



Further support for the execution by Ukraine of judgments in respect of Article 6 of the European Convention on Human Rights

General conclusions and recommendations of the Third Annual Forum “Execution of National Judgments in Ukraine”

The participants¹ of the Third Annual Forum “Execution of National Judgments in Ukraine”, held on 5 November 2020, discussed the situation regarding the execution of national judgments and the current state of the system of execution of judgments in Ukraine,

noting that resolving this issue persisting for decades in Ukraine shall be a common priority for all branches of government,

underlining that resolving this issue would improve access to justice and would safeguard constitutional rights and freedoms, strengthen confidence in the judiciary and other state institutions, promote economic and social progress, improve investment climate and have a positive impact on Ukraine’s compliance with its international obligations as a member of the Council of Europe,

taking into account the state’s international obligations towards the International Monetary Fund (IMF) and the European Union (EU), in particular in the context of the Memorandum of Understanding between Ukraine and the European Union and the Loan Agreement between Ukraine and the EU on the provision of macro-financial assistance from the EU,

taking note of Article 6 §1 of the European Convention on Human Rights, the established case-law of the European Court of Human Rights (ECtHR), in particular, the case of *Hornsby v. Greece*, which identifies the problem of non-execution of judgments as a failure of the rule of law and effective access to justice, and the requirements stemming from the judgments ECtHR in the

¹ The forum brought together over 200 project partners and guests, including the President and other judges of the Supreme Court, Deputy Prime Minister and Chair of the Government Commission for the execution of the judgments of the European Court of Human Rights, Chair of the Committee on Legal Policy of the Verkhovna Rada of Ukraine and other members of the Ukrainian Parliament, Deputy Minister of Justice of Ukraine – Agent before the European Court of Human Rights and other representatives of the Ministry of Justice of Ukraine, the members of the High Council of Justice, Deputy Head of the State Judicial Administration of Ukraine, the representatives of the Ukrainian Parliament Commissioner for Human Rights, as well as the representatives of civil society and international organisations, namely the USAID New Justice Program, EU Project “Pravo-Justice”, the OSCE Project Coordinator in Ukraine.

group of cases of *Zhovner*²/*Yuriy Nikolayevich Ivanov*³/*Burmych and others*⁴ v. Ukraine pending execution before the Committee of Ministers of the Council of Europe,

recalling that the findings of such violations by the European Court of Human Rights impose a legal obligation to adopt general measures preventing new similar violations

taking note of the measures identified in the last interim resolution of the Committee of Ministers of the Council of Europe of 1st October 2020 on this issue, which demands immediate action at the highest political level to fully address this issue, and of numerous decisions of the Committee of Ministers of the Council of Europe, as well as recommendations of other bodies of the Council of Europe and analytical papers of the Department for the Execution of Judgments of the ECtHR in this regard,

considering the establishment by the Government of Ukraine of the Commission for the Execution of ECtHR Judgments as an advisory and coordinating body and the approval by the Government of Ukraine, by its Order No. 1218-r of 30 September 2020, of the National Strategy for resolving until 2022 the problem of non-execution of national judgments against government bodies or state-owned or controlled enterprises, institutions, and organisations as debtors,

paying attention to the extremely low actual enforcement rate, a reduction of budget allocations under the budget program No. 1170 and 4044, the lack of a comprehensive system of calculation, management, and control over accumulated state debts under the judicial decisions, which would allow to clarify the overall picture of enforcement of judgments against the state,

noting the presentations, discussions, and addresses during the Forum,

welcoming that all authorities concerned in Ukraine agreed to meet and discuss, in an open and constructive manner, the ways and means for improving the existing procedures for execution of domestic court decisions against the state and its entities,

² *Zhovner* against Ukraine (No. 56848/00), judgment as of 29 June 2004.

³ *Yuriy Nikolayevich Ivanov* against Ukraine (no. 40450/04), judgment of 15 October 2009, final on 15 January 2010.

⁴ *Burmych and Others against Ukraine*, (No. 46852/13 et al), judgment as of 12 October 2017.

