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## Online Round Table On Assessing the Recommendations Proposed in the Monitoring and Evaluation Report on the functionality of the VRU Human Rights mechanism

*Organised by*

**The Parliamentary Assembly of the Council of Europe (PACE) jointly with  
Directorate General Human Rights and Rule of Law (Justice Sector Reform)**

*for Members of the Verkhovna Rada of Ukraine and staff*

## Online Conference Institutional cooperation for execution of the ECtHR judgments in Ukraine

*Organised by*

**The Parliamentary Assembly of the Council of Europe (PACE) jointly with  
Directorate General Human Rights and Rule of Law (Justice Sector Reform)**

*for Members of the Verkhovna Rada of Ukraine and staff*

**7 and 11 December 2020**

# GUIDELINES REPORT

*Report prepared by Ms Yeva Sushko, Consultant*

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## BACKGROUND

In October 2020, as a part of the Council of Europe Action Plan for Ukraine 2018 - 2021 and within the project "Further support for the execution by Ukraine of judgments in respect of Article 6 of the ECHR", PACE expert produced the Monitoring and Evaluation Report on the functionality of the Sub-Committee on the execution of judgments of the European Court of Human Rights and Alternative Dispute Resolution of the Committee on Legal Policy of the Verkhovna Rada of Ukraine.<sup>1</sup>

The Monitoring and Evaluation Report was carried out in line with PACE Resolution 1823 (2011) "National parliaments: guarantors of human rights in Europe."<sup>2</sup> and PACE Handbook for parliamentarians "National parliaments as guarantors of human rights in Europe."<sup>3</sup> and covered the period from June 2017 to June 2020. The Report assessed the functionality of the existing national mechanisms and introduced concrete recommendations to the Sub-Committee for enhancing its working efficiency.

Two online events organised on 7 and 11 December 2020, proposed to discuss the content of the Monitoring and Evaluation Report and its recommendations with Members of the PACE, Members of the Verkhovna Rada of Ukraine, Ministry of Justice, Supreme Court, Non-Governmental Organisations and international experts, dealing with the human rights issues, in order to agree on the role of each institution and define a strategy on how to effectively advance in the implementation of the ECtHR judgments through institutional cooperation.

The present Guidelines Report aims to introduce structural guiding principles, following extensive discussions during two about-mentioned online events. These Guidelines together with the recommendations proposed in the Monitoring and Evaluation Report will be used as a roadmap for further enhancement of the Parliamentary role in ensuring compliance of Ukraine with its obligations under Article 46 of the Convention and will be included in the national policy which should be developed by the Sub-Committee on the execution of judgments of the European Court of Human Rights and Alternative Dispute Resolution of the Committee on Legal Policy of the Verkhovna Rada of Ukraine in early 2021.

## ABBREVIATIONS

CM	Committee of Ministers
DEJ	Department for the Execution of Judgments, Directorate General of Human Rights and Rule of Law
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
MP	Member of Parliament (People's Deputy of Ukraine)
MoJ	Ministry of Justice of Ukraine
NGO	Non-governmental organisation
PACE	Parliamentary Assembly of the Council of Europe
PPSD	Parliamentary Project Support Division (within the Secretariat of the Parliamentary Assembly)
SCU	Supreme Court of Ukraine
VRU	Verkhovna Rada (Parliament) of Ukraine

<sup>1</sup> Monitoring and Evaluation Report, prepared by Mr Sergyi Zayets, published in 2020, available at: <https://assembly.coe.int/LifeRay/APCE/pdf/PPSD/VerkhovnaRadaJudgmentsECHR-EN.pdf>, accessed in December 2020.

<sup>2</sup> Assembly Resolution 1823 (2011) on "National parliaments: guarantors of human rights in Europe", available at <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=18011&lang=en>, accessed in December 2020.

<sup>3</sup> Donald A. and Speck A-K. (2018). National parliaments as guarantors of human rights in Europe. Handbook for parliamentarians, Parliamentary Assembly, Council of Europe. Available in Ukrainian at <http://www.assembly.coe.int/LifeRay/JUR/Pdf/Handbook/HumanRightsHandbook-UA.pdf>, and in English at <http://www.assembly.coe.int/LifeRay/JUR/Pdf/Handbook/HumanRightsHandbook-EN.pdf>, accessed in December 2020.

