INTERNATIONAL CONFERENCE

BETTER ENFORCEMENT OF NATIONAL JUDICIAL DECISIONS:

A HUMAN RIGHTS AND RULE OF LAW REQUIREMENT

Principles, challenges and possible solutions

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MAIN CONCLUSIONS AND TAKEAWAYS[1]

Full and timely execution of national judicial decisions is key for the effective operation of the legal and judicial systems of the Member States of the Council of Europe, who are bound by the principle of rule of law, a cornerstone of the Council of Europe and the European human rights protection system. In this respect, Article 6 § 1 of the European Convention of Human Rights (the Convention) guarantees enforcement of final and binding judicial decisions as an integral part of a right to a fair hearing, being indissociable from access to justice.

The case-law of the European Court of Human Rights (the Court/European Court), which developed considerably since the first judgments on the subject-matter of enforcement at the end of 1990s, underlines that the right of access to justice would be illusory if a domestic legal system allowed final and binding judicial decisions to remain inoperative, depriving the right to a fair hearing of all useful effect. Based on the well-established Court's case-law, which presents extensive guidance as to the manner in which national courts' judgments should be enforced, such execution should be swift and timely; full and exhaustive; aiming at full redress, not just partial; also comply with the criteria of reasonable length, bearing in mind the urgency of enforcement in certain specific situations. The State has a duty and a positive obligation, not only to organise a system of enforcement of domestic judgments, but also to undertake measures to ensure necessary enforcement in situations where it concerns the State as a respondent, its controlled or owned entities or even State structures or institutions.

In response to the case-law of the Court, the Committee of Ministers, responsible for supervising the implementation of the Court's judgments, has developed its own extensive practice (*acquis*), following up on how the States address challenges related to execution of

[1] This document was produced by the Secretariat. It does not bind the European Court of Human Rights, the Committee of Ministers, the European Commission for the Efficiency of Justice (CEPEJ), nor other council of Europe bodies.

national courts' judgments and which led to violations of the Convention. Based on its assessment of both individual and general execution measures (aimed respectively at ensuring *restitutio in integrum* and cessation of ongoing breaches, and non-repetition of the violations), the Committee's *acquis* demonstrates that effective solutions depend on sustained political commitment, adequate financial and institutional resources, coherent and comprehensive legal frameworks, strong safeguards and independent institutions to ensure enforcement, including the judiciary. While some member States have successfully implemented reforms and resolved systemic and structural non-enforcement problems, others continue to face challenges requiring further legislative, judicial, administrative, organisational and financial measures. This underlines that continued engagement of all authorities at national level is necessary to address both persistent structural deficiencies and emerging challenges in the enforcement of domestic judicial decisions.

In some States, legislative obstacles, such as notably *moratoria*, prevent execution of court decisions against the State itself, or State-owned or controlled companies. Such obstacles, even if they are driven by the need to protect economic interests, are contrary to the Convention as they effectively hinder access to justice, as well as the timely and unconditional enforcement of binding judicial decisions.

Moreover, a responsible and sustainable policy is crucial to ensure that judicial decisions related to social benefits align with available funding. This issue is exacerbated when a State assumes new social obligations without sufficient funding, making it important to adopt a thorough review process for draft laws, to assess their impact on budgetary constraints. In addition, measures aimed at envisaging necessary budgetary funding for future enforcement of judicial decisions are also of importance.

In line with Article 13 of the Convention, States should also offer effective remedies to address the non-enforcement of judicial decisions, ensuring that in such cases, compensation is not conditional on proving fault, reasonably comparable with European Court awards under Article 41 of the Convention, and paid promptly. National courts play a crucial role in ensuring the efficient operation of remedies, and the development of a coherent case-law regarding adequate compensation.

In addition to the above, the principle of "automatic execution" of domestic judgments awarded against a State requires that enforcement is not overburdened by unnecessary and excessive formalities. The domestic system and authorities should be proactive in ensuring enforcement and possibly even anticipate enforcement of monetary compensations, by envisaging sufficient funding for these purposes. This includes achieving automatic delivery of payments and compensation for delayed enforcement, removing excessive procedural barriers for enforcement, strengthening the role of bailiffs and sanctions for non-enforcement, and creating infrastructure for efficient e-enforcement.

Where issues of systemic and structural nature arise, compensation schemes, including *ad hoc* schemes, can offer solutions to resolve pending historical debts under the domestic court judgments. They can also prevent accumulation of future debts assisting in signalling the root causes of the problem. *Ad hoc* compensation schemes can be later transposed into larger permanent solutions for systemic and structural problems, being a test ground for establishment of remedies, analysing their efficiency and accessibility, they can lead to creation of permanent structures and procedures assisting in enforcement of judgments on continuous basis.

Committee of Ministers Recommendations Rec(2003)16[2] on the enforcement of judicial decisions in administrative matters and Rec(2003)17[3] on the enforcement of court decisions in a broader civil context provide important guidance on the issues of enforcement of domestic judgments. They call on member States to adopt legislative and practical measures to guarantee compliance with judicial decisions, streamline enforcement procedures, and remove obstacles that may hinder their implementation. In addition to that, the CEPEJ tools on enforcement of judicial decisions, such as the Good practice guide on enforcement of judicial decisions (2015), the Guidelines for a better implementation of the existing Council of Europe's Recommendation on enforcement (2009), and the CEPEJ Study No. 8 (2008) on Enforcement of court decisions in Europe, all serve as useful practical tools for better enforcement of judicial decisions.

