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Meeting: 1318th meeting (June 2018) (DH)

Item reference: Action plan (17/04/2018)

Communication from Ukraine concerning the case of YURIY NIKOLAYEVICH IVANOV v. Ukraine
(Application No. 40450/04)

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Réunion : 1318^e réunion (juin 2018) (DH)

Référence du point : Plan d'action

Communication de l'Ukraine concernant l'affaire YURIY NIKOLAYEVICH IVANOV c. Ukraine (Requête n° 40450/04) **(anglais uniquement)**



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№ _____

На № _____

*As to the execution of the Court's judgments
in the case of Burmych and others v. Ukraine*

DGI

17 AVR. 2018

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

Dear Madam,

Herewith please find enclosed the Action plan for the execution of the Court's judgment in the case of "*Burmych and others v. Ukraine*" (application No. 46852/13) and group of cases "*Yuriy Nikolayevich Ivanov/Zhovner*" (application No. 40450/04).

This information has been also sent by e-mail.

Encl: on 5 pages.

Yours faithfully

**Deputy Minister of Justice
of Ukraine – Agent before
the European Court of Human Rights**


Ivan LISHCHYNA



DGI

17 AVR. 2018

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

Ms Geneviève Mayer

**The Head of Department
for the Execution of Judgments
of the European Court of Human Rights
Directorate General
Human Rights and Rule of Law
Council of Europe
F-67075 Strasbourg Cedex**

*As regards execution of the Court's judgments
in the group of Burmych cases*

Dear Madam,

Please let me, first of all, assure you of our outmost respect.

First of all, let me on the behalf of the Government of Ukraine thank you for your outstanding efforts and the work that your Department invested into the resolution of the problem of the lengthy non-enforcement of domestic judicial decisions in Ukraine. These efforts were inspiring for and highly appreciated by the Ukrainian Government. We understand the importance of finding an effective mechanism to resolve it, based on the solid ground of the existing practices and principles of the Council of Europe.

With regard to the foregoing, we are glad to inform you that following the round table meeting held on 27 March 2018 and based on the results of the discussions that took place during this meeting the Government of Ukraine continued their law drafting activities. The resulting Draft Law will be discussed at the Interdepartmental Working Group meeting fixed for 19 April 2018. On the basis of the discussions that will take place at the meeting the final Draft Law will be prepared and sent to the Committee of Ministers for comments and suggestions.

It is important to emphasise that the issue of the non-enforcement of judicial decisions is one of the key matters in Ukraine now, and it has been brought to the attention of not only senior public officials, but also society. In particular, by virtue of Decree of the President of Ukraine No. 361/2017, the year of 2018 has been announced a year of the "I Have a Right" project. One of the main elements of this project is its direction "The Enforcement of Domestic Judicial Decisions". The project is aimed, inter alia, at bringing of ways to have a judicial decision enforced in a speedy and effective manner to people's attention.

Point by point, the Government would like to draw the Committee's attention to the following amendments to be introduced by the Draft Law:

1. The Law of Ukraine "On the Execution of Judgments and Application of the European Court of Human Rights Case-Law" will be amended, because as of today it does not envisage the procedure for the execution of a judgment with the nature which is as complicated as that of the judgment in the *Burmych* case.

2. The Government have had the judgement in the *Burmych* case translated with regard to its public importance and interest. However, the translation is thus far unofficial, because pursuant to the provisions of the relevant Law, the judgment in the *Burmych* case is not classified as judgement. Upon making respective amendments, the translation in this judgment will become authentic.

3. Also, necessary amendments are being introduced in order to address the difficulties which the applicants residing within the temporarily occupied territory of Donetsk and Luhansk Regions, the Autonomous Republic of Crimea and the City of Sevastopol experience with the receipt of just satisfaction awarded by the Court. According to those amendments, the Government will not only send a notification of the delivered judgment to them, hoping that they will receive it but also post this notification at the official website of the Representative Authority.

4. The applicant residing within the temporarily occupied territory of Donetsk and Luhansk Regions, the Autonomous Republic of Crimea and the City of Sevastopol who failed to apply for his or her money within one year and this money therefore was transferred to the State Budget of Ukraine shall be entitled to file an application with the State Bailiffs Service of Ukraine, requesting to pay compensation pursuant to this Law.

5. The Ministry of Justice shall post explanations of the right to file an application pursuant to the Law of Ukraine “On the State Guarantees regarding the Enforcement of Judicial Decisions” exercised by the applicants included in Annex 2 to the Grand Chamber judgment at its official website and send a respective notification for publication in the “Government’s Courier” [Uriadovyi Kurier] newspaper.

6. Domestic judicial decisions shall be enforced and compensations shall be paid to the applicants whose applications will be sent to the Government within the framework of the Grand Chamber judgment pursuant to the Law of Ukraine “On the State Guarantees regarding the Enforcement of Judicial Decisions”.

7. The enforcement of the Grand Chamber judgment in terms of payments to the applicants included in Annex 1 to the Grand Chamber judgment shall consist of the payment of compensations in the amount equal to that payable to other creditors under the judgment against the state (i.e. 10 per cent of the unpaid amount but in any event not more than the amount of the minimum salary as of the payment day), as well as the enforcement of domestic judicial decisions and shall be carried out by the State Bailiffs Service.

8. Compensation under the Grand Chamber judgment shall be determined in the amount of the minimal salary as of the payment day.

9. Within 3 month as of the institution of execution proceedings, the State Bailiffs Service shall organise verification of the progress in the enforcement of domestic judicial decisions and establish a Register of Applicants pursuant to the form approved by the Representative Authority.

