

Strengthening the Individual's Role in State Responsibility: European Legal Standards and Mechanisms

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Abstract

The article aims to analyze the strengthening of the individual's role in addressing state wrongful acts, to trace the historical transformation of this role, and to propose mechanisms that could consolidate and institutionalize this trend. The study employs historical-legal analysis, case study review, and comparative analysis of European legal instruments and judicial practice, focusing on representative cases from the 21st century. The article distinguishes systemic shortcomings, including chronic non-compliance with judgments, political blocking of international arrest warrants, and insufficient resources for victims.



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The article suggests two instruments to address these deficiencies: integration of International Criminal Court warrants into the European arrest warrant system, backed by sanctions for non-execution; an automatic parliamentary cycle for implementing international court decisions through a silent consent procedure. The scientific novelty of the study lies in outlining a legal mechanism for integrating individual procedural rights into the system of international responsibility. These suggestions are legally grounded in the Framework Decision 2002/584/JHA and related EU instruments regulating judicial cooperation in criminal matters. The enforcement component can rely on targeted financial or political sanctions, such as the temporary suspension of EU funding or cooperation mechanisms, in cases of persistent non-compliance. Their feasibility is assessed in light of constitutional constraints, Member States' competences under the Treaty on European Union, and compatibility with the European Convention on Human Rights, ensuring that due process and the rule of law are fully respected. This aligns with Sustainable Development Goals (SDGs) 16: Peace, justice, and strong institutions.

KEYWORDS *Civil Confiscation, Court Enforcement, International Crimes, Universal Jurisdiction, Sustainable Development Goals (SDGs).*

Introduction

In modern international law, there is a growing interest in the participation of individuals in mechanisms for holding states accountable for internationally wrongful acts. Previously, this area was considered mainly within the framework of diplomatic protection. Today, more and more attention is paid to the ability of an individual to directly participate in investigations and demand compensation for damage. The corresponding changes necessitate a comprehensive analysis of the legal status of the individual and the effectiveness of international institutions designed to ensure the realization of his rights.

In the modern doctrine of international law, the trend of "individualization" of state responsibility is increasingly clearly traced after a number of military conflicts. As Stahn notes, armed conflicts have turned into "communicative wars", where legal rhetoric becomes an element of

counteraction to aggression and violations of *jus cogens*.¹ The actualization of the role of the individual is especially noticeable in the post- and inter-war processes that continue between Azerbaijan and Armenia. After the 44-day war of 2020, thousands of armed clashes have transformed into a “legal front”. That is, both states and individuals are simultaneously appealing to the International Court of Justice, the European Court of Human Rights (hereinafter – ECtHR) and other instances. Petrossian shows that, along with interstate proceedings, the statutory mechanisms of the International Convention on the Elimination of All Forms of Racial Discrimination have already opened the way to hundreds of individual applications from victims.² It is the massive involvement of private plaintiffs that is pushing international law institutions to rethink the role of the individual. This, in turn, is shaping new standards of procedural subjectivity.

The 2020–2022 Tigray war demonstrates another dimension of individual participation. It can be characterized as extrajudicial and transnational. In March 2025, a group of victims filed the first criminal complaint with the Federal Prosecutor’s Office of Germany. They referred to the principle of universal jurisdiction for war crimes and crimes against humanity.³ The analytical report of the New Lines Institute indicates the possible genocidal nature of the actions of government and allied forces. Given this, such a step shows that it is the victims who become the drivers of global justice when domestic and classical interstate mechanisms are blocked. They give impetus to the criminal prosecution of aggressor officials in third states.⁴

¹ C. Stahn, *A Critical Introduction to International Criminal Law* (Cambridge: Cambridge University Press, 2018).

² G. Petrossian, “Legal Battles over Nagorno-Karabakh: A Review of the Jurisprudence to Date,” *American Society of International Law* 28, no. 11 (2024): 5, <https://www.asil.org/insights/volume/28/issue/11>

³ D. Ehl, “Tigrayan survivors seek justice in German courts,” Politics|Ethiopia, *Deutsche Welle*, March 31, 2025, <https://www.dw.com/en/tigrayan-survivors-seek-justice-in-german-courts/a-72099489>

⁴ S. Basch, “New Lines Institute for Policy and Strategy Releases Report Concluding War Crimes in Tigray War,” International Law in Brief, *American Society of International Law*, July 18, 2024, <https://www.asil.org/ILIB/new-lines-institute-policy-and-strategy-releases-report-concluding-war-crimes-tigray-war>

In addition, in 2022, Russia's armed aggression against Ukraine revealed systemic gaps in traditional means of holding an aggressor state accountable. Mechanisms for establishing state responsibility for aggression are still limited. The International Court of Justice and other interstate bodies require the consent of states or do not have direct jurisdiction over the crime of aggression. Ukraine is trying to hold the Russian Federation accountable at the interstate level. However, there is a need for other ways to fill the existing gaps. Considerable attention has shifted to the individual criminal liability of officials and military personnel guilty of crimes. There are tools for prosecuting war criminals at both the national and international levels.

Thus, the International Criminal Court is investigating crimes in Ukraine by issuing arrest warrants for specific individuals. At the same time, the ICC does not have jurisdiction over the crime of aggression itself in this conflict due to jurisdictional limitations. The reason for this is Russia's non-participation in the Rome Statute. As a result, the international community is looking for alternative mechanisms for holding people accountable for aggression. There has been a political demand for the creation of a special tribunal for the crime of aggression and other new institutions, although their legal foundations remain shaky.⁵

Thus, individual initiatives change the very understanding of sovereign immunity and open up new exceptions for grave violations of jus cogens. Moreover, the prospect of individual claims and criminal proceedings in any jurisdiction increases the likelihood of real responsibility. Thus, an analysis of the role of the individual in state responsibility for aggression is necessary for the formation of practical mechanisms for the protection of human rights on a global scale.

⁵ R. Varga, "The Russian-Ukrainian War: The Possibilities of Ensuring Accountability," *Hungarian Journal of Legal Studies* 64, no. 4 (2024): 581, <https://doi.org/10.1556/2052.2024.00007>

Methods

The methodological basis of this article is grounded in community service-oriented legal implementation, aimed at strengthening the role of individuals and affected communities in mechanisms of international legal accountability. In accordance with the focus of this article, the methods applied are not limited to theoretical legal research but function as legal empowerment tools designed to support communities, victims, and legal aid actors in understanding, accessing, and utilizing international legal mechanisms. The methodological framework combines general scientific and special legal approaches, commonly used in community-based legal service activities, particularly those involving legal education, advocacy support, and institutional capacity building. This approach helps to examine international legal responsibility of the state as a dynamic process with direct implications for individuals and communities seeking justice.

The starting point is the dialectical approach, which sees international law not as a static system of norms, but as a process of constant renewal under the pressure of opposing imperatives. On this theoretical basis, a system-structural analysis was applied. The author decomposed the mechanism of responsibility into subsystems (collection of evidence, proceedings, execution of decisions); determined the functions of international and national courts; identified the execution gap. For the normative component of the study, the formal-legal method was used. In particular, this method was applied through the literal and systemic interpretation of the Rome Statute, the European Convention and other considered acts. Their analysis allowed us to investigate the formation of the role of an individual in holding the state accountable through legal acts that underwent changes. The results of the formal legal analysis were critically compared with the actual mechanisms for implementing decisions and made it possible to outline regulatory gaps.

The historical method was applied to analyze the retrospective role of the state and the individual in international relations. The treatises and doctrinal works of classical positivism of the 17th–19th centuries were analyzed, which consolidated the state-centric paradigm. Using this method, the author traced the shift in emphasis in international relations

from the state to the individual. The empirical method ensured a proper analysis of the case study. A number of key precedents of the past and present centuries helped to test the hypothesis about the decisive role of coalitions of individuals in launching procedures against the state. To verify the trends, a content analysis and statistical review of the HUDOC databases, ICC and UN reports, and European Implementation Network data were carried out. When formulating recommendations, the author used a normatively projective approach. Models of ways to eliminate existing barriers were proposed and their effectiveness was assessed, and not just a formal expansion of the regulatory framework.

