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Enforcement of decisions of national courts in cases of compensation for damage caused as a result of armed conflicts

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Abstract. The relevance of the study is due to the lack of proper legal regulation in the field of legal determination of the procedure for executing a court decision under which a foreign state (aggressor or occupier) acts as a debtor. The purpose of the study is to develop a mechanism for effective protection of the rights of Ukrainian recoverers in cases of compensation for damage by the state aggressor through the prism of proper enforcement of court decisions in these categories of cases. In the course of the study, a number of general scientific and industry methods are applied, in particular, the method of analysis and synthesis, system, structural-functional, dialectical, historical, and hermeneutical methods. The paper analyses the legal positions of the European Court of Human Rights regarding the right to appeal to the court in cases of debt collection from a foreign state as compensation for material and/or moral damage caused to individual applicants. The study examines the practice of the national courts of Ukraine in cases of claims of individuals – citizens of Ukraine against a foreign state for compensation of material and (or) moral damage caused by the invasion of the territory of Ukraine. It is established that a state cannot be allowed to use the doctrine of sovereign immunity as a shield for its violations of other doctrines of international law, such as international law on armed conflicts. The expediency of applying the model of functional (limited) immunity, which is becoming increasingly widespread and recognised by advanced countries of the world, is justified, considering its practicality and compliance with modern requirements for the development of society and leading trends in the development of international law. The results of the study can be used for further scientific developments of the outlined problems in the rule-making process, both in the conclusion of international treaties and in national legislation and in the law enforcement process in the implementation of legal proceedings

Keywords: enforcement of court decisions; enforcement proceedings; executor; enforcement of decisions; recoverer; debtor-a foreign state; protection of human rights

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Introduction

Since 2015, Ukrainian citizens who participated in military operations were in captivity, belonged to the families of the victims, or were internally displaced persons who were harmed as a result of the armed invasion of Ukraine in 2014 apply to the Ukrainian courts with claims for compensation for both material and moral damage. After examining such claims, the courts, among other things, decided to satisfy the claims and determined the payment of compensation to the applicants. After receiving the enforcement document for such a decision, the recoverers applied to the State Executive Service body (hereinafter referred to as the SES) with applications for its enforcement in connection with non-fulfilment of payments by a foreign debtor state. However, enforcement of the recovery of the amount of compensation for the damage caused was impossible because the legislation of Ukraine, in particular, the Law of Ukraine "On State Guarantees Regarding the Execution of Court Decisions" (2012), the Law of Ukraine "On Executive Proceedings" (2016), does not regulate this type of legal relationship. Therefore, there is a gap in the legislation of Ukraine in regulating the procedure for executing court decisions when the debtor is another occupying state or an aggressor state.

N. Wieb and A. Zimmermann (2022) point out that international humanitarian law is applicable in times of armed conflict, and issues of compensation for victims of its violations are becoming particularly relevant. O. Hnativ (2023), examining the procedure for determining the composition of losses and damages caused as a result of armed aggression, indicates that they can be compensated through judicial protection or by creating appropriate funds that will provide such compensation (the so-called compensation procedure). However, the researcher does not offer a solution to the question of the future fate of the decision taken by the National Court against the occupying state or the aggressor state or mention the mechanism of actual execution of such court decisions. A similar approach can be traced in the paper of N. Kaminska and N. Kosiac (2017).

N. Onishchenko *et al.* (2023), outlining the need for regulatory regulation of compensation for damage caused by armed aggression to legal entities and individuals, including foreigners and stateless persons, suggest that when forming national compensation procedures for damage, consider such factors as registration and accounting of damaged property, fixing expenses to the person incurred by them, and identifying the link between this damage and military actions committed by the aggressor state. In addition, researchers rightly emphasise that compensation is subject not only to material damage caused to a person but also to moral damage, compensation for which is conducted exclusively in court. Despite this, the specific features of consideration and decision by the court of cases on compensation for damage caused as a result of armed aggression of another state, and the issue of actual execution of court decisions taken on compensation for such damage, remain ignored.

