



**ROUND-TABLE:
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CAPACITY FOR RAPID EXECUTION OF JUDGMENTS
OF THE EUROPEAN COURT OF HUMAN RIGHTS**

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The views expressed are those of the author only.

SPEAKING POINTS
EXPERIENCE OF DRAWING UP OF THE ACTION PLAN IN RESPECT OF THE PILOT
JUDGMENT OLARU V. MOLDOVA AND THE EXECUTION MEASURES TAKEN
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For being able to have a comprehensive view on the action plan and actions taken by the Moldovan authorities in this particular judgment, I consider the most opportune to start the presentation of my topic by the following **brief overview of the *Olaru and others* case.**

The case concerns the problem, existed in Moldova, of the **systemic non-enforcement of the final judicial decisions or the belated enforcement thereof.** In this particular judgment the Court pointed its attention on the non-enforcement/belated enforcements of judgments concerning affording of social housing for different categories of social groups, therefore and so the Court has selected and distinguished from a lot of similar complaints the 4 (four) applications, with which it has dealt in this case. There were applications from each of categories of the applicants who were entitled by a final domestic judgment to receive a house or an apartment, **basically, from local authorities,** on account of different social criteria which the applicant fit (internal displaced persons, judges, police officers, prosecutors, or other vulnerable categories). A lot of similar judgments on the domestic level were not enforced for long periods of time.

Now, I wish to go forward on the basic issues that were in fact identified by the Court in the present judgment, and in particular those structural deficiencies, which lead to the systemic problem of non-enforcements or belated enforcements. In my opinion, this was the first step, performed by our Governmental Agent's Division when we started to run the enforcement proceedings on the *Olaru and others* judgment. It is incumbent also for being able to draw an **Action plan** since the latter relies on the measures that should solve such systemic problems and the correct and appropriate interpretation of the Court's judgment is required in this context.

So, the first step was the reading and the re-examination of the *Olaru* case, for a proper interpretation of the judgment and the causes of problems to which the Court had pointed out.

We considered that the following issues and structural deficiencies have been established by the Court's judgment in the present case:

- Firstly, **the deficient legislative framework** by which the different categories were entitled to receive some social facilities and which was only declarative one, without any financial background that may secure its implementation.
- The **insurmountable burden placed on the local authorities' shoulders** from the central state administration side by enacting the above laws without any financial coverage. In other words, the awarding of some social facilities was the central Government's policy but it runs opposite the policy of the local domestic administration. This discrepancy between the central and local policies involved in fact, in my opinion, the core of the system problem occurred.
- The **existence of huge amount of already non-enforced judicial decisions,** concerning the similar social privileges, and the risk of increasing thereof is still persisted in time of adoption of the pilot judgment and afterward. This amount would inevitably imply a hard financial burden for the Government since they will be required to compensate the damages, which would unavoidably appear after the delivering of pilot judgment and during the execution thereof.

- and, the last issue, but which is of the same great importance – **the lack of the efficient remedy** on the domestic level for non-enforcement or belated enforcement. The lack of the remedy was noted not only in the present judgment but in all previous case-law of the Court that dealt with the same problem of non-enforcement or delayed enforcement.

The above issues allowed us to divide our forces in the certain directions. However, the next step, which would be relevant to mention, is the identification of the all applications that were already submitted before the Court and those persons, which may potentially lodge a complaint or would do it in near future. Also, we must not forget **the individual measures** which the pilot judgment implies, namely the enforcement and settling of those four applications which stand on the basis of the pilot judgment procedure.

Therefore, the second step in the enforcement of the Court’s judgment was the identification of every applicant and potential applicants with the similar non-enforced judgments or belated enforcement. This required the acquiring of information from all the domestic authorities in charge and the information from the bailiffs’ offices about all similar judgments concerning the social housing privileges. After that we created a simple database of all applicants with such kind of judgments and divided them according to several criteria: for example the local authorities on duty to enforce; the social type of the applicants (judge, prosecutors, etc.), the date of the final judgments and the object of enforcement (the award of an house or apartment, or the pecuniary compensation). During the classification of the applicants we also divided those applicants with the applications already declared admissible and communicated to the Government (about 130 applications, with approximately 180 applicants), from those potential cases that may appear before the Court in near future. Due such kind of classification we have been able to identify the manifestly ill-founded applications, the abusive and misleading applications and the applications which may be settled in different ways (by awarding the compensation for both pecuniary and non-pecuniary damages, and those who required the awards for non-pecuniary damages only).

