

SECRETARIAT GENERAL

SECRETARIAT OF THE COMMITTEE OF MINISTERS
SECRETARIAT DU COMITE DES MINISTRES

COMMITTEE
OF MINISTERS
COMITÉ
DES MINISTRES



Contact: Clare Ovey
Tel: 03 88 41 36 45

Date: 08/06/2015

DH-DD(2015)595

Documents distributed at the request of a Representative shall be under the sole responsibility of the said Representative, without prejudice to the legal or political position of the Committee of Ministers.

Meeting: 1230 meeting (9-11 June 2015) (DH)

Item reference: Communication from a NGO (Ukrainian Helsinki Human Rights Union (UHHRU)) (26/05/2015) in the case of Yuriy Nikolayevich Ivanov (Zhovner group) against Ukraine (Application No. 40450/04)

Information made available under Rule 9.2 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

Les documents distribués à la demande d'un/e Représentant/e le sont sous la seule responsabilité dudit/de ladite Représentant/e, sans préjuger de la position juridique ou politique du Comité des Ministres.

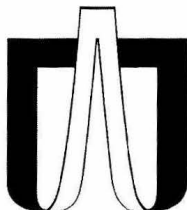
Réunion : 1230 réunion (9-11 juin 2015) (DH)

Référence du point : Communication d'une ONG (Ukrainian Helsinki Human Rights Union (UHHRU)) (26/05/2015) dans l'affaire Yuriy Nikolayevich Ivanov (Groupe Zhovner) contre Ukraine (Requête n° 40450/04) (**anglais uniquement**)

Informations mises à disposition en vertu de la Règle 9.2 des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.

Українська Гельсінська
Спілка з прав людини

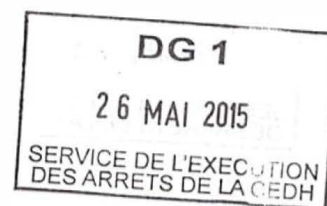
УГСПЛ, а/с 100, м. Київ, Україна, 04071
Тел./факс: +38(044) 4174118
Ел. пошта: office@helsinki.org.ua
Веб-сайт: www.helsinki.org.ua



Ukrainian Helsinki Human
Rights Union

UHHRU, P.O.B. 100, Kyiv, Ukraine, 04071
Tel./fax: +38(044) 4174118
E-mail: office@helsinki.org.ua
Website: www.helsinki.org.ua

UKRAINIAN HELSINKI HUMAN RIGHTS UNION'S SUBMISSION TO THE COUNCIL
OF EUROPE COMMITTEE OF MINISTERS:
YURIY NIKOLAYEVICH IVANOV V. UKRAINE
(Zhovner group)
Judgment of 15/10/2009 (Application 40450/04)



This briefing is submitted in accordance with Rule 9(2) of the Rules of the Committee of Ministers for the supervision of the execution of judgments.

1. Case description: This group of cases is under enhanced supervision and was highlighted in the CM Annual Report of 2014 as concerning important structural problems: specifically the non-enforcement or delayed enforcement of domestic judicial decisions, mostly delivered against the State and against State enterprises, and the lack of an effective remedy in this respect (violations of Articles 6§1, 13 and Article 1 of Protocol No. 1). The group concerns about 400 cases.

This was a pilot judgement: The Court noted that specific reforms in Ukraine's legislation and administrative practice should be implemented without delay to resolve this problem and set a specific deadline to 15/07/2011 for the establishment of an effective domestic remedy in this respect. The Court further invited the respondent state to settle on an *ad hoc* basis all similar applications lodged to it before the delivery of the pilot judgement (1600) and decided to adjourn the examination of similar cases.

2. Status of execution: The Committee of Ministers has been examining the cases in the *Zhovner group* since 2004. It adopted five Interim Resolutions so far (two before the pilot judgment and three since then; the last Interim Resolution was adopted in December 2012, in which the Committee urged the Government as a matter of utmost priority to adopt measures resolving the structural problem). In its Decision 1214 of 2-4 December 2014, the Committee noted with concern that despite the adoption of relevant measures, the Ukrainian Government has provided no information as to whether the remedy functions effectively in practice, nor any information as to

whether there is a strategy in place to address the lack of sufficient budgetary provisions for payments. Further, the Ukrainian Government has not provided information regarding outstanding payments that are to be made to applicants, nor any information on measures to be taken to prevent the recurrence of similar violations.