The analysis was conducted using several open databases, including HUDOC, which contains ECtHR decisions, the ICC Case Information Database, the UN Treaty Body Database, and reports of the European Implementation Network. The study covered the period from 2000 to 2024, enabling the examination of developments in international legal practice over the past two decades. Relevant cases and documents were identified through targeted search queries. The keywords and their combinations included state responsibility, individual application, war crimes, aggression, Rule 39, universal jurisdiction, reparation, execution of judgment, victims' participation, and civil confiscation. The inclusion criteria required that selected cases address issues of state responsibility or international crimes, involve private individuals as applicants or victims, and contain publicly available full texts of decisions or official reports. Excluded from the analysis were domestic cases without an international component, publications lacking empirical data, and duplicate resolutions. A mixed-method approach was applied to process the data. Thematic coding was initially used to identify the main analytical categories, such as type of application, type of violation, level of implementation, and instrument of responsibility. This was followed by a quantitative assessment through frequency counts and examination of correlations between categories. The final dataset consisted of a representative selection of ECtHR judgments, ICC cases, UN documents, and reports from regional mechanisms that directly address questions of state responsibility, war crimes, and individual participation in international proceedings. The sample size ensured sufficient coverage to capture the dynamics of judicial

practice over two decades. Summary statistics, including frequency of applications, types of violations, and levels of enforcement of decisions, were organized into analytical tables that served as the empirical foundation for identifying key trends and drawing conclusions.

Several limitations should be acknowledged. The results primarily reflected a European perspective and might not fully represent developments in other legal systems. This limitation stemmed from the study's focus on the jurisprudence of the ECtHR and related European mechanisms. Access to primary evidence in ICC proceedings and in some national jurisdictions was restricted, which necessitated reliance on publicly available sources and secondary analyses. Furthermore, conclusions regarding the universality of individual participation models in state responsibility processes require additional verification using data from non-European regions. Although these limitations constrain the generalizability of findings, they also provide a basis for future comparative research on global judicial practices.

Results and Discussion

I. Historical Transformation of the Role of the Individual in the System of International Law

In the classical sense, international law has long been perceived as the law of states. The idea of state-centrism occupied a central place in this paradigm. Its essence was revealed through the idea that only states were recognized as full-fledged subjects of international law. Only a state is capable of concluding international treaties, creating obligations, and acting as a party in disputes.⁶ In contrast, individuals were outside this legal order and were limited by the jurisdiction of their state. Even the protection of their rights was implemented indirectly, mainly through the institution of diplomatic protection. This approach was enshrined in the Westphalian

⁶ L. S. Yermolenko-Knyazeva, "An Individual as a Subject of International Law," *Scientific Bulletin of the Flight Academy* 3-4, (2021): 168, <https://doi.org/10.33251/2707-8620-2021-3-4-166-171>

system, which laid the foundations for the classical model of international law. According to this model, the state was recognized as the sole and central actor in the global legal order. In addition, its sovereignty was considered absolute and not subject to external interference.⁷ The research by Burjaliani underscores the central theme of the individual as an emerging locus of accountability. The researcher analyzes the ECtHR ruling in the case of Georgia v. Russia, holding Russia accountable for numerous human rights violations. Burjaliani believes that this case signifies the expanding power of individual and interstate litigation as a means to address state misconduct.⁸

In the scientific doctrine of the 20th century, the above model was supported by leading theorists. They noted that individuals are not bearers of international rights or obligations. They linked this opinion to the fact that individuals cannot independently participate in international legal relations.⁹ Despite the dominance of this position, some representatives of the natural law school began to question the exclusivity of the state. In particular, French lawyer Scelle insisted that states are only derivative entities. At the same time, individuals are the primary subjects of law.¹⁰ Although these ideas remained marginal for a long time, they became the basis for the further transformation of the international legal order.

Key changes took place after World War II. The catastrophic consequences of the conflict exposed the inadequacy of the traditional

⁷ N. Arizmendi, "Individuals in International Law: A Historical Shift towards Agency," *The Age of Human Rights Journal* 25, (2025): e9536, <https://doi.org/10.17561/tahrj.v25.9536>

⁸ T. Burjaliani, "The European Court and the 2008 War: Why Georgia Should Be Pleased, and Russia Sorry," Opinion, *Justiceinfo*, January 29, 2021, <https://www.justiceinfo.net/en/69008-european-court-2008-war-why-georgia-pleased-russia-sorry.html>

⁹ O.M. Sheredko, *Hersh Lauterpacht's Contribution to the Development of the Concept of Human Rights in Public International Law* (Lviv: Ivan Franko National University of Lviv, 2023).

¹⁰ Y. Tanaka, "Reflections on Georges Scelle's Theory of the Law of Dédoublement Fonctionnel in the Law of the Sea: Two Models for the Protection of Community Interests," *The International Journal of Marine and Coastal Law* 38, no. 1 (2022): 54, <https://doi.org/10.1163/15718085-bja10110>

model, which was focused exclusively on the state. This moment marked the beginning of the humanization of international law. This can be called a process in which a person as an individual acquires real international significance as a bearer of rights and obligations.¹¹ One of the first to consistently argue for the need to recognize the individual as a subject of international law was the renowned lawyer Lauterpacht. He argued that international law should apply not only to states but also to individuals as direct participants in the global legal order.¹² His position was reflected in his subsequent works, in particular in the theory of limited international legal personality of individuals.

The further evolution of international human rights law after 1945 proved the growing role of the individual. The adoption of the UN Charter and key international legal instruments for the protection of human rights gave individuals a direct opportunity to protect their rights at the international level. In particular, the institution of individual complaints to ECtHR transformed individuals from objects of legal protection into active subjects of the international process.¹³ Thus, even if states are formally parties to a treaty, their obligations give rise to direct rights for individuals. Individuals themselves can initiate proceedings for violations of their rights. In addition, this includes, among other things, cases of internationally unlawful conduct by a state.

However, it should be noted that rights cannot exist without obligations. With this in mind, the concept of international criminal responsibility of individuals was actively developed in parallel with the development of international law. This concept has become one of the key forms of legal reinforcement of the role of individuals in the context of internationally wrongful acts of states. The creation of the Nuremberg and Tokyo Tribunals after World War II marked a new paradigm of responsibility. Thus, it is not states but specific individuals who are responsible for violations of fundamental norms of international

¹¹ A. Peters, "Humanity as the A and Omega of Sovereignty," *European Journal of International Law* 30, no. 2 (2009): 522, <https://dx.doi.org/10.1093/ejil/chp026>

¹² Sheredko, *Hersh Lauterpacht's Contribution*.

¹³ Council of Europe, "European Convention on Human Rights," *European Treaty Series* 5, (1950): 8, <https://rm.coe.int/1680a2353d>

humanitarian law.¹⁴ These tribunals established the practice of personalized responsibility and demonstrated it.

Legitimacy for this approach was provided by UN General Assembly Resolution No. 95 (I).¹⁵ This concept was further developed within the framework of specialized ad hoc international tribunals, in particular those dealing with the former Yugoslavia and Rwanda. They became an institutional example of the international community's response to systematic human rights violations, even taking into account the fact that such actions were carried out under the cover of a state mandate. In these cases, individuals were not simply held accountable for their own actions. They acted as a mechanism for holding the state accountable through its authorized representatives. In the Advisory Opinion in the case of *Reparation for Injuries Suffered in the Service of the United Nations*, the International Court of Justice emphasized that "other subjects of international law besides states can be envisaged."¹⁶ Thus, it laid the foundation for modern regimes where individual rights arise directly from international treaties, rather than through the intermediary of the state.

