

**H/Exec(2018)2 – 6 December 2018**

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## **Cases examined by the Committee of Ministers concerning the non-enforcement or delayed enforcement of domestic judicial decisions in Ukraine (case of *Yuriy Nikolayevich Ivanov* against Ukraine and group of cases of *Zhovner* against Ukraine)**

Memorandum prepared by the Department for the Execution of Judgments of the ECHR (Directorate General of Human Rights and the Rule of Law)

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*The opinions expressed in this document are binding on neither the Committee of Ministers nor the European Court.*

### **Executive summary**

The authorities' continuous failure to ensure the enforcement of domestic court judgments given against the State and state owned or controlled enterprises/entities, a structural problem revealed since the very first decision rendered against Ukraine in 2001, constitutes an important danger for the respect of the rule of law, undermining people's confidence in the judicial system and putting into question the credibility of the State.

The Committee has over the years tried to assist the authorities in finding solutions in numerous ways, notably through extensive guidance in decisions and resolutions and encouragement to use Council of Europe expertise and cooperation programs.<sup>1</sup>

The authorities have also tried to respond to the important challenges posed and have undertaken several legislative and institutional reforms in this regard. These have included, in particular, attempts to improve domestic remedies (by for example the adoption of the law "On State guarantees concern execution of judicial decisions" in 2012). However, the necessary results have not been achieved.

Confronted with this failure, notably manifested through large numbers of repetitive cases, the Court concluded in the *Burmych* judgment of 12 October 2017 that "the execution process ... has remained ineffective", despite the guidance given by the Committee.<sup>2</sup>

This memorandum provides an overview of the execution process so far in order to assist the Ukrainian authorities in the implementation of the further important general measures required, bearing in mind the deadline of October 2019 set by the Court in the *Burmych* judgment.<sup>3</sup>

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<sup>1</sup>. The present group of cases identifies Convention-based complex and structural problems in relation to non-enforcement of judgments delivered against the State under Articles 6 § 1, 13 and Article 1 of Protocol No. 1). The pilot judgment further specifically requires establishing an effective remedy for such complaints.

<sup>2</sup>. The Court has examined a total of approximately 29,000 similar applications since the first application in 1999 (§ 44 of *Burmych* judgment). As to the Committee's examination, the present group, has been examined on almost 50 occasions, with the six interim resolutions adopted

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<sup>3</sup>. With the assistance and in co-operation with the Human Rights Trust Fund “Supporting Ukraine in the execution of judgments of the European Court of Human Rights”.

## I. Introduction: Current state of affairs- *Burmych* situation

1. The present group of cases relates to the longstanding failure of the Ukrainian State to ensure that state authorities and state owned or controlled enterprises/entities are put in a position to be able to honour domestic court judgments rendered against them without the necessity of any special enforcement measures. This failure has revealed itself to be a very important structural problem with many ramifications in law, practice and budget procedure.
2. The Committee has repeatedly found that this continuing failure constitutes an important danger for the respect of the rule of law, undermining people's confidence in the judicial system and putting into question the credibility of the State.
3. The different cases demonstrate breaches of the right to effective judicial protection and the right to the peaceful enjoyment of possessions (violations of Article 6 § 1 of the Convention and of Article 1 of Protocol No. 1). They also demonstrate an absence of effective remedies at the domestic level in case of non-enforcement or delays in enforcement (violation of Article 13).
4. The problem was brought before the Committee for the first time in the *Kaysin* case in 2001, a friendly settlement rapidly closed on the basis of the undertakings given by the Ukrainian authorities that they would solve the problem. The absence of results led to the present group of cases, with the *Zhovner* case as the first and leading case in 2004.
5. The group of cases, steadily increasing due to the absence of progress, has been examined by the Committee on almost 50 occasions, including six interim resolutions adopted between 2008 and 2017 expressing the Committee's grave concerns. In the meantime, the Court also intervened with the pilot judgment in the *Ivanov* case of 2009, stressing in particular – although as matters have developed, in vain - the necessity of the speedy adoption of effective remedies.
6. A total of about 29,000 *Ivanov-type* applications have been submitted to the Court since the first application in 1999.<sup>4</sup> The Court has since adopted some 424 judgments (including grouped ones with 250 applicants per case). Over 5,000 unilateral declarations have also been approved by the Court (relating to a much larger number of applications).
7. The absence of results led the Court to adopt a landmark judgment in October 2017 – the *Burmych* judgment – referring 12,000 pending applications back to the national level to be solved by the domestic authorities in a Convention compliant manner under the Committee's supervision.

### 1. 2017: *Burmych and Others v. Ukraine and its aftermath*

8. On 8 December 2015 the Chamber of the Court to which the cases related to the present problem had been allocated, relinquished jurisdiction in favour of the Grand Chamber.<sup>5</sup>

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<sup>4</sup>. Par. 44 of *Burmych* judgment.

<sup>5</sup>. *Burmych and Others v. Ukraine*, (Nos. 46852/13, 47786/13, 54125/13, 56605/13, and 3653/14).

9. On 12 October 2017, the Grand Chamber delivered its judgment in the *Burmych* case. It noted that, despite the significant lapse of time since the *Ivanov* pilot judgment, the Ukrainian Government had so far failed to implement the requisite general measures capable of addressing the root causes of the systemic problem identified by the Court and to provide an effective remedy securing redress to all victims at national level. Bearing in mind its efforts in examining *Ivanov*-type cases for over 17 years,<sup>6</sup> the Court concluded that nothing was to be gained, nor would justice be best served, by the repetition of its findings in a lengthy series of comparable cases, which would place a significant burden on the Court's resources, with a consequent impact on its considerable caseload.
10. The Court thus decided to strike the *Ivanov* follow-up applications (12,143 cases) out of its list of cases and found that the grievances raised in these applications had to be resolved in the context of the general measures to be introduced by the authorities at national level, as required by the execution of the *Ivanov* pilot judgment, including the provision of appropriate and sufficient redress for the Convention violations, measures which are subject to the supervision of the Committee. The Court envisaged that it might be appropriate to reassess the situation within two years<sup>7</sup> of the delivery of the *Burmych* judgment. The Court stressed that the root causes of the problems were of a fundamentally financial and political nature.<sup>8</sup>
11. As a reaction to the *Burmych* judgment a high level meeting was held on 17 November 2017 in Strasbourg, with the participation of the Ministry of Justice, the Presidential Administration and the Parliament, to discuss the creation of an *ad hoc* targeted redress mechanism for all applicants concerned by this judgment, which should go hand in hand with efforts to secure a long-lasting solution addressing the root cause of the problems.
12. It was followed up by discussions on 27 March 2018 at a High Level Round Table at the Verkhovna Rada held with the participation of the Minister of Justice, the Chair of the Verkhovna Rada's subcommittee on the execution of judgments of the European Court of Human Rights, the Ombudsman, the judiciary, civil society and other authorities as well as Council of Europe experts and officials, including the Director General of Human Rights and Rule of Law.