While synchronicity with the EU *acquis* and the case law of the EU Court of Justice is important for the development of rule of law compliant practices within EU member states, it is equally critical in the context of EU enlargement and broader cross-border cooperation. The coherent interplay between the Council of Europe and the EU *acquis* is essential.

In light of the abovementioned and of the Conference discussions, bearing in mind the evolving case-law of the European Court and the extensive Committee of Ministers' practice, it would appear timely to explore whether and how "soft law" standards on the topic concerned could be further enhanced and refined. This would involve considering the recent jurisprudential and legal developments in the member States, as well as the changing social-political landscape, emerging human rights challenges in Europe, and the rapid pace of technological advancement, including the digitalisation of justice. The use of artificial intelligence and digital tools is transforming enforcement processes and presenting new ethical challenges, while the development of extra-judicial methods requires careful attention. At the cross-border level, creating rules for the enforcement of foreign judgments could simplify procedures and increase legal certainty.

[2]. Recommendation Rec(2003)16 of the Committee of Ministers to member states on the execution of administrative and judicial decisions in the field of administrative law.
[3]. Recommendation Rec(2003)17 of the Committee of Ministers to member states on enforcement.

BACKGROUND DOCUMENT

Introduction

The present background document contains three sections, which briefly summarise background information on the current Council of Europe standards as regards implementation of national judgments. They reflect the structure of the agenda of the conference on "Better Enforcement of National Judicial Decisions: A Human Rights and Rule of Law Requirement". The suggested sections are the following:

- case-law of the European Court of Human Rights setting out the main principles related to the execution of judgments of the national courts;
- practices of the High Contracting Parties to the European Convention on Human Rights on enforcement of judgments of the European Court identifying systemic and structural problems or root causes of non-implementation of judgments of the national courts, as based on *acquis* of the Committee of Ministers of the Council of Europe in its supervisory role over implementation of European Court of Human Rights judgments;
- activities of the European Commission for the efficiency of justice (CEPEJ) as regards enforcement of national judicial decisions, its guidelines and recommendations.

A number of judgments of the Court reveal challenges to the national systems of domestic judgments' enforcement. Some challenges revealed relate to the endemic, systemic and structural problems or well-entrenched in the domestic legal systems root causes which cannot be easily resolved. This is the case for a number of Council of Europe member States, not only States seeking accession to the European Union, but also the European Union member states. The number of repetitive judgments adopted by the Court concerning this issue is striking, indicating that the systemic and structural problems identified in the judgments of the Court remain at least partly unresolved. The number of cases that were pending and remain pending, as regards the theme of non-execution, still remains important, with some 1,200 to 1,700 cases dealt with the Committee of Ministers at all times and some 640 cases still pending supervision over execution.[4]

I. Case law of the European Court of Human rights setting out main principles on execution of judgments[5]

Article 6 § 1 of the European Convention on Human Rights guarantees the right to a fair hearing as well as the right to a court, as inherent elements of the rule of law, through *notably* execution of final and binding judicial decisions. The European Court's case-law is firm in that the "right to a court" would be illusory if a domestic legal system allowed a final, binding judicial decisions to remain inoperative to the detriment of one party.[6] The execution has to be full and timely, fulfilled in a manner which would not impair a successful litigant's right to enforcement and would not deprive Article 6 of its useful effect.[7] The enforcement proceedings by their very nature should be dealt with expeditiously.[8] Special diligence and swiftness in execution might

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4. For the period from 1.01.1999 to 28.02.2025, more than 57,400 applications were allocated to a judicial formation by the European Court with at least one of the subjects referring to non-execution of judgments. Of these, almost 26,000 applications resulted in a judgment or were struck out following a friendly settlement, which represent around 1,600 judgments and 1,000 F.S. decisions. This information is not sufficiently certain as regarding the input of data and the different criteria used, since 1997 and later, as regards how the non-enforcement cases were grouped and identified. In addition, around 1,200 of such applications are still pending before the Court. As for the State against which the applications were allocated, the top 10 are as follows: Ukraine (50%), Italy (20%), Serbia (15%), Russia (6%), BiH (2%), Romania (2%), Moldova, Belgium, Turkiye and Azerbaijan (1% each).

5. For more details – case-law guide under Article 6 (civil head), available at: https://ks.echr.coe.int/web/echr-ks/article-6-civil.

6. *Hornsby v. Greece*, no. 18357/91, § 40; *Scordino v. Italy* (No.1) [GC], no. 36813/97, § 196; *Burdov v. Russia*, no. 59498/00, § 34.

7. See, on the last point, *Foundation Hostel for Students of the Reformed Church and Stanomirescu v. Romania*, nos. 2699/03 and 43597/07, § 56.

8. *Vrtar v. Croatia*, no. 39380/13, § 97; *Comingersoll S.A. v. Portugal* [GC], no. 35382/97, § 23.

be required in specific circumstances, based on what is at stake for the litigant seeking enforcement of a favourable judgment already awarded.[9] Ensuring the implementation of judicial decisions goes alongside with procedural guarantees afforded to individuals under Article 6.[10] In addition, non-execution of final judicial decisions may also raise issues related to the access to an effective remedy under Article 13, and lead to violations of Article 1 of Protocol No. 1, given that for the purposes of this Article, an unpaid judgment debt is considered a "possession".[11] Also, failure to enforce domestic judgments may lead to breaches of other substantive rights under the Convention or its Protocols.[12]

