



COUNCIL CONSEIL
OF EUROPE DE L'EUROPE

Committee of Ministers
Comité des Ministres

**Round Table on
“Non-enforcement of domestic courts decisions in member states:
general measures to comply with European Court judgments”**

Conclusions of the Round Table in Strasbourg, 21-22 June 2007

Round Table on “Non-enforcement of domestic courts decisions in member states: general measures to comply with European Court judgments”

**Round Table
Strasbourg, Palais de l'Europe
21 – 22 June 2007**

CONCLUSIONS

Fully committed to put an end to the continuously high number of violations of the European Convention of Human Rights in certain States revealing an important structural problem of non-compliance by the State and its entities with domestic court decisions and at the steady influx of new complaints in this respect;

Recalling that the findings of violations by the European Court of Human Rights impose a legal obligation on competent state authorities to adopt general measures preventing similar violations and that the need for such measures is all the more pressing in case of repetitive violations revealing structural problems;

Stressing that the lack of proper enforcement of judicial decisions severely affects the efficiency of the State structures, frustrates the citizens' legitimate expectations and their confidence in the judicial system;

Having thoroughly considered the relevant judgments and decisions of the European Court of Human Rights, the conclusions of the Round Table Held in Strasbourg 30 – 31 October 2006, « Non-enforcement of court decisions against the State and its entities in the Russian Federation: remaining problems and solutions required”, the memoranda prepared for the Committee of Ministers in the context of its supervision of the execution of the judgments at issue¹ and the reports by the European Commission for the Efficiency of Justice (CEPEJ)²;

The Participants in the Round Table:

Welcomed the work already carried out in the different member states concerned in order to solve this major structural problem and the ongoing reflection on possible further reforms;

Welcomed, in particular, the fact that the competent authorities of a number of interested states agreed to meet in order to share their experiences and to discuss, in an open and constructive manner, the ways and means for improving the existing procedures for execution of domestic court decisions, in particular against the state and its entities;

Emphasised strongly that it is incumbent on the State to execute spontaneously all judicial decisions delivered against public authorities, without compelling the claimants to go through enforcement proceedings;

Noted however that this spontaneous execution continues to be hampered by a number of persistent problems resulting in repetitive violations of the Convention in a number of states;

Focused their attention at the Round Table on the following main structural problems:

¹ Non enforcement of domestic judicial decisions in Russia: general measures to comply with the European Court's judgements, CM/Inf/DH(2006) 19 Rev. 3; Non enforcement of domestic judicial decisions in Ukraine: general measures to comply with the European Court's judgements, CM/Inf/DH(2007)30

² See in particular the document CEPEJ(2005)8 and the Report “European judicial systems – Edition 2006”

As regards the legal and regulatory framework preventing non-execution:

- shortcomings in the legal framework governing control and/or restitution of property;
- shortcomings in the legislation governing the budgetary procedures, notably inconsistencies between the budgetary planning and the state's payment obligations, inadequate budgetary control and the lack of proper mechanisms to rapidly ensure the additional funding where appropriate;
- excessive formalism and/or lack of clarity of the execution procedures which makes their use difficult for the individuals and thus contributes to delays in execution;

As regards domestic remedies in case of non-execution:

- lack of effective domestic remedies at the disposal of claimants in case of non-execution of judicial decisions, notably the lack of adequate compensation for pecuniary and non-pecuniary damages and of adequate mechanisms for acceleration of execution proceedings and for compulsory enforcement;
- ineffectiveness of other procedures (administrative, civil, criminal, etc.) to compel the responsible authorities to comply with judicial decisions;
- lack of clarity of the bailiffs' powers, insufficient means allocated to them and absence of an appropriate legal framework governing compulsory enforcement in respect of the State and its entities;

Noted, in view of the urgency of the situation, the need for priority action to improve domestic remedies, notably by providing for the acceleration of pending execution proceedings and adequate compensation for delays in execution, and to rapidly improve funding in sectors particularly affected by the non-execution of judicial decisions;

Welcomed the measures already adopted or being taken by the States concerned to remedy a number of the aforementioned problems as well as the continuing discussions on further improvements to rapidly achieve more tangible results;

Stressed the importance of rapidly pursuing the reform work, taking into account the progress already achieved in each state and its specific needs and problems, in order to fully resolve the above-mentioned problems, notably through:

As regards the legal and regulatory framework preventing non-execution:

- ensuring a coherent legal framework and/or coherent practices for the control and restitution of property respecting the requirements of the Convention;
- improving budgetary planning, notably by ensuring the compatibility between the budgetary laws and the State's payment obligations;
- proper control over the use of the budgetary funds by the authorities responsible for payments;
- providing for specific mechanisms for rapid additional funding to avoid unnecessary delays in the execution of judicial decisions in case of shortfalls in the initial budgetary appropriations;
- setting up, where appropriate, a special fund or special reserve budgetary lines, to ensure timely compliance with judicial decisions, with a subsequent possibility of recovering from the debtor the relevant sums together with default interest;
- ensuring the individuals' effective access to execution proceedings by clearly identifying the authority responsible for execution and simplifying the requirements to be fulfilled by the execution documents;

As regards domestic remedies in case of non-execution:

- introducing, either in budgetary laws and in other laws, a general obligation to automatically compensate for delays in execution of judicial decisions through appropriate default interest at a reasonable rate (e.g. in line with the Central Bank's marginal lending rate);
- ensuring effective civil liability of the State for damages arising from the non-execution of domestic judicial decisions, which are not compensated by the default interest and providing, in appropriate cases, for the possibility of recovering awards made from the state agents responsible;
- guaranteeing the existence of effective procedures capable of accelerating the execution process leading to full compliance with the judicial decision;
- providing for increased recourse to money penalties, where appropriate, the automatic increase of those money penalties as the authority concerned continues to delay execution;
- improving the personal responsibility of state agents in case of deliberate non-execution through efficient penalties or fines;
- further developing central procedures for the freezing of accounts held by debtor authorities in order to secure the honouring of payment obligations, including the possibility of freezing also the accounts of authorities subordinate to the debtor's authority;
- setting up or improving procedures and regulations allowing the seizure of state assets which are manifestly not necessary for the fulfilment of the missions of the authorities concerned and, where appropriate, drawing up necessary inventories;
- providing the bailiffs with sufficient means and powers so as to allow them to properly ensure, where appropriate, the enforcement of judicial decisions;
- strengthening the individual responsibility (disciplinary, administrative and criminal where appropriate) of decision makers in case of abusive non-execution and providing the responsible state authorities with the necessary powers to that effect;

Noted the difficulties in setting up one single remedy in order to effectively address situations where an authority clearly refuses execution, but stressed, nevertheless, the positive results which may be obtained through different remedies and in particular through the combined pressure of several remedies;

Encouraged the further development of the direct effect of the ECHR and of the judgments of the European Court of Human Rights in domestic law, notably in order to secure adequate compensation for delays in execution;

Underlined that, awaiting the necessary improvements in the execution procedure, special care should be taken to ensure speedy execution in all **cases where special diligence** is required under the Convention and in particular in the execution of decisions concerning vulnerable persons;

Decided to report these conclusions to the Committee of Ministers, the CEPEJ and to convey the proposals to the competent authorities of the member states concerned, with a view to taking the necessary measures;

Encouraged further CEPEJ projects in the area in order to further develop the sharing of experiences and **encouraged** member states to make use of the CEPEJ's expertise to develop further reform of the execution mechanisms at national level;

Encouraged in particular the development of relevant indicators of the problem of non-execution as regards its extent and the rate of progress in resolving it;

Agreed to continue the ongoing consultations with the competent authorities with a view to speeding up and increasing the efficiency of the reforms in their respective countries, and to resume consideration of progress achieved in an appropriate form at the earliest opportunity.

**LIST OF PARTICIPANTS OF THE ROUND TABLE
(Strasbourg, 21-22 June 2007)**

Permanent Representations to the Council of Europe

Mr Torbjørn Frøysnes, Ambassador, Permanent Representative of Norway to the Council of Europe

Mr Andrii Kuzmenko, Deputy to the Permanent Representative of Ukraine to the Council of Europe

Mrs Rodica Postu, Deputy to the Permanent Representative of Moldova to the Council of Europe

EXPERTS

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COUNCIL OF EUROPE

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Mr Stanislav Pavlovschi, Judge at the European Court of Human Rights (Moldova)

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