This evolution found its logical conclusion in the establishment of a permanent institution – the International Criminal Court. The institution operates on the basis of the Rome Statute of the International Criminal Court.¹⁷ The document establishes individual criminal responsibility for a number of crimes: genocide; crimes against humanity; war crimes; the crime of aggression. At the same time, the Rome Statute explicitly states that a person's official position is not a basis for avoiding the jurisdiction of the

¹⁴ International Military Tribunal, "Judgment in the Trial of German Major War Criminals," last modified October 1, 1946, <https://crimeofaggression.info/2013/01/international-military-tribunal-nuremberg-judgement-1946/>

¹⁵ A. Cassese, *Affirmation of the principles of international law recognized by the Charter of the Nürnberg Tribunal General Assembly Resolution 95 (I)* (New York: United Nations Audiovisual Library of International Law, 2009).

¹⁶ International Court of Justice, "Request for advisory opinion and documents of the written proceedings," last modified December 4, 1948, <https://www.icj-cij.org/sites/default/files/case-related/4/10815.pdf>

¹⁷ International Criminal Court, *Rome Statute of the International Criminal Court* (The Hague: International Criminal Court, 1998).

Court. Even the highest state officials cannot be exempt. This approach confirms the final consolidation of the principle of individualization of responsibility in international law. At the same time, it opens up new mechanisms for controlling the abuse of state power by individual officials. This development has provided the conditions for the gradual strengthening of the legal status of individuals in international law. As of the end of 2024, according to the Annual Report of the Office of the Prosecutor of the International Criminal Court, the Court maintained a portfolio of a dozen ongoing investigations and several dozen issued arrest warrants across multiple situations, including Ukraine, Sudan, and Libya. These figures reflect the Court's expanding engagement in situations involving serious international crimes. Data cited in media sources were cross-verified against official ICC reports and press releases to ensure consistency and reliability.¹⁸ This once again confirms the trend towards personalization of responsibility even for the crime of aggression, which was once considered purely "interstate". These figures provide a quantitative background for further analysis, which will be revealed in the following sections.¹⁹

It should be noted that the International Covenant on Civil and Political Rights and its optional protocols have created effective mechanisms for individual appeals to UN treaty bodies.²⁰ Thus, the First Optional Protocol to the Covenant provides for the possibility of submitting complaints to the UN Human Rights Committee. Similar procedures apply to other treaties. Although the implementation of this mechanism requires the ratification of the relevant protocols, in practice

¹⁸ International Criminal Court, "Annual Report of the Office of the Prosecutor – Law in Action for All," last modified April 12, 2024, <https://www.icc-cpi.int/sites/default/files/2024-12/2024-12-04-ICC-Annual-Report-OTP-web.pdf>

¹⁹ E. Ioanes, and N. Narea, "Why ICC Arrest Warrants Matter, even if Israel and Hamas Leaders Evade Them," World Politics, *Vox*. May 22, 2024, <https://www.vox.com/world-politics/350915/icc-arrest-netanyahu-israel-sinwar-hamas-khan-prosecutor-gallant-idf-haniyeh>

²⁰ UN General Assembly, "International Covenant on Civil and Political Rights," last modified December 16, 1966, <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>

they have become an important means of international control. UN committees develop practices for interpreting key legal standards, which can then be implemented in domestic legislation.²¹ Appeals to UN treaty bodies allow victims to obtain recommendations on compensation or other forms of legal protection. Although these mechanisms require separate recognition by the state, they provide real control over compliance with international obligations. As Callejon notes, the participation of individuals in such procedures contributes to the formation of an international standard of legal protection even in jurisdictions with ineffective national remedies.²² This practice consolidates the functional role of individuals in the international legal system.

A significant initiative in this context is the work of the Trust Fund for Victims, established under the ICC. In particular, Council of the European Union note that the Trust Fund for Victims has already helped tens of thousands of victims.²³ This mechanism provides not only compensation but also symbolic restoration of the dignity of victims. At the same time, it should be noted that such participation of victims in the justice process contributes to strengthening the legitimacy of international justice and trust in it. No less important is the role of individuals as initiators of law enforcement at the international level. Although formally only states have the right to initiate inter-state lawsuits, individuals are increasingly

²¹ V. Kotsur, O. Hovpun, S. Podhorets, A. Metil, and T. Chasova, "State Regulation of anti-Corruption Activities in Ukraine During Martial Law," *Journal of International Legal Communication* 11, no. 4 (2023): 70, <https://doi.org/10.32612/uw.27201643.2023.11.4.pp.65-79>; A.S. Zubarieva, "Certain Aspects of the Implementation of the Decisions of the UN Human Rights Committee in Ukraine," *Scientific Bulletin of the International Humanitarian University*, 20, (2016): 175, <https://vestnik-pravo.mgu.od.ua/archive/juspradenc20/46.pdf>

²² C. Callejon, *UN Treaty Body Individual Communications Procedures: What Is at Stake in the Strengthening Process?* (Geneva: Geneva Academy, 2024).

²³ Council of the European Union, "Council conclusions on the International Criminal Court on the occasion of the 25th anniversary of the adoption of the Rome Statute," last modified June 26, 2023, <https://data.consilium.europa.eu/doc/document/ST-11082-2023-INIT/en/pdf>

becoming a source of legal initiative.²⁴ By submitting information to non-governmental organizations or participating in independent investigations, they effectively launch international legal processes.

A separate proof of the strengthening role of individuals in international law is access to the special procedures of the UN Human Rights Council. As indicated by the Office of the UN High Commissioner, any individual, group, or organization can submit information about human rights violations to independent experts. Such procedures apply to crimes such as torture, enforced disappearances, extrajudicial executions, etc. This mechanism allows individuals to directly appeal to international bodies. Although such appeals do not have the force of a court decision, they shape the international discourse on the responsibility of the state towards the individual.²⁵

Alongside these mechanisms, the participation of individuals in joint investigation teams (JITs) established for the effective international investigation of serious international crimes plays an important role. Such teams are established by intergovernmental bodies. However, they actively interact with individuals who provide critically important evidence. It is thanks to their participation that internationally illegal acts are documented. In the future, this may become the basis for criminal prosecution in international or national jurisdictions.²⁶

Special attention should be paid to Independent International Mechanisms (hereinafter – IIMs), which are created by the UN General Assembly or the Human Rights Council to respond to mass violations of

²⁴ O. M. Omelchuk, I. Y. Haiur, O. G. Kozytska, A. V. Prysiazhna, and N. V. Khmelevska. "Analysis of the Activities of Law Enforcement Authorities in the Field of Combating Crime and Corruption Offences," *Journal of Money Laundering Control* 25, no. 3 (2022): 711, <https://doi.org/10.1108/JMLC-07-2021-0073>

²⁵ V. A. Shatilo, S. O. Kharytonov, V. M. Kovbasa, A. V. Svintsytskyi, and A. M. Lyseiuk, "Prospects for State and Individual Responsibility in Cases of Aggression in the Context of Russia's Armed Aggression Against Ukraine." *International Criminal Law Review* 23, no. 4 (2023): 626–641. <https://doi.org/10.1163/15718123-bja10154>

²⁶ Eurojust, "Joint investigation teams: Practical guide," last modified December 16, 2021, <https://www.eurojust.europa.eu/publication/jits-practical-guide>

international humanitarian and human rights law. For example, the International Independent Mechanism for Investigating Crimes in Syria actively accepts information from individuals who have documentary evidence of crimes. As stated in the IIM's official mandate, the mechanism is to "collect, preserve, and analyze evidence that can be used in future legal proceedings, including tribunals".²⁷ In addition, individual actions and campaigns by victims can catalyze the creation of special international tribunals. There are well-known cases where testimony has triggered proceedings for crimes committed in other countries. As noted by Varney and Zduńczyk, universal jurisdiction not only allows for circumventing the passivity of the offending state, but also recognizes the autonomous capacity of individuals to seek justice, regardless of their citizenship or place of residence.²⁸

In summary, contemporary literature proposes three "waves" of recognition of the individual as a subject of international law: (1) the post-Versailles "static" stage (1648-1919), when the individual remained an object of diplomatic protection; (2) the "humanization" stage (1945-1990), marked by the emergence of universal and regional human rights regimes; (3) the "cooperative" stage (1990-present), in which the individual becomes a co-participant in the international responsibility of states.²⁹ This periodization allows us to systematically correlate historical events with theoretical developments. Therefore, history has created a systemic dissonance between the traditional construct of international state responsibility and the latest practice of individual human rights and

²⁷ United Nations, "General Assembly Resolution A/RES/71/248. International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since March 2011," November 21, 2016, <https://digitallibrary.un.org/record/856708?v=pdf>

²⁸ H. Varney, and K. Zduńczyk, *Advancing Global Accountability. The Role of Universal Jurisdiction in Prosecuting International Crimes* (New York: International Center for Transitional Justice, 2020).