The nature of State's obligations varies depending on the status of the debtor.[13] Even where the enforcement is to be carried out against a private actor, the State has to take all necessary steps, within its competence, to execute a final judicial decision, including by ensuring an organisation of an effective legal and practical system for enforcement,[14] as well as effective participation of its entire State apparatus in the enforcement process, failing which will fall short of the requirements contained in Article 6.[15] The State, as the possessor of the public force[16], should be consistent and diligent in providing adequate and sufficient assistance to a litigant in enforcement proceedings, including in situations of insolvency/bankruptcy of debtors, especially where the latter abuses the insolvency proceedings in order to dodge the enforcement.[17] The State is also responsible for the enforcement of final decisions if the factors impeding or blocking a full and timely enforcement of a decision are within the control of the authorities.[18]

In situations where litigants obtained a judgment against the State, they should not be overburdened with initiating separate enforcement proceedings to ensure execution.[19] Certain procedural steps in order to recover the judgment debt may be required from them; however, formalities may not be such as to restrict disproportionately litigants' access to the enforcement proceedings[20] and these formal requirements should not go beyond what is strictly necessary. In any event, with a view to honouring the judgment against the State, the duty of the successful plaintiff to take some procedural steps does not relieve the authorities of their obligation under the Convention to take timely and *ex officio* action.[21] In exceptional circumstances, the authorities may intervene in proceedings related to the enforcement of a judicial decision; however, such intervention should not prevent, invalidate or unduly delay execution or undermine the substance of the decision.[22]

According to the well-established case-law of the Court, while delay in the execution of judicial decisions may be justified and compatible with the Convention in certain circumstances,[23] it

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9. *Shmalko v. Ukraine,* no. 60750/00, § 44.

10. *Hornsby v. Greece*, no. 18357/91, § 40.

11. *Ryabykh v. Russia*, no. 52854/99, § 61.

12. These might concern rights under Articles 8 – 11 to the Convention, notably parental rights and custody rights, obligation to ensure access to information, protection of public assemblies, etc.

13. *Liseytseva and Maslov v. Russia*, nos. 39483/05 and 40527/10, § 183.

14. *Fuklev v. Ukraine*, no. 71186/01, § 84.

15. *Felbab v. Serbia*, no. 14011/07, § 62.

16. *Fociac v. Romania*, no. 2577/02, § 70; *Cebotari and Others v. Republic of Moldova*, nos. 37763/04, 37712/04, 35247/04, 35178/04 and 34350/04, §40.

17. *Constantin Oprea v. Romania*, no. 24724/03, § 40; *Işgın v. Turkey*, no. 41747/10, § 45.

18. *Yuriy Nikolayevich Ivanov v. Ukraine*, no. 40450/04, § 54.

19. *Fuklev v. Ukraine*, no. 71186/01, § 84; *Burdov v. Russia* (No.2), no. 33509/04, §§ 68-69, *Matexas v. Greece*, no. 8415/02, § 19; *Sharxhi and others v. Albania*, no. 10613/16, § 93.

20. *Shvedov v. Russia*, no. 69306/01, § 32.

21. *Akashev v. Russia*, no. 30616/05, § 22.

22. *Immobiliare Saffi v. Italy* [GC], no. 22774/93, § 74; *Sabin Popescu v. Romania*, no. 48102/99, § 65; *Margushin v. Russia*, no. 11989/03, § 32.

23. For example, the failure to enforce a judgment for a period of six months was not found unreasonable by the Court, nor the overall delay on nine months was not *prima facie* unreasonable under the Convention; in respect of the payment of monetary judicial award by a public authority, delay less than a year is in principle compatible with the Convention, which however depends

should still be “reasonable”. “Reasonableness” of the length of enforcement proceedings should be assessed based on complexity of the enforcement proceedings, behaviour of the litigant and that of the competent authorities, and the amount and nature of the court award may be also taken into account.[24] The Court has indicated on many occasions that in response to excessive length of enforcement proceedings, the States are expected to put in place an effective domestic remedy, or a combination of such remedies, aimed at acceleration of enforcement or compensations for delays, capable of securing adequate and sufficient redress for the non-enforcement or delayed enforcement of domestic decisions.[25] In case of compensatory remedy, enforcement of a decision awarding compensation should not generally exceed six months from the date on which it became enforceable.[26]

Lastly, stemming from the principle of *res judicata*, the European Court indicates that no party is entitled to seek a review of a final and binding judgment unless it aims to correct fundamental errors and miscarriages of justice, excluding mere purpose of obtaining a rehearing and a fresh determination of the case.[27]

II. *Acquis* of the Committee of Ministers on the implementation of the European Court’s judgments concerning non-execution of domestic judgments

The effective execution of national judicial decisions is a cornerstone of the rule of law, ensuring that courts’ judgments are not merely declaratory, but can actually be fully and timely enforced. The Committee of Ministers has emphasised these principles through Recommendation Rec(2003)16 on the enforcement of judicial decisions in administrative matters and Recommendation Rec(2003)17 on the enforcement of court decisions in a broader civil context. These recommendations call on member States to adopt legislative and practical measures to guarantee compliance with judicial decisions, streamline enforcement procedures, and remove obstacles that may hinder their implementation.

The Committee has developed a detailed practice addressing the challenges faced by member States as regards execution of the domestic judgments. The cases examined by the Committee in the context of its supervision of the execution of the European Court’s judgments demonstrate that effective solutions depend on sustained political commitment, adequate financial and institutional resources, as well as comprehensive legal frameworks, safeguards and operational institutional setting, including as regards the enforcement officers and the supervisory role of the courts. While some member States have successfully implemented reforms that led to the resolution of non-enforcement issues, others are still taking measures to resolve the systemic challenges requiring further organisational, legislative, administrative and financial measures.