3. The main observations to the Action Plan from 30 September 2014 (see DH-DD(2014)1203) and its update (DH-DD(2015)419) from 13 April 2015.

A) In the Action Plan Ukrainian authorities refer to some measures adopted to alleviate the problem. In general, the Ukrainian authorities cite changes to the legislation and procedures concerned with the implementation of judgements. The Government has introduced a new law "On State guarantees concerning execution of judicial decisions" and some Rules. According to the Law the procedure of enforcement of judgements was replaced by direct payment from the State Budget. The government provided statistics that in 2014 - 76.96 million UAH were allocated and paid in full under the Law; 4005 judicial decisions have been enforced. Also they gave information that the Law of Ukraine "On the 2015 State Budget" provides for 150 million UAH for the payments under the Law. And 16,25 million UAH have been paid and 816 judicial decisions have been enforced.

The Government claims that the state debt totals 7,544,562,370 UAH as of 1 January 2015, pursuant to court decisions whose enforcement is guaranteed by the State, as well under the Court's judgments adopted following considerations of cases against Ukraine. But it is our belief that the real amount is higher than indicated in official data.

We believe that the costs allocated annually in the state budget are insufficient for the proper implementation of such decisions. The 150 million UAH (that Ukraine allocated in 2015 year) amounts to only 1% of the total debt. It again raises the problem of insufficient costs that Ukraine allocates to this purpose. It's impossible to solve the problem of non-enforcement of court decisions with this approach.

B) In the Action Plan the Government of Ukraine also provided information that the Cabinet of Ministers of Ukraine by its resolution No. 440 adopted the Rules for Debt Repayment under the Courts Judgments the Implementation of which is Guaranteed by the State (that came into force on 29 September 2014), which established the procedure for submission of relevant documents by the applicants to the State Bailiff Service, further transmission of these documents to the State Treasury, and the payment of sums awarded by national courts.

However, these steps taken by the Government are still ineffective. The practice shows that for over 10 years the Government has failed to resolve the problem of the non-execution of judgements (since the Zhovner judgement of 2004). On the one hand, this is because the procedure of implementation depends on the text of a judgement. Many judgements contain some “incorrect” wording, which prevents the judgment’s execution for formal reasons, according to the special Law: for example, it could be written that one must “exact a certain sum of money from somebody” rather than “oblige somebody to recover a sum of money”). On the other hand, there is a wide margin of discretion allowed to officials who are responsible for the implementation (They can, for example, deny the execution of the judgments due to formal inaccuracies of applied documents – and they often use this opportunity to decrease the amount of cases to be implemented).

Official statistics show that in pursuance of the above Rules, the Bailiff Service has submitted over 19.920 decisions to the territorial bodies of the State Treasury on the basis of statements of transfer and acceptance. But the State Treasury have accepted from the Bailiff Service only 8.910 decisions for a total amount of 158 million UAH. The other submitted decisions are being processed or remitted back to the Bailiff Service. This means that almost 60% of decisions were not accepted by the State Treasury. And these are only the decisions passed by the Bailiff Service in the State Treasury. However, there are even more non-enforced judgments that have not been transferred to the State Treasury for various reasons.

We believe that this enforcement procedure in such judgments are too complicated, and presents too many obstacles that are difficult for persons to overcome. Currently the process is as follows: the claimant has to obtain the court's decision and the writ of execution. Afterwards the claimant submits this execution writ to the Bailiff Service, which has discretionary powers. The judgement may not be taken to execution because of the mistakes or lack of information contained in it (particularly, in order to gain the judgment execution the claimant has to provide his or her banking account data, tax ID etc.). Due to the same reason the documents may be rejected by the State Treasury. A possible alternative would be to simplify the procedure by creating opportunities for the automatic enforcement of court decisions regarding the recovery of funds by the State Treasury. In other words we believe that the court should forward the judgement directly to the State Treasury, where the funds can be recovered. This will, inter alia, shorten the time to process documents, as well as the chain links number. Obviously, this requires some certain legislative changes as long as the enforcement of court decisions in Ukraine can only be initiated by the corresponding claimant's will and motion. The fact that an individual brought their case to the court, proves their will to receive the due funds from the State. Thus it seems odd and needless to

additionally confirm the claimant's desire to execute the judgment.