## INTRODUCTION

On several occasions, the PACE has highlighted that the national parliaments should play an equally important role in the execution of the ECtHR judgments as the executive and the judicial branches of the state power. Member States have accepted this central principle, and the Council of Europe has developed a solid framework for parliamentary engagement in the execution process which has been changed and improved over time.<sup>4</sup>

Several elements of parliamentary control in the process of executing the ECtHR judgments could be specified: (i) the legislative function - aimed to change, introduce, lift, or abolish the domestic legislation at the cause of the violations, (ii) the function of cooperation with the executive branch, which is in principle responsible for the implementation of the ECtHR judgments in complex, structural and systemic problems where general measures are required, (iii) the preventive function which is intended to introduce remedial measures when the violation of the Convention and the ECtHR judgment requires so, and to eliminate the root causes of violations, when those are of legislative nature.<sup>5</sup>

The ECtHR judgments bind the State as a whole.<sup>6</sup> The execution process would become ineffective or even impossible without proper engagement of the legislature, and in the situation of systemic, complex or structural human rights violations, the role of the national parliament is crucial. However, not only the systemic, structural or complex in character violations require parliamentary intervention, but sometimes, cases without such indicators require targeted legislative changes. It is crucial to plan the legislative activities strategically, with a holistic approach and attention to avoiding setbacks. Sustainable and solid inter-institutional cooperation is essential to secure the execution process.

In 2020, the Council of Europe project “Further support for Ukraine in implementation of judgments in the context of Article 6 of the European Convention on Human Rights” organised a number of events aimed at supporting the Ukrainian authorities. In November 2020, the annual forum “Execution of judgments of national courts in Ukraine” was organised for the third consecutive year. Based on the forum discussions, the central recommendation for further measures had been made - prioritising the development of comprehensive legislative package that meets the requirements of ECtHR practice and Council of Europe standards in order to address the problem of non-enforcement or delayed enforcement of domestic judicial decisions.<sup>7</sup>

During the online discussions in December 2020, the main positive changes in 2020 were outlined: i) the National Strategy for implementation of general measures for execution of the pilot judgment in the case of *Yuriy Nikolayevich Ivanov v. Ukraine* and *Burmych and Others v. Ukraine*; ii) establishment of the Commission for Execution of the European Court of Human Rights Judgments; iii) new legislative proposals prepared by the Sub-Committee on the execution of judgments of the

<sup>4</sup> Resolutions 2358 (2021), 2178 (2017), 2075 (2015), 1787 (2011), 1516 (2006) and Recommendations 2110 (2017) and 2079 (2015) on the “Implementation of judgments of the European Court of Human Rights”, in which it promoted national parliaments’ involvement in this process. See for more details the latest Report of the PACE AS/JUR (2020) 14 on “Implementation of the judgments of the European Court of Human Rights: 10th report”, available at: <https://pace.coe.int/en/files/28658>, accessed in December 2020.

<sup>5</sup> For more details, see Expert Analysis on Parliamentary oversight on the execution of the ECtHR judgments: Brief overview of the practices of CoE member states resolving the systemic problem of non-execution, published in October 2020, available at: <https://rm.coe.int/parliamentarian-oversight-over-exec-of-judg-l-apostol-nov-2020-eng-fin/1680a06a27>, accessed in December 2020.

<sup>6</sup> “The Assembly recalls that the legal obligation for the States Parties to the Convention to implement the Court’s judgments is binding on all branches of State authority and cannot be avoided through the invocation of technical problems or obstacles which are due, in particular, to the lack of political will, lack of resources or changes in national legislation, including the Constitution.”, Resolution 2358 (2021) on the “Implementation of judgments of the European Court of Human Rights”, available at: <https://pace.coe.int/pdf/cd63ba845991cf9aa5fe7708c61eb0b4a2d83eea3326667a8259ffe25682ae848428feba12/doc.%2015123.pdf>

