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Is there a need for a new institutional framework in Ukraine to strengthen implementation of the judgments of the European Court of Human Rights? Some reflections on the expert opinion of the Council of Europe as to the 2006 Law “On Execution of Judgments and Application of the case-law of the European Court of Human Rights”¹

Ukraine has been a party to the European Convention on Human Rights since 1997. Since then it has adopted a number legal acts and undertook institutional measures to comply with the requirements of the European standards envisaged by the treaties and the soft law of the Council of Europe. Most importantly, it has introduced, in 2006 a legal act, which was seen as unique at the given point of time, reinforcing domestic implementation of the European Convention of Human Rights in Ukraine, strengthening domestic implementation of the Convention and the case-law of the Court, introducing an institutional system of coordination of execution of judgments of the European Court of Human Rights against Ukraine.

Now, more than 20 years after, the question can be asked whether the legal and institutional changes introduced have led to tangible results. Such results being measures vis-à-vis cases still pending implementation concerning complex problems, for a prolonged period of time. Arguably, indeed, the 2006 law has had its successes, building a system for fast payment of just satisfaction claims under the individual judgments. It has also allowed for important dissemination measures and most importantly envisaged that the case-law of the Court, its constant jurisprudence, shall be sources of law for the Ukrainian judges. Nevertheless, assessing a number of cases pending implementation, both in enhanced and in standard procedure, one can say that the 2006 Law on Execution of Judgments and Application of the Case-law of the European Court of Human Rights (hereafter – 2006 Act) is outdated as it is missing sufficient capacity to deal with mounting systemic and structural problems in the Ukrainian legal system as identified by the judgments of the European Court of Human Rights.

This article intends to provide an answer to now certainly a rhetorical and self-explanatory question – is there a need for change of legal and institutional framework to ensure implementation of judgments of the European Court of Human Rights finding systemic and structural deficiencies in the domestic legal system? In brief – yes and this publication will give some ideas and explanations justifying the urgent need for action.

¹ All views expressed in this publication are personal and do not necessarily reflect official position of the Council of Europe or the Department for the execution on matters relating to the execution process.

“The adoption of the 2006 law and establishment at the national level of a specialised body dealing with coordination for the enforcement of Strasbourg judgments is a very welcome development. However, its mere adoption is not sufficient ... As such existence of a law, does not fill the gap between legal regulations and reality of Ukraine before Convention institutions. The inefficient implementation of the ECHR at the domestic level leads to multiple repetitive applications submitted to the European Court of Human Rights The rate of closure of supervision of cases concerning Ukraine, especially those relating to systemic and structural problems, is remarkably low.”¹

1. Introduction

At present there are some 600 cases pending execution before the Committee of Ministers of the Council of Europe as regards Ukraine. The topics covered by the required implementation measures are diverse. They range from measures relating to efficiency, independence and access to justice, to issues that are covering criminal justice reforms, reform of the penitentiary system, focused reforms in the area of privacy, freedom of religion, expression and association, and possibly most important – ensuring property rights and peaceful enjoyment of possession, without unnecessary and unjustified interference of the State.

Out of the above-mentioned 600 cases, some 123 cases are so-called “leading cases” depicting complex legal issues, frequently relating to structural and systemic problems, among which 52 cases are leading cases supervised by the Committee of Ministers in the enhanced procedure.² A number of issues were resolved since 11 September 1997 and certain reforms were effectuated under the indications given in the judgments of the Court and the guidance given by the Committee of Ministers, like for instance, reform of the system of supervisory review, as well as a number of individual cases where measures of redress and *restitutio in integrum* were undertaken, with 950, mostly repetitive cases, closed with final resolution, within the last several years in view of the new working methods permitting such closures.

The situation with regard to the cases relating to systemic and structural problems remains stable and represents, possibly, what can one call a status quo of “stable stagnation”, whereas the problems of such nature are not being resolved at the domestic level for the last 5-15 years and are being mounted on the Court and the Committee of Ministers in disproportionate numbers. One of the examples of such a problem is the issues of non-enforcement of judgments of the domestic courts given against the State, State-owned or controlled entities. These issues had been first identified in the cases of *Kaysin and Others* in 2001 and has been repeated in the cases of *Piven and Zhovner* and later on in the cases of *Yuriy Nikolayevich Ivanov and Burmych and Others*.³

The impact of non-compliance with the indications given in the judgments is obvious – there are new similar violations established by the Court itself, with repetitive findings of breaches, the same issues are being circulated through domestic remedies, without chances of success as frequently there are no remedies for repetitive issues available, or a possibility of domestic redress. There are other negative effects – most importantly – reputational, diplomatic and political losses, both domestically and at international arena, however, most importantly the biggest loss relates to failure of the State, in such instances, to ensure *restitutio in integrum* for specific victims of declared by the Strasbourg Court human rights violations as well as, more generally, ensure that similar violations no longer occur.

