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ROOT CAUSES OF THE NON-ENFORCEMENT OF THE DOMESTIC JUDICIAL DECISIONS IN UKRAINE

The study was carried out based on the "Methodology for international and/or national expert analysis to determine the main reasons for the non-enforcement of decisions rendered by the domestic courts of Ukraine" within the Council of Europe's project "Supporting Ukraine in the execution of judgements of the European Court of Human Rights".

This study was particularly related to the devastatingly low levels of the enforcement of judgments and, accordingly, the need to improve the situation in this area.

The project implementation revealed the root causes of the non-enforcement of three categories of court decisions (social disputes, labour disputes and decisions concerning legal entities falling under the responsibility of the State or the State itself), as well as other problems linked to the statistics and the register of court decisions

The first problem was associated with the impossibility of finding necessary cases. The experts identified systemic flaws in record-keeping and data comparability of the Unified State Register of Court Decisions (USRCD) and the Unified State Register of the Enforcement Proceedings with respect to all these categories of judgments. For example, of 2,760 court decisions in "social disputes" selected for analysis, the experts could only find 2,254 judgements in the USRCD under the provided requisites. The analysis revealed systemic violations of the relevant legislation, such as illegal reduction of payments, significant narrowing of the scope of plaintiffs' rights by bylaws, misapplication of the budget legislation by the authorised government bodies.

Speaking of labour disputes, the analysis covered 1,505 unexecuted court decisions. Causes for the non-enforcement in this category of decisions included the lack of necessary state funding (lack of budgetary allocations) at the time of the matter of controversy leading to the state's failure to fulfil its obligations, improper exercise of powers by government authorities and state-owned enterprises, flaws in normative regulation of labour relationships, repeated reorganisations of one and the same enterprises leading to the interpretation confusion of these procedures and their improper execution.

As for the decisions concerning legal entities falling under the responsibility of the State or the State itself, 250 of 14,324 court decisions of this category were subjected to expert analysis. It revealed inefficiency of the State Execution Service in recovering such debts, the improper performance of duties by the public executors, unlawful assistance to the debtor or delays in the enforcement of court decisions, obstruction of the plaintiffs' right to use the mechanisms stipulated by the Law "On State Guarantees for the Enforcement of Judgements".

The study has also analysed the national legislation governing the system of bodies and the procedure for enforcement of judgments.

Therefore, if taken into consideration by the relevant authorities, the project results presented in this publication can contribute to the understanding of current situation with the enforcement of judgements and developing approaches to their better execution.

The analytical report includes four sections.

The first section outlines the overall situation with the enforcement of judgments by Ukraine.

The second section examines the enforcement of court decisions in three categories – social disputes, labour disputes and decisions concerning legal entities falling under the responsibility of the state or the state itself.

The third section reviews the national legislation regulating the state's liability to plaintiffs.

The fourth section presents conclusions and recommendations aimed at elimination of causes of the non-enforcement.

In addition to the Razumkov Centre's expert team, led by professor Viktor Musiyaka, PhD in Law, the following experts contributed to this analytical report: professor Anatoliy Zayets, Doctor of Law, associate member of the National Academy of Legal Sciences of Ukraine, head of the Department of theoretical legal science and public law of the National University of "Kyiv-Mohyla Academy"; Tetyana Tsuvina, PhD in Law, Associate Professor at the Department of civil procedure of Yaroslav Mudryi National Law University; Volodymyr Sushchenko, PhD in Law, Associate Professor, chairman of the board of the Expert Centre for Human Rights; M. Tsiunchyk, assistant of the Project leader Viktor Musiyaka.

1. THE ENFORCEMENT OF JUDGEMENTS IN UKRAINE: SITUATION, PROBLEMS, INTERNATIONAL ASPECTS

The right to a fair trial is guaranteed by Art.6 of the European Convention on Human Rights (ECHR) and is the necessary precondition for adherence to the rule of law as stipulated in Art.8 of the Constitution of Ukraine. The non-execution of court rulings made in the name of Ukraine leads to the loss of the sense of justice and undermines trust in the judiciary and the government

The execution of judgments in different periods of Ukraine's history was organised in different ways. During the USSR period, starting from 1973, the judgment execution was entrusted to bailiffs. The enforcement proceedings were considered a part of the judicial trial, and the judge was supervising the activity of bailiffs. Because of the authoritarian government system, which also affected the judicial power, the rulings were executed mostly willingly. So the efficiency of the judgment enforcement was not relevant. However, from the first days of independence, as Ukraine officially proclaimed the judicial protection of all human and citizen rights, which was later entrenched as the constitutional provision in the 1996 Constitution of Ukraine, this issue gained particular relevance due to the sharp decrease of the voluntary execution of rulings.

Over the years, the level of the court judgment execution was different, but it never went above 40-45%, and in some years – reached the critical 5-10%. As a result, according to the government sources, before the start of the state enforcement service reform announced in Ukraine by the Groysman Government after 2014, the rate of execution of civil case rulings was approximately at 6%, and the overall cost of the unexecuted cases in this sector was UAH 400 billion, which became a key barrier on the way to establishing the rule of law and effective work of courts and judges in Ukraine.[1]

The constitutional reform in the judicial system in Ukraine resulted not only in the change of a court system and a review of the procedures framework, but also involved the related sector – the execution of the court judgments and decisions of other bodies. Notably, the Constitution guarantees the execution of the court judgments, as according to **Art.129-1 of the Constitution of Ukraine, a court judgment is binding**. The State ensures the execution of a court judgment in the order defined by the law. The supervision over the execution is vested in courts.

These constitutional provisions are reflected in the sectoral laws. Thus, according to Art.18 of the Civil Procedure Code (CPC) of Ukraine, the effective court judgments are binding for all government and local self-government bodies, enterprises, institutions, organisations, public officials and employees, persons and citizens and are subject to the execution on the entire territory of Ukraine, and in cases defined by the international laws and approved as binding by Verkhovna Rada of Ukraine, – and abroad. The non-execution of a court judgment is the reason for the incurrence of liability as defined by the law. Along with the amending the Constitution, Ukraine has also approved two laws that directly regulate the enforcement of court judgments: **"On the Bodies and Persons that Enforce the Court Decisions and Decisions of Other Authorities" and "On the Enforcement Proceedings" as of 2 June 2016**, which reflect the new organisational, functional and procedural cornerstones of this segment of legal practice.

The main guideline of the constitutional reform of the judiciary and reforms of the court procedures and related institutions in Ukraine is the harmonisation of the domestic legislation with **the European standards of fair justice**. In this context, the cornerstone is p.1 of Art.6 of the European Convention on Human Rights (ECHR), according to which in the determination of his civil rights and obligations, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. This provision is called "the right to a fair trial" and is an inalienable human right, which is organically tied with the international legal principle of the rule of law and is its

[1] Court Judgement Enforcement Reform. – Government web-site, *https://www.kmu.gov.ua/ua/diyalnist/reformi/verhovenstvo-prava-ta-borotba-z-korupciyeyu/reformuvannya-sistemi-vikonannya-sudovih-rishen*.

part. The integral part of the right to a fair trial that came from the ECtHR practice of the applying and interpreting the abovementioned paragraph, is the **requirement to make judgments legally binding, i.e. to provide a guarantee of their enforcement**.

It would seem that the improvement of legislation aimed at harmonising the domestic procedural framework with the international standards would increase the efficiency of the enforcement proceedings, yet the statistical data testifies to the systemic problem in this area. Thus, in 2017 Ukraine was fourth according to the number of complaints filed to the ECtHR, which made up 12.6% (7,100 complaints) of the total number of complaints filed to ECtHR in 2017,[2] as well as third (after Russia and Turkey) by the number of judgments against it in 2017 (87 judgments, which was 8.14% of all judgments made in 2017).[3] Thus, as of 31 December 2018, 7,250 complaints were filed against Ukraine, which was 12.9% of the total number of complaints filed in 2018.[4] Over the entire period of the ECtHR operation up to 2017, it considered 82,514 complaints against Ukraine,[5] with at least 29 thousand being related to the systemic failures of the court judgment enforcement.[6]

It should be noted that according to the ECtHR statistics, in the entire period of the ECtHR work from 1959 to 2017, 39.68% of all violations deemed by ECtHR as such were violations of the right to a fair trial, including 17.21% violations of the fairness of the judgment principle, and 20.70% – violations of trial within a reasonable time principle and the non-execution of judgments. The data reveals a number of problems in the European region with a reasonable time principle and the enforcement proceedings.

The non-enforcement of the domestic court decisions in Ukraine is the most common and serious problem in the operation of the judiciary. The existence of this problem was ascertained in the pilot judgment of the ECtHR "Yuriy Mykolayovych Ivanov v. Ukraine" (2009).

In response to the ECtHR's pilot judgment, on 5 June 2012 Ukraine adopted the Law of Ukraine "On the State Guarantees for the Enforcement of the Court Judgments", which provided a number of the state guarantees in this area, namely, a compensation for the untimely execution of the court decisions in the form of collecting funds and the obligation to take certain action regarding the property, with debtors including: the government bodies, government enterprises, institutions, organisations or legal entities, whose assets are protected by the laws of Ukraine from being sold. According to this Law, if the central executive government body that performs the treasury servicing of the budget funds fails to transfer the court-ordered funds within three months, the creditor is owed the annual 3% interest on the unpaid amount provided in the framework of the budget programme for the enforcement of the court decisions. The State Treasury of Ukraine has to execute the domestic court decisions against the government bodies and companies within three months from the date of submission of all required documents by the applicant. If the said decision remains unexecuted for over three months, the state has to pay the person the yearly amount of the annual 3% interest on the unserviced debt. However, these guarantees are limited by the funds provided by the budget law for each respective year.

Clearly, this Law is unable to resolve the problem as it is, as the state has assumed the responsibility for the execution of a limited scope of judgments; also, the abovementioned legal mechanism is not judicial and does not allow for considering case details in determining the size of the compensation.

AS to the compensation in its precedence practice, the ECtHR has repeatedly emphasised that the compensation at the domestic level must not be unreasonable in comparison with the amounts made by the Court in similar cases,[7] which is also a ECtHR criterion for assessing the efficiency of the remedy designed to prevent the court proceedings from becoming excessively lengthy. However, the Law of Ukraine "On the State Guarantees for the Execution of Court Judgments" provides for a fixed amount of compensation, which compared to the compensation made by the ECtHR is unreasonable and disproportionate. Given the above, the proposed compensation mechanism cannot be considered as an effective measure of the legal protection of a person's right to a trial and to a timely execution of a court judgment as seen in p.1 of Art.6 and Art.13 of the ECHR and ECtHR precedence practice.

The state happened to be unable to perform its obligations even in the framework of this Law, which led to a major debt. According to Art.19 of the Law of Ukraine "On the State Budget 2018", in the order defined by it, the Cabinet of Ministers of Ukraine has the right to restructure the existing debt up to UAH 7,544,562,370.00 that arose in connection with

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2 The ECHR in Facts and Figures 2017. – European Court of Human Rights, March 2018, p.3, *https://www.echr.coe.int/Documents/Facts_Figures_2017_ENG.pdf*.

3 Ibid.

4 Pending Applications Allocated to a Judicial Formation. – European Court of Human Rights, 2018, *https://www.echr.coe.int/Documents/Stats_pending_month_2018_BIL.pdf*.

5 Overview 1959-2017 ECHR. – European Court of Human Rights, 2018, p.5, *https://www.echr.coe.int/Documents/Overview_19592017_ENG.pdf*.

6 *Burmych v. Ukraine* [GC], №46852/13 та інші, 12 October 2017, §44, *http://hudoc.echr.coe.int/eng?i=001-178082*.

7 *Burdov v. Russia* (№2), №33509/04, §99, *http://hudoc.echr.coe.int/eng?i=001-90671*.

the judgments, enforcement of which is guaranteed by the State, and in connection with the ECtHR judgments made as a result of cases against Ukraine, through issuing the treasury notes with up to 7-year maturity, with a one year deferred payment on the debt and the annual interest rate of 9.3%. This measure was proposed as the alternative legal mechanism to protect the right to the timely execution of judgments. Yet according to the Government itself, there have been no requests to apply this legal protection mechanism from the interested parties.[8]

The proposed legal remedies have repeatedly become the subject of discussion of the Committee of Ministers of the Council of Europe (CMCE) in a number of the interim resolutions, namely CM/ResDH(2008)1,[9] CM/ResDH(2009)159,[10] CM/ResDH(2010)222,[11] CM/ResDH(2011)184,[12] CM/ResDH(2012)234.[13] Finally, in the interim resolution CM/ResDH(2017)184, the CMCE defined a number of measures for Ukraine in order to deal with the crisis in the discussed sector. Among other things, a three-stage strategy was proposed, which included:

(1) the calculation of the amount of debt arising from the unenforced decisions;

(2) the introduction of a payment scheme with certain conditions, or containing alternative solutions, to ensure the enforcement of the unenforced decisions;

(3) the introduction of the necessary adjustments to the state budget so that sufficient funds are made available for the effective functioning of the above-mentioned payment scheme, as well as the necessary procedures to ensure that the budgetary constraints are duly considered when passing legislation to prevent the situations of the non-enforcement of the domestic court decisions rendered against the State or state enterprises.[14]

Yet, as the other ECtHR cases against Ukraine demonstrated, the abovementioned strategy was not executed, and the ECtHR renewed consideration of similar complaints due to the failure to ensure the effective domestic remedies. According to the ECtHR's own calculations, since the first complaint filed in 1999 up to 2016, the ECtHR has received approximately 29 thousand Ivanov-type cases. From early 2016, the ECtHR continued to receive many complaints of this type – over 200 per month.[15]

Despite the abovementioned ECtHR decision and the long period since its adoption, Ukraine is still missing the mechanisms for the effective protection of the corresponding right. This delay and the endless number of similar complaints filed after the pilot judgment made the ECtHR resort to the unprecedented measures – a judgment dated 12 October 2017 in *"Burmych and Others v. Ukraine"* case, in which the ECtHR took a new approach to the problem of the non-execution of the pilot judgments by states against which they were made, reviewing its role in cases when the respondent state does not implement the ECtHR recommended measures to remedy the systemic problem. In this case, the ECtHR joined the five applications and another 12,143 Ivanov-type cases, in which applicants complained of the violation of p.1, Art.6 of the ECHR regarding the failure to provide the timely execution of judgments in cases where the debtor is the State, into one case. In its decision, the Court observed that it runs the risk of operating as part of the Ukrainian legal enforcement system and substituting itself for the Ukrainian authorities, and that such task is not compatible with the subsidiary role which the Court is supposed to play in relation to the High Contracting Parties under Article 1 and Article 19 of the Convention, and runs directly counter to the logic of the pilot-judgment procedure developed by the Court.

Emphasising the distribution of tasks between the ECtHR and the Committee of Ministers, the Court stated that it may assist the respondent State in fulfilling its obligations under Article 46 by seeking to indicate the type of measure that might be taken by the State in order to end the systemic problem identified by the Court.

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8 See: *Burmych v. Ukraine* [GC], №46852/13 et al, 12 October 2017, §126, *http://hudoc.echr.coe.int/eng?i=001-178082*.

9 Interim Resolution CM/ResDH(2008)1 on the execution of the judgements of the European Court of Human Rights in the case of ZHOVNER and 231 other cases against Ukraine relative to the failure or serious delay in abiding by final domestic judicial decisions delivered against the state and its entities as well as the absence of an effective remedy, *https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168059ddae*.

10 Interim Resolution CM/ResDH(2009)159 Execution of the judgments of the European Court of Human Rights in 324 cases against Ukraine concerning the failure or serious delay in abiding by final domestic courts' decisions delivered against the state and its entities as well as the absence of an effective remedy, *https://rm.coe.int/168059ddb0*.

11 Interim Resolution CM/ResDH(2010)222 Execution of the pilot judgment of the European Court of Human Rights in the case Yuriy Nikolayevich Ivanov against Ukraine and of 386 cases against Ukraine concerning the failure or serious delay in abiding by final domestic courts' decisions delivered against the state and its entities as well as the absence of an effective remedy, *https://rm.coe.int/168059ddb0*.

12 Interim Resolution CM/ResDH(2011)184 Execution of the pilot judgment of the European Court of Human Rights Yuriy Nikolayevich Ivanov against Ukraine and of 386 cases against Ukraine concerning the failure or serious delay in abiding by final domestic courts' 5 decisions delivered against the state and its entities as well as the absence of an effective remedy, *https://rm.coe.int/168059ddb0*.

13 Interim Resolution CM/ResDH(2012)234 Execution of the judgments of the European Court of Human Rights Yuriy Nikolayevich Ivanov against Ukraine and the Zhovner group of 389 cases against Ukraine concerning the non-enforcement or delayed enforcement of domestic judicial decisions and the lack of an effective remedy in respect thereof, *https://rm.coe.int/168059ddb0*.

14 Interim Resolution CM/ResDH(2017)184 Execution of the judgments of the European Court of Human Rights Yuriy Nikolayevich Ivanov and Zhovner group against Ukraine concerning the nonenforcement or delayed enforcement of domestic judicial decisions and the lack of an effective remedy in respect thereof (Adopted by the Committee of Ministers on 7 June 2017 at the 1288th meeting of the Ministers' Deputies), *https://rm.coe.int/168071e6fd*.

15 *Burmych v. Ukraine* [GC], №46852/13 et al, 12 October 2017, §44.

In its practice, the ECtHR has developed a number of efficiency criteria for the means of legal protection of the right to a trial and the timely execution of judgments, according to which:

(1) a remedy is effective if it can be applied to expedite the decision-making by the court that considers the case, or if it provides the adequate compensation to the trial party for the delay that has already taken place;

(2) the most effective are prevention remedies, not the ones providing the compensation for the delays or non-execution of judgments;

(3) the best option is the combination of the compensatory and expeditory remedies;

(4) the remedies are applied to ongoing as well as completed proceedings where a judgment has been made;

(5) the remedies must provide the compensation for material and non-material damage;

(6) the level of compensation must be adequate compared to the compensation made by the ECtHR;

(7) the remedies must apply to both trial and enforcement stages.[16]

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 Article 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.[17] Thus, the Court held that the legal matters that concern ECtHR regarding the long-lasting non-execution of domestic judgments in Ukraine have been already resolved in the Ivanov pilot judgment. Therefore, the Court has fulfilled its mission under Article 19 of the ECHR […]. In accordance with the principle of subsidiarity, which underlies the whole Convention and not only the pilot judgment procedure, the matter treated by the Ivanov pilot judgment, including the provision of redress for the victims of the systemic violation of the Convention found in Ivanov, is a question of the execution under Article 46 of the Convention.[18] Based on the above, the Court ruled that all the abovementioned applications have to be reviewed in line with the obligations under the pilot judgment. As a result, the said cases were struck out of the Court's list and transferred to the Committee of Ministers to be reviewed in the framework of general measures for the execution of the Ivanov's case pilot judgment. In addition, considering that the same reasoning applies to any future well-founded Ivanov-type applications that may be lodged after the delivery of this judgment, the Court may strike them out of the list of its cases and transmit them directly to the Committee of Ministers, save those applications which are found to be inadmissible under Article 35 of the Convention.

On 12-14 March 2019, the Committee of Ministers published its decision on the group of cases "Yuriy Mykolayovych Ivanov, Zhovner group and Burmych and Others v. Ukraine" (Application No. 40450/04). Among other things, the Committee "strongly urged the authorities to complete their work on identification of the root causes without any further delay, encouraging them to move from preliminary identification of root causes to a comprehensive strategy that will identify the necessary institutional, legislative, financial and other practical measures based on thorough expert analysis, Court's precedent law and preliminary instructions provided by the Committee".

On 4-6 June 2019, the Committee of Ministers analysed the execution and level of progress in Ukraine's execution of the ECtHR pilot judgments in the group of cases "Yuriy Mykolayovych Ivanov, Zhovner group and Burmych and Others v. Ukraine". The Committee "considered with interest the consolidated action plan submitted by the Ukrainian government, which contains measures previously taken towards the execution of the Ivanov pilot judgment, as well as measures taken in cooperation with the Council of Europe to identify the root causes of the non-execution of judgments delivered against the State or entities owned or controlled by the State".

Also, the Committee **praised the completion of government work on identifying the root causes**, but at the same time noted with concern that the deadline established by the European Court for the execution of the Burmych judgment is 12 October 2019 **and the government still has not adopted a comprehensive strategy**.

The draft strategy was submitted by the Ministry of Justice of Ukraine to the Committee on 31 May 2019 and involved the required institutional, legislative, financial and practical measures.

Deputy Minister of Justice, Commissioner for ECtHR, Ivan Lishchyna stated that due to the political situation in Ukraine (early parliamentary elections), it is possible that the government composition will change, and the government is responsible for the implementation of the respective measures. This prompts the Ministry of Justice to ask the ECtHR for a prolongation of the deadline (October 2019) established for taking measures in the framework of the pilot judgments on Yuriy Ivanov and Burmych cases aimed at the implementation of the corresponding strategy. Ivan Lishchyna stated that such **national strategy** has already been developed in cooperation with the government representatives and Council of Europe experts. After consideration by a special interdepartmental group it is scheduled to be approved by the Government. The strategy implementation will require the development and adoption of a number of specific laws to provide the legislative remedies for overcoming the primary sources of the non-enforcement of court decisions against the state

[16] See: Tsuvina T. The Right to a Trial in Civil Proceedings – Kharkiv, 2015, p.281, 257-258; Sakara N. Protection of the Right to a Fair Trial: Problems and Prospects. – Lawyer of Ukraine, 2013, p.57-62, 58.

[17] *Burmych v. Ukraine* [GC], №46852/13 et al, 12 October 2017, §194.

[18] Ibid., §197.

2. SEARCH RESULTS AND ANALYSIS OF THE UNEXECUTED JUDGEMENTS IN THE USRCD BASED ON THE STATISTICAL SAMPLE OF THE TOTAL BODY OF THE ENFORCEMENT PROCEEDINGS

Since no unified register of the unexecuted court decisions exists in Ukraine, the Budget Programme No.KPKV 350-404017 ("Programme 4040") has been the main (and the only) source of information in this area. Files provided by the Council of Europe Office in Ukraine showed the number of court decisions registered within this Programme as of February 2019: 305,554.

2.1. Analysis methodology[1]

All enforcement proceedings under the relevant court decisions are divided into three categories:

- Category 1 – decisions in the social security cases ("social disputes");
- Category 2 – decisions in the employment relations ("labour disputes");
- Category 3 – decisions concerning the legal entities falling under the responsibility of the State (the State owns 25% or more in authorised capital) or the State itself.

From each category of the enforcement proceedings, 1% of cases were selected from the Unified State Register of Court Decisions (USRCD).

It should be noted that the Budget Programme provided by the State Treasury Service had serious flaws, in particular the requisites of the court decisions in the USRCD were often inaccurate: no relevant judgements under categories 1 and 3 using the Budget Programme system could be found.

The experts summarised information on the enforcement proceedings for specific court decisions in all three Categories of cases. The following information was displayed in the tables:

(1) the enforcement proceedings number;

(2) the name of the court which rendered the decision;

(3) the court instance;

(4) the name of the debtor;

(5) the nature of the obligation;

(6) the amount of funds under the writ of enforcement;

(7) the status of the judgment and the like.

Let's have a closer look at the unexecuted court decisions for each Category individually.

2.2. RESULTS OF ANALYSIS OF CATEGORY 1 COURT DECISIONS – "SOCIAL DISPUTES"

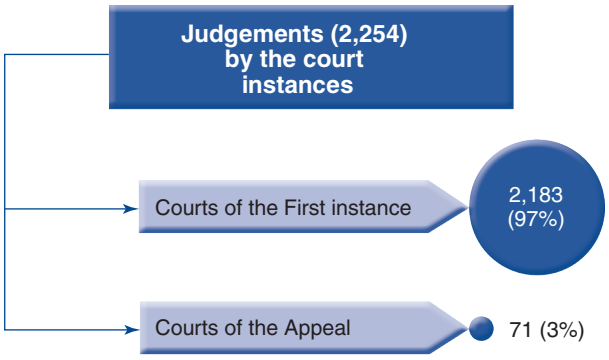
The "Social Disputes" group (Category 1) is the largest in the "Programme 4040". For the purposes of analysis, a statistical sample of the enforcement proceedings under this category of cases included **2,760 judgements**, which makes 1% of the total number of court decisions in this category of cases under the "Programme 4040".

[1] In line with the "Methodology for international and/or national expert analysis to determine the main reasons for non-enforcement of decisions rendered by domestic courts of Ukraine" (October 2018, Strasbourg).

The information provided by the State Treasury Service of Ukraine, as anticipated by the authors of the Methodology, should have allowed the identification of the relevant decisions in the USRCD for their further analysis, filling in relevant table and identifying the reasons for the non-enforcement in the specified category of cases. However, of **2,760 judgements**, subject to analysis, the experts could only find **2,254 judgements** in the USRCD under the provided requisites, which make **82%** of court decisions accepted for review. The remaining share of judgements could not be matched with the data in the Unified State Register, which may be explained by the erroneous entry of the case requisites during their recording in the USRCD or in the tables of the State Treasury. This made the search for the relevant court decisions impossible. This fact reiterates the need for the national-level monitoring of the enforcement proceedings in the specified category of cases, for the effective automated enforcement proceedings system linked to the USRCD data.

Almost all cases submitted for analysis are, **the cases of the administrative jurisdiction**. As many as 2,216 reviewed decisions were delivered within the administrative justice procedure, which make 98% of all decisions. The remaining 38 judgements (or only 3%) were awarded in the civil procedure. This fact is explained by the specific nature of the subject of dispute in the cases under consideration.

Thus, in accordance with Part 1 of Article 19 of the Code of Administrative Justice of Ukraine (CAJU), the jurisdiction of administrative courts covers cases in public-law disputes, including disputes of natural or legal persons with the authority to appeal against its decisions (regulatory or individual acts), actions or inaction, unless the law establishes another procedure of judicial proceedings for the settlement of such disputes. Most social security disputes are traditionally regarded as public-law disputes with the authority and are dealt with in the administrative procedure. Judgements in the civil procedure relate to the period before the adoption of the Law "On Amendments to Section XII 'Final Provisions' of the Law of Ukraine "On the Judiciary and the Status of Judges" on the Transfer of Cases Related to Social Benefits" dated 2 December 2010, according to which all disputes concerning the appointment, calculation, re-calculation, implementation, provision and receipt of pensions, social benefits for disabled citizens, payments under compulsory state social insurance and other social benefits, social services, allowances, protection, privileges, clothing, rations or monetary compensation for these items have been transferred from the civil to the administrative jurisdiction.



Given the purpose of the study, the distribution of judgements in social disputes by categories depending on **the subject matter of the claim** is the key. It should be noted that lawsuits with several claims at a time are quite typical for these cases. In particular, it involves the combining of several claims arising from a single legal basis, such as the Chornobyl nuclear accident, or combining a claim to the supplementary pension to a child of war with a claim to recalculate or pay the supplementary pension to a person affected by the Chornobyl accident, etc. In these circumstances, each claim has been calculated separately, which is reflected in the following statistical indicators on the number of judgements in social disputes:

- Accounting and payment of the supplementary pension to a child of war – 1,267 judgements (56.2%[2]);
- Accounting and payment of pensions and other allowances related to the Chornobyl disaster, including:
  - accounting of pension and additional disability pension related to the Chornobyl disaster – 81 judgements (3.6%);
  - accounting and payment of supplementary and additional pension to a person living on the radiation contaminated territory – 419 judgements (18.6%);
  - extras to salaries of citizens working on the territory of radiation contamination – 51 judgements (2.3%);
  - accounting and payment of pension to a person affected by the Chornobyl disaster – 55 judgements (2.4%);
  - re-calculation and payment of additional pension for damage to health caused by the Chornobyl disaster – 332 judgements (14.7%);
  - accounting and payment of annual health improvement allowance to a Chornobyl liquidator or a person affected by the Chornobyl nuclear accident – 54 judgements (2.4%);

[2] Percentages reflect all judgements found in the USRCD (a total of lawsuits with the only claim of this kind, and lawsuits with several claims, including the claim of this kind).

