



Разумков
центр

Громадська організація Український Центр
економічних і політичних досліджень
імені Олександра Разумкова

Україна, 01034, м. Київ, вул. Лаврська, 16
тел. (044) 2011196, тел./факс (044) 2011199
e-mail: info@razumkov.org.ua



REPORT

on the results of the sociological study on the problem of non-execution of judgments in Ukraine and measures to address it

Summary

Kyiv – 2021

*Project “Further support for the execution by Ukraine of judgments in respect of Article 6 of the
European Convention on Human Rights”, which is funded by the Human Rights Trust Fund*

The Ukrainian government Commission for the Execution of Judgments of the European Court of Human Rights approached the Council of Europe project "Further support for the execution by Ukraine of judgments in respect of Article 6 of the European Convention on Human Rights" (the Project) with a request to undertake a sociological study so as to determine attitudes towards the problem of non-execution of judgments and towards the mechanisms to address this problem, which were proposed by the state (in the context of the execution of the European Court of Human Rights judgments of *Zhovner / Ivanov / Burmych* and Others v Ukraine, hereinafter – the *Burmych group* of cases). The Project is funded by the Human Rights Trust Fund and implemented by the Department for Implementation of Human Rights Standards, Justice and Legal Co-operation of the Council of Europe. The Project involved national consultants of the Ukrainian Centre for Economic and Political Studies after Oleksander Razumkov (the Razumkov Centre) to conduct this sociological study.

The aim of the sociological study is to collect and analyse views of certain categories of people about the problem of non-execution of judgments, the mechanisms to solve this problem as proposed by the state, as well as to provide recommendations on measures to be taken to fully address this problem. The findings of the sociological study can be used to further improve the system of government measures designed to execute the *Burmych group* of judgments.

In view of this aim, the following objectives were formulated:

- to analyse the target audience's perception of the issue of non-execution of judgments of national courts, where a state authority or a state-owned enterprise, institution, organisation is a judgment debtor;
- to estimate the awareness and attitude of the target audience towards the measures proposed by the state to address the problem of non-execution of judgments;
- to determine the role of non-governmental and international organisations in addressing the problem of non-execution of judgments;
- to identify priority measures, including the necessary general measures, that are required to solve the problem of non-execution of judgments (in the context of the *Burmych group* of cases).

The preferred methodology included focus group discussions and in-depth interviews – qualitative methods that allow exploring the issue from different angles, recognising respondents' diverse experiences and competencies, responding to the discussion dynamics flexibly and promptly, identifying valuable insights, simulating different situations, and hearing every person's opinion without limiting them to a certain list of options that are traditionally provided in questionnaires within quantitative surveys.

The target audience of the sociological study was identified as professional, expert and public audiences that encountered the problem of non-execution of judgments and/or were involved in the processes of execution of judgments in various ways or otherwise addressed the problem at stake. The target audience included representatives of government bodies, private and public enforcement agents, judges, as well as lawyers, legal counsellors, attorneys, human rights activists, heads of non-governmental organisations, and journalists.

On the whole, 5 focus group discussions (with 5-6 respondents in each focus group) and 25 individual in-depth expert interviews were conducted.

The profile of focus group discussions of target audience is the following: 2 focus groups (lawyers, legal advisers, some of them human rights defenders and heads of NGO), 1 focus group –

journalists with legal issues expertise, 1 focus group – employees of various levels of State Executive office, 1 focus group- counsellor at law.

Among the participants of 25 individual in-depth interviews there were 5 judges, heads of city courts and city district courts, 3 employees of the State Judicial Administration, high-ranking employee of the Ministry of Justice, 8 heads of law firms with some of them being heads of NGO and national experts of the Project, 4 human right defenders, heads of non-governmental organizations, 2 private executives, independent Project's experts, 2 lawyers of business holdings and others.

The focus group discussions and in-depth interviews were conducted from 29 April to 27 May 2021.

Based on the information received during the conducted interviews and focus groups, the following conclusions were made:

- A large majority of the respondents viewed the mechanism of execution of judgments in Ukraine as exceptionally inadequate, inefficient, and corrupt. The remaining respondents were even more categorical stating that such a mechanism did not exist altogether. At the same time, it was found that the target audiences became accustomed to the scale and “chronic nature” of this escalating problem.
- According to the research participants, the level of the problem diagnosis and the availability of quality monitoring of its development are low. Even though all the research participants faced this problem, the most of them did not have any information on the share of executed/non-executed judgments across various categories of cases, the dynamics, the amounts of state debt. They also did not know where one could find reliable information on such issues.
- Also the low level of awareness of most respondents is identified with regard to measures, mechanisms, strategic tools proposed by the state to address the problem at hand. However, it was not due to the inaccessibility of relevant information, but mostly because of the low level of public trust and interest in government plans and strategies in general, which are either considered declarative and formal or not implemented in the absence of proper funding or control and due to human factor (in the negative connotation).
- The respondents repeatedly mentioned inadequate professional level, heavy workload, low salaries, and more frequently – an irresponsible attitude to the execution of judgments by the officials who are directly involved in the process but do not want to duly perform their duties and bear no personal responsibility for it.
- The respondents also focused on specific categories of state bodies and their representatives, whose action or inaction forces citizens to go to national courts and hereinafter to the European Court of Human Rights (for example, to defend the right to full social benefits, allowances, etc). Based on the frequency of spontaneous mentions, the undisputed “winner” of this negative rating was the Pension Fund of Ukraine. According to the respondents, this institution functions according to its own rules and interprets laws and regulations at its discretion pursuing one goal – to “save” budget funds at the expense of the pensioners in any possible way.
- During discussions and interviews, the respondents repeatedly emphasised the following reasons for non-execution of national judgments. Failure to eliminate them will render impossible any real progress in addressing the problem:
 - Insufficient replenishment of the state budget for the execution of judgments and government-planned measures (including the implementation of strategic documents), with the ensuing realisation of necessary actions by individual government agencies and institutions.