10. After having determined the amount of debt under domestic judicial decisions, the State Bailiffs Service shall calculate compensation.

11. Within 30 days as of delivery of respective documents from the State Bailiffs Service, the Central Executive Authority that carries out public policy in the field of treasury services for budget funds shall write off funds from the respective Programme of the State Budget of Ukraine to the bank

accounts stated by the applicants, and in the absence thereof – to the respective account of the State Bailiffs Service.

12. Furthermore, it is important to ensure the preventive mechanism; therefore upon amending the aforesaid Law, the Ministry of Justice shall prepare and send a submission regarding general measures to be taken with a view to the elimination of the systemic problem found in the Grand Chamber Judgment and its root cause to the Cabinet of Ministers of Ukraine.

13. The Cabinet of Ministers of Ukraine shall instruct the respective advisory authority to draft and submit an action plan regarding the prevention of the circumstances found in the Grand Chamber Judgment, as well as proposals concerning the Law of Ukraine “On the State Budget” for a respective year in terms of funding of the expenditures, as set forth in the action plan, for approval by the Cabinet of Ministers of Ukraine.

Also, the Draft provides for, inter alia, the amendments to the Law of Ukraine “On the State Guarantees regarding the Enforcement of Judicial Decisions”.

It is being planned to decrease time limits – If a judicial decision regarding recovery of money from a state company or legal entity has not been enforced within three month as of delivering an Order on the institution of enforcement proceedings, it shall be enforced at the expense of the funds envisaged by the Budget Programme established for the enforcement of judicial decisions.

If the Central Executive Authority that carries out public policy in the field of treasury services for budget funds has failed to transfer money under a judicial decision on recovery of money within fifteen months as of the day when a judicial decision took legal effect, except for the case specified in Article 4.4 of this Law, compensation in the amount of 10 per cent of the unpaid amount but in any event not more than the amount of the minimum salary as of the payment day shall be paid to the recoveror upon his or her request at the expense of funds envisaged by the Budget Programme established to ensure the enforcement of judicial decisions.

As to decisions ordering specific performance , if the enforcement has been delayed for two month as of delivering an Order on the institution of enforcement proceedings, except for cases when the recoveror impedes enforcement actions, the state bailiff must take measures for calculation of the amount of debt in money terms, namely:

if by virtue of the decision the debtor is obliged to accrue (calculate, etc) and/or pay money, the state bailiff must demand that the debtor, and if the debtor that was a legal entity has been terminated – that its legal successor or the state authority that decided to terminate the debtor which was a legal entity calculate the amount of money that is subject to being paid to the recoveror;

file an application with the court, requesting that the mode and manner of the enforcement of the decision be varied;

approach the recoveror and debtor with a proposal to conclude a settlement agreement pursuant to the existing legislation with a view to calculating the value of the property/services granted to the recoveror under the judicial decision;

other measures, as envisaged by laws.

Also, it is being planned to establish the Supervisory Commission on the Enforcement of Judicial Decisions against the State. The Supervisory Commission on the Enforcement of Judicial Decisions against the State (hereinafter “Supervisory Commission”) is established under the Ministry of Justice of Ukraine for the examination of issues arising when enforcing judicial decisions against the State. The Supervisory Commission shall consist of five members; two of them shall be appointed by the Ministry of Justice of Ukraine, including the Minister or Deputy Minister, and the Ministry of Economy, the Ministry of Finance and the Supreme Court shall appoint one member each. The composition of the Supervisory Commission shall be approved by the Order of the Ministry of Justice of Ukraine.

The Head of the Supervisory Commission is the Minister of Justice of Ukraine or Deputy Minister of Justice of Ukraine. The Supervisory Commission shall:

- 1) examine complaints regarding refusals to enforce judicial decisions against the State;
- 2) give recommendations regarding the peculiarities of the enforcement of judicial decisions against the State;
- 3) solve other issues regarding the enforcement of judicial decisions against the State.

5. The time limits for filing an application for the enforcement of judicial decisions delivered before this Law (on amendments) came into force pursuant to the Law of Ukraine “On the State Guarantees regarding the Enforcement of Judicial Decisions” shall be six months as of the day when the Law (on amendments) came into force.

Judicial decisions on recovery of money where the debtors are subjects set forth in Article 2.1 of the Law of Ukraine “On the State Guarantees regarding the Enforcement of Judicial Decisions” and no writs of enforcement have been filed within six month shall be deemed to have been enforced.

As to financing – it is proposed that at the Intergovernmental Working Group’s meeting a decision would be taken to strive to envisage in 2019 State Budget the financing of the Budget Programme in the amount of at least UAH 1 billion.

As of 2019, it is proposed that at the Intergovernmental Working Group’s meeting a decision would be taken to strive to envisage in State Budgets of the subsequent years the following amounts: 2020 – 25 per cent of the outstanding debt but not less than UAH 1 billion; 2021 – 35 per cent of the outstanding debt but not less than UAH 1 billion; 2022 – 50 per cent of the outstanding debt; 2023 – the outstanding debt.

Also, this process involves amendments to other regulatory instruments.

The Government would like to draw the Committee’s attention to the fact that the aforementioned amendments are only drafts that are being discussed at this stage.

At the meeting of Interdepartmental Working Group, the relevant authorities will be discussing this project, give their comments and introduce their proposals. The Government will inform the Committee on the results of the aforesaid meeting.

Once again, we would like to make an emphasis on our commitment to the European principles and standards of the protection of human rights when executing ECHR judgments and thank for the contribution of the Council of Europe in this direction of work.