In response to these numerous problems, in 2017 the Ministry of Justice of Ukraine requested the Council of Europe to assess existing legal and institutional framework constructed on the basis

¹ From the presentation of Assistant Professor of Public Law C. Paraskeva, University of Cyprus, member of the CPT, to representatives of the Ukrainian Parliament on 8 November 2019 “Institutional and legal challenges – review of the current domestic system of implementation of judgments of the ECHR in Ukraine and the main systemic and structural problems vis-à-vis Ukraine”.

² See, Country Factsheet related to the cases pending execution and issues resolved with regard to Ukraine (updated on 27 September 2019). <https://rm.coe.int/1680709769>

³ Basically, all of the cases relating to non-enforcement of judgments relate to one large-scale group, i.e. Yuriy Nikolayevich Ivanov and Burmych group of cases, Burmych case being a “repetitive case” in relation to leading pilot case pending execution. For more information and most recent notes and submissions, please see : <http://hudoc.exec.coe.int/eng?i=004-47973>

of the 2006 Law.¹ This expert opinion did not go unnoticed. It was discussed among legal professionals and within the academic circles, attracting a lot of attention and generating significant debate.

I will try in turn to discuss the specific elements of this expert opinion and, with reference to the opinion itself and expert presentation of my dear colleague, Professor Costas Paraskeva, with whom we had vivid discussions on this and possibly diverging views, suggesting on the basis of this discussion that amendments need to be made to the institutional and legal framework relating to the system and processes of implementation of the Court's judgments with respect to Ukraine. I would also suggest that, on the basis of opinion, a *modus operandi* and domestic institutions should change to respond to demands of the judgments of the European Court, which more and more frequently identify systemic incompatibilities of the Ukrainian legal system with the Convention.

2. The brief summary of the model of the existing system of interaction with the European Convention on Human Rights and the judgments of the Court vis-à-vis Ukraine

To begin with, the model suggested by the 2006 Law envisaged that the position of the Government agent of Ukraine before the European Court of Human Rights (hereafter – the Agent) shall be under the auspices of the Cabinet of Ministers of Ukraine. This idea, once implemented, allowed sufficient visibility and hierarchy to the Agent to bring to the attention of the government of Ukraine notably issues related to the execution of judgments of the Court.

The Agent though, notwithstanding the original idea, is currently also, in part, jointly with the Secretariat, a constituent part of the Ministry of Justice. Its actions extend beyond representation of the state before the Strasbourg Court and the Committee of Ministers on execution matters, but are much larger, covering such issues as expertise of bylaws and draft legislation, initiated by the Government as well as dissemination of information concerning judgments of the European Court of Human Rights concerning Ukraine, translating them into Ukrainian, as an official language, as well as *jurisprudence constante* of the Court or its well-established case-law.

The legal and political context of the activities of the Agent's office remains volatile. Rapid changes to the domestic legal and political system, especially following the Maidan and post-Maidan events of 2013-2014, frequent political changes, overall reform of the public administration, on-going reform of the judiciary and the legal system. This context, notwithstanding the fact that the implementation of the Convention, case-law of the Court and execution of judgments, are essentially apolitical in their substance, they still do encounter a number of obstacles, frequently referred in the execution process as "pockets of resistance", which are difficult for the Agent to overcome, being a part of the hierarchy of the executive and with many decision-making choices belonging to the domain of legislative power or to the domain of the judiciary (this specifically relates to issues relating to changes to the case-law of the domestic courts and its alignment with the requirements of the Convention).