I. Izarova *et al.* (2023), analysing the legal issues of compensation for losses caused by war, concluded that considering the practice of the European Court of Human Rights (hereinafter – ECHR) in the approach to solving this issue and its impact on decision-making by national courts, it is necessary to introduce a simplified procedure for considering such categories of cases. According to the researchers, this approach, on the one hand, will unify judicial practice, and on the other, it will protect plaintiffs from a rather long, complex and cumbersome legal process, which will contribute to the protection and restoration of their rights. However, it is not clear how court decisions on compensation for non-pecuniary damage caused by an armed invasion of the territory of Ukraine, taken under such a simplified mechanism, should be implemented.

P.V. Otenko (2023) notes that in the national legislation of Ukraine, there is no proper legal regulation of the enforcement of court decisions under which the debtor is a foreign state, which proposes to apply a special international compensation mechanism, according to which the special commission, when considering the award of payments for damage caused, proceeded from the provisions declared in the court decision taken against such a person. Thus, the researcher is more inclined to use international compensation mechanisms than to introduce appropriate legal mechanisms at the level of national legislation and adjust the legal regulations of the procedures for the enforcement of court decisions. Notably, there is no proper legal regulation of the issue of state immunity through mechanisms that would be established by the national legislation in Ukraine, which contributes to the formation of different approaches to understanding the essence of the concept of state immunity by researchers and practitioners, generates heterogeneous judicial practice, and also complicates the search for ways of legal settlement.

On the other hand, researchers note that with the invasion of Russia on the territory of Ukraine, the system and procedure for the enforcement of court decisions in general has undergone substantial changes. In particular, V. Kovalsky (2022) and A. Avtorgov (2023) indicate that the military conflict on the territory of Ukraine and the introduction of martial law in this regard required the legislator to introduce a number of restrictions in the procedure for implementing enforcement proceedings. V. Prytuliak *et al.* (2022) and N. Shelever *et al.* (2023) recognise the necessity and balance of such restrictions, and their relevance, according to researchers, is primarily due to the protection of national interests. However, as they rightly pointed out, the application of such restrictions in those enforcement proceedings in which debtors are persons associated with the aggressor state will be complicated or even impossible since the legislator has not clearly formulated the relevant restrictions, which leads to ambiguity in the interpretation of their content.

N. Sergiienko *et al.* (2022) note that considering the experience of different countries, in this perspective, it is worth reviewing the acceptability and relevance of the system of organising the enforcement of decisions for a particular state (considering its legal traditions, the level of development of civil society, the mechanism of the state, the legal system, etc.).

The review of these papers indicates the absence of comprehensive and fundamental research that would directly relate to the disclosure of problematic issues related to the execution of court decisions in cases of compensation for damage caused as a result of armed aggression by the occupying state. In this regard, the purpose of this study is to determine an effective mechanism for the proper execution of court decisions on compensation for damage caused as a result of armed aggression by the state occupier, as an integral element of the right to judicial protection of violated rights of persons.

A number of general scientific and sectoral methods were applied to achieve the purpose of the study, in particular: dialectical, with the help of which the gap in the legal regulation of the issues of restoring the rights of persons who were harmed as a result of armed conflict was stated; historical analysis – the use of this methodallowed presenting the genesis of the legal positions of the ECHR on the outlined issues; hermeneutical – through the application of this method, the content of the main doctrines of state immunity was clarified; analysis and synthesis – was used during the examination of the positions of researchers on compensation for harm to citizens of Ukraine; deduction – allowed making a transition from the general provisions of the theory of law on compensation for harm to the problem of compensation material and moral damage caused as a result of armed conflict; systemic and structural-functional – allowed developing provisions for the restoration of human rights; legal axioms – based on the provisions of international law, the issue of state immunity was investigated; formal-dogmatic – with its help, the current legislation was analysed and proposals for its improvement were formulated. In addition, a number of legislative acts (for example, conventions, international treaties, national legislation) and their law enforcement (decisions of the ECHR and decisions of national courts of Ukraine) were used in the process of conducting this study, which became the empirical basis of the paper.