<sup>7</sup> The recommendations have only been announced and have not yet been published. For more details, see Third Annual Forum “Execution of judgments of national courts in Ukraine”, available at: [https://www.coe.int/en/web/kyiv/further-support-for-the-execution-by-ukraine-of-judgments-in-respect-of-article-6-of-the-european-convention-on-human-rights/-/asset\\_publisher/5pg775ZIBvx8/content/third-annual-forum-execution-of-judgments-of-national-courts-in-ukraine-?inheritRedirect=false&redirect=https%3A%2F%2Fwww.coe.int%2Fuk%2Fweb%2Fkyiv%2Ffurther-support-for-the-execution-by-ukraine-of-judgments-in-respect-of-article-6-of-the-european-convention-on-human-rights%3Fp\\_id%3D101\\_INSTANCE\\_5pg775ZIBvx8%26p\\_p\\_lifecycle%3D0%26p\\_p\\_state%3Dnormal%26p\\_p\\_mode%3Dview%26p\\_p\\_col\\_id%3Dcolumn-3%26p\\_p\\_col\\_count%3D1](https://www.coe.int/en/web/kyiv/further-support-for-the-execution-by-ukraine-of-judgments-in-respect-of-article-6-of-the-european-convention-on-human-rights/-/asset_publisher/5pg775ZIBvx8/content/third-annual-forum-execution-of-judgments-of-national-courts-in-ukraine-?inheritRedirect=false&redirect=https%3A%2F%2Fwww.coe.int%2Fuk%2Fweb%2Fkyiv%2Ffurther-support-for-the-execution-by-ukraine-of-judgments-in-respect-of-article-6-of-the-european-convention-on-human-rights%3Fp_id%3D101_INSTANCE_5pg775ZIBvx8%26p_p_lifecycle%3D0%26p_p_state%3Dnormal%26p_p_mode%3Dview%26p_p_col_id%3Dcolumn-3%26p_p_col_count%3D1), accessed in December 2020.

European Court of Human Rights and Alternative Dispute Resolution of the Committee on Legal Policy; iv) organisation of parliamentary and committee hearings.

The issues discussed in 2016 are still on the agenda: “The preponderance of structural or systemic violations of the Convention in Ukraine has meant that it has been, and continues to be, the subject of repeated scrutiny by PACE. There is, nevertheless, a high level of respect for the Convention and ECtHR in Ukraine, including amongst parliamentarians (...). The introduction of a law in 2006 specifically addressing the implementation of ECtHR judgments was symptomatic of such respect, but the lack of any real political will to get to grips with structural and other serious human rights violations, coupled with the insufficient clout enjoyed by the government agent dealing with human rights, has meant that the law has had little impact in practice.”<sup>8</sup>

It is clear that resolute actions at the highest political level are necessary to ensure full compliance by Ukraine with its obligations under Article 46 of the Convention regarding the major long-standing problems relating to non-enforcement or delayed enforcement of final domestic judicial decisions, mostly delivered against the State or public enterprises, and the lack of an effective remedy in this respect (*Zhovner/Yuriy Nikolayevich Ivanov/Burmych group*); inhuman and/or degrading treatment mainly because of overcrowding (*Nevmerzhitsky/Sukachov group*); long-lasting moratorium on the alienation of agricultural land (*Zelenchuk and Tsytsyura group*).

The present Guidelines provide a set of measures that have been discussed at two online events and which the national authorities should take to ensure that implementation of the ECHR and appropriate execution of the ECtHR judgments is among the core priorities of the State.

## General provisions

### Purpose

The purpose of this Guidelines Report is to strengthen and facilitate the execution process, in particular by involving the national parliament as a proactive stakeholder, and to provide recommendations to the national authorities to regulate and to improve the domestic coordination process between different stakeholders.

### Scope

This Guidelines Report covers the execution of the ECtHR judgments in Ukraine. The present Guidelines Report summarises the weak points of the national system and introduces operational directions, as discussed during two online events in December 2020.

The present Guidelines should not be interpreted as limiting in any manner the possibilities for the national authorities to grant wider and more comprehensive mechanisms in the process of the implementation of ECtHR judgments.

#### I. General guidance

Domestic authorities' primary responsibility to respect and ensure the rights and freedoms guaranteed by the ECHR necessarily requires that all branches of power should be involved to ensure the execution of final ECtHR judgments. This responsibility should also include a binding commitment for all national authorities to cooperate effectively and ensure such cooperation *de jure* and *de facto*.

As pointed out in the discussions, there is a serious lack of consistency and coherence in implementing ECtHR judgments in Ukraine. Political will for reform has been demonstrated by the national authorities but results have so far been limited. Fundamental recommendations that were addressed in the expert opinion on “Assessment of the Ukrainian Legislation on the Execution of Judgments of the European Court of Human Rights”<sup>9</sup> are still relevant and require an immediate response from the national authorities. For instance, the participants discussed: i) the lack of

<sup>8</sup> Philip Leach and Alice Donald, *Parliaments and the European Court of Human Rights* (Oxford University Press, 2016), pt. II Ch. 5, <https://doi.org/10.1093/acprof:oso/9780198734246.001.0001>, accessed in December 2020.

