

# ЦИВІЛЬНЕ ПРАВО І ЦИВІЛЬНИЙ ПРОЦЕС



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## EXECUTION OF COURT DECISIONS IN UKRAINE: REFORMING THE SYSTEM IN TERMS OF THE RIGHT TO A FAIR TRIAL

*The article addresses the Ukrainian model of executive proceedings (which was recently updated as a result of constitutional reform in the justice sector) through the prism of the right to a fair trial, guaranteed by paragraph 1 of Art. 6 ECHR. Particular attention is paid to the analysis of the pilot judgement of ECtHR «Yuriy Nikolaevich Ivanov v. Ukraine» and the judgement «Burmych v. Ukraine», in which the ECtHR diagnosed a systemic problem of non-enforcement of court decisions where the debtor is the State or state-owned enterprises. The article critically assesses the main consequences of reforming the system and procedures of enforcement of court decisions, in particular: establishing the profession of private bailiffs and transforming the public model of enforcement proceedings into the mixed one, its further decentralization; digitalization of enforcement proceedings by setting up an automated electronic system of executive proceedings, a unified register of debtors and electronic auction systems; introduction of obligatory prepayment of bailiff's fees by creditor, etc. The article advocates a position according to which the national legislation of Ukraine needs further changes to ensure fulfillment of its international obligations. In particular, it is necessary to provide at national level an effective remedy of the right to a fair trial and execution of court decisions within a reasonable time in accordance with the requirements of Art. 13 ECHR, which should combine preventive and compensatory elements.*

**Keywords:** right to a fair trial, execution of court decisions, enforcement proceedings, model of enforcement proceedings, bailiffs, private bailiffs, reasonable time of a trial, effective remedies.

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**Исполнение судебных решений в Украине: реформирование системы сквозь призму права на справедливое судебное разбирательство**

*В статье сквозь призму требований права на справедливое судебное разбирательство, закрепленное в п. 1 ст. 6 ЕКПЧ, рассматривается украинская модель исполнительного производства, которая недавно претерпела существенные изменения в результате конституционной реформы в секторе правосудия. Особое внимание уделяется анализу пилотного решения ЕСПЧ «Юрий Николаевич Иванов против Украины» и решения «Бурмич против Украины», в которых ЕСПЧ констатировал наличие на национальном уровне системной проблемы неисполнения судебных решений, в которых должником выступает государство либо государственные предприятия. Критически оцениваются основные последствия реформирования системы органов исполнения судебных решений и процедурных правил исполнительного производства, в частности: введение профессии частных судебных исполнителей и трансформация публичной модели исполнительного производства в смешанную, ее дальнейшая децентрализация; электронизация исполнительных процедур путем создания автоматизированной системы исполнительного производства, единого реестра должников и электронной системы торгов; введение процедуры авансирования издержек исполнительного производства кредитором и т. д. Аргументируется позиция, согласно которой национальное законодательство Украины нуждается в дальнейших изменениях для исполнения Украиной своих международных обязательств. В частности, необходимо обеспечить на национальном уровне эффективное средство правовой защиты права на справедливое судебное разбирательство и исполнения судебных решений в разумные сроки в соответствии с требованиями ст. 13 ЕКПЧ, которое должно сочетать превентивные и компенсаторные элементы.*

**Ключевые слова:** право на справедливое судебное разбирательство; исполнение судебных решений; исполнительное производство; модель исполнительного производства; государственный исполнитель; частный исполнитель; разумные сроки судебного разбирательства; эффективное средство защиты.

**Problem setting.** The constitutional reform in the justice sector of Ukraine has not only changed the judicial system and updated the procedural law but has also affected the closely related area, namely enforcement of decisions rendered by courts and other bodies. What stands out most of all is the constitutional framework ensuring the enforcement of court decisions. Thus in accordance with Art. 129<sup>1</sup> of the Constitution of Ukraine the court decision is legally binding and is to be enforced. The state provides the enforcement of court decisions in the manner determined by law. The control over executing of court decisions is carried out by the court. These constitutional provisions are evolved further in the sectoral legislation. Thus, under Art. 18 of the Civil Procedure Code of Ukraine court decisions which came into force, are compulsory for all public authorities and bodies of local self-government, enterprises, institutions, organizations, public officers and citizens and are to be executed on the territory of Ukraine and abroad in cases identified by international treaties the binding nature of which has been accepted by the Supreme Council of Ukraine. Failure to execute the court decision entails liability established by law. Furthermore, alongside with the amendments to the Constitution of Ukraine the following two laws were adopted regulating compulsory execution of court decisions: The Law of Ukraine “On Agencies and Persons Performing Compulsory Enforcement of Court Decisions and Decisions of Other Authorities” and the Law of Ukraine “On the Enforcement Proceedings” of 06 February 2016, reflecting new organisational and operational framework for this segment of legal practice.

There is no doubt that number one priority of the constitutional reform of judiciary and connected institutions in Ukraine is to bring national legislation into line with European standards of fair trial. In this respect the ground-breaking provision is Art. 6 § 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter – ECHR), according to which in the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. The provision mentioned above is commonly known as “the right to a fair trial” which is deemed to be an inalienable fundamental human right inherent in the very essence of the Rule of law. The state provided guarantee that court decisions are always executed constitutes an integral part of the right to a fair trial established in the case-law of the European Court of Human Rights (hereinafter – the ECtHR).

Notwithstanding permanent improvement of legislation aimed at bringing national procedural law into line with international standards, statistics point to a systemic problem in this area. Thus, in 2016 Ukraine took the first place by the number of applications submitted to the ECtHR which added up to 22,8 % of the total number of applications submitted to the ECtHR and was ranked the fourth (after the Russian Federation, Turkey and Romania) by the number of judgements against it (73 judgements, accounting for 7,35 % of all judgements delivered in 2016) [26, p. 3–4]. As of 31 October 2017 6950 applications were filed against Ukraine which accounted for 10,8 % of all the applications submitted to the ECtHR [22]. Overall, for the entire period (up to 2017) of the ECtHR operation, of the 67101 applications decided [21], at least 29000 were related to systemic drawbacks in enforcement proceedings [7].

As early as 2009, the ECtHR delivered a pilot judgment in the case *Yuriy Nikolayevich Ivanov v. Ukraine*, where the non-enforcement of court decisions was recognized as a systemic problem of the national legislation and there were given recommendations regarding the introduction of effective remedy to protect the right of enforcement of court decisions within a reasonable time. Despite this judgment of the ECtHR and the long time passed since then, Ukraine has not yet introduced appropriate mechanisms for the protection of this right. This delay and the infinite number of similar applications submitted after the pilot judgment forced the ECtHR to take drastic measures, which led to the outstanding decision in the case *Burmych and Others v. Ukraine*. In this case the ECtHR changed its practice, and, for the first time, without examining the facts, added to five applications examined other 12143 applications concerning the excessive length of enforcement procedure, having acknowledged them as part of the previous pilot judgment and having submitted those cases to the Committee of Ministers of the Council of Europe (hereinafter – Committee of Ministers) to obtain fair compensation by the applicants.