RECOMMEND:

1. To develop and adopt a comprehensive legislative package aimed at fully resolving the problem of non-execution of judgments in Ukraine, which would reflect the requirements of the ECtHR case-law, the Council of Europe standards, and Ukraine's international obligations. For this purpose, ***the Verkhovna Rada of Ukraine and the Government of Ukraine*** without delay to start preparing a comprehensive set of legislation, which must include the following measures:

1.1. Ensuring automatic execution of judgments via the changes to the financial and budgetary system procedures

- Review the existing budgetary procedures for the purposes of ensuring automatic execution of judgments adopted against the state, state-owned or controlled entities.
- Introduce a mechanism of provision of information as regards total amount of debts under the judicial decisions, with the use of modern methodology of accounting for such debts.
- Examine a possibility for introducing changes and amendments to budgetary procedures for ensuring automatic payment of funds upon judicial decisions, given against the state debtor, as well as ensuring automatic compensation and damages for delays in execution of judgments.

1.2. Improving the socially oriented legislation by

- Revising and cancelling those social benefits that are economically and financially unfeasible. In doing so, the need to comply with the principles of equality and non-discrimination must be respected, including the principles of legal certainty and non-retroactivity of the law.
- Draft laws on improving social legislation should consider the experience of the Council of Europe member states that carried out systemic social security reforms.
- Improving of budget planning to ensure that funds allocated correspond to the state's payment obligations and of procedures for management of budgetary funds.

1.3. Revision of the existing domestic enforcement system by

- Preparing, on the basis of draft laws Nos. 3609 and 3726, a single draft law on reforming the enforcement system, taking into account the positions of all stakeholders, including representatives of the judiciary, the Association of Private Bailiffs of Ukraine, the legal community, experts of international organisations, and business organisations, as well as considering:
- The need to set up an efficient and coherent mechanism for enforcement of judicial decisions by the public authorities and automate the execution process: a person who has obtained a judgment against the State may not be expected to bring separate set of enforcement proceedings, the authorities are under obligation to take timely action of their own motion, on the basis of the information available to them, with a view to honouring the judgment against the state.
- The need to set up adequate incentives to induce the authorities responsible to comply with their payment obligations and to use different approaches regarding the application

of financial and other sanctions to the debtor in cases of voluntary execution and coercive enforcement.

- The need to ensure the institutional independence of bailiffs, both public and private, simplify the procedure for entering the profession of a private bailiff so as to increase their numbers and introduce a full-fledged mixed enforcement system with equal competence for private and public bailiffs, including removal of restrictions on enforcing judgments against certain categories of debtors (including state-owned legal entities and partially state-owned legal entities) and certain categories of judgments.
- The need to introduce effective mechanisms of judicial control and clearly determine the role of courts in supervising the execution of judgments in order to avoid unnecessary formalism, speed up the execution procedure, strengthen the ability to execute judgments, and facilitate the execution process.
- The need to introduce effective remedies against non-execution at the domestic level which would ensure proper enforcement of judicial decisions and effective compensation for delays (indexation, default interest, specific damages, penalties for delays).

1.4. Revision of the state liability system by

- Improving national legislation governing the bankruptcy of state-owned or state-managed enterprises, with the account of the expert advice provided and the relevant practice of the ECtHR.
- Revising the existing system of moratoria on the execution of judgments regarding certain categories of enterprises, including state-controlled ones. It should take into account the principle under which the system of granting preferences to certain categories of enterprises should not depend on a prohibition on enforcement of judgments or transferring the burden of financial responsibility to creditors of such enterprises.

1.5. Simplification of procedures for execution of judgments

- Simplify to the extent possible and digitalise procedures for issuing writs of execution, judicial orders and other documents, which constitute the basis for execution, synchronise these procedures with the principles of “single step” procedure and non-repetition of steps in the process of execution of judgments.
- Finalise creation of the comprehensive system of accounting and collection of information, which would demonstrate the general overview of the status of execution of judgments, including those awarded against the state.
- Finalise drafting and adoption of the necessary normative acts, including the draft of Regulations “On the Unified State Register of Execution Documents”.
- Ensure introduction of a system of automatic blocking and collection of funds from the debtors’ accounts, including those belonging to the state, with involvement of various banking institutions.
- Ensure development of high quality digital communication channels between the bodies of judicial and executive power with regard to execution of courts’ judgments, automatization and simplification of the procedures for execution of judgments, as well as maintaining relevant databases, with the aim of simplification of the execution and digitalisation of this process.