## 2. Awaited response to the *Burmych* judgment

### a) *Ad-hoc* solution

13. In the light of the results of the high level meeting on 17 November 2017, at its 1302<sup>nd</sup> meeting (DH) in December 2017, the Committee urged the Ukrainian authorities to introduce a targeted mechanism at domestic level to provide redress to all actual *Burmych* applicants with valid complaints under the Convention.<sup>9</sup>
14. The Committee stressed that such a mechanism should provide, in line with the Convention requirements as developed in the Court's case-law, adequate and sufficient redress to all applicants with valid complaints.
15. The mechanism should take into account the following:

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<sup>6</sup>. *Kaysin and others v. Ukraine* (dec.), nos. 46144/99 and Others, 3 May 2001.

<sup>7</sup>. October 2019

<sup>8</sup>. Par. 195 of the *Burmych* judgment.

<sup>9</sup>. Notes for the 1302<sup>th</sup> (DH) meeting.

- the requirement of securing enforcement of domestic court decisions that still remain enforceable;
  - the obligation to ensure payment of default interest to safeguard the monetary value of the domestic awards, and,
  - the need to ensure adequate and sufficient compensation for non-pecuniary damage and costs and expenses.
16. The *ad hoc* mechanism should also ensure a procedure for verification of claims and speedy administration of payments.
17. In addition the Committee stressed that such a mechanism must be provided with the necessary resources in order to carry out its functions. Thus the authorities should ensure that necessary staff and administrative resources are provided and that necessary budgetary allocations are made.

b) The long-term solution and the necessity of a root cause analysis

18. The necessity of ensuring the non-repetition of the past failures also calls for a series of more complex measures to ensure a long term solution so that in the future domestic judgments rendered against the State, or State-owned or controlled entities, are enforced automatically without any undue delays, excessive formalities or obstacles.
19. So far, apart from an indication that the Cabinet of Ministers and Ministry of Justice will elaborate an action plan to that end, the authorities have, however, not submitted any new information on this issue.
20. In its last decision the Committee thus expressed concern over this situation as it is imperative that the work on an ad-hoc solution operates in parallel with the efforts to secure a long-lasting solution to the problem.<sup>10</sup>
21. The Committee noted in this context the necessity of a detailed analysis of the root causes of the problems.
22. Work on such an analysis on the basis of available, up to date factual information was thus engaged rapidly after the meeting with support from the Human Rights Trust Fund (“HRTF”) – see also below.
23. The Committee indicated that this expert analysis should incorporate a legal assessment of the substantive and procedural problems already identified in the Court’s judgments and in the execution process before the Committee. It should also include, *inter alia*, statistical data relating to judgments delivered against the State (i.e. number and types of unenforced judgments, the types of cases awaiting enforcement, the types of obligations - monetary or in kind - arising from these judgments, enforcement and recovery rates). Furthermore, it should address the issue of simplification of the process of execution of judgments delivered against the State in the future, having regard to the case-law of the Court.

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<sup>10</sup>. After delivery of the *Burmych* judgment the Court keeps striking out new similar applications (more than 300 cases as of June 2018).

c) Draft law 2018 in response to the *Burmych* judgment<sup>11</sup>

24. In reply to the Committee's decision of December 2017 the Intergovernmental Working Group prepared a draft law, which was submitted to the Parliament in June 2018 to allow the *ad hoc* solution of the situation of the applicants within the *Burmych and Others* group of cases and amending the 2006 Law on "Execution of the judgments of the European Court of human rights", to clarify that the *Burmych* judgment falls within its scope. Among relevant proposals figure:

- a procedure for *disseminating information* to the applicants, including creditors residing on territories outside control of the authorities (i.e. Donetsk and Lugansk regions and Crimea), as regards the *ad hoc* solution, in particular publication of an announcement on the official website of the Ministry of Justice and in the official journal;
- a procedure for the *verification* of the applicants' claims by bailiffs, as well as a procedure and a time-limit for debt payment by the Central Executive Authorities;
- a *priority order for enforcement* of the court's judgments would be introduced: 1) pension, social payments, compensation for damage caused by injury or other health impairments; 2) labour disputes; 3) other judgments;
- a procedure for *replacement of obligations in kind* by its monetary equivalent by the Bailiffs Service if they are not enforced for more than 2 months by the debtor. A supervisory Commission on the implementation of the court decisions against the State shall be established with the Ministry of Justice for these purposes;
- a procedure for the *determination of the outstanding judgment debt* and the amount of compensation *for non-pecuniary damage* with respect to each applicant (10% of the outstanding debt, but not more than the amount of the minimum salary<sup>12</sup> if the enforcement is delayed for more than 15 months);
- a six month *time-limit for filing claims* and compensation under this mechanism for the judgments delivered before its entry into force, and three months if they are delivered following its adoption; if a duly notified creditor doesn't claim the amount of compensation within one year, the unclaimed amounts shall be transferred to the state budget;
- an adjustment of the state budget accordingly to allow for the payment of claims;
- as regards moratoriums on the forced realization of the State property and the fuel and energy enterprises, an exemption would be introduced. It would allow payment of the arrears arising from the execution of Court's judgments and the domestic courts' decisions within the framework of the Law "On State Guarantees Concerning Execution of Judicial Decisions".

3. HRTF "Supporting Ukraine in the execution of judgments of the European Court of Human Rights" project

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<sup>11</sup>. [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=64316](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=64316).

<sup>12</sup>. 3 723.00 UAH ( approx. 115 EUR) as on 17 October 2018.

25. In the light of the Committee's assessments, the Council of Europe launched a special HRTF project in 2018 in order to assist the authorities in defining rapidly a common vision of the root causes of the present problem, establish the solutions required and implement them within the deadline set by the Court.
26. The project is being implemented in Ukraine, in co-operation with Ukrainian counterparts – the Government Agent before the European Court of Human Rights, the Parliamentary Sub-Committee on the Execution of Judgments of the European Court of Human Rights, and the Supreme Court. The project is managed by the Justice and Legal Co-Operation Department of the Directorate General Human Rights and Rule of Law, in close cooperation with the Execution Department. One of the objectives of this project is to help the authorities to deliver the thorough expert analysis on the basis of updated factual information to identify all root causes.

## II. Overview of the execution process in the *Zhovner/ Ivanov* group

### A. Individual measures

27. According to Article 46 of the Convention, the respondent State has an obligation, beyond the payment of just satisfaction, to adopt under the Committee's supervision individual measures with a view to ensuring that the injured party is put, as far as possible, in the same situation as he/she enjoyed prior to the violation of the Convention (*restitutio in integrum*). In context of failure to enforce a domestic judgment, *restitutio in integrum* cannot be achieved unless and until the domestic judgment is fully enforced.

#### 1. Before the *Ivanov* pilot judgment

28. Prior to delivery of the *Ivanov* pilot judgment in 2009, the Court awarded pecuniary or/and non-pecuniary damage under the Article 41 on a case by case basis. Whereas in the first judgments the Court itself in general awarded the outstanding judgment debt with interest/indexation as part of pecuniary damage, it rapidly started to follow the practice developed in cases against other countries of limiting itself to simply insisting on the speedy execution of the domestic judgment at issue, at least where the State's outstanding obligation to enforce the domestic judgment was not in dispute.<sup>13</sup> Accordingly, the Court considered that, if the Government were to pay the remaining debt owed to the applicant under the domestic judgment, it would constitute full and final settlement of the claim for pecuniary damage, and the Court thus dismissed claims for pecuniary damage. In the other cases<sup>14</sup> the Court continued to consider that the Government should pay the applicant the unsettled judgment debt (including inflation loss, if requested by the applicant) by way of compensation for pecuniary damage and awarded both pecuniary and non-pecuniary damage.