The foregoing shows that, in fact, the harmonization of national legislation with international standards aimed at ensuring everyone’s right to a fair trial has been only partial, and national legislation needs further improvement in this respect.

These facts substantiate the relevance of studying the reform of enforcement proceedings in Ukraine through the prism of the right to a fair trial, in accordance with Art. 6 § 1 of the ECHR and its further interpretation in the case-law of the ECtHR.

**Paper objective** This article attempts to analyze the main consequences of the reform of enforcement proceedings in Ukraine in the light of recent judgements of the ECtHR against Ukraine and the requirements of the right to a fair trial.

**Paper main body.** 1. *Execution of court decisions as an element of the right to a fair trial in the context of Art.6 § 1 of the ECHR and other articles of the ECHR: general observations.*

The execution of domestic court decisions is not directly mentioned as an element of the right to a fair trial in Art. 6 § 1 of the ECHR. However, due to the evaluative interpretation of this article it was eventually recognized in the case-law of the ECtHR as an indispensable guarantee of this right. For the first time this idea was expressed in case *Hornsby v. Greece*, where the ECtHR stated: «Art. 6 § 1 of the ECHR secures to everyone the right to have any claim relating to his civil rights and obligations brought before a court or tribunal; in this way it embodies the ‘right to a court’, of which the right of access, that is the right to institute proceedings before courts in civil matters, constitutes one aspect. However, that right would be illusory if a Contracting State’s domestic legal system allowed a final, binding judicial decision to remain inoperative to the detriment of one party. It would be inconceivable that Art. 6 § 1 of the ECHR should describe in detail procedural guarantees afforded to litigants – proceedings that are fair, public and expeditious – without protecting the implementation of judicial decisions; to construe Art. 6 as being concerned exclusively with access to a court and the conduct of proceedings would be likely to lead to situations incompatible with the principle of the rule of law which the Contracting States undertook to respect when they ratified the ECHR. Execution of a judgment given by any court must therefore be regarded as an integral part of the ‘trial’ for the purposes of Art. 6 of the ECHR» [30, par. 40].

Numerous judgments of the ECtHR on the issue of execution of court decisions under Art. 6 § 1 of the ECHR emphasize the tight connections between the requirement to enforce domestic court decisions and other guarantees of the right to a fair trial. The ECtHR states that access to a court also includes the right to execute court decisions without undue delay. In case *Immobiliare Saffi v. Italy*, the ECtHR has found that non-execution of the domestic court decision confirming termination of the lease and requiring the tenant to vacate the premises for eleven years violated not only the right to a reasonable time of a trial, but also a right to access to a court [14, par. 64-75].

Since the ECtHR considers enforcement proceedings to be an integral part of a trial, states should protect not only the right to access to first-instance and appeal courts, but also guarantee the right to access to enforcement proceedings [3, par. 56]. For example, in its case-law the ECtHR points out that significant court fees can constitute an obstacle to access to a court. The same relates to

enforcement proceedings. In case *Apostol v. Georgia* the ECtHR found a violation of the right to access to a court due to an applicant's obligation to pay excessive "preliminary expenses" of enforcement proceedings. The ECtHR stated that by shifting onto the applicant the responsibility of financially securing the organization of the enforcement proceedings, the State tried to escape its positive obligation to organize a system for enforcement of judgments that is effective both in law and in practice. In the light of the above considerations, the authorities' stance of holding the applicant responsible for the initiation of enforcement proceedings by requesting him to bear the preliminary expenses, coupled with the disregard for his financial situation, constituted an excessive burden and restricted his right of access to a court to the extent of impairing the very essence of that right [3, par. 64-65].

Therefore, lack of flexible norms and standards providing efficient mechanism of payments installment, deferral and exemption from prepayment of bailiff's fees jeopardizes access to a court under Art. 6 § 1 of the ECHR.

Another strong interrelation exists between the necessity to execute court decisions and the requirement of a reasonable time of a trial in civil cases. Thus, in the case *Stadnyuk v. Ukraine* the ECtHR reiterated that "the court proceedings and the enforcement proceedings are stages one and two in the total course of proceedings" [24, par. 21]. According to the established case-law of the ECtHR the reasonable time of a trial includes execution of court decisions [9, par. 35].

In cases concerning violations of reasonable time-limits in the enforcement stage the ECtHR has set out the basic standards to be applied in enforcement proceedings at national level in Contracting States. It is stated, in particular, that "enforcement proceedings should by their very nature be expeditious" [8, par. 23]; its length should be assessed "in the light of the circumstances of the case and with reference to the following criteria: 1) the complexity of the case, 2) the conduct of the applicant; 3) the conduct of the relevant authorities; 4) what was at stake for the applicant in the dispute" [20, par. 110]. However a violation of domestic statutory time-limits of enforcement proceedings does not automatically amount to a breach of the ECHR [5, par. 67], since "a delay in the execution of a judgment may be justified in particular circumstances, but the delay may not be such as to impair the essence of the right protected under Art. 6 § 1 of the ECHR" [15, par. 27].

The ECtHR always emphasizes the State's responsibility to ensure effective enforcement proceedings. Thus, according to the ECtHR, "irrespective of whether a debtor is a private or a State-controlled actor, it is up to the State to take all necessary steps to enforce a final court judgment, as well as to, in so doing, ensure the effective participation of its entire apparatus" [18, par. 37], because "the State has an obligation to organize a system of enforcement of judgments that is effective both in law and in practice" [10, par. 84]. As to the ECtHR, its objective is "to consider whether the measures taken by the national authorities to have the decisions concerned executed were adequate and sufficient" [11, par. 44].

At the same time one should distinguish between cases where the debtor in enforcement proceedings is a private person and those where the debtor is the State.

In first case, State's obligation under the ECHR is limited to "providing the necessary assistance to the creditor in the enforcement of the respective court awards" [18, par. 37]. In such situations the ECtHR examines "whether measures applied by the authorities were adequate and sufficient and whether they acted diligently in order to assist a creditor in execution of a judgment" [18, par. 38]. For instance, the State cannot be held responsible for non-enforcement of domestic court decision caused by debtor's indigence "unless and to the extent that it is imputable to the domestic authorities, for example, to their errors or delay in proceeding with the enforcement" [4, par. 87].