The office maintains large workload, taking into account its functions of representative of the State before the European Court of Human Rights, Ukraine having the largest workload before that Court², widest functions relating to review of legislation and bylaws, translation and dissemination of judgments, as well as, most importantly for the purposes of this discussion on execution of Strasbourg judgments, task of acting as a focal point and coordinator for execution of judgments of the European Court of Human Rights, both from the point of view of general and individual measures, i.e. ensuring non-repetition and compliance as well as undertaking measures of redress and *restitutio in integrum*.³

The general legal framework for implementation of judgments of the Court, even though it is firmly operational and does not establish excessive blocks of principle for the execution purposes, is also not ideal.

¹ The Assessment was made on request of the Ministry of Justice of Ukraine and analysed related Ukrainian legislation vis-a-vis the applicable Council of Europe standards and recommendations, as well as good European practices as to the implementation of judgments of the European Court of Human Rights. It also describes the interaction between the Ukrainian Government Agent before the European Court of Human Rights with relevant national authorities. It was prepared in the framework of the Council of Europe Project "Support to the implementation of the judicial reform in Ukraine" by the international consultants of the Council of Europe – Dr Costas Paraskeva, Assistant Professor of Public Law, University of Cyprus and Dr Marius Emberland, Government Agent of the Kingdom of Norway before the European Court of Human Rights. <https://www.coe.int/en/web/kyiv/-/the-council-of-europe-publishes-the-assessment-of-the-ukrainian-legislation-on-the-execution-of-judgments-of-the-european-court-of-human-rights>

² There are more than 8,500 cases pending before the Court as regards Ukraine, several inter-State cases and a large number of cases concerning the events relating to the East of Ukraine and the Crimea.

³ The Office of the Agent experiences large turnover of staff and of the agents themselves, with sure negative effects on the institutional memory and organisation of processes.

The provisions of the Constitution of Ukraine (Article 9) provide that the ratified international treaties constitute a part of the domestic legal system, the ratified European Convention on Human Rights, not being an exception. Additionally, a number of legal acts, including the most recently adopted procedural codes in 2017, suggest that such principles of law as the “rule of law” or even provisions of the criminal law, in the Criminal Code, should be interpreted in the light of the jurisprudence of the European Court of Human Rights. Furthermore, the 2006 law itself provides that the case-law of the Court should be treated by the domestic courts as a “source of law”¹, without extending this principle to the work of the Constitutional Court, which still sees case-law of the Strasbourg Court as a rule which should be applied with caution, via the approach of “friendly attitude to international law” and without considering the judgments of the European Court as a part of constitutional human rights *acquis* of Europe. In addition, Article 55 of the Constitution, while recognizing a right to appeal to the international jurisdictional bodies, after exhausting the domestic remedies domestically, does not deal directly (and most probably should not!) with the issue of implementation of obligations arising from the judgments of the international jurisdictional bodies, presuming that right of access also presupposes a right of enforcement. More generally, the 2006 law does not provide for legal standing to the decisions adopted by the Committee of Ministers in the course of supervision over execution of judgments. These decisions, which possess traits of local or regional customary international law, prove to be difficult to integrate legally into the domestic execution processes, even though they are produced by the statutory body of the Council of Europe. Furthermore, there is no real understanding domestically that such customary law is formed and fixed in legal decisions domestically, of the higher judicial instances, and is reflected in the decisions of the Committee of Ministers, which produces its decisions on the basis of *inter alia* its previous implementation practices. The problem in this respect might further lie in non-recognition of customary international law, along with other sources of international law, recognized by the Statute of the International Court of Justice, at the constitutional and legislative level, with Constitution having some grounds to recognize the customary international law rules.

In the system where the Agent has to act as a focal point and a coordinator of the process, facilitator of full and timely execution of judgments of the European Court of Human Rights, without actually being a direct decision-maker, its functions should be supplemented by sufficient resources and ensured domestic capacity of various authorities, including the domestic interlocutors or decision-makers in the execution process, such as the Supreme Court, the Constitutional Court, the law enforcement authorities, including the General Prosecutor’s Office, as well as the legislator should remain sufficiently high. Evidently, the coordinator and focal point cannot take legislative decision and cannot introduce changes to the domestic judiciary practice. Thus, authority and legitimacy of the coordination action should be assured in sensitive matters of interaction of the Agent with the other authorities. The domestic decision-makers in such a system should also possess sufficient analytical and expert capacity to analyse suggestions for legislative change or ideas as to review of the domestic judicial practice. It is extremely important in order to ensure meaningful dialogue on these issues. The Agent plays a particular role in the procedure of settling cases through friendly settlements or through suggesting unilateral declarations. The role of the Agent also extends to interim measures indicated by the Court under Rule 39 of the Rules of Court, within the ambit of its preventive action under Article 34 of the Convention.