<sup>9</sup> Expert opinion on “Assessment of the Ukrainian Legislation on the Execution of Judgments of the European Court of Human Rights”, published in 2017, available at: <https://rm.coe.int/coe-assessment-law-execution-of-ecthr-judgments/168097f9dc>

cooperation between all relevant domestic actors in the execution process (for example, there is no specific procedure for the interaction of the Government Agent's Office with the highest judicial authorities, parliament and law enforcement bodies); ii) the role of the Government Agent in the execution process and the need to strengthen his/her capacity and authority; iii) necessity to increase visibility of the execution process and to ensure that other domestic authorities become sufficiently informed of their crucial role; iv) the need for a comprehensive legislative package to settle the major long-standing issues identified in the ECtHR judgments and/or by the Committee of Ministers.

On several occasions, the Council of Europe has recalled that it was mainly the discretion of the States how the national parliaments should organise their business and their structure. However, in Resolution 2358 (2021) on the "Implementation of judgments of the European Court of Human Rights", the PACE stressed the need to establish parliamentary structures to monitor compliance with international human rights obligations, and in particular those stemming from the Convention and the Court's case law.<sup>10</sup>

The participants appreciated the creation of the Sub-Committee on the execution of judgments of the European Court of Human Rights and Alternative Dispute Resolution of the Committee on Legal Policy. They underlined the interest in having the Sub-Committee as a focal point in the Verkhovna Rada of Ukraine, and in strengthening its role in ensuring holistic approach in the Parliament's activities related to the execution of judgments. Nevertheless, the Sub-Committee should not prevent the national or international institutions from having contacts with other parliamentary committees regarding the State's human rights obligations.

It would also be necessary to formulate and adopt the amendments to the existing legislative framework to ensure comprehensive approach to matters related to execution of the Strasbourg judgments, which would, *inter alia*, include the oversight function and determine the level of involvement and responsibility of the Ukrainian Parliament in implementing ECtHR judgments. As stressed during the discussions, it is essential to provide the Parliament with effective means of systematic parliamentary control.<sup>11</sup>

In order to increase the effectiveness and minimise the impact of frequent political changes on the execution process, the official strategic planning and scheduling on the national level would be appropriate. In this regard, it would also be necessary to pay particular attention to the cases raising structural, systemic or complex problems identified by the ECtHR or by the Committee of Ministers, especially those cases which have been pending for several years or even decades.

### *Legislative changes*

The root causes of the violations of the Convention in many ECtHR judgments in respect of Ukraine have already been identified, as well as the possible general measures aimed at tackling these issues. The Verkhovna Rada together with the Government should be strongly encouraged to examine the major long-standing issues identified in the ECtHR judgments and/or by the Committee of Ministers and to put forward a roadmap for elaborating and adopting a comprehensive legislative package, as requested repeatedly by the Committee of Ministers in a number of cases.<sup>12</sup>

Moreover, the stalemate or significant delays in non-execution of the ECtHR judgments, with certain systemic and structural problems being not resolved for fifteen years or more, suggests that the national execution procedure itself requires significant improvement to address systemic and structural problems that remain unresolved. It can be concluded that there was a consensus among the participants on the need to amend the Law of Ukraine "On the execution of judgments and the application of the case-law of the European Court of Human Rights", which reflected the position set out in expert opinion in 2017 that "the Law provides for a highly complex, very formal and legalistic approach to the aims it has established. Such an approach might restrict domestic implementation of

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<sup>10</sup> Resolution 2358 (2021) on the "Implementation of judgments of the European Court of Human Rights", available at: <https://pace.coe.int/pdf/cd63ba845991cf9aa5fe7708c61eb0b4a2d83eeea3326667a8259ffe25682ae848428feba12/doc.%2015123.pdf>

<sup>11</sup> See for further details expert analysis on "Parliamentarian oversight on the execution of the ECtHR judgments: Brief overview of the practices of CoE member states resolving the systemic problem of non-execution", published in October 2020, available at: <https://rm.coe.int/parliamentarian-oversight-over-exec-of-judg-l-apostol-nov-2020-eng-fin/1680a06a27>