Legal positions of the ECHR on the right to apply to the court for protection in cases of debt collection from a foreign state

The ECHR in "Bellet v. France" (1995) emphasised that Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) (hereinafter referred to as the Convention) includes a system of guarantees of fair trial, one of the elements of which is access to a court. The degree of access provided for by national legislation should be sufficient to ensure a person's right to a court in view of the principle of a democratic society such as the rule of law. A person must have a clear and real opportunity to appeal against actions that constitute interference with their rights to effectively ensure access to a court. O.R. Balatska (2022) and M.O. Hetmantsev (2023) have repeatedly noted that according to many cases considered by the ECHR, the right of access to a court is the main component of the right to judicial protection, that is, a person must have a real opportunity to apply to a court in order to resolve a certain issue and the state should not put legal or factual obstacles to the exercise of this right. In particular, this position of the court is reflected in such cases as "Golder v. The United Kingdom" (1975), "Bellet v. France" (1995), "Gorgiladse v. Georgia" (2009), etc).

One of the priorities in the judicial review of cases, the ECHR determines its duration. According to the well-established practice of the ECHR, the case "Pélissier and Sassi v. France" (1999) and "Frydlender v. France" (2000) – reasonable length of proceedings requires an assessment of the circumstances of a particular case and such criteria as the conduct of the person applying to the court and the competent authorities, the complexity of the case itself, and the importance of the dispute for the subject of the appeal. The national courts of Ukraine are also trying to follow this guideline.

ECHR, in the case of "Hornsby v. Greece" (1997), notes that a person's right to a court would become an empty illusion if the Justice of a state party to the convention allowed for non-enforcement of a binding judgment, which could harm one of the parties. It cannot even be assumed that Article 6 of the Convention, which regulates in detail the procedural guarantees for the parties to a legal dispute, such as prompt, public, and fair proceedings, does not provide for the execution of a court decision. If Article 6 of the convention (1950) was considered solely as a declaration of the right to judicial protection and access to a court, this could lead to situations contrary to the principle of the rule of law, which, by ratifying the convention, states parties undertook to respect. In addition, the ECHR has repeatedly expressed in its decisions about the existence of a problem of non-enforcement of court decisions in Ukraine. Thus, for example, in the case of "Yuriy Mykolayovych Ivanov v. Ukraine" (2009) of the ECHR states that more than half of the decisions of the ECHR against Ukraine are related precisely to the long-term non-compliance of the Ukrainian authorities with the final court decisions.

The issue of special (non-contractual) civil and international liability of foreign states for damage caused by armed conflicts, as rightly noted by B. Karnaukh (2022), is inextricably linked to sovereign immunity. S.T. Mouland (2021), D. Franchini (2023) and Y. Mordecai (2023), and note that sovereign immunity should be understood as the ability of a sovereign state not to obey the authorities of a foreign country. In this regard, in the doctrine of international law, in particular, such researchers as A. Sanger (2016), P.D. Winch (2021), C.E.P. Tache (2023) identify the following types of jurisdictional immunities: 1) judicial immunity (from lawsuits); 2) immunity from securing a claim, in particular the previous one; 3) immunity from enforcement of court decisions by force; 4) property immunity (from interference with property).

It can be argued that the formation of the ECHR's position in the category of cases related to the immunity of a foreign state began with the 2002 decision in the case "Kalogeropoulou and others v. Greece and Germany" (2002). The application was filed by 257 Greek citizens, relatives of victims of mass executions conducted by the Nazi occupation forces in the village of Distomo in 1944. This was preceded by the adoption in 1997 by the Greek national courts, which were upheld by the Greek Supreme Court, obliging Germany to pay compensation to the plaintiffs who were the legal successors to the victims of the massacre in the village of Distomo.

The plaintiffs applied to the minister of justice for appropriate enforcement authorisation to enforce this judgment against a foreign state in Greece, as required by Article 923 of the Greek Civil Procedure Code (1985). However, such permission was not granted. As a result, the court's decisions against Germany remained unenforced in Greece. The plaintiffs filed a lawsuit with the ECHR, claiming that Germany and Greece violated Article 6 (1) of the Convention and Article 1 of Protocol No. 1 of this convention (1950) by refusing to comply with the decision of the Greek National Court of 1997 (in relation to Germany) and not allowing this decision to be implemented (in relation to Greece). In its decision, the ECHR, referring to the state immunity rule, ruled that the plaintiffs' application was inadmissible.