#### 2. After the *Ivanov* pilot judgment

29. After resuming examination of *Ivanov-type* cases in 2012 the Court adopted a unified approach as regards just satisfaction. It started to award the applicants, in respect of pecuniary and non-pecuniary damage, EUR 1,500 for delays of up to three years and

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<sup>13</sup>. See, for example, *Sikorska v. Ukraine*, 34339/03, final 06/09/2007.

<sup>14</sup>. See, for example, *Derkach v. Ukraine*, 34297/02, final 06/06/2005.

EUR 3,000 for delays exceeding three years, stressing that the respondent State has an outstanding obligation to enforce the decisions which have not been enforced.<sup>15</sup>

30. From 20 June 2013 the Court adopted a policy<sup>16</sup> of awarding fixed-rate sums of EUR 2,000 for pecuniary and non-pecuniary damage. As regards pecuniary damage, it also held that “the respondent State has an outstanding obligation to enforce the judgments which remain enforceable”.

### 3. State of affairs at the time of adoption of the *Burmych* judgment in 2017

31. In some cases, information relating to the payment of just satisfaction and, where applicable, the enforcement of domestic judicial decisions, is still missing (see the Appendix I to the memorandum). From the various information received in these individual cases, it appears that a number of the domestic judgments still remain unenforced without explanation, despite the repeated calls of the Committee to ensure their full enforcement. Information as to the payment of just satisfaction is also still lacking in some cases.<sup>17</sup>

### 4. After the *Burmych* judgment in 2017

32. On 12 October 2017, the Grand Chamber delivered its judgment in the *Burmych and Others* case. It decided to strike the *Ivanov* follow-up applications (12,148 cases) out of its list of cases and found that the grievances raised in these applications had to be resolved in the context of the general measures to be introduced by the authorities at national level. It referred to the requirements on execution of the *Ivanov* pilot judgment. It suggested the need for provision of appropriate and sufficient redress for the Convention violations to be introduced at the domestic level, subject to the supervision of the Committee.
33. In December 2017 the Ukrainian authorities were urged by the Committee to introduce a targeted mechanism at domestic level to provide redress to all applicants with valid complaints under the Convention in the *Burmych* group (see paragraph 13 of this Memorandum for more details as regards *an ad-hoc mechanism*).

## **B. General measures**

### 1. 2001: First cases before the CM

34. The problem of non-enforcement of the domestic judgments in Ukraine was first raised before the Court as long ago as in 1999 in the case of *Kaysin and Others against Ukraine*,<sup>18</sup> which was declared admissible. It was later struck out from the Court’s list of cases on 3 May 2001, following a friendly settlement reached by the parties. Although the judgment does not establish any violation, it nonetheless gave rise to a careful study of the problem of non-execution of judicial decisions in Ukraine by an expert group with participation of relevant authorities. This first study showed the need for adoption of administrative and legislative changes with a view to preventing situations similar to that at issue in the case of *Kaysin and Others*. Stress was in particular laid on the necessity of reinforcing, on the one hand, the State’s civil liability and, on the other, the disciplinary and criminal responsibility of the State officials, in cases of non-compliance with domestic court decisions. These

<sup>15</sup>. See, for example, *Kharuk and Others v. Ukraine*, 703/05 , final 26/07/2012.

<sup>16</sup>. See, for example, *Pysarskyy and Others v. Ukraine*, 20397/07, final 20/06/2013.

<sup>17</sup>. See for more details : <https://www.coe.int/en/web/execution/payment-information>.

<sup>18</sup>. *Kaysin and Others against Ukraine* (No. 46144/99).



conclusions were supposed to be taken into account in the on-going reform of the Ukrainian legal system at that time.

## 2. 2004: The first judgment on the merits

35. In 2004 the Court established the first substantive violation of several provisions of the Convention concerning non-enforcement of domestic court decisions in the case of *Zhovner against Ukraine*.<sup>19</sup> Violations found by the Court in subsequent cases concerned, *inter alia*, non-enforcement of domestic court decisions related to payment of salaries and allowances to employees of various public authorities (educational institutions, armed forces, the police / the Ministry of Interior, the State Security Service, prisons, courts, enforcement authorities, the Finance Ministry, the Tax Police, the government, village councils and municipal authorities, etc.) and State-owned enterprises (mine companies, “Atomspetsbud”, other State companies).

36. Among the reasons invoked for non-enforcement of judicial decisions were:<sup>20</sup>

- the *lack of funds* on the debtors' accounts;
- the *impossibility of attaching any property of the State* or of bankrupt companies owned by the State according to the 2001 Moratorium on the Forced Sale of Property;
- the impossibility of attaching any property located in the Chernobyl area without the State's special authorization, previously denied; and
- more generally, the lack of the appropriate enforcement procedures.

## 3. 2007: CM's assessment of the general root causes

37. In order to assist the Committee and the Ukrainian authorities in reflection on the underlying problems the Secretariat prepared its first Memorandum on the non-enforcement of domestic judicial decisions in Ukraine<sup>21</sup> which was issued and declassified at the 997th meeting (DH) in June 2007. The Memorandum took stock of the current situation in each area of concern and pointed out the issues that remained to be considered with a view to ensuring Ukraine's compliance with the European Court's judgments.

38. The Memorandum identified several major flaws where the problems related to the practice of enforcing domestic court decisions rendered against public authorities or State-owned companies in Ukraine take their root in:

- lack of appropriate budgetary financing for enforcement of judgments against public authorities or State-owned companies;
- complex legal rules for seizure and attachment of state-owned assets, including State accounts, which in addition are not effectively applied in practice;
- lack of appropriate and effective regulations ensuring effective compensation for delays;
- lack of any effective liability (criminal, administrative, disciplinary or civil) of civil servants for non-enforcement of court decisions and lack of any liability of bankruptcy and liquidation administrators and trustees for such failure to comply with court decisions;

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<sup>19</sup>. *Zhovner against Ukraine* (No. 56848/00), judgment of 29/06/2004.

<sup>20</sup>. See Notes of the 940<sup>th</sup> CM DH (October 2005).

<sup>21</sup>. CM/Inf/DH(2007)30rev.

- inefficient State Bailiffs' service.

39. The Memorandum focused on a number of avenues that appear to be of particular interest in the on-going search for a comprehensive resolution of the problem:

- improvement of budgetary procedures and better implementation of budget decisions to ensure the existence of necessary funds;
- ensuring effective compensation for delays (indexation, default interest, specific damages, possibility of reinforcing the obligation to pay in case of delays);
- increased recourse to judicial remedies to solve disputes and to control bailiffs;
- ensuring effective liability of civil servants for non-enforcement;
- development of existing rules for compulsory execution, including improved procedures for seizure of State assets;
- increasing the efficiency of Bailiffs, who are solely responsible for execution.

#### High Level Round Table

40. On 21-22 June 2007 a High Level Round Table on non-enforcement of domestic judicial decisions in member States<sup>22</sup> took place in Strasbourg with the active participation of the Ukrainian authorities (including the Deputy Prosecutor General, the Deputy Minister of Justice, the Deputy Head of the Department for State Budget of Ministry of Finance, the Representative of the Office of the Government Agent before the Court, the Deputy Head of the State Bailiffs' Service).