In this context, the cases listed below, as examples of measures taken by the authorities or those which are still being taken, explore relevant aspects of the Committee of Ministers’ practice in this area. As it can be inferred in the following paragraphs, the vast practice of the Committee is shaped depending on the scale of the problem, as well as on the nature of the non-enforceable decisions.

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on specific circumstances; in respect to the allocation of housing, the Court has required a delay of less than two years, unless there is a need for special diligence. See, for more detail, Case-law guide under Article 6 (civil head), §§ 244, 246-247, 249, available at: https://ks.echr.coe.int/web/echr-ks/article-6-civil.

24. *Burdov v. Russia* (no. 2), no. 33509/04, § 66-67; see also in the context of length of enforcement proceedings, *Comingersoll S.A. v. Portugal* [GC], no. 35382/97, § 19.

25. *Yuriy Nikolayevich Ivanov v. Ukraine*, no. 40450/04, § 65.

26. *Scordino v. Italy (No. 1)* [GC], no. 36813/97, § 198.

27. *Ryabykh v. Russia*, no. 52854/99, § 52; *Tığrak v. Turkey*, no. 70306/10, § 49; *Balan v. the Republic of Moldova (no. 2)*, no. 49016/10, § 27; *Brumărescu v. Romania*, no. 28342/95, § 61.

Already the first judgment of the European Court on the issues of non-enforcement, i.e. *Hornsby v. Greece*, led to significant change in the domestic legal framework. In particular, in 2001, the Constitution of Greece was amended to reinforce the public administration's obligation to comply with judicial decisions. A new constitutional provision envisaged not only compulsory execution of judgments against the State, local authorities and legal entities of public law, but following these constitutional amendments, new statutory and regulatory provisions were adopted in 2002 to implement the constitutional requirement. These new rules also granted the compulsory enforcement of judgments against the State, local authorities and legal entities of public law and strengthened civil liability of the State for damages through acts or omission of State organs. The disciplinary and civil liability of public servants was also reinforced.

Similarly to the first case above, a number of cases dealt with by the Committee of Ministers dealt with changes to the legislative framework and regulations and have resulted in positive changes at the domestic level:

- In *Viskupova and others v. Slovakia*, which concerned non-enforcement of a final judgment granting compensation for the State-owned enterprise using the applicants' property on account of the State-owned enterprise's entry into liquidation,[28] the authorities amended the law allowing all the creditors to lodge claims against those enterprises without any time-limit, envisaging that its provisions can be applied retrospectively, thus resolving an issue that had been at the core of this judgment.[29]
- In the case of *"Iza" Ltd and Makrakhidze v. Georgia* concerning the State's budgetary institutions failure to enforce final judgments due to limited resources,[30] the authorities allocated in 2007 a special budget and created a separate enforcement institution to deal with the problem identified by the European Court. Following subsequent amendments to the relevant legislation in 2010, a special Department at the Ministry of Justice was created which carries out forcible execution in cases against the State, requesting the Ministry of Finance to pay the creditors from the budget directly.[31]
- In the *Ruianu v. Romania* group concerning the authorities' failure to execute final and enforceable court decisions due to notably various deficiencies of the legal framework on execution of judgments,[32] the authorities introduced a new legal framework. It provides now for two avenues to challenge inactivity of bailiffs: a preventive action challenging inaction or delays and an action in tort liability. After the adoption of the new Civil Procedure Code in 2014, further improvements were introduced, sanctioning debtors obstructing the execution of final court decisions, with penalties in the benefit of the creditor and the state.[33]
- In the *Kvartuc v. Croatia* and *Cvijetić v. Croatia*[34] groups that concerned the excessive length of enforcement proceedings[35], the authorities in 2014 amended the Enforcement Act and set up a dedicated authority, the Financial Agency, to enforce the outstanding writs of execution. Later, in 2015, IT solutions enabling the Agency to sell movable and immovable properties at electronic public auctions were introduced. An amendment to the Enforcement Act of 2017 further enhanced enforcement action. In 2013, a new Courts Act provided for the possibilities of acceleratory and compensatory requests in cases of excessive delays and the Judicial Inspection of the Ministry of Justice had been vested with special powers in the supervision of required diligence.[36]

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28. *Viskupova and others v. Slovakia,* no. 43730/06.
29. Committee of Ministers, Final Resolution CM/ResDH(2015)140.
30. *"Iza" Ltd and Makrakhidze v. Georgia,* no. 28537/02.
31. Committee of Ministers, Final Resolution CM/ResDH(2011)108.
32. *Ruianu v. Romania*, no. 34647/97.
33. Committee of Ministers, Final Resolution CM/ResDH(2017)392.
34. *Cvijetić v. Croatia,* no. 71549/01.
35. *Kvartuc v. Croatia* no. 4899/02.
36. Committee of Ministers, Final Resolution CM/ResDH(2020)104.