With regard to the right to appeal to a court (Article 6, paragraph 1 of the Convention), the ECHR agreed that the refusal of the Greek authorities to authorise the enforcement of the District Court's judgment, which had been in favour of the applicants and established the defendant's obligation to pay compensation, constituted a restriction on the applicants' right of access to justice. Therewith, granting the authorities of their state to a foreign state "sovereign immunity" from prosecution in the field of civil law is aimed at observing the norms of international law regarding international politeness (*comitas gentium*) and showing respect for the sovereignty of a foreign state.

Regarding the enforcement of decisions (Article 1 of Protocol 1 to the Convention), the ECHR notes that when the court issued the final decision, the applicants acquired the right of claim against Germany in respect of "property" within the meaning of Article 1 of Protocol 1 to the Convention (1950). However, the refusal to authorise the enforcement of German property located in Greece was conducted "in the public interest", namely, to avoid undermining relations between Greece and Germany. According to ECHR, it was impossible to oblige the Greek authorities against their will to violate the principle of a state's immunity from prosecution on the territory of another state and to put friendly inter-state relations at risk to allow applicants to resort to enforcement of a court decision taken in their favour in a civil case.

The court emphasises that by turning to the enforcement proceedings, the applicants should have been fully aware that, in the absence of the prior consent of the minister of justice, they would most likely not be able to achieve anything. Therefore, the real situation could not objectively give the applicants grounds to reasonably hope for the payment of the amounts awarded to them. After all, the applicants had not lost the opportunity to assert their rights against the German state; it could not be ruled out that enforcement might take place in the future. Therefore, the courts' refusal to authorise enforcement did not upset the balance that must exist between the rights of individuals and the public interest.

Ambiguity is characterised by the decision of the ECHR in the case "Al-Adsani v. the United Kingdom" (2001), which was adopted with a margin of only one vote, that the immunity granted to the state of Kuwait takes precedence over the claim filed in the British court by a victim of torture for compensation for the damage caused. The majority of judges (9 against 8) noted that since the prohibition of torture is of a special nature in international law, the court cannot determine in international documents, judicial authorities, or other materials whether there are irrefutable grounds for believing that a state, according to the norms of international law, does not exercise immunity from a civil claim in a court of a foreign state claiming to have committed torture against a person. A minority of judges stressed that the conclusion that a mandatory rule (jus cogens) constitutes a prohibition of torture would necessarily mean that it would take precedence over other rules of lower status, such as the immunity of a state that has not received such status under international law.

The ECHR in the case "Jones and others v. The United Kingdom" (2014) identified no violation of Article 6 of the convention (1950). November in a situation where a British court rejected the claim of victims of torture filed against Saudi Arabia. However, the court noted that the development of the law in relation to sovereign immunity at the time of the decision is in a dynamic development and, considering developments in the field of international law on this issue, encourages a periodic review of its conclusions. Thus, the ECHR does not rule out the possibility that new exceptions may arise in international law over time in the application of sovereign immunity. Therefore, the ECHR established that granting sovereign immunity to a state in civil proceedings is a legitimate goal that promotes compliance with the norms of international law on the basis of the principles of international politeness and supports the creation of positive relations between states, provided that states mutually show respect for the sovereignty of another state.

Considering the case "Cudak v. Lithuania" (2010) on the violation of the right to appeal to the court, the ECHR touches on the historical component of the issue and notes that in recent years the application of the rules on absolute immunity of states has been weakened. In 1979, the International Law Commission was tasked with streamlining and gradually developing international law in the context of jurisdictional immunity of states and their property. As a result of this work, in 2004, the General Assembly of the United Nations (hereinafter referred to as the UN) adopted the Convention on jurisdictional immunity of a state and its property (2004). Its provisions apply to Lithuania by virtue of customary international law.

