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**UKRAINIAN HELSINKI HUMAN RIGHTS UNION'S SUBMISSION TO THE COUNCIL
OF EUROPE COMMITTEE OF MINISTERS:
YURIY NIKOLAYEVICH IVANOV V. UKRAINE
(Zhovner group)
Judgment of 15/10/2009 (Application 40450/04)**

1. **Status of execution:** The Committee of Ministers has been examining the cases in the Zhovner group since 2004. It adopted five Interim Resolutions so far (two before the pilot judgment and three since then; the last Interim Resolution was adopted in December 2012, in which the Committee urged the Government as a matter of utmost priority to adopt measures resolving the structural problem).

In the Decision 1259 of 7-8 September 2016 the Committee insisted on the necessity for the Ukrainian authorities to intensify their efforts in order to settle the applications pending before the European Court without further delay, bearing in mind that the settlement of currently pending applications is part of Ukraine's obligations under the Ivanov pilot judgment. The Committee strongly urged the Ukrainian authorities to adopt a three-step strategy to find a viable long term solution to the problem of non-enforcement of domestic court decisions, including:

- calculation of the amount of debt arising out of unenforced decisions in Ukraine;
- introduction of a payment scheme with certain conditions, or containing alternative solutions, to ensure the enforcement of still unenforced decisions;
- introduction of the necessary adjustments in the State budget so that sufficient funds are made available for the effective functioning of the above-mentioned payment scheme, as well as necessary procedures to ensure that budgetary constraints are duly considered when passing legislation, so as to prevent situations of non-enforcement of domestic court decisions rendered against the State or State enterprises.

In its Decision 1265 of 20-22 September 2016 the Committee noted with profound regret that, despite clear indications given by the Committee at the meeting in June 2016, the Ukrainian authorities have not so far reacted to these indications. This is a matter of deep concern because this situation creates an important risk for the Convention system. It should be noted in this respect that the number of similar pending applications before the Court has now exceeded 10,000 and is increasing rapidly. It is therefore indispensable that the Ukrainian authorities react to the decision adopted by the Committee at its last DH meeting and take strong action without any further delay.

In its Decision CM/Del/Dec(2017)1280/H46-38 of 7-10 March 2017 the Committee noted with utmost concern that the Ukrainian authorities have not yet started to implement the three-step strategy, nor have they formulated a global approach or strategy for the settlement of cases pending before the European Court, notwithstanding the previous decisions of the Committee. And also Committee reiterated that, in view of the increasing number of applications brought before the European Court, the lack of progress puts an additional undue burden on the Convention system; underlined that rapid resolute action is absolutely necessary in view of the scope and seriousness of the issues pending before the Committee.

2. The main observations about implementation by the Government of Ukraine of the three-step strategy, proposed by the Committee of Ministers.

A) Calculation of the amount of debt arising out of unenforced decisions in Ukraine

To this date, the Government of Ukraine has not known the amount debt arising out of unenforced decisions in Ukraine. Meetings are held time to time with representatives of various state authorities - the Pension Fund of Ukraine, the Ministry of Social Policy of Ukraine, the Ministry of Justice of Ukraine and others do not lead to determine the exact amount of debt. This debt even with rough estimates compounds a number a 20 billion UAH at least. However, this is only an estimated figure, which may differ greatly when comparing with the real figures.

Lack of state factual statistical data on arrears of court decisions does not allow understanding which mechanism is the most effective to address the problem as well as the scale and the required resources. The figures, given by Government sound more like guesses and are based on separate episodic data from various government bodies, not on objective system and integrated database.

This exacerbates the problem that the government offered no strategy for receiving actual and relevant information on the amount of state debt arising out of unenforced decisions in Ukraine. However, without obtaining this information it is impossible to effectively implement the following steps of three-step strategy.