41. The importance of rapidly pursuing the reform work was stressed in order to fully resolve the above-mentioned problems, notably through the legal and regulatory framework and introduction of remedies.

*As regards the legal and regulatory framework preventing non-execution:*

- ensuring a coherent legal framework and/or coherent practices for the control and restitution of property respecting the requirements of the Convention;
- improving budgetary planning, notably by ensuring the compatibility between the budgetary laws and the State's payment obligations;
- proper control over the use of the budgetary funds by the authorities responsible for payments;
- providing for specific mechanisms for rapid additional funding to avoid unnecessary delays in the execution of judicial decisions in case of shortfalls in the initial budgetary appropriations;
- setting up, where appropriate, a special fund or special reserve budgetary lines, to ensure timely compliance with judicial decisions, with a subsequent possibility of recovering from the debtor the relevant sums together with default interest;
- ensuring the individuals' effective access to execution proceedings by clearly identifying the authority responsible for execution and simplifying the requirements to be fulfilled by the execution documents;

*As regards domestic remedies in case of non-execution:*

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<sup>22</sup>. CM/Inf/DH(2007)33.

- introducing, either in budgetary laws or in other laws, a general obligation to automatically compensate for delays in execution of judicial decisions through appropriate default interest at a reasonable rate (e.g. in line with the Central Bank's marginal lending rate);
  - ensuring effective civil liability of the State for damages arising from the non-execution of domestic judicial decisions, which are not compensated by the default interest and providing, in appropriate cases, for the possibility of recovering awards made from the state agents responsible;
  - guaranteeing the existence of effective procedures capable of accelerating the execution process leading to full compliance with the judicial decision;
  - providing for increased recourse to money penalties and, where appropriate, the automatic increase of those money penalties when the authority concerned continues to delay execution;
  - improving the personal responsibility of state agents in case of deliberate non-execution through efficient penalties or fines;
  - further developing central procedures for the freezing of accounts held by debtor authorities in order to secure the honouring of payment obligations, including the possibility of freezing also the accounts of authorities subordinate to the debtor's authority;
  - setting up or improving procedures and regulations allowing the seizure of state assets which are manifestly not necessary for the fulfilment of the missions of the authorities concerned and, where appropriate, drawing up necessary inventories;
  - providing the bailiffs with sufficient means and powers so as to allow them to properly ensure, where appropriate, the enforcement of judicial decisions;
  - strengthening the individual responsibility (disciplinary, administrative and criminal where appropriate) of decision makers in case of abusive non-execution and providing the responsible state authorities with the necessary powers to that effect;
42. The Ukrainian authorities were encouraged to give appropriate follow-up to the Conclusions adopted at that High Level Round Table.

4. 2007 CM's assessment of a sector-specific approach<sup>23</sup>

43. The Ukrainian authorities had chosen to implement sector-specific approaches to resolve the funding problems at the basis of the present problems, awaiting a more general solution. These measures were positively assessed by the Committee in 2007.<sup>24</sup> As regards the education sector, state mines (coal industry employees), and a special situation in the Chernobyl area (Atomspetsbud subgroup concerning impossibility to attach any property in the Chernobyl zone), the respective Ministries developed several special sector plans to resolve the problem of arrears, the necessary funds were allocated in the state budget and then paid in full between 2005-2007.

5. 2008: First Interim resolution<sup>25</sup>

44. In its first Interim Resolution CM/ResDH(2008)1 the Committee noted progress in the sector-specific measures adopted by Ukrainian authorities.

<sup>23</sup>. The follow up according to the debtor/defendant involved in the domestic proceedings.

<sup>24</sup>. See decisions of the 1007<sup>th</sup> CM DH (October 2007) and 1013d CM DH (December 2007).

<sup>25</sup>. Committee of Ministers' Interim Resolution [CM/ResDH\(2008\)1](#) (March 2008).

45. At the same time the Committee recognized that the non-enforcement of domestic judicial decisions constituted a structural problem in Ukraine and underlined the Convention organs' consistent position that, while improving enforcement proceedings and/or their particular aspects is important, it is incumbent on the State to execute spontaneously all judicial decisions delivered against public authorities, without compelling the claimants to go through enforcement proceedings, and thus irrespective of the availability of funds.

6. 2009: The pilot judgment

46. As the Committee's attempts to find a solution to the problem with the Ukrainian authorities yielded no tangible result and the influx of new similar applications was increasing, in 2009 the Court adopted its pilot judgment in *Yuriy Nikolayevich Ivanov* against Ukraine.<sup>26</sup>

47. The Court noted that the delays had been caused by a variety of dysfunctions in the Ukrainian legal system and a combination of factors, including:<sup>27</sup>

- the lack of budgetary allocations;
- the bailiffs' omissions;
- shortcomings in the national legislation (including the introduction of bans on the attachment and sale of property belonging to State-owned or controlled companies).

48. Whilst the Court noted with satisfaction that the adoption of measures in response to the structural problems of prolonged non-enforcement and the lack of domestic remedies had been thoroughly considered by the Committee in cooperation with the Ukrainian authorities, it considered that Ukraine had demonstrated an almost complete reluctance to resolve the problems at hand.

49. The emphasis put in the pilot judgment on the necessity introduction of effective remedies is dealt with below (see E).

**C. The special problem of moratoriums laws**

50. Several specific remarks can be made as to the moratoriums on enforcement and extension of State liability for State-owned or controlled legal entities:

- a) The approach taken by the Court in its case-law with regard to the State-owned or controlled companies related to the moratorium imposed an obligation on the State for the enforcement of judgments against the legal entities where the State held more than 25% of shares. The case-law also established that the State was liable for the activities of separate legal entities in the event that it exercised effective managerial, financial or administrative control over operations of a particular legal entity<sup>28</sup> or even in the course of its liquidation.<sup>29</sup> It was also liable for such companies in the event it gave direct subsidies to payment of salaries and restructuration of the companies' debts.<sup>30</sup>

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<sup>26</sup>. Pilot judgment in the case of *Yuriy Nikolayevich Ivanov* against Ukraine (no. 40450/04) , judgment of 15/10/2009, final on 15/01/2010.

<sup>27</sup>. See §§ 83-84 of the judgment.

<sup>28</sup>. *Mykhaylenko and Others v. Ukraine*, §46, nos. 35091/02; *Sokur v. Ukraine*, §33, no. 29439/02, 26 April 2005.

<sup>29</sup>. *Fuklev v. Ukraine*, no. 71186/01, §68, 7 June 2005.

<sup>30</sup>. *Romashov v. Ukraine*, no. 67534/01, § 41, 27 July 2004.