The ECHR points to the principle established by international law that even if a state has not ratified a treaty, it may be subject to one of its provisions because such a provision reflects customary international law, "codifies" it, or creates a new customary prescription. The court notes that there is a trend both in international law and in the practice of an increasing number of countries that impose restrictions on the application of rules of sovereign immunity but draws attention to the fact that such restrictions must have a legitimate purpose and be proportionate to it. The ECHR also emphasises that the establishment of immunity for a particular state in civil proceedings has a legitimate goal – compliance with the requirements of international law aimed at achieving polite and good relations between states, which is manifested in respect for each other's sovereignty. In the cited case, in 2010, the court concludes that the Lithuanian judicial authorities committed a violation of the essence of the right of access to a court in respect of the applicant, stating that there was no competence to examine her claim. By doing so, the ECHR confirmed the existence of exceptions related to the immunity of states.

In the case of "Oleynikov v. Russia" (2013) the ECHR decided that the 2004 UN Convention applies in accordance with generally accepted norms of international law, even in cases where it has not been ratified by the relevant state convention, if it has not protested against it. The Russian Federation (hereinafter referred to as the RF) did not ratify this convention but did not raise any objections to it; on the contrary, it signed it on December 01, 2016. The ECHR stressed that the establishment of sovereign immunity in civil proceedings is aimed at achieving the legitimate goal of international law – promoting commitment and achieving good relations between states through the prism of respect for the sovereignty of a foreign state. Since the national courts of the Russian Federation refused to examine the applicant's claim by applying the absolute immunity of the state from the jurisdiction without any analysis of the provisions of legislation and treaties, without examining the

merits of the dispute, giving specific and complete reasons, or considering the applicable requirements of international law, the ECHR finds that by dismissing the applicant's claim, the Russian courts failed to maintain a reasonable balance of proportionality. Therefore, they committed a violation of the essence of a person's right to apply to the court for protection. In this regard, the norms of the Convention (2004) were also violated. Consequently, the requirements under the 2004 UN Convention apply to the respondent state in accordance with generally accepted standards of international law. The court must consider this fact when deciding whether the right of access to a court has been violated, as defined in the convention (2004).

In the case of "Loizidou v. Turkey" (1998), the ECHR ruled that the Republic of Turkey must pay compensation to the claimant, including compensation for moral suffering, as a result of the illegal occupation of the northern part of Cyprus by the Turkish Armed Forces, where the claimant was born and lived. The applicant in the present case is a citizen of Cyprus and owns plots of land, access to which she lost after the Turkish occupation of Northern Cyprus on 20/07/1974. She argued that she was entitled to just satisfaction on account of a prolonged breach of her property right, which prevented her from "enjoying it peacefully" because of the presence of Turkish troops there. Since, from 1974 onwards, the applicant had effectively lost all control of her property, the court concluded that the continuous denial of access to her property had been an unjustified interference with her property rights and a violation of the UN Convention (2004), and the related loss of any control over the property was an issue that fell within Turkey's jurisdiction.

With this in mind, the ECHR considers that the issue of Turkey's responsibility under the UN Convention (2004) in relation to the contested issues is *res judicata*. The court states that it should decide to force Turkey for a payment of just satisfaction to the applicant. The ECHR is not convinced by the argument that this approach will undermine political discussions about the Cyprus problem when considering the case on the merits of the stated claims. Consequently, the court awarded the payment of just satisfaction as compensation for the breach of property rights, which includes redress for the damage suffered and compensation for the suffering and feelings of helplessness and frustration that the applicant had experienced over the years by not being able to use her property as she saw fit. However, no information has been established about the actual payment by the foreign respondent state of the awarded compensation for pecuniary and non-pecuniary damage.

Therefore, filing individual applications against foreign countries is a fairly common practice in the ECHR, which cannot be said about the direct implementation of such decisions. Notably, Ukrainian citizens could file claims to the ECHR until 16.09.2022, since the Russian Federation denounced the Convention and left the Council of Europe, and this date is determined to be the extreme date for filing new claims. Although the court has the competence to consider claims filed before this date, there is also no mechanism for implementing the ECHR decisions resulting from their consideration. Thus, the current practice of the ECHR shows that the norms unified in the conventions on the immunities of states are applied by the judicial authorities in accordance with the requirements of customary international law. Therewith, the purpose of granting immunity to a foreign state during the trial of a case is precisely the criteria of politeness, respect, and good relations, which, of course, cannot relate to the circumstances of war. The existence of decisions taken on debt collection from a foreign state as compensation for material and/or moral damage caused to individual applicants, and the lack of legal means in practice to protect and restore their violated rights, indicate the possibility of applying the ECHR practice as a basis for the formation of a legal framework and national law enforcement practice in Ukraine, but it should not be considered as a single platform for protecting the rights of Ukrainians in this category of cases.