Yours faithfully

**Deputy Minister – Agent
before the European Court of Human Rights**

Ivan LISHCHYNA

Concept for Solving Problematic Issues Arising from the Emergence of the State Debt under Judicial Decisions

DGI

17 AVR. 2018

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

I. **Burmych and Others v. Ukraine**

1. On 12 October 2017 the Grand Chamber of the European Court of Human Rights (“ECHR”) adopted the Judgment in the case of Burmych and Others (Applications nos. 46852/13 et al., “Burmych Judgment”), which concerned 12,143 applications of so called Ivanov-type. The cases related to the non-enforcement of the court judgments rendered against the state bodies, establishments and companies, causing systematic violations of Articles 6 (fair trial) and 13 (effective remedies) of the Convention on Human Rights and Fundamental Freedoms (“Convention”) and Article 1 of Protocol 1 (right to property) as identified in the pilot judgment of ECHR of *Yuriy Nikolayevich Ivanov v. Ukraine* (no. 40450/04, 15 October 2009).

2. ECHR in the Burmych Judgment found as follows:

“195. The situation faced by the Court in the Ivanov-type cases in essence derives from an ineffective execution of the Court’s final judgment, requiring the adoption of general measures under the supervision of the Committee of Ministers in order to eliminate the root cause of a systemic problem continually generating numerous applications to the Court. The problems involved are fundamentally of a financial and political nature and, as shown by the developments following the Ivanov pilot judgment (...), their resolution lies outside the Court’s competence under the Convention, as defined by Article 19. They can be addressed adequately only between the respondent State, on the one hand, and the Committee of Ministers, on the other, the latter being empowered under Article 46 § 2 of the Convention to supervise the execution of the Court’s judgments.

196. It is therefore incumbent on the respondent State and the Committee of Ministers to assume their responsibilities under Article 46 and ensure that the Court’s Ivanov pilot judgment is fully implemented and that, in addition to the necessary general measures addressing the root cause of the problem, individual applicants are provided with appropriate relief at domestic level, including a scheme offering to them redress for the Convention violation identified by the Court that would serve the same function as an award under Article 41 of the Convention” (citations omitted).

3. Based on the above considerations, ECHR declared as follows:

“198. The present case and all similar 12,143 cases pending before the Court, as well as any similar future cases to be submitted to it, are part and parcel of the process of execution of the pilot judgment. Their resolution, including individual measures of redress, must necessarily be encompassed by the general measures of execution to be put in place by the respondent State under the supervision of the Committee of Ministers. Consequently, all such cases fall to be dealt with under the execution process and should be notified to the Committee of Ministers in its capacity as the body which, under the Convention system, has the responsibility to oversee

redress and justice for all the victims affected by the systemic problem found in a pilot judgment (...), including the applicants whose names are mentioned in the appended lists.

199. Having regard to the respective competences of the Court and the Committee of Ministers under Articles 19 and 46 of the Convention, the Court is forced to conclude that no useful purpose is served in terms of the Convention's aims in its continuing to deal with these cases in accordance with the practice hitherto followed. That being said the Court must now consider whether in these circumstances it may and should exercise its power under Article 37 § 1 (c) to strike the applications out of its list” (citations omitted).

4. On the basis of the above one can conclude that the gist of the Burmych Judgment was that ECHR suspends the consideration of the Ivanov-type applications for two years within which period the Government of Ukraine is required, under the supervision of the Committee of Ministers (“CoM”), to put in place the general measures mechanism conclusively resolving the systematic problem of non-enforcement of the courts judgments against the State.

5. The 12,148 applications, struck-out under the Burmych Judgment and those, that will be from time to time struck out in the future do not require individual execution measures, but should be settled together with other non-enforced judgments through the general measures mechanism to be established. In particular, ECHR noted in para. 204 of the Burmych Judgment that *“the grievances raised in these applications must be resolved in the context of the general measures required by the execution of the Ivanov pilot judgment”*.

6. Thus, Appendixes I and II containing in total 12,143 applications as well as the future similar lists of the struck-out Ivanov-type applications intend to demonstrate to the Government and the CoM the magnitude of the problem rather than call for any specific actions with respect to the applications listed therein. This is proved, *inter alia*, by the ECHR Registry's letter of 20 December 2017, stating in response to the Government's request for the details of the applications, listed in Appendix II (uncommunicated cases) that *“[i]n the light of the foregoing and of the clear thrust of the Burmych judgment, notably in relation to the shared responsibility promoted under the Interlaken process, you will appreciate that it is no longer possible to justify devoting further Registry resources to the particular cases identified”*¹.

II. Qualifications of the general measures mechanism

7. At its 1288th meeting on 7 June 2017, the CoM adopted Interim Resolution CM/ResDH(2017)184 (“**Interim Resolution**”) in which, *inter alia*, it *“urged the authorities, at the highest political level, to hold to their commitment to resolve the problem of non-enforcement of domestic judicial decisions and to adopt, as a matter of priority, the general measures required fully to comply with pilot judgment and aimed at finding a longlasting solution to the problem of non-enforcement or delayed enforcement of domestic judicial decisions”*.

¹ See, letter of 20 December 2017 [Tab 1].

8. The examination of the Burmych Judgment and Resolutions and Decisions of the CoM allows to identify the following qualifications that the prospective General Measures Mechanism (“GMM”) should have in order to be considered effective in the eyes of ECHR and CoM. In particular, GMM should:

- (a) contain payment scheme with certain conditions, or containing alternative solutions, to ensure the enforcement of still unenforced decisions within the reasonable time (Interim Resolution);
- (b) introduce necessary adjustments in the state budget so that sufficient funds are made available for the effective functioning of the above-mentioned payment scheme (Interim Resolution);
- (c) include the provision of appropriate and sufficient redress for the Convention violations related to continued non-enforcement of the judgments (§ 204 of the Burmych Judgment);
- (d) provide for procedures to prevent situations of non-enforcement of domestic court decisions rendered against the State or state enterprises (Interim Resolution).