In the system of the Ukrainian public administration the Agent’s office was also required to inform the citizens about notably the possibilities for exercise constitutional rights under Article 55 of the Constitution, i.e. bring cases before the European Court of Human Rights on matters of concern, after all the remedies have been exhausted. It is also to advise the domestic authorities of the need to produce, in a timely and appropriate manner, the information with regard to cases pending examination or execution, for the attention of the Court and the Committee of Ministers, respectively. In addition, the national authorities shall recognise authority and rely on the Government Agent’s expertise in representing Ukraine before the Court and the Committee of Ministers. In this sense, the Government Agent has a very specific role to play in coordinating inter-state cases, which were brought before the Court in recent years.

Thus, in this role of coordinator and focal point, the Government Agent is having a double function of the advocate of the State in both the proceedings before the Court and in the implementation process as well as

¹ The 2006 law “commits” another arrow of narrowing down the scope of execution measures to judgments identified as “enforceable” for the purposes of the 2006 law. This runs contrary to the Convention and its requirements under Article 46. Therefore, the expert opinion suggests that the notions and terminology used in the 2006 Law should be further aligned with the requirements of the Convention, case-law of the Court, decisions and recommendations of the Committee of Ministers of the Council of Europe.

a role of an advocate for human rights within the system of the public administration and governance.¹ In this sense the roles of the Agent's office in ensuring compatibility of legislation and practice with the ECHR and Court's case-law, role of a "human rights watchdog" as regards implementation by other authorities within the executive branch of power of the case-law and the Council of Europe's recommendations, the role in disseminating and ensuring that this information is well-received and incorporated into the activities of the domestic interlocutors, as well as the role of ensuring "early warning" immediately after finding of violation or even before a possible finding of violation through measure of preventive control or through ensuring that the Council of Europe standards are adhered to in ensuring communication with the Strasbourg authorities ("Strasbourg proofing"), systemic compatibility checking on own initiative of the Agent or upon call of other authorities. All of these raise difficult questions as to how to ensure systematic compatibility checking (preventive control) and how to detect practices inconsistent with the ECHR, acting within the limits of the Agent's focal point and coordinator mandate. This surely requires not only a great degree of authority within the domestic system, but also coordination with the legislative and judicial branches of power, not speaking about internal coordination measures within the Ministry of Justice itself as a "SuperMinistry" and the executive. The Agent in this sense can act as the first contact point for seeking assistance from the Council of Europe and its expert bodies.

How to ensure the follow-up above? It appears that coordination between the Agent's office and the national authorities as regards the execution of judgments of the Strasbourg Court plays an essential role in this process. The role of the Agent is vital for the setting up and operation of domestic mechanisms for the full and rapid execution of the Court's judgments. Persuasion of the Government - and in particular of his/her Ministry - to initiate and support draft laws aiming at remedying situations found by the Court to be in breach of the European Convention on Human Rights and Fundamental Freedoms can be seen as an extremely difficult and challenging task, especially on issues which are surrounded by political polemic or are a part of a sensitive societal debate. Nevertheless, the Agent's role in coordination within the executive is essential to full and timely execution of judgments. In this sense, the Agent's role in proposing general or individual measures, first to the executive, finding consensus on these measures within this branch of power and then consolidating consensus within the judiciary and legislative branch of power, if necessary are uneasy, but extremely important tasks.

This role extends beyond the Ukrainian territory, strictly speaking, and also extends to external action of the authorities via the Ministry of Foreign affairs. Interaction with the Council of Europe and its statutory body, Committee of Ministers of the Council of Europe is a difficult political task, where the role of the Agent is only limited to technical and substantive interaction with the Committee of Ministers on issues related to execution of judgments. Last but not least, finding incentives for the law enforcement authorities, judiciary or legislator to change and to reform, to adhere to different standards, indeed, can prove to be an extremely challenging and practically unachievable task, with only slow visible progress that could be achieved through implementation measures. Additionally, the Agent plays an important role in relations with other relevant domestic human rights institutions, including the Ombudsperson's Office, various NGOs involved in domestic human rights debate.