Practice of national courts of Ukraine in cases of claims of individuals-citizens of Ukraine regarding compensation for material or moral damage caused during an armed conflict

Judicial practice in cases involving claims of individuals-citizens of Ukraine to the Russian Federation for compensation for material and moral damage began to take shape in 2016 and still remains ambiguous. Individual courts, when considering the jurisdiction of such cases, do not assess the norms on jurisdictional immunity of foreign states (Decision of the Yarmolyn District Court..., 2016; Decision of the Lychakiv District Court..., 2019). Other courts refer to international treaties regulating foreign policy issues and establishing general principles of Foreign Relations and refuse to recognise the jurisdictional immunity of the aggressor state (Decision of the Holosiivskyi District Court..., 2016; Decision of the Starobilsk District Court..., 2018; Decision of the Solomianskyi District Court..., 2023). It is also quite common to refuse to consider such claims due to the jurisdictional immunity of foreign states (Resolution of the Civil Court of Cassation within the Supreme Court..., 2020; Decision of the Kramatorsk City Court..., 2021). Therefore, in the judicial practice of Ukraine, there is no unified approach to the issue. On the one hand, the courts satisfy the claims of citizens and legal entities, referring to the norms of the Constitution (1996) as norms of direct action and to general principles of law. On the other hand, they refuse to satisfy the claim, citing the need to obtain the consent of the competent authority of the aggressor state and/or the occupying state to enter into legal proceedings on the territory of Ukraine.

In certain cases, the courts note that in the absence of such consent, court decisions on the territory of Ukraine may not be recognised by the Russian Federation and, therefore, will not be implemented. This may lead to the loss of a real opportunity to protect and restore the rights of Ukrainian citizens as a result of these court decisions. However, it is obvious that requests from the courts of Ukraine for such consent are doomed to failure and will only delay the consideration of cases in violation of the requirements of the convention regarding the reasonableness of the time frame for consideration of cases in court.

In addition, there is a position according to which, to protect their rights, plaintiffs can submit an application to the ECHR. However, this opinion raises doubts, given the substantial number of affected parties, which can reach hundreds of thousands of people whose appeals to the ECHR will block the work of this judicial body. Also, even if a positive decision is made on the complaint of the affected person, it will be impossible to execute it on the territory of a foreign debtor state since, according to the decision of the Constitutional Court of the Russian Federation adopted

in 2015, the decisions of the ECHR are not subject to execution on the territory of this country (Ministry of Justice of Ukraine, 2015), if they contradict the Constitution, and considering the exclusion of the Russian Federation from the Council of Europe on 16.03.2022 and the intention to denounce the convention (Russia will not comply with the ruling of the European Court..., 2022), consideration of new cases in the ECHR will be completely impossible.

Under such conditions, the complexity of implementing decisions of the ECHR adopted based on the results of consideration of applications of persons affected by armed aggression against Ukraine will not differ from the complexity of implementing similar decisions of national courts of Ukraine. Therefore, the procedure for implementing this category of decisions, regardless of which body they were issued by, is not defined by law. In addition, in some decisions, the courts, at the request of the plaintiffs, apply interim measures and determine potential sources of repayment of debts on claims of Ukrainian citizens who suffered losses during the armed conflict.

Execution of decisions on the Russian Federation in Ukraine can be conducted by one of the following bodies: 1) the Department of Enforcement of Decisions of the Department of State Executive Service (DSES) of the Ministry of Justice, which already conducts enforcement of consolidated enforcement proceedings on the recovery of funds and which takes a number of measures, in particular on the identification and foreclosure of property; 2) a separate SES body, formed for these purposes as part of the DSES of the Ministry of Justice, endowed with exclusive competence to ensure the enforcement of decisions on a foreign state and which should include the most experienced performers.