In some cases, the authorities established new structured payment plans and compensation schemes to ensure better enforcement of judicial decisions as regards various types of payments, notably in:

- *Kunić and Others v. Bosnia and Herzegovina* groups of cases, which concerns non-enforcement of domestic judgments ordering to pay work-related benefits owed to public service employees.[37] Progress has been achieved due to notably implementation of repayment schemes, which imply a systematic enforcement approach of domestic judgments through structured payment plans, ensuring that debts owed to public service employees are settled in chronological order within predefined deadlines. The repayment schemes have been set up in compliance with the European Court's indications.[38]
- *R. Kačapor and Others v. Serbia* group, which concerns non-enforcement or delayed enforcement of domestic judicial decisions given in the applicants' favour against socially or State-owned companies ordering them to pay their debts for salary arrears or their commercial debts[39], the authorities have reverted to their initial strategy of establishing a repayment scheme to settle most unenforced judicial decisions concerning debts to former employees of socially-owned and State companies, solution previously favoured by the European Court. They have also taken steps to amend the 2015 Law by transferring competence over enforcement-related cases from ordinary courts to the Constitutional Court, which had previously been recognised as an effective remedy. Measures are still being taken to finalise the repayment scheme without delay and to strengthen the Constitutional Court's capacity to handle these cases efficiently.[40]
- *Colic and Others v. Bosnia and Herzegovina* cases that concerned non-enforcement of judgments granting compensation for war damages, due to a legal suspension affecting all such judgments, imposed on account of the high public debt they would generate.[41] To implement the Court's judgment, the Federation of Bosnia and Herzegovina (FBH) amended the Internal Debt Law, and the Government adopted a decision to settle war-related claims. By 2017, the FBH Ministry of Finance recorded 341 final judgments, securing funds and ensuring payments in 319 cases, with the remaining debts to be settled upon receipt of necessary documentation. As to Republika Srpska, where the number of war damage claims was higher, the National Assembly adopted the Domestic Debt Act (2012), and the Government introduced a settlement plan. A 2016 plan set a 13-year schedule for cash payments, starting in 2016, for creditors unwilling to accept government bonds. Payments were made for judgments due in 2016, subject to required documentation.[42]

In several other cases, the authorities of the High Contracting Parties to the Convention had to address the systemic and structural problems established in the pilot and leading judgments of the Court, with varying degrees of progress. In particular:

- *Olaru v. Republic of Moldova* group of cases, that concerns State's failure to enforce final domestic judgments awarding them social housing rights or compensation in lieu of housing.[43] In its pilot judgment, the Court instructed the respondent State to set up within six months an effective domestic remedy, which secures adequate and sufficient redress for non-enforcement or delayed enforcement of final domestic judgments concerning social housing in line with the Convention principles as established in the

37. *Kunić and Others v. Bosnia and Herzegovina,* no. 68955/12.
38. Committee of Ministers, Decision, CM/Del/Dec(2021)1411.
39. *R.Kacapor v. Serbia* no. 2269/06.
40. Committee of Ministers, Decision, CM/Del/Dec(2023)1483/H46-35.
41. Colic and Others v. Bosnia and Herzegovina, no. 1218/07.
42. Committee of Ministers, Final Resolution, CM/ResDH(2018)116.
43. *Olaru and Others v. the Republic of Moldova*, no. 476/07.

Court's case-law.[44] In 2011, the authorities adopted a law providing for a compensatory remedy in cases of excessive length of judicial and enforcement proceedings. Subsequently, in its decision of 24 January 2012 in the case of *Balan*, the Court accepted that the law was designed, in principle, to address the issue of delayed enforcement of judgments in an effective and meaningful manner, taking account of the Convention requirements.[45] The Court therefore declared the case inadmissible because the applicant had not availed himself of this new remedy. The assessment of functioning of the remedy is still underway.

- As regards the Ivanov / Burmych v. Ukraine pilot judgment procedure, the Court, recognising the systemic nature of the problem, struck out 12,148 follow-up applications, emphasising that the resolution of these grievances necessitates comprehensive general measures at the national level, under the supervision of the Committee of Ministers. Most recently, on 30 September 2020, the Cabinet of Ministers approved a national strategy demonstrating the will, at the highest political level, to address the root causes of the non-enforcement issues. Notably, this strategy consists in the removal of regulatory barriers hindering the enforcement of judicial decisions; the strengthening of institutional capacities of the authorities and persons responsible for the enforcement of judicial decisions and of other authorities; the establishment of effective interaction between electronic justice systems and enforcement-related e-tools for the search, collection, storage and registration of enforcement-related information; the adequate funding of the reimbursement of debts resulting from judicial decisions; and the introduction of effective remedies against non-enforcement and excessive delays in the enforcement of judicial decisions. In addition, certain legislative reforms, such as the enactment of the Bankruptcy Code and developments in the judicial practice of the Supreme Court, represent steps towards compliance with the Court's case-law. However, the introduction of additional moratoriums preventing the payment of any sum owed by the State until January 2021, including those related to social payments and pensions for vulnerable individuals, has further contributed to delays in enforcement. The absence of a system to calculate, manage and control the debts accumulated by the State constitutes another critical problem. This deficiency hinders the ability to determine the overall scope of unenforced judgments, which makes it difficult to implement effective resolution strategies or to establish an ad hoc compensation mechanism. A reliable debt assessment mechanism would enable the authorities to establish clear priorities and allocate resources accordingly.[46]

A number of cases where the structural problems identified in the judgments of the Court are still being resolved underline the difficulties and complexity of the execution measures, their multilayered and multidimensional nature, requirements to introduce overarching strategies, step-by-step action plans and the need to maintain strong pace, efficiency and coherence in enforcement of the judgments of the European Court. In particular:

- *Pennino and Croce and Others v. Italy* groups that concern the impossibility for the applicants to have domestic final judicial decisions enforced to recover money owed to them by municipal authorities which became insolvent and the issue of the impossibility for some of the applicants to obtain the enforcement of domestic final judicial decisions against insolvent private and public companies to which the State had delegated its powers (e.g. to expropriate the applicants' land and carry out public works).[47] In this group the violations were stemming from a legislative ban on enforcing judgments against insolvent municipal authorities. This framework prevented applicants from receiving expected sums and deprived them of court access until an

44. *Olaru and Others v. the Republic of* Moldova, no. 476/07, § 58-61.