- b) The Court also established that the State is accountable for the debts of enterprises owned and controlled by its local or municipal authorities to the same extent as it is accountable for the debts of the State-owned enterprises.<sup>31</sup>
- c) As regards private debtors included in the Register of fuel and energy enterprises taking part in the procedure for recovery of debts pursuant to the 2005 Act on measures designed to ensure the stable functioning of fuel and energy enterprises,<sup>32</sup> according to the Court, the State is only responsible for the period of non-enforcement when the debtor remained in the Register. The same applies to Private commercial banks in respect of which the National Bank applied a moratorium on satisfaction of its creditors' claims during insolvency proceedings. The State is likewise responsible only for the period of non-enforcement when the enforcement proceedings were suspended.<sup>33</sup> The State also remains liable for debts of its companies which are undergoing bankruptcy proceedings and are under liquidation proceedings, which has not yet terminated.<sup>34</sup>

#### **D. Note on the State's freedom to decide the level of social benefit**

- 51. On 3 June 2014 the Court declared inadmissible the application in *Velikoda v. Ukraine*.<sup>35</sup> The applicant alleged a violation of Articles 6 and 13 of the Convention and Article 1 of Protocol No. 1 on account of the fact that, following a final judgment in the applicant's favour ordering the national authorities to pay a social benefit, legislation<sup>36</sup> that entered into force subsequently drastically reduced for all beneficiaries the amounts of the social payments in question for the future. The Court held, among other things, that the relevant legislative measures were not unreasonably disproportionate having been adopted as a result of economic policy considerations and the financial difficulties faced by the State.

#### **E. Effective remedy**

##### 1. Exhaustion of domestic remedies and automatic execution of judgments against the State

- 52. The Court's case-law clearly establishes that in a situation of a State debtor or State-owned or controlled company compliance should be automatic and there should be no need to exhaust domestic remedies, for example, to complain of the Bailiffs' inactivity or inactivity of the State appointed liquidation commission in enforcement proceedings.<sup>37</sup> This is in contrast to the situation in which the debtor is a private party; as such a party would be required to exhaust domestic remedies against the Bailiffs.
- 53. There is also no obligation on the applicant's part to re-submit a writ of execution to the Bailiffs' if they have refused enforcement citing lack of funds of the State-owned company.<sup>38</sup>

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<sup>31</sup>. Otychenko and Fedishchenko v. Ukraine, nos. 1755/05 and 25912/06, § 26, 12 March 2009, Nuzhdyak v. Ukraine, 16982/05, § 26.

<sup>32</sup>. Konosh v. Ukraine (dec.) and Kukis v. Ukraine (dec.), nos. 24466/07 and 11063/09, 10 May 2012.

<sup>33</sup>. *Kryshchuk v. Ukraine*, no. 1811/06, 19 February 2009.

<sup>34</sup>. *Polovoy v. Ukraine*, no. 11025/02, 4 October 2005.

<sup>35</sup>. *Velikoda and Others (dec.)*, no. 43331/12, 3 June 2014..

<sup>36</sup>. The Cabinet of Ministers' Resolution no. 745 of 6 July 2011.

<sup>37</sup>. See Romashov, cited above, § 31, Fuklev v. Ukraine, cited above, § 76, Yuriy Nikolayevich Ivanov v. Ukraine, 40450/04, §48.

<sup>38</sup>. *Ishchenko and Others v. Ukraine*, nos. 23390/02, 11594/03, 11604/03 and 32027/03, 8 November 2005, § 22; *Kolosenko v. Ukraine*, no. 40200/02, § 13. 26 April 2007.

In addition, the applicant is not obliged to replace one State debtor with another in case of debtor change or change in the legal status of a State debtor.<sup>39</sup>

54. It is incumbent on the State to execute spontaneously all judicial decisions delivered against public authorities, without compelling the claimants to go through enforcement proceedings, and thus irrespective of the availability of funds.<sup>40</sup>

## 2. CM and Court's guidance as regards the remedy

55. In 2009 in the pilot judgment the Court found that there was no remedy at national level satisfying the requirements of Article 13 of the Convention.

56. The Court highlighted the structural nature of the problem and set a specific deadline for the setting-up of a domestic remedy in respect of the excessive length of enforcement proceedings. The Court also indicated that specific reforms in Ukraine's legislation and administrative practice should be implemented without delay. The Court further invited the respondent State to settle on an ad hoc basis all similar applications lodged with it before the delivery of the pilot judgment (there were 1,600 such repetitive applications at the time) and decided to adjourn the examination of similar cases.

57. During its 1108<sup>th</sup> meeting (DH) in March 2011,<sup>41</sup> the Committee called upon the Ukrainian authorities to give priority to the adoption of the domestic remedy as required by the pilot judgment within the new deadline extended by the Court, 15 July 2011.

58. The Committee stressed that in order to be considered as effective, such a remedy should meet the core requirements of the Convention, namely that:

- no-one should be required to prove the existence of non-pecuniary damage as it is strongly presumed to be the direct consequence of the violation itself;
- compensation should not be conditional on establishing fault on the part of officials or the authority concerned as the State is objectively liable under the Convention for its authorities' failure to enforce court decisions delivered against them, within a reasonable time;
- the level of compensation must not be unreasonable in comparison with the awards made by the European Court in similar cases;
- adequate budgetary allocations should be provided so as to ensure that compensation is paid promptly.

59. Given that the measures called for by the Court in its pilot judgment were not adopted within the deadline set, in February 2012 the Court decided to resume the examination of the frozen applications raising similar issues (at that time there were approximately 2,800 such applications against Ukraine).

## 3. The attempts to introduce an effective remedy

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<sup>39</sup>. *Vasylyev v. Ukraine*, no. 10232/02, §§ 24-31, 21 June 2007, and *Chuykina v. Ukraine*, 28924/04, final 13/04/2011.

<sup>40</sup>. *Yuriy Nikolayevich Ivanov v. Ukraine*, no. 40450/04, § 24, *Kontsevych v. Ukraine*, no. 9089/04, § 36.

<sup>41</sup>. 1108<sup>th</sup>

a) *2012: New remedy law*

60. On 5 June 2012 the Ukrainian Parliament, in response to the numerous requests by the Committee adopted the remedy law “On State guarantees concerning execution of judicial decisions”.
61. It introduced a new specific procedure for the execution of domestic judicial decisions delivered against the State which were rendered after its entry into force; pecuniary debts were to be met by the State Treasury within certain deadlines if the debtor (State bodies, State companies, or legal entities whose property could not be subjected to a forced sale within enforcement proceedings) failed to pay them in due time. The law also provided for automatic compensation if the authorities delayed payments under this special procedure.
62. At its 1150<sup>th</sup> meeting (DH) in September 2012, the Committee noted that the above-mentioned law, which would enter into force on 1 January 2013, could constitute an effective domestic remedy in cases of non-enforcement of domestic judicial decisions which will be taken after the entry into force of the said law, provided that the outstanding questions identified in the Memorandum CM/Inf/DH(2012)29 were addressed, including the allocation of sufficient budgetary means.

b) *2013: Questions as regards new remedy law*

63. The Committee, at its 1164<sup>th</sup> meeting (DH) in March 2013, raised<sup>42</sup> a number of concerns in light of new developments, namely that the remedy law did not cover the problem of non-enforcement of judgments already rendered at the time of the entry into force of the new law (i.e. before 1 January 2013) and the authorities’ failure to enforce a decision of non-pecuniary nature. In addition, the Committee reiterated that questions persisted, most notably as regards the absence of adaptation of other legislation (in particular the moratorium laws) and the effectiveness of the measures taken to ensure execution within a reasonable time in all situations, notably because of the inflexibility of the new system, including the level of compensation.

c) *2013: Amendments to the remedy law*

64. In response to the concerns raised, the Ukrainian Parliament adopted legislative amendments setting up a remedy in respect of the non-enforcement of domestic judicial decisions rendered before 1 January 2013. In this respect, at its 1186<sup>th</sup> meeting (DH) in December 2013 the Committee invited the Ukrainian authorities to take all the necessary measures to ensure the effective implementation of this remedy, and encouraged them to launch an appropriate information campaign on this new remedy for the attention of the persons concerned.
65. The Committee further invited the authorities to provide clarifications on all the outstanding issues as regards, in particular, the way in which the distribution of available funds would be assured between the beneficiaries of different order groups; the relationship between the remedy legislation and other special laws concerning different moratoria; the organisation of a public awareness-rising campaign amongst the creditors concerned in order to incite them

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<sup>42</sup>. Information document (CM/Inf/DH(2013)11).

to benefit from the new legislation; and the availability of budget funds needed to finance the new remedy.<sup>43</sup>

66. As regards specifically judicial decisions delivered after 1 January 2013, the Committee invited the authorities to submit an assessment on the impact in practice of the new legislation since its entry into force.

d) *2015: new remedy found ineffective*

67. On 3 February 2015 the Court gave notice to the Ukrainian Government of *Filipov and 3 other applications* (no. 35660/13),<sup>44</sup> where the applicants complained that the remedy introduced by the 2012 Law was ineffective.