III. Development of the GMM

9. The Government of Ukraine was in an ongoing search of the acceptable GMM, conforming to the above qualifications.

10. On 21 June 2017, a conference concerning solving the systemic problem arising from the non-execution of domestic judicial decisions in Ukraine, which is under enhanced supervision of the CoM (the *Yuriy Nikolayevich Ivanov v. Ukraine* group of cases) was held under the chairmanship of the First Vice-Prime-Minister – Minister of Economic Development and Trade, with the participation of the Minister of Justice of Ukraine, the Government Agent before the European Court of Human Rights, representatives of the Office of the Cabinet of Ministers of Ministers of Ukraine, the Ministry of Justice of Ukraine, the Ministry of Social Policy of Ukraine, the Pension Fund of Ukraine and the State Treasury Service of Ukraine.

11. During the aforementioned conference, it was decided to support the proposal made by the First Vice-Prime-Minister of Ukraine – Minister of Economic Development and Trade and the Government Agent regarding the necessity to establish an Interdepartmental Working Group on the issue of the non-enforcement of domestic judicial decisions, which would discharge the following tasks: keeping records and carrying out examination of domestic judicial decisions in terms of the State debt; development of a strategy concerning the disposal of the issue of the non-enforcement of domestic judicial decisions and taking expeditious measures in order to eliminate the exiting problems arising from the emergence of debt.

12. Subsequent to the conference, a Draft Ruling of the Cabinet of Ministers of Ukraine “On the Establishment of the Interdepartmental Working Group on Problematic Issues Arising from the Emergence of the State Debt under Judicial Decisions” was prepared.

13. On 25-26 September 2017, consultations between experts of the Council of Europe and the Agent before the European Court of Human Rights and representatives of the Verkhovna Rada of Ukraine, the Presidential Administration, the Ministry of Justice of Ukraine, the Prosecutor's General Office of Ukraine, the Supreme Court of Ukraine, the Higher Specialised Court of Ukraine for Civil and Criminal Cases, the Council of Europe project "Support to the implementation of the judicial reform in Ukraine" regarding the assessment of efficiency of mechanisms securing the execution of the European Court of Human Rights judgments by Ukraine.

14. During the consultation the following was done:
the efficiency and institutional capacity of the mechanisms set forth by laws for the execution of the ECHR's judgments were discussed;
ideas regarding each authority's role in the process of ensuring of the execution of the ECHR's decisions were exchanged;
proposals concerning possible ways for the improvement of the domestic legislation were formulated, with a special emphasis on the role of the judicial branch in this process and its procedural powers, with a view to ensuring of the timely and full execution of the ECHR judgments, as well as mechanisms of effective coordination of activities carried out by all stakeholders involved in this process.

15. Within the period from 24 to 27 July 2017, a series of meetings of the Government Agent and representatives of the Ministry of Justice with the Department for the Execution of Judgments of the European Court of Human Rights (Directorate General of Human Rights and Rule of Law) were held, that were aimed, in particular, at more effective execution of the ECHR's judgment in the case of *Yuriy Nikolayevich Ivanov v. Ukraine/the Zhovner v. Ukraine* group of cases (violations of Article 6 (right to fair trial) and Article 1 of the Protocol 1 to the Convention (protection of property)).

16. On 11-12 September 2017, within the framework of the visit the Minister of Justice of Ukraine also held separate meetings with Mr Guido Raimondi, President of the European Court, and Mr Roderick Liddell, Registrar of the European Court, as well as with Mr Christos Giakoumopoulos, Director General of the Directorate General of Human Rights and Rule of Law, Ms Genevieve Mayer, Head of the Department of Execution of Judgements of the European Court of Human Rights and Patrick Penninckx, Head of the Information Society Department.

17. During the negotiations with senior officials of the ECHR, the Ukrainian party informed them of the beginning of complex work by the Ministry of Justice in order to find a solution in the critical situation with the quantity of applications lodged with the ECHR on account of the non-enforcement of domestic decisions by Ukraine (the case of *Yuriy Nikolayevich Ivanov v. Ukraine* and the *Zhovner v. Ukraine* group of cases).

18. With a view to the provision of expeditious and effective solution of the issue arising from the State debt under judicial decisions and writs of enforcement to natural persons and private legal entities that have given rise to wide-scale lodging of applications with the ECHR and the latter's findings of violations of Article 6 (right to fair trial) and Article 1 of the Protocol 1 to the Convention (protection of property), the development of measures for identification and elimination of causes giving rise to such debts, as well as prevention of thereof in the future, the Cabinet of Ministers adopted Ruling "On the Establishment of the Interdepartmental Working Group on Problematic Issues Arising from the Emergence of the State Debt under Judicial Decisions" No. 591 dated 09 August 2017 (hereinafter – "Ruling 591", which had been drafted by the Ministry of Justice by Ukraine.