In addition, it appears that the obstacles to the execution of judgments, which are based on the formulation applied by the court, should be removed. Any decision, whose execution is guaranteed by a state, should comply with the procedure established independently of the court decision's textual wording.

Moreover, in order to remove the foresaid barriers, national court decisions may contain provisions regarding the recovery of funds from the state budget. In addition, the court may decide upon the question of subrogation recoveries, which should be provided to the state by the initial debtor. Despite the existence of subrogation recovery under Ukrainian legislation, this procedure is too protracted in a number of cases. Such a change may contribute to reducing the budget deficit.

C) In the Updated Action Plan, the government proposed to create an alternative mechanism of enforcement of judicial decisions in order to resolve the structural problem underlying the judgment in the case Yuriy Nikolayevich Ivanov v. Ukraine.

Thus, Section 23 of the Law of Ukraine "On the 2015 State Budget" entitles the Cabinet of Ministers of Ukraine, in accordance with the procedure established by the Government, to restructure actual debt, totalling up to 7,544,562,370 UAH as of 1 January 2015, pursuant to the court decisions whose enforcement is guaranteed by the State, as well under Court's judgments adopted following considerations of cases against Ukraine, by way of debt alleviation by means of funds provided for by the above Act to that end, in the amount of up to 10% of the amounts awarded in accordance with the decisions at issue with issuing of financial treasury bonds covering the remaining amounts with the maturity up to seven years with the deferred payment in two years and at an interest rate of three percent. The right to issue the above bonds is to be conferred to the bodies that carry out treasury [the Treasury's] accounting of budgetary funds.

We notice that this alternative mechanism has serious gaps.

Among the important aspects of this mechanism is that it is assumed that the principal amount of the debt will be paid with bonds, which amounts to only 10% of the planned pay money. The mechanism also provides 2 years of *carte blanche* for the non-execution of court decisions where the debtor is State. An unknown number of instalments are scheduled for the liability settled. Also, the indicated 7-year period for restructuring is too long.

Importantly, the 3%, anticipated on these bonds is a very low percent, which does not even cover the rate of annual inflation.

Also there is no Stock Exchange in Ukraine, where they could sell these bonds.

In fact, the state usually does not fulfil the judgments within the designated 2 years of *carte blanche*,

Documents distributed at the request of a Representative shall be under the sole responsibility of the said Representative, without prejudice to the legal or political position of the Committee of Ministers. / Les documents distribués à la demande d'un/e Représentant/e le sont sous la seule responsabilité dudit/de ladite Représentant/e, sans préjuger de la position juridique ou politique du Comité des Ministres.

and can in fact take up to 7 years to fulfil its obligations.