45. *Balan v. the Republic of Moldova*, no. 44746/08, § 19.

46. See the Memorandum prepared by the Department for the Execution of the ECHR on *Yuriy Nikolayevich Ivanov* and groups of cases of *Zhovner and Burmych and Others v. Ukraine* H/Exec(2018)8.

47. Pennino and Croce and Others groups v. Italy, no. 43892/04.

uncertain future date, depending on an independent administrative commission beyond their control. The European Court underlined that financial difficulties cannot excuse a local authority from honouring its obligations, yet the legislative framework remains unchanged and is still considered by domestic courts to strike a fair balance between public and private interests.[48]

- In the *Croce and Others* group, enforcement was frustrated by domestic courts' case-law, which excluded State responsibility when an insolvent company, entrusted with public functions, failed to pay debts. The European Court found this in conflict with its case-law, affirming that a State must comply with judgments against a delegated company if the debt ultimately falls under its responsibility. A 2022 Court of Cassation judgment applied these principles, marking a positive step forward in implementation of judgments.[49]
- The *Sacaleanu v. Romania* group, that concerns the non-implementation or delayed implementation of final domestic court decisions against the State or legal persons under its responsibility, and its *Polyinvest* sub-group relates specifically to cases where State-controlled companies in bankruptcy or liquidation have not complied with court or arbitration decisions.[50] The authorities announced in their 2016 action plan a revision of the statutory framework governing payments by public debtors and to establish a supervisory mechanism with powers of prevention and intervention. The Committee of Ministers recalled that the reforms needed to address: (i) the domestic legal system's response when strict compliance is objectively impossible; (ii) statutory limitation rules in line with European Court case-law; and (iii) effective legal remedies for cases of non-implementation. They are still pending.[51]
- The *Camara v. Belgium* case, concerning the authorities' failure to provide accommodation to the applicant, an asylum-seeker, in a suitable place and provide him with material support as defined, based on an enforceable order issued by the Labour Tribunal of Brussels. The execution process revealed that the circumstances of the case were not isolated and that there had been a systemic failure on the part of the authorities to enforce final judicial decisions concerning the reception of applicants for international protection.[52] The Committee of Ministers stressed the need to increase the capacity of the reception network by providing sufficient places in the long term, including in individual structures so as to resolve the current crisis and deal with the future flows of applicants. This would also make it possible to eradicate, at its source, the problem of non-enforcement of judicial decisions (more than 700 as of 17 June 2024), by stopping forcing applicants for international protection to take legal action to have their right to reception recognised and sanctioned.[53]

III. The activities of the European Commission for the efficiency of justice (CEPEJ) as regards enforcement of national judicial decisions

Based on the solutions identified by the European Court and the Committee of Ministers, other bodies of the Council of Europe, mainly the CEPEJ, but also the Consultative Council of European Judges (CCJE) have addressed the issue of improving enforcement of national judicial decisions in Europe, thereby contributing to the progressive harmonisation of the national enforcement laws of the Member States.

The CEPEJ, whose mandate includes the objective of facilitating the implementation of the Council of Europe's international legal instruments concerning efficiency and fairness of

48. Committee of Ministers, Notes, CM/Notes/1521H46-20.
49. Ibid.
50. *Sacaleanu v. Romania*, no. 73970/01.
51. Committee of Ministers, Notes CM/Notes/1483/H46-29.
52. *Camara v. Belgium*, no. 49255/22.
53. Committee of Ministers, Notes, CM/Notes/1507/H46-6.

justice, included enforcement of judicial decisions into the list of its priorities. Firstly, through a scientific approach, by the publication of a comparative law study entitled “The enforcement of court decisions in Europe” published in 2008.[54] More recently, in 2023, a comparative law study was published on electronic judicial auctions[55]. Also, the publication, every two years, of the CEPEJ’s specific Study on enforcement agents[56] can be highlighted. This Study, based on the responses to a questionnaire distributed in all Council of Europe member states (as well as in observer countries), is a valuable barometer for identifying trends emerging from national legislation.

Secondly, the CEPEJ contributed to the harmonization of enforcement principles in Europe, in particular with the adoption in December 2009, of the ‘*Guidelines for a better implementation of the existing Council of Europe Recommendation on enforcement*’.[57] The purpose of this document is to ensure the effectiveness of the European enforcement standards listed in the aforementioned Recommendation of the Committee of Ministers. However, noting that none of the 46 member states of the Council of Europe fully complied with these guidelines, the CEPEJ focused its attention on the respect, in national legislation, of the principles enshrined in the Rec(2003)17 Recommendation and detailed in the 2009 Guidelines. To this end, it adopted in 2015 a “Good practice Guide on enforcement of judicial decisions”[58], guided by the objective of maintaining a fair balance between the rights of creditors and those of debtors. In the same vein, the CEPEJ also adopted in 2023 a Guide on electronic judicial auctions.[59]

Alongside the work of the CEPEJ, the work of the Consultative Council of European Judges can also be mentioned, whose Opinion No. 13 (2010) is specifically devoted to “the role of judges in the enforcement of judicial decisions”. This CCJE opinion clearly divides the functions between judges and enforcement agents during the process of enforcing court decisions handed down in civil matters, placing the former back at the heart of their jurisdictional activity and centralising the enforcement function with the latter.