- accounting and payment of one-off compensation to a person affected by the Chornobyl disaster – 5 judgements (0.2%);
- monthly allowance to a child affected by the Chornobyl disaster – 1 judgement (0.04%);
- re-calculation and payment of one-off compensation to families that have lost breadwinners with a status of responders to the Chornobyl nuclear accident ("liquidators"), or re-calculation and payment of monthly compensation, supplementary pension, additional pension in connection with a loss of a breadwinner as a result of the Chornobyl disaster – 11 judgements (0.5%);
- payment of cash assistance due to restricted consumption of food produced locally and in private subsidiary farm – 137 judgements (6.1%);

➢ payment of annual one-off allowance to a war veteran – 16 judgements (0.7%);

➢ re-calculation and payment of supplementary pensions to disabled war veterans – 2 judgements (0.1%);

➢ re-calculation and payment of old age pension – 2 judgements (0.1%);

➢ collection of underpaid childcare allowance for children under 3 – 7 judgements (0.3%).

The debtors in all these cases **are the departments of the Pension Fund of Ukraine or the departments of labour and social protection of the population**, depending on the type of social payment sought by the claimant.

As noted above, the State Treasury Service also provided the tables listing the decisions executed under the "Programme 4040" in 2018. The data in the respective tables were compared with the original tables of decisions accepted for recording under the relevant programme, and it was found that **in 2018 only 738 of 2,760 judgements** (26.7%) selected for analysis were enforced. The data analysis on the judgements included in the sample is provided in the map below, reflecting the status of their enforcement in 2018 by regions (p.10-11).

Speaking of arrears under the decisions in this category of cases, the State Treasury Service of Ukraine reports that these sums are small, but it is still impossible to establish the actual amount of arrears on the basis of analysis of the relevant judicial decisions,

since the widespread practice in this category of cases is that courts do not determine the exact size of debt in the operative part of judgements, but rather point to the obligation of the relevant authority to re-calculate payments, which in turn leads to the problem with the enforcement of judgments.

Causes of the non-enforcement of judgements identified on the basis of the analysis of court decisions in social disputes

The analysis of court decisions (2,254) in social disputes has revealed systemic problems in the legal regulation, so above all it is necessary to review the dynamics of adoption of legal acts in this sphere, which will allow us analysing causes of the non-enforcement of court decisions of the relevant category.

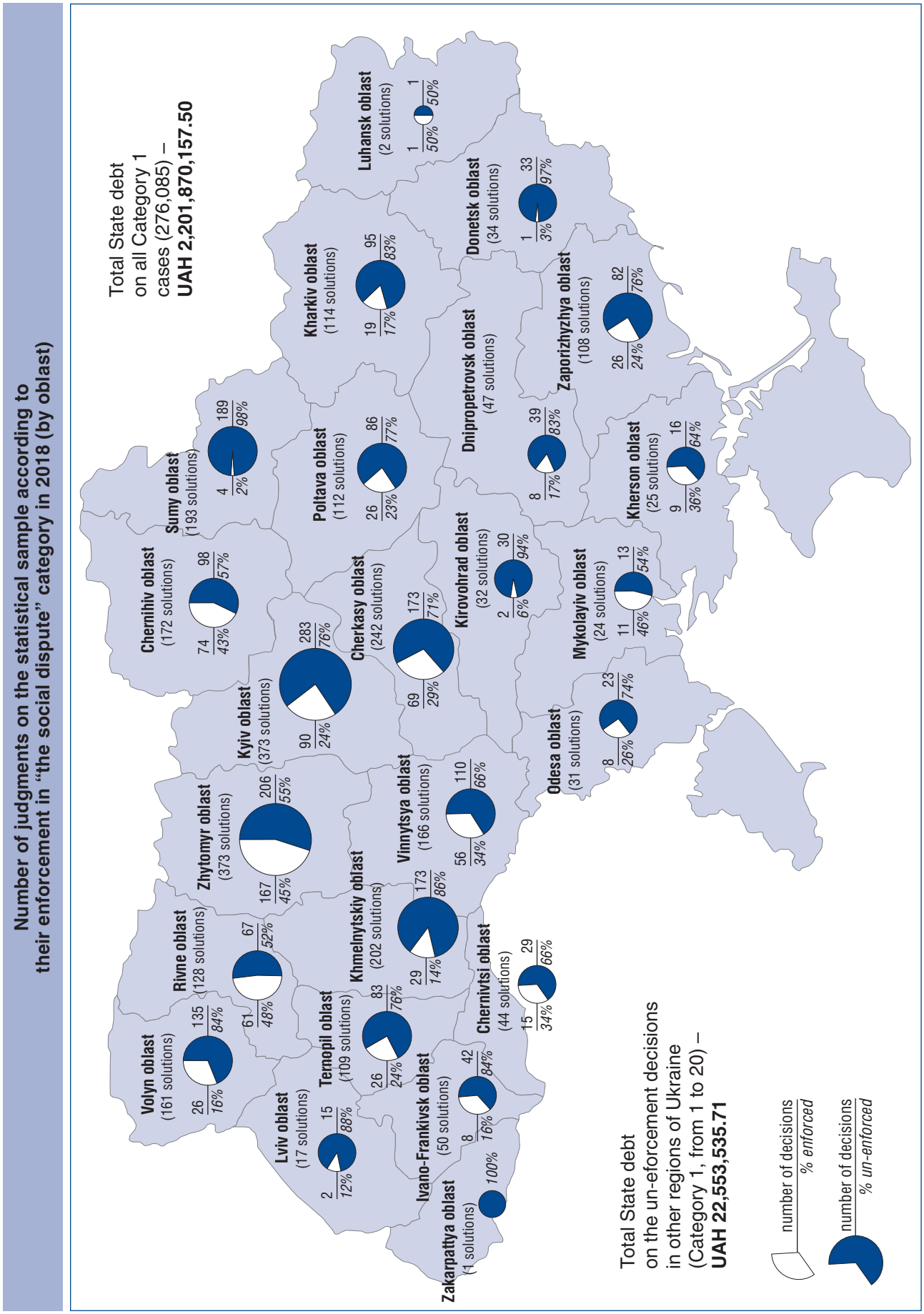
Payments to children of war

The main statutory instrument that regulates the procedure of payments to persons of this category is the Law of Ukraine "On the Social Protection of Children of War" adopted on 18 November 2001. The analysis of court decisions of this group shows that in most cases the claimants took legal action against the incorrect accounting of payments by the Pension Fund bodies contrary to the provisions of the current legislation (which, unfortunately, is rather unbalanced and volatile).

It is clear that the lack of funding in this area has sometimes led to the state's inability to make the appropriate extra payments. As a result, the government has repeatedly taken specific measures, including the adoption of new laws and bylaws, that reduced the amount of payments or cancelled them altogether for at least a certain period of time. The analysis of court decisions has helped to distinguish at least several serious attempts to make such limitations.

In particular, para. 12 of Article 71 of the Law on the State Budget of Ukraine for 2007 dated 19 December 2006 suspended the operation of Article 6 of the Law on the Social Protection of Children of War, which guaranteed the supplementary pension or monthly lifelong allowance or the state social assistance to the specified category of citizens. Instead, it introduced the supplementary pensions or monthly lifelong allowance or the state social assistance paid in lieu of pension to persons with disabilities (other than those covered by the Law of Ukraine "On the Status of War Veterans and Guarantees of their Social Protection" dated 22 October 1993) to the amount of 50% of extras set for war veterans.

However, the said provisions of the Law on the State Budget for 2007 were declared unconstitutional by the Constitutional Court of Ukraine in the case upon the constitutional petition of 46 People's Deputies of Ukraine on the conformity with the Constitution of Ukraine (constitutionality) of provisions of Articles 29, 36, part 2 of Article 56, part 2 of Article 62, part 1 of Article 66, paragraphs 7, 9, 12, 13, 14, 23, 29, 30, 39, 41, 43, 44, 45, 46 of Article 71, Articles 98, 101, 103, 111 of the Law of Ukraine "On the State Budget of Ukraine for 2007" (case on the social guarantees of citizens) on 9 July 2007.


Number of judgments on the statistical sample according to their enforcement in "the social dispute" category in 2018 (by oblast)
Total State debt on all Category 1 cases (276,085) – UAH 2,201,870,157.50
Volyn oblast (161 solutions)
26 16%
135 84%
Rivne oblast (128 solutions)
61 48%
67 52%
Zhytomyr oblast (373 solutions)
167 45%
206 55%
Kyiv oblast (373 solutions)
90 24%
283 76%
Chernihiv oblast (172 solutions)
74 43%
98 57%
Sumy oblast (193 solutions)
4 2%
189 98%
Lviv oblast (17 solutions)
2 12%
15 88%
Ternopil oblast (109 solutions)
26 24%
83 76%
Khmelnytskiy oblast (202 solutions)
29 14%
173 86%
Vinnytsya oblast (166 solutions)
56 34%
110 66%
Cherkasy oblast (242 solutions)
69 29%
173 71%
Kirovohrad oblast (32 solutions)
2 6%
30 94%
Poltava oblast (112 solutions)
26 23%
86 77%
Kharkiv oblast (114 solutions)
19 17%
95 83%
Luhansk oblast (2 solutions)
1 50%
1 50%
Ivano-Frankivsk oblast (50 solutions)
8 16%
42 84%
Chernivtsi oblast (44 solutions)
15 34%
29 66%
Zakarpattya oblast (1 solutions)
100%
Odesa oblast (31 solutions)
8 26%
23 74%
Mykolayiv oblast (24 solutions)
11 46%
13 54%
Kherson oblast (25 solutions)
9 36%
16 64%
Dnipropetrovsk oblast (47 solutions)
8 17%
39 83%
Donetsk oblast (34 solutions)
1 3%
33 97%
Zaporizhzhya oblast (108 solutions)
26 24%
82 76%
Total State debt on the un-eforcement decisions in other regions of Ukraine (Category 1, from 1 to 20) – UAH 22,553,535.71
number of decisions
% enforced
number of decisions
% un-enforced

Another failed attempt to change the size of payments was the adoption of the Law of Ukraine "On the State Budget of Ukraine for 2008 and Amendments to Certain Legislative Acts of Ukraine" dated 28 December 2007, which introduced a new version of Article 6 of the Law On Social Protection of Children of War with the following wording: "Children of war (except those covered by the Law of Ukraine "On the Status of War Veterans and Guarantees of their Social Protection") shall, in addition to pension or monthly lifelong allowance or state social assistance paid in lieu of pension, receive extras in the amount set for war veterans. War veterans who are entitled to the supplementary pension or monthly lifelong allowance or state social assistance paid in lieu of pension, pursuant to the present Law and the Law of Ukraine "On the Status of War Veterans and Guarantees of Their Social Protection" may choose either raise according to one of these laws".

However, the aforementioned legal provisions have been ruled unconstitutional by the decision of the Constitutional Court in the case upon the constitutional petition of the Supreme Court of Ukraine on the conformity with the Constitution of Ukraine (constitutionality) of specific provisions of Article 65 of Section I, para. 61, 62, 63, 66 of Section II, para. 3 of Section III of the Law of Ukraine "On the State Budget of Ukraine for 2008 and Amendments to Certain Legislative Acts of Ukraine", and of 101 People's Deputies of Ukraine on the conformity with the Constitution of Ukraine (constitutionality) of the provisions of Article 67 of Section I, para. 1-4, 6-22, 24 -100 of Section II of the Law of Ukraine "On State Budget of Ukraine for 2008 and Amendments to Certain Legislative Acts of Ukraine" (concerning the subject matter and content Law on State Budget of Ukraine) on 22 May 2008.

The next attempt was made through para. 7 of Part 1 of the Law "On the Amendments to the Law of Ukraine "On the State Budget of Ukraine for 2011" dated 14 June 2011. Therefore, Final Provisions of the amended Law were supplemented with para. 4, according to which the rules and regulations of Article 6 of the Law On Social Protection of Children of War in 2011 were to be applied in the manner and in size established by the Cabinet of Ministers, based on the available financial resources of the Pension Fund budget for 2011. Pursuant to these provisions, the Cabinet adopted the Resolution "On the establishment of certain payments financed from the State Budget".[3]

The same practice continued, as the laws "On the State Budget of Ukraine for 2012" dated 22 December 2011, and "On the State Budget of Ukraine for 2013" dated 6 December 2012 provided that rules and regulations of Article 6 were to be applied in the manner and in size established by the Cabinet of Ministers, based on the available financial resources of the State Budget of Ukraine and the Pension Fund budget for 2012 and 2013 respectively.

Further on, the Law of Ukraine "On the State Budget of Ukraine for 2014" dated 16 January 2014 as amended by the Law "On Amendments to the Law of Ukraine 'On the State Budget of Ukraine for 2014'" dated 31 July 2014, determined that rules and regulations of Article 6 of the Law On the Social Protection of Children of War were to be applied in the manner and in size established by the Cabinet of Ministers, based on the available financial resources of budgets of all levels, the Pension Fund budget and other funds of compulsory state social insurance for 2014.

Pursuant to para. 26 of the Final and Transitional Provisions of the Budget Code of Ukraine of 8 July 2010 subject to further changes, the rules and regulations of Article 6 of the Law On Social Protection of Children of War shall be applied in the manner and in size established by the Cabinet of Ministers, based on the available financial resources of the State and local budgets and the budgets of compulsory state social insurance funds.

As one can see, Article 6 of the Law of Ukraine "On the Social Protection of Children of War" has been subject to the permanent change throughout the entire duration of the law, which runs counter to the principle of legal certainty. This has produced a significant number of lawsuits related to the incorrect calculation of payments to children of war by the relevant authorities. Obviously, the above attempts to limit payments to this population are primarily due to the lack of budget financing and applicable law from the very beginning, let alone the proper analysis of financial rationale for introducing these extra payments and examining the budget's capacity to secure them.

Currently, Article 6 of the said Law provides that children of war (except those covered by the Law of Ukraine "On the Status of War Veterans and Guarantees of their Social Protection") are entitled to extras in the manner and in size established by the Cabinet of Ministers of Ukraine, in addition to the pension or monthly lifelong allowance or the state social assistance paid in lieu of the pension. Aforementioned legal regulation, according to which the exact amount of additional payments shall be determined by the Government rather than set out in the law, currently seems more reasonable as it allows adjusting relevant expenditures to the available budget resources and makes them predictable.

Payments related to the consequences of the Chornobyl nuclear accident

The large number of social benefits related to the consequences of the Chornobyl nuclear accident translate into multiple legal acts, which cannot but affect the quality of the enforcement. The main sources of legal regulation of these relationships include:

- The Law of Ukraine "On the Status and Social Protection of Citizens Affected by the Chornobyl Disaster" dated 28 February 1991;

[3] The Cabinet of Ministers of Ukraine Resolution No. 745 "On the establishment of certain payments financed from the State Budget" dated 6 July 2011, has entered into force on 23 July 2011.

- The Law of Ukraine "On the Pension Provision" dated 5 November 1991;
- The procedure of using the State Budget funds for the implementation of programmes related to the social protection of citizens affected by the Chornobyl disaster, approved by the Cabinet of Ministers (CMU) Resolution No. 936 dated 20 September 20, 2005;
- The CMU Resolution No. 562 dated 12 July 2005 "On the annual health improvement allowance for the citizens affected by the Chornobyl disaster";
- The CMU Resolution No. 530 dated 28 May 2008 "Some issues of the social protection of the certain categories of citizens";
- The procedure for calculating pensions to persons affected by the Chornobyl disaster, approved by the CMU Resolution No. 1210 dated 23 November 2011;
- The decision of the Constitutional Court of Ukraine dated 17 July 2018 in the case upon the constitutional petition of 50 People's Deputies of Ukraine on the conformity with the Constitution of Ukraine (constitutionality) of the provisions of subparagraphs 2-7, 12 and 14 of para. 4, Section I of the Law of Ukraine "An the Amending and Declaring Certain Legislative Acts of Ukraine Null and Void" dated 28 December 2014;[4]
- Procedure for paying one-off compensation for damage caused by the Chornobyl disaster, other nuclear accidents, nuclear tests, military exercises with the use of nuclear weapons, and the annual health improvement allowances to certain categories of citizens, approved by the CMU Resolution No. 760 dated 26 October 2016;
- The procedure for granting the annual financial assistance to compensate for the cost of vacation packages to health resorts and recreation centres, to make extra payments at their own expense, to pay the financial compensation to citizens affected by the Chornobyl disaster, approved by the CMU Resolution No. 854 dated 23 November 2016;
- The Order of the Ministry of Social Policy "On the approval of the Procedure for compensating the cost of treatment in the health facilities on the territory of Ukraine, the purchase of the medicine unavailable in the said facilities, health products and prosthesis appliances (other than dental prosthetics with precious and porcelain fused metals) to the citizens affected by the Chornobyl disaster" dated 21 May 2018;[5]
- The Order of the Ministry of Social Policy "On setting the size of the monetary compensation for food products to the citizens affected by the Chornobyl disaster for 2019" dated 31 January 2019;[6]
- The Order of the Ministry of Social Policy "On setting the average cost of a vacation package for the payment of monetary compensation instead of such packages to the citizens affected by the Chornobyl disaster included in category 1, as well as to children disabilities related to the Chornobyl disaster" dated 28 February 2019;[7]
- The decision of the Constitutional Court of Ukraine dated 25 April 2019 in the case upon the constitutional complaints of Anatoliy Skrypka and Oleksiy Bobyr on the conformity with the Constitution of Ukraine (constitutionality) of the provisions of part 3 of Article 59 of the Law of Ukraine "On the Status and Social Protection of Citizens Affected by the Chornobyl Disaster"[8] and many others.

The problem of the non-enforcement of judgments in this category of cases is quite similar to the previous group in view of the state's efforts since 2007 to reduce the scope of guarantees provided to the relevant category of citizens. Thus, Article 98 of the Law of Ukraine "On the State Budget of Ukraine for 2007" dated 19 December 2006 established that in 2007 working pensioners covered by the Law of Ukraine "On the Status and Social Protection of Citizens Affected by the Chornobyl Disaster" of 28 February 1991, were not entitled to an early old age pension (subject to subparagraph "d" of para. 1, Article 26 of the Law of Ukraine "On the Employment of Population"; para. "c" of part 2, Article 12 of the Law of Ukraine "On the General Principles of Further Operation and Decommissioning of the Chornobyl Nuclear Power Plant and Transformation of the Destroyed Fourth Unit of this NPP into an Ecologically Safe System"; and Article 21 of the Law of Ukraine "On the Basic Principles of Social Protection of Veterans of Labour and other Elderly Citizens in Ukraine") prior to the retirement age set by law for the relevant category of persons. This legal provision was eventually ruled unconstitutional by the decision of the Constitutional Court of Ukraine on 9 July 2007[9].

[4] The decision of the Constitutional Court of Ukraine No. 6 dated 17 July 2018 in the case upon the constitutional petition of 50 People's Deputies of Ukraine on the conformity with the Constitution of Ukraine (constitutionality) of the provisions of subparagraphs 2-7, 12 and 14 of para. 4, Section I of the Law of Ukraine "An Amending and Declaring Certain Legislative Acts of Ukraine Null and Void" dated 28 December 2014.

[5] Order of the Ministry of Social Policy of Ukraine No. 736 dated 21 May 2018; registered with the Ministry of Justice on 5 June 2018 under No.670/32122.

[6] Order of the Ministry of Social Policy of Ukraine No. 127 dated 31 January 2019; registered with the Ministry of Justice on 20 February 2019 under No.176/33147.

[7] Order of the Ministry of Social Policy of Ukraine No. 299 dated 28 February 2019; registered with the Ministry of Justice on 15 March 2019 under No.267/33238.

[8] The decision of the Constitutional Court of Ukraine No. 1 dated 25 April 2019 in the case upon the constitutional complaints of Anatoliy Skrypka and Oleksiy Bobyr on the conformity with the Constitution of Ukraine (constitutionality) of the provisions of part 3 of Article 59 of the Law of Ukraine "On the Status and Social Protection of Citizens Affected by the Chornobyl Disaster".

[9] The decision of the Constitutional Court of Ukraine No. 6 dated 9 July 2007 in the case upon the constitutional petition of 46 People's Deputies of Ukraine on the conformity with the Constitution of Ukraine (constitutionality) of provisions of Articles 29, 36, part 2 of Article 56, part 2 of Article 62, part 1 of Article 66, paragraphs 7, 9, 12, 13, 14, 23, 29, 30, 39, 41, 43, 44, 45, 46 of Article 71, Articles 98, 101, 103, 111 of the Law of Ukraine "On the State Budget of Ukraine for 2007" (case on social guarantees of citizens).

Similarly, the Laws "On the State Budget of Ukraine for 2012" and "On the State Budget of Ukraine for 2013" provided that the rules and regulations in the Law of Ukraine "On the Status and Social Protection of the Citizens Affected by the Chornobyl Disaster" of 28 February 1991 were to be applied in the manner and in size established by the Cabinet of Ministers, based on the available financial resources of the State Budget of Ukraine and the Pension Fund budget for 2012 and 2013 respectively.

The Law of Ukraine "On the State Budget of Ukraine for 2014" dated 16 January 2014 established that the rules and regulations of certain articles of the Law On the Status and Social Protection of Citizens Affected by the Chornobyl Disaster were to be applied in 2014 in the manner and in size established by the Cabinet of Ministers, based on the available financial resources of budgets of all levels, the Pension Fund budget and other funds of compulsory state social insurance.

And finally, pursuant to para. 26 of the Final and Transitional Provisions of the Budget Code of Ukraine of 8 July 2010 subject to further changes in line with the Law of Ukraine "On the Amendments to the Budget Code of Ukraine concerning the Reforms of the Intergovernmental Fiscal Relations" dated 28 December 2014, the rules and regulations of certain articles of aforementioned "Chernobyl" Law shall be applied in the manner and in size established by the Cabinet of Ministers, based on the available financial resources of the State and local budgets and budgets of the compulsory state social insurance funds.

As one might see, the issue of legal regulation of these social benefits is in principle comparable to the problems related to children of war but is further complicated by the multitude of payments related to the consequences of the Chornobyl disaster and the large number of bylaws in this sphere.

Other types of social benefits

The Annual one-off allowance to war veterans

The Payment of the annual one-time benefits to war veterans is regulated by the Law of Ukraine "On the Status of War Veterans and Guarantees of Their Social Protection" dated 22 October 1993, the Budget Code of Ukraine dated 8 July 2010, the annual budget laws and relevant bylaws of the Cabinet of Ministers regulating the size of the said allowances every year.[10]

The cases submitted for analysis concerned collection of the underpaid annual one-off allowances to war veterans and were generally substantiated by illegality of the reducing relevant payments established by legal acts other than the Law of Ukraine "On the Status of War Veterans and Guarantees of Their Social Protection", for example, the Law "On the State Budget of Ukraine for 2007" (the related provisions of this law were later declared unconstitutional by aforementioned decisions of the Constitutional Court on 9 July 2007),[11] or by the Cabinet of Ministers' bylaws, such as the Resolution No. 341 dated 4 April 2011 "On the size of one-off monetary assistance paid in 2011 pursuant to the Laws of Ukraine "On the Status of War Veterans and Guarantees of Their Social Protection" and "On the Victims of Nazi Persecution". Decisions in this category of cases generally boil down to the fact that the introduction of smaller allowances lower than those stipulated by the Veterans Law is unacceptable.

At present, in line with the provisions of the Law of Ukraine "On the Status of War Veterans and Guarantees of Their Social Protection", the one-off financial assistance (allowance) shall be paid to war veterans by 5 May annually in the amounts determined by the CMU within the budget allocations established by the Law on the State Budget of Ukraine (Article 13). Therefore, the Cabinet of Ministers annually regulates the size of this allowance, taking into account the available state budget funds.

Re-calculation and payment of the supplementary pensions to the disabled war veterans and old age pensions

The issue of raising pensions for the disabled war invalids is regulated by the Laws "On the Status of War Veterans and Guarantees of Their Social Protection", "On the Pension Provision" dated 5 November 1991, and "On the Compulsory State Pension Insurance" dated 9 July 2003. The incorrect calculation of pensions in the judgements of this category is primarily caused by the situations, when the Pension Fund bodies at different times used the minimum pension size established by bylaws rather than the law for calculating payments. These bylaws, for example, included currently void Cabinet of Ministers Resolutions No. 342 of 19 March 1996 "On raising pensions until 1 March 1996 and the procedure for calculating pensions awarded after 1 March 1996"; No. 831 of 26 July 1996 "On raising pensions until 1 August 1996 and the procedure for calculating pensions awarded after 1 August 1996", No.1 of 3 January 2002 "On increasing the size of pensions and other social benefits to certain categories of pensioners, financed from the State Budget". It was found that bylaws that were used as a basis for calculating pensions had substantially narrowed the scope of the plaintiffs' statutory rights, and therefore the latter are entitled to re-calculation.

[10] See, for example, the Cabinet of Ministers of Ukraine Resolution No. 141 dated 2 March 2016 "Certain issues of payment of one-off monetary assistance in 2016 as stipulated by the Laws of Ukraine "On the Status of War Veterans and Guarantees of Their Social Protection" and "On Victims of Nazi Persecution".

[11] The decision of the Constitutional Court of Ukraine No. 6 in the case upon the constitutional petition of 46 People's Deputies of Ukraine.

Similar situations concerning calculation of the reduced pensions due to the application of bylaws instead of the provisions of the law, have also occurred in cases of calculation of old age pensions.

Collection of underpaid childcare allowance for children under 3

Incorrect application of legislation by the authorities in this category of cases has to do with rendering unconstitutional of certain provisions of the budget legislation governing the specified category of social benefits in line with aforementioned decision of the CCU of 22 May 2008.[12] In particular, in all the cases under review, the authorities generally ignored the fact that with the adoption of the Constitutional Court decision they nullified relevant bylaws and restored provisions of the Law "On the Compulsory State Social Insurance in Connection with the Temporary Disability and the Funeral Costs" dated 18 January 2001, and since 1 January 2009 – Articles 13 and 15 of the Law on "The State Assistance to Families with Children" dated 21 November 1992, and therefore the size of childcare allowance for children under 3 should have been larger.