19. On 10 October 2017, the first meeting of the Interdepartmental Working Group was held, where the agenda of the meeting and its personal composition were approved and it was decided that:

- registers of domestic judicial decisions that took legal effect, where debtors are the authorities, State-owned enterprises, institutions, organisations, as well as bodies in whose favour the executive authorities' powers were granted, and registers of decisions pending before the European Court be established;
- the central executive authorities calculate decisions and writs of enforcement where debtors are the authorities, State-owned enterprises, institutions, organisations, as well as bodies in whose favour the executive authorities' powers were granted; statistics regarding the structure of such debts be prepared and submitted to the Ministry of Justice;
- the Ministry of Energy and Coal Mining, the State Treasury of Ukraine and the Pension Fund of Ukraine without delay finish the work and submit to the Ministry of Justice comprehensive information concerning 1,300 applications lodged with the European Court that are being processed by the Ministry of Justice;
- the Ministry of Finance of Ukraine coordinate the work of the PJSC "The State Savings Bank of Ukraine" and the State Treasury regarding measures in connection with the transfer of the information resource that is necessary for exchange of electronic documents to the State Treasury in compliance with Resolution of the Cabinet of Ministers of Ukraine No. 703 dated 16 September 2015.

20. On 17 November 2017 bilateral consultations with the high level Ukrainian delegation regarding the execution of the ECtHR's judgment in the case of Burmych were held in Strasbourg. During this meeting Government officials assured the representatives of the Council of Europe that they appreciate the complexity of the issues that arouse from the Burmych judgment and are currently considering the approaches to resolve the problem identified in this judgment. Simultaneously, the Government officials assured that they are now working on the development of long lasting solution for the resolution of the problem of non-enforcement of judgments.

21. In the course of the above events a number of various measures were considered, the experience of other Member-States in resolution of the systematic problems examined, opinions exchanged. Finally, at the meeting on 22 January 2018, which was chaired by the Vice-Premier Mr Kubiv, the senior officials of the Ministries of Justice, Finance and the Social Affairs, the Secretariat of the Cabinet of Ministers and the Treasury adopted the following GMM as a basis for the following development, adoption and implementation.

22. GMM would consist of two principal elements: the long-term solution (“**LTS**”), addressing the problem of all the outstanding judgments against the State and State-owned companies and *ad hoc* solution (“**AHS**”), addressing (to the fullest possible extent) the applications, included in the Burmych Judgment (jointly “**Solutions**”).

23. Both Solutions would be based on the already existing remedies, namely that of the State Budget Programme 3504040 “Measures for the Enforcement of Judicial Decisions Guaranteed by the State” (“**4040 Programme**”) for LTS and State Budget Programme 3601170 “Payments under Decisions Delivered by Foreign Jurisdiction Institutions subsequent to the Examination of Cases against Ukraine” (“**1170 Programme**”) for AHS.

24. LTS would bear the principal burden of GMM. In order to comply with the qualifications stated in para. 8 above it would:

- identify of the principle shortcomings of the 4040 Programme towards the effective mechanism for the payment under the judgments;
- remove the identified shortcomings;
- provide for the sufficient redress for the non-enforcement of the judgments;
- ensure sufficient financing for compliance with the schedule;
- establish clear schedule of payments;
- provide for a clear procedure for the payments;
- provide for a mechanism against abuses.

25. AHS would provide for the amendment of the legislation in order to allow the payment of the domestic judgments, the non-enforcement of which resulted in the applications being brought before ECHR, which then were joined to the Burmych Judgment via 1170 Programme. The procedure of payment of AHS would be similar to the amount for redress for non-enforcement would be equal to that, established under LTS.

IV. Long-Term Solution

1. The current state of affairs

26. Currently there exist **two parallel procedures** via persons can be put on the payment waiting lists under 4040 Programme that was established pursuant to the Law of Ukraine “On the

State Guarantees regarding the Enforcement of Judicial Decisions” (“**Guarantees Law**”). This programme is being administered by the State Treasury of Ukraine.

27. Pursuant to Article 2 the Guarantees Law envisages that the State shall guarantee the enforcement of a judicial decision on collection of money and obligation to perform certain actions concerning the property, where the debtor is:

- a. a state authority;
- b. a state company, institution, organisation;
- c. a legal entity whose property cannot be sold forcibly pursuant to laws.

28. Judicial decisions on collection of money where the debtor is the state authority shall be executed by the State Treasury Service of Ukraine within respective budgetary expenditures *via* writing off finds from such authority’s accounts and if the aforesaid authority does not have respective budgetary expenditures, funds shall be written off the money envisaged under the Budget Programme for the execution of judicial decisions (Article 3 of the Guarantees Law).

29. Article 4 of the Guarantees Law sets forth that the enforcement of judicial decisions on collection of money from a state company of legal entity shall be performed in the manner specified by the Law of Ukraine “On Enforcement Proceedings” in the light of the peculiarities provided for by this Law.

30. If the decision on collection of money from a state company or legal entity has not been enforced during six months as of taking decisions on the institution of enforcement proceedings, it shall be enforced at the expense of funds envisaged under the Budget Programme to ensure the enforcement of judicial decision.

31. In this regard, the State Bailiffs Service shall submit documents and information that are necessary for transferring money to recoveror the State Treasury Service according to the list created under 4040 Programme and informs the recoveror in the prescribed manner accordingly.

32. Decisions on recovery of the State Budget and local budgets or debtors shall be enforced on the basis of enforcement documents only by agencies of the State Treasury Service in turn in the order of arrival of such documents (in cases of recovery of the State Budget and local budgets the Ministry of Finance shall be preliminary informed; in cases of recovery of debtors’ funds – within the limits of necessary budgetary expenditures (available balances on accounts of companies, institutions and organisations).

33. The aforementioned is envisaged by the Procedure for the Enforcement of Decisions on Recovery of Money from the State Budget and Local Budgets or Debtors, as approved by the Cabinet of Ministers of Ukraine Ruling No. 845 dated 3 August 2011 (hereinafter “**CMU Ruling 845**”). The aforesaid Procedure covers only decisions delivered on 1 January 2013 or later.