Another approach is adopted in cases where the person receives a final judicial decision against the state. The ECtHR considers that "the burden to ensure compliance with a judgment against the State lies primarily with the State authorities starting from the date on which the judgment becomes binding and enforceable" [5, par. 67]. Furthermore, neither 'the complexity of the domestic enforcement procedure or of the State budgetary system' nor 'the lack of funds or other resources' can justify non-execution of court decisions in such situation [5, par. 70].

A similar approach applies also when it comes to the execution of final court decisions rendered against entities that do not enjoy 'sufficient institutional and operational independence from the state'. In spite of the fact that such state-controlled companies can operate as a private entity, the State is responsible for non-enforcement of domestic court decisions against them. Moreover, "the fact that the State sold a large part of its share in the company it owned to a private person could not release the State from its obligation to honour a judgment debt which had arisen before the shares were sold" [18, par. 37]. In such cases the State must guarantee an execution of court decisions by new owner.

The ECtHR also emphasized a simplified procedure of initiation of enforcement proceeding of domestic court decisions against the State and stated: "a person who has obtained a judgment against the State may not be expected to bring separate enforcement proceedings. Where a judgment is against the State, the defendant State authority must be duly notified thereof and is thus well placed to take all necessary initiatives to comply with it or to transmit it to another competent State authority responsible for compliance. This especially applies where, in view of the complexities and possible overlapping of the execution and enforcement procedures, an applicant may have reasonable doubts about which authority is responsible for the execution or enforcement of the judgment. Nevertheless, a successful litigant may be required to undertake certain procedural steps in order to recover the judgment debt, be it during a voluntary execution of a judgment by the State or during its enforcement by compulsory means. Accordingly, it is not unreasonable that the authorities request the applicant to produce additional documents, such as bank details, to allow or speed up the execution of a judgment. The requirement of the creditor's cooperation must not, however, go beyond what is strictly necessary and, in any event, does not relieve the authorities of their obligation under the ECHR to take timely and *ex*

*officio* action, on the basis of the information available to them, with a view to honouring the judgment against the State” [1, par. 21–22].

In order to understand the nature of the requirement to enforce final court decisions one should take into account the interpretation of this guarantee provided by the ECtHR in the context of some other conventional rights as well. Thus, according to Art. 1 of 1<sup>st</sup> Additional Protocol to the ECHR every natural or legal person is entitled to the peaceful enjoyment of his possessions. In the judgment delivered in the case *Burdov v. Russia* the ECtHR reiterated that “a ‘claim’ can constitute a ‘possession’ within the meaning of Art. 1 of 1<sup>st</sup> Additional Protocol to the ECHR if it is sufficiently established to be enforceable”. Since the court decision “provided the applicant with enforceable claims and not simply a general right to receive support from the State” [5, par. 70], the ECtHR considered impossibility of execution of domestic court decision to be an interference with the right to peaceful enjoyment of possessions.

Another article relevant in the context is Art. 13 of the ECHR which enshrines the right to an effective remedy. In the case *Kudla v. Poland* the ECtHR pointed out that “the time has come to review its case-law in the light of the continuing accumulation of applications before it in which the only, or principal, allegation is that of a failure to ensure a hearing within a reasonable time in breach of Art. 6 § 1. The growing frequency with which violations in this regard are being found has recently led the ECtHR to draw attention to ‘the important danger’ that exists for the rule of law within national legal orders when ‘excessive delays in the administration of justice’ occur ‘in respect of which litigants have no domestic remedy’ ” [16, par. 148]. In recent case-law ECtHR finds a violation of Art.6 § 1 as well as Art. 13 of the ECHR whenever the right to a fair trial within a reasonable time was infringed and there was no effective remedy available to the aggrieved person at the national level.

Failure to comply with court decisions delivered in particular categories of cases, such as cases concerned with the removal of the child, may be considered as a violation of Art. 8 of the ECHR which establishes the right to respect for private and family life. In such cases the ECtHR sometimes does not evaluate a violation of Art. 6 of the ECHR, instead paying pre-eminent attention to Art. 8 of the ECHR. In the case *Sylvester v. Austria* the ECtHR noticed that “while Art. 6 affords a procedural safeguard, namely the ‘right to a court’ in the determination of one’s ‘civil rights and obligations’, Art. 8 serves the wider purpose of ensuring proper respect for, *inter alia*, family life. The difference between the purpose pursued by the respective safeguards afforded by Art. 6 and Art. 8 may, in the light of the particular circumstances, justify the examination of the same set of facts under both Articles” [25, par. 76–77].

In this case the ECtHR considered that it is not necessary to examine the question of non-execution of court decision in the context of Art. 6 § 1 of the ECHR since the lack of respect for family life was caused by non-execution of the return order and this fact was examined in terms of Art. 8 of the ECHR [25, par. 77]. In

other cases the ECtHR also examines a complaint about non-enforcement of court decision concerning the applicants' right to have contact with a child or court decision to grant the applicant the custody of the child solely under Art. 8 of the ECHR [19, par. 65; 23, par. 54–56] or considers the complaint under Art. 6 of the ECHR to be part of the complaint under Art. 8 of the ECHR.

The above analysis of ECtHR's case-law allows to conclude that the ECtHR interprets the requirement for execution of final court decisions at least in the context of several conventional rights: two of them – the right to a fair trial (Art. 6 § 1) and the right to an effective remedy (Art. 13) – have procedural nature, and the other ones – the right to peaceful enjoyment of possessions (Art. 1 of 1<sup>st</sup> Additional Protocol to the ECHR) and the right to respect for private and family life (Art. 8) – are substantive in nature. However, Art. 6 § 1 of the ECHR should be regarded as the basic one; the interpretation and elaboration thereof by the ECtHR allows for the development of the main standards of enforcement proceedings.

2. *The problem of non-enforcement of court decisions in cases Yuriy Nikolaevich Ivanov v. Ukraine and Burmych and Others v. Ukraine.* As it was noted above, the problem of non-enforcement of court decisions in Ukraine was recognized as a systemic one by the ECtHR in its pilot judgment in the case *Yuriy Nikolaevich Ivanov v. Ukraine*, where the ECtHR found violations of Art. 6 § 1, Art. 13 and Art. 1 of Protocol No. 1 to the ECHR. In this case the applicant retired from the Ukrainian Army and was entitled to a lump-sum retirement payment and compensation for his uniform, but the payments were not made to him on his retirement which made him seek recovery of the debt in the court. The court allowed his claim in full but the court decision remained partially unenforced: at first – due to the lack of funds in the debtor's bank accounts and later on – due to insufficient budgetary allocations for such payments and also the fact that the forced sale of assets belonging to military units was prohibited by the law.