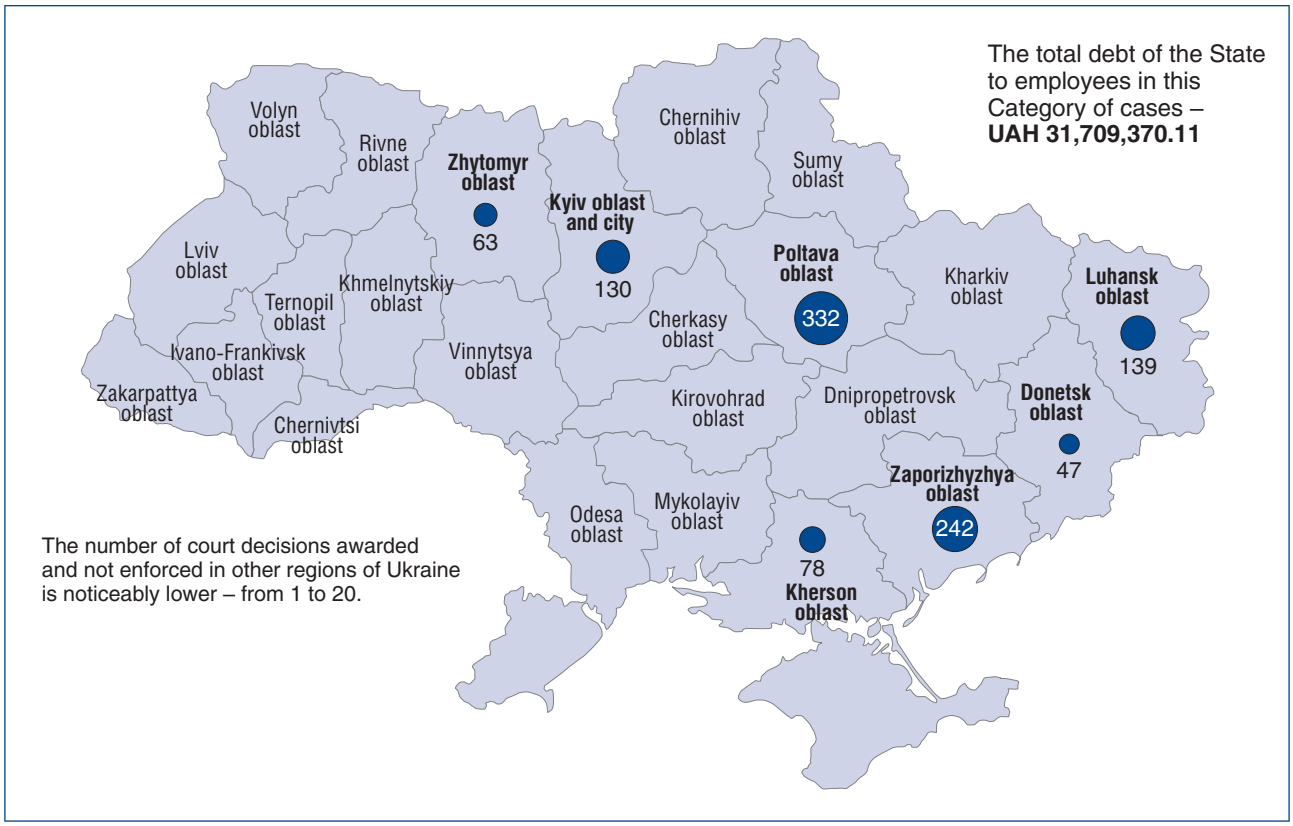
2.3. RESULTS OF ANALYSIS OF CATEGORY 2 COURT DECISIONS – "LABOUR DISPUTES"

The expert analysis covered **1,505** unexecuted judgements concerning labour relationships / disputes from the General Information Table provided by the State Treasury Service of Ukraine regarding the enforcement proceedings registered under the Budget Programme KPRVR 3504040 "Measures for enforcement of court decisions guaranteed by the State" as of 1 November 2018.

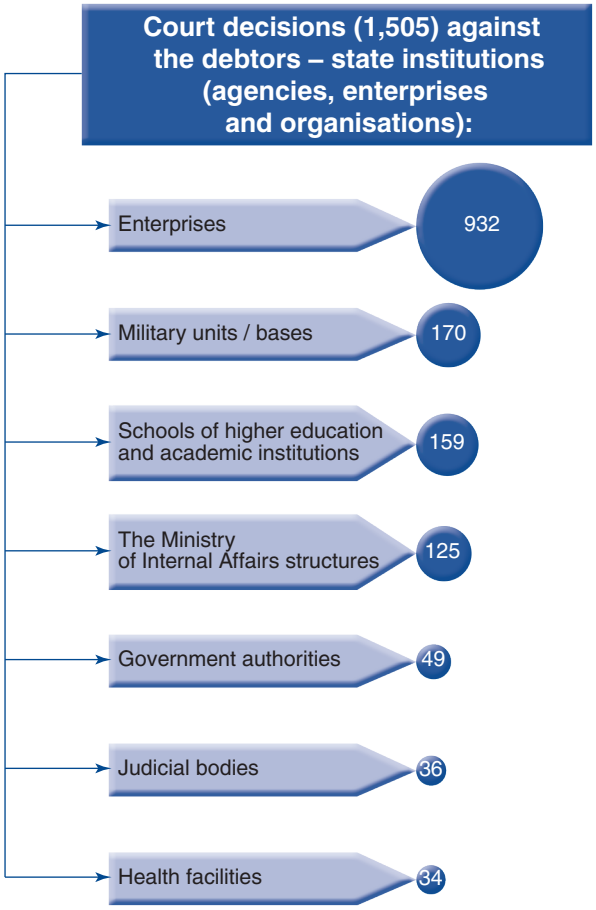
It should be noted that by using relevant case numbers in the Table, the expert could find texts of **80** judgements in the USRCD out of **1,505 un-enforced decisions**. Having worked with the USRCD and the State Treasury's table, it is possible to conclude the codes for registering the court decisions in the vast majority of cases (1,465 in total) are far from perfect, as they do not allow finding relevant decisions in the USRCD by codes (case numbers).

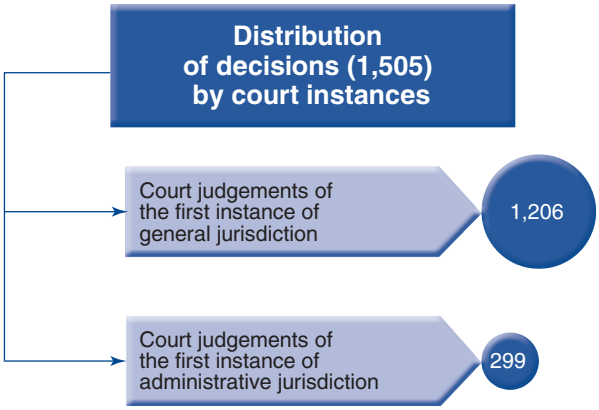
Nonetheless, having analysed the content of a generalised table compiled by the State Treasury Service, which includes **1,505** un-enforced court decisions based on the results of labour disputes in courts, one can see that it statistically reflects the overall situation of the State's failure to meet its obligations before employees of different categories, by the following indicators.

Number of decisions taken in the statistical sample, in the Category of "the labor disputes" (by oblast)



[12] The decision of the Constitutional Court of Ukraine No. 10 dated 22 May 2008 6 in the case upon the constitutional petition of the Supreme Court of Ukraine.



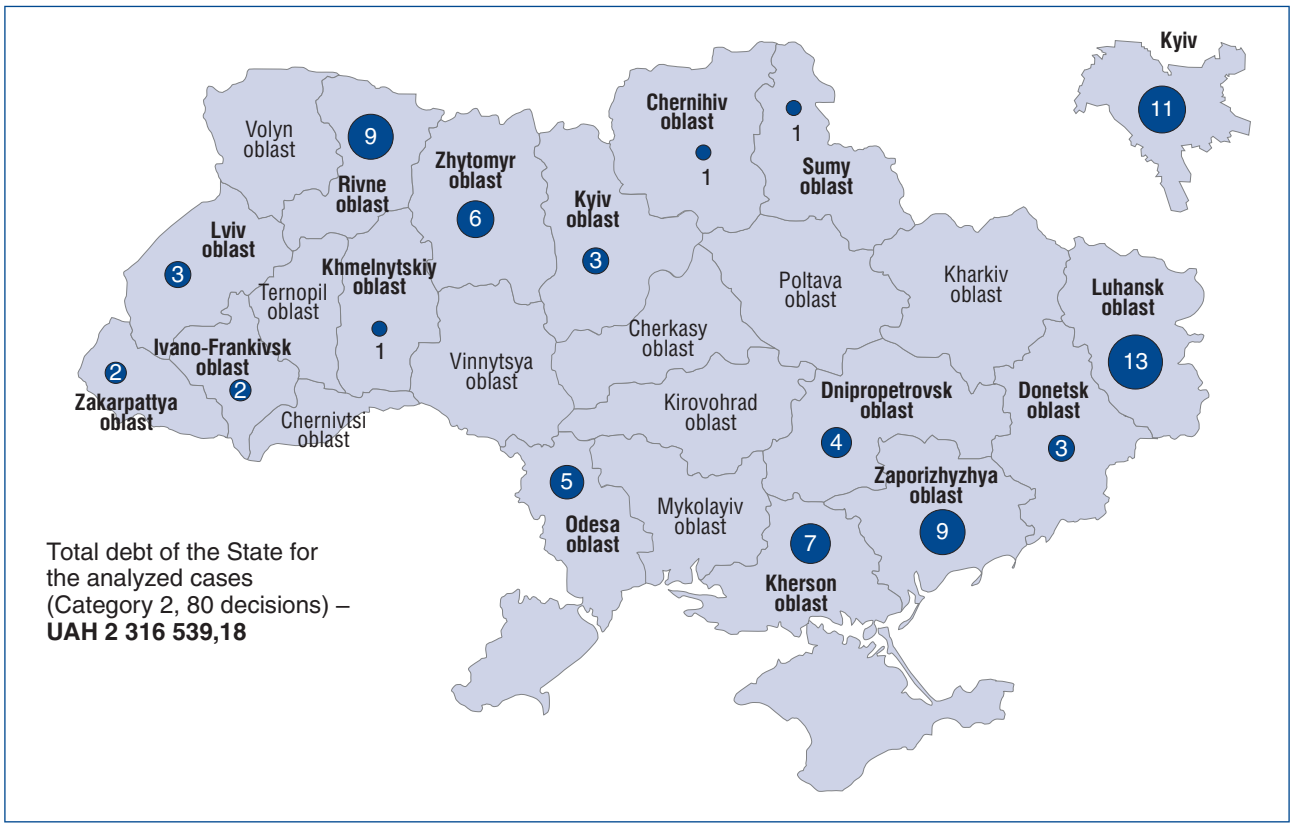


The total debt of the State to employees in this category of cases is ***UAH 31,709,370.11.***

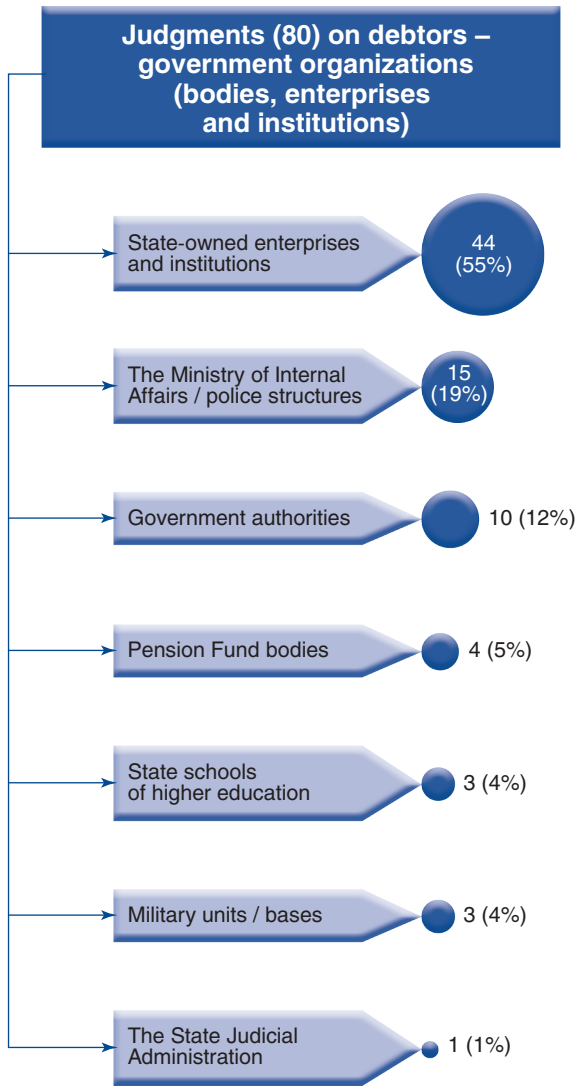
The analysis of **80** judgements has demonstrated that their non-enforcement presents the debt of the State in the person of state-owned enterprises, institutions and organisations to employees in the total amount of **UAH 2,316,539.18.**

Due to the aforementioned reasons, including apparent flaws in the coding of court cases, the experts could not analyse judgements in the following regions: Volyn, Vinnytsya, Kirovohrad, Mykolayiv, Poltava, Ternopil, Kharkiv, Cherkasy, Chernivtsi oblasts, as well as the Autonomous Republic of Crimea and the city of Sevastopol.

Number of court judgments from the statistical sample in "the labor disputes" Category (by oblast)



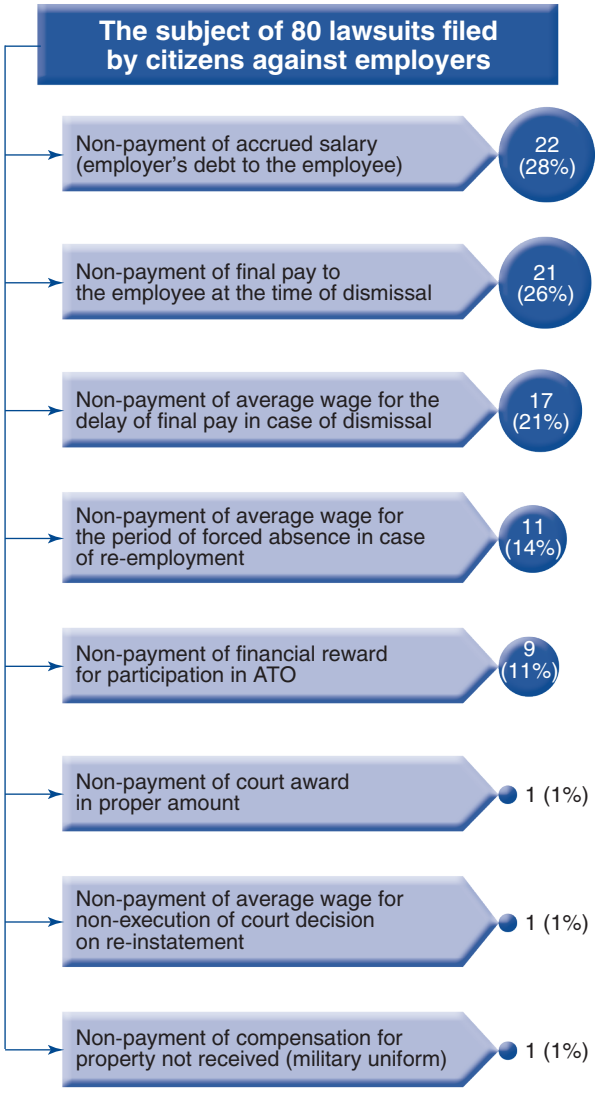
The **debtors**, that were ruled to pay compensations for the material/financial damages to employees included state-owned enterprises, organisations and institutions.



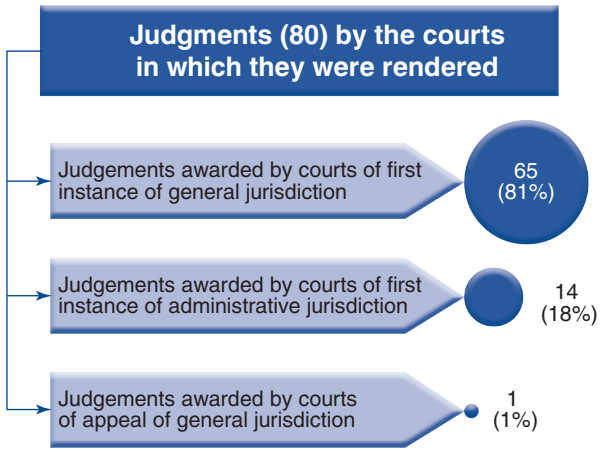
To perform in-depth analysis of 80 court decisions, a special table with the following baseline indicators has been developed:

- Name of the court / region)
- Name of the debtor
- Nature of the obligation (subject matter of the claim)
- Court jurisdiction / instance
- Grounds (causes) for the non-enforcement of a judgement, including:
  - Lack of necessary funding
  - Improper exercise of powers by authorities / enterprises
  - Terms of the enforcement proceedings
  - Flaws in the normative regulation
  - Amount of funds in the writ of enforcement
  - State of the enforcement (in case of partial execution)

Speaking of grounds for labour disputes and causes for the non-enforcement of court decisions made in favour of employees, it would be expedient to review the following indicators.**The nature (subject matter)** of the citizens' lawsuits against the employers on the relevant grounds included the following.



Distribution of the judgements by court instances:



Upon request of the Council of Europe's Justice and Legal Co-operation Department, a special document called "The Methodology for international and/or national expert analysis to determine the main reasons for the non-enforcement of decisions rendered by the domestic courts of Ukraine" has been developed within the project *"Supporting Ukraine in the execution of judgements of the European Court of Human Rights",*[13] which was used to determine the main typical reasons for the non-enforcement of judgements based on expert assessments.

Guided by this methodology, the experts outlined a list of the following reasons after the analysis of texts of **80** court decisions. Therefore, main reasons for the non-enforcement of judgements by the State include:

1. *Lack of the necessary state funding* which has led to failure of the state-owned enterprises, institutions and organisations to meet their obligations before employees in **10**/12% of court decisions, including:

- **nine** decisions of the Luhansk district administrative court (Luhansk oblast) on the claims of employees of the rayon and city divisions of the Central Department of the Ministry of Internal Affairs of Ukraine in the Luhansk oblast in the person of the liquidation commissions for the non-payment of rewards for direct participation in anti-terrorist operation (ATO). Defendants in these cases, while denying the claims, referred to the lack of budget funding at the time of the matter of controversy. Specifically, they referred to Order No. 158 issued on 7 June 2015 by the SBU's Anti-Terrorism Centre, which provided for appropriate payments to direct ATO participants "at the end of the budget period". As a result, the relevant institutions did not have financial resources to make such payments to persons who were already dismissed from the law enforcement agencies at the time of issuance of this local regulatory act ;
- the statement of reasons in another court decision, related to the non-payment of salaries, compensation for delayed final pay during dismissal and compensation of non-pecuniary damage, refers to lack of proper budget financing of the State Enterprise "The Capital Construction Administration of the National Academy of Sciences".

2. *Improper exercise of powers by the government authorities / state-owned enterprises / organisations* was found in all **80** judgements reviewed by experts. It should be emphasised that the analysis revealed the pervasive violations of the current legislation of Ukraine by the heads of all state bodies, enterprises, organisations and institutions.

Such non-execution (violations) included: *delays of payment of accrues salaries; delays of all necessary payments to the employee in case of his/her dismissal in the process of liquidation or reorganisation of the enterprise or institution; non-payment of average wage (compensation) for the period of forced absence in case of the employee's re-instatement by court decision; non-payment of "sick pays" during pregnancy and childbirth; non-payment of additional premiums for special operations, including direct participation in ATO.*

It should be added that in **99%** of court hearings that resulted in the relevant decisions, *the representatives of defendants (heads of state-owned enterprises, organisations and institutions) did not appear in courts in person, providing only written explanations prior to such hearings.* Quite frequent are the *cases of non-attendance of plaintiffs themselves,* who have consented to hear their claims without personal participation. Therefore, 20% of judgements were made in absentia or through the court orders.

3. *Flaws in normative regulation of labour relationships* concerning the proper provision of wages, social benefits, severance allowances, monetary rewards and the like were also found in **11** judgement.

These flaws include: *(a) ill-timed adoption of bylaws of the SBU's Anti-Terrorism Centre regarding the financial provision for the direct ATO participants concerning payment of compensations for their time at the "contact line"; (b) repeated reorganisations of one and the same state-owned enterprises and institutions during 1-2 years without their proper and unambiguous regulation,* which has led to the interpretation confusion of these procedures and their proper implementation.[14]

2.4. RESULTS OF ANALYSIS OF CATEGORY 3 COURT DECISIONS – "DECISIONS CONCERNING LEGAL ENTITIES FALLING UNDER THE RESPONSIBILITY OF THE STATE OR THE STATE ITSELF"

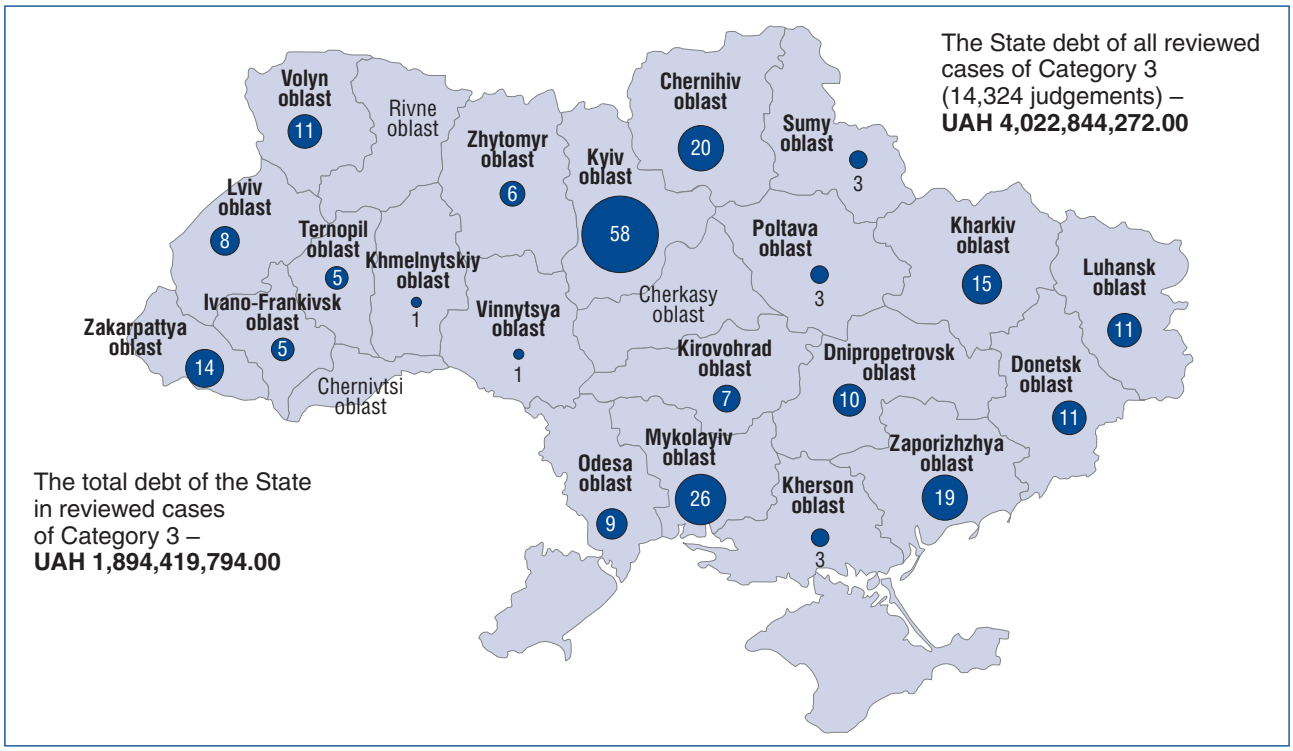
250 court decisions of this category were subjected to expert analysis. The General Information Table provided by the State Treasury Service of Ukraine regarding the enforcement proceedings registered under the Budget Programme KPRVR 3504040 "Measures for the enforcement of court decisions guaranteed by the State" as of 1 November 2018 was used to identify and list **14,324** judgements falling under Category 3. When searching for 1% of relevant court decisions in the USRCD, the experts found that the enforcement proceedings with the number of court cases did not match the registration codes (numbers) in the USRCD: most court cases within Category

[13] Framework Agreement FC 8521/2018/1, Series 3.

[14] See, for example, a court decision concerning the defendant "State enterprise on the management of wastes as recyclable materials", Case No. 755/18301/15-c, *http://www.reyestr.court.gov.ua/Review/53700455*.

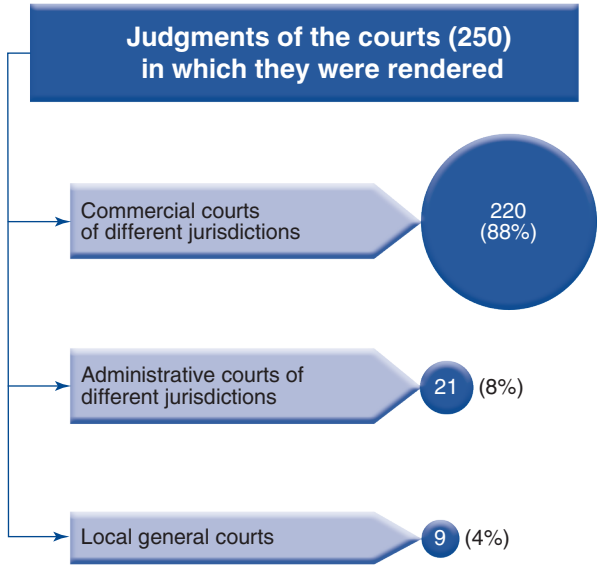
3 were cases belonging to the Category 1 register. This is evidence of serious shortcomings in the process of forming registers and poor harmonisation of their parameters between the state institutions responsible for compiling and ensuring operation of these registers.

The number of cases on the statistical sample in Category 3 (by oblast)



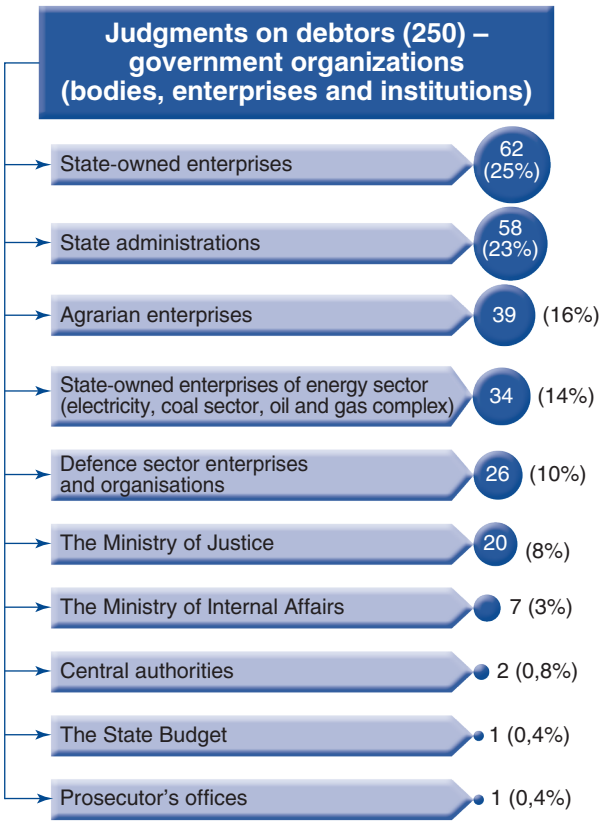
The largest number of cases was considered by courts of different jurisdictions and specialisations.

Distribution of the reviewed judgements by instances:



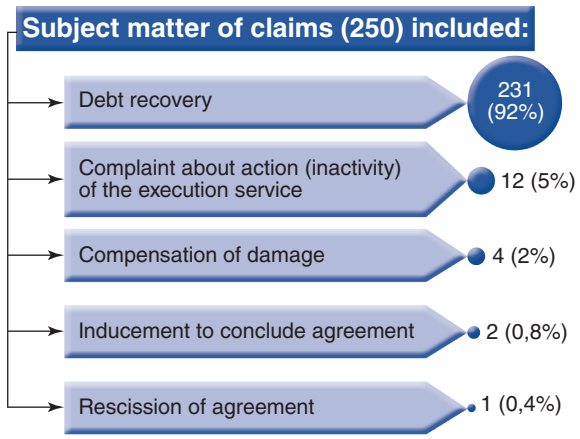
Meanwhile, Courts of Appeal rendered 33 judgments (13%) and Courts of Appeal - 13 (5%).