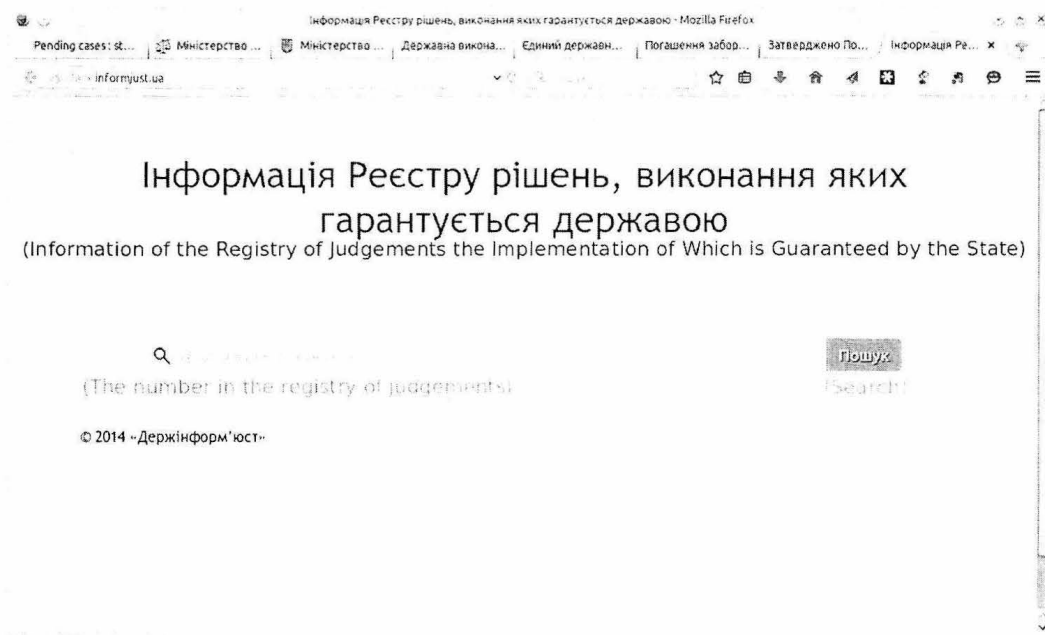
If this alternative procedure is implemented, it is very likely that in the near future we can expect more cases in the ECHR against Ukraine similar to the Case of Čolić and Others v. Bosnia and Herzegovina.

D) The Government also said that they created a working group consisting of representatives of various State agencies involved in the payment procedure and an Electronic Registry of information on the processing of documents and relevant payments.

But we would like to focus on the effectiveness of the creation of a working group, that consists of representatives of various State agencies involved in the payment procedure, and on the creation of an electronic registry that would enable applicants and all authorities involved to have access to information on the processing of documents and relevant payments.

As to the working group: its structure, goals, methods of work, decisions and so on are not transparent for society. The Government has not consulted or involved civil society in the process. As such, it is the State actors, who have a stake in the matter, who prepare the decisions of the working group, and who thus seek to pay the minimum in recovery costs or no recovery at all. So it is possible to assume that the main goal of the officials in this situation is to get rid of the problem but not to resolve it.

E) The electronic registry mentioned above has been created. (the address is <http://stack.informjust.ua/>):



It is very difficult to use the electronic registry to discover the number of executive procedures and the sums paid out. In order to use it we need to know 'the exact number in the registry of judgements'. Therefore it is not transparent in order to estimate the overall progress in resolving the problem of implementation of judgements in Ukraine.

It is a welcome initiative, but it is not yet accessible or effective as a resource and needs significant improvements.

F) Crimea questions

And there is one more challenge that has arisen from the occupation of Crimea. Regular postal and banking services are unavailable for Ukrainians who have remained in Crimea. As a result, many of them cannot send applications or receive information that concerns the implementation of judgements. They also experience difficulties with opening bank accounts at the Motherland of Ukraine, due to the special Rules established for them by National Bank of Ukraine. But there is no special procedure for such cases so the situation jeopardises the interests of applicants from the region of Crimea.

RECOMMENDATION

(1) To make readily available to all concerned people and organisations all the information regarding the execution of the judgements, (including statistics and details, such as the number of and level of payments), the implementation of which is guaranteed by the State (for instance by reorganizing the electronic registry in order to make it more transparent).

(2) To improve the digital registry of the state-enforced decisions;

(3) To consult civil society about the means of resolving the ongoing problem of the non-execution of judgments, and to involve representatives of civil society in the work of reforming the legal procedures of execution.

(4) To improve the state-enforced procedure on the execution of judgments by removing the existent unnecessary steps (legislative changes should be made prescribing the court to proceed with the decision's execution without the claimant's participation);

(5) To simplify the subrogation recoveries procedure where the compensation was paid from the state budget;

(6) To remove the formal obstacles preventing the execution of court decisions, which are based on the formulation applied by the court.

We would also like to invite the Committee of Ministers to ask the Government of Ukraine to respond to the following questions:

- (1) What are the challenges faced by the residents of Crimea?
- (2) Are there any special Rules for the execution of judgements in favour of the residents of Crimea? Do they need such Rules?

Arkadiy Bushchenko

Executive director of

Ukrainian Helsinki Human Rights Union