This case concerned two repetitive problems in the national legal system of Ukraine: firstly, undue delay in enforcement of final court decisions where the debtor is the state or public enterprise; secondly, absence of effective remedy for protection of the right to a fair trial and enforcement of court decisions within a reasonable time. The ECtHR agreed that lengthy delays in execution of final national court decisions were “caused by a variety of dysfunctions in the Ukrainian legal system”, in particular, “the lack of budgetary allocations, the bailiffs' omissions and the shortcomings in the national legislation [...], authorities' failure to take specific budgetary measures, the introduction of bans on the attachment and sale of property belonging to State-owned or controlled companies [...]. The ECtHR noted that the above-mentioned factors were all within the control of the State, which has failed so far to adopt any measures aimed at improving the situation, despite the Court's substantial and consistent case-law on the matter”. Given these circumstances, the ECtHR pointed out that the “situation in the present case must be qualified as resulting from a practice incompatible with the ECHR. The structural problems with which the ECtHR is dealing in the present case are large-scale and complex in

nature. They prima facie require the implementation of comprehensive and complex measures, possibly of a legislative and administrative character, involving various domestic authorities". Under this judgment Ukraine was given a year "to set up an effective domestic remedy or combination of such remedies capable of securing adequate and sufficient redress for the non-enforcement or delayed enforcement of domestic decisions, in line with the ECHR principles as established in the ECtHR's case-law" [28, par. 84–88, 94].

In response to the ECtHR's pilot judgment Ukraine adopted the law "On State Guarantees of the Enforcement of Court Decisions" of 05 June 2012 which was to establish specific State guarantees in this respect, namely a compensation for the delays in the enforcement of court decisions awarding payments or obliging the debtor to take certain actions relating to property, and the debtor of which is a state body, state enterprise, institution, organization, a legal entity, whose property cannot be sold in accordance with the law. Pursuant to this law the State Treasury of Ukraine is responsible for the enforcement of court decisions delivered by national courts against state bodies and state enterprises. If the decisions remain unenforced for a period exceeding 3 months, the State shall compensate 3 per cent of the outstanding debt per year. However, these guarantees are limited by the amount of funds allocated for the purpose according to the Budget for each year.

It is obvious that this Law is not able to solve the problem because the State has taken responsibility for ensuring the enforcement of only a limited number of court decisions and the remedy provided is not judicial one and therefore it does not allow to take into account all the relevant circumstances of each particular case. Attention should also be drawn to the amount of compensation. In its case-law the ECtHR consistently notes that "the level of compensation must not be unreasonable in comparison with the awards made by the ECHR in similar cases" [5, par. 99], and this is one of the criteria by which the ECHR reviews the effectiveness of compensatory remedies in cases concerned with excessive length of proceedings. The Law of Ukraine "On State Guarantees of the Enforcement of Court Decisions", however, sets up a fixed amount of compensation which is unjustified and disproportionate in comparison to the compensation awarded by the ECtHR. In view of the above, the proposed compensation mechanism cannot be considered as an effective remedy for the protection of the right to execution of a court decision within a reasonable time under Art. 6 § 1 and Art. 13 of the ECHR and the case-law of the ECtHR.

It should be noted that the state turned out to be unable to fulfill its obligations even under the Law mentioned above which resulted in substantial debt. According to Art. 19 of the Law of Ukraine "On the State Budget of 2018", the Cabinet of Ministers of Ukraine is entitled to restructure actual debts amounting to 7 544 562 370 UAH under court decisions, the execution of which is guaranteed by the state, as well as under the decisions of the ECtHR against Ukraine. The debts will be restructured through issuing financial Treasury bills with up to 7-year maturity, with 1 year of deferred payments and 9.3 % yield per annum. This

mechanism was proposed as an alternative remedy for protection of the right to execution of court decisions within a reasonable time. However, according to the Government, no one interested person has yet applied for the mentioned mechanism [4, par. 126].

The Committee of Ministers has repeatedly had to address the mentioned remedies, and as a result has worked out a set of measures to be taken by Ukraine in order to overcome the crisis under consideration. In particular, there was proposed the three-step strategy including (1) “calculation of the amount of debt arising from unenforced decisions”; (2) “introduction of a payment scheme with certain conditions, or containing alternative solutions, to ensure the enforcement of still unenforced decisions”; (3) “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 to prevent situations of non-enforcement of domestic court decisions rendered against the State or state enterprises” [7, par. 128]. However, subsequent practice of ECtHR against Ukraine evidences that this strategy was never put into life and for this reason the ECtHR had to renew the examination of applications in such cases due to failure to provide effective domestic remedies. Estimates provided by the ECtHR reveal that a total of about 29,000 *Ivanov*-type applications have been submitted to the ECtHR since the first application in 1999. Since the beginning of 2016 the ECtHR has continued to receive a large number of such applications - over 200 per month [7, par. 44].

Crucial in this regard for both Ukraine and the practice of the ECtHR was the judgment in the case of *Burmych and Others v. Ukraine* of 12 October 2017 where the ECtHR took a fresh look at the problem of non-enforcement of pilot judgments delivered against the States. The ECtHR revised its role in cases where the respondent State has not introduced the measures recommended by the ECtHR to solve the systemic problem. In this case, the ECtHR joined 5 applications in one proceeding with 12 143 *Ivanov*-type cases in which the applicants complained about violation of Art. 6 § 1 of the ECHR regarding delayed enforcement of court judgments delivered against the State. By this judgment the ECtHR observes that “it runs the risk of operating as part of the Ukrainian legal enforcement system and substituting itself for the Ukrainian authorities in directing “appropriate and sufficient redress for the nonenforcement or delayed enforcement of domestic decisions”, as required under the fifth operative provision of the *Ivanov* judgment. That task is not compatible with the subsidiary role which the ECtHR is supposed to play in relation to the High Contracting Parties under Art. 1 (obligation to respect human rights) and Art. 19 of the ECHR, and runs directly counter to the logic of the pilot-judgment procedure developed by the ECtHR” [7, par. 155]. Pointing out the importance of distributing tasks between the ECtHR and the Committee of Ministers, the ECtHR observes that it “may assist the respondent State in fulfilling its obligations under Art. 46 by seeking to indicate the type of measure that might