Finally, under the model suggested by the 2006 Law, the role of the Agent's office can only be implemented successfully, if, within variety of functions that the Agent is required to exercise and numerous obligations imposed on the post, the correct strategy and respective priorities and policies are clearly defined, there is a continuous process aimed at preventive action with compatibility of normative acts and practices being carefully scrutinized, the Convention, role of the Court and the Committee of Ministers are properly maintained and supported, Convention and the Court's case-law and the best practices of the Committee of Ministers being popularized, through measures of translation, publication and dissemination. The Agent's office should also liaise with academic institutions to ensure structural deep incorporation and embeddedness of the human rights standards domestically.

The model above, is rather an ideal and possibly abstract model. The level of interaction of the focal point and coordinator with other authorities could vary. It largely depends on the workload of the Agent's office primarily focused on representation before the Court and the Committee of Ministers as well as authority and legitimacy of the Agent's office within the structure of the State institutions, support provided by the decision-makers to the coordinator and the focal point. However, more generally, the description above reflects the main delineation of the approach for the ideal model reflected in numerous Council of

¹ This role is essentially similar to the role of the Department for the Execution of Judgments of the European Court of Human Rights of the Directorate General of Human Rights and the Rule of Law. It has a role of facilitator of the process and role of adviser to the Committee of Ministers of the Council of Europe as well as the role of adviser to the State willing to get assistance and guidance with regard to identification and implementation of the required by the judgments of the Court execution measures.

Europe recommendations. Nevertheless, it is never the theoretical model that ensures compliance with the Convention in practice, but the operational model and that is what was at stake in assessment not only of the model itself, but of its operation in practice, by the Council of Europe experts. The answer the experts had to give was whether the present model, in operation, can bring about practical tangible results or is likely to bring those results, taking into account the context in which this model operates.¹

3. General conclusions from the 2017 Council of Europe expert report

The expert report covered several areas of concern. First of all, it dealt with the role of the Government Agent as a domestic coordinator of the actions aimed at implementation of judgments of the Court. It also covered the functions that the Government Agent possess, his or her hierarchy and the degree of authority, both factual and hierarchical, that the offices of the Agent had within the system of state institutions dealing in coordinated fashion with execution of the judgments of the Court. Furthermore, the analysis covered interaction of the domestic authorities with the Committee of Ministers of the Council of Europe, in both consolidating information and submitting to the attention of the Committee of Ministers, supervising execution of specific judgments, but also information transferred to the attention of the authorities through action taken by the Committee of Ministers itself, via its decisions, interim resolutions, final resolutions and specific legal instruments in its possession – legal memorandums, information documents, etc.

To begin with, the expert report stated that the implementation of the 2006 Law and the establishment at the national level of a specialised body dealing with coordination of the execution of the Strasbourg judgments is a very welcome development. The report mentioned that, its mere adoption, without implementation of the necessary actions by domestic authorities, is not sufficient to ensure full and timely execution of the Strasbourg Court's judgments. In this sense, the office of the Government agent should possess necessary resources, capacity and authority, to ensure its function of a coordinator. Most importantly, the Agent's office should ensure necessary political support and leverage within the hierarchy of the executive. This could be done, under the processes suggested in the law, through the action vis-à-vis the Ministry of Justice or directly through the Cabinet of Ministers. The idea of complementary *ad hoc* mechanisms was discussed as well, whereas such mechanisms could focus on resolution of systemic and structural problems identified by the European Court of Human Rights in its judgments. The assessment highlighted that "one of the fundamental conditions to further advance the execution of controversial or politically sensitive judgments is undoubtedly establishing dialogue with key interlocutors. This dialogue should in particular aim at creating a common understanding of the execution requirements and the consequences that should flow from them".²

The report evidently referred to the need of continuous institutional dialogue and reaching consensus at the domestic level, through coordinated action, to ensure identification and full and timely implementation of measures already agreed and identified. Clearly, this is the main recommendation applicable for the Ukrainian authorities, whereas this dialogue should be supported by efficient implementation of the domestic laws. The report concludes that, while the 2006 Law provides for solid legislative basis for execution of the Strasbourg Court's judgments, but this Law could be only be further strengthened to ensure its better implementation. More specifically, the report suggests that the 2006 Law should provide for establishment of a preferably permanent network of domestic interlocutors dealing with the execution of Court's judgments full-time. Additionally, the 2006 Law could provide for complementing the current permanent institutional framework with an *ad hoc* institutional and legislative solutions dealing with systemic or structural problems identified in the judgments.