3.1. The CEPEJ Guidelines for a Better Implementation of the Council of Europe's Recommendation[60] on Enforcement

The CEPEJ Guidelines for a Better Implementation of the Council of Europe's Recommendation on Enforcement aim to enhance the efficiency, and fairness of the enforcement of court decisions in member states. The 82 points of these Guidelines focus on improving both the legal and practical aspects of enforcement procedures to ensure that judicial decisions are implemented promptly and in a consistent manner with human rights standards, bringing together in a single reflection the principles that govern enforcement procedures and those that concern the professionals responsible for implementing them.

In essence, these guidelines are organised around four main themes. The first can be summarised in the statement that enforcement agents should have control over the conduct

54. J. Lhuillier, D. Lhuillier-Solenik, G. Nucera, J. Passalacqua, Enforcement of court decisions in Europe - CEPEJ Studies No. 8 , 2008, p. 140. The study is in two parts and covers the main aspects of the issue of enforcement in civil matters. The first part relates to the ‘accessibility of the enforcement of court decisions’ and includes developments on both the status and the number of enforcement agents in the Member States of the Council of Europe, as well as on the cost of enforcement in these States. The second part is devoted to the ‘efficiency of enforcement of court decisions’ and distinguishes between the efficiency of ‘enforcement services’ on the one hand and that of enforcement measures on the other.

55. M. Blasone and D. Satkauskiene, Comparative study on the use of electronic judicial auctions in the member states of the Council of Europe, 16 June 2023, CEPEJ-GT-CYBERJUST(2023)1.

56. On the latest edition: Specific study of the CEPEJ on the Legal Professions: Enforcement agents, CEPEJ-GT-EVAL(2024)25, 30 January 2025.

57. CEPEJ(2009), 11REV2, 17 December 2009. On these Guidelines, Adde, International Union of Judicial Officers, The CEPEJ Guidelines on Enforcement: A Model for the World?, Institut Jacques Isnard Juris-Union No. 5, February 2011, p. 125.

58. Good practice guide on enforcement of judicial decisions, CEPEJ(2015)10, 11 December 2015

59. CEPEJ(2023)11.

60. Recommendation Rec(2003)17 of the Committee of Ministers on the enforcement of court decisions.

of enforcement operations. The second takes the form of a general recommendation to ensure that the parties have a good understanding of the enforcement process. The third relates to improving the quality of enforcement procedures and periodically evaluating this quality. Finally, the fourth consists of promoting the use of common legal terminology in enforcement matters, by including a glossary specifying the meaning of the concepts used.[61]

A key aspect of the CEPEJ guidelines is the promotion of clear, transparent, and standardized enforcement procedures. They stress the importance of making these processes understandable to all parties involved, ensuring accessibility for citizens and providing adequate legal information and assistance. To achieve this, the guidelines suggest simplifying enforcement procedures and using modern technology to make enforcement more efficient, such as through digital platforms that allow easier tracking of cases and communication between relevant authorities.

The guidelines also emphasize the need for the effective training of judicial officers, bailiffs, and law enforcement agents to ensure that they have the skills and knowledge to enforce judgments fairly and without unnecessary delay. They advocate for closer cooperation between judicial and administrative authorities, both at the national and international levels, to tackle challenges related to cross-border enforcement and to harmonize enforcement practices across member states.

Additionally, the CEPEJ guidelines stress the importance of effective monitoring and evaluation mechanisms. They encourage states to regularly assess the performance of their enforcement systems to identify issues and areas for improvement. This continuous monitoring ensures that enforcement practices remain aligned with international standards, particularly in relation to fundamental rights, and that remedies are available when enforcement is delayed or fails. Overall, the guidelines aim to promote a balanced approach where the rights of individuals are respected, while ensuring that court decisions are respected and implemented swiftly.

3.2. Current challenges and Best Practices in Enforcement

Enforcement procedures, remain in some cases long rigid and ill-suited to contemporary realities, and can generate high costs, both for the creditor seeking justice and for the debtor, who is often already in a precarious situation. At the national level, these difficulties are already significant, but they are exponentially amplified in cross-border debt recovery, where different systems (for example, some countries assign this task to bailiffs, while others rely on centralized judicial services or administrative authorities), linguistic barriers, procedural disparities, costs, and the slow pace of enforcement complicate the implementation of court decisions.

However, the CEPEJ's specific studies on enforcement agents, which are periodically disseminated, show that, from one exercise to the next, there is increased compliance, by the national laws of the Council of Europe member states, with the principles enshrined in 2003 in Recommendation Rec(2003) 17 of the Committee of Ministers and detailed in the Guidelines on implementation adopted by the CEPEJ in 2009. For example, there has been an increase in the proportion of countries where specific initial training is provided for enforcement agents. In addition, the requirement to sit an entrance exam and undergo compulsory ongoing training are gradually becoming the norm in Europe. The same applies to the multidisciplinary nature of enforcement agents and the centralisation of the function of enforcing court decisions. In addition, the general trend is towards the provision of a system

61. This glossary essentially includes the key concepts defined in the aforementioned comparative law study, adopted in 2008 under the aegis of the CEPEJ.

for monitoring and controlling the activities of these professionals and the development of a system for monitoring enforcement.

Some good practices can be mentioned at this point:

- Providing for alternative mechanisms to judicial intervention:

Traditionally, a judicial procedure precedes enforcement. However, in some cases, this contentious step could be avoided if alternative mechanisms were put in place upstream. Indeed, many disputes come before a judge when they should not, particularly when dealing with uncontested debts. In several European countries, simplified mechanisms already exist to address these debts without judicial intervention, such as:

- Payment orders (accelerated procedures without hearings);
- Enforceable titles issued directly by bailiffs;
- Digital platforms for automated debt collection.