Distribution of court decisions by debtors:



To perform in-depth analysis of 250 court decisions, a special table with the following baseline indicators has been developed:

1. Case number, year of judgement;
2. Court jurisdiction / instance;
3. Name of debtor;
4. Nature (subject matter) of the claim;
5. Name of the court (rayon, oblast, Kyiv);
6. Amount of funds in the writ of enforcement;
7. State of enforcement (in case of partial execution).



The content of individual cases reviewed by experts clearly indicates that the **actions of the state enforcement agents denote signs of "assistance" to debtors in concealing financial resources and property from legal recovery.**

Moreover, various courts that heard the case (courts of first instance – twice, the court of appeal and the cassation instance) have used various means in order to prevent the claimant from applying the mechanism provided by the Law of Ukraine "On the State Guarantees for the Enforcement of Judgements".

This refers to the circumstances of the Case No.25/215/10, which was considered in various court instances from 13 January 2011 until 9 April 2014. Company "N" has transferred several tens of thousands of tons of wheat to the State Enterprise "X" for storage. A few months later, the inspection established the absence of wheat at the "X"'s grain warehouse. For 3.5 years thereafter, the executor has consistently demonstrated various "obstacles" that, in his opinion, did not allow him to finalise and submit to the State Treasury Service of Ukraine an appropriate act to enable application of the State guarantees in favour of the plaintiff as established by the Law "On the State Guarantees for the Enforcement of Judgements". He used the opportunity afforded by Articles 30 and 33 of the Law of Ukraine "On the Enforcement Proceedings": if several enforcement proceedings are initiated to recover funds from a single debtor, they are consolidated into a single proceeding. The 6-month term for the enforcement is linked to the **date of including the latest writ of the enforcement in such consolidated proceeding**. Because the last writ of enforcement was issued moments before the expiration of the **6-month term from the date of the decision to open the enforcement proceedings**. as established by Article 4 of the Law "On the State Guarantees for the Enforcement of Judgements", the enforcement should be made **at the expense of funds under the budget programme to ensure the enforcement of judgements.** In this case, the court of cassation, in fact, sided with the public executor. Most likely, the main argument for such court-executor "link" is the size of the claim in connection with the theft of grain transferred for the responsible storage – UAH 62,844,275.60.

In describing the **inappropriate actions of the State Execution Service** quite illustrative is the Case No.908/884/15-g of 18 April 2017. The public joint-stock company has filed a lawsuit against the State Execution Service regarding return of the writ of enforcement to the claimant (plaintiff) **"in connection with impossibility to determine the location of the debtor – the legal entity"**.

The court upheld the claim, stating that pursuant to part 1, Article 18 of the Law of Ukraine "On the Enforcement Proceedings", the executor is obliged to undertake all measures stipulated by the Law to enforce court decisions in an effective, timely and full and complete manner.

The court reasonably referred to para. 13 of the Resolution of the High Commercial Court of Ukraine No. 9/38-10 of 21 October 2014: **"The conclusion about the "ineffectiveness" and/or "impossibility" of search of the debtor may be justified only when the State executor, having fully realised the rights granted to him, has taken all possible (prescribed by law) actions to achieve necessary positive result".** Pursuant to part 2 of Article 36 of the Law "On the Enforcement Proceedings", the search of a debtor – a legal entity and property of a debtor shall be organised by the executor by submitting requests to the authorities and institutions or by conducting the verification of information about the property.

The similar claim concerning a wrongful return of the writ of enforcement to the claimant due to the impossibility to determine the location of the defendant – a legal entity was considered in the Case No. 908/2393/14 of 26 April 2017. In addition to the above arguments, the court, while upholding the claim, stated: "In accordance with Article 90 of the Civil Code of Ukraine, the location of a legal entity is the actual place of business or the location of an office from which the daily management of a legal entity, its governance and accounting is taking place".

These examples give grounds for considering initiation of the criminal prosecution of public executors in line with Article 382 of the Criminal Code of Ukraine.

When establishing the facts of obstruction of the enforcement of judgements by other persons (debtors, heads of State legal entities, judges), they can also become punishable under this article of the Criminal Code.

3. ANALYSIS OF NATIONAL LEGISLATION REGULATING THE STATE LIABILITY TO CLAIMANTS

At **the moment, legislation on the judgment enforcement consists of two basic laws adopted on 2 June 2016, namely "On the Bodies and Persons that Enforce Court Decisions and Decisions of Other Authorities"** and **"On the Enforcement Proceedings"**, which regulate the process of the judgment execution, as well as a whole range of laws and by-laws aimed at ensuring execution of judgments or related procedure.[1]

3.1. MAIN DRAWBACKS OF THE ORGANISATIONAL AND LEGAL REGULATION OF THE JUDGMENT ENFORCEMENT

1. Discrepancy between the proclaimed principle of the rule of law and level of the actual judgment enforcement. Today we see a clear problem rooted in the organisational and legal system of the judgment execution as at its core there is a deep division between the judiciary and judgment enforcement branches, between courts and state enforcement service, which are subordinate to different public administration systems (The State Court Administration and the Ministry of Justice respectively).

A judge's final act when passing a judgment is issuance of an enforcement order. After this, he essentially forgets about this judgment and has no interest in it, unless the bailiff needs clarification on the certain aspects of a judgment execution, or if parties applied for a postponement of the judgment execution or an instalment order. This means that the judge often does not have any idea about the real ways and mechanisms through which his judgment will be executed, does not control its execution and has no incentive to ensure its effective execution. Rather telling in this aspect is the practice of securing of claims by judges, which shows that judges very rarely issue respective decisions thus demonstrating their lack of interest in making a judgment execution more real.

At the core of this legal structure, there are also **organisational, motivational and goal-related disconnections between the government bodies that ensure the execution of judgments: government and executive power bodes, banks, State Treasury, notaries, etc.** Each of these bodies has its own key goals that do not match the goals of other agencies.

The Government tried to balance the economic situation and prevent bankruptcy of the state enterprises which may cause the unemployment and social instability. Thus, together with the central executive power authorities it was trying to take preventive action by submitting bills on the introduction of corresponding moratoria on the forced sale of property of state enterprises, and in cases when adopted laws provided economically and financially unjustified privileges and the Government had no corresponding resources, it attempted to cease the provision of such privileges through different measures that were not always in line with legal requirements, which led to the lawsuits.

Notably, there is no system that would regulate the coordinated action of agencies involved in the judgment execution, and thus, there are no rapid response mechanisms to deal with the deficiencies and complications arising in the process of judgment execution. There have been numerous attempts to create different interagency bodies that would provide timely response to problems in the system of judgment enforcement, yet all of them have failed. The same goes to the intergovernmental body (commission) that was meant to counter the illegal takeovers of the state-owned enterprises which often went hand in hand with "the custom made" illegal judgments and involvement of the state enforcement service.

[1] Laws and regulations that have been analysed in the framework of this project and they are presented in the Appendix of this Section.

2. The status of a state bailiff, and even less so a **private bailiff introduced by the Law in 2016 is insufficient for the task of the enforcing court decisions** – a procedure equally as important (and possibly even more important) as issuance of a judgment. How does this manifest itself?

According to p.2 Art.7 of the Law "On the Bodies and Persons that Enforce Court Decisions and Decisions of Other Authorities", a state bailiff is a government representative, who acts in the name of the state, is protected by the state and is authorised by the state to execute actions for the enforcement of judgments in the order defined by the law.

What are the guarantees of independence of a state bailiff? According to the Law, state bailiffs, heads and specialists of the state enforcement service bodies are public servants (Art.8), their independence from the influence or interference with their judgment enforcement work is guaranteed by the special procedures of funding and equipment and supplies provision for the state enforcement service agencies; an efficient bailiff motivation mechanism; transparency of the judgment enforcement activities; other ways defined by the Law (Art.9). Yet **none of these measures as captured in the current legislation and by-laws and implemented to ensure true independence**.

The qualification requirements for the state bailiffs. To become a state bailiff, one has to be a citizen of Ukraine with a university law degree (only for heads of the state enforcement service bodies and their deputies – second level and above), be proficient in the state language and have personal qualities and working skills to perform duties of a state bailiff (Art.10). Thus, to become a state bailiff **it is sufficient to have a Bachelor's degree from any period**.

As a public servant, a state bailiff is strictly subordinate to his management in a multi-level hierarchy.

Thus, according to Art.74 of the Law "On the Enforcement Proceedings", decisions, actions or failure to act on the part of a state bailiff may be appealed against by the enforcement creditor and other parties to the enforcement proceedings (with the exception of the debtor) in court and with the head of the department, to which the state bailiff is directly subordinate. Decisions, actions or failure to act on the part of the head of the department, to which the state bailiff is directly subordinate, may be appealed against with the head of the state enforcement service agency of a higher level.

While supervising decisions and actions of the state bailiff in the enforcement proceedings, the head of the department, to which the state bailiff is directly subordinate, has the right to issue an order cancelling the resolution or another procedural document (or their part) issued by the bailiff in the enforcement proceedings if they contradict the law, obliging the bailiff to carry out the enforcement actions in a manner defined by the Law.

The head of the department, to which the state bailiff is directly subordinate, or the bailiff himself (on his own initiative or following an appeal from a party to the enforcement proceedings) can correct grammatical or arithmetic errors made in the procedural documents issued in the enforcement proceedings, with a corresponding order being issued along with such corrections.

If violations of the law are found, the head of the higher state enforcement service agency captures them in his resolution and authorises the head of the department, to which the state bailiff is directly subordinate, to take action to correct the errors made by the bailiff in the enforcement proceedings.

The career growth, salary and rewards of a state bailiff fully depend on the management of the State Enforcement Service (SES) and the Ministry of Justice.

The financial and technical provision of work of the state enforcement service employees, which according to the law is funded by the state budget as well as the enforcement proceedings funds accumulated according to the Law "On the Enforcement Proceedings" (p.1 Art.14), as well as their social security (state bailiffs in need of improvement of their housing situation are provided priority corporate housing for the period of performing their duties according to the law using the state or local budget funds – Art.14), – are funded according to the leftover principle. In order to confirm this, it is enough to visit several state enforcement service offices.

State bailiffs lack power to use acts of force. The execution of many elements of forced collection of funds from the debtor or the forced sale of his assets require initiative and real mobilisation of powers on the part of the bailiff. Bailiffs often find themselves in a real conflict situation, where they have to face the powerful debtors who pressure them using all available means to prevent collection of funds, including bureaucratic influence, use of courts, abuse of court process.

If a bailiff needs real support requiring the acts of force, he needs to ask for help from outside, as the entire executive service, of which he is part, is not authorised to use force. According to the Law "On the Enforcement Proceedings", if the enforcement procedure involves acts of force (forced entry into the house or other property of an individual, forced opening in the predefined order of the premises of an individual debtor, a person who holds the debtor's property, or property and funds owed to the debtor by other persons), a state bailiff has to bring in police officers.

Thus, **neither state bailiffs, nor private ones enjoy a balance between powers, responsibilities and incentives**. Therefore, most state bailiffs take the easiest way – enforcing first the simplest judgments that do

not hold the abovementioned risks, can influence their success rate and thus their rewards, as well as those with the corresponding instructions from their supervisors.

In 2017, besides the State Enforcement Service, Ukraine established the institute of private bailiffs in order to raise the efficiency and increase the number of the executed court decisions. State does not fund the work of private bailiffs: they fund their work themselves and pay 41.5% tax from their fee, which is their remuneration. At the same time, with the introduction of private bailiffs, the state (represented by the Ministry of Justice) has done everything to complicate an access to private bailiff positions, as well as to complicate their work. For instance, persons that wish to become private bailiffs are held to a higher standard than applicants for state bailiff positions.

Ukraine has also introduced restrictions on the amounts to be collected in the judgment enforcement procedures. SES' lack of trust in the institute of private bailiffs is rooted in its inability to fully control and manage them.

Draft Law "On Amending Certain Laws of Ukraine on the Enforcement of Court Decisions and Decisions of Other Authorities"[2] proposes to improve the procedure of the judgment enforcement by the state enforcement service authorities and private bailiffs. Namely, it is proposed to amend Art.30 of the Law "On the Enforcement Proceedings" as follows: "Details of the enforcement procedures in case several documents are being enforced regarding one debtor by a state and a private bailiff are determined by the Ministry of Justice of Ukraine". Transferring regulation of work of state and private bailiffs to the state body, of which state bailiffs are part, creates conditions for the discrimination of private bailiffs. Thus, it is enough to amend Rules No.512/5 as of 2 April 2012 with a provision stating that a SES body started an enforcement procedure on decisions listed in p.2 Art.5 of the Law (which contains a restriction on the enforcement of decisions by a private bailiff), and the private bailiff will be obliged to transfer his ongoing proceedings to the SES body. This mechanism will deprive private bailiffs of a lion's share of work.

3. The judgment enforcement process, which is based on the two laws mentioned above – "On the Bodies and Persons that Enforce Court Decisions and Decisions of Other Authorities" and "On the Enforcement Proceedings", **is rather cumbersome, overly formalised**, and contains a number of procedural gaps that allow debtors to avoid the judgment execution. It contains many provisions that can be interpreted not in a creditor's favour, create possibilities for the government bodies, their officials and debtors to influence the bailiff and judgment enforcement process.

4. According to experts, the **judgment enforcement law mostly sides with the debtor**. First of all, this includes ample use of legal forms of influencing the judgment enforcement procedure by debtors provided by this law (connected with the involvement of witnesses and recusal procedure in the enforcement proceedings, postponement of the judgment execution or instalment orders, termination of the collection procedure, court suspension of sale of the seized property, debtor's bankruptcy, moratorium on inclusion of debtor's assets in the debt collection, inclusion of state-owned enterprises or shares of economic entities into small or large privatisation lists, lists of objects that cannot be privatised, etc.), which ultimately leads to long delays in the judgment enforcement process, limits the chances of its enforceability and allows the debtor to evade its execution.

5. Despite the fact that the Law provides many debtor obligations (e.g. refrain from the actions that make it impossible or difficult to execute a decision; allow access to the bailiff in the order prescribed by law to accommodation or other property, premises or storage facilities that belong to him or are in his use for the enforcement actions; for property-related judgments, within five working days from the date of the start of the enforcement procedure, submit to the bailiff a declaration on the debtor's income and property, including property he owns jointly with other persons, accounts in banks and other financial institutions, the mortgaged property or property held by other persons, or funds and property owed to him by other persons using a Ministry of Justice approved form; inform the bailiff of the change of information in the declaration of the debtor's income and property not later than the working day following the day such circumstances arose; promptly appear before the bailiff upon his request; provide the explanation of the non-execution of the bailiff's decisions or lawful demands or other violation of the enforcement proceedings legislation), **state bailiffs, and even less so – private ones, have almost no real ways to influence debtors nor the mechanisms of holding them accountable in case they fail to fulfil the abovementioned obligations. The ones that do exist, present a lot of complications in their application.**

Firstly, establishing the fact of the debtor's failure to perform these duties is an extremely complicated process that involves the collection and evaluation of proof of such failure, starting a corresponding court procedure and taking corresponding measures. Thus, the only available means at a bailiff's disposal are fines, which will hardly incentivise the debtor to execute the required actions as such actions entail much more negative consequences than a money penalty of

[2] Registr. No.8198 as of 26 March 2018.

this kind. Thus, debtors bear almost no liability for failure to execute court judgments.

This is observed even in cases, when a court issues a decision that requires the debtor not just to pay a certain amount or compensate the creditor for his losses, but to perform a certain action. In this situation it was considered that an effective measure in case of the debtor's repeated failure to execute the decision without good reason, and if such decision cannot be executed without the debtor's involvement, would be the bailiff's power determined in Art.63 of the Law "On the Enforcement Proceedings" to file a notice of criminal offense committed by the debtor to the pre-trial investigation body. However, this also does not stimulate the debtor to execute the decision, as the effort is nullified by the subsequent instruction for the bailiff to file a resolution on concluding the enforcement procedure after such notice, which makes this method of bailiff influence on the debtor inefficient and ultimately leads to loss of prospects of attaining justice. Thus, there are almost no cases of debtors being held accountable for evading the execution of a court judgment.

6. The list of reasons foreseen in Art.37 of the Law "On the Enforcement Proceedings", according to which the enforcement document is returned to the creditor, looks unreasonably long and poorly justified. Such reasons include a debtor's lack of assets that can be included in the debt collection, and a bailiff's failure to locate such assets through actions performed according to this Law; cases when after performing corresponding actions a bailiff was unable to establish a debtor's identity, identify the location of a debtor that is a legal entity, place of residence, location of a debtor who is a private entity (except in cases when the documents to be enforced deal with alimony collection, compensation of damages incurred as a result of injury or other damage to health, survivors' benefits, removal of the child, as well as the enforcement documents warranting collection of funds or other assets, and other enforcement documents that can be executed without the debtor's participation); cases when a debtor does not possess assets listed in the enforcement document as ones to be transferred to the creditor in kind; when a debtor who is a private entity, except in cases when the documents to be enforced deal with the alimony collection, compensation of damages incurred as a result of injury or other damage to health, survivors' benefits, removal of the child, or the debtor's vehicles that the police has tried to track, have not been found within a year since the start of the search; when the law prohibits the transfer of collection action to property or funds of the debtor, if he has no other property or funds that can be included in the collection action, as well as other enforcement actions regarding the debtor, which makes it impossible to enforce the corresponding decision; when the debtor bank is under interim administration, except for non-property-related judgments.

After the enforcement letter is returned to the creditor, the execution of the judgment is hardly expected. Now it is up to only the debtor himself to monitor the circumstances that made judgment execution impossible, and once they disappear is when the creditor can repeat presentation of the enforcement letter within the term set by Art.12 of the Law "On the Enforcement Proceedings". However, the creditor has very limited possibilities of getting information on the change of the debtor's financial situation.

7. Determining jurisdiction in the judgment enforcement when the enforcement proceedings are united into joint proceedings. Currently, many of these cases are processed by commercial, administrative and general jurisdiction courts, including respectively the Grand Chamber, Administrative Cassation Court and Civil Cassation Court.

8. For over two years (from 21 December 2016) a provision in p.2 Art.26 of the Law "On the Enforcement Proceedings" was in effect, according to which for the enforcement of a judgment the creditor had to pay an advance payment of 2% from the amount to be collected, not to exceed 10 minimum wages, and for the non-property-related cases and judgments on securing the claim – the amount of one minimum wage payable by individual debtors and two minimum wages – by debtors who are legal entities. Only on 15 May 2019, the Constitutional Court has found this provision unconstitutional, saying that placing the financial burden of operation of the court judgment enforcement system introduced by the state on the creditor "does not guarantee access to this system for everyone, and thus does not guarantee the full and timely execution of these decisions in all cases and under any circumstances, their obligatoriness".

9. Draft Law "On Amending Certain Legislative Acts of Ukraine On Resolving the Issue of the

State Debt According to Court Judgments"[3] was meant to remove some of these drawbacks. It was introduced to "improve the mechanism of ensuring a person's right to the enforcement of court judgments where the debtor is the state, increase the efficiency of the state debt repayment as per domestic court decisions". Yet the mechanisms foreseen in this draft do not present comprehensive solutions to the issues observed in the judgment execution. In particular, the bill establishes a limit on the compensation for long-term non-execution of a domestic court judgment against the state of 10% from the amount to be collected, not to exceed one minimum wage established on the date of payment.[4] No less "serious" is the following innovation: "Compensations that remain unclaimed within a year by the duly notified creditors are transferred to the State Budget of Ukraine according to the Law of Ukraine "On the Enforcement Proceedings" in the presence of documented confirmation of such notification".

It is proposed to amend Articles 4, 5 and 7 of the Law "On the Enforcement of Judgments and the Application of the Case-Law of the European Court of Human Rights", introducing longer deadlines, compared to the existing, for notification and publication of information on final ECtHR judgments in cases against Ukraine and new deadlines for notifying persons about filing a corresponding claim for the compensation payment etc. leading to longer deadlines for ECtHR judgment execution.

Authors of this bill proposed amendments to the Law "On the Enforcement of Judgments and the Application of the Case-Law of the European Court of Human Rights", which provide for creating mechanisms for general measures aimed at the execution of the pilot judgment. Towards this end, the Cabinet of Ministers had to create an Interdepartmental Working Group for resolving the structural problem mentioned in the pilot judgment within two months from the pilot judgment. Within the period of three months, the working group had to prepare and submit to the Cabinet of Ministers for the approval an action plan for the pilot judgment execution and proposals for the state budget law regarding the funding of expenses mentioned in the action plan. Note that the creation of such authorities lies within the Government purview, not the Parliament's.

This draft also proposes an amendment to the Law "On the State Guarantees for the Execution of Court Judgments" introducing the following order for the judgment execution: first stage includes judgments on pensions and social security payments, compensations for damages and losses incurred as a result of injury or other damage to health, as well as survivors' benefits; second stage – judgments regarding labour relations; third – all other judgments. On provision that the demands of creditors of each following stage are being fulfilled after the previous stage creditors' demands have been fully fulfilled.

It was also proposed to create a Supervisory Committee for the Execution of Judgments Against the State at the Ministry of Justice of Ukraine to consider issues that arise in the process of the enforcement of court judgments against the state by bailiffs.

Obviously, these changes are not a fundamental solution to the problem of the non-execution of judgments, even those issued by the ECtHR, which is quite clearly seen in the order of the Cabinet of Ministers to "plan for expenses sufficient to fund the budget programme of executing judgments in the State Budget of Ukraine for 2019 and the following years, **based on the budget capacity**[5]".

10. The entire range of issues is related to the organisation of work of state bailiffs, their excessive and uneven work load, availability of computers at work stations, shortcomings in cooperation between bailiffs and other government and non-government institutions, staffing issues (training and specialisation), loss of the enforcement documents (cooperation between SES bodies and courts on sharing information about postal addresses, their change), the procedure for reviewing citizens' complaints (queues and hours of admission), the current system of supervision over the actions of state bailiffs. All of these issues have to be carefully studied and dealt with.

3.2. A MORATORIUM ON THE FORCED SALE OF PROPERTY

The erratic transition to market economy after gaining independence, mistakes and abuse in the process of privatisation of the state-owned enterprises (SOEs), delayed implementation of resolution programmes for SOEs, outdated technology, poor SOE management led to a risk of mass dismissal of these enterprises' workers, bankruptcies and social upheavals. In this situation, institution of moratoria was seen as a way to ensure economic security, maintain social stability at SOEs amidst the general stagnation of economy. As a result, starting from 2001, under different circumstances, Ukraine has instituted a number of moratoria that prohibit the forced sale of SOE assets and thus make it impossible to enforce judgments against such enterprises.

Ukraine has several laws that capture moratoria on the forced sale of SOE assets.

1. The process of instituting a moratorium was started with the Law **"On Introducing a Moratorium**

[3] Registr. No.8533 as of 27 June 2018, initiated by MPs R.Sydorovych, I.Alekseiev, S.Alekseiev.

[4] As of July 2019, this amount was UAH 3,723 (approximately €111.27).

[5] Semibold font by report authors.

on the Forced sale of Property" as of 29 November 2001 with the amendments in 2004, 2011 and 2015, in effect. In order to ensure economic security of the state, preserve the integrity of the SOE property complexes and protect state interests, the Law **introduced a moratorium on application of the forced sale procedure to assets of SOEs and economic entities with 25 or more percent of equity capital owned by the Sate "until determined by the Ukrainian laws mechanism of forced sale of assets is improved" (Art.1).**

The forced sale of enterprise assets is defined as expropriation of immovable property and other fixed assets that ensure these enterprises' production activity, as well as equity (shares) that belong to the state within the assets of other economic entities and are transferred to equity capital of these enterprises, if such expropriation is done through: directing the collection to the debtor's assets based on the judgments that are subject to execution by the State Enforcement Service, **with the exception of judgments on salary and other payments owed to employees as part of labour relations**, and judgments on the debtor's obligations to pay arrears to State Compulsory Social Security Funds arising prior to 1 January 2011, and arrears of the single contribution to the compulsory state social insurance payable to the Pension Fund of Ukraine.

The Law proposed that within a month and in the order defined by the law the Cabinet of Ministers submit a draft law on amending the laws of Ukraine "On the Enforcement Proceedings", "On Restoring a Debtor's Solvency or Declaring a Debtor Bankrupt", which must make provisions for improvement of the said mechanism of the forced sale of enterprise assets.

2. The Law "On Measures Aimed at Ensuring a Stable Operation of Fuel and Energy Complex Enterprises" as of 23 June 2005, in effect.

The Law included fuel and energy complex enterprises (FEC) (mining companies (coal mines, ore mines, quarries, open pits, preparation plants), gas production companies, boiler rooms connected to main thermal power system, as well as companies that had a license for at least one type of the following activities listed in this law on the date of debt incurrence, namely: electricity production; transmission of electricity through main and interstate electricity networks; transmission of electricity through local electricity networks; supply of electricity with regulated tariffs; wholesale electricity supply; transportation of natural gas through main pipelines; transportation of natural and petroleum gas through distribution pipelines; transportation of petroleum products through main pipelines; supply of natural gas with regulated tariffs), as well as other participants of settlements that had or were owed an unpaid balance incurred from the incomplete settlement of electricity bills.

If **a state-owned, communal enterprise or economic entity with 50 or more percent of equity capital owned by the state that was a FEC enterprise was undergoing the bankruptcy procedure (preparatory, preliminary hearing, asset disposal or resolution phase), the person managing such debtor enterprise within the period determined by this law was obliged to take measures to put the debtor enterprise on the FEC Enterprise Registry and it was subject to debt redemption mechanisms established by the same Law, namely: being included in the FEC Enterprise Registry was recognised as a sufficient reason for the commercial court to return the claim for the commencement of proceedings on the bankruptcy case without its consideration** (p.3.7 of the Law). The Commercial court judge had to return the claim for the commencement of proceedings on the bankruptcy case, if a FEC enterprise was included in the Registry, evidenced by the corresponding decision.

For the period the FEC enterprise was part of the debt redemption procedure, the enforcement proceedings were to be ceased, as well as acts to enforce decisions made regarding this enterprise aimed at collecting the debt incurred prior to 1 January 2013, that were to be enforced in the order established by the Law "On the Enforcement Proceedings", **with the exception of judgments on salary payments, severance payments, other payments (compensations) owed to employees as part of labour relations, compensation for material (property) damages incurred as a result of injury or other damage to health or death, alimony collection, and judgments on collection of debts connected with payment of contributions to the State Compulsory Social Security Funds arising prior to 1 January 2011, and arrears of the single contribution to the compulsory state social insurance payable to the Pension Fund of Ukraine.**

In the enforcement of judgments on collection of debts of FEC enterprises owed as unpaid contributions to State Compulsory Social Security Funds arising prior to 1 January 2011, and arrears of these enterprises resulting from the unpaid single contributions of compulsory state social insurance to the Pension Fund, it was prohibited to transfer collection to main production assets.

Until the debt redemption procedure is completed by the commercial court, the Law prohibits to consider requests for starting the resolution procedure, declaring the debtor-enterprise bankrupt and starting liquidation proceedings (par.8 p.4.1 Art.4 of the Law).