B) Introduction of a payment scheme with certain conditions, or containing alternative solutions, to ensure the enforcement of still unenforced decisions

The existing mechanism for the implementation of domestic judicial decisions involving the State Treasury Service of Ukraine according to the Law "On state guarantees of enforcement of judicial decisions" can no longer be considered an effective mechanism to solve the problem. As of February 2017, the State Treasury Service of Ukraine has under consideration more than 191 thousand court orders worth more than 3.45 billion UAH.

The increasing appeals to the ECtHR on this issue confirm the inefficiency of this mechanism that appeared after the introduction of the mechanism. As we know more than 12 000 such applications are under consideration of ECtHR and this number continues increasing.

The Committee of Ministers have repeatedly stated on the lack of efficiency of this mechanism.

Regarding the alternative bond payment scheme (see the Notes for the 1230th and 1236th DH meeting), the authorities of Ukraine indicated that this scheme has not yet been applicable. So far, no holders of unenforced judicial decisions have applied to receive bonds.

The total amount of debt associated with the judicial decisions that were supposed to be converted into bonds was around 7.5 billion UAH (around EUR 267 million according to the current exchange rate).

This mechanism of restructuring the debt was proposed by the state in 2015. This proposition was formulated in Article 23 of the Law "On State Budget of Ukraine for 2015".

Similar provisions for restructuring debt were made in the Law "On State Budget of Ukraine for 2016" (Article 20) and the Law "On State Budget of Ukraine for 2017" (Article 19). However, state bodies did not adopt the necessary changes to legislation and also required the necessary funding.

To this date, the mechanism has not been working and this fact was stated in the conclusions of the Budget Committee of the Verkhovna Rada of Ukraine on the analysis of the draft "On State Budget of Ukraine for 2017". The Committee expressed doubt of effectiveness and feasibility of mechanism formulated in Article 19 of the draft law, which proposed to the Government to apply bonds (maturities up to 7 years deferred payment for 1 year and interest rate of 9.3% per annum) for the actual restructuring of the debt. They noted that the same rules, which were formulated in 2015 and 2016, have not been implemented.¹

Nevertheless, even if this mechanism could really be in use it contains fundamental flaws. And experts and human rights organizations define that the mechanism could not be an effective remedy. On this situation, Ukrainian Helsinki Human Rights Union in the information submitted to the Committee of Ministers (DH-DD (2015) 595) noted that the mechanism has numerous disadvantages. Specifically noting that this mechanism involves restructuring and has too long maturity bond, namely, emphasizing that 7 years is unreasonably long term of execution of judgment. In addition, there was drawn attention to the lack of adequate budget funding for this mechanism.

Government has not offered any other alternative mechanism for enforcement of decisions of national courts.

B) Introduction of the necessary adjustments in the State budget so that sufficient funds become available for the effective functioning of the above-mentioned payment scheme, as well as necessary procedures to ensure that budgetary constraints are duly considered when passing legislation, so as to prevent situations of non-enforcement of domestic court decisions rendered against the State or State enterprises.

Sufficient funds are not allocated from the budget for the operation of any mechanism of execution of domestic judicial decisions in Ukraine. The lack of prospects for execution of the national court rulings is confirmed by the State Treasury Service of Ukraine. The answer from this state body was received in response to parliamentary inquiries from Solvara and Melnichuk (Letter dated 23/09/2015) alleging lack of sufficient budgetary resources for the implementation of court decisions, which have been guaranteed by the state in recent years.

Data on the financing of the special state budget program 3504040 KPKVK:

¹ Additional info:

http://budget.rada.gov.ua/kombjudjet/control/uk/publish/article?jsessionid=103B09EBF775FA8A7540C6E7CE9682AD?art_id=57943&cat_id=44731

Year	State Budget program name	Budget (mln., UAH)
2013	KPKVK 3504040	153 921
2014	KPKVK 3504040	76 961
2015	KPKVK 3504040	144 757
2016	KPKVK 3504040	144 757

Separately stated that insufficient government funding, according to the State Treasury Service, significantly reduces the efficiency mechanism of guaranteed state court decisions, limits the ability of individuals to the full protection of their property rights, reduces the effectiveness of the protection of state interests, leading to the spread of discontent in society and the increasing number of appeals to the European Court human rights.