be taken by the State in order to put an end to a systemic problem identified by the ECtHR. However, it is for the Committee of Ministers to supervise the execution of the judgment and ensure that the State has discharged its legal obligation under Art. 46, including the taking of such general remedial measures as may be required by the pilot judgment in relation to affording relief to all the other victims, existing or potential, of the systemic defect found” [7, par. 144]. In this respect the ECtHR notes that “the legal issues under the ECHR concerning prolonged nonenforcement of domestic decisions in Ukraine were already resolved in the *Ivanov* pilot judgment. The ECtHR thereby discharged its function under Art. 19 of the ECHR [...]. In accordance with the principle of subsidiarity, which underlies the whole ECHR and not only the pilot judgment procedure, the matter treated by the *Ivanov* pilot judgment, including the provision of redress for victims of the systemic violation of the ECHR found in *Ivanov*, is a question of execution under Art. 46 of the ECHR” [7, par. 197]. Based on the above the ECtHR decided that all applications mentioned above should be dealt with in compliance with the obligation deriving from the pilot judgment. As a result, the ECtHR struck these applications out of the Court’s list of cases and transmitted them to the Committee of Ministers in order for them to be dealt with in the framework of the general measures of execution of the above-mentioned *Ivanov* pilot judgment. Moreover, the ECtHR rules that it may strike any future *Ivanov*-type applications that may be lodged after the delivery of this judgment, out of the list of its cases and transmit them directly to the Committee of Ministers, except for those applications which are found to be inadmissible under Art. 35 of the ECHR.

It should, of course, be pointed out that it was the case of *Burmych v. Ukraine* when the ECtHR employed such a drastic measure for the first time and elicited a number of criticisms from the ECtHR judges themselves. Thus, in their joint dissenting opinion, the judges Yudkivska, Sajó, Bianku, Karakaş, De Gaetano, Laffranque and Motoc argue that “the present judgment has nothing to do with the legal interpretation of human rights. It concerns a matter of judicial policy only, and as such completely changes the well-established paradigm of the Convention system [...]. The ECtHR cannot, on account of a heavy caseload, just cease to perform its judicial tasks, leave the applicants in an unpredictable position and transfer the judicial responsibility on to a political body which unfortunately has so far had little impact on helping the respondent Government to properly execute the pilot judgment and to enact general measures [7]. Amongst other arguments the following are given. Firstly, the judges insist on the fact that the circumstances of those joined 12 134 applications have not been examined so their similarity cannot be established for sure. Secondly, this judgment, in fact, denies future applicants’ right to access to the ECtHR and justifies the ECtHR’s reluctance to consider the cases by reference to its previous position regarding the functions of the pilot judgment procedure. In such a context, the ECHR “appears to become a filtering body for the Committee of Ministers” regarding future *Ivanov*-type applications that can be struck out of the list of cases and transmitted to the Committee of Ministers. “It would mean

transferring the determination of human rights claims from a judicial authority, as the Convention system requires, to a political body, albeit a collective one". However, "this seems to be in clear contradiction with the changes introduced in 1998 by Protocol No. 11. That Protocol explicitly abolished any competence on the part of the Committee of Ministers to decide on violations of the ECHR, and retained only the Committee's competence as to the execution of the judgments of the ECtHR". Thirdly, bureaucratic reasons of "reducing the burden on the ECtHR" underlie the judgment under consideration and leave the applicants in a state of legal uncertainty as instead of obtaining the ECtHR judgment in their cases they, in fact, "will have to wait sine die for a political monitoring mechanism of the domestic reforms" [7].

In our opinion, arguments can be found both for and against such a judgement of the ECtHR, and it can hardly be unambiguously assessed, but it is obvious in this context that Ukraine must abide its obligations and ultimately fulfill the requirements of the ECtHR's pilot judgment regarding the introduction of effective remedies of the right to a fair trial and enforcement of judgments within a reasonable time, as well as to eliminate the drawbacks existing in the national system in order to guarantee the right to a fair trial. Otherwise Ukraine puts itself at risk of having an infinite series of payments of fair satisfaction with an endless series of applications. It worth noting that some positive developments in this direction have already been made due to legislation renewal concerning the system of enforcement of court decisions and decisions of other bodies within constitutional reform of the judicial system and related institutions, which should be addressed in more detail.

*3. Reforming the model of execution of court decisions and enforcement proceedings: main observations in search of efficiency.* Depending on different criteria, there have been offered different classifications of the models of enforcement of court decisions and decisions of other authorities. A. Uzelac identifies court system of enforcement, system of enforcement by the executive branch of government and system of enforcement by private bailiffs [28, p. 8]. B. Hess distinguishes centralized and decentralized systems of enforcement (dependent on the number of systems of executive bodies (single or several)) and bailiff-oriented systems, court-oriented systems, administrative systems and mixed systems of enforcement (dependent on the place of authorities that enforce court decisions in the general system of state bodies) [28, p. 8].

Numerous studies by the European Commission for the Efficiency of Justice (CEPEJ) [12] and review of foreign scientific publications show a tendency towards "privatization" [28, p. 13] of the enforcement proceedings sector which manifests itself in a growing number of states choosing mixed or private models of enforcement proceedings. Similar tendencies can be seen in Ukraine. Since independence the model of compulsory enforcement of court decisions in Ukraine has gone a long way of formation and development and has been changed several times. It really is a transformation of model of compulsory enforcement of court decisions and decisions of other authorities at the national level. There used to be a judicial public system of compulsory enforcement of court decisions inherited from the Soviet

Union according to which enforcement proceedings were implemented by bailiffs attached to courts and controlled by them. Later, that model was transformed into administrative public model under the Law of Ukraine “On the State Enforcement Service” of 24 March 1998 according to which powers on enforcement proceedings were delegated to the State Enforcement Service of the Ministry of Justice of Ukraine. Now there are enough grounds to acknowledge the transformation of domestic public model of enforcement proceedings into the mixed one. Now, pursuant to Art. 1 § 1 of the Law of Ukraine “On Agencies and Persons Performing Compulsory Enforcement of Court Decisions and Decisions of Other Authorities”, the State Enforcement Service and private bailiffs, in the cases specified by the Law of Ukraine “On the Enforcement Proceedings”, are entitled to carry out compulsory enforcement proceedings of judgments and decisions of other authorities.

The state enforcement officer (bailiff) is the public agent and the civil officer who acts both in the name of the state and under its protection while the private bailiff is an independent professional, authorized by the state to carry out activities for compulsory execution of court decisions in the order established by the law. The citizen of Ukraine who has reached 25-year-old age with full legal high education, good command of the state language, a 2-year work experience in the field of law and who has passed a qualification examination can work as a private bailiff. The Ministry of Justice of Ukraine regulates the activities of private bailiffs at the legislative level. The person who intends to pursue a career of the private bailiff has to take a training course and do an internship as well as a qualification examination for the private bailiff through the anonymous automated testing system. On the basis of successful passing an examination the Ministry of Justice of Ukraine issues the person a certificate of the private bailiff so that he is granted the right to perform his professional activity from the date of entering the data into the Unified Register of Private Bailiffs of Ukraine. The private bailiff is obliged to insure civil responsibility to the third parties prior to the beginning of his activity and entitled to be remunerated for enforcing court decisions.