²⁹ C. Stahn, "More than Rhetoric? International Criminal Justice, Crime Semantics and the Role of the ICC in the Ukraine Conflict," *OpinioJuris*, February 25, 2022, <https://opiniojuris.org/2022/02/25/more-than-rhetoric-international-criminal-justice-crime-semantics-and-the-role-of-the-icc-in-the-ukraine-conflict/>

criminal mechanisms. Further analysis will show whether this dissonance will transform into a stable regime of responsibility, where the state will be accountable to the individual.

II. Analysis of European Mechanisms for Individual Participation in Holding the State Accountable

The transformation of international law towards human-centeredness found its most vivid manifestation in the European legal space. The development of the human rights protection system in Europe took place gradually. However, it can be argued that the real turning point came with the emergence of mechanisms allowing individuals to initiate international legal proceedings. The ECtHR became the central element of this architecture. According to Article 34 of the European Convention on Human Rights (hereinafter – ECHR), every person has the right to lodge a complaint directly with the Court.³⁰ According to Protocol No. 11, the ECtHR was transferred to a permanent basis with full jurisdiction over individual applications.³¹

As Bilodid and Shulga aptly noted, this radically changed the balance between the individual and the state. This step transformed the individual from a passive object of care to an active participant in the formation of human rights policy.³² According to Article 46 of the ECHR, the Court's decisions are binding.³³ They award compensation to individual applicants and encourage systemic changes in the legislation and administrative practices of the offending states. As Szwed notes, these processes are

³⁰ Council of Europe, "European Convention on Human Rights," 8.

³¹ Council of Europe, "Protocol No. 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms, restructuring the control machinery established thereby," *European Treaty Series* 155, (1994): 5. https://www.ecmi.de/fileadmin/doc/Implementing_Human_Rights/English/Reporting/Council%20of%20Europe%20Conventions/CPHRFF-11.Protocol.pdf

³² S.I. Bilodid, and V.O. Shulga, "The Role of the European Court of Human Rights in the Formation of International Standards for the Protection of Human Rights," *Uzhhorod National University Herald* 4, no. 88 (2025): 24, <https://doi.org/10.24144/2307-3322.2025.88.4.3>

³³ Council of Europe, "European Convention on Human Rights," 11.

systematically described in the concept of “judicial empowerment of the individual.”³⁴ According to this concept, Europe is currently transitioning from monistic “state-centrism” to a polycentric model, where individuals, states, and supranational institutions interact on equal terms.

To understand the strengthening of the role of the individual in holding the state accountable, attention should be paid to specific judicial practice. At the practical level, this manifests itself in three successive “waves” of ECtHR precedents: protection→attribution→hybrid responsibility.³⁵ Each “wave” expands the possibilities for complainants: from classic protection of individuals to the use of their experience as evidence of international responsibility of states. The significance of the ECtHR case law is illustrated by the decision in the case of *Makaratzis v. Greece*, which established standards of proportionality in the use of force.³⁶

The decision in the case of *Ilascu and Others v. Moldova and Russia* laid the foundation for a new approach to the responsibility of states for actions outside their territory.³⁷ The latest joint case of *Ukraine and the Netherlands v. Russia* confirmed that consolidated individual complaints can influence the determination of international responsibility of states in inter-state proceedings.³⁸ In § 388 of the case, the Court noted that around 8,500 individual applications under Article 34 had a direct connection with inter-state proceedings. As Šturma rightly notes, the Court’s practice

³⁴ M. Szwed, “Protecting the Rights of Judges: The Judgments of the European Court of Human Rights in *Juszczyzyn v Poland* and *Tuleya v. Poland*,” *ERA Forum* 25, (2024): 145. <https://doi.org/10.1007/s12027-024-00783-y>

³⁵ P. Šturma, “State Responsibility and the European Convention on Human Rights,” *Czech Yearbook of Public & Private International Law* 11, (2020): 8. <https://rm.coe.int/the-issues-of-state-responsibility-before-the-ecthr/1680a05736>

³⁶ European Court of Human Rights, “Case of *Makaratzis v. Greece*.” Application no. 50385/99, last modified December 12, 2004, <https://hudoc.echr.coe.int/eng?i=001-67820>

³⁷ European Court of Human Rights, “Case of *Ilascu and Others v. Moldova and Russia*.” Application no. 48787/99, last modified July 8, 2004, <https://hudoc.echr.coe.int/fre?i=001-61886>

³⁸ European Court of Human Rights. “Case of *Ukraine and the Netherlands v. Russia*.” Applications 43800/14, 8019/16, and 28525/20. Last modified November 30, 2025. <https://hudoc.echr.coe.int/eng?i=002-13989>

demonstrates that the Convention has created a unique order.³⁹ In it, the international obligations of states correlate with the direct rights of individuals, secured by a judicial mechanism for their enforcement.

In parallel with judicial protection, the Council of Europe has launched additional mechanisms for victims to participate in compensation processes. In 2023, a Register of Damage Caused by Russia's Aggression against Ukraine was established. It collects and stores claims from individuals and legal entities regarding losses incurred since February 24, 2022. Its purpose is to lay the material foundation for a future compensation mechanism.⁴⁰ This initiative fills the gap in responsibility in cases where it is impossible to overcome the immunity of the aggressor state in national courts.

The role of individuals as procedural parties has also been strengthened thanks to EU instruments. The EU's global human rights sanctions regime of 2020 allows for targeted restrictions to be imposed on individuals responsible for serious crimes. Importantly, neither citizenship nor the place where the act was committed matters.⁴¹ In other words, we can talk about the transnational nature of sanctions. This horizontal approach ensures personalization of responsibility and has a preventive effect. The practical implementation of sanctions is supported by the Freeze and Seize Task Force network and the G7 REPO mechanism, which freeze and confiscate the assets of sanctioned individuals. Their activities pave the way for the use of these resources for the benefit of victims.⁴²

³⁹ Šturma, "State Responsibility and the European Convention on Human Rights."

⁴⁰ Committee of Ministers, "Resolution CM/Res (2023)3 Establishing the Enlarged Partial Agreement on the Register of Damage Caused by the Aggression of the Russian Federation against Ukraine," last modified May 16, 2023, <https://rm.coe.int/0900001680ab2595>

⁴¹ T. Tsertsvadze, "Sharpening the EU Global Human Rights Sanctions Regime," *European Democracy Hub*, March 12, 2024, <https://europeandemocracyhub.epd.eu/sharpening-the-eus-global-human-rights-sanctions-regime/>

⁴² S. Kolarz, "EU Supports the Ukrainian Justice System in the Face of War," *PISM Bulletin* 151, no. 2068 (2022): 1-2, <https://pism.pl/publications/eu-supports-the-ukrainian-justice-system-in-the-face-of-war>

Although the International Criminal Court is not part of the EU institutional system, its practice resonates strongly with European human rights standards. As Pimenova points out, it was within the framework of the ICC that a model was introduced whereby victims can personally participate in proceedings and claim compensation through the Trust Fund.⁴³ This approach gives individuals real procedural powers that go beyond the traditional status of victims. Combined with the individual right to appeal to the ECtHR, this model reflects a profound transformation of the status of individuals in contemporary international law.

