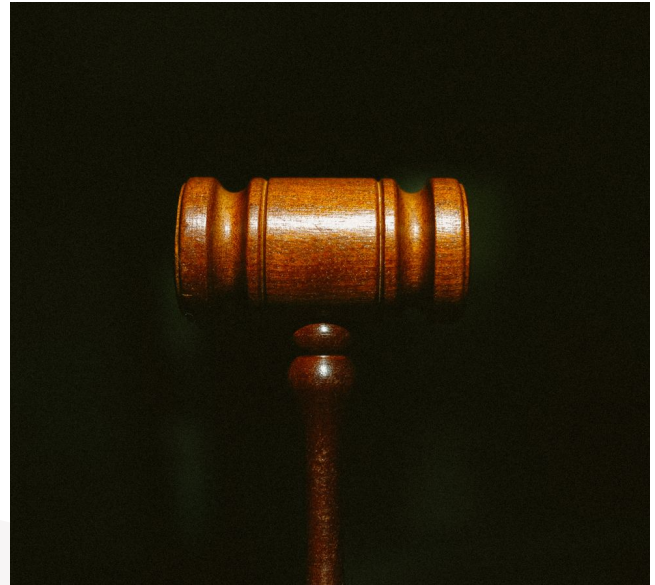
Mr Volkov was a Supreme Court judge who was dismissed from his post after an investigation by the High Council of Justice (HCJ) and Parliament found him guilty of “breach of oath”. He challenged his dismissal up to the ECtHR, arguing that he had been the victim of political corruption. The ECtHR vindicated him by finding multiple violations of Article 6 on account of the **authorities’ failure to ensure the applicant an independent and impartial trial**. Following the delivery of the judgment, and the exchange of many conflicting submissions between the applicant and the authorities in the implementation process as well as several interim decisions by the Committee of Ministers, Mr Volkov was re-instated and awarded the compensation recognised by the ECtHR.

However, the structural defects in the Ukrainian judiciary remain. According to the CM, these stem from “serious systemic problems”. Starting with the action plan of 2013, the authorities set out a Constitutional reform, which was already the subject of an opinion by the Venice commission. This was soon joined by new draft bills focussing on an overall reform of the justice system in the framework of an EU project. As detailed in many subsequent updates to the original action plan, this reform was enacted with the Right to Fair Trial Act of 2015. However, as the government acknowledged, many issues, including the composition of the HCJ, the definition of the role of Parliament as regards dismissal of judges, and issues with the offence of “breach of oath”, were not addressed by this reform.



**“even appearances may be of a certain importance [...] justice must not only be done, it must also be seen to be done. What is at stake is the confidence which the courts in a democratic society must inspire in the public”**

*(Oleksander Volkov v. Ukraine, 9 January 2013, § 106)*



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Some of these aspects were covered by the 2016 Constitutional reform, while new legislative amendments introduced in 2019, after a second opinion from the Venice commission, aimed at strengthening the guarantees of judicial independence. The authorities claimed to have fully remedied the violations. However, as pointed out by the NGO representing the applicants in various cases included in this group, and duly noted by the CM, many public servants who have suffered the same violation endured by Mr Volkov are still waiting to be re-instated in their position and awarded compensation. Moreover, as admitted by the government, the Constitutional Court recently found that in many respects the new amendments were unconstitutional - quashing relevant parts of the legislation and forcing Parliament to start a fresh discussion.

As noted by the KHRPG, **the amendments so far adopted have failed to set clear limits to the discretion of the HCJ in disciplinary proceedings and lacked legal clarity and foreseeability**. This seems to also be the opinion of the CM, which warned that the reforms “could have potentially adverse and long-lasting effects” and welcomed further pending decisions of the Constitutional Court as an opportunity.

## NGO ENGAGEMENT

NGOs play a crucial role in the implementation process. Through their **Rule 9 communications** and **informal briefings** they can shed light on the actual state of execution of a given group of cases, and prevent them from being closed too early.

These organisations can be contacted for more information on specific cases.

### [Helsinki Human Rights Union](#)

Frolivska St. 3/34, 02000, Kyiv, Ukraine

[office@helsinki.org.ua](mailto:office@helsinki.org.ua)



### [Kharkiv Human Rights Protection Group](#)

Vanova St. 27, 61002, Kharkiv, Ukraine

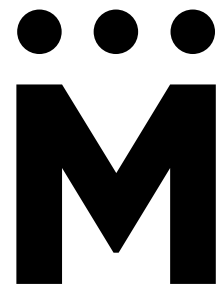
[KHPG@ukr.net](mailto:KHPG@ukr.net)



### [Institute of Mass Information](#)

Pushkinskaya St. 39, 01024, Kyiv, Ukraine

[info@imi.org.ua](mailto:info@imi.org.ua)



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**IMPLEMENTATION OF  
THE JUDGMENTS OF  
THE EUROPEAN COURT  
OF HUMAN RIGHTS:  
UKRAINE**

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**European Implementation Network  
January 2021**