It is worth noticing that the national legislation proceeds from the unity of state and private bailiffs’ tasks and principles of their activity, basic provisions of legal protection and guarantees of implementation of their activities in terms of compulsory execution of court decisions. Along with this, the competence of private bailiffs is limited compared to that of the state bailiffs namely, the private bailiff cannot enforce: (1) decisions on child removal and transfer, decisions granting meeting with a child and removing obstacles in access to child; (2) decisions where a debtor is the state, state authorities, the National Bank of Ukraine, local government bodies, their public officials, the state and utility companies, institutions, the organizations, legal entities in which the State possesses more than 25% of authorized capital and/or which are completely financed by government or local budgets; (3) decisions where a debtor is the legal entity whose compulsory sales of property is prohibited by law; (4) decisions where a claimant is the state, public bodies; (5) decisions of administrative courts and judgments of the ECtHR; (6) decisions

imposing actions regarding the state or municipal property; (7) decisions on eviction and installation of natural persons; (8) decisions where debtors are the children or incapacitated natural persons or persons whose civil capacity is limited; (9) decisions on confiscation of property; (10) decisions the enforcement of which is vested by the law directly on other bodies which are not bodies of compulsory enforcement. The legislation also sets up other restrictions, for example, for the first year the private bailiff cannot enforce court decisions according to which the amount to be recovered is twenty and over million UAH or the equivalent amount of foreign currency.

Establishing the institution of private bailiffs resulted in decentralization of the system of enforcement of court decisions. In our opinion, the specified changes are positive, even in spite of the fact that private bailiffs cannot enforce domestic court decisions where a debtor is the state, as they will reduce a burden of the state bailiffs and the average time to enforce court decisions can be reduced as well.

Along with reforming the model of compulsory enforcement of court decisions and decisions of other authorities, changes have also been made in the enforcement proceedings directed to accelerate enforcement proceedings and increase its effectiveness to provide everyone with the right to a fair trial. In general, legislative definition of the concept of ‘enforcement proceedings’ reflects the ECtHR’s approach which treats the latter as a part of judicial proceedings in terms of Art. 6 § 1 of the ECHR. According to Art. 1 of the Law Of Ukraine “On enforcement proceedings” enforcement proceedings are considered to be the final stage of the court proceedings, and compulsory enforcement of court decisions and decisions of other authorities (public officials) is the totality of all the actions of the authorities and persons aimed at compulsory execution of court decisions.

Out of the most essential changes which the enforcement proceedings have undergone the following most relevant ones should be noted. First of all, it is a certain degree of digitalization of enforcement proceedings in the form of introduction of obligatory electronic registers and the system of electronic auctions during enforcement proceedings. The legislation provided facilities to create a data processing system for exchange of information about enforcement proceedings in order to accelerate finding the debtor’s property and to monitor bailiffs’ activity. From now on, registration of writs of executions, documents on enforcement proceedings and records of execution actions has to be carried out in the automated system which is designed, on the one hand, to provide objective and impartial distribution of writs of execution between the state bailiffs, and, on the other hand, to keep the parties of enforcement proceedings informed about the process. Also it serves as the unified database and archive of enforcement proceedings and documents, access to which is free.

An integral part of the automated system of enforcement proceedings is the Unified Register of Debtors. This Register constitutes systematic database that serves several purposes, namely (a) it allows everyone to check the creditworthiness of his future counter party by providing free access to information about unperformed pecuniary obligations in real time; (b) it helps to prevent disposition of property *in*

*fraudem creditorum* (if a debtor listed in the Register applies to notaries or other registration authorities with a view to close a transaction for disposition of his property but at the same time there is no information on the arrest of his property or money, the above mentioned authorities have to refuse the registration and inform the bailiff about the property debtor wanted to dispose of. Conversely the transaction is null and void).

Within the tendency of digitalization, it was established that the forced sale of debtor's property has to be conducted exclusively at the electronic auction in the following cases: if the value of property to be sold exceeds 50 minimum wages or if real estate, vehicles, air, sea and river crafts (irrespective of their value) are to be sold.

Secondly, from now on, the legislation does not provide the debtor with the time for voluntary execution of the court decision, but starts the procedure of compulsory execution as soon as the enforcement procedure is opened which automatically results in placing the obligation to pay executive fees or the private bailiff's fees on the debtor. On the one hand, the specified changes are directed at preventing concealment of property by the debtor within the time provided for voluntary execution of the court decision but, on the other hand, in our opinion, such provisions invalidate the rights of the debtor acting in good faith for voluntary independent performance of the court decision in order to avoid incurring additional costs such as covering the bailiff's fees.

Thirdly, the creditor is obliged to prepay the bailiff's fees. The amount of advanced payment adds up to 2% of the amount subject to collecting but no more than 10 minimum wages, or one minimum wage (for natural persons) or two minimum wages (for legal entities) in decisions on non-pecuniary claims or decisions granting security for a claim.

Creditor is exempted from advance payment according to the decisions on wage recovery, return to work and on other requirements following from employment relationship; calculations, entitlement, recalculation, implementation, granting, receiving of pension payments, social payments to disabled citizens, payments for obligatory state social insurance, payments and privileges to children of war, other social payments, surcharges, social services, help, protection, privileges; indemnification caused by a mutilation or other damage of health or the death of the natural person; collecting alimony; compensation of the pecuniary and/or moral damage inflicted as a result of a criminal offense. Public authorities, disabled veterans, disabled people of I and II groups, authorized representatives of disabled children and incapacitated disabled people of I and II, citizens who were injured due to the Chernobyl accident are also exempted from prepayment. In case of enforcement of the decision of the ECtHR the advance payment is not paid either.

