



Верховний  
Суд

**ОБСЕ** Організація з безпеки та  
співробітництва в Європі

DEUTSCHE STIFTUNG FÜR  
INTERNATIONALE RECHTLICHE  
ZUSAMMENARBEIT E.V.



# AGENDA

International Seminar-Workshop

Is a Right Without a Remedy Really  
a Right? Issues of Compensation for  
the Breach of a Right as a Result of  
an Act Being Declared Unconstitutional

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Kyiv  
22 November 2024

# Objectives of the event

Exchange of experience:

- regarding consideration and resolution of cases by administrative courts through the prism of protection of human rights, guaranteed by the third part of Article 152 of the Constitution of Ukraine, on state compensation for damage caused by actions and acts recognized as unconstitutional;
- in the aspect of analyzing the specifics of judicial protection of the rights guaranteed by the Constitution of Ukraine, in the absence of a law on state compensation for damage caused to a person by actions and acts recognized as unconstitutional;
- in the context of the formation of national and foreign case-law on state compensation for damage caused by actions and acts recognized as unconstitutional;
- regarding the application of the case-law of the European Court of Human Rights, the Court of Justice of the EU in the aspect of protecting the rights to state compensation of human right violated by contradictory normative acts.

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9:30–10:00      **Registration of participants. Welcoming coffee**

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## Opening. Welcoming remarks

Moderator: **Myroslava BILAK**,  
judge of the Supreme Court in the Administrative Cassation Court, LL.D.



10:00–10:25

**Stanislav KRAVCHENKO**, President of the Supreme Court, PhD in Law



**Iryna KUSHNIR**, Project Manager of the Council of Europe Project "Support to the Functioning of Justice in the War and Post-War Context in Ukraine", CoE Department of the Cooperation Programmes, PhD in Law



**Oleksandr VODIANNIKOV**, Senior Project Associate, OSCE Support Programme for Ukraine "Support to National Stakeholders in Enhancing Accessibility of Constitutional Justice", PhD in Law



**Angela SCHMEINK**, projects leader in Ukraine and Vietnam, Deputy Head of the German Foundation for International Legal Cooperation (IRZ)



**Mykhailo SMOKOVYCH**, President of the Administrative Cassation Court within the Supreme Court, LL.D.

10:25–10:30



Guest speaker

**Oleksandra MATVIICHUK**, human rights activist, Head of the Center for Civil Liberties, Nobel Peace Prize laureate

## Session 1. The mechanism of judicial compensation by the state in accordance with the third part of Article 152 of the Constitution of Ukraine and the exchange of international experience

**Moderator:** **Myroslava BILAK**, judge of the Supreme Court in the Administrative Cassation Court, LL.D.

Issues for discussion:

- the essence of the concept of "damage" in the sense of Articles 56, 152 of the Constitution of Ukraine;
- determination of the procedure and conditions for compensation of damage in the sense of Article 152 of the Constitution of Ukraine as a positive obligation of the state;
- problematic aspects of the practical implementation of the third part of Article 152 of the Constitution of Ukraine;
- conditions for restoration of the violated constitutional right to effective protection within the meaning of the third part of Article 152 of the Constitution of Ukraine;
- the case-law of the European Court of Human Rights, the Court of Justice of the EU in the aspect of protecting the rights to state compensation for the violated human right as a result of the application of a contradictory regulatory (legal) act (in case of its non-compliance with the constitution, law, international treaty).

10:30–12:30

Speakers:



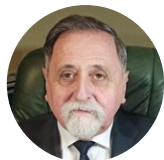
**Compensation for damage caused by a violation of the constitutional rights of a person: the experience of European states in the light of the case-law of the European Court of Human Rights**

**Mykola GNATOVSKYY**, judge of the European Court of Human Rights, PhD in Law



**Compensation by the state for damage caused to persons by acts and actions recognized as unconstitutional: conceptual and methodological approaches**

**Mykola KOZIUBRA**, professor of the Department of General Theoretical Jurisprudence and Public Law of the National University "Kyiv-Mohyla Academy", member of the Scientific Advisory Board at the Supreme Court, LL.D.