First version of this Law established that the period of debt redemption procedure for the FEC enterprises should not exceed nine months from the date of the Ministry of Fuel and Energy order on approving the list of FEC enterprises included in the debt

redemption procedure (p.3.4 Art.3 of the Law). In 2006, this procedure was extended to 31 December 2006 (the Law "On the Amending Article 3 of the Law of Ukraine "On Measures Aimed at Ensuring a Stable Operation of Fuel and Energy Complex Enterprises"), with regular renewal in the future.

In its ruling on the constitutionality (agreement with the Constitution of Ukraine) of certain provisions of the Law of Ukraine "On the State Budget of Ukraine in 2008 and Amendments to Certain Legislative Acts of Ukraine" (case on the subject matter and content of the law

"On the State Budget of Ukraine"), the Constitutional Court has established that recognition by the Law "**On the State Budget of Ukraine in 2008 and Amendments to Certain Legislative Acts of Ukraine"** of legal acts as obsolete, their termination, introduction of changes and amendments regarding human and citizen rights and freedoms captured in them, are viewed as the termination or restriction of these rights and freedoms by the Constitutional Court.

3. In 2016, the Law adopted on December 20 "On Amending Certain Laws of Ukraine on Railway Enterprises, whose Property is Located in the Anti-Terrorist Operation (ATO) territory" (on 18 October 2018, an amended version of this Law was adopted under the title "On Amending Certain Laws of Ukraine on Railway Enterprises, whose Property is Located in the Territory of Deterrence and Defence Against Russian Armed Aggression in Donetsk and Luhansk Oblasts, Anti-Terrorist Operation Territory") introduced a moratorium on transferring the collection of debt to assets of railway enterprises located on the ATO territory in Donetsk and Luhansk oblasts temporarily not controlled by the government, and on approving acts of transferring these assets to the Association as the successor of the rights and liabilities of the said enterprises until inventory auditing and asset evaluation are conducted according to the law.

This moratorium will expire after the inventory auditing and asset evaluation of such enterprises are conducted according to the law and the act of transferring these assets to the Association is approved, but not later than six months from the date of cessation of national security and defence measures, deterrence and defence measures against Russia's armed aggression and the restoration of state sovereignty of Ukraine in the temporarily occupied territories of Donetsk and Luhansk oblasts.

The corresponding changes introduced in Section 13 "The Final and Transitional Provisions" of the Law "On the Enforcement Proceedings" provide that for the term of the moratorium **agencies are to cease the enforcement proceedings and measures to enforce the execution of decisions on transferring collection to the assets of Public Joint Stock Public Railway Company with 100% of shares owned by the state regarding liabilities of railway enterprises with assets located in the territory of ATO**, national security and defence measures, deterrence and defence measures against Russia's armed aggression in Donetsk and Luhansk oblasts temporarily not controlled by the government.

4. The Law "On the Restoring Solvency of the State-Owned Coal Mining Companies" dated 13 April 2017 introduced a moratorium on the expropriation of assets of coal mining companies. Thus, according to Art.1 of this Law, temporarily, before 1 January 2022, agencies are to cease the enforcement proceedings and measures to enforce decisions regarding state coal mining enterprises to be executed in the order defined by the Law "On the Enforcement Proceedings", arrests and prohibitions of asset expropriation are lifted in such enforcement proceedings, **except the judgments on salary payments, severance payments, other payments (compensations) owed to employees as part of labour relations, compensation for material (property) damages incurred as a result of injury or other damage to health or death, alimony collection, and judgments on collection of debts connected with the payment of contributions to the State Compulsory Social Security Funds and arrears of the single contribution to the compulsory state social insurance.**

According to this Law, no cases on bankruptcy of the state coal mining companies can be started prior to 1 January 2022. The coal mining company bankruptcy proceedings started before the adoption of this Law are to be ceased except cases when the liquidation process was started by the owner.

5. On 12 July 2018, the Law "On Amending the Laws of Ukraine on the Settlement of Some Issues Regarding the Debt Owed by Defence Companies (Belonging to the State Group "Ukroboronprom" (Ukrainian Defence Industry)) to the Aggressor State and/or Occupant State and Ensuring Their Stable Development". was adopted. This Law changed the current legislation (e.g. laws "On Collateral", "On Private International Law", "On Certain Issues Regarding the Debt Owed by Defence Companies (Belonging to the State Group "Ukroboronprom" (Ukrainian Defence Industry)) and Ensuring Their Stable Development", "On the Enforcement Proceedings", which prohibit the enforcing decisions on collection of debts where the creditor (collector) is the aggressor state and/or occupant state or a legal entity with foreign investment or a foreign enterprise of the aggressor state and/or occupant state, and the debtor – a defence company included in the list of the state-owned companies with strategic value for the country's economy and security. Consequently, the agencies are to cease the already started and not to start the new enforcement proceedings and measures to enforce decisions on the collection of

debts of defence companies, proceedings on the bankruptcy of defence companies are also prohibited. This Law also provides that foreign court decisions in cases on the collection of debt from defence companies are inadmissible and inexecutable.

3.3. SOCIAL LEGISLATION

1. The Law "On the Status and Social Protection of Population Affected by the Chornobyl Disaster" as of 28 February 1991 established main provisions for the implementation of constitutional rights of citizens affected by the Chornobyl disaster to protection of their life and health, as well as social protection of affected persons. The law provided for the significant social security payments to Chornobyl victims, with the hardest to execute – pension payments, as their amount was almost 10 times higher than the minimal pension.

Already in 1997-1998, the execution of this Law started slipping, the state turned out economically incapable to fully provide the benefits and compensations it promised. This led to numerous protests and rallies as well as an avalanche of lawsuits, mostly against the Pension Fund, in order to defend Chornobyl victims' rights in court. In 2011, there were over 240 thousand of such lawsuits, with over 14 thousand Chornobyl victims gaining the increased pensions through corresponding judgments. Pension funds then started refusing Chornobyl victims to issue their salary statements for the past years, thus making them unable to file a lawsuit. On the other hand, a lack of necessary funds in the budget (according to some estimates, in 2011 – the required annual amount to be paid to all social security recipients was over UAH 170 billion, with 6.6 billion going to Chornobyl victims) led to the massive non-execution of court judgments and to numerous attempts to review and cancel a large portion of benefits for this group of people. Since the very beginning, the Law contained mechanisms against the attempts to lower social benefits. Thus, Art.64 of the Law provided for coverage of the expenses related to execution of this Law by the state and local budget funds as well as other sources not prohibited by the law. According to Art.71 operation of provisions of this Law cannot be terminated by other laws, except by laws amending this Law. Article 70 stressed that citizens affected by the Chornobyl disaster have the right to defend their lawful interests and the interests of their children in relevant state and court institutions.

Ukraine attempted on many occasions to harmonise Chornobyl benefit payments with the state economic capabilities. The most popular measure was the abolition of benefits and compensations by the state budget laws for relevant years. In order to justify these measures, lawmakers even changed the interpretation of legal provisions which prevented changing or abolishing the laws on the benefits and compensations, through the corresponding provisions of the state budget law. For a certain periods of time, such practice became systematic. Changes to the budget law in this regard in 2001, 2002, 2005, 2007, 2008, 2010, and 2011 became the subject matter of Constitutional Court cases.

The ruling of the Constitutional Court of Ukraine No.5 as of 20 March 2002 in the case of the constitutional appeal by 55 people's deputies of Ukraine regarding the agreement with the Constitution of Ukraine (constitutionality) of provisions in Articles 58, 60 of the Law "On the State Budget of Ukraine in 2001" and the Supreme Court of Ukraine regarding the agreement with the Constitution of Ukraine (constitutionality) of provisions in paragraphs 2, 3, 4, 5, 8, 9 in part 1 of Article 58 of the Law "On the State Budget of Ukraine in 2001" and subparagraph 1 of p.1 of the Law "On Certain Budget-Saving Measures" (case on the benefits, compensations and guarantees) as of 20 March 2002, stressed the **inadmissibility of abolishing certain benefits, compensations and guarantees for people affected by the Chornobyl disaster, as "according to Article 16 of the Constitution of Ukraine, it is the duty of the state to ensure environmental safety, maintain ecological balance on the territory of Ukraine, and overcome the consequences of the Chornobyl disaster. One of the grave consequences of the Chernobyl accident was the serious impact on the health of citizens. Ukrainian laws group these citizens in specific categories, which require the restoration of damaged health, regular medical care and social protection by the state (p.4 of the motivational section).**

The Productive Forces Study Council of the National Academy of Sciences of Ukraine analysed the efficiency and social justice of the Ukraine's current system of benefits, which showed that the system of the abovementioned benefits was formed without the consideration of current legislation and economic processes, increasing social injustice as the most vulnerable population groups got the least benefits. At the same time, the excessive expansion of the range of social security recipients led to the devaluation of the very idea of awarding benefits to the categories of people with the most significant contributions to society. The Council thought that as the benefits do not execute the function of social protection of the most vulnerable population categories, it makes sense to substitute them for the targeted social assistance.

In its Ruling No.8 as of 11 October 2005 in the case on pension size and the monthly lifetime allowance for judges, the CCU established that the Law "On the Status and Social Protection of the Population Affected by the Chornobyl Disaster" determines main provisions for the execution of constitutional rights of persons affected by the Chornobyl disaster to protection of their life and health, as according to Art.50 of the Constitution of Ukraine, everyone has the right to safe and healthy environment and to compensation for damages resulting from violation of this right. The Constitutional Court noted on many occasions that

the Constitution and laws of Ukraine determine certain categories of Ukrainian citizens that require additional social protection guarantees by the state (paragraphs 11, 14 p.5 of the motivational section).

In 2007, Ruling No.6 as of 9 July 2007 in the case of constitutional appeal by 46 people's deputies of Ukraine regarding the agreement with the Constitution of Ukraine (constitutionality) of provisions in Articles 29, 36, p.2 Art.56, p.2 Art.62, p.1 Art.66, points 7, 9, 12, 13, 14, 23, 29, 30, 39, 41, 43, 44, 45, 46 Art.71, Articles 98, 101, 103, 111 of the Law of Ukraine "On the State Budget of Ukraine in 2007" (case on the social guarantees for citizens) found a number of articles in the Law of Ukraine "On the State Budget of Ukraine in 2007" unconstitutional.

The Law "On the State Budget in 2011" established that in 2011 rules and provisions in articles 39, 50-52, 54 of the Law "On the Status and Social Protection of Population Affected by the Chornobyl Disaster" are to be applied in the order and amount established by the Cabinet of Ministers based on available financial resources of the Pension Fund Budget in 2011.

The change or cancellation of established benefits by individual legislative acts became a popular practice.

The Law "On Amending and Recognising as Void Certain Legislative Acts of Ukraine" adopted on 28 December 2014 attempted to cancel a part of benefits and reduce the strain on the budget.

Having considered the appeal by 50 people's deputies of Ukraine regarding the agreement with the Constitution of Ukraine (constitutionality) of subparagraphs 2-7, 12 and 14 of p.4 Section 1 of the Law "On Amending and Recognising as Void Certain Legislative Acts of Ukraine" as of 28 December 2014, the Constitutional Court in its Ruling No.6 as of 17 July 2018 noted: "Benefits, compensations and guarantees established by Ukrainian laws for the citizens of Ukraine affected by the Chornobyl disaster are based on the state's constitutional obligation under Article 16 of the Basic Law of Ukraine to overcome the consequences of the Chornobyl disaster and preserve the gene pool of the Ukrainian people. Such benefits, compensations and guarantees are a special form of compensation for damages incurred by the abovementioned category of citizens, and thus the cancellation or restriction of these benefits, compensations and guarantees without an equivalent replacement is an abandonment of the state's constitutional obligation". Thus, "the cancellation of benefits, compensations and guarantees is in disagreement with the constitutional obligation of the state under Article 16 of the Basic Law of Ukraine regarding persons affected by the Chornobyl disaster, therefore benefits, compensations and guarantees are protected by the Constitution of Ukraine from negative consequences for this category of persons in the process of amending Ukraine's legislation".

2. An almost identical situation happened with the implementation of provisions in **laws "On Pension Benefits of Persons Dismissed from Military Service, and Certain Other Persons" (adopted in 1992) and "On Social Protection of War Children" (adopted in 2005).** Implementation of these laws in 2011 required a sum of approximately UAH 20 billion which led to amendment of these laws with the Law "**On the State Budget in 2011"**, According to p.4 Section 7 "Final Provisions" of the law, in 2011 rules and provisions in Articles 39, 50, 51, 52, 54 of the Law "On the Status and Social Protection of Population Affected by the Chornobyl Disaster", Art.6 of the Law "On Social Protection of War Children", Articles 14, 22, 37 and p.3 Art.43 of the Law "On Pension Benefits of Persons Dismissed from Military Service, and Certain Other Persons" are applicable in the order and amount established by the Cabinet of Ministers based on available financial resources of the Pension Fund Budget in 2011.

This issue was brought to consideration by the CCU as case No.1-42 on the agreement with the Constitution of Ukraine (constitutionality) of p.4 Section 7 "Final Provisions" of the Law of Ukraine "On the State Budget of Ukraine in 2011" that determines that the amount of social payments is dependent on the state's socio-economic capacity, yet has to guarantee the constitutional right of each citizen to a sufficient standard of living for himself and his family, as per Article 48 of the Constitution of Ukraine (Ruling No.20 as of 26 December 2011).

Given its previous rulings No.9 as of 19 June 2001, No.20 as of 8 October 2008, Art.22 of the Universal Declaration of Human Rights amounts of social payments and benefits are established with consideration of the state's financial capacity, judgment of the European Court of Human Rights as of 9 October 1979 on the "Airey v. Ireland" case, "Kjartan Ásmundsson v. Iceland" case as of 12 October 2004, the Constitutional Court of Ukraine ruled that socio-economic rights provided by laws are not absolute, that "mechanism of implementing these rights may be changed by the state, in particular due to the lack of financial resources, through proportional redistribution of funds with the purpose of preserving the balance of interests within society. Besides, such measures can be called upon to prevent or remove a real threat to the economic security of Ukraine, which according to p.1 of Art.17 of the Constitution of Ukraine, is the most important responsibility of the state. At the same time, the scope of the basic right cannot be interfered with. It is also inadmissible to introduce regulations that would reduce the size of pensions, other social security and assistance payments below the level identified in p.3 of Art.46 of the Constitution of Ukraine, and prevent a person from having proper living conditions in the society and preserving their human dignity, in violation of Art.21 of the Constitution of Ukraine".

National Legislation Governing the Liability of the State to the Claimants[1]

1. LAWS OF UKRAINE

1991	
February 28	On the Status and Social Protection of the Population Affected by the Chornobyl Disaster
2000	
February 17	On the Certain Budget-Saving Measures (with further amendments)
December 7	On the State Budget of Ukraine in 2001
2001	
November 29	On the Introducing a Moratorium on the Forced Sale of Property
2005	
June 23	On Measures Aimed at Ensuring a Stable Operation of the Fuel and Energy Complex Enterprises
2006	
February 23	On the Enforcement of Judgments and the Application of the Case-Law of the European Court of Human Rights
December 21	On the State Budget of Ukraine in 2007
2007	
December 28	On the State Budget of Ukraine in 2008 and Amending the Certain Legislative Acts of Ukraine
2010	
December 23	On the State Budget of Ukraine in 2011
2012	
June 5	On the State Guarantees for the Execution of Court Judgments
2014	
December 28	On the Amending and Recognising as Void Certain Legislative Acts of Ukraine
2016	
June 2	On the Bodies and Persons that Enforce Court Decisions and Decisions of Other Authorities (with further amendments)
	On the Enforcement Proceedings (with further amendments)
December 20	On the Amending Certain Laws of Ukraine on Railway Enterprises, whose Property is Located on the Anti-Terrorist Operation (ATO) Territory
2017	
April 13	On Restoring the Solvency of State-Owned Coal Mining Companies
2018	
July 12	On Amending the Laws of Ukraine on Resolution of Certain Issues Regarding the Debt of the Defence Industry Companies – Members of the State Corporation "Ukroboronprom" to the Aggressor State and/or the Occupant State and Ensuring Their Sustainable Development
October 18	On Amending Certain Laws of Ukraine on the Railway Enterprises, whose Property is Located on the Territory of Deterrence and Defence Against Russian Armed Aggression in Donetsk and Luhansk oblasts, Anti-Terrorist Operation Territory

[1] Documents are divided into groups and are listed in chronological order within a group.

2. DECISIONS OF THE CONSTITUTIONAL COURT OF UKRAINE

2002	
No.5 as of March 20	The Decision on the case of the constitutional appeal of 55 people's deputies of Ukraine on equalling to the Constitution of Ukraine (constitutionality) of the provisions in Articles 58, 60 of the Law of Ukraine "On the State Budget of Ukraine in 2001" and the Supreme Court of Ukraine on corresponding to the Constitution of Ukraine (constitutionality) of paragraphs 2, 3, 4, 5, 8, 9 of p.1 Art.58 of the Law of Ukraine "On the State Budget of Ukraine in 2001" and point 1 of p.1 of the Law of Ukraine "On Certain Budget-Saving Measures" (case on benefits, compensations and guarantees)
2005	
No.8 as of October 11	The Decision on the case of the constitutional appeal by the Supreme Court of Ukraine and 50 people's deputies of Ukraine regarding corresponding to the Constitution of Ukraine (constitutionality) of the provisions in paragraphs 3 and 4 of p.13, section 15 "The Final Provisions" of the Law of Ukraine "On Compulsory State Pension Insurance" and the official interpretation of the provision in p.3, Art.11 of the Law of Ukraine "On the Status of Judges" (case on the amount of pension and monthly lifetime allowance)
2007	
No.6 as of July 9	The Decision on the case of the constitutional appeal by 46 people's deputies of Ukraine regarding corresponding to the Constitution of Ukraine (constitutionality) of the provisions in Articles 29, 36, p.2 Art.56, p.2 Art.62, p.1 Art.66, points 7, 9, 12, 13, 14, 23, 29, 30, 39, 41, 43, 44, 45, 46 Art.71, Articles 98, 101, 103, 111 of the Law of Ukraine "On the State Budget of Ukraine in 2007"
2008	
No.10 as of May 22	The Decision on the case of the constitutional appeal by the Supreme Court of Ukraine on corresponding to the Constitution of Ukraine (constitutionality) of the certain provisions in Art.65, Section 1, p.61, 62, 63, 66 of Section 2, p.3 of Section 3 of the Law of Ukraine "On the State Budget of Ukraine in 2008 and The Amendments to the Certain Legislative Acts of Ukraine", and appeals by 101 people's deputies of Ukraine regarding their corresponding to the Constitution of Ukraine (constitutionality) of the provisions in Art.67, Section 1, p.1-4, 6-22, 24-100 of Section 2 of the Law of Ukraine "On the State Budget of Ukraine in 2008 and The Amendments to the Certain Legislative Acts of Ukraine" (the case on the subject matter and content of the law "On the State Budget of Ukraine")
2018	
No.6 as of July 16	The Decision on the case of the constitutional appeal by 50 people's deputies of Ukraine on corresponding to the Constitution of Ukraine (constitutionality) of points 2-7, 12 and 14 of p.4 Section 1 of the Law of Ukraine "On the Amending and Recognising as Void Certain Legislative Acts of Ukraine" as of 28 December 2014 No.76-VIII
2019	
No.2 (second senate) as of May 15	The Decision on the case No.3-368/2018(5259/18) of the constitutional complaint by Khlipalska Vira Vasylivna on the corresponding to the Constitution of Ukraine (constitutionality) of the provisions in p.2 Art.26 of the Law of Ukraine "On the Enforcement Proceedings" (on the State guarantees of the judgment enforcement)

3. DECREES OF THE CABINET OF MINISTERS OF UKRAINE

2004	
Order No.554 as of April 2	On the Approving Procedure for Management of Funds in the Enforcement Proceedings
2016	
Order No.643 as of September 8	On the Approving Procedure and the Amount of Bonus Payments to the State Bailiffs and the Amount of the Basic Bonus of the Private Contractor
2017	
Order No.275 as of April 3	On the Approving Medium-Term Government Priority Action Plan to 2020 and the Government Priority Action Plan to 2017

4. MINISTRY DECREES

2012	
Order of the Ministry of Justice No.512/5 as of April 2	The Instructions for Organising the Enforcement Actions
2016	
Order of the Ministry of Justice No.2432/5 as of August 5, registered at the Ministry of Justice on August 12 under No.1126/29256	The Provision on the Computer-Based Enforcement Proceedings System
Order of the Ministry of Justice No.3005/5 as of October 21, registered at the Ministry of Justice on November 7 under No.1441/29571	The Special Requirements for the Professional Competencies of the State Bailiffs and Heads of the Enforcement Service Bodies
2017	
Order of the Ministry of Justice No.3791/5 as of November 27, registered at the Ministry of Justice on November 28 under No.1442/31310	The Provision on the Private Bailiff Disciplinary Board
Order of the Ministry of Justice No.3792/5 as of November 27, registered at the Ministry of Justice on November 28 under No.1443/31311	The Provision on the Private Bailiff Qualification Commission

4. CONCLUSIONS AND RECOMMENDATIONS TO ADDRESS CAUSES OF THE NON-ENFORCEMENT OF JUDGMENTS

4.1. GENERAL CAUSES OF THE NON-ENFORCEMENT

4.1.1. Socio-political causes

The most common cause is Ukrainian society's "die-hard" tradition, which, on the one hand, declares the respect for law and, therefore, for justice by the authorities and officials, and on the other – shows **the absence of any respect for courts and a culture of the enforcement,** by using them as a tool to pursue the vested interests and combat political opponents or competitors in business. This was facilitated by ever-growing corruption of the judiciary in recent years, increased influence of the government on the courts and judges, and the spread of practice of "the bespoken" court decisions. All of the above produced **a purely formal existence** of legal ideals and principles inherent in the European legal tradition at the level of the Constitution and legislative acts of Ukraine (the rule of law, guarantees of the constitutional rights and freedoms of a person and citizen, the principle of a fair trial, which implies the independence of courts and judges, equality of all before the court, as well as the mandatory nature of court decisions (Article 129 of the Constitution of Ukraine), which, however, failed to find proper realisation in legal practice.

This has resulted in the situation, where almost total rejection of the voluntary execution of judgments by debtors was of little concern to the government authorities and officials; it has always been some "sectoral" rather than national issue. At the same time, there existed a parallel system of the selective enforcement of judgments that were important to authorities or those backed by influential persons.

Ukraine's ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms in 1997 and formal recognition of the jurisdiction of the European Court of Human Rights (ECHR or the Court) necessitated the enforcement of Court's binding decisions. The Ukrainian government's efforts to execute these decisions produced parallel systems of the enforcement – decisions of the ECHR on the one hand, and domestic court judgments on the other. This additional system of the enforcement is set out in the Law of Ukraine "On the Enforcement of Judgments and Application of the European Court of Human Rights Case-Law", adopted on 23 February 2006. The Law established the procedure for informing about the Court decision, its publication, initiation of enforcement proceedings and the procedure for paying compensation to the claimant at the expense of the State budget (within the established three-month period).

Therefore, the citizens who complained to the ECHR and obtained relevant decisions in their favour received an opportunity for the priority compensation. As for all other claimants, the "regular" procedure for debt collection continued to apply in accordance with the enforcement proceedings established by the Law "On the Enforcement Proceedings". This situation continued until the inconsistency between the two parallel enforcement systems became apparent. On 5 June 2012 Ukraine adopted the Law "On the State Guarantees for the Enforcement of Judgments", which attempted to introduce the state guarantees for the execution of all judgments and the writs of enforcement, where the debtors were the state bodies and agencies; state-owned enterprises, institutions and organisations; legal entities, whose property could not be subject to forced sale according to law. The algorithm for the enforcement of court decisions under this Law is similar to that established for the execution of the ECHR decisions.

4.1.2. Economic and financial causes

For many years, Verkhovna Rada of Ukraine had been passing various legislative acts that introduced privileges to various categories of pensioners, "children of war", persons affected by the Chornobyl disaster, while generally ignoring the financial capacity of the state, also failing to take into account the government's position and conclusions of financial appraisals. As a result, the state was unable to economically and financially ensure the implementation of these legislative acts, which led to their suspension, often in an unlawful manner, and which, in turn, produced multiple lawsuits and ensuing judgments unfavourable for the State.

4.1.3. Organisational and legal causes

In different periods of Ukrainian State, the enforcement of judgments was arranged differently. Since 1973, the enforcement of judgments was delegated to the judicial enforcement agents. At that, the enforcement proceedings were considered a part of the trial, and a judge himself oversaw the procedural actions of these agents. Given the authoritarian system of government, which also affected the administration of justice, judgments were enforced in a timely manner under the penalty of not only harsh administrative but also criminal punishment. Therefore, the issue of the non-execution of court decisions was hardly relevant.

Following the Declaration of Independence, Ukraine in 1998 adopted the Law on the State Execution Service, and one year later – the Law "On the Enforcement Proceedings". According to these laws, the State Execution Service was tasked to enforce the decisions of courts and other bodies in Ukraine. These acts marked the beginning of a large-scale reform of the entire enforcement system and represented a major step forward in its development. However, 20 years of operation of the State Execution Service have revealed multiple problems, which point at Ukraine's failure to set up an effective and viable system of the enforcement of judgments that would guarantee every person living in the country the right to a fair trial.

4.2. CAUSES OF THE NON-ENFORCEMENT OF JUDGMENTS IN SOCIAL DISPUTES

The analysis of court decisions in social disputes allows identifying several reasons for their non-enforcement at two levels. The reasons (grounds) for the non-execution of relevant judgments included the lack of funding, improper exercise of powers by the government authorities, terms of the enforcement proceedings, flaws in normative regulation. However, while analysing such judgments, one can only determine the reason for making this or that decision in a particular dispute, but not the causes for their further non-execution, since such information can only become available following the review of the specific enforcement proceedings documents. Therefore, only the first level cause of all social disputes can be established.

The lack of sufficient budget funding

Generally speaking, current situation with social payments can be condensed to the following model. At the initial stage, the state adopts economically unsubstantiated legislation that guarantees large privileges and various payments to broad categories of citizens (children of war, persons affected by the Chornobyl disaster, internally displaced persons, etc.), while disregarding the real state of budget. Then the state begins to experience shortage of funds, being no longer capable of making appropriate payments. To address the issue, the government introduces emergency measures, such as the restrictions on the provisions of laws granting said privileges, or adopts new budget acts or bylaws, which allow reducing the number and size of payments for a certain period of time. Such reductions in the size of social benefits outrage citizens and encourage them to appeal to the Constitutional Court, which by its decisions declares legal provisions that reduce the amount of relevant social guarantees unconstitutional. As a result, the courts start receiving huge numbers of people's claims against the government authorities on the grounds of reduced social payments due to the incorrect application of legislation, calculations based on bylaws that established a smaller amounts of guarantees instead of applying the norms of laws, ongoing reduced payments even after formal recognition of relevant legal provisions unconstitutional, and the like. At this stage, we receive a large number of the enforceable judgments against the state in social disputes, but the state still experiences the lack of funds to make appropriate payments, now based on the court decisions. The number of court decisions against the state in social disputes reached its peak in 2011.

Therefore, the main cause of the non-enforcement of the first level judgements in social disputes is the lack of sufficient budget allocations to make social payments.

Complicated regulatory and legal regulation

The analysis of judgments in different categories of social disputes leads to a conclusion that the legal regulation of this sphere is overloaded. As the study shows, the number of regulatory and legal acts in this area has been growing steadily since 2007, being primarily driven by the government's efforts to limit the number and size of social payments through the adoption of bylaws and enactment of laws, which would block these payments for certain periods of time, and which would later be declared unconstitutional. Such uncertainty of the legal regulation has resulted in complications with the application of legal norms by the relevant government bodies, which in turn produced incorrect calculations and gave rise to new lawsuits.