In our opinion, such legislative provisions may constitute significant barriers to access to the court, as it may lead to unjustified obstacles to the opening of enforcement proceedings on the grounds of failure to prepay bailiff's fees, because the legislation does not provide the exemption from the obligation to prepay on the

grounds of creditor's low-income, or due to fact that the amount to be pre-paid is disproportionately large compared to creditor's income. Neither the payment in installments nor deferred payment is permitted. The ECtHR addressed such issues in the case of *Apostol v. Georgia* noting that in order to determine whether or not a person enjoyed the right of access to court in case of obligation to pay "preliminary expenses" of enforcement proceedings, "amount of the fees requested is to be assessed in the light of the particular circumstances of a given case, including the applicant's ability to pay them, and the phase of the proceedings at which that restriction has been imposed". In the present case, "the impugned financial restriction was not imposed on the applicant either at first instance or at the appellate stage of the trial, and could not therefore be regarded as being related to the merits of his claim or its prospects of success, considerations which might justify restrictions on the right of access to a court". Consequently, "the imposition of the obligation to pay expenses in order to have that judgment enforced constitutes a restriction of a purely financial nature and therefore calls for particularly rigorous scrutiny from the point of view of the interests of justice". The ECtHR notes that any provision of the national legislation in this case "defines what proportion of the enforcement-related expenses is to be borne by the creditor, and for what measures. Nor does it follow from the Enforcement Act that the expenses initially borne by the creditor are to be fully reimbursed after the enforcement. In their letters to the applicant, the enforcement authorities did not clarify those issues any further. They did not specify how much the applicant had to pay or in respect of what enforcement measures. As to the applicant's declaration of his lack of means, it was left unanswered". The ECtHR believes that "by shifting onto the applicant the responsibility of financially securing the organisation of the enforcement proceedings, the State tried to escape its positive obligation to organise a system for enforcement of judgments that is effective both in law and in practice. In the light of the above considerations, the authorities' stance of holding the applicant responsible for the initiation of enforcement proceedings by requesting him to bear the preliminary expenses, coupled with the disregard for his financial situation, constituted an excessive burden and restricted his right of access to a court to the extent of impairing the very essence of that right" [3, par. 56–65]. Therefore, lack of flexible norms and standards to provide an efficient mechanism of payments installment, deferral and exemption from prepayment of bailiff's fees jeopardizes access to the court under Art. 6 § 1 of the ECHR.

Fourthly, the legislative changes also affected the timing of enforcement proceedings. Thus, the general period of submission of enforcement documents, (previously, one year) was increased, and from now on enforcement documents may be submitted to compulsory enforcement within three years, except for the certificates of labor dispute commissions and writs of execution where the creditor is the state or a state body that can be subjected to enforcement within three months.

Moreover, if the bailiff used to be obliged to enforce proceedings within six months from the date of the ruling on the opening of enforcement proceedings, and in the case of a non-pecuniary decision – within a two-month period, there is now no

regulation of the time limits for enforcement proceedings at all. The only reference is made in Clause 2 of Part 1 of Art. 37 of the Law “On Enforcement Proceedings”, according to which a writ of execution is returned to the creditor, if the procedures taken by the bailiff during the year on the search for the debtor’s property proved to be unsuccessful. In our view, when assessing the reasonable amount of time limits for enforcement proceedings, one should proceed from the position of the ECtHR and the criteria developed to assess the reasonable terms of the trial, as noted above. At the same time, the absence of statutory time limits for enforcement proceedings may entail the risk of delaying the enforcement proceedings by state bailiffs, since the legislation at all does not provide any guidelines in this respect, which is especially dangerous when enforcing decisions on cases concerning family legal relations, for example, on cases relating to removal of a child, etc.

Fifthly, another enhancement concerns the collection of regular payments: the creditor is entitled now to send an writ of execution directly to the enterprise, institution, organization, individual entrepreneur, an individual who pays the debtor his salary, pension, scholarship and other income with the simultaneous filing of an application where the following is stated: (1) the details of the bank account to which the funds should be credited; (2) the surname, name, patronymic of the creditor, details of the document certifying his identity. If there are arrears on the writ of execution on regular payment recovery or the debtor objects to its amount, the creditor has the right to present the writ of execution for compulsory enforcement. Enterprises, institutions, organizations, individuals-entrepreneurs and natural persons, upon the creditor’s request, are obliged to make deductions from the debtor’s respective income in the amount specified by the writ of execution. This innovation should be considered positive, since it simplifies the procedure for applying court decisions to execution in certain cases, and enables avoiding excessive formalities and unnecessary expenses.

At the same time, the lack of simplifying executive mechanisms of enforcement proceedings in relation to writs of execution where the debtor is the state, causes serious concerns and was recognized as a systemic problem in the practice of the ECtHR, according to which, in this category of cases, it is expedient to automatically send writs of execution directly to the enforcement authorities. The changes introduced in enforcement proceedings not only ignored the position of the ECtHR in this regard, but they even did not exempt the creditor from the obligation to pay advance payments in all cases where the debtor is a state. In this context, imperfection of other provisions of the legislation that make it impossible to enforce court decisions becomes another reason for concern. For example, a writ of execution is returned to the creditor if the law imposes a prohibition on foreclosure on the debtor’s property or funds and if he does not have any other property or funds that can be recovered. One of the grounds for suspending enforcement is moratorium on foreclosure on the assets of the debtor for the obligations of railway enterprises, the property of which is located on the territory of the anti-terrorist operation and where the state authorities temporarily fail to exercise their powers.

Sixthly, the new legislation is characterized by more severe sanctions for non-enforcement of court decisions. In particular, pursuant to Art. 75 of the Law of Ukraine “On Enforcement Proceedings” in case of failure to enforce without a valid reason and within the time specified by the bailiff a decision imposing an obligation on the debtor to execute certain actions or a decision on renewal at work, the bailiff imposes a fine on the debtor—a natural person in the amount of 100 minimum incomes of citizens exempt from tax, on officials – 200 minimum incomes of citizens exempt from tax, on a debtor—a legal entity – 300 minimum incomes of citizens exempt from tax and sets a new period for enforcement proceedings. In case of a repeated non-performance of a decision by the debtor without valid reasons, the bailiff in the same order imposes on him a fine in double amount and reports to the bodies of pre-trial investigation about a commission of a criminal offense. Indeed, Art. 382 of the Criminal Code of Ukraine establishes criminal liability for non-performance of court decisions, although this norm was hardly ever applied in practice until this time.

The enforcement proceedings have undergone other changes too, for example, there have been introduced the debtor’s obligation to file a declaration of income and property; the assessment of the value of property is made with the mutual consent of the creditor and the debtor, and only if they fail to reach an agreement, evaluation of the property is carried out by another person; the bailiff is obliged to immediately arrest the property of the debtor as soon as the enforcement proceedings are opened etc.

As we can see, most of the latest changes in legislation of Ukraine are aimed at enhancing the transparency of enforcement proceedings and accelerating the latter in order to ensure the right to a fair trial, which is a very positive trend. However, in our opinion, these changes can only potentially improve the situation with enforcement of court decisions where debtors are private individuals and legal entities, as, in fact, none of them are directly concerned with solving the systemic problem of non-enforcement of court decisions against the state. Taking this into account, we observe that there is an urgent need for introducing effective remedies into the national legislation to ensure the right to a fair trial and enforcement of court decisions within a reasonable time pursuant to Art. 6 § 1 and Art. 13 of the ECHR.