The implementation of such decisions should be conducted at the expense of the property of the aggressor state in Ukraine, subject to the adoption by the Verkhovna Rada of Ukraine of a legislative act on the immunity of a foreign state, which will establish appropriate exceptions. Additionally, regulatory legal acts should define the procedure for enforcement of decisions against a foreign state. Such a procedure should establish the specifics of opening enforcement proceedings, identifying the property (assets) of a foreign debtor state and foreclosing on them, and the procedure for informing such a debtor at each stage of performing enforcement actions. This option is the easiest to implement through its integration into the existing mechanisms and procedures for the enforcement of decisions in Ukraine, but it contains warnings and risks.

The legislation regulates the procedure for recognising and granting permission for the enforcement of court decisions taken on the territory of Ukraine in relation to labour, family, and civil cases (Law of Ukraine No. 4901-VI…, 2012; Law of Ukraine No. 4901-VI…, 2016). However, considering the separate status of the defendant in decisions on compensation for damage caused by the armed aggression of a foreign country as a special subject of legal relations, different from individuals and legal entities, the conditions of accessibility for the application of this option of solving the problem can be considered if: 1) the property of a foreign state located in Ukraine is not enough to meet the requirements for decisions of national and international arbitration courts; 2) the legislation of a foreign state, on the territory of which assets are achievable for recovery, allows recognising the decisions of Ukrainian courts and implement measures for their enforcement. Summarising the analysed information, three potential classes of Russian assets can be identified, each of which should be treated differently:

- Private assets of those who committed a crime, financed terrorism, war, tried to evade sanctions, etc. According to the established legal approach at the national and international levels, such assets can be confiscated as a result of the commission of a crime as a punishment for this crime, which does not violate the norms of national or international law.
- Private assets of individuals close to the Russian regime. Confiscation of such assets only because of the alleged connection of a person (or organisation) with the aggressor state may violate national and/or international law. Therefore, it is advisable to freeze assets as a priority as a sanction, followed by a penalty in the form of confiscation of such assets.
- Russian sovereign assets. The approaches to sovereign immunity that currently exist in international law and the national legislation of individual states significantly limit the possibility of alienation of such assets. However, Ukraine is conducting intensive negotiation work at the interstate level to achieve progress and changes in these approaches.

When foreclosing on the assets of the aggressor state, the measures taken should be conducted on the basis of the rule of law and be balanced, and the recovery should be proportional and necessary, for which it is necessary to avoid the following potential violations of international law: 1) violation of investment agreements on mutual protection of investments for the protection of the latter; 2) violation of the Convention on the right to a fair trial, the right to property, private life, and home (European Convention..., 1950); 3) violation of customary international law, including the right to due process and a fair trial; 4) violation of the national legislation of the relevant foreign state.

The doctrine of sovereign jurisdictional immunity, which originates in customary international law, like other doctrines of international law, tends to change. The time has come to change the established custom in accordance with modern needs and current challenges facing democratic societies. Armed aggression against Ukraine cannot be interpreted as an activity of a sovereign nature, and therefore, it should not be subject to sovereign immunity in the category of cases on compensation for material damage or moral damage caused by armed aggression and occupation of a part of the territory. Thus, a state may not be allowed to commit the crime of aggression (thereby causing substantial damage to another state) and then attempt to protect its own assets from recovery as compensation for that damage by referring to the doctrine of sovereign jurisdictional immunity.

The realisation of the right of persons affected by armed aggression to appeal to the court, including the execution of a court decision as an integral element of access to justice, should not directly depend on the actions of the aggressor state, which is already not interested in achieving the goals and objectives of justice, but also thanks to the tool for granting consent to the administration of justice in relation to persons who have suffered damage caused by it, will have an unlimited opportunity to hinder the implementation of justice. Therefore, the very idea of obtaining the consent of the aggressor country to bring it to civil liability for property and/or moral damage caused to persons is unacceptable.

Therewith, the application of enforcement measures against a foreign aggressor state and legal entities and individuals associated with it should not exclude bringing such

a state and related persons to responsibility defined by international law and law, including special non-contractual ones. Therefore, considering the advanced trends in the development of international law and compliance with modern standards of social development, the most rational is the use of functional (limited) immunity as a model of legal regulation of this procedure.