For the first time in 2025, the Freeze & Seize mechanism explicitly provided for the possibility of submitting an individual “victim request” to the Secretariat of the Working Group. Thus, this became another point of entry for private individuals into the processes of international responsibility. An individual acquires the ability not only to record the fact of a violation, but also to initiate legal proceedings aimed at holding both individuals and states accountable, with the subsequent restoration of violated rights. Therefore, European legal mechanisms form a multi-level, comprehensive system that puts people at the center. In the context of developing countries, Mukhlis et al. show that the regional autonomy system in Indonesia also represents a form of redistribution of authority from the center to the community, thereby strengthening the role of individuals in the national legal system. They show how international law has moved from diplomatic protectionism to judicial autonomy for individuals, confirming their status as full subjects of legal relations and providing effective tools for enforcing and protecting violated rights.⁴⁴

⁴³ A.Yu. Pimenova, “Ensuring the Rights of Victims in International Criminal Proceedings,” *Uzhhorod National University Herald* 4, no. 88 (2025): 131, <https://doi.org/10.24144/2307-3322.2025.88.4.19>

⁴⁴ M. M. Mukhlis, M. Maskun, M.S. Tajuddin, J. Aslan, H. Hariyanto, and H. Samosir, “Regional Autonomy System: Delegation of Authority and Power of Regional Government in Indonesia in the Study of Fiqh Siyasah,” *Al-Istinbath: Jurnal Hukum Islam* 9, no. 2 (2024): 517, <https://doi.org/10.29240/JHI.V9I2.9709>; M. M. Mukhlis, M. S. Tajuddin, I. Ilham, K. Koharudin, and A. Rahman, “Democratization or Extra-

III. Practical Cases of Individual Participation in International Practice of Holding States Responsible in the 21st Century

The 21st century has seen a qualitatively new phenomenon: individuals are becoming increasingly involved in processes that ensure the accountability of states for international wrongdoing. Through international courts and other instruments, private individuals have become the driving force behind such accountability. For example, approximately 250 individual applications related to the consequences of the war were submitted to the European Court of Human Rights after the armed conflict between Georgia and Russia in 2008.⁴⁵ The Court noted even wider involvement of private individuals, given the current conflict in Ukraine. According to the European Court of Human, “The Court is also examining approximately 9,500 applications lodged by individuals who allege that they have been affected by the conflicts in the Autonomous Republic of Crimea, the city of Sevastopol and eastern Ukraine, as well as, by the Russian military operations on the territory of Ukraine since February 2022”.⁴⁶ The events in Nagorno-Karabakh are another illustrative example. According to the ECtHR Register, 241 applications concerning persons missing or captured during hostilities were received under Rule 39 in 2020–2021.⁴⁷ Thus, these examples serve as an indicator of the ability of

Constitutionalism: Ideas for Limiting the Term of Office for Chairmen of Political Parties in Indonesia,” *Jambura Law Review* 6, no. 2 (2024): 380, <https://doi.org/https://doi.org/10.33756/jlr.v6i2.24116>

⁴⁵ European Court of Human Rights, “Georgia v. Russia (II) (Just Satisfaction).” Application no. 38263/08, last modified April 28, 2023, <https://hudoc.echr.coe.int/eng?i=002-14058>

⁴⁶ European Court of Human Rights. “Q&A – Ukraine and the Netherlands v. Russia. Press Unit.” Last modified July 9, 2025, <https://www.echr.coe.int/documents/d/echr/press-q-a-ukraine-netherlands-russia-eng>

⁴⁷ European Court of Human Rights, “Receipt of applications in two inter-State cases related to the conflict in Nagorno-Karabakh. Press Release,” last modified February 4, 2021, [https://hudoc.echr.coe.int/eng-press#%22itemid%22:\[%22003-6927916-9310877%22\]}](https://hudoc.echr.coe.int/eng-press#%22itemid%22:[%22003-6927916-9310877%22]})

international legal mechanisms to respond adequately to contemporary conflicts and mass human rights violations.

The first example for analysis will be Georgia. The five-day war in August 2008 between Georgia and Russia led to massive humanitarian losses, including hundreds of deaths and tens of thousands of displaced persons.⁴⁸ In response to these events, Georgia filed an interstate complaint against Russia with the ECtHR. The Grand Chamber of the ECtHR delivered a landmark judgment, finding the Russian Federation responsible for serious and systematic violations of the European Convention on Human Rights during and after the active hostilities. In particular, the Court found Russia guilty of the following crimes: killing civilians; destroying property; torturing prisoners; and forcibly expelling ethnic Georgians. The Court found that these violations were “administrative practices,” meaning they happened on a large scale and with the knowledge or consent of the defendant state.⁴⁹ This decision was the first international legal confirmation of the state’s responsibility for the consequences of the 2008 war.

Importantly, the success of the interstate case paved the way for individual claims by victims of the conflict. Immediately after the war and in parallel with the interstate case, several hundred Georgian citizens filed their own complaints against Russia with the ECtHR, demanding compensation for the damage caused. The 2021 decision strengthened their position, as the Court unequivocally established the fact of violations. This made it possible to convert humanitarian damage into legal claims for compensation. In April 2023, the ECtHR, relying on the decision in the case of *Georgia v. Russia (II)*, awarded Georgia €130 million in compensation for approximately 23,000 affected citizens.⁵⁰ To date, the mechanism is still imperfect. After the aggression against Ukraine, Russia

⁴⁸ T. Oniani, “Georgia 2008 War: When Russia Won’t Pay Victims, Solutions Still Exist,” *JusticeInfo*, August 1, 2024, <https://www.justiceinfo.net/en/134838-georgia-2008-war-when-russia-wont-pay-victims-solutions-still-exist.html>

⁴⁹ European Court of Human Rights. “Georgia v. Russia (II).” Application no. 38263/08. Last modified January 21, 2021. <https://hudoc.echr.coe.int/fre?i=001-207757>

⁵⁰ European Court of Human Rights, “Georgia v. Russia (II) (Just Satisfaction).”

was expelled from the Council of Europe. It refuses to pay the fine and admit guilt. However, the very fact of this decision sets a precedent: the state is recognized as financially liable to individuals for mass human rights violations during the war. Thus, the Georgian case demonstrates that private individuals can obtain international recognition of the responsibility of the offending state and legally claim compensation for damages.

Another example of the active role of private individuals in holding states accountable is the events during the second war for Nagorno-Karabakh in the fall of 2020. In the heat of the fighting, both sides of the conflict, Armenia and Azerbaijan, faced situations where soldiers were captured or went missing. The relatives of these individuals were unable to obtain information or assistance quickly through political channels. They turned to the ECtHR for protection. Under Rule 39 – Interim measure of the Rules of Court, the Court has received a large number of requests concerning missing and captured persons on both sides of the conflict since 2020.⁵¹ In total, these requests concerned at least 148 individuals, both prisoners of war and civilian hostages. They were submitted either directly by the relatives of the missing persons or on behalf of states in the interests of their citizens. The ECtHR responded quickly and on 29 September 2020, a decision was made under Rule 39, obliging both states to refrain from actions that could threaten the life and health of the civilian population and prisoners of war, and to respect the human rights of all persons under their control. The Court clarified that this requirement applies not only to civilians but also to all persons captured during the conflict.⁵² Thus, the Court explicitly extended the protection of the Convention to prisoners of war.

When governments failed to provide sufficient information about the fate of specific prisoners, the ECtHR imposed interim measures, obliging the state to provide information about these individuals. These applications

⁵¹ European Court of Human Rights, *Rules of Court* (Strasbourg: Council of Europe, 2025).

⁵² M. Tsirli, *The Interim Measure Indicated in the Case of Armenia v. Azerbaijan and Rule 39 Proceedings with Regard to Alleged Captives to Remain in Force* (Strasbourg: ECHR Registry, 2020).

played an important humanitarian role. There have been cases where, as a result of the Court's intervention, states exchanged information about prisoners or returned some of them.⁵³ This case of Nagorno-Karabakh is indicative of the procedural subjectivity of private individuals even during the "hot phase" of the conflict. Individuals effectively used the international human rights protection mechanism to hold the warring states accountable for compliance with basic humanitarian standards. In fact, parallel processes were also ongoing at the inter-state level.⁵⁴ However, it was the personal appeals of the families of the prisoners that gave the situation an urgent moral and legal imperative.