34. Also, by virtue of the amendments introduced to the Guarantees Law (on 19 September 2013), its operation was extended to enforcement documents under judicial decisions on recovery of money or final judicial decisions where debtors are subjects specified by Article 2.1 of this Law (state authority, state company, institution, organisation; legal entity whose property cannot be forcibly sold according to laws) that had been issued or delivered before this Law came into force, and shall be submitted to the agency of the State Bailiffs Service within six months as of coming into force of this provision, i.e. before 01 January 2013.

35. In order to implement this, by the Cabinet of Ministers of Ukraine Ruling No. 440 (hereinafter “**CMU Ruling 440**”) dated 03 September 2014 the Procedure for the Payment of Debts under Judicial Decisions whose Execution is Guaranteed by the State. Pursuant to this Procedure, decisions shall be divided in a manner that respects the hierarchy of such repayment of debts:

1st waiting list – decisions regarding pensions and social benefits, recovery of alimony, reimbursement of damages and losses inflicted due to a crime or administrative offence, disability or other harm to health, as well as on account of the loss of primary earner;

2nd waiting list – decisions regarding labour legal relations;

3rd waiting list – other decisions.

Decisions are referred to a waiting list according to the date of their arrival to an agency of the State.

36. Currently about 169,500 enforcement document are pending before the State Treasury for the total amount of UAH 4,612 billion. Expenditures in the amount of UAH 500 million are envisaged for the execution of the aforesaid programme by the 2018 State Budget of Ukraine.

37. Most of such unenforced domestic judicial decisions refer to obligations of Departments of the Pension Fund of Ukraine to calculate and pay the applicants’ pensions pursuant to the Laws of Ukraine “On the Status and Social Security of Victims of the Chernobyl Disaster”; “On Social Protection of Children of War”; collection of social benefits from Labour and Social Security Agencies pursuant to the Laws of Ukraine “On the Status and Social Security of Victims of the Chernobyl Disaster”; “On the Status of War Veterans, Guarantees of Their Social Security”; collection of debts, as well as to impose new **moratoria** on the enforcement of domestic judicial decisions against legal entities whose property cannot be forcibly sold according to laws.

38. The provisions in force, for example, of the Law of Ukraine “On the Imposition of Moratorium on Forcible Sale of Property”, whereby a moratorium on forcible sale of state enterprises and business companies’ property, where the State share in the charter capital amounts to at least 25 per cent, often make it impossible to enforce judicial decisions on recovery of debts. Also, there are a number of other moratoria that make it impossible to enforce judicial decisions.

39. The problem is connected, *inter alia*, with the fact that when enforcing decisions on imposing an obligation, agencies of the State Bailiffs Service do not apply measures of

enforcement of judicial decisions to the full extent according to the Law of Ukraine “On Enforcement Proceedings”. Also, as specified by the State Treasury court’s decisions are taken contrary to the second paragraph of subparagraph 10.3 of paragraph 10 of the resolution of the Plenum of the Supreme Administrative Court of Ukraine No. 7 of 20 May 2013 “On the court decision in administrative case”. Resolution sets forth that if a court declares the defendant’s actions or omissions unlawful, a court may oblige him to act or refrain from certain actions in the manner prescribed by laws in force, which can protect or restore the infringed right. At the same time, the operative part of the decision shall not contain prescriptions that foresee possible violations on the defendant’s party and obligations for him to perform some action or refrain from acting in the future.

40. As the practice shows, delivered judgments imposing obligations enable recoverors to apply to debtors for recalculation of debt on a permanent basis. Inasmuch as there exists a delay in the enforcement of judicial decisions (around 2.5 years), recoverors file requests for recalculation of debts under judicial decisions with the State Pension Fund of Ukraine or social security authorities. The aforementioned authorities perform such recalculation and the amount that is subject to being paid increases significantly, which results in constant increase of the amount of debt and does not allow to foresee time limits for the enforcement of a judicial decision correctly and to determine the necessary amount of money unequivocally.

41. Furthermore, the legislation that regulates the payment of the State debt under judicial decisions allows submitting both an enforcement document and a judicial decision. There is a risk of double enforcement of the judicial decision both on the grounds of the writ of enforcement and the judicial decision. Such provision does not correspond with the domestic procedural legislation and the Law of Ukraine “On Enforcement Proceedings”.

42. Another problem is the enforcement of domestic judicial decisions obliging to transfer social payments and refusing to vary the mode and manner of the enforcement of decisions.

43. The nature of the majority of decisions regarding social benefits is obligatory. The Guarantees Law envisages state bailiffs’ right to file an application with a court, requesting that the mode and manner of the enforcement of decisions be varied, the courts however do not grant such requests and, accordingly, decisions cannot be enforced. Besides, the Cabinet of Ministers Ruling 845 envisages only the enforcement of decisions on recovery of funds.

44. Another identified problem concerns issues of the enforcement of judicial decisions in connection with moratoria imposed by laws, in particular, the State Bailiff Service’s failure to submit such decisions to the State Treasury Service of Ukraine due to “administrative impediments”. A significant negative fact affecting the enforcement of court decisions in Ukraine is the presence of moratoria on recoveries against property. Thus, the state has extended a moratorium on the bankruptcy proceedings against the enterprises of the fuel and energy complex, which formally allowed such companies not to pay the debts on their obligations, to avoid paying taxes, to distort the competitive environment etc.

45. The State Treasury executed court decisions whose execution is guaranteed by the state under the budgetary programme:

In 2013 – 8 143 court decisions for an overall amount of UAH 153, 870, 000;

In 2014 – 4 005 court decisions for an overall amount of UAH 76, 610, 000;

In 2015 – 7 468 court decisions for an overall amount of 144, 710, 000;

In 2016 – 7 157 court decisions for an overall amount of 144, 720, 000;

For the latest available information in 2017 (until 01 November) – 30 727 court decisions for an overall amount of UAH 385, 940, 000.