<sup>12</sup> For example, the CM noted that "despite the passage of almost 15 years since the first judgment in *Nevmerzhiitsky/Sukachov* group, the authorities have not put forward any concrete proposals as to the modalities of this remedy (or combination of remedies), much less initiated the process for the adoption of the required legislation... It is therefore urgent that the authorities step up their efforts and draft legislative proposals to establish the preventive and compensatory remedies and engage the necessary procedures for their adoption. For this, it is essential to build a genuine and constructive collaboration of the relevant bodies and agencies: the prison service, judges, prosecutors, ministries, as well as the relevant parliamentary committee". See CM/Notes/1383/H46-25 [https://search.coe.int/cm/pages/result\\_details.aspx?objectId=09000016809f9124](https://search.coe.int/cm/pages/result_details.aspx?objectId=09000016809f9124)

the ECHR, of judgments of the ECtHR delivered in cases concerning Ukraine and of the case-law in general".<sup>13</sup>

#### *Adoption and implementation of the legislation*

National authorities should implement effective tools for addressing complex issues such as the quality of law-making and enhancing the effectiveness of domestic institutions' oversight functions.

Verkhovna Rada of Ukraine, in particular the Secretariat, should ensure that new legislative initiatives introduced by all relevant authorities are fully compatible with the European Convention on Human Rights, ECtHR case-law and the CM decisions. It will prevent the adoption of legislation or other measures that would hinder the process of execution of ECtHR judgments.

National authorities could establish a consultative procedure for auditing existing legislation and administrative practice for compliance with the European Convention on Human Rights, ECtHR case-law, the CM decisions and the Council of Europe main principles and values.

#### *Visibility and transparency of the execution process*

There's a need to continue the measures to ensure greater transparency of the supervision of the implementation of ECtHR judgments. In particular, the state authorities could put in place a national information-exchange system which can meet the minimum requirements for: (i) transparency and (ii) accessibility, (iii) clarity of use, (iv) constant updating of the content, (v) result-orientated designing.<sup>14</sup>

For instance, the Ukrainian authorities can consider the successful changes that were implemented by the Committee of Ministers itself several years ago, which improved access to information and created public database (HUDOC Exec ); thematic and country-specific factsheets as regards the execution of judgments are also regularly published. The increased transparency of the supervision process has greatly improved the possibilities for national stakeholders to support execution.

Domestic authorities should make sure that the ECtHR case-law is adequately circulated in the official language of the State and that the representatives of relevant domestic institutions are trained to implement the ECtHR case-law. Moreover, the Council of Europe welcomes the initiative, which has been introduced during discussions, on the need to increase translations of the judgments against other member States into the official language. In addition, there is also a need of translation and dissemination of the decisions and resolutions, other documents produced by the Committee of Ministers and by the Department for the Execution of Judgments of the ECtHR to the attention of various domestic authorities engaged in the process of the execution of ECtHR judgments.<sup>15</sup> Further support should be also offered, notably in the form of specific co-operation and assistance activities such as legal advice, training activities and experience-sharing between States.

#### *Cooperation and coordination*

The participants welcomed the efforts of the national authorities to set up their coherent cooperation in the supervision of the implementation of ECtHR judgments and encouraged them to continue this work.

Reporting mechanisms that systematise dialogue between the Government and Parliament could be introduced. The reporting mechanisms should be based but not limited to the following principles: (i) stability, (ii) regularity, (iii) transparency and (iv) binding obligation to cooperate. Parliament should be empowered not only to hear the Government's regular reports, but to initiate unscheduled Government reporting on urgent matters when necessary.

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<sup>13</sup> Expert opinion on "Assessment of the Ukrainian Legislation on the Execution of Judgments of the European Court of Human Rights"., published in 2017, available at: <https://rm.coe.int/coe-assessment-law-execution-of-ecthr-judgments/168097f9dc>

<sup>14</sup> This possibility has been proposed on several occasions, for instance, see §14 of Monitoring and Evaluation Report, prepared by Mr Sergyi Zayets, published in 2020, available at: <https://assembly.coe.int/LifeRay/APCE/pdf/PPSD/VerkhovnaRadaJudgmentsECHR-EN.pdf> , accessed in December 2020.