According to the information acquired, the Governmental Agent’s Division proceeded to **identification of all authorities** that may support and assist them in enforcements proceedings and those authorities which are in charge and which are directly responsible for the enforcement. In this sense **the mechanisms and the legislative framework**, in which the authorities act, were also established for being able to identify which leverages the Governmental Agent should use.

The third step was the proper dissemination of the Court’s findings in the pilot judgment. In this sense the main role played the *Permanent Governmental Commission for the Supervising of execution of the Judgments of the European Court* (the “Governmental Commission”). It has raised the attention of all relevant authorities and the attention of the mass-media on the necessity and requirements which resulted from the pilot judgment. Also it allowed coordinating of the activities and the measures between the authorities.

Nevertheless, as it would be appropriate to note in this context that the most difficult and challenging situation in the enforcing proceedings was the **relation between the central Government’s administration and the local authorities**, especially the municipality of the Chisinau, in burden of which was placed about the 80% of non-enforced judgments in all country. Due to decentralisation and the local administration autonomy it was very difficult, and it still remains demanding, to convince the local authorities to contribute in the enforcing proceedings. In this sense, the invitation to appear before the Governmental Commission of the local administration’s leaders (such as Mayor of Chisinau Municipality, for instance) was the most appropriate measure that the Government may take in this case. The local authorities were often reticent in changing of clear and comprehensive information and their replies on the Government’s requests were seldom brief and formal, being always invoked the lack of financial funds and authorities personnel. The authorities were always reserved in their proposals about the necessary

measures for being able to overcome the situation. In this sense the Governmental Commission appeared here as guaranty of efficient coordination between the authorities involved and the necessary measures.

The next, fourth, step was the redistribution of the actions between the authorities involved and the supervision of their fulfilment. In this sense the above steps played the basic role.

The actions were divided in four principal directions upon the previously mentioned issues that have been identified by the Court in its judgment.

- The Ministry of Justice's Division on drafting legislation was ordered to finish and to promote the amendments in all laws for withdrawn of all social housing privileges.
- The Governmental Commission and the Agent for the Government were entitled to establish and to keep the permanent link with local authorities in charge for execution of the domestic judgments.
- other relevant authorities, such as Ministry of Internal Affairs, Prosecutors' Office, Supreme Council of Magistrates, etc., were asked to provide the Agent's Division with the information about their actions and the enforcement judgments from which their employees benefciate.
- The Governmental Agent, in connection with the Division on drafting legislation, was entitled to draft a law on national remedy.

Basing on above mentioning steps, which were performed sometimes simultaneously, sometimes distinctly, the Governmental Agent was able to draft an **Action Plan** and the resulting **Actions reports**.

Challenges

As it was mentioned above, the biggest problem, which determined the Court to find the systemic problem in the present case, in some ironic way, played the decisive role in enforcement proceedings and the drafting of the Action Plan. This was the problem of the **local administration autonomy** and the challenging procedure in acquiring and mutual change of information between the central and local authorities. The Court emphasized that such autonomy were not considered when the social privileges were set up by the central Government, but in the same time that autonomy, being properly secured, may lead in some extent to the impossibility to overcome the local authorities' omission in enforcement of already existed judgments.

Also, **the Government's reliance on the legislative body**, such as Parliament, and the **political processes** which might appear during the enforcement of any pilot judgment, lead to delays in expeditious implementation of legislative changes and amendments required. Also the same reasons may be applied in respect of the duty on implementation of the domestic remedy. The last one obligation implies also **the changing of judicial culture and mentality**, establishing new judicial practices and the instruction of the actors involved in implementation of such a remedy.

Furthermore, the enforcement of this particular pilot judgment procedure, which related on the non-enforcement problem, was undertaken **simultaneously with the reform of the State Bailiffs and the General Enforcement Mechanism in Moldova**. Even if the Reform was required and it is welcomed in general, the revision of the execution system had its positive and adverse consequences on the enforcement of the domestic judgments and the pilot judgments as well. We cannot ignore that any Reform, beyond its encouraging effects, brings the temporal deficiencies in transitional period.

At last, I would not include the financial aspects and the lack of funds for consideration but I cannot disregard such aspects absolutely.