Therefore, it deems necessary to undertake revision and unification of legal acts in this area in order to increase the efficiency of their application.

Significant number of privileges granted to specific categories of citizens

The absence of moderate government policy for determining the categories of persons eligible for privileges may be viewed as one of the second level causes of the non-enforcement of judgments. The number of citizens who may receive state assistance is increasing steadily along with the adoption of popular yet economically unjustified legal acts in the absence of proper budget allocations. This study focused on

such categories of citizens as children of war, persons affected by the Chornobyl nuclear accident, persons with disabilities and pensioners. Right now we see the emergence of new categories of beneficiaries after the events in the East of Ukraine, including ATO veterans and internally displaced persons. More importantly, granting privileges to these citizens is often not economically justified and relevant allocations are neither reserved nor sufficient in the budget.

At present, ther is a need to urgently review the government policy regarding categories of citizens who are granted various types of benefits and privileges in terms of the economic viability of the latter and the ability of the state to adequately guarantee the corresponding obligations.

To accomplish this assignment it is necessary to reduce the amount of social payments and make it dependent on the available budget allocations, which should be determined by the Cabinet of Ministers of Ukraine.

The above is generally consistent with the ECHR's case-law: in the case of *Velikoda and Others v. Ukraine* the Court, while considering the issue of reduction of the applicant's benefits as a liquidator of the Chornobyl disaster, noted that "the reduction of the applicant's pension was apparently made as a result of economic policy considerations and the financial difficulties faced by the State. In the absence of any evidence to the contrary and acknowledging that the respondent State has a wide margin of appreciation in balancing the rights at stake in relation to economic policies, the Court considered that such reduction could not be said to have been disproportionate to the legitimate aim pursued or that it put an excessive burden on the applicant".[1]

Flaws in the judgments that complicate their enforcement

Another problem with the enforcement of judgments in social disputes is the quality of such decisions. In this context, it is necessary to note weak statements of reason in the analysed decisions, which are generally limited to copying and pasting the texts of the relevant legal acts without giving any logic of reasoning and calculations, thus undermining the authority of judicial decisions. Moreover, the state body that was ordered to recalculate payments, may not understand the logic of the judge in making such a decision. At the same time, the main problem in this context is non-determination by the judges of exact size of recovery in the operative part of the decision; instead, the latter only provides general statements regarding the obligation of the respective government body to recalculate the payments without specifying the exact amount of such payments and indicating the need for its recovery.

The absence of instruction on the need to recover calculated amounts in the operative part of judgment is often explained by the court's inability to go beyond the claims presented by the claimant in his/her statement of claim. In this regard, where the latter requests only recalculation without mentioning the need for recovery, the court in its decision also limits itself to merely pointing at the obligation to recalculate.

Quite often, the government bodies and agencies do not make such recalculation, yet again referring to the lack of funds. However, even when the local pension fund division or the department of labour and social protection does perform such recalculation, it is virtually impossible to recover these funds, as recalculation itself is not a writ of the enforcement, while the enforcement agents cannot independently determine the size of penalty. As a consequence, claimants are often forced to once again go to the court asking to change the manner of the enforcement and to indicate the exact amount of penalty in the enforcement writ.

The practice of domestic courts in this category of cases varies, as some courts uphold such applications by specifying the exact amount of penalty, while others refuse to do so. And this practice can hardly be welcomed.

Thus, the mechanism for changing the manner and the judgment enforcement procedure used to enforce court decisions in social disputes cannot be applied. According to Article 378 of the Code of Administrative Justice, the court may establish or change the manner or the procedure of enforcement upon request of a claimant or an executor (in cases established by law).

The grounds for establishing or changing the manner or the procedure of execution, delay or extension of the enforcement of judgment include circumstances that significantly complicate the enforcement or make it impossible. Similar provision is included in Article 435 of the Civil Procedure Code. Pursuant to Article 33 of the Law "On the Enforcement Proceedings", in the circumstances that complicate the enforcement of judgment or render it impossible, the parties, as well as the executor at the request of the parties, or public executor on its own initiative and in cases stipulated by the Law of Ukraine "On the State Guarantees for the Enforcement of Judgments", shall have the right to apply to the court, which heard the case as a court of first instance, with a request to establish or change of the manner and the procedure of the enforcement. According to part 2 of Article 7 of the Law "On the State Guarantees for the Enforcement of Judgments", if the court decision that orders to undertake certain actions regarding

[1] *Velikoda and Others v. Ukraine*, №43331/12, 03 June 2014.

property, in which the debtor is the government body, state-owned enterprise or legal entity, has not been enforced within two months from the date of the ruling to initiate enforcement proceedings, except in cases where the claimant interferes with the enforcement actions, the public executor shall be obliged to apply to the court with a request to change the manner and the procedure of the enforcement. Thus, the **Law provides for the possibility of changing the manner and the procedure of the enforcement of judgments on the obligation to undertake certain actions regarding property, but not with respect to the court decisions regarding making payments**.

The point is that binding judgments, in which the operative part includes an obligation to make recalculation, actually become executed at the time of such recalculation, and therefore it is not possible to change the manner and the procedure of their enforcement. In cases where the courts uphold such applications by including the obligation to recover certain amount of money in their decisions to change the manner and the procedure of the enforcement, they, in fact, go beyond the claims made by the claimant in the court of first instance, as they arbitrarily apply a remedy (initially not requested by the claimant) rather than change the manner and the procedure of the enforcement.

Particularly interesting in this regard are the provisions of the Code of Administrative Justice on remedies. According to Article 5, each person shall have the right, in the manner established by this Code, to appeal to the administrative court if he/she feels that the decision, action or inaction of the authority has violated his/her rights, freedoms or legitimate interests, and to seek protection through: (1) recognition of a regulatory and legal act or its specific provisions as unlawful and invalid; (2) recognition a regulatory and legal act or its specific provisions as unlawful and its invalidation; (3) recognition of actions of the authority as unlawful and an obligation to refrain from certain actions; (4) recognition of inaction of the authority as unlawful and an obligation to take certain actions; (5) establishment of the presence or absence of competences (power) of the authority; (6) adoption of one of the decisions referred to in paragraphs 1-4 by the court and recovery of funds from the defendant – the authority – to compensate for the harm caused by its unlawful decisions, action or inaction. **The protection of violated rights, freedoms or interests of a person who appealed to a court may be also exercised by the court in different way that does not contravene the law and ensures effective protection of the rights, freedoms, interests of a person and citizen, other subjects in the field of public-legal relations, from violations on the part of the authorities.** This article of the Code of Administrative Justice apparently does not provide for the recovery of relevant funds, although it does not exhaust the list of remedies.

There are several ways to improve the situation.

First, **it is possible to form an established case-law, for example, by using a "model case" mechanism, whereby clarifying the need to indicate the exact amounts of payments in the operative part of court decisions to the lower courts.**

Second, para.3 of part 2, Article 180 of the Code of Administrative Justice establishes that during the preliminary hearing the court, if necessary, may hear clarification of the claims and objections and consider the respective statements. Similar provision is formulated in para. 3 of part 2 of Article 197 of the Civil Procedure Code. Therefore, **at the preliminary hearing a claimant may clarify his/her claims and add the request to recover appropriate sums. It is expected that the judge, while understanding possible difficulties linked to the subsequent enforcement of the judgment in this category of cases, should explain to the plaintiff the nature of effective remedies applicable to his dispute, keeping the option for open clarification of the claims.**

Third, **one should consider the ECHR's position regarding recovery of funds in court decisions, where the debtor is the state.** In the case of *Akashev v. Russia*, the Court notes that, **in cases where an applicant has obtained a final judgement against the State, this person may not be expected to bring separate enforcement proceedings. Instead, 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. A successful litigant, however, 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, the authorities may request the applicant to produce additional documents, such as bank details, to allow or speed up the execution of 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 Convention 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.[2]

[2] *Akashev v. Russia*, №30616/05, 12 June 2008.

The above suggests that the State itself is responsible for the flaws in the enforcement system, especially when the state is the debtor in such decisions. Therefore, it has to ensure opportunities for enforcing this category of decisions, even when the exact amount of penalty is not specified in the operative part of a judgment, as any effective mechanism of protection of one's rights must conclude with the execution of judgment and a successful litigant receiving an appropriate compensation. In this context, it seems expedient to introduce a single system of records (decisions) in this category of cases with the subsequent automatic and simplified procedure of the enforcement with regards to recovery of relevant sums after their calculation without the need for the claimant to additionally apply to the enforcement agencies. This would help to reduce the enforcement time of the said court decisions, to estimate the amount of funds necessary to execute them and address shortcomings of the decisions that do not specify the relevant size of recovery in their operative part.

4.3. RECOMMENDATIONS FOR ENSURING THE ENFORCEMENT OF JUDGMENTS DELIVERED ON BEHALF OF THE UKRAINIAN STATE

1. The state policy in the area of the enforcement of judgments should be reviewed based on the requirements of part 2 of Article 3 of the Constitution of Ukraine: "Human rights and freedoms and their guarantees determine the essence and orientation of the activity of the State".

It is necessary to complete the adoption of the Strategy for addressing the issue of the non-enforcement of judgments against the State and the state-owned legal entities, which should include all necessary institutional, legislative, financial and other practical tools. This Strategy must be made binding for all relevant government institutions and agencies, which requires its approval by the National Security and Defence Council.

2. It is important to realise that nowadays the state is one of the biggest violators of the said constitutional provision, as it not only fails to ensure the effective functioning of the execution service, which operates within the executive branch, but also creates conditions for the non-enforcement of court decisions by adopting legislative acts that are either not financially or economically grounded or relieve the defendants in civil legal relations of liability (e.g. via moratoriums on the enforcement).

3. Guarantees of the enforcement of judgments introduced by the laws of Ukraine must be strictly observed. The state should review and lift the moratorium on the forced sale of property of state-owned enterprises, or secure budgeting of the "Programme 4040" if it still seeks to resolve certain social or economic issues by preventing the bankruptcy of state-owned enterprises.

4. Current legislation affecting the enforcement of judgments should be revised against the continuing reform of the civil service.

These efforts should be based on close coordination between Verkhovna Rada, the Cabinet of Ministers and all other government bodies of Ukraine in order to prepare and implement the most effective and comprehensive means for the execution of judgments.

The Cabinet plays a decisive role in this process. It is advisable to set up a government commission comprising the representatives of all the major institutions that are involved in activities of the execution service or otherwise affect the enforcement of judgments.

5. The reform of the system of agencies and officials responsible for the enforcement of judgments, as well as improvement of the enforcement procedure in Ukraine, should be carried out **in view of the following actions:**

- to raise the status of executors (bailiffs), including revision of qualification and age requirements. By its significance, the position of an executor should be considered equivalent to that of a judge, including the level of authority and financial support. The financial and material needs of the execution service and public executors in transport, premises, computer equipment and workplace arrangements should be fully met;
- to introduce and promote the maximum automation of the debt recovery procedure; to continue efforts aimed at introduction of registers necessary for prompt identification of the debtor's property (such as creation of the Single Register of Debtors), including those containing the information on the debtors' bank accounts. It is necessary to **ensure mutual adaptation of the Register of Court Decisions and the Register of the Enforcement Proceedings**;
- to strengthen the enforcement powers of the State Execution Service so that actions taken by executors are successfully enforced and debtors are effectively encouraged to participate and execute court decisions without being able to evade the executor's orders. The powers of the executor concerning access to premises and property to be seized should be reinforced;
- to effectively balance responsibilities and incentives for an executor, which are currently undermined by a complex system of accountability within the bureaucratic system, complicated procedures for obtaining remuneration, excessive or uneven workload per executor;

- to proceed from the fact that the enforcement proceedings constitute logical continuation of a trial and its final stage. Therefore, it is necessary to revise the entire procedure of the enforcement in terms of strengthening the procedural guarantees for the enforcement of judgments, reinforcing the position of the claimant and strengthening the procedural powers of the executor;
- to encourage the voluntary execution of court decisions. Failure to voluntarily comply with a judgment should result in serious disadvantageous consequences for the debtor, including significant penalties;
- to adopt the Cabinet of Ministers Resolution on timely issuance of local sectoral acts aimed at implementing the laws of Ukraine that regulate labour relations concerning timely remuneration and payments to the employees in the process of reorganisation or liquidation of state-owned enterprises and institutions. At the same time, such Resolution should also focus on the unconditional financing of expenditures in the balance sheets of the respective enterprises, institutions and organisations to ensure proper and timely payment of the financial obligations to their employees, primarily related to the elimination and/or reorganization of such legal entities or staff optimisation;
- to ensure consistent and timely performance by the State Execution Service of its powers to protect the rights of employees in payments of financial compensation and social benefits under court decisions through the regular monitoring and control of their activity by the Ministry of Justice of Ukraine;
- for the Ministry of Justice – to develop single standards for recording and keeping all court decisions / cases and non-enforced judgments, as well as to create technical capacities for introduction of a single coding of court cases / judgments in relevant state registers, thus allowing timely and quality control of their enforcement;
- to instruct the government ministries and agencies to systematically monitor the enforcement of judgments at the enterprises / institutions / organisations reporting to these ministries, and to respond appropriately to all cases of the non-enforcement with the application of the appropriate administrative and disciplinary sanctions to executives who fail to properly exercise their powers in this field;
- to propose Verkhovna Rada to improve legislation on legal liability (punishment) for the non-enforcement of judgments, including dismissals of the heads of such institutions and enterprises.

6. The Cabinet and the Parliament need to devote a particular attention to the problem of compensations by the state to the citizens of Ukraine in non-government-controlled areas of Donbas and Crimea. The acuteness of this issue will only be growing, as its resolution requires international legal action. Therefore, it is important to outline the conceptual approaches and remedies for citizens whose interests and rights are related to the named territories of Ukraine.

7. It is necessary to introduce the single register of the non-executed judgments, specifying the non-enforcement causes, such as the lack of sufficient financial and property resources of the debtor, moratorium, bankruptcy, shortage or absence of budget funds to answer the claims of creditors of the state or state-owned legal entities, inadequate legislation and the like.

8. An in-depth expert analysis should be carried out, followed by the standardisation of mechanisms for ensuring the automatic enforcement of judgments against the "State" debtors.

9. The moratorium system no longer serves the purpose of protecting the interests of the state and society; it continues to burden the country with increasing debt. The government must adhere to the constitutional principle "All subjects of the right of property are equal before the law".[3]

This requires lifting of all moratoriums, as this problem in the management of government activities and those of the state legal entities produces financial and economic complications in the fulfilment of public and private obligations.

10. It is critical to develop and put in place a real system of judicial control over the enforcement of judgments, as established by the Constitution: "The court shall supervise the enforcement of the court decision".[4]

11. The amendments to the Rules of Procedure of Verkhovna Rada by introducing a compulsory expert review of bills initiated by MPs in terms of their "financeability" and cost-effectiveness would be another step forward.

12. The Cabinet of Ministers should set up an Expert Commission involving specialists in various fields of law and economy, tasked to undertake a comprehensive analysis of the current legislation to identify the scope of statutory obligations in the area social security and the real budget capacities to finance them.

[3] Part 4 of Article 13 of the Constitution of Ukraine.

[4] Part 3 of Article 129-1 of the Constitution of Ukraine.

Summary of the Report on the Analysis of Root Causes of the Non-Enforcement of Domestic Judicial Decisions in Ukraine under the Grant Agreement between the Council of Europe and the Razumkov Centre

1. The study of root causes of the non-enforcement of judgments in Ukraine was carried out within the Council of Europe's project "Supporting Ukraine in the execution of judgements of the European Court of Human Rights", funded by the Human Rights Fund and implemented by the Council of Europe's Justice and Legal Cooperation Department. Within this project, experts of the Razumkov Centre and other leading legal experts have analysed the root causes of the non-enforcement of domestic judicial decisions in Ukraine. The study was conducted by the expert team of the Razumkov Centre, led by professor Viktor Musiyaka, PhD in Law. Other team members included professor Anatoliy Zayets, Doctor of Law, associate member of the National Academy of Legal Sciences of Ukraine, head of the Department of theoretical legal science and public law of the National University of "Kyiv-Mohyla Academy"; Tetyana Tsuvina, PhD in Law, Associate Professor at the Department of civil procedure of Yaroslav Mudryi National Law University; Volodymyr Sushchenko, PhD in Law, Associate Professor, chairman of the board of the Expert Centre for Human Rights.

2. The study was guided by the "Methodology for International and/or National Expert Analysis to Determine the Main Reasons for the Non-Enforcement of Decisions Rendered by Domestic Courts of Ukraine" (hereinafter the "Methodology"), developed in pursuance of the Committee of Ministers of the Council of Europe, adopted in June 2018. In line with this Methodology, the experts obtained the generalised information about the non-executed court decisions included in the current Budget Programme No.KPKV 350-404017 ("Programme 4040"), which has been recognised as the one and only source of judgments for this expert analysis. As of February 2019, the "Programme 4040" contained 305, 554 that were divided into three categories:

- decisions in social disputes;
- decisions in labour disputes;
- decisions concerning legal entities falling under the responsibility of the state (the state owns 25% or more in authorised capital) or the state itself.

To continue analysis within these three categories of court decisions, the experts selected 1% of the total number of judgments from each of these groups. Based on the analysis of case-law and relevant legislation, the experts formulated the main root causes of non-enforcement of judgments within each of the three categories and outlined some mechanisms for their elimination.

3. Judgments in social disputes represent the largest category, with the amount of debt at the time of the study reaching UAH 2,201,870,157. For the purpose of analysis of these court decisions, the experts selected 2,760 judgments; 2,254 of them were identified in the Unified State Register of Court Decisions. These decisions have been analysed separately depending on the subject matter of the claim.

It was found that the state adopted economically unsubstantiated social security legislation that guaranteed a variety of privileges and benefits to broad categories of citizens (children of war, persons affected by the Chornobyl disaster, internally displaced persons, etc.), while disregarding the real state of budget. To address this issue, the government introduced various measures to restrict provisions of such regulations (including new budget acts and bylaws, which reduced the number and size of social payments). As a result, the courts started receiving huge numbers of people's claims against government authorities on the grounds of reduced social payments due to

incorrect application of legislation. Despite court decisions in favour of claimants, the state still failed to execute them due to lack of funds to make appropriate payments.

The expert concluded that the main reason for failure to enforce judgments in social disputes is the lack of sufficient budget funding for social expenditures. Other causes of non-enforcement in this category of cases included the following: complicated regulatory and legal regulation of this sphere of social relations; granting a significant number of privileges to specific categories of citizens (e.g. veterans of the anti-terrorism operation) without allocating sufficient funds in the state budget; flaws in judgments that complicate their enforcement (e.g. non-determination by the judges of exact size of recovery in the operative part of the decision, weak statements of reason in the analysed decisions, etc.).

4. The next category of judgments concerns labour disputes, where the total debt reaches UAH 31,709,370. The expert received information on 1,505 non-enforced court decisions, of which only 1,465 were found in the Unified State Register of Court Decisions. The expert selected and analysed 1% of them, specifically 80 judgments.

The expert concluded that the main reasons for non-execution of these court decisions included the lack of necessary funding by the state (lack of budgetary allocations), which has led to failure of the state-owned enterprises, institutions and organisations to meet their obligations before employees; improper exercise of powers by government authorities, state-owned enterprises and institutions (delays of payment of accrues salaries; delays of all necessary payments to the employee; non-payment of "sick pays" during pregnancy and childbirth and the like); flaws in the normative regulation of labour relationships (for example, ill-timed adoption of sectoral bylaws on the financial support of ATO participants).

To eliminate these root causes of the non-enforcement, the expert recommends to adopt the Cabinet of Ministers Resolution on timely issuance sectoral regulating labour relations concerning timely remuneration and payments to the employees. It was also suggested for the Ministry of Justice of Ukraine to develop single standards for recording and keeping all court decisions / cases and non-enforced judgments, as well as to create technical capacities for introduction of a single coding of court cases / judgments in relevant state registers, thus allowing timely and quality control of their enforcement.

5. The final category of judgments covers court decisions concerning the legal entities falling under the responsibility of the state or the state itself. The total debt of the state under these cases amounts to UAH 4,022,844,272. The expert analysed 250 judgments out of 14,324 provided for analysis.

The causes of non-enforcement of judgments in this category are in many cases identical to the first two categories. In addition, failure to enforce these decisions can be also attributed to improper exercise of powers by the State Execution Service in collecting this type of debt. The content of individual cases reviewed by expert clearly indicates that the actions of state enforcement agents show signs of "assistance" to debtors in concealing financial resources and property from legal recovery. Moreover, there have been frequent instances of wrongful return of the writ of enforcement to the claimant due to the impossibility to determine location of the defendant legal entity. This prevents the claimants from applying the mechanism provided by the Law of Ukraine "On the State Guarantees for the Enforcement of Judgements".

6. The study has also analysed the national legislation regulating the system of agents and the procedure for the enforcement of judgments. The expert found the absence of effective legal system of interaction between the state bodies that may affect the enforcement (primarily between the Parliament, the Cabinet and other executive authorities, the State Treasury Service of Ukraine, banks, notaries). In addition, the current organisational and legal system of the enforcement of judgments shows limited consistency between the actions of the judicial branch and the execution service, which are "located" in different systems of public administration (the State Judicial Administration of Ukraine and the Ministry of Justice of Ukraine respectively). After having announced the decision, judges pay little attention to the process of its enforcement (unless they need to be clarified or extended.

The study found that the process of the enforcement of judgments, regulated by the Laws of Ukraine "On the Agencies and Persons Performing the Compulsory Enforcement of Judgments and Decisions of Other Authorities" and "On the Enforcement Proceedings" is rather cumbersome and overly formal, also offering for a number of procedural opportunities for the debtor to evade the execution of court decisions.

7. According to experts, the enforcement legislation mainly protects the debtors who actively use statutory forms of influence on the enforcement procedure (e.g. withdrawal in the enforcement proceedings, extension or postponement of the execution, suspension of the sale of property by the court, bankruptcy of the debtor).

The use of these methods leads to significant delays in the enforcement process or renders it largely unpromising.

Moreover, despite formal obligations of the debtor to refrain from certain actions or fulfil certain requirements of the executor, the latter has practically no leverage over the debtor and no mechanisms to hold him liable in the event of failure to fulfil these obligations or requirements, or their application implies serious mobilisation of efforts, to which the executor may not always be ready.

In this regard, there are virtually no examples of establishing the fact of fraud of the debtor, withdrawal of assets in the period following the judgment and even after the ruling on the seizure of property and funds of the debtor, as well as the prosecution (except for the use of fines, which, due to their small size, can hardly force the debtor to observe the court decision).

8. There are many other weaknesses in the enforcement procedure. In particular, grounds listed in Article 37 of the Law of Ukraine "On the Enforcement Proceedings", under which the writ of enforcement may be returned to the claimant, seem unjustified and unsubstantiated. They include, for example, the absence of property that can be recovered, while search for such property was unsuccessful; impossibility to establish the identity of the debtor – legal entity, or the place of residence of the debtor – natural person; instances where the debtor owns no property determined by the writ of enforcement, and the like. Upon the return of the writ to the claimant, the enforcement of this judgment becomes highly doubtful, placing the burden of all debt-related actions on the claimant.

9. There is also no clarity in determining the jurisdiction of the enforcement of judgments following the consolidation of the relevant enforcement proceedings into a single proceeding, whereby it is to be heard by commercial, administrative and general courts, the Grand Chamber of the Supreme Court, the Administrative Court of Cassation and the Civil Court of Cassation within the Supreme Court.

10. Certain legislative issues are also associated with the status and working arrangements of the public and private executors. The current status of an executor, the qualification and age requirements for this position do not match the significance of this agent in the enforcement process. Moreover, the system of subordination, forms of remuneration and incentives transform public executors into administratively dependent entities.

11. The problem of the non-enforcement of judgments is further intensified by the legislation that introduces the state moratoriums on the forced sale of property of state-owned enterprises. The repeated extension of these moratoriums due to failure to comply with the government's instructions to fix problems that have led to the imposition of these moratoriums was absolutely groundless. As a result, a large number of judgments in favour of the citizens of Ukraine, which duly restored their rights, have not been enforced.

12. Based on findings of the study, the experts emphasised the need for a comprehensive review and refinement of the current legislation related to the judicial decisions and their enforcement.

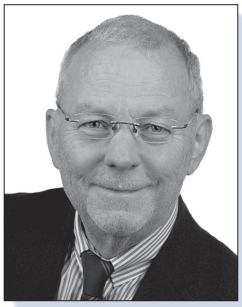
It is suggested to present the relevant approach in the Strategy for addressing the non-enforcement of judgments issue against the State and the state-owned legal entities, which should also include necessary institutional, legislative, financial and other practical steps. Among other important things, this Strategy should stipulate the elaboration of mechanisms for the compulsory government's approval of social policy legislation adopted by Parliament in order to finally abandon the tradition of making unsound economic decisions that cannot be implemented due to the lack of financial and material resources.

Other recommended measures include the following:

- to abolish the moratorium on the forced sale of property of state-owned enterprises;
- to secure budgeting of the "Programme 4040";
- to raise the status of the executors;
- to introduce the automated debt recovery procedure;
- to introduce a system of registers for the prompt identification of the debtor's property and finances, including information about bank accounts and current balance;
- to ensure the mutual adaptation of the Unified State Register of Court Decisions and the Unified State Register of Enforcement Proceedings;
- to increase motivation for the voluntary execution of domestic court decisions and introduce serious hurtful consequences for the debtor in case of their non-execution, including significant raise in fines. ■

THE STATUS OF THE COURT BAILIFFS IN GERMAN LAW

The article presents a brief description of the status, training, work supervision, procedure for determining salaries and extra expense coverage for the court bailiffs in German law. It also explores some issues in the work of court bailiffs in the Netherlands.



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The Status of Court Bailiffs

In Germany a court bailiff is a **government employee** working for the respective federal land, where he executes his duties. As an employee (the former public service of intermediate level) of one of the district courts, in the court district where he executes his duties, he gets attached to a specific bailiff district. Thus, **his work is supervised by the respective district court head**. This means that the management of this district court (chief judge or an authorised employee) will **regularly** monitor the execution of his duties by the bailiff.

Such inspections are done **quarterly**, at least one commences **without a prior notice**. The frequency of inspections also depends on the amount of money collected from the third parties by bailiffs. and consequently handled by them.

I would like to specifically point out that the supervision measures cannot include the content of case materials. As such, bailiffs are viewed as the independent bodies in law enforcement. If one of the proceeding parties (creditor, debtor or a third party) intends to appeal against a certain action during judgment execution procedure or because of the bailiff's inaction, they should file a corresponding appeal to the court for enforcement of judgments.

The Bailiff Training

The bailiff candidate pool mostly comes from the intermediate level public service officials (justice experts). They work for 2.5 years to reach the required level of legal education, and they have to positively demonstrate their practical skills in the field of justice and law. Additional bailiff training for these candidates takes 18 months and completes by passing the corresponding test.

In the Netherlands bailiff training implies getting a Bachelor's Degree in Law. The entire course takes four years, three of which are designated for legal studies and one year conveys a practical training.