Conclusions

Thus, summing up all the above, it is noted that, despite the existence of a number of legal positions of the ECHR in relation to the restoration of violated rights of persons in cases of debt collection from foreign countries, there is no effective mechanism for the enforcement of decisions in cases of compensation for damage caused as a result of armed conflict. Despite the widespread practice of submitting applications to the ECHR by persons against foreign countries, there is a problem of implementing the decisions taken by these countries. It is proved that it is unacceptable to apply the doctrine of sovereign immunity to the aggressor state as a justification for its violations of other doctrines of international law, in particular, such as customs and rules developed in the doctrine of international law on the conduct of war. Based on the analysis, the expediency of applying the model of functional or limited immunity, which is recognised and practised by the countries of Western Europe and North America, is argued, considering its practicality and compliance with high standards of the rule of law, the development of civil society, and considering trends in the development of international law. The aggressor state may not enjoy judicial immunity in enforcement proceedings for compensation for material and/or moral damage caused by its armed aggression. Therefore, the analysed practice of the ECHR can only be a prerequisite, a basis for the formation of relevant legal norms and law enforcement practice in Ukraine. The following legal models of execution of court decisions on compensation for damage caused by armed aggression of a foreign country are proposed. Such categories of enforcement proceedings should apply to either the Ministry of Justice's Department of Enforcement of Decisions in the order of consolidated enforcement proceedings or a separate specially formed SES body within the Ministry of Justice's Department of Enforcement. The object of foreclosure is the property of the aggressor state that is located on the territory of Ukraine (in particular: private assets of subjects of committing crimes – financing terrorism, war, attempts to evade sanctions, etc. as punishment for such crimes; private assets of persons close to the regime, however, so that the confiscation of these assets, considering the alleged connection of such subjects with the aggressor state, does not violate the norms of national and/or international law, it is necessary to first freeze these assets as sanctions with their subsequent confiscation), subject to the adoption of rules on exceptions to the rules on state immunity.

The results of the study described above can be used as the basis for future research on resolving controversial issues regarding the doctrine of state immunity as a subject of private and public international law and creating an effective mechanism for restoring violated human rights by harm caused by a foreign state as a result of armed conflict.

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Conflict of interest

None.

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Виконання рішень національних судів у справах про компенсацію шкоди, завданої внаслідок збройних конфліктів

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Анотація. Актуальність дослідження зумовлено відсутністю належного правового регулювання у сфері правового визначення порядку виконання судового рішення, за яким боржником виступає іноземна держава (агресор або окупант). Мета дослідження полягає в тому, щоб розробити механізм ефективного захисту прав українських стягувачів у справах про компенсацію шкоди державною-агресором або державою-агресором крізь призму належного виконання судових рішень у цих категоріях справ. У процесі дослідження застосовано низку загальнонаукових і галузевих методів, зокрема, метод аналізу та синтезу, а також системний, структурно-функціональний, діалектичний, історичний та герменевтичний методи. У статті проаналізовано правові позиції Європейського суду з прав людини стосовно права на звернення до суду у справах про стягнення боргу з іноземної держави як компенсації завданої заявникам – фізичним особам матеріальної та/або моральної шкоди. Досліджено практику національних судів України у справах за позовами фізичних осіб – громадян України до іноземної держави щодо компенсації матеріальної та (або) моральної шкоди, яка заподіяна вторгненням на територію України. Встановлено, що державі не може бути дозволено використовувати доктрину суверенного імунітету як щит для порушень нею інших доктрин міжнародного права, таких як міжнародного права щодо збройних конфліктів. Обґрунтовано доцільність застосування моделі функціонального (обмеженого) імунітету, яка набуває все більшого поширення та визнання передових країн світу з огляду на її практичність і відповідність сучасним вимогам розвитку суспільства та провідних тенденцій розвитку міжнародного права. Результати дослідження може бути використано для подальших наукових розробок окресленої проблематики, у нормотворчому процесі як при укладенні міжнародних договорів, так і в національному законотворенні, а також у правозастосовному процесі під час здійснення судочинства

Ключові слова: примусове виконання рішень судів; виконавче провадження; виконавець; виконуваність рішень; стягувач; боржник-іноземна держава; захист прав особи