**Problems of protection of the right violated by the application of an unconstitutional law**

**Yurii KLIUCHKOVSKYY**, Associate Professor of the Department of General Theoretical Jurisprudence and Public Law of the National University "Kyiv-Mohyla Academy", member of the Scientific Advisory Board at the Supreme Court, LL.D., senior researcher



**Monetary compensation and other types of compensation in judgments of the Constitutional Court of Croatia – ensuring a fair balance between the interests of the state and the rights of individuals**

**Slavica BANIĆ**, International consultant of the Council of Europe, Zagreb (Croatia), retired judge of the Constitutional Court of Croatia, Former Substitute Member of the European Commission "For Democracy through Law" (Venice Commission)



**Liability for the compensation of damages caused by infringement of European Union law**

**Rimvydas NORKUS**, advocate general at the Court of Justice of the European Court, judge of the General Court of the European Union (2019–2024), President of the Supreme Court of Lithuania (2014–2019)



**Formation of the practice of the Constitutional Court of Ukraine regarding compensation for material or moral damage caused to individuals or legal entities by acts recognized as unconstitutional**

**Serhii RIZNYK**, judge of the Constitutional Court of Ukraine, LL.D.

11:40–12:30

Discussion

12:30–13:15

Break

## Session 2. The effectiveness of the constitutional right of a person to restore the violated right without the possibility of its efficient protection: ways of solving the problem through the prism of national and international aspects

**Moderator:** **Myroslava BILAK**, judge of the Supreme Court in the Administrative Cassation Court, LL.D

Issues for discussion:

- judicial protection of the rights guaranteed by the Constitution of Ukraine,
- in the absence of a law on compensation for damage caused to a person by actions and acts recognized as unconstitutional;
- the causal relationship between the recognition of the act as unconstitutional and damage caused by the state to human rights;
- legal instruments of compensation for violated human rights as a result of recognition of act as unconstitutional;
- the possibility of applying the rule of law principle in judicial cases as a tool of compensation for violated rights (in the absence of a law);
- the effectiveness of the procedure for reviewing judgments under exceptional circumstances;
- the experience and case-law of European states regarding the compensation of the violated right due to recognition of the act as unconstitutional

13:15–15:15 Speakers:



**Legal mechanisms for the protection of the violated right due to recognition of a legal act or its separate provision as unconstitutional**

**Mykhailo SMOKOVYCH**, President of the Administrative Cassation Court within the Supreme Court, LL.D.



**Retroactive effect of judgments of the Constitutional Court**

**Martin STEINKÜHLER**, judge of the Federal Administrative Court of the Federal Republic of Germany



**Execution of the ECtHR judgments regarding the compensation for damage caused by violation of personal rights: experience of constitutional jurisdiction bodies and courts of general jurisdiction**

**Pavlo PUSHKAR**, head of division at the Department for the Execution of Judgments of the European Court of Human Rights of the Directorate General of Human Rights and the Rule of Law of the Council of Europe, lecturer of international and European human rights law at the University of Strasbourg and the Ukrainian Catholic University, member of the Scientific Advisory Board at the Supreme Court, PhD in Law



**Recognition of the act as unconstitutional: procedural issues of restoration of the violated right**

**Vitalii URKEVYCH**, Secretary of the Grand Chamber of the Supreme Court, LL.D.



**Procedural consequences of recognizing an act as unconstitutional: an overview of individual problems**

**Nataliia SAKARA**, judge of the Civil Cassation Court within the Supreme Court, PhD in Law

14:20–15:15 Discussion

15:15–15:30

### Summing up. Closing the seminar

- **Mykhailo SMOKOVYCH**, President of the Administrative Cassation Court within the Supreme Court, LL.D.
- **Myroslava BILAK**, judge of the Supreme Court in the Administrative Cassation Court, LL.D.