46. According to the currently available information the number of applications, filed to State Treasury in 2017 decreased compared to 2016. The execution of judgments under 4040 Programme increased. Which on the whole shows positive dynamics. However, there remains the problem of decisions that cannot be executed under the mentioned budgetary programme and imposing obligations. Relevant information will be specified further.

2. The identified shortcomings

47. Therefore, the following shortcomings of 4040 Programme have been identified in the course of the preparation of GMM:

(a) the lack of funds allocated for this Programme: if the financing would remain on the same level, i.e. UAH 500 million per year, only the current indebtedness would not be conclusively settled any earlier than within 9 years;

(b) the absence of any predictable time limitations for the completion of the task;

(c) the non-eligibility of the judgments ordering specific performance, adopted after [01 January 2013] for the Programme;

(d) administrative impediments for the putting of moratorium judgments on the 4040 Programme's waiting list.

3. The removal of obstacles: specific performance and moratorium cases

48. The interdepartmental group is currently developing the amendments to the Guarantees Law, which would harmonise the two existing procedures, related to the 4040 Programme. It is proposed that a two-step procedure, provided for in the CMU Ruling 440 would be extended to all the applications for enforcement of the judgments at the cost of the 4040 Programme.

49. Thus, all of the applications would apply to the competent bailiff officer. If the relevant application meets the requirements set out in the law, the officer would collect the relevant data and documents and pass on the case-file to the Treasury. The latter checks the completeness of the case-file and puts the applicant on the waiting list for payment. If the bailiff officer refuses to

accept the application, his decision can be challenged before an administrative commission to be established at the Ministry of Justice for this purpose. If the commission agrees with the bailiff, the refusal to accept the application can be appealed against to the administrative court.

50. Thus, the CMU Ruling 440 regime of treating of the specific performance cases would be extended to all of the judgments, irrespective of the time of their adoption. The reluctance of the bailiffs to transfer the moratorium cases to the Treasury would be addressed via relevant instructions and guidelines of the Ministry of Justice and the work of the above administrative commission.

4. Funding and payment schedule

51. The funding of the 4040 Programme and the payment schedule are two interrelated issues. Ideally, the Government would have simply paid all the outstanding judgments against the State and the State-owned companies. However, this scenario is impossible for technical and financial reasons.

52. When the Government set out to comply with the first step of the three-step strategy, proposed in the Interim Resolution, namely the calculation of the amount of debt arising from unenforced decisions it turned out that the information on the judgments against the State is contained in several unrelated electronic registers and paper archives. Each such register contained incomplete information and lent very limited opportunities for analysis.

53. For example, the State electronic register of the enforcement proceedings (“**Enforcement Proceedings Register**”) contained only writs of executions brought for compulsory enforcement. Thus, if a judgment creditor did not request the court for issuance of a writ of execution on the judgment or did not apply to the Bailiff Officer for enforcement such unenforced judgments would not have been reflected in the register. Moreover, where the writ was returned without enforcement due to the moratorium the information on such writ would have been erased from the register and would also not be reflected as an unenforced judgment.

54. On the other hand the State Register of Judgments would contain all the judgments issued against the State, but only those, issued after 2007, when the Register was launched. However, it would require a Sisyphus effort to screen the Register for specifically final and binding judgments against the State and State-owned companies. Moreover, were such task to be undertaken and succeed, the Register does not contain any information on the enforcement of the judgments and is not linked with the Enforcement Proceedings Register. Thus, in order to determine, which of the hundreds of thousands judgments against the State remain unenforced, one would have to manually insert the numbers of the court proceedings into the Enforcement Proceedings Register and even that would deliver the imperfect results, given the limitations of the latter Register, described above.

55. That is why the information gathered by the Agent's Office from the State bodies as to the amount of the State's indebtedness to the private persons, approximately UAH 31 billion should not be overestimated and should be treated as a crude indication of the potential claims that could be brought under GMM rather than a basis for any budgetary allocations.

56. This said, it is proposed to rely on the 4040 Programme's waiting list as a basis for the calculation of the outstanding debt of the State under Ivanov-type judgments. Currently there are 169,5 enforcement document pending before the State Treasury for the total amount of UAH 4, 612 billion. These figures, however, are also of limited worth from the point of view of the determination of the overall historical debt, given that there is no time limitation for the judgments to be put on the Programme and the steady (albeit decreasing) inflow of the applications continues.

57. The Government proposes that, as a part of establishment of GMM, a time-limit for the filing of the applications for the payment through 4040 Programme be established. Preliminary, it is suggested that the persons, whose judgments were adopted before the date of the adoption of the law, introducing GMM, would be allowed to file the applications to be put on the 4040 Programme's waiting list on 30 June 2018. The applicant for the judgments, adopted after the date of the adoption of GMM Law would be able to file the application within 6 months following the expiry of the 6 months term for the performance of the judgment by the initial debtor. Those, who have failed to comply with the time-limits would not be allowed to receive redress through GMM, but would retain the right to claim the execution of the judgments in the course of the usual enforcement procedures.

58. The establishment of the above time-limits would allow to determine the outstanding historical debt owed by the State under the court judgments and to set out the schedule of payments accordingly.

59. It is proposed that for the 2018 budgetary year, the 4040 Programme would be allotted UAH 1 billion, which is over $\frac{1}{4}$ of the currently outstanding debt. The allotment of the funds to the Programme in 2019-22 years would be carried out in a manner that ensures the payment of the total indebtedness by the end of 2022.