In this sense the report recommends defining clearly, within the system of state hierarchy, the Ministry of Justice as a responsible body for the execution process. This would reflect reality, in which the Ministry and the Minister of Justice give guidelines and supervise the actions of the Government Agent. It would also assist in unblocking processes within the Ministry of Justice itself and allow direct reporting from the Minister, with the assistance of the Agent, to the Cabinet of Ministers. This would further increase visibility, transparency, coherence and efficiency of the process, make it more result-oriented and ensure real ownership by the Ministry of Justice, Cabinet of Ministers and executive of the results of the execution, its successes and even possible failures. The Cabinet of Ministers, it is suggested, could have even specially dedicated to the execution of judgments sessions, where it could hear reports on the progress as to execution

¹ As a result of the assessment, the expert gave a list of some 20 recommendations to the authorities on how to improve the existing system.

² This has been underlined by the Director General of the Directorate General of Human Rights and Rule of Law in the 9th Annual Report of the Committee of Ministers on the supervision of the execution of judgments and decisions of the Court.

of judgments of the European Court of Human Rights. In this respect, the Agent should be empowered to indicate specific deadlines to each body involved, taking into account notably deadlines for preparation of reports to the Committee of Ministers DH (human rights) sessions that occur four times a year, within which such instructions should be acted upon. It might be recommended that whereas a specific ministry or state institution concerned prepares an action plan or action report and the Government Agent assists in its technical preparation and submission to the Committee of Ministers, that there is a procedure for informing them about the Committee of Ministers decision and possibly engaging these specific decision-makers in the dialogue with the Committee of Ministers during specific sessions. If allowed to issue such instructions, the Agent should obviously take into account the independence and specific roles in execution process, limits of their jurisdiction, of different branches of power. The Agent's role, under these recommendations, should be focused on achieving concrete tangible results by means of managerial process of establishing clear priorities, aligned with the priorities of the Court in examination of cases¹ and the priorities of the Committee of Ministers², deadlines, benchmarks for the execution process and respective preparation of actions.³

Another suggestion, as a part of the process, is to suggest procedures whereby the measures indicated by the Committee of Ministers are brought to the attention of the relevant domestic authorities and thus the required action should be taken within the established time limits. The report provides for an idea that the analytical notes, envisaging individual and general measures to be taken, should be transformed into domestic action plans, having binding force, with specific deadlines and allocated responsibility of the relevant authorities, to be submitted by the Ministry of Justice to the attention of the Cabinet of Ministers or the even the Prime Minister of Ukraine. The authorities, depending on their required level of engagement in the problems identified by the European Court should aim at adopting a framework strategy of execution of particular measures required by the judgment, distributing tasks and ensuring follow up, compliance with deadlines and result from the action to be taken.

The expert report also suggests that the judiciary plays one of the key roles in implementation action. However, the does not provide for a system of clear interaction of the Agent with such key stakeholders in the judiciary as the Constitutional Court and the Supreme Court. Also, the General Prosecutor's Office, being now a part of the judiciary under the 2016 Constitutional amendments, is not covered. Thus, the report suggests that some of the regulations gaps could be filled by respective bylaws regulating such joint action, soft law measures, like joint memorandums, technical and less formal discussions⁴ or involvement of the Agent in cases via *amicus curiae* briefs.⁵

In addition to the above, most importantly for the action with involvement of legislative branch of power, the report suggest that a system of Parliamentary reporting and Parliamentary hearings should also be envisaged in the Law based on the respective Council of Europe recommendations, including recommendations of the PACE, in order to raise visibility of the reporting process and discuss any progress achieved or difficulties encountered. Such hearings could also contribute to the work of the PACE on supervision of implementation of judgments and production of relevant PACE reports on these issues.