2. To ensure that concrete measures are taken by **the Government of Ukraine** to implement the National Strategy for resolving by 2022 the problem of non-execution of national judgments against government bodies or state-owned or controlled enterprises, institutions, and organisations as debtors, which is approved by the Cabinet of Ministers of Ukraine by its Order No. 1218-r on 30 September 2020.

For that purpose, to recommend that **the Government of Ukraine**:

- Organises the preparation of an Action Plan for the Implementation of the National Strategy, designating responsible persons, setting deadlines, in line with the requirements stemming from the ECtHR judgments and the decisions of the Committee of Ministers of the Council of Europe.
- Ensures that implementation of the National Strategy and the Action Plan is backed by sufficient funding.
- Ensures the involvement of representatives of all branches of power and expert institutions in the work of the Commission for the Execution of ECtHR Judgments, which is chaired by a Vice Prime Minister of Ukraine, to enable the Commission to monitor the current state of affairs in this field and provide appropriate recommendations and binding instructions on a comprehensive resolution of problems of non-execution of judgments where the state is a debtor, and ensure the cooperation of the bodies concerned with the Commission.
- Separates a category of non-enforced judgments of the so-called historic cases and calculates the total amount of debt that need to be paid under these judgments.
- Maintains an inventory of the number of non-executed national judgments against the state, state-owned or controlled institutions, enterprises, and organisations, and sums to be collected under such judgments.
- Reviews existing budgetary procedures to identify financial problems and ensure sufficient appropriations and disbursements that are needed to ensure the execution of judgments against the state.
- Conducts a comprehensive analysis and systematisation of all benefits and types of financial assistance provided from the state budget and checks the implementation of mechanisms for their receipt which need to be taken into account during the preparation of legislative proposals for their revision.

Jointly with the State Court Administration of Ukraine, to:

- Ensure digitalisation of the procedure for issuing enforcement documents, synchronising these procedures based on the principle of one-stop-shop, and elimination of any requirements to repeat any action to confirm the enforceability of a judgment.
- Complete the creation of a comprehensive system of registration and collection of judicial information, which will show the overall picture of the execution of judgments, including those against the state.
- Complete the adoption of the draft Regulation “On the Unified State Register of Enforcement Documents”.
- Ensure high-quality digital communication between the judiciary and the executive on the execution of judgments, automation, and simplification of the execution process, as well

as the creation of appropriate databases, in order to simplify the execution process and digitalise it.

Jointly with the National Bank of Ukraine, to:

- Ensure the introduction of an automated system for freezing and debiting debtors' accounts, to which all banks must be connected.
- Release information on the implementation of these measures in public space on a set schedule to ensure free access to it.

3. That *the Supreme Court and Constitutional Court of Ukraine:*

- Analyse and summarise the case law on bankruptcy of state-owned or state-managed enterprises and assess the validity of the moratoriums on enforcement regarding certain categories of state enterprises.
- Explore and develop the mechanisms of judicial control and the role of courts in supervising the enforcement of judgments.

4. That *educational institutions and civil society, including non-government organisations:*

- Disseminate information on the execution of judgments and the obligation to execute such judgments, including as regards the need to change inadequate attitude of the officials responsible for the enforcement of the judgments.
- Participate more actively in the public discussion and examination of proposals for the reform of the execution process, the discussion of general measures for the execution of ECtHR judgments, and the dissemination of information on the execution of these judgments.
- Encourage the activities of NGOs and national professional legal associations in this field, including through cooperation with the state authorities and the Committee of Ministers of the Council of Europe, to communicate information on NGOs' assessment of the state of execution of judgments of the ECtHR.

5. That *the Council of Europe* notes the general tenor of the discussions and continues to support the Forum's activities and expert discussions in 2021.