- Legislative populism, for example, adoption of laws on social benefits, increased social payments, and the like despite the state budget deficit.
 - The imperfection of national legislation.
 - Inconsistency of actions of state bodies responsible for undertaking measures to address non-execution of judgments.
 - Political populism and lack of political will. Most of the respondents believe that the state is not interested in establishing a transparent and effective mechanism for timely and high-quality enforcement of judgments. Instead, it declares such intentions to the European Union and international organisations, including the Council of Europe, to receive financial or other assistance.
 - The inefficiency of the state enforcement service bodies.
 - Existence of moratoriums.
 - Lack of personal liability of officials for the non-execution of judgments.
 - Corruption, etc.
- In the light of the stated reasons for the non-execution of judgments, the research participants recommended the following priority measures aimed at addressing the problem:
 - Increasing personal responsibility for non-execution of judgments and for wrongful acts by officials/civil servants, which led to recourse to the national court (or the European Court of Human Rights), moral compensation, etc. in favour of the claimant against the “state”, from substantial fines to criminal liability.
 - Improvement of regulatory framework to adjust national legislation to the European level.
 - Development of the road map to upgrade the court proceedings, length of court proceedings and penalty for untimely execution of national judgments, etc.
 - Introduction of accomplished system for automatic execution of judgments, simplification of the procedure of judgment execution.
 - Ensuring a high-quality ongoing monitoring of the state of execution of the national judgments, including finalising and introducing the Unified State Register of Enforcement Writs.
 - Allocation of the state funds sufficient for the execution of national judgments and ECoHR and for implementation of basic measures in the framework of the National Strategy.
 - Countering legislative and political populism, including reducing unjustified social benefits (this primarily concerned the officials).
 - Reduction of moratoria as a result of state enterprises audits with subsequent specification of those which are expedient to eliminate, privatize, etc.
 - Reforming and upgrading the work of state executive service.
 - Increasing the competencies and number of private enforcement agents. Introducing a mixed system of execution of judgments and other measures.
- Although rarely mentioned, the respondents did not reject the involvement of public in addressing the problem at stake. At the same time, they did not see how non-governmental organisations could be effectively involved and they were not aware of examples of NGOs’ significant impact on solving the problem.

- The respondents mostly lacked knowledge about the role of international organisations in addressing the problem. Those respondents who were in some way involved in international projects and programmes, including in the Project, were more knowledgeable about this role. They were more likely to mention the ongoing advisory, expert, and methodological support of Ukraine from the Council of Europe, USAID, and other international organisations.
- In general, the respondents considered it necessary to clearly and regularly update the public and professional communities, to gradually increase the political and legal literacy of the population using all possible methods and tools.
- The respondents recommend posting all necessary information on the website of the Ministry of Justice of Ukraine in the first place. Apart from reliable statistics, of particular interest would be the dynamics and results of analysis of the reasons for non-execution of judgments, measures planned by the government to address the problem, deadlines and persons responsible, enforcement agencies and entities responsible for control. Once again, the respondents stressed the need to shift from the collective responsibility of state agencies, judiciary, and executive bodies to personal responsibility, with the publication of specific investigations, the names of responsible officials, and subsequent prosecution of alleged violations.
- At the same time, the respondents viewed increased personal responsibility of civil servants, high-ranking officials, staff of executive bodies, in particular the Pension Fund of Ukraine, as the most effective mechanism for shaping adequate attitude of officials to the urgency of addressing the problem of non-execution of judgments.
- Many respondents felt that Ukraine received sufficient assistance from the international community to address the non-execution of judgments, in particular through comprehensive expert recommendations developed in cooperation with the Council of Europe, including its Committee of Ministers and the European Court of Human Rights. Still, some respondents believed that the problem became so pervasive that it would be impossible for Ukraine to address it without the methodological and, most importantly, financial support from international organisations.
- The respondents' summing up – the problem of non-execution of national judgments will further aggravate unless there are no proper political will, sufficient funding and personal responsibility of judicial and executive authorities and civil servants involved in the process of court proceedings.