<sup>15</sup> This possibility has been proposed on several occasions, for instance, see §§61, 128 of Expert opinion on "Assessment of the Ukrainian Legislation on the Execution of Judgments of the European Court of Human Rights"., published in 2017, available at: <https://rm.coe.int/coe-assessment-law-execution-of-ecthr-judgments/168097f9dc>

Expertise and analysis of measures taken by other States and best practices of Parliaments in addressing execution of the ECtHR judgments could be launched to enable national authorities to compare the execution of ECtHR judgments in different States, notably their response to violations found by the ECtHR, which could have consequences for the domestic legal system.

Cooperation and regular dialogue should be maintained with relevant national and international bodies and non-governmental organisations that have significant and relevant experience.

It is important to strengthen the role of civil society in the process of implementing the ECHR and execution of ECtHR judgments. Particularly, the national NGOs should be encouraged to use the procedure for communications under Rule 9 of the Rules of the Committee of Ministers and provide comments on the execution of judgments and the terms of friendly settlements and invite them to give regular feedback on measures adopted pursuant to ECtHR judgments. National authorities should consider the recommendations of the international and national institutions and NGOs that provide expert reports and opinions regarding the situation in Ukraine when taking measures aimed at executing the ECtHR judgments.

Consequently, the following points could be specified in respect of the Ukrainian Parliament and Government:

## II. Ukrainian Parliament

In its human rights oversight function, the Parliament should combine two core pillars of its work: improving national legislation to prevent violation of the Convention, including introducing domestic remedies, and abstaining at the same time from any populist or regressive changes in legislation that would be incompatible with the Convention and ECtHR case-law. Coherence and planning are an important aspect of the parliamentary activities, the lack of which has been criticised by the Committee of Ministers.<sup>16</sup>

Parliamentary and Committee hearings could be cited as a successful example of parliamentary oversight in action. The necessity to organise a special hearing dedicated to the parliamentary control in the process of executing the ECtHR judgments is obvious. Parliamentary and Committee hearings could be arranged on a regular basis and in this way they would contribute to the common discussions and shared decision-making processes.

Effective institutional cooperation within various structural subdivisions of the Verkhovna Rada of Ukraine (internal cooperation) and other domestic authorities and international partners (external cooperation) should be amongst the priorities for the Sub-committee's activities. It can be done by defining common strategic goals and activities, elaboration of plans and establishing discussion forums and platforms for specific topics or pieces of draft legislation.<sup>17</sup> Such forms of interaction could require changes to the legal acts, procedural and administrative organisation of the existing processes within the Verkhovna Rada, with more focus on the role of its Secretariat in providing expert support in analysing the scope and extent of the execution measures required.

The Sub-committee's mandate should therefore be sufficiently broad to reflect the obligation for parliamentarians to act upon the State's human rights obligations, and to allow performing its umbrella role effectively. In this regard, the visibility of the parliamentarian's activities (publishing the Committee's and Sub-Committee's work plans, agendas, regular press-releases etc.) could increase their credibility. It would also give an excellent opportunity to involve civil society in the process.

To facilitate the strategic planning, the Sub-committee could be responsible for compiling an annual list of the issues that the VRU can deal with independently, without cooperation with other state bodies, and include this list in the parliament's legislative work, giving priority to issues that have been unresolved for long period of time. This list could be public and open for discussion. The Sub-

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<sup>16</sup> For example, in Oleksandr Volkov group of cases (organisation of the judiciary) the CM noted that "*given the diversity of ideas on further judicial reforms and different views and proposals, the Committee may wish to stress the need for a coherent and carefully measured approach together with a clear strategy in the planning and implementation of the reform of judiciary. Consultations with all the necessary stakeholders, making use of the expertise of the Council of Europe, including that of the Venice Commission, would appear to be important*". CM/Notes/1383/H46-26, available at: [https://search.coe.int/cm/pages/result\\_details.aspx?objectid=09000016809f9127](https://search.coe.int/cm/pages/result_details.aspx?objectid=09000016809f9127)

committee could also be entrusted with the pre-legislative scrutiny, examining draft legislation through the lens of the ECtHR case-law and the relevant international obligations of Ukraine.

The method of appointment of the members of the Sub-committee should be transparent and must meet the minimum requirements for ensuring that it reflects the balance of power between political groups within the Ukrainian parliament, the parliamentarians involved are with a proven record of independence and commitment to human rights, and it conforms to the principles of gender balance.