68. Subsequently, at its 1230<sup>th</sup> meeting (DH) in June 2015 the Committee concluded that the remedy introduced in 2013 appeared not to have solved the problem of non-enforcement or delayed enforcement of domestic judicial decisions.<sup>45</sup> The main immediate impediment to its effective implementation was the lack of sufficient budgetary allocations, a fact which was recognised by the Ukrainian authorities themselves.<sup>46</sup>

**F. 2016: « Three-step strategy » for a global solution**

69. Despite several attempts made by the Ukrainian authorities, in particular the introduction of a remedy in 2013, the measures taken so far have not been successful in solving the problem. Consequently, the influx of applications lodged with the Court has continued to grow.<sup>47</sup>

70. On 8 April 2016, the Special Advisor of the Secretary General on Ukraine at that time, Mr Christos Giakoumopoulos, addressed a letter to Minister of Justice of Ukraine, Mr Pavlo Petrenko, in which he conveyed the Committee's concerns on account of the lack of progress in taking the necessary measures for the execution of these cases and proposed to organise a consultation meeting with the relevant authorities as well as with other interested international organisations, such as the International Monetary Fund and the World Bank with a view to identifying avenues to solve this problem.<sup>48</sup>

71. The Ukrainian authorities responded positively to this request. Consequently, a meeting took place on 12 May 2016 in Kyiv with the participation of the Vice-Ministers of Justice, Finance and Foreign Affairs of Ukraine, the Permanent Representative of Ukraine before the Council of Europe, the representatives of the Office of the Government Agent before the European Court and of the International Monetary Fund.

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<sup>43</sup>. For more details, see the notes prepared for the 1186<sup>th</sup> meeting (December 2013) (DH).

<sup>44</sup>. Struck out in the *Burmych* judgment.

<sup>45</sup>. In addition in its communication of 26 May 2015, the NGO "Ukrainian Helsinki Human Rights Union (UHHRU)" pointed out that the amount allocated in 2015 in the State budget for the purpose of repaying the debts under both the remedy law and the just satisfaction awarded by the Court – UAH 150,000,000 – represented only 1% of the total debt. It further contended that the real amount of the debt was much higher than the one indicated by the authorities. [DH-DD\(2015\)595](#)

<sup>46</sup>. Notes for the 1230<sup>th</sup> DH meeting (June 2015). and Notes for the 1259<sup>th</sup> DH meeting, June 2016: As of June 2016 there were some 120,000 holders of unenforced judicial decisions waiting to receive compensation under the remedy law. The estimated amount of debt relating to the entirety of these decisions was around UAH 2.5 billion (around EUR 89 million).

<sup>47</sup>. Notes for the 1259<sup>th</sup> DH meeting on 7-9 June 2016.

<sup>48</sup>. DH-DD(2016)575.



72. As a result of these discussions and given that the Ukrainian authorities were not aware of the exact amount of debt that the State owes to the holders of domestic court decisions, during the Committee's 1259<sup>th</sup> meeting (DH) in June 2016 the Ukrainian authorities agreed to follow a so-called "three-step strategy":

- the first step that needed to be taken was to calculate the amount of debt arising out of unenforced decisions in Ukraine;
- the second step would be to introduce a payment scheme under certain conditions or containing alternative solutions to ensure that unenforced decisions were enforced;
- the third step would be to make the necessary adjustments in the State budget so that sufficient funds were made available for the effective functioning of the above-mentioned payment scheme, as well as the introduction of necessary procedures to ensure that budgetary constraints were duly considered when passing legislation<sup>49</sup> so as to prevent situations of non-enforcement of domestic court decisions rendered against the State or State enterprises.

73. Despite numerous assurances from the Ukrainian authorities, it does not appear that they put into effect the "three-step strategy", nor have they provided a timetable for its implementation. Clear information as to the scope of the problem was still lacking.

#### **G. Other avenues to help resolving the issue of non-enforcement**

##### **1. Alternative mechanism of enforcement of judicial decisions (bond-scheme)**

74. In April 2015, the Ukrainian authorities indicated that a new alternative mechanism for the enforcement of judicial decisions was being developed in Ukraine. From the information provided it appeared that the essence of this mechanism consisted in the transformation of debts from the non-enforced judicial decisions (the enforcement of which was guaranteed by the State and the European Court's judgments, accrued as of 1 January 2015 (totalling up to 7 544 562 370 UAH)) into treasury bonds payable over a period of seven years. It was envisaged that only a small part of the debt would be paid in cash (up to 10%), based on the limited funds provided to this end by the Law "On the 2015 State Budget".

75. The envisaged scheme was provided for in Article 23 of the Law "On the 2015 State Budget"<sup>50</sup> and required the adoption of special regulations which needed to be additionally developed.

76. At its 1230<sup>th</sup> meeting (DH) in June 2015 the Committee expressed its concern that this scheme, if not carefully designed, could run contrary to the authorities' efforts to introduce

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<sup>49</sup>. See for example *Velikoda v. Ukraine* cited above.

<sup>50</sup>. This Article reads as follows: The Cabinet of Ministers shall have the right, according to the procedure established by it, to restructure the current debt in the amount of up to 7.544.562.370 UAH as of 1 January 2015 under the judicial decisions the enforcement of which is guaranteed by the State, and under the judgments of the European Court on Human Rights delivered following the examination of cases against Ukraine, by means of partial payment from the funds provided by the present Law to this end, in the amount of up to 10% of the sum indicated in the above-mentioned decisions, and the issuance for the outstanding amount of financial treasury bills (bonds) payable up to seven years, with the delayed payment of two years, with the interest rate of 3% per annum. The right to issue such bills (bonds) shall be given to authorities in charge of the treasury service of the budgetary funds.

an effective remedy for the present cases. The Committee therefore requested further information on the details of the scheme. Lastly, the Committee stressed that the envisaged scheme could not, in any case, be applied to the payment of the just satisfaction awarded by the Court, which should be done exclusively according to the terms set by the Court.