60. Moreover, The Laws of Ukraine on the State Budget for 2015-2018 envisage the instalment payment of debt under domestic judicial decisions in the amount of UAH 7.5 billion by means of issue of State Treasury Bonds. The procedure for the implementation of the aforesaid provisions is stipulated by Resolution of the Cabinet of Ministers of Ukraine "On Certain Issues regarding the Execution of Judicial Decisions Guaranteed by the State, as well as Judgments Delivered by the European Court of Human Rights" No. 703 dated 16 September 2015; Resolution of the Cabinet of Ministers of Ukraine "On Approval of the Procedure for the Use of Money envisaged by the State Budget for the Implementation of Measures concerning the Execution of Judicial Decisions Guaranteed by the State" No. 522 dated 12 July 2017.

61. As of 1 February 2017, judicial decisions entered in the 3rd waiting list amount in total to UAH 3.7 bln (judicial decisions that do not rule on the issues connected with social benefits and due payments in course of labour legal relations), i.e. these are recoverers in those cases who will apply for State Treasury Bonds.

5. Redress

62. While the Burmych Judgment requires that “sufficient redress” was paid to those who have suffered from length non-enforcement of their judgments, it is silent on the actual amount, apparently leaving the question to be determined in the course of the adoption of GMM by the State under supervision of the CoM.

63. Apparently, by “redress” the ECHR meant a sum to be paid over the actual awarded amount, payable to the victim of the lengthy non-enforcement. While considering the amount at issue one would see a range between the amount of EUR 2,500 awarded by the Court in the Ivanov Judgment to the applicant in respect of non-pecuniary damage and 3 per cent, awarded to the applicants by the Guarantees Law. The latter amount may be seen as insufficient in the cases, involving insignificant awards or excessive, bordering on unjust enrichment where significant awards are concerned.

64. Following extensive discussions, the Government proposes to amend the Guarantees Law, providing for the payment of the redress for the length non-enforcement in the amount of 10% of the awarded amount, but no more than one minimal salary. The later currently constitutes UAH 3,723 that is approximate EUR 111, 27. Such redress would improve the situation of those with claims for less than UAH 37,000 (on 01 January 2018, and UAH 1 544 on 01 January 2017), i.e. persons with claims for social security payments, but would not allow for unjust enrichment of those with commercial claims.

V. Ad Hoc Solution

65. AHS is based on the fact that in the 2018 State Budget UAH 800 million was allocated for the payments under the ECHR judgments. This was done in order to cover the amounts to be payable under the domestic judgments, the payment of which the ECHR would order as a part of the Ivanov-type judgments. Obviously after Burmych Judgment this became redundant, but the amount remains readily available for this purpose. Thus the Government intends to use this amount for its intended purpose in order to at least partially alleviate the problem of non-enforcement of the judgments.

66. AHS is to be structured as following:

- the Law of Ukraine “On the Execution of Judgments and Application of the European Court of Human Rights Case-Law” (“**ECRH Law**”) would be amended to include the Burmych Judgment in the list of ECHR judgments enforceable under this Law;
- the enforcement would be limited to the payment of the amounts awarded by the judgments, unenforced on the date of payment, the non-enforcement of which was the reason for their inclusion into Appendixes to Burmych Judgment;
- the redress would be payable in the amount equal to that under LTS;
- the applicants would be contacted by the Agent’s Office and invited to provide relevant information to competent bailiffs, otherwise the procedure before the bailiff would be the same as for LTS;
- the eligibility of the cases for the payment would be evaluated by the bailiffs against the criteria set out in the Guarantees Law;
- the payment would be effected at the cost of the 1170 Programme.

67. AHS would be limited to the amounts available under the 1170 Programme for 2018 budgetary year. The preliminary calculations show that this amount would be sufficient to cover the applications included into Appendixes I and II. No payments beyond this amount or after 2019 would be available and the applicants would be invited to join the LTS on the general conditions.

68. It is important to note that AHS would be limited to the judgments, that caused the ECHR to join the relevant applications to the Burmych Judgment. In this respect one should bear in mind that the Agent’s Office has relevant information only regarding the cases included in Appendix I as they had been communicated by the ECHR to the Government for observations.

69. The Registry has already refused to supply this information with respect to Appendix II cases. Thus, unless certain procedure could be established whereby Secretariat of CoE would supply the relevant information, AHS would be necessarily limited to applications included into Appendix I.

VI. Additional measures of general character

42. While the above described GMM intends to resolve the problem of the historical judgments confirmed debts, accumulated by the State over the years of independence, there remains a risk of building up of the new debts under the judgments to be adopted after the enactment of the GMM legislation. In other words, GMM would not be able to fully implement the part of the third step of the three-step strategy, described in the Interim Resolution, which requires, inter alia, the introduction of “necessary procedures to ensure that budgetary constraints are duly considered when passing legislation to prevent situations of non-enforcement of domestic court decisions rendered against the State or state enterprises”.

43. The above risk would be addressed through a number of measures to be developed within the framework of the Interdepartmental Working Group, including:

- introduction of a system of monitoring of draft laws and laws in force granting additional benefits and against the State Budget capacity in order to prevent the adoption of laws providing for expenditures exceeding such capacity;
- abolition of moratoriums and other measures, impeding the enforcement proceedings against the State-owned companies;
- strengthening the legal representation of the State bodies before the courts;
- improvement of the procedure for bringing of civil proceedings against the State-owned companies for redress of the sums, paid by the State Budget on account of their debts;
- establishment of a system of constant monitoring of court decisions, ordering payments by the State in order to prevent the new mass waives of claims against the State;
- other measures, intended to prevent mass non-enforcement of the court judgments against the State.