The Bailiff Responsibility

Because bailiffs are employed officials, they are not directly responsible for the job mistakes. The **employer**. bears the principal responsibility. The employer is the federal land, where the bailiff executes his duties. I.e. there is a state responsibility privilege that protects judges and public officials from being held liable by third parties (Art.34 of the Basic Law of Germany, §839 of CC) (insert "*Excerpts from the Basic Law and the Civil Code of Germany*", p.42)

Given the above legal status, German bailiffs do not have **to make an insurance contract for material damage liability**, which can arise due to mistakes in the execution of official duties. The fact that some judges and public officials choose to make such insurance contracts is explained by the employer's right to invoke **the right of recourse**, if the damage was inflicted as a result of **gross negligence or intentionally**. Such cases are, however, extremely rare.

EXCERPTS FROM THE BASIC LAW AND THE CIVIL CODE OF GERMANY

Basic Law of Germany, Art.34

If any person, in the exercise of a public office entrusted to him, violates his official duty to a third party, liability shall rest principally with the state or public body that employs him. In the case of the intentional wrongdoing or gross negligence, the right of recourse against the individual officer shall be preserved. If a claim of damages is made ann in the case of a regression a general court case is not ruled out.

German Civil Code, §839. Liability in case of breach of official duty

(1) If an official intentionally or negligently breaches the official duty incumbent upon him in relation to a third party, then he must compensate damage to the third party. If an official is responsible for the negligence, then he may be held liable if the person who suffered damage is unable to get compensation in another way.

(2) If an official breaches his official duties in a legal matter according to a court decision, then he is responsible for any consequent damage only if the breach of duty implies a criminal offence. This provision is not applied to the refusal or delay in exercising public duties.

(3) The liability for damage does not arise if the suffered person has intentionally or negligently failed to avert the damage by having recourse to appeal.

Liability and Insurance in the Private Execution of Court Judgments

The legal regulation of material responsibility and signing the insurance contracts totally differ if the sector of judgment enforcement is privatised. In this case, state's principal responsibility is not applied and the bailiff is personally responsible for the inflicted damage. Then, execution of potential claims for compensation by the relevant bailiff mainly depends on his financial situation. Because individual assumption of these liabilities is risky and foremost unacceptable to enforcement creditors, as well as enforcement debtors, they have to be covered by the bailiff's corresponding **insurance contract for material damage liability**.

Given the fact that sometimes the amount of money received and handled by bailiffs are rather large, and also given the fact that there are major risks associated with judgment enforcement actions (e.g. mistakes during the extraction, detention, seizure and disposal of items), the only possible way to cover these risks is to make an insurance agreement for material damage liability. Prior to starting their work, bailiffs have to make such insurance agreement for the minimum of 1 year. In order to avoid any manipulations in this sector, there is a legal obligation for the involved insurance organisations to inform the judgment enforcement supervisory body (not later than one month before the end of insurance contract) about the next insurance payment for the next year of insurance.

In a similar way, other negative consequences for the bailiff are also legally regulated, e.g. if the first insurance payment or the next-year payment were not made or were not made on time (immediate prohibition of the relevant activity, revocation of license, etc.).

Insurance amount depends on the financial situation in the respective state and the amounts handled by bailiffs regarding the execution of their duties (influenced by the financial situation in the country).

As for the respective legal regulation in the Netherlands, court bailiffs are public officials there too. However, they do not get a salary, but solely the collected fees. Thus, in the Netherlands there is at least a partial privatisation of the judgment enforcement. As opposed to the German system, in the Netherlands the insurance of this kind of work is obligatory. The total insurance amount equals €2 million.

Taking into account the principles applied to German notaries, whose position, from the point of view of liability insurance, is similar to the situation of bailiffs, the liability insurance for the latter should have used notary liability amounts as guidance. In the case of notaries, who conduct a privatised executive activity, their work is also associated with the potential damage and material liability risks. According to §19a of the Federal Code of Notaries (BNotO), the minimal amount of the coverage is **€500 thousand** for one insured event (insert "*Excerpts from the German Federal Code of Notaries*", p.43). Whether this amount is sufficient, too big or too small, depends on the economic situation in the corresponding state. Therefore, one should consider financial numbers handled in judgment enforcement procedures, as well as the overall economic and social situation in the corresponding state, while determining the corresponding amount.

The Bailiff salary

Because bailiffs in Germany are public officials by the status, first they get a salary defined by corresponding norms, the amount of which depends on a number of different factors, like belonging to a certain salary group, period of service, and family status of the bailiff.

Also, bailiffs receive a fee for actions they do as a part of the enforcement procedure. The fees are prescribed by the **Bailiffs' Costs Act (GvKostG)**, which has a table of corresponding fees and costs (something like a fee and cost catalogue).

Percentage of these fees/costs that a bailiff can take for himself is rather significant. Thus, **it stimulates these officials to quickly process** the enforcement

EXCERPTS FROM THE GERMAN FEDERAL CODE OF NOTARIES, §19A[1]

(1) The notary is obliged to obtain professional indemnity insurance to cover the liability risks for the financial loss resulting from his work and the work of persons, for whom he is responsible. The insurance contract is concluded with an insurance company authorized to conduct business in the country, in line with the general conditions of an insurance activity that meets the requirements of the Insurance Supervision Act. The insurance must cover all liability risks listed under p.1 and each individual breach of duty which could lead to liability claims against the notary.

(2) The following can be excluded from insurance coverage:

1. The compensation claims in connection with intentional breach of duty;
2. The compensation claims in connection with advice on non-European law, unless the breach of duty was the failure to recognise the possibility of the application of that law;
3. The compensation claims for embezzlement by the notary's employees, unless the notary is charged with the negligent violation of his official duty to supervise his staff.

If, in the event of a breach of duty, it is only disputed whether there are grounds for exclusion provided for in p.1, and the professional liability insurer refuses to settle the case due to this, he must nevertheless pay the minimal insurance payment stipulated for the insurer, who covers losses resulting from the intentional actions. Insofar as the professional liability insurer satisfies the claim of the entitled party, this party's claim (or that of any other person entitled to the compensation) against the notary, the notary chamber, the insurer shall be transferred to such insurer in accordance with p.3 of § 63 (3). The professional liability insurer may require the persons for whose obligations he assumes responsibility pursuant to p.2, to reimburse his expenses as a representative.

(3) The minimal insurance payment is €500 thousand for each insured event. The insurer's payments for all insured events within an insurance year may be limited to twice the amount of the minimal insurance payment. The insurance contract must oblige the insurer to notify the Land Judicial Authority and the Notary Chamber immediately of the start and end, or termination of the insurance contract, as well as of any changes to the insurance contract that affect the required insurance coverage. It can be provided by the insurance contract that all breaches of duty during execution of a single official act, whether these are based on the behaviour of the notary or of an assistant employed by him, are considered one insured event.

(4) A deductible of 1% of the minimal insurance payment can be stipulated.

(5) The competent authority as provided in p.2 of §117 of the Insurance Contract Act is the Land Judicial Authority.

(6) The Land Judicial Authority or the notary chamber, to which the notary is assigned, as per third parties' request and for the purpose of them making a claim to compensate the suffered damage, has to provide third parties with the name and address of the professional liability insurer of the notary, as well as the insurance number, unless the notary has an overriding protectable non-disclosure agreement; this also applies in case of the notary's office liquidation.

(7) Through adopting a regulation approved by the Bundesrat, the Federal Ministry of Justice is authorised to establish a different minimal insurance amount for mandatory liability insurance according to p.1, in case this is deemed necessary to ensure the adequate degree of protection to the complainant in the event of the economic situation change.

cases and perform other duties pertaining to their job description.

According to the regulations almost all enforcement creditors have to make an advance payment to start the enforcement procedure, corresponding costs will be also covered in case of failure to recover them from the enforcement debtor, who actually should be the one to cover them.

Percentage of fees collected by the bailiff that belongs to him is reviewed each year by the relevant public authority that issues a corresponding regulation.[2] For instance, in Federal State of Lower Saxony, it was approximately 52% in 2013, and approximately 40% in 2014. These fees are designated to reimburse the so-called office expenses, e.g. the cost of setting up and maintaining a bailiff's office. Noticeably, the organising and maintaining a separate office is mandatory for a bailiff.

Along with this, the bailiffs also receive another part of fees, approximately 15%. This part is considered as their reward and a supplement payment to bailiff's salary.

Note that these parts of fees are limited by the maximum margin. If the annual amount exceeds approximately €20,000, the bailiff will only get half of the abovementioned sums from the amount in excess. In case the amount of rewards (received in addition to the salary) exceeds €2,400 per year, bailiff only gets 40% of the amount that is in excess of €2,400. ■

1 Translated from Russian by the Razumkov Centre.

2 Act on Compensation of Office Expenses in the Bailiff Service (GVEntschVO).

ACCESS TO JUDICIAL CONTROL OVER THE ENFORCEMENT OF JUDGMENTS AND DECISIONS OF OTHER BODIES: A REVIEW OF CERTAIN LEGAL POSITIONS OF THE SUPREME COURT

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The adoption of the Laws of Ukraine "On the Amendments to the Constitution of Ukraine (Concerning Justice)", "On the Judiciary and the Status of Judges", "On the Agencies and Persons Performing the Compulsory Enforcement of Court Decisions and Decisions of Other Authorities" and "On the Enforcement Proceedings" on 2 June 2016 highlighted the beginning of a new development stage for both the judicial system and the system of the enforcement of judgments and decisions of other bodies.

Ukraine's judicial system underwent profound changes as a result of the discontinuation of high specialised courts and the Supreme Court of Ukraine, re-introduction of a three-tier court system, and creation of a new Supreme Court (SC) as the highest court in Ukraine's judiciary – the only court of cassation in the country, also responsible for ensuring the consistency and unity of the judicial practice in the manner and procedure prescribed by the procedural law. Meanwhile, the system of the enforcement of judgments and decisions of other authorities completed its transition from the centralised public-law model to a somewhat decentralised, mixed model. All these changes are interlinked and interdependent, as they seek to improve the efficiency of protection of violated, unrecognised or disputed rights, freedoms and interests. At the same time, despite the separation of agencies responsible for the enforcement of judgments and decisions of other bodies from the judicial branch, courts maintained their judicial control function, which is carried out through the consideration of complaints about decisions, actions or inaction of the state execution service officials and public executors (bailiffs) in the enforcement of judgments or decisions of other bodies.[1]

Although the period of operation of the new Supreme Court has been brief, there is already a considerable number of positions that formulate the conceptual provisions on procedural peculiarities of judicial control over the enforcement of judgments and decisions of other bodies, including its accessibility. The latter are binding, as the law imperatively states that "the conclusions regarding the application of legal provisions specified in resolutions of the Supreme Court shall be taken into account by other courts in the application of such legal provisions" (Parts 5,6 of Article 13 of the Law "On the Judiciary and the Status of Judges"). Their analysis is relevant, especially since the wording of most provisions stems from the requirements of Para. 1, Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms, which also extends to the sphere of jurisprudence adjacent to civil justice, that is, the enforcement of judgments and decisions of other judicial bodies,[2] aimed at shaping the new level of legal awareness in the law enforcement activities.

It should be noted that access to justice in general and to individual legal procedures currently can be viewed in broad and narrow terms. According to the first

[1] V. Komarov, V. Bihun, V. Barankova et al. The Course of Civil Process: Textbook (ed. V. Komarov) – Pravo, 2011, p. 958.

[2] O. Tkachuk. Problems of realisation of the judicial power in civil justice: Monograph – Pravo, 2016, p.247.

approach, it serves as an international standard that mirrors the requirements of a fair and effective judicial protection, which further translates into unlimited court jurisdiction, due process, reasonable time and unimpeded appeal of any interested person to court.[3]

The second approach implies a somewhat narrower meaning, which focuses on understanding the essence of access to a tribunal, as unhindered realisation of this right allows any person to go to court. It has its own scope and exists along with the right to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Thus, the access to judicial control in this article will be addressed through the prism of the last aspect.

As the European Court of Human Rights (ECHR, or the Court) case-law provides the most detailed insight into all components of access to a court, its analysis suggests that the ECHR has gradually formulated several postulates, which should be used for clarifying the content of the said right. Specifically, this right should be understood as the opportunity to institute proceedings in a case that must be "practical and effective",[4] that is, an individual must have a clear, practical opportunity to challenge an act that is an interference with his rights.[5] Apart from the initiation of a trial, it also includes the right to proper notification on initiated proceedings to which an individual is a party[6], and the right of access to a court for the determination of civil disputes.[7] Moreover, if the national law provides for the functioning of the courts of appeal and cassation, this right also extends to the entitlement to appeal and review judicial decisions.[8] However, the right to appeal and review becomes illusory if an individual has not been made familiar with the full text of the court decision in his case, meaning that the right of access to a court entails the entitlement to receive adequate notification of court decisions.[9] At the same time, an individual may waive his right of access to a court, however, such a waiver must be free and unambiguous.[10]

Based on the foregoing, **the right of access to a court should be understood as a positive entitlement that encompasses the opportunity for initiating a case before the court of the first instance and also superior courts, adequate notification on initiated proceedings in the case to which an individual is a party, the trial, and proper information about the full text of a court decision**. This right is not absolute, so the states act autonomously in regulating this right, thus making it possible to factor in the national specifics of relevant legal order. In some cases, the Court recognises introduction of certain restrictions in legislation, which, as a general rule, do not lead to a violation of the right of access to justice, but are rather viewed as "potential obstacles". These include jurisdictional, subjective, time, procedural and financial restrictions, which are introduced to ensure proper administration of justice.[11]

The right of access to judicial control is enshrined in the current legislation. Specifically, Part 1 of Article 74 of the Law "On the Enforcement Proceedings" establishes that decisions, actions or inaction of an executor (bailiff) and other officials of the state execution service concerning the enforcement of the court decision may be appealed by the parties, other participants and individuals to the court, which issued a writ of the enforcement, in the manner prescribed by law. The said norms are further specified in the sectoral legislation. Thus, according to Article 447 of the Civil Procedure Code, and Article 339 of the Commercial Procedure Code, the parties to the enforcement proceedings may lodge a complaint to the court, if they believe that their rights or freedoms have been violated by the decision, action or inaction of a public executor, other official of the state execution service or a private executor during the enforcement of the court decision, adopted pursuant to these Codes. Part 1 of Article 287 of the Code of Administrative Justice establishes that the participants in the enforcement proceedings (other than public and private executors), as well as those involved in the enforcement, have the right to submit a complaint to the administrative court, if they feel that the decision, action or inaction of a public executor, other official of the state executive service, or a private executor violated their rights, freedoms or interests, and also if law establishes no other procedure for the judicial appeal against such decisions, actions or inaction.

The analysis of the said norms suggests that **the Ukrainian legislation regulates only one component of the right of access to judicial control, namely the right to initiate judicial activity in relation to the administration of justice**. All other elements are either disregarded or presumed, based on the content of a general rule. For example, lawmakers did not establish clear norms on the notification about the initiated proceedings in a case to which a person is a party. However, according to Part 1 of Article 450 of the Civil Procedure Code, and Part 1 of Article 342 of the Commercial Procedure Code, a complaint shall be considered within a 10-day term in a court session in the presence of a recoverer, a debtor and a public executor / other state execution service

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3 N. Sakara. The problem of access to justice in civil cases: Monograph – Pravo, 2010, p.477.

4 *Airey v. Ireland, №6289/73, §24, Series A №3.*

5 *Bellet v. France*, №20385/94, §36, 38, Series A №333-B.

6 *S.C. Raisa M. Shipping S.R.L. c. Roumanie*, №37576/05, §30.

7 *Kutić v. Greece*, №48778/99, §25, ECHR 2002-II.

8 *Delcourt v. Belgium*, №2689/65, §25, Series A №11.

9 *Zavodnik v. Slovenia*, №53723/13, §71.

10 *Suda c. République Tchèque*, №1643/06, §48-49.

11 N. Sakara. The right of access to justice in civil cases: legal positions of the European Court of Human Rights and the national context – "Pravo Ukrayiny", 2018, No. 10, p.8.

official or a private executor, whose decision, action or inaction is being challenged. Therefore, it can be argued that this rule does exist and is recognised. Similar situation can be observed in the administrative proceedings.

As the jurisdictional restrictions present one of the most significant "potential obstacles" for the implementing access to a court, including access to the judicial control, the Supreme Court of Ukraine, and especially its Grand Chamber (GCSC) devotes significant attention to the jurisdictional issues, specifically the separation of the jurisdiction of general and commercial courts from that of administrative courts when considering complaints against decisions, actions or inaction by the agencies and persons performing the compulsory enforcement of judgments and decisions of other authorities, as well as lawsuits, in which the said entities serve as defendants.

There are several reasons for that.

First, in line with Part 6, Article 403 of the Civil Procedure Code, Part 6, Article 302 of the Commercial Procedure Code, and Part 6, Article 346 of the Code of Administrative Justice, a case shall be transferred to GCSC for consideration in all situations where a party challenges the court decision on grounds of violation of the subject-matter and personal jurisdictions. In other words, this is unconditional, and GCSC has no power to return the cassation appeal to the relevant panel (chamber, united chamber) of the Supreme Court.

Second, no one may be deprived of the right to consideration of his/her case in court under the jurisdiction of which it falls according to the procedural law (Part 1 of Article 8 of the Law "On the Judiciary and the Status of Judges"). Moreover, this provision reproduces the requirement for case hearing by the "tribunal established by law", which is one of essential elements of the right to a fair trial.[12]

Third, the resolution of the conflict of jurisdictions is essential, because, as already noted, it presents a "potential obstacle", as repeatedly emphasised by the ECHR in its decisions, including those regarding Ukraine.[13]

Jurisdictional issues in performing judicial control over the enforcement of judgments and decisions of other bodies are regulated by law. As noted above, Part 1 of Article 74 of the Law "On the Enforcement Proceedings" establishes that decisions, actions or inaction of an executor and other officials of the state execution service concerning the enforcement of a court decision may be appealed by the parties, other participants and individuals to the court, which issued a writ of the enforcement, in the manner prescribed by law. Similar provisions are enshrined in Articles 447-448 of the Civil Procedure Code, and Articles 339-340 of the Commercial Procedure Code. In turn, Part 2 of Article 74 of the Law "On the Enforcement Proceedings" provides that decisions, actions or inaction of an executor and officials of the state execution service in the implementation of decisions of other bodies (officials), including resolutions of a public executor on collection of the execution fee, the decisions of a private executor on recovery of the basic compensation, the costs of enforcement proceedings and fines, may be appealed by the parties, other participants and individuals to the relevant administrative court in the manner prescribed by law. Moreover, Part 1 of Article 287 of the Code of Administrative Justice establishes that the participants in the enforcement proceedings (other than public and private executors), as well as those involved in enforcement, have the right to submit a bill of complaint to the administrative court, if they feel that the decision, action or inaction of a public executor, other official of the state executive service, or a private executor violated their rights, freedoms or interests, and also if law establishes no other procedure for judicial appeal against such decisions, actions or inaction. Therefore, if law introduces another procedure for appeals against decisions, acts or inaction of a public executor or other official of the state execution service, the jurisdiction of administrative courts shall not extend to consideration of disputes of said category.

Despite rather clear legal regulation of jurisdictional issues, the judicial practice faces a number of challenges linked to their interpretation. This explains a considerable number of resolutions, issued by the Grand Chamber of the Supreme Court, seeking to formulate legal positions on the separation of the jurisdiction of general and commercial courts from that of administrative courts.

Since it is possible to separate jurisdictions of general and commercial courts based on a personal (subjective) criterion, this article only deals with the cases that are subject to review in civil and administrative proceedings.

Governed by the norms of procedural law, the GCSC proceeds from the fact that if a court decision made in accordance with the civil justice procedure is being enforced, it is general courts that exercise their powers in civil proceedings, shall be responsible for the consideration of complaints against decisions, action or inaction of representatives of the State execution service,[14] including officials of the bodies of

[12] *Sokurenko and Strygun v. Ukraine*, №29458/04, 29465/04, §27-28.

[13] *Tserkva Sela Sosulivka v. Ukraine*, №37878/02, §36; *Bulanov and Kupchik v. Ukraine*, №7714/06, №23654/08, §27-28, 38-40; *Andriyevska v. Ukraine*, №34036/06, §13-14, 23, 25-26; *Mosendz v. Ukraine*, №52013/08, §116, 119, 122-125; *Shestopalova v. Ukraine*, №55339/07, §13, 18-24.

[14] Resolution of GCSC dated 10 April 2019 in the case No. 461/4349/16-c (proceedings No. 14-115cs19).

the state execution service and the Commissioner of the Deposit Guarantee Fund on the liquidation of relevant bank for refusal to comply with the decision of the national court, if an applicant presents two interrelated motions that have different procedural and legal consequences after consideration;[15] public executors on foreclosure on the mortgaged property for debt repayment, including the abolition of the act on sale of mortgaged property;[16] actions on the valuation of property, regardless of who – the public executor himself or external estimating entity – performed appropriate actions;[17] inventory and arrest of property;[18] electronic auctions, where an individual is a winner.[19] Complaints regarding the execution of a writ of the enforcement, issued for the execution of a civil claim sustained within the framework of criminal proceedings, should be considered in the same manner.[20]

Further on, within administrative proceedings, the administrative courts should consider complaints against decisions, action or inaction of a public executor, other officials of the state execution service or a private executor regarding collection of the execution fee, costs related to organisation and execution of the enforcement process and the imposition of fines, accepted in the enforcement proceedings for the execution of all writs of the enforcement irrespective of the issuing body and court's jurisdiction, as well as on appealing against decisions, action or inaction of the state execution service taken (enforced, allowed) during the enforcement of executive orders by a public executor on collection of execution fees, costs related to the organisation and execution of the enforcement process and the imposition of fines as writs of enforcements in a separate enforcement proceedings;[21] regarding execution of court decisions (rulings, decrees, sentences) adopted based on the rules set forth in the Criminal Procedure Code,[22] the Code of Administrative Justice,[23] or the Code of Administrative Offences;[24] decisions of other bodies (officials)[25] on the obligation of the Authorised Person of the Deposit Guarantee Fund to include an individual in the list of depositors entitled to reimbursement from the Fund on the basis of a writ of the enforcement;[26] regarding the central executive body implementing the state policy in the field of treasury budget service to eliminate infraction by transferring funds based on writs of enforcement;[27] regarding inaction in performing the management functions of control over improper execution of duties by a public executor.[28] In addition, grounds for considering a complaint against the decision, action or inaction of a public executor, other official of the state execution service or a private executor within administrative proceedings also include the presence of court decisions in the a consolidated enforcement proceedings that were made under the rules of different jurisdictions or decisions of other (extrajudicial) bodies, if these decisions are subject to the enforcement.[29] However, the consolidated enforcement proceedings in itself

[15] Resolution of GCSC dated 20 June 2018 in the case No. 553/1642,15-c (proceedings No. 14-207cs18).

[16] Resolution of GCSC dated 12 June 2019 in the case No. 752/1115/17 (proceedings No. 14-175cs19).

[17] Resolution of GCSC dated 12 June 2019 in the case No. 308/12150/16 (proceedings No. 14-187cs19).

[18] Resolutions of GCSC dated 22 August 2018 in the case No. 658/715/16-c (proceedings No. 14-299cs18); dated 13 March 2019 in the case No. 815/615/16-c (proceedings No. 11-1037app18), dated 5 June 2019 in the case No. 805/1569/17 (proceedings No. 11-302app19).

[19] Resolution of GCSC dated 21 March 2018 in the case No. 725/3212/16-c (proceedings No. 14-3cs18).

[20] Resolutions of GCSC dated 21 November 2018 in the case No. 569/12295/16-c (proceedings No. 14-451cs18), dated 23 January 2019 in the case No.235/4749/13-k (proceedings No. 14-607cs18).

[21] Resolutions of GCSC dated 6 June 2018 in the case No. 921/16/14-g/15 (proceedings No. 12-93gs18); dated 6 June 2018 in the case No. 127/9870/16-c (proceedings No.14-166cs18), dated 13 June 2018 in the case No. 307/1451/15-c (proceedings No. 14-177cs18), dated 30 August 2018 in the case No. 754/8453/16-c (proceedings No. 14-380cs18); dated 28 November 2018 in the case No. 2-01575/11 (proceedings No.14-425cs18); dated 28 November 2018 in the case No. 401/169/16-c (proceedings No. 14-427cs18); dated 16 January 2019 in the case No. 279/3458/17-c (proceedings No. 14-543cs18); dated 30 January 2019 in the case No. 161/8267/17 (proceedings No. 14-604cs18), dated 13 March 2019 in the case No. 545/2246/15-c proceedings No.14-639cs18), etc.

[22] Resolutions of GCSC dated 12 December 2018 in the case No. 757/61236/16-c (proceedings No. 14-431cs18); dated 27 March 2019 in the case No.586/77/17 (proceedings No. 14-556cs18), dated 29 May 2019 in the case No. 760/14437/18 (proceedings No. 14-224cs19), dated 12 June 2019 in the case No.201/2779/17 (proceedings No. 14-205cs19).

[23] Resolutions of GCSC dated 3 October 2018 in the case No. 201/17676/16-c (proceedings No. 14-305cs18), dated 5 December 2018 in the case No.279/2369/17 (proceedings No. 14-505цс18).

[24] Resolution of GCSC dated 6 February 2019 in the case No. 757/62025/17-c (proceedings No. 14-619cs18).

[25] Resolutions of GCSC dated 14 March 2018 in the case No. 213/2012/16-c (proceedings No. 14-13cs18), dated 14 November 2018 in the case No.161/15523/17 (proceedings No. 14-403cs18); dated 6 February 2019 in the case No. 678/1/16-c (proceedings No. 14-437cs18); dated 15 May 2019 in the case No. 678/301/12 (proceedings No. 14-624 cs18).

[26] Resolution of GCSC dated 21 December 2018 in the case No. 204/2221/17 (proceedings No. 14-416cs18).

[27] Resolutions of GCSC dated 12 September 2018 in the case No. 916/223/17 (proceedings No. 12-196gs18); dated 13 February 2019 in the case No.199/9550/15-ц (proceedings No. 14-521cs18).

[28] Resolution of GCSC dated 12 December 2018 in the case No. 212/7068/13-c (proceedings No. 14-430cs18).

[29] Resolutions of GCSC dated 14 March 2018 in the case No. 660/612/16-ц (proceedings No. 14-19cs18); dated 17 October 2018 in the case No.5028/16/2/2012 (proceedings No.12-192gs18); dated 17 October 2018 in the case No. 927/395/13 (proceedings No. 12-189gs18); dated 14 November 2018 in the case No.707/28/17-c (proceedings No.14-354cs18); dated 16 January 2019 in the case No.657/233/14-c (proceedings No.14-447cs18); dated 10 April 2019 in the case No.712/8126/17 (proceedings No.14-546cs18); dated 19 June 2019 in the case No.64/229 (proceedings No.12-66gs19).

do not change the general rule for determining jurisdiction, depending on the court that has passed a decision, in case of merger of several court decisions adopted under the rules of same jurisdiction and pursuant to the same court procedure.[30]

At the same time, the Grand Chamber of the Supreme Court allows for departing from the above-mentioned general rule only if an individual has previously filed a complaint or a lawsuit to the court with observance of the rules of jurisdiction, but the court falsely denied this person the initiation of proceedings, and repeated appeal to this court with an identical claim deems impossible. In this case, that is, in the presence of the conflict of jurisdiction, an individual may apply to a court of different jurisdiction and the latter must consider his/her case in substance.[31]

The issue of subjective restrictions is not relevant, since the legislation clearly defines the persons entitled to access to judicial control, therefore there are no problems with their definition. Thus, in case of appeal against decisions, action or inaction of a public executor, other official of the state execution service, or a private executor in the civil or commercial procedure, these are the parties to enforcement proceedings, namely the recoverer and the debtor (Part 1 of Article 447 of the Civil Procedure Code, Part 1 of Article 339 of the Commercial Procedure Code). At the same time, if violations concern the rights, freedoms and interests of other persons, they are not deprived of opportunity to defend themselves, but only through litigation by filing a lawsuit, for example, on the release of arrested property.[32] Appeals to the court with an administrative claim within administrative proceedings are available to a slightly broader circle of subjects: participants in the enforcement proceedings (excluding public and private executors), specifically the parties, representatives of the parties, prosecutors, experts, specialists, translators, estimating entities – businesses, persons whose intellectual property rights have been violated according to the writs of the enforcement on confiscation and destruction of property pursuant to Articles 176, 177 and 229 of the Criminal Code, Article 51-2 of the Code on Administrative Offences, as well as persons involved in enforcement, such as attesting witnesses, police officers, representatives of guardianship authorities and other agencies and institutions in the manner prescribed by the Law "On the Enforcement Proceedings" (Part 1 of Article 287 of the Code of Administrative Justice, Article 14 of the Law "On the Enforcement Proceedings").