These solutions help avoid unnecessary judicial procedures, ease the burden on courts, and reduce recovery times.

- Ensuring adequate access to information before the judicial procedure:

Before initiating a judicial procedure, access to information about the debtor's financial situation is essential. On one hand, it allows for the evaluation of whether a legal action is worthwhile and, if necessary, considering alternative solutions for debtors for whom a judgment would be ineffective due to insolvency. On the other hand, once a judgment is obtained, having precise data is equally crucial to choose the most appropriate enforcement procedure. This helps avoid blind enforcement and minimize unnecessary costs, ensuring a more efficient and fair approach for all parties involved.
Today, a considerable number of judicial and enforcement procedures are initiated without any prior verification, resulting in overloaded courts, unnecessary costs for creditors, extended delays in processing judicial cases, increased frustration due to non-enforcement of court decisions.
Initiatives already exist in some countries, including online insolvency registers or interconnected databases accessible to bailiffs and creditors.

- Accompanying the adoption of digital tools:

Digitalization helps speed up debt recovery by reducing delays and costs, thus preventing court congestion and prolonged forced enforcement procedures. However, excessive automation, where decisions are made solely by algorithms without human intervention, poses a significant risk to fundamental rights, notably the right to an effective remedy and respect for adversarial proceedings.
Therefore, it appears as a good practice to integrate a neutral body, such as a bailiff, to ensure the protection of both the creditor's and debtor's rights. This independent public officer would serve as a filter in the handling of uncontested debts, ensuring both the validity and transparency of the creditor's request (preliminary verification of supporting documents), ensuring that the debtor has received and understood the debt (formal, traceable notification) and maintaining the debtor's right to challenge, with reasonable timeframes and accessible appeal routes.
The challenge is to modernize without dehumanizing, finding a middle ground between digital optimization and the necessity of human oversight to guarantee the respect of fundamental rights. A hybrid approach, combining digitalization, the intervention of a neutral body, and effective protection of the parties, is a suitable response to the contemporary challenges of debt recovery in Europe. This is the case with the Uncontested Debt Recovery Procedure (RCCI) in Belgium.

3.3. The necessary modernisation and harmonisation of judicial enforcement standards and tools

Modernising and harmonising standards for judicial enforcement has become increasingly necessary in a world where economic exchanges, cross-border transactions, and contractual relationships are expanding on a global scale. Effective and uniform judicial enforcement is crucial to ensuring the credibility of court decisions, fostering international cooperation, and safeguarding the legal security of both citizens and businesses.

This can be pursued at different levels:

- **At national level**: To reduce discrepancies between states, common shared principles have been introduced, notably in the CoE standards and tools. While recognizing that each country has its own mechanisms for judicial enforcement, these common principles also serve as a legislative model for states wishing to reform their enforcement laws. Future efforts in this sense could focus on identifying which of the existing principles common to all systems of enforcement should be modernised, as well as which should be added, regarding particularly:
    - The digitalisation of enforcement;
    - The ethical and professional standards for bailiffs and enforcement agents, in particular in the use of digital tools for enforcement purposes;
    - The use of extrajudicial methods for enforcement.

Professionals involved in enforcement are significantly impacted by the *digitalisation of justice* and the enforcement of court decisions. This includes electronic communication of acts and documents, access to digital registers, the dematerialization of enforcement procedures, the digital management of professional activities, and the use of artificial intelligence. The latter can be used not only during the implementation of civil enforcement procedures, but also beforehand, when searching for information to locate the debtor and identify the elements of his assets. Additionally, new forms of assets are emerging with digitalization (e.g., cryptocurrencies), which necessitate the development of appropriate procedures for seizing these global digital assets. Defining principles that states should incorporate into their national legislation to regulate the use of digital and AI tools in the enforcement of court decisions might be considered, including regarding the ethical obligations tied to this use.

Considering *the extrajudicial recovery of debts and the use of amicable dispute resolution methods,* some national legislative arsenals[62] exist already for the recovery of uncontested debts based primarily on the intervention of an enforcement agent, who may be required *in fine* to draw up the execution title. Procedures of this type - which help to relieve the courts of congestion - could be included in the scope of possible new European instruments.

- **At cross-border level**: Essentially, the instruments adopted to date under the aegis of the Council of Europe concern the enforcement of a title in the State in which it was obtained. One of the avenues for development could lead to the elaboration of rules specific to cross-border enforcement. Due to the differences between legal systems, the enforcement of foreign decisions can be a lengthy and complex process. The absence of common rules can lead to conflicts of jurisdiction and difficulties in cooperation between foreign jurisdictions and their respective enforcement agents. Enforcement standards could be integrated into international instruments that govern the recognition and enforcement of foreign judgments. A harmonized legal framework would provide greater legal certainty and simplify the steps required for global enforcement.

62. This is the case in Belgium and France in particular.

Taking these trends (digitalisation, internationalisation, promotion of amicable settlement) into consideration would make it possible to update the Council of Europe's standards and tools for enforcement. This certainly does not exhaust all the possible modifications that could be made to the existing instruments. For example, while the current focus is on the enforcement of court decisions on the merits of the case, the debate could encompass the enforcement of decisions by supreme courts. Similarly, the current emphasis is on the enforcement of court decisions against individuals. One avenue for development could be to include provisions applicable when the debtor is the state or a public entity.