To summarise, the three main areas were thus identified where improvement was thought as necessary, to rephrase the findings of the expert report:

- the 2006 law should be sufficiently equipped to ensure *an effective system of implementation of judgments* (specifically judgments revealing systemic and structural problems within the domestic system);
- the 2006 law and its system of implementation should be build to secure an effective mode of *cooperation between the GoA and the CoE, including interaction with the Committee of Ministers of the Council of Europe*;

¹ There are clear priorities for examination of cases, as adopted by the European Court of Human Rights. These usually include cases with allegations of breaches of "core rights" under Articles 2, 3 and 5 of the Convention. More information on the priority policy and its application can be found at the web-site of the Court: echr.coe.int.

² These priorities are manifested in the cases being examined in the so-called "enhanced procedure", which require urgent individual measures, are of complex nature, relate to inter-state cases or concern pilot judgments.

³ The procedure for exchanges between the authorities at all levels should be simplified and most possible should be transformed into electronic exchanges, ensuring electronic signatures and simplified circulation of information.

⁴ Some other less formal (and more flexible) methods of regular information exchanges, leading to concrete action, should be established between the secretariats of institutions involved in the execution process and the Office of the Government Agent;

⁵ Incidentally, the expert report, recommended to set up a clear system of priorities and to reconsider some of the very ambitious functions of the Government Agent's Office, like translation tasks or tasks related to review of legislation and bylaws, in order to allow the Office to concentrate more specifically on the tasks of representation before the Court and coordination of execution of judgments.

- the Law should be inadequately attuned to the importance of *including all branches of government – as well as other bodies of society – in the implementation process*, reaching consensus and reverse feedback from the domestic authorities and the Committee of Ministers, while simultaneously taking into account the different bodies' varied functions and roles in a democratic society, governed by the rule of law.

4. Concluding remarks

It is true that the initial approach taken by the authorities, to establish a system of reaction to the judgments of the Court through legislative action, can only be praised and it had indeed been assessed by the Council of Europe bodies, including PACE, in its reports on implementation of judgments as a positive step forward. Indeed this approach proved effective for the system of law of Ukraine and for the legal and judicial system still suffering from “excessive formalism” and “caveist positivism”.

However, as witnessed from the situation with regard to Ukraine and its standing before the Convention institutions, one can only frankly admit and advocate that not only the law itself, but the practice of its implementation require urgent change.

It is worth noting in this respect that the implementation of judgments of the European Court in this sense is a technical, legal and managerial process, which requires dialogue and involvement of different branches of power. It is a process which remains difficult for Ukraine for a number of reasons. One of these reasons is that initially Ukraine and its young independent institutions, at the moment of adhering to the Convention at the end of 1990s, were not ready – they were unable to consume and integrate a body of the Council of Europe laws and standards into the domestic legal system and make them operational at the same time. The process of integration of these standards, based on democratic ideas of human rights and the rule of law supported by the like-minded states, is a lengthy process, involving the “long and winding road” to an ideal state of human rights compliance, which is hardly possible to achieve fast. Nevertheless, the process of the execution of Strasbourg Court's judgments as a technical, legal and managerial process useful for Ukraine internally, also has important political consequences for Ukraine internationally and these connotations equal or could potentially equal to membership in the European Union or could even potentially raise issues as to compliance with already existing obligations under the Association Agreement with the European Union. The execution of judgments is not only a process of transformation of the legal system of Ukraine, but is a process aimed at securing human rights at the domestic level, in a situation where the State is unable initially to ensure these rights under the principle of subsidiarity.

These important elements should not be overlooked and the execution of judgments, in specific context of Ukraine, should be seen as an important legal tool of positive transformation of the Ukrainian legal system. This tool is based on binding effect of judgments of the Court under Article 46, obligation to ensure rights under Articles 1 and to provide for remedies under Article 13, as well as, on principles of *pacta sunt servanda* and acting in good faith, and additionally, on the international obligations of the State towards other Council of Europe member states, which are enforced collectively. Notwithstanding its “legal nature” in context of international law, it should still be seen as an important tool of individual human rights redress, with main actor in this system – a human being. As it is being said that “the road can only be passed by only by those who walk through it”, so it appears urgent that concerted action is taken by the authorities to ensure that implementation of the Convention and the execution of judgments of the Court are “on the go”. The Convention system, which has been so successful in a number of states as well as in Ukraine, should also regain its dignified place in the system of human rights protection ensured by Ukraine. For this, Ukrainian authorities should take the report seriously and indeed undertake substantive institutional change to ensure full and timely reaction to the judgments of the European Court of Human Rights.