However, note that the Law "On State Budget of Ukraine for 2017" provides insignificant increase in funding for the special budget program up to UAH 500 mln. But if it takes to consideration the huge amount of debt arising out of unenforced decisions and the government's plans to implement debt restructuring mechanism, this amount is not sufficient for these tasks. Especially when considering that the state does not have objective and systematic information on the total amount of debt.

The legislation of Ukraine does not solve the core problem of a large number of judgments against the state in Ukraine, namely the large number of social commitments by the state, which is not covered by state funding. Judgments against the State continue to emerge despite the efforts of the Government of Ukraine to limit the social obligations of the state through legislative mechanisms.

Nevertheless, Parliament of Ukraine continues policy to increase state social obligations when making new legislation, particularly in recent years. For example, parliament had passed legislation that increases the number of beneficiaries of soldiers who participated in the ATO (anti-terrorist operation) and expands social obligations directed to this group of people. Also due to changes in the legislation, the number of state social obligations for internally displaced persons increased.

3. The main observations on information of Government Agent from 14 September 2016 (DH-DD(2016)1009 and 17 January 2017 (see DH-DD(2017)58)

A) Some comments in regard to the Law of Ukraine on Amending and Revoking Certain Statutory Acts of Ukraine № 76-VIII.

First of all, the Law concerns only some of the issues that have become the basis for decisions by national courts concerning public bodies. In addition, there is an approach based on the government's right to set other exact amount of social security than those provided in the laws. This approach does not have clear support and was debated among experts. It is important that even the Constitutional Court of Ukraine has different practice on these issues.

It should be noted that the constitutional appeal of the law proceeds. Three different constitutional applications of 50 MPs of Ukraine on the constitutionality of the law are being in consideration of the Constitutional Court of Ukraine. (Agenda Constitutional Court of Ukraine as of

May 11, 2017 - <http://www.ccu.gov.ua/novyna/konstytuciyini-podannya-za-stanom-na-11-travnnya-2017-roku>)

B) Some comments concerning the Article 267 of the Code of Administrative Court Procedure.

The current edition of Article 267 of Code of Administrative Procedure has existed since 2011, and in accordance with such procedure existed for many years. But over the years the procedure for decisions supervision by the courts has not actually been working and is not effective. In fact, to this date it seems that there is no successful example of using this mechanism.

C) Some comments on the newly adopted law “On Enforcement Procedure”

The adoption of this law is welcomed because it could fill the gaps that Ukraine has in procedures of enforcement of decisions of national courts. But it should be noted that to a greater degree this law addresses gaps in enforcement of court decisions where the debtor is a private individual, not the state.

The law itself does not solve the problem of unenforced court judgments where the debtor is a state, those related to implementation of the State's social commitments particularly, which causes the core cases appear in the ECtHR.

4. Recommendations

- Establish an integrated system of determination the amount of debt arising out of unenforced decisions in Ukraine, which would use clear criteria and would be based on real and objective data.
- Provide the increased efficiency of existent enforcement of national courts or develop a new approach to solving the problem. Provide the necessary budgetary funding to this mechanism. Engage to this process the highest state officials due to the large scale and importance of the problem and involve major stakeholders to this discussion.
- Address the issues, which constitute core aspects of the problem causing a large number of unenforced decisions where the state is a debtor. In particular, take certain measures, ensuring that the size of the state statutory social obligations is corresponding to the financial capabilities of the state budget. Establish a mechanism preventing such problems in the future.
- In the context of the issue of the state social obligations to implement a clear division of legislative norms to those that guarantee social and economic rights and those granting certain privileges in connection with a particular position or particular services.