In addition, we have already mentioned the example of Syria. The civil war in 2011 was accompanied by horrific crimes committed by Bashar al-Assad's regime against the civilian population. International intergovernmental mechanisms were blocked because Syria had not ratified the Rome Statute of the International Criminal Court. Furthermore, efforts to refer the situation to the ICC through the UN Security Council were vetoed. In such circumstances, Syrian victims and human rights defenders turned to the principle of universal jurisdiction. This means that the national courts of individual states can prosecute the most serious crimes regardless of where they were committed and the nationality of the perpetrators. Germany played a special role in this process, where the law allows foreigners to be tried for crimes against humanity and war crimes committed abroad.⁵⁵

On January 3, 2022, the Higher Regional Court of Koblenz handed down a verdict in the case of former Syrian intelligence colonel Anwar R. This is the world's first verdict against a high-ranking official of the Assad regime for crimes against humanity. Anwar R. was found guilty of

⁵³ K.V. Gusarov, and O.I. Popov, "Recognition of the Fact of Birth or Death in the Temporarily Occupied Territory under the Rules of Special Proceedings," *Journal of the National Academy of Legal Sciences of Ukraine* 27, no. 4 (2020): 168, [https://doi.org/10.37635/jnalsu.27\(4\).2020.161-171](https://doi.org/10.37635/jnalsu.27(4).2020.161-171)

⁵⁴ M. Tsirli, *Armenia v. Azerbaijan and Alleged Captives: Notification to the Committee of Ministers of Interim Measures Indicated* (Strasbourg: ECHR Registry, 2021).

⁵⁵ Ehl, "Tigrayan survivors seek justice in German courts."

complicity in the torture of more than 4,000 prisoners, the murder of 27 people, rape, and sexual violence in the secret Al-Khatib prison in Damascus. He was sentenced to life imprisonment. This historic trial was made possible thanks to the efforts of a group of Syrian victims and the non-governmental organization European Center for Constitutional and Human Rights. Together, since 2017, they have been gathering evidence and have secured an international arrest warrant for Syrian officials from German prosecutors. In this case, 14 Syrians acted as co-plaintiffs and testified about their experiences. As human rights activists noted, this is a striking example of how the actions of a group of individuals led to the prosecution of a representative of the state regime.⁵⁶

This verdict was a turning point for the entire international justice system. It confirmed that universal jurisdiction can be an effective mechanism for victims of the most serious crimes. This case demonstrated that even in the absence of international jurisdiction, individuals can seek justice by turning to the courts of another state. European national justice effectively provided Syrian victims with a legal platform. This once again confirms that, at the present stage, the role of individuals in the context of holding states accountable has grown significantly and that they are full-fledged actors in international law.

Another example of the expansion of universal jurisdiction thanks to the efforts of private individuals is the case concerning the genocide of the Rohingya people (a Muslim minority in Myanmar), which was initiated in Argentina. In 2017, the Myanmar military carried out so-called “cleansing operations” against the Rohingya, accompanied by mass killings and the expulsion of more than 700,000 civilians. Some countries, including Bangladesh and Gambia, initiated international proceedings. However, this mechanism proved ineffective. The Rohingya diaspora decided to act through Argentina’s national justice system. In November 2019, the Burmese Rohingya Organisation UK, which brings together Rohingya in exile, filed a petition on behalf of the victims with the Argentine federal

⁵⁶ European Center for Constitutional and Human Rights, “Syria Trial in Koblenz: Life Sentence for Anwar R for Crimes Against Humanity,” last modified January 13, 2022, <https://www.ecchr.eu/en/press-release/syria-verdict-anwar-r/>

court demanding an investigation into crimes of genocide and crimes against humanity committed by the Myanmar military and officials. Argentine law allows for the application of universal jurisdiction. This precedent-setting lawsuit by the diaspora was based on the same principle as the German cases against Syria, namely that serious crimes affect all of humanity and can therefore be prosecuted anywhere.⁵⁷ The UN Independent Mechanism for the Collection of Evidence on Myanmar joined the case. It provided Argentine prosecutors with evidence and testimony. During 2022-2023, the Argentine authorities gathered evidence. This culminated in June 2024, when the Argentine federal prosecutor filed a motion for 25 arrest warrants for senior Myanmar officials, including the current head of state. In February 2025, an Argentine court granted the request and authorized the arrest of these individuals.⁵⁸ Although the defendants are outside Argentina, the mere fact that international warrants have been issued puts legal pressure on the regime in Myanmar.

This case does not concern Europe. However, we have described it to illustrate the transnational evolution of the status of individuals in international law. This case demonstrated the universality of the principle of universal jurisdiction in the literal sense. Thus, it is not only European courts that are prepared to prosecute international crimes. The initiators of the process were private individuals who did not wait for international punishment for the guilty in their own country. Instead, they independently appealed to the court of a foreign state. This clearly demonstrates that even outside Europe, the ability of individuals to influence the prosecution of a violator state has increased.

Thus, the cases discussed above illustrate how, in the 21st century, private individuals have become influential actors in international legal

⁵⁷ UN Human Rights Council, "Independent Investigative Mechanism for Myanmar. The Case in Argentina," last modified November 12, 2024, <https://iimm.un.org/en/universal-jurisdiction>

⁵⁸ Legal Action Worldwide, "Argentina Court Issues Arrest Warrants for Genocide and Crimes Against Humanity Committed Against The Rohingya Community," last modified February 14, 2025, <https://reliefweb.int/report/bangladesh/argentina-court-issues-arrest-warrants-genocide-and-crimes-against-humanity-committed-against-rohingya-community>

responsibility. This evolution of international practice has several important dimensions. First, the effectiveness of international mechanisms increases significantly when people appeal to them directly. Individual complaints to the ECtHR have resulted in precedent-setting decisions. This is an important signal that human rights are important and that the state may be held accountable for their violation. Second, universal jurisdiction has become an effective tool in the hands of civil society against the immunity of state authorities.⁵⁹ The cases of Syria and Myanmar have confirmed this. Third, the participation of private individuals in international proceedings is changing the very nature of international legal responsibility. It makes it more personalized, focused on restoring the rights of specific individuals.

Particular attention should be paid to the role of the individual in the issue of civil confiscation of assets of an aggressor state. This concept refers to a judicial or administrative mechanism for the compulsory seizure of property belonging to a foreign state or its associated entities, without the need for a prior criminal conviction.⁶⁰ This instrument differs from classical criminal confiscation in that it is based on the balance of probabilities standard. It can be applied in cases where assets are considered to have been obtained as a result of gross violations of international law or are used to finance them.⁶¹ There are no direct universal norms on the civil confiscation of assets of an aggressor state at the international level. The relevant procedures are consistent with the principles of sovereign immunity of the

⁵⁹ Y. Bilousov, I. Yakoviyk, D. Kosinova, S. Asirian, and I. Zhukov, "Foreign State Immunity in the Context of Russia's Full-Scale Aggression Against Ukraine," *Amazonia Investiga* 12, no. 67 (2023): 287, <https://doi.org/10.34069/AI/2023.67.07.25>

⁶⁰ G. France, "Non-Conviction-Based Confiscation as an Alternative Tool to Asset Recovery," *Transparency International*, January 26, 2022, <https://knowledgehub.transparency.org/helpdesk/non-conviction-based-confiscation-as-an-alternative-tool-to-asset-recovery-lessons-and-concerns-from-the-developing-world>

⁶¹ FATF. *Best Practices on Confiscation (Recommendations 4 and 38) and a Framework for Ongoing Work on Asset Recovery* (Paris: OECD, 2012).

state and are enshrined in the United Nations Convention on Jurisdictional Immunities of States and Their Property.⁶²

At the same time, recent events related to the aggression of the Russian Federation against Ukraine have led to the search for exceptions to this immunity in order to direct confiscated assets to reparation funds for victims.⁶³ The 2023 amendments of the Special Economic Measures Act allow the confiscation of frozen assets of sanctioned foreign states for subsequent transfer to Ukraine.⁶⁴ Similar initiatives are being considered in the United States under the REPO for Ukrainians Act.⁶⁵ The legal possibility of such confiscation depends on a combination of national legislation, international obligations, and the doctrine of limited immunity, which allows for exceptions in cases of serious violations of jus cogens.⁶⁶ In the context of strengthening the role of the individual in state accountability mechanisms, civil confiscation can be an effective tool for providing material compensation to victims. However, this requires adequate procedural safeguards and transparency. One measure could be to channel confiscated funds into special funds accessible to individual applicants.