77. Nevertheless, the authorities subsequently indicated that this scheme was not applicable in practice and recalled that the total amount of debt associated with the judicial decisions that were supposed to be converted into bonds was around UAH 7.5 billion (around EUR 267 million according to the current exchange rate).<sup>51</sup>

## 2. Development of judicial control over the execution of judgments process

78. According to the amendments to the Constitution of Ukraine of 2 June 2016 the State ensures execution of a court decision in accordance with the procedure established by law. The domestic courts control the execution of their decisions. These amendments were noted with interest by the Committee at its 1280th meeting (DH) in March 2017 and the authorities were invited to explore this avenue with a view to strengthening the role of the judiciary in the execution process.

79. A specific form of judicial control was already put in place for the courts of administrative jurisdiction by Article 267 of the Code of Administrative Justice of Ukraine, which provided the courts with a right to:

- require the State authority to submit a report on the execution;
- set a new deadline for reporting on the progress in execution, upon consideration of such report, or providing information on the outcome of the enforcement proceedings. It further permitted the imposition of a fine on the head of the state authority responsible for the execution of the decision.

80. Judicial control over the execution of judgments process in the civil and commercial jurisdictions was provided by the new procedural codes adopted on 03/10/2017. The authorities have not provided any further information as to the application of these new provisions.

## 3. Reform of the State Bailiffs Service

81. The Ukrainian authorities informed the Committee about the on-going reform of the State Bailiffs Service, the purpose of which was to introduce a mixed system of enforcement of judicial decisions engaging private bailiffs. In particular, the new legislation provided for the establishment of private bailiffs as well as strengthening of the power of the bailiffs in the course of the enforcement of the judgments. The new law "On Enforcement Procedure" came into force on 05/10/2016. They expected that this new procedure would assist in overcoming the irregularities and loopholes of the existing enforcement system and would contribute to the lowering of the number of non-enforcement complaints, being brought before the Court.

82. However, private bailiffs are not empowered to deal with enforcement of judgments against the State, State-owned or controlled entities or with regard to the State social debts

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<sup>51</sup>. Notes for the 1259<sup>th</sup> (DH) meeting June 2016.

identified in the group of judgments of *Ivanov / Zhovner*. Thus, these changes will not have a direct impact on the reform of the system of enforcement of judgments against the State.<sup>52</sup>

### III. **Current domestic system of enforcement of judgments against the State**

83. A person seeking enforcement against the State<sup>53</sup> shall apply to the State Treasury Service, which enforces judgments on a first-come basis. Requests for enforcement shall be lodged within 3 years after the judgment becomes final.<sup>54</sup> In case of omission, the time limit for lodging a request may be renewed by the court. The judgment is enforced within the limits of budgetary allocations and in case of lack of funds – in accordance with the relevant budgetary program to ensure execution of judgments. If available, the funds shall be transferred to the claimant within 3 months after receipt of all documents.
84. In case of execution of judgments against State-owned companies and legal entities protected from enforcement by moratoriums on sale of property, the claimant applies to the State Bailiff Service. If a judgment is not executed within 6 months after initiation of enforcement proceedings, execution shall be ensured by a special budgetary program through the funds made available to the State Treasury. The bailiff shall transfer the enforcement writs to the Treasury in case of a moratorium or lack of funds within 10 days after such circumstances have been revealed through the enforcement action. The funds, if available, shall be transferred to the claimant within 3 months after receipt of all abovementioned documents required for money transfer.<sup>55</sup> The bailiff shall inform the applicant on the procedure of withdrawal of funds and ensure their transfer within 10 days.
85. The Treasury shall submit to the Ministry of Finance proposals on amendments to the State budget in case of insufficient allocations. Claimants are entitled to compensation in the amount of annual interest rate of 3% of the unpaid sum if enforcement is delayed.
86. The law prescribes at least 30 different reasons for return, suspension or termination of enforcement proceedings.

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<sup>52</sup>. Notes for the 1280<sup>th</sup> DH meeting.

<sup>53</sup>. State institution, State-owned or controlled company or municipal entity, i.e. against State and local budgets.

<sup>54</sup>. Such a request shall be accompanied by a writ of execution, court judgment itself, confirmation of payment to the State budget of claimed sums, if excessively paid by the claimant. It may also concern other documents. If funds are not withdrawn by the claimant within 1 year after their transfer, such funds shall be transferred back to the State budget.

<sup>55</sup>. In case of absence of all required documents to provide transfer for claimant the funds shall be transferred to the bank account of the State Bailiff Service.

IV. **Appendix 1: Summary of the main issues identified in the course of supervision process**

	Issue identified	Assessed by the Committee (Reference to the CM's meeting/Notes)	Action taken by the authorities	Reassessment by the Committee (Reference to the CM's meeting/Notes)
1.	Lack of appropriate budgetary financing for enforcement of judgments against public authorities or State-owned companies	Notes of the 940th meeting (October 2005) Memorandum 997th meeting (June 2007)	<p>On 10/10/2005 the authorities provided a draft law dealing in particular with the enforcement of domestic judicial decisions within a reasonable time. At 992nd meeting (April 2007) they submitted that the Law was returned by the Government of Ukraine to the Ministry of Justice for amendments. The authorities did not provide any further information in this respect.</p> <p>In 2006 the President of Ukraine approved a number of policy papers, intended to define tasks, authorities in charge and terms with a view to eliminate problems arising from the Zhovner type of judgments:</p> <ul style="list-style-type: none"> <li>• The Action Plan for Honouring by Ukraine of Its Obligations and Commitments to the Council of Europe, approved on 20/01/2006;</li> <li>• The Action Plan for the Improvement of the Judicial System and Ensuring Fair Trial in Ukraine in Line with European Standards, approved on 20/03/2006;</li> <li>• The Concept for the Improvement of the Judiciary and Ensuring Fair Trial in Ukraine in Line with European Standards, approved on 10/05/2006;</li> <li>• The National Action Plan for Ensuring Due Enforcement of Court Decisions, approved on 27/06/2006;</li> <li>• Analysis of the main problems causing a large number of repetitive violations of the Convention.</li> </ul> <p>At the 982nd meeting (December 2006), the Ukrainian authorities indicated that following the Analysis mentioned above, the government had issued a special resolution ordering all state authorities concerned to consider it and provide the Ministry of Justice with proposals to solve or prevent similar problems. The authorities did not provide any further information in this respect.</p> <p>Alternative mechanism of enforcement of judicial decisions (bond-scheme) in 2015. The authorities subsequently indicated that this scheme was not applicable in practice. (Notes 1230th meeting (June 2015).</p>	Notes 1007th meeting (October 2007): the Committee recalled its position that the setting up domestic remedies does not dispense states from their general obligation to solve structural problems underlying violations
2.	Impossibility of attaching any property located in Chernobyl area without the State's special authorization previously denied	Notes of the 940th meeting (October 2005)	The authorities did not provide any further information in this respect.	Memorandum 997th meeting (June 2007): the Committee reiterated still complex legal rules for seizure and attachment of state-owned asserts, including State accounts, which in addition are not effectively applied in practice
3.	Impossibility of attaching any property of the State or of bankrupt	Notes of the 940th meeting (October 2005)	The authorities did not provide any further information in this respect.	Memorandum 997th meeting (June 2007): the Committee reiterated still complex legal rules for seizure and attachment of state-owned asserts,