*4. Effective remedies for the right to enforcement of court decisions within a reasonable time: in search of a domestic model.* At present, the most important task for the government according to the judgements *Yuriy Nikolaevich Ivanov v. Ukraine* and *Burmych and Others v. Ukraine* is to provide effective remedies for the right to a fair trial within a reasonable time in accordance with the principle of subsidiarity by which the obligation to protect human rights and freedoms, the implementation of the ECtHR’s guarantees is vested on the State at national level in the first place, before applying to the ECtHR.

It should be noted that this issue has been addressed in the case-law practice of the ECtHR against different states so the ECtHR worked out certain criteria of

the effectiveness of remedies for the right mentioned above which are as follows: (1) a remedy is “effective” if it allows for an earlier decision by the courts to which the case has been referred or for the aggrieved party to be given adequate compensation for the delays that have already occurred; (2) a remedy designed to expedite the proceedings in order to prevent them from becoming excessively lengthy is the most effective solution, because it does not merely repair the breach *a posteriori*, as does a compensatory remedy; (3) the best solution is combination of two types of remedy, one designed to expedite the proceedings and the other to afford compensation; (4) a remedy should apply to both pending proceedings and proceedings on which decisions were delivered; (5) a remedy should allow compensation for both moral and material damage; (6) the level of compensation must not be unreasonable in comparison with the awards made by the Court in similar cases; (7) a remedy should apply to both court trial stage and the enforcement of court decisions [29, p. 257–258]. It is obvious that neither the Law of Ukraine “On State Guarantees for the Execution of Judgments” of 5 June 2012 mentioned above nor the Government’s proposals to restructure debt by issuing Treasury bills meet the specified efficiency criteria of effectiveness, as the ECtHR itself and the Committee of Ministers emphasized. Therefore, in this respect, we should address positive experience of foreign states (Italy, Poland, Moldova, Croatia, Slovenia, etc.) in terms of their introduction those remedies, which proved to be effective.

Having analyzed the legislation of foreign states, we can distinguish two groups of such remedies dependent on the purpose: accelerating (or preventive) and compensatory. The purpose of the former ones is to affect the time of hearing the case by submitting a special application, a complaint or a request for expedited hearing the case, for appointing a time limit for hearing the case or stating the actions to be done (the application is addressed to court chairman or a higher court). These remedies serve to prevent a violation of the reasonable time of court proceedings when the proceedings are still pending. The purpose of compensatory remedies is to award a compensation for the violation of reasonable time of court proceedings or enforcement proceedings that has already happened. Such compensation is awarded by a court of first instance or appellate court. At the legislative level, in most foreign countries, there are both types of remedies which seems to be more effective compared to only one of them operating. As a rule, cases of this category fall into the jurisdiction of general courts, and the object of judicial protection here is not only the length of court proceedings, but also the time of enforcement proceedings. Therefore, in our opinion, we should focus on preventive remedies for accelerating court proceedings or enforcement proceedings rather than on compensatory ones. It is obvious that a compensatory remedy itself cannot solve a systemic problem of non-enforcement of court decisions in Ukraine. Undoubtedly, given that, in most cases, the ECtHR finds a violation of Art. 6 § 1 and Art. 13 of the ECHR due to non-enforcement of judgments where the debtor is a state, it is simply not possible to overcome the specified systemic problem without the introduction of effective mechanisms for regulating the issue. In view of the above, we believe that it is

expedient to introduce a set of remedies that will include both judicial compensatory remedy in cases where the violation of the right to enforce a court decision within a reasonable time has already taken place and preventive remedy, which is of a non-judicial nature, and involves effective budget regulation in order to prevent future delays in enforcement of court decisions the debtor to which is the state or state authorities.

**Conclusions.** The analysis of the reform of enforcement proceedings in Ukraine through the prism of guarantees of the right to a fair trial allows us to generally approve legislative initiatives to bring the norms of the national legislation in line with international standards in this respect. In this context, the transition to a mixed system of enforcement of court decisions with the introduction of private bailiffs, digitalization of enforcement proceedings, simplified procedure of recovering debts in certain cases, etc., aimed at accelerating enforcement proceedings and increasing its efficiency, requires special attention. However, the systemic problem of ensuring the enforcement of court decisions where the debtor is the state and state-owned enterprises remains unsolved, which has repeatedly been addressed by the ECtHR in its judgements against Ukraine. Therefore, at present, the priority task in this respect is to introduce complex effective remedies at the national level for the enforcement of court decisions within a reasonable time, which would combine both preventive and compensatory elements.

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### **Виконання судових рішень в Україні: реформування системи крізь призму права на справедливий судовий розгляд**

*Крізь призму вимог права на справедливий судовий розгляд, закріпленого в п. 1 ст. 6 ЄКПЛ, розглянуто українську модель виконавчого провадження, яка нещодавно зазнала істотних змін у результаті конституційної реформи у сфері правосуддя та суміжних інститутів. Окремо проаналізовано пілотне рішення ЄСПЛ «Юрій Миколайович Іванов проти України» та рішення «Бурмич проти України», в яких ЄСПЛ констатував наявність на національному рівні системної проблеми невиконання судових рішень, в яких боржником виступає держава або державні підприємства. Зазначена проблема зумовлена багатьма недоліками української правової системи, зокрема, браком бюджетних коштів, бездіяльністю з боку державних виконавців, дефектами національного законодавства, невиконання певних превентивних заходів з метою забезпечити виконання судових рішень у зазначеній категорії справ.*

*Критично оцінюються основні наслідки реформування системи органів виконання судових рішень та процедурних правил виконавчого провадження, зокрема: введення приватних виконавців та трансформація публічної моделі виконавчого провадження у змішану, а також її подальша децентралізація; електронізація виконавчого провадження внаслідок створення автоматизованої системи виконавчого провадження, єдиного реєстру боржників та електронної системи торгів; введення процедури авансування витрат виконавчого провадження кредитором тощо. Обґрунтовано позицію, відповідно до якої національне законодавство України потребує подальших змін для виконання Україною своїх міжнародних зобов'язань. Зокрема, необхідно забезпечити на національному рівні ефективні засоби правового захисту права на справедливий судовий розгляд та виконання судових рішень у розумні строки відповідно до вимог ст. 13 ЄКПЛ, який має поєднувати превентивні та компенсаторні елементи.*

**Ключові слова:** право на справедливий судовий розгляд; виконання судових рішень; виконавче провадження; модель виконавчого провадження; державний виконавець; приватний виконавець; розумні строки судового розгляду; ефективні засоби захисту.

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