From the standpoint of international law, such judicial practice raises complex questions regarding the limits of state immunity and the interaction between jus cogens obligations and sovereign equality. The

⁶² General Assembly of the United Nations, *United Nations Convention on Jurisdictional Immunities of States and Their Property* (New York: United Nations, 2024).

⁶³ Ministry of Finance of Ukraine, "European Commission Proposal: EUR 35 Billion in EU Macro-Financial Assistance on a Non-Refundable Basis," *Government Portal*, September 20, 2024, <https://www.kmu.gov.ua/en/news/propozytsiia-ievrokomisii-35-mlrd-ievro-makrofinansovoi-dopomohy-dlia-ukrainy-na-bezpovorotnii-osnovi>

⁶⁴ Parliament of Canada, "Special Economic Measures Act," last modified June 4, 1992, <https://laws-lois.justice.gc.ca/eng/acts/s-14.5/page-1.html>

⁶⁵ United States Congress, "REPO for Ukrainians Act," June 15, 2023, <https://www.congress.gov/bill/118th-congress/house-bill/4175>

⁶⁶ L. McGregor, "State Immunity and Human Rights: Is There a Future after Germany v. Italy?" *Journal of International Criminal Justice* 11, no. 1 (2013): 127, <https://doi.org/10.1093/jicj/mqs081>

ECtHR's acknowledgment of a State's direct financial liability to individuals marks a gradual erosion of the absolute concept of immunity traditionally protected under customary international law. In this sense, the *Georgia v. Russia* judgment could be viewed as part of a broader trend toward the emergence of a qualified immunity doctrine in cases involving grave breaches of peremptory norms. While the decision formally relied on the European Convention on Human Rights, its implications extend further: it suggests that violations of *jus cogens* norms, such as torture, ethnic cleansing, and unlawful deprivation of life, cannot be shielded by procedural immunity. This development helps shape a new international precedent, reinforcing the principle that state sovereignty cannot override fundamental human rights and obligations.

IV. Practical Barriers and Community-Based Solutions in Holding States Accountable

A review of recent practice shows that today individuals are no longer merely “objects of protection” in international law. Individuals are increasingly taking the initiative in holding states accountable. This trend has systemic implications. Nevertheless, ensuring the rights of individuals in connection with internationally wrongful acts of states continues to face numerous challenges. Despite the existence of a ramified system of human rights protection, victims of international crimes still face numerous barriers. They are often denied effective access to information, participation in judicial proceedings, adequate protection, and compensation, as noted in a study by leading human rights organizations.⁶⁷

Human Rights Watch emphasizes that jurisdictional barriers remain one of the fundamental structural limitations.⁶⁸ For example, the International Criminal Court does not have its own enforcement tools.

⁶⁷ S. Finnin, *Breaking down barriers: Access to justice in Europe for victims of international crimes* (Brussels: European Union, 2020).

⁶⁸ Human Rights Watch, “EU Cooperation in International Criminal Court Arrests,” last modified November 1, 2024, <https://www.hrw.org/news/2024/11/26/eu-cooperation-international-criminal-court-arrests>

This makes it dependent on the political will of member states to ensure the arrest of defendants. Although most EU countries are parties to the Rome Statute, the execution of arrest warrants is often blocked for political reasons. As a result, dozens of suspects remain at large for years, significantly undermining confidence in the effectiveness of international justice. An additional factor complicating access to justice is political pressure on judicial institutions. In many cases, there is direct or indirect interference by the executive branch in the judicial process. According to the conclusions of the International Commission of Jurists, such distortions of the justice system are systemic in a number of European countries.⁶⁹

Practice shows that the individual's right to appeal remains unevenly accessible. Therefore, it is advisable for states to create funds for procedural support for victims, in particular to provide pro bono legal services. This will improve the quality of investigations and strengthen the legitimacy of court decisions. The issue of state immunity deserves special attention. States should clearly regulate in procedural law exceptions to the immunity of the state and its officials in cases of serious international crimes, so that decisions have a better chance of being enforced and internationally recognized. As noted by Mukhlis et al., the ambiguity in the distribution of power between the executive and legislative branches can undermine the effectiveness of legal accountability, including in the context of implementing international judgments.⁷⁰

In addition to difficulties in accessing justice, another serious problem is the low level of enforcement of decisions by international courts. In the ECtHR system, this manifests itself in the prolonged disregard or delay in the enforcement of decisions by national authorities. As of 2024, approximately 44% of so-called "leading" decisions remain unenforced by member states. This percentage is calculated as the ratio of the number of

⁶⁹ H. Duffy, E. Hammarström, and K. Babická, *Justice under pressure: Strategic litigation of judicial independence in Europe* (Geneva: International Commission of Jurists, 2025).

⁷⁰ M. M. Mukhlis, H. A. Wahab, Z. Paidi, N. Sastrawaty, and H. Hasan, "Heavy Parliamentary v. Heavy Executive: Ambiguity of Power in Indonesian Constitutional Practices," *Jurnal Media Hukum* 31, no. 2 (2024): 193, <https://doi.org/https://doi.org/10.18196/jmh.v31i2.21703>

outstanding leading cases to the total number of such decisions closed in the period 2017–2024. The report highlights that almost half of such decisions have not been enforced for more than five years, posing a risk of violating the rule of law.⁷¹ For example, in the case of *Kavala v. Turkey*,⁷² Turkey was formally notified of the initiation of non-compliance proceedings under Article 46(4) of the Convention on 3 February 2022 due to its failure to comply with the judgment of the ECtHR.⁷³ In the case of *Reczkowicz v. Poland*, the ECtHR established that the Disciplinary Chamber of the Supreme Court of Poland was not a court established by law.⁷⁴ However, as Csúri states, the full implementation of the decisions had not yet taken place.⁷⁵

Systematic non-enforcement of international court decisions undermines the legitimacy of the very idea of a fair trial. In the activities of the ICC, a similar problem manifests itself in the unwillingness of states to cooperate in the transfer of accused persons. Even after binding decisions have been issued, their implementation does not always take place. In fact,

⁷¹ European Implementation Network, and Democracy Reporting International, “Justice Delayed Justice Denied: Non-implementation of European Courts’ Judgments and the Rule of Law,” last modified September 19, 2024, <https://www.einnetwork.org/blog-five/2024/9/20/justice-delayed-and-justice-denied-report-on-the-non-implementation-of-european-judgments-and-the-rule-of-law>

⁷² European Court of Human Rights, “Case of *Kavala v. Turkey*.” Application no. 28749/18, last modified October 12, 2019, [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-199515%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-199515%22]})

⁷³ Council of Europe, “Committee of Ministers refers *Kavala v. Turkey* case to the European Court of Human Rights,” last modified February 3, 2022, <https://www.coe.int/en/web/portal/-/committee-of-ministers-refers-kavala-v-turkey-case-to-the-european-court-of-human-rights>

⁷⁴ European Court of Human Rights, “*Reczkowicz v. Poland*.” Application no. 43447/19, Last modified July 22, 2021, <https://hudoc.echr.coe.int/fre?i=001-211127>

⁷⁵ Csúri, A, “ECtHR: Disciplinary Chamber of the Polish Supreme Court in Breach of the ECHR,” *EU CRIM*, November 17, 2021, <https://eucrim.eu/news/ecthr-disciplinary-chamber-of-the-polish-supreme-court-in-breach-of-the-echr/>

this leads to evasion of responsibility, contrary to the formal obligations of the parties to the Rome Statute.⁷⁶

A practical step that could significantly reduce the barriers described above is the introduction within the EU of an updated “European Arrest Warrant+” mechanism, which would automatically equate International Criminal Court warrants with ordinary European warrants. The essence of the initiative is the adoption of a special protocol to Framework Decision 2002/584/JHA. According to this protocol, member states would be obliged to execute ICC warrants without additional political coordination. To prevent the mechanism from becoming yet another declaration, the protocol would have to include financial and political sanctions for non-compliance.⁷⁷ In such a model, the ICC would no longer depend on the situational political will of governments. In addition, failure to comply with an order would become disadvantageous for a member state. At the same time, the European Union would demonstrate that it can turn the principle of universality into a real legal standard.