	<b>Issue identified</b>	<b>Assessed by the Committee</b> (Reference to the CM's meeting/Notes)	<b>Action taken by the authorities</b>	<b>Reassessment by the Committee</b> (Reference to the CM's meeting/Notes)
	companies owned by the State according to the 2001 Moratorium on the Forced Sale of Property			including State accounts, which in addition are not effectively applied in practice
4.	Lack of appropriate enforcement procedures	Notes of the 940th meeting (October 2005)	At the 955th meeting (February 2006) the Ukrainian authorities indicated that an interdepartmental working group had been established within the Ministry of Justice by Government Resolution No. 784 of 31/05/2006 to examine possible administrative measures remedying the situation pending the adoption of legislative reform. The Group is in charge with assisting the Government Agent, in particular in matters related to enforcement of judgments of the European Court. The authorities did not provide any further information in this respect.	Interim Resolution CM/ResDH(2008)1(March 2008):  The Committee stressed that it is incumbent on the State to execute spontaneously all judicial decisions delivered against public authorities, without compelling the claimants to go through enforcement proceedings, and thus irrespective of the availability of funds.
5.	Lack of any effective liability (criminal, administrative, disciplinary or civil) of civil servants for non-enforcement of court decisions and lack of any liability of bankruptcy and liquidation administrators and trustees for such failure to comply with court decisions	Memorandum 997th meeting (June 2007)	The authorities did not provide any further information in this respect.	
6.	Inefficient State Bailiffs' Service	Memorandum 997th meeting (June 2007)	1280 <sup>th</sup> meeting (March 2017): Introduction of judicial control over the execution of judgments process in the civil and commercial jurisdictions in the new procedural codes adopted on 03/10/2017.  Reform of the State Bailiffs Service: the on-going reform of the State Bailiffs Service, the purpose of which was to introduce a mixed system of enforcement of judicial decisions engaging private bailiffs. The new law "On Enforcement Procedure" came into force on 05/10/2016. The authorities hoped that this new	The authorities did not provide any further information as to the application of these new provisions.  The Committee noted that private bailiffs are not empowered to deal with enforcement of judgments against the State, State-owned or

	<b>Issue identified</b>	<b>Assessed by the Committee</b> (Reference to the CM's meeting/Notes)	<b>Action taken by the authorities</b>	<b>Reassessment by the Committee</b> (Reference to the CM's meeting/Notes)
			procedure would assist in overcoming the irregularities and loopholes of the existing enforcement system and would contribute to the lowering of the number of non-enforcement complaints, being brought before the Court.	controlled entities or with regard to the State social debts identified in the group of judgments of <i>Ivanov / Zhovner</i> . Thus, these changes will not have a direct impact on the reform of the system of enforcement of judgments against the State: 1280th meeting (March 2017). The authorities did not provide any further information in this respect
7.	Lack of appropriate and effective regulations ensuring effective compensation for delays and the need to introduce an affective domestic remedy which should meet the core requirements of the Convention, following the pilot judgment	Memorandum 997th meeting (June 2007)  1108th meeting (March 2011)	On 5 June 2012 the Ukrainian Parliament, in response to the numerous requests by the Committee, adopted the remedy law "On State guarantees concerning execution of judicial decisions".	1230th meeting (June 2015) the Committee concluded that the remedy introduced in 2013 appeared not to have solved the problem of non-enforcement or delayed enforcement of domestic judicial decisions. The main immediate impediment to its effective implementation was the lack of sufficient budgetary allocations.
8.	Lack of information as to the exact amount of debt that the State owes to the holders of domestic court decisions	1259th meeting (June 2016)	The Ukrainian authorities agreed to follow so-called "three-step strategy".	1288th meeting (June 2017). Despite numerous assurances from the Ukrainian authorities, it did not appear that they put into effect the "three-step strategy", nor had they provided a timetable for its implementation. Clear information as to the scope of the problem was still lacking.

V. **Appendix 2: List of cases in which information is awaited on the individual measures (payment of the just satisfaction and enforcement of the domestic judgment)**

	<b>Application Number</b>	<b>Court Case Title English</b>	<b>Date of Definitive Judgment</b>
1.	35087/02	Sharenok v. Ukraine	06/06/2005
2.	31095/02	Shcherbakv v. Ukraine	28/06/2006
3.	39265/02	Fateyev v. Ukraine	06/12/2007
4.	19949/03	Glivuk v. Ukraine	20/12/2007
5.	903/05	Lopatyyuk v. Ukraine	17/04/2008
6.	9177/05	Skrypnyak v. Ukraine	10/10/2008
7.	37758/05	Peretyatko v. Ukraine	27/02/2009
8.	30922/05	Stadnyuk v. Ukraine	27/02/2009
9.	36772/04	Krasovskiy v. Ukraine	12/06/2009
10.	34419/06	Khmylyova v. Ukraine	18/09/2009
11.	33959/05	Tereshchenko v. Ukraine	30/10/2009
12.	28070/04	Gvozdetskiy v. Ukraine	01/03/2010
13.	30675/06	Gimadulina and Others* v. Ukraine	10/03/2010
14.	8437/06	Osokin v. Ukraine	10/03/2010
15.	4510/05	Logachova v. Ukraine	10/05/2010
16.	21231/05	Panov v. Ukraine	10/05/2010
17.	703/05	Kharuk and Others* v. Ukraine	26/07/2012
18.	15729/07	Globa v. Ukraine	19/11/2012
19.	12405/06	Varava and Others* v. Ukraine	17/01/2013
20.	27617/06	Feya, Mpp v. Ukraine	21/02/2013
21.	22722/07	Shtabovenko and Others* v. Ukraine	25/04/2013
22.	11770/03	Kononova v. Ukraine	06/06/2013
23.	42953/04	Kiselyov v. Ukraine	13/06/2013

	<b>Application Number</b>	<b>Court Case Title English</b>	<b>Date of Definitive Judgment</b>
24.	65656/11	Tsibulko v. Ukraine	20/06/2013
25.	1270/12	Moskalenko and Others* v. Ukraine	18/07/2013
26.	72631/10	Necheporenko v. Ukraine	24/10/2013
27.	10319/04	Andrianova and Others* v. Ukraine	12/12/2013
28.	40934/06	Makara and Others* v. Ukraine	12/12/2013
29.	12895/08	Khaynatskyy and Others* v. Ukraine	09/01/2014
30.	7070/04	Semyanisty and Others* v. Ukraine	09/01/2014
31.	59834/09	Shchukin and Others* v. Ukraine	13/02/2014
32.	29266/08	Vasilyev and Others* v. Ukraine	13/02/2014
33.	25663/02	Yavorovenko and Others* v. Ukraine	17/07/2014
34.	12424/06	Filatova v. Ukraine	31/07/2014
35.	36762/06	Shtefan and Others* v. Ukraine	31/07/2014
36.	22611/12	Terletskiy v. Ukraine	19/11/2015
37.	79754/12	Gorodnichenko v. Ukraine	03/12/2015
38.	11632/13	Kobylinskyy v. Ukraine	16/06/2016
39.	15712/13	Burma v. Ukraine	18/05/2017



**Awaiting information on default interest**

	<b>Application Number</b>	<b>Court Case Title English</b>	<b>Date of Definitive Judgment</b>
40.	6155/05	Kyselyova and Others* v. Ukraine	09/01/2014
41.	35995/09	Malakhova and Others* v Ukraine	12/12/2013
42.	13977/05	Vinnik and Others*v. Ukraine	07/11/2013

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\* These are grouped judgments, with multiple judgments unenforced, relating to up to 250 individual applicants in each group of cases.