The Verkhovna Rada of Ukraine should install tools for safeguarding and transmitting “institutional memory” which will be valuable for ensuring a smooth operational transition after each elections.

The Sub-committee as well as the Committee should be sufficiently resourced to carry out its functions, including appropriate dedicated secretariat support, which will also serve as one of the tools for supporting the “institutional memory”. Particular attention should be paid to the suitable, systematic and timely training courses for the parliamentarians and the Secretariat members. To support it in the pre-legislative scrutiny, the Sub-committee and the Committee should have access to independent national and international experts with proficiency in human rights.

### III. Ukrainian Government

Participants discussed ways to strengthen the mechanism for implementation of ECtHR judgments. There were two main areas under consideration, which the Council of Europe has already repeatedly pointed out in its expert opinions: i) enhance the functions and status of the Office of the Agent of Ukraine before the European Court of Human Rights ii) provisionally introduce new body responsible only for the execution process.

Considering current situation in Ukraine, the severe continuing delay in the execution of ECtHR judgments, the creation of temporary new body responsible only for the execution process could be a reasonable solution. However, an essential element is to gain efficiency through existing structure and not to create ineffective secondary or parallel institutional facilities. Besides, the main weak point of the establishment of a new state body is that the process of developing the structure, division of functions and the installation of the whole body could be unreasonably long<sup>18</sup>.

Sufficient resources should be provided to relevant domestic bodies responsible for executing ECtHR judgments. The institution in charge should be equipped with appropriate human and financial resources, and authority necessary to fulfil its function of ensuring full and rapid execution of ECtHR judgments.

The action plans and action reports prepared by Government should be shared with Parliament at the same time as they are submitted to the Committee of Ministers of the Council of Europe. The Government should regularly inform the Parliament about ECtHR judgments whose implementation reveals complex, systemic or structural problems and requires legislative initiatives<sup>19</sup>. The responsible authorities should also aim to achieve concrete results by establishing clear priorities, deadlines, benchmarks for the execution process and preparation of necessary actions.

It is important to address the problem of incoherence between various electronic registers and databases supporting enforcement action, including of the judicial decisions database and the enforcement database.<sup>20</sup>

Explicit financial commitments should be foreseen regarding all activities proposed in the action plans and action reports submitted to the Committee of Ministers.

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<sup>18</sup> Expert opinion on “Assessment of the Ukrainian Legislation on the Execution of Judgments of the European Court of Human Rights”., published in 2017, available at: <https://rm.coe.int/coe-assessment-law-execution-of-ecthr-judgments/168097f9dc>

<sup>19</sup> One of the main issues mentioned in the expert opinion as regards the lack of cooperation is still core problem in Ukraine: “*It is of paramount importance to involve at the earliest possible stage all the relevant domestic actors in the preparation and drafting of the action plans or action reports. This process should surely involve the Verkhovna Rada, which at present appears to be inadequately informed*”. Assessment of the Ukrainian Legislation on the Execution of Judgments of the European Court of Human Rights., published in 2017, available at: <https://rm.coe.int/coe-assessment-law-execution-of-ecthr-judgments/168097f9dc>

<sup>20</sup> This measure was also recalled by the CM in addition to the legal, financial and institutional root causes in Zhovner/Yuriy Nikolayevich Ivanov/Burmych group of cases, see CM/Notes/1383/H46-27, available at: [https://search.coe.int/cm/pages/result\\_details.aspx?objectid=09000016809f91a2](https://search.coe.int/cm/pages/result_details.aspx?objectid=09000016809f91a2)

In April 2020, the Commission on the Implementation of ECtHR Judgments had been set up. The Commission is a temporary advisory body to the Cabinet of Ministers of Ukraine and it is also the basis for inter-agency cooperation. On the one hand, it was not evident to the participants how this Commission would function in terms of regularity and efficiency. On the other hand, as mentioned on 1383rd (Human Rights) meeting of the Ministers' Deputies, it is not the first Commission created by the authorities to resolve the issues of non-enforcement of domestic judgments identified in the Ivanov / Burmych group of cases, and it is crucial now that the operation of this newly created advisory and coordinating body produce rapidly tangible results<sup>21</sup>.

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<sup>21</sup> For more details see CM/Notes/1383/H46-27, available at:  
[https://search.coe.int/cm/pages/result\\_details.aspx?objectid=09000016809f91a2](https://search.coe.int/cm/pages/result_details.aspx?objectid=09000016809f91a2)