From a legal perspective, the introduction of the “European Arrest Warrant+” mechanism requires an assessment of the European Union’s competence as defined in Articles 3(2) and 4(2) of the Treaty on European Union (hereinafter –TEU) and Article 82 of the Treaty on the Functioning of the European Union (hereinafter –TFEU), which regulate judicial cooperation in criminal matters. Since the original Framework Decision 2002/584/JHA was adopted under the former “third pillar,” its revision would require either a new protocol or a directive adopted by the Council of the EU upon a proposal from the European Commission. The legal basis for the automatic execution of ICC warrants can be derived from Article 29 TEU, which mandates the preservation of peace and the strengthening of international law.

⁷⁶ Human Rights Watch, “EU Cooperation in International Criminal Court Arrests.”

⁷⁷ Council of the European Union, “2002/584/JHA: Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States - Statements made by certain Member States on the adoption of the Framework Decision,” last modified March 28, 2009, https://eur-lex.europa.eu/eli/dec_framw/2002/584/oj/eng

However, such an initiative should also respect the balance between Member States' obligations under the Rome Statute and the rights of suspects guaranteed by the European Convention on Human Rights (Articles 5 and 6). Potential conflicts may arise due to the personal immunities of state officials or the non-recognition of ICC jurisdiction by states that are not parties to the Rome Statute. Therefore, the suggested protocol should include exceptions grounded in the *jus cogens* principle and procedural safeguards ensuring due process for individuals subject to arrest.

To ensure effectiveness, the EU can rely on existing sanctioning instruments, such as the Rule of Law Conditionality Mechanism, which allows the suspension of EU funding or the limitation of participation in joint programmes in cases of non-compliance. A practical legislative roadmap can include: (1) the adoption of recommendations on the execution of ICC warrants by the Council of EU; (2) the drafting of a directive-protocol amending Framework Decision 2002/584/JHA; (3) the establishment of an independent monitoring body within Eurojust, empowered to record instances of non-execution; (4) the introduction of financial and political consequences for defaulting Member States. Such a model would not only comply with the principles of *jus cogens* but could also establish a new international legal precedent, combining the enforcement efficiency of EU law with the universality of the ICC's accountability mechanisms.

Equally important is the problem of insufficient implementation of international standards in national legal systems. The European Network for the Implementation of Court Decisions qualifies the non-execution of ECtHR and EU Court decisions as a systemic problem. The governments of many states continue to ignore the need to harmonize national legislation and administrative practice with the requirements of international law.⁷⁸ This causes a chronic gap between declarative adherence to European standards and their actual application, which ultimately discredits the very system of human rights protection on the continent.

⁷⁸ European Implementation Network, and Democracy Reporting International, "Justice Delayed Justice Denied"

We believe that the problem of systemic non-compliance with decisions can be minimized by introducing an “automatic implementation cycle” in each state. That is, after a decision comes into force, the government submits a short “Implementation Act” to parliament within 30 days. It comes into force without discussion if parliament does not vote against it within 90 days. An independent parliamentary commissioner monitors implementation and can initiate disciplinary action against officials. A transitional phase of 12–18 months could allow states to adapt administrative procedures and train civil servants. Oversight should be exercised by an independent Parliamentary Commissioner for International Obligations, empowered to audit implementation reports and recommend disciplinary measures against responsible officials. Administrative or financial sanctions, such as reductions in ministerial funding or restrictions on participation in EU-funded programmes, could serve as enforcement tools in cases of persistent non-compliance.

Pilot implementation could begin in countries with established parliamentary monitoring structures, such as the Netherlands or Finland, where existing human rights committees already cooperate with the Council of Europe. Risk analysis should focus on avoiding excessive delegation of legislative powers to the executive, thereby safeguarding parliamentary sovereignty through ex post review and transparency requirements. Success indicators would include (a) the average time of judgment implementation, (b) the ratio of implemented to pending leading cases, and (c) the number of disciplinary or corrective measures adopted following parliamentary review. This model would thus transform declarative obligations into an enforceable and measurable mechanism of compliance within the rule-of-law framework.

At the same time, there are also positive prospects. At the European Union level, key instruments in the field of victims' rights are being reviewed.⁷⁹ In addition, a number of EU countries have already established specialized prosecutorial structures and investigative units to investigate

⁷⁹ European Union Agency for Fundamental Rights, “Stepping up the Response to Victims of Crime: FRA Findings on challenges and Solutions,” last modified November 28, 2024. <https://fra.europa.eu/en/publication/2024/stepping-response-victims-crime>

war crimes and crimes of an international nature, accompanied by systematic support for victims.

Therefore, in order to effectively strengthen the role of individuals in the international legal system, it is necessary not only to remove institutional and procedural barriers, but also to reform the internal legal mechanisms of the participating countries. The adaptation of national legislation and proactive support for victims are necessary conditions for overcoming the systemic ineffectiveness of international human rights protection in Europe.

Conclusion

Historical analysis has revealed that the beginning of humanization was laid after World War II. However, it was only in the 21st century that individual subjectivity became practically effective. European standards have set a precedent that is increasingly being referred to outside the continent. Practical cases in the 21st century have shown that it is the initiative of individuals that triggers judicial mechanisms where inter-state procedures are ineffective. The universal jurisdiction of national courts has proven effective in cases where the offending state does not recognize international tribunals or blocks their jurisdiction.

At the same time, systemic challenges emerged: jurisdictional gaps; the ICC's dependence on cooperation between states; slow and selective enforcement of ECtHR and ECJ decisions; political pressure on national legal systems; and unequal access. The proposed practical solutions aim to remove these barriers without the need for radical restructuring of existing institutions. For states experiencing armed conflict, the mass involvement of victims in international and national proceedings serves not only as a legal but also as a political argument in inter-state negotiations. The broad participation of individuals increases the legitimacy of decisions and creates public pressure that encourages the enforcement of judgments. However, this requires institutional support.

Finally, the experience of the 21st century shows that the strength of the international legal order is determined not only by intergovernmental

agreements, but also by the ability of individuals to protect their rights. By integrating individual initiative into official mechanisms, states strengthen their own resilience to internal abuses. Therefore, the main lesson of the study is that the individualisation of international responsibility is a trend. By transforming it into a structural norm through legal and financial instruments, the international community will achieve a more effective, fairer and more sustainable law.

From a theoretical standpoint, the individualization of international responsibility redefines the concept of sovereignty. Sovereignty is no longer perceived as absolute or immune from external accountability but as a form of responsible sovereignty, conditioned by respect for human rights and compliance with jus cogens norms. This anthropocentric transformation signifies a shift from sovereignty as power to sovereignty as responsibility – a model in which the legitimacy of state authority depends on its ability to protect the rights and dignity of individuals.

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Declaration of Conflicting Interests

There is no conflict of interest in the publication of this article.

Funding Information

None.

Acknowledgment

Not Applicable.

Generative AI Statement

The authors declare that no generative artificial intelligence (AI) tools were used to generate the scientific content, data analysis, interpretations, or conclusions presented in this manuscript. If AI-assisted tools were used, they were limited to language editing, grammar checking, or improving readability under the authors' full supervision. The authors take full responsibility for the originality, accuracy, and integrity of the manuscript.

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