Apart from jurisdictional issues, the application of an individual's right of access to judicial control may encounter the problem, linked to the procedure for calculating periods during which a person may file complaints against decisions, action or inaction of a public executor, other official of the state execution service, or a private executor. There is no conformity in legal regulation in this regard. For example, in line with Part 1 of Article 449 of the Civil Procedure Code, Part 1 of Article 341 of the Commercial Procedure Code, and Part 2 of Article 287 of the Code of Administrative Justice, a complaint or an administrative suit may be filed with the court: (*a*) within 10 days after a person learned or should have been informed about the violation of his/her rights or freedoms; (*b*) within three days from the day when the person after a person learned or should have been informed about the violation of his/her rights, in the event of appeal against the decision to postpone the enforcement process.

Part 5 of Article 74 of the Law "On the Enforcement Proceedings" defines the terms for appeal in the same way, but here the lawmakers have used a more detailed measurement unit – "working days", thus increasing the total term. Since this regulation creates gaps and does not contribute to the formation of the universal law enforcement practice, this legal issue was submitted to the Grand Chamber of the Supreme Court for consideration. Initially the GCSC failed to clearly define what should serve as a measure for the procedural terms, but eventually it formulated the position on the need of applying procedural law that regulates the legal proceedings, within which the case should be considered.[33] Subsequently, the GCSC concluded that in case of appeal against decisions, action or inaction of a public executor, other official of the state execution service or a private executor that execute the writ of the enforcement issued by commercial court, it is necessary to observe the relevant provisions of the Commercial Procedure Code included in Section VI "Judicial Control over the Execution of Court Decisions",

[30] Resolutions of GCSC dated 14 November 2018 in the case No.707/28/17 (proceedings No. 14-354cs18); dated 16 January 2019 in the case No.657/233/14c (proceedings No.14-447cs18); dated 5 June 2019 in the case No.911/100/18 (proceedings No.12-60gs19).

[31] Resolutions of GCSC dated 12 June 2019 in the case No.201/2779/17 (proceedings No.14-205cs19); dated 12 June 2019 in the case No.201/2779/17 (proceedings No14-205cs19); dated 12 June 2019 in the case No.370/1547/17 (proceedings No.14-223cs19).

[32] Resolutions of CCC dated 5 December 2018 in the case No.496/1013/16-c (proceedings No.61-29821sv18).

[33] Resolution of GSCS dated 17 October 2018 in the case No.5028/16/2/2012 (proceedings No.12-192gs18).

in particular, regarding the right to file a complaint within 10 calendar days, as determined in Para. "a", Part 1 of Article 341 of the Code.[34] We believe that since all codes of procedure are special norms to the Law "On the Enforcement Proceedings", and procedural terms by their ideology are calculated based on calendar days, then the period for exercising the right to initiate judicial control should also be calculated based on the calendar, rather than working days.

The procedural law does not specify the rules for processing complaints filed within the civil and commercial proceedings against decisions, action or inaction of a public executor, other official of the state execution service or a private executor. In this regard, we believe that the general requirements for claims should be applied (Article 175 of the Civil Procedure Code, Article 162 of the Commercial Procedure Code), also taking into account the specifics of a "complaint". Therefore, they should be filed in writing in Ukrainian; be signed by the party to the enforcement proceedings or its representative; include information about an individual and entity whose decisions, action or inaction are being challenged; describe the way by which the complainant wants to protect his/her rights, freedoms or interests; present circumstances justifying requirements; provide evidence in support of these circumstances; list documents and evidence attached to the complaint; specify evidence that cannot be submitted with the complaint (if any), etc. If the right to judicial control is exercised within the administrative proceedings, the participant in the enforcement proceedings or another entity has to file an administrative claim meeting the requirements stipulated in Article 160 of the Code of Administrative Justice.

Another controversial issue linked to the right to appeal decisions, action or inaction of agencies and persons performing the enforcement of judgments and decisions of other bodies is payment of court fees. Thus, the Chamber of the Civil Court of Cassation (CCC) proceeded from the fact that the execution of court decisions is final and integral part (stage) of court proceedings in a specific case with no complaint-related proceedings, while relevant court fee has been paid for for the filing of the statement of claim. Moreover, neither Section VII of the Civil Procedure Code, nor the Law "On Court Fee" (Part 1, Article 3) do not provide for the payment of a court fee for filing a complaint against the decision, action or inaction of a public executor or other official of the state execution service, therefore no court fee shall be paid for filing a complaint.

In other words, the court fee shall neither be charged for filing an appeal in cases of complaints against decision, action or inaction of a public executor or other official of the state execution service.[35] In turn, the Civil Court of Cassation decided to abandon this position, so the case was submitted to the Grand Chamber of the Supreme Court for consideration. The latter has also departed from the CCC's position and concluded that Clause 7, Para. 7, Part 2 of Article 4 of the Law "On Court Fee" determines the rate of court fees for appeals and cassation petitions on the ruling of commercial court in the amount of one subsistence minimum for able-bodied persons. The above provision also concerns the filing of appeals and cassation petitions on all rulings of commercial court, which are subject to appeal, irrespective of whether the Law "On the Enforcement Proceedings" provides for the collection of court fees for filing statements that result in the relevant decisions and rulings. In other words, the court fee must be paid on general grounds.[36]

Subsequently, the United Chamber of the Civil Court of Cassation has also abandoned its previous position and concluded that if the law does not obligate the applicant to pay court fees for filing a complaint to the court of first instance against the actions of a public executor, then in the event of appeal against the decision of the court of the first instance by the person concerned following consideration of the said complaint, a court fee shall be charged on general grounds as established in Clause 9, Para. 1, Part 2 of Article 4 of the Law "On the Court Fee". At the same time, the subject matter of trial in the court of first instance cannot affect the obligation to pay (or not to pay) court fees for filing an appeal in case of person's disagreement with a court decision.[37]

Summarising the above, **the right of access to judicial control over the enforcement of judgments and decisions of other bodies, that is, its accessibility, is enshrined in current legislation**, but due to certain legal conflicts, evidenced the law enforcement practice, it requires further regulation. ■

[34] Resolution of GCSC dated 13 March 2019 in the case No.920/149/18 (proceedings No.12-297gs18).

[35] Resolutions of CCC chamber dated 18 January 2018 in the case No.565/256/15-c (proceedings No. 61-1504sv17); dated 14 February 2018 in the case No.589/6044/2013 (proceedings No.61-1900sv18), etc.

[36] Resolution of GCSC dated 29 May 2018 in the case No.915/955/15 (proceedings No.12-66gs18).

[37] Resolution of the united chamber of CCC dated 20 June 2018 in the case No.752/7347/16-c (proceedings No.61-10168svo18).

THE ENFORCEMENT PROCEEDINGS REFORM: PRECONDITIONS, PRESENT AND FUTURE

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On 5 October 2016, the Laws of Ukraine "On the Enforcement Proceedings" (new version) and "On the Bodies and Persons that Enforce Court Decisions and Decisions of Other Authorities" have come into force. Note, that a change of philosophy of the judgment enforcement, a new mechanism of judgment execution, introduction of the institute of private bailiff were designated to streamline the process of the decision enforcement. It was planned to finalise this approach and ensure its efficiency through the "European Ukraine" Coalition Agreement of MP Factions "European Ukraine".

What caused lawmakers to decide to make such a radical move?

Foremost the fact that the overall level of the judgment enforcement in Ukraine has dropped to a disastrously low level. This situation arose due to a number of objective and subjective factors. Objective factors include:

(*a*) a large number of the enforcement cases per one bailiff (as of 2015, the average load was over 150 cases per one state bailiff);

(*b*) the outdated and ineffective mechanism for locating debtors' assets (paper-based requests to the relevant institutions that work with the corresponding data, the ineffective cooperation with the State Fiscal Service bodies on locating the bank accounts of debtors engaged in an entrepreneurial activity, the absence of a mechanism for the locating bank accounts of individuals, a costly and lengthy procedure for determining the initial cost of debtors' assets listed for sale, etc.);

(*c*) the flawed judgments – the improper wording of the operative part, which caused difficulties regarding the procedure of the enforcing such judgments;

(d) the lack of the sufficient court supervision over the enforcement of judgments and the work of state bailiffs.

Main subjective factors include numerous instances of corruption at the State Fiscal Service bodies and the lack of the proper level of motivation to ensure the enforcement of the court judgments due to the small financial reward for the state bailiffs, as well as the lack of public awareness of the importance of the steadfast execution of the court judgments.

All of the above have also been recognised by the Ministry of Justice of Ukraine in the process of developing the reform and in the debates during voting for the respective laws.

Also note that the absence of the effective judgment execution mechanism violates the Ukraine's international obligations, in particular, Art.6 of the European Convention on the Human Rights (ECHR). The European Court of Human Rights (ECtHR) has repeatedly emphasised in its decisions that the right to an available fair trial is illusory, if the state is unable to ensure the proper execution of judgments. Pivotal for the purpose of acknowledging the systemic problem with the non-execution of judgments in Ukraine were decisions in the court cases "*Zhovnir v. Ukraine*" and "*Ivanov v. Ukraine*". The October 2017 judgment in the "*Burmych and others v. Ukraine*" case stands out as completely unprecedented.

As for the creating a powerful and independent judiciary, the low level of judgment execution is directly linked to the trust in courts. Persons are essentially

deprived of the real reinstatement of their violated rights due to the inefficient enforcement of court decisions, which greatly decreases the court authority.

Thus, the need to start the judgment enforcement reform was caused by the objective factors such as the need to observe human rights, including those guaranteed by the ECtHR, as well as the need for a capable system of executing the court decisions.

In early 2015, due to the abovementioned circumstances, the Judicial Reform Council brought together efforts of the Ukrainian and international experts, MPs, the representatives of Ukraine's Ministry of Justice and President's Administration, who ultimately developed bills No.2506a and No.2507a, which as of 2 June 2016 became laws "On the Enforcement Proceedings" and "On the Bodies and Persons that Enforce Court Decisions and Decisions of Other Authorities".

The Reform Implementation

First of all, it is important to know that in the process of developing the judgment enforcement reform, the discussions at the Judicial Reform Council were aimed at finding a compromise, which, given the high level of populism among the policymakers (attempting to erode the very idea of the need to enforce judgments, considering a high level of mistrust in courts), could offer an approach that would help to start the reform and introduce the institute of private bailiff. In addition, they were working on the reform roadmap for the next 10 years, taking into account the Ukrainian reality and, thus, planning for the phased introduction of the key reform ideas through laws and executive orders.

In particular, it was planned to:

1. gradually expand the jurisdiction of the private bailiffs to the level of jurisdiction of the state bailiffs;
2. gradually raise the qualification standards for people who want to become the state bailiffs to the level established for the private bailiff applicants;
3. gradually reduce the number of the state bailiffs and eventually fully move to the private format of the judgment enforcement;
4. expand the use of electronic document management to streamline and increase the efficiency of the enforcement procedures and reduce the cost of bailiff services;
5. introduce an automated e-system for locating the debtors' bank accounts, and automated arrest or recovery of debtors' funds;
6. introduce an automated system for the distribution of funds recovered from the debtor between the creditors in the required order and, in case several bailiffs are involved in the enforcement (state and/or private), the distribution of the enforcement fees/reward to the private bailiff;
7. organise training and hold the certification testing for private bailiffs ensuring that the number of private bailiffs makes 1,000 persons by the end of 2016, eventually going up to the total of 3,000-4,000.

At the same time, the changes made to the adopted on 2 June 2016 Laws "On the Enforcement Proceedings" and "On the Bodies and Persons that Enforce Court Decisions and the Decisions of Other Authorities" suggest reverse trends in the judgment enforcement reform.

Namely, the Law "On the Enforcement Proceedings" was amended 15 times, and the Law "On the Bodies and Persons that Enforce Court Decisions and the Decisions of Other Authorities" – twice.

Details of the Amendments and the Assessment of Their Impact on the Progress of the Enforcement Procedure Reform

1. The Law "On the Measures for Settling the Energy Consumption Debts of District Heating and Heat-Generating Organisations and Centralised Water Supply and Sewerage Companies" dated 3 November 2016 amended Art.34 of the Law "On the Enforcement Proceedings", and made the enforcement proceedings started in relation to corresponding companies subject to termination. I.e. **introduced the ninth moratorium on the court judgment execution**.

2. On 18 January 2018, the Law "On Privatisation of State and Communal Property" changed Art.34 of the Law "On the Enforcement Proceedings", where according to the amended p.12 of the article, the bailiff has to stop the enforcement procedure if the state company or the business entity shares are listed as the objects of small or large privatisation and will be sold to the private sector. On the one hand, such changes **preclude the reduction of assets of the object to be privatised**, yet on the other hand, they, **hold back judgment enforcement**.

3. Instead of developing and introducing an automatic e-system for locating the debtors' bank accounts in real time, on 3 July 2018, Ukraine adopted the Law "On the Amendments to Certain Legislative Acts of Ukraine on Creating the Economic Preconditions for the Reinforcing the Right of the Child to Proper Support", which provides for **creating an automated system only for arresting the debtors' accounts, and includes only those debtors who have delayed child support payments**. A different type of system that would effectively locate the debtors' bank accounts

in real time (for all types of debtors – individuals and entrepreneurs) is not being developed. At the same time, between the first and second readings, MPs were able to remove the provision on creating a registry of private individuals' bank accounts, which could destroy bank secrecy for all types of debtors – individuals and entrepreneurs.

4. The Law "On the Amendments to Certain Legislative Acts of Ukraine on Creating the Economic Preconditions for Reinforcing the Right of the Child to Proper Support" changed Art.27 of the law on enforcement fees charged by state bailiff, namely **reinstated the provision on charging the enforcement fee from the amount to be collected from the debtor, returned by him, or the cost of debtor's assets to be transferred to the enforcement creditor according to the enforcement document**. This position is incomprehensible not only in the sense of the economic justice, but also in the context of the existing judicial practices based on the idea that the enforcement fee is a state bailiff's reward for activity enforcing the decision, given that such actions have led to execution of the decision.

5. A number of the amendments to the Law "On the Enforcement Proceedings" introduced **the additional bans on the enforcement actions regarding an entire range of companies**, including heat and water supply companies, JSC "Chernomornaftogaz", Ukrainian Railways, defence sector companies, coal mining companies, etc. While a temporary moratorium was justifiable at the moment in order to ensure the operation of the enterprises of particular importance to the state, at the same time, no appropriate measures were proposed and taken to address the global issue of such debts and to ensure the proper solvency of such enterprises.

Lawmakers took a reasonable step of banning the enforcement procedures for the benefit of the aggressor state as seen in the Law "On the Amending the Laws of Ukraine on Settlement of Some Issues Regarding the Debt Owed by Defence Companies (Belonging to the State Group "Ukroboronprom" (Ukrainian Defence Industry)) to the Aggressor State and/or Occupant State and Ensuring Their Stable Development" dated 12 July 2018. This law also contains a much less justifiable ban on the enforcing payment of other debts owed by the defence sector strategic enterprises, and thus creates the uneven working conditions and does not stimulate these companies to maintain a proper payment discipline.

Therefore, the **amendments**, introduced within three years of the start of the enforcement proceedings reform in 2016, **either solve the isolated problems of debts owed by the enterprises in a specific sector, without solving the overall issue of debts** (which clearly exacerbated the already existing non-payment crisis), **or contradict the very idea of the reform**.

The decision of the Constitutional Court of Ukraine as of 15 May 2019 ruled the unconstitutional provisions of Art.26 of the Law "On the Enforcement Proceedings" in the part of the mandatory payment of the advanced enforcement proceedings fees. It is hard to disagree with the Constitutional Court emphasising that the state has a positive obligation of the ensuring execution of the court decisions. However, using the logic of the state's positive obligation, one might ask whether it is constitutional to introduce a mandatory court fee payable when private individuals turn to court to defend their violated rights and interests. Nowhere in its text does Section 8 of the Constitution of Ukraine provide for a mandatory court fee.

Also, recognising the corresponding provisions of Art.26 of the Law unconstitutional, CCU has not analysed possible serious consequences of such approach, as this universal exemption from advance payment might lead to the situation where authorities and persons authorised to enforce the court judgments lack financial resources for the very process of court judgment enforcement. Distributing the full financial burden of the judgment enforcement process between all taxpayers instead of parties to the specific enforcement procedure does not look like a very just decision. In its decisions, the ECtHR foremost highlights the unacceptability of placing the excessive financial burden of the enforcement procedure on the enforcement creditor. This is the principle that guided lawmakers to relieving certain categories of enforcement creditors of this advance payment. Moreover, given that most EU countries use either private or mixed judgment enforcement form, such interpretation of ECtHR position would contradict the very philosophy of the judgment enforcement procedure typical for the majority of European countries.

Yet, the abovementioned CCU ruling indirectly raises another crucial issue – the abidance of government authorities by the court rulings. It is absurd that decisions made on behalf of the state in cases where this very state is the debtor (as represented by a certain government body) may require the enforcement. When the state ignores its own decisions, the enforcement creditor is a priori the discriminated party. This is the reason, not the advance payment, that violates the right guaranteed by Art.6 of the Convention. In the "*Ivanov v. Ukraine*" and "*Burmych and others v. Ukraine*" cases, ECtHR emphasised the importance of introducing the effective mechanisms for the execution of judgments made by the domestic courts.

It should be noted that for **resolving the problem of the non-execution of the court decisions by the state, it is not just the legal framework that has to be changed, but the way of thinking of the public**

servants, as the state has to abide by the court decisions voluntarily without any enforcement proceedings.

Another major failure of the reform is the critically small number of private bailiffs. According to the preliminary plan of the reform, by the end of 2016, there should have been up to 1,000 private bailiffs. Yet as of June 2019, only 180 private bailiffs have opened their offices. The total number of the enforcement cases handled by private bailiffs is about 1% of the total number of all cases in the country.

There are several reasons for such a small number of private bailiffs. At the very start of the reform, the Ministry of Justice allowed only one establishment to train private bailiffs – the Institute of Advanced Training of the Ministry of Justice, – which was already against the ideas behind the bills. The adopted Law "On the Bodies and Persons that Enforce the Court Decisions and Decisions of Other Authorities" ensured just one filter for bailiff certification – the corresponding examination granting admission only to persons who possess the required level of knowledge and skills. The choice of training programmes and institutions was up to the applicants. Thus, by establishing this artificial filter, lawmakers automatically assured that the number of applicants would be insufficient. Later, the regulator allowed more educational establishments in, but this failed to attract a lot of applicants for one more reason.

In the middle of 2017, after a number of exams, where most applicants were successful, test results suddenly became reverse. The scandal that erupted gradually subsided, but it undermined the legal community's trust in the admission procedure.

The Reform Prospects and Directions

Despite the negative trends, further progress of the enforcement proceedings reform is irreversible.

First of all, the package of laws that was adopted on 2 June 2016 was the result of more than a year and a half of work on their development. Long before that there have been discussions about reducing state involvement in the judgment enforcement. Previous convocations of Verkhovna Rada registered corresponding bills, but it never came to actual voting. Yet all of these factors together ensured presence of political consensus for the adoption of this reform.

Secondly, transition from state to mixed or private form of the judgment enforcement is a generally accepted European practice. The reasons include:

(*a*) reducing the state budget expenditure, and thus the taxpayers expenditure on these processes;

(*b*) increasing bailiffs' accessibility and transparency standards, meant to increase people's trust;

(*c*) increasing the efficiency of these services, as the motivational component in the form of percentage from the collected sums is not something employed in the government sector;

(*d*) reducing corruption within the profession as private bailiffs are interested in the results of their work, as well as ensuring the integrity of their professional image, which is also the guarantee of the bailiff's success.

However, the irreversibility of the reform is not something that will ensure social satisfaction until the rate of the executed rulings reaches average European level, and citizens and businesses get positive results in the process of restoring their rights.

What are the steps that need to be taken in the near future?

1. The change of the admission procedure into the private bailiff profession and restoring a society's trust in the testing results to ensure that at least 1,000 professionals are in the market by the end of 2019.

2. Developing and introducing the online system for locating the bank accounts of debtors (legal entities and private individuals). It is important to make sure that this system does not violate the bank secrecy or legislation on the personal data protection, and does not allow for prying out information outside of the specific enforcement actions. To handle this issue, changing the enforcement proceedings legislation alone is not enough, the alteration of the National Bank's regulatory framework is necessary. The key part of the solution algorithm is developing and introducing quality software.

3. Complete transition to online execution of the enforcement actions aimed at locating and arresting the assets and property rights of debtors. In order to accomplish this task, it is necessary to develop software that combines data from different authorities' databanks, which requires coordination by the Government of Ukraine.

4. Comprehensive analysis of reasons that led to the introduction of all types of moratoria on execution of the court judgments, and development of the national strategy for eliminating such conditions followed by the phased cancellation of the corresponding moratoria.

5. Strengthening the court supervision over execution of the court judgments and decisions of other bodies, with the purpose of building a continuum from filing a lawsuit to the judgment execution.

The implementation of this part of recommendations requires the amending of the current procedure codes of Ukraine – the Civil Procedure, Economic Procedure, Administrative Procedure and Criminal Procedure Codes.

The Non-Execution of the Court Judgments Through the Light of the ECtHR Decisions and the Department for the Execution of Judgments of the ECtHR of the Council of Europe

Ukraine ratified ECHR in 1997. Art.6 of the Convention, as noted before, guarantees the right to a fair trial. In a number of its decisions (not just regarding Ukraine, for example "*Hornsby v. Greece*", "*Immobiliare Saffi v. Italy*") the ECtHR highlighted the importance of executing the court judgments in the context of the right to a fair trial.

Since Ukraine became a party of the convention, tens of thousands of Ukrainian citizens have turned to the ECtHR claiming that their rights guaranteed by the Convention, specifically Art.6, were being violated by the state of Ukraine in the part of non-execution of the domestic court decisions. The ECtHR ruling on "*Zhovnir v. Ukraine*" case as of 2004 and "*Ivanov v. Ukraine*" as of 2009 testified a systemic violation of the right to a fair trial and obliged Ukraine to take general action to prevent further violation of human rights guaranteed by Art.6 of the ECHR.

Given the non-receding flow of applications from Ukrainian citizens who complained to the ECtHR about violation of their rights guaranteed by Art.6 of the ECHR, as well as because as a party to the Convention in its communications with the Council of Europe Ukraine failed to provide the necessary proof of taking the sufficient general action to eliminate the causes of systemic violations of human rights guaranteed by Art.6 of the Convention, in June 2017, judgments "*Zhovnir v. Ukraine*" and "*Ivanov v. Ukraine*" became subject to special supervision measures of the Department for the Execution of Judgments of the ECtHR of the Council of Europe.

The fact that Ukraine ignored the special supervision measures and failed to eliminate violations of human rights guaranteed by the Convention, as well as numerous citizen applications to the ECtHR led to ECtHR's unprecedented decision – "*Burmych and Others v. Ukraine*", in which the ECtHR struck out 12,148 cases from its list and transferred them to the Department for the Execution of Judgments of the ECtHR of the Council of Europe saying that it makes no sense to issue another Court ruling, given that (*a*) it will reiterate the "*Ivanov v. Ukraine*" ruling; (*b*) ECtHR is not just another legal authority within Ukraine's judicial system.

The uniqueness of this decision is that the ECtHR has found Ukraine in violation of the Convention, but has not issued a traditional ruling on the dispute (e.g., did not determine the amount of just satisfaction), but only affirmed that the ruling issued on 12,148 cases would reiterate the "*Ivanov v. Ukraine*" judgment. The Court has also given Ukraine a two-year term to adopt the *ad hoc* mechanism and use it to execute the domestic court decisions on cases included in the "*Burmych and Others v. Ukraine*" case.

However, as of June 2019, Ukraine not only has not executed the general measures to prevent further cases of violating human rights guaranteed by Art.6 of the Convention, but also has failed to introduce the *ad hoc* mechanism to ensure execution of the domestic court judgments, despite the fact that the corresponding bill has been submitted on 27 June 2018 ("On Amending the Certain Legislative Acts of Ukraine On Resolving the Issue of State Debt According to Court Judgments", reg.no. 8533).

Conclusions

The absence of the effective system of the court judgment execution makes one doubt whether the judicial power truly exists in Ukraine, thus causing real worries about democracy in the country.

The violation of human rights guaranteed by Art.6 of the ECHR is not just a violation of Ukrainians' rights, but also a failure to uphold the international legal obligations, which damages the international image of Ukraine.

The enforcement proceedings reform approved on 2 June 2016 started the process of reducing a state involvement in the judgment enforcement, and thus became a massive shift in the philosophy of the sector. At the same time, the analysis presented above confirms the insufficient decisiveness of steps taken towards ensuring the required institutional capacity of people authorised to enforce the court judgments. ■

THE ENFORCEMENT OF COURT DECISIONS IN THE CONTEXT OF THE RIGHT TO A FAIR TRIAL AND TO EFFECTIVE REMEDIES

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The constitutional reform in the field of justice in Ukraine has not only produced changes in the judicial system and innovated procedural law but also affected the adjacent areas of legal regulation, including the enforcement of judgments. Thus, in accordance with Article 129-1 of the Constitution of Ukraine, the court decision shall be legally binding. The State shall ensure that the court decision is enforced in the manner prescribed by law. The court shall supervise the enforcement of the court decision. These constitutional provisions are duly reflected in the sectoral legislation. For example, Article 18 of the Civil Procedure Code (CPC) of Ukraine establishes that "court decisions that have entered into force shall be binding for all state authorities and local self-government bodies, enterprises, institutions, organisations, public servants or officials and citizens and shall be enforceable across the entire territory of Ukraine, and in cases established by international treaties agreed to be binding by Verkhovna Rada of Ukraine – beyond its borders. The non-execution of court decision shall constitute grounds for liability established by law". And finally, along with the adoption of amendments to the Constitution, the Ukrainian parliament has passed two more laws that directly regulate the enforcement of the court decisions system: "On the Agencies and Persons Performing the Compulsory Enforcement of Court Decisions and Decisions of Other Authorities" and "On the Enforcement Proceedings", which reflect new organisational, functional and procedural principles of the regulation of the said segment of legal practice.

Without a doubt, the harmonisation of Ukraine's national legislation with the European standards of a fair trial is the current priority of the constitutional reform in the field of justice and adjacent institutions. The key in this regard is para. 1 of Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter the Convention), according to which in the determination of his civil rights and obligations […] everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. The aforementioned provision, commonly known as the "right to a fair trial", is an integral human right, which naturally links to, and forms a part of the international legal principle of the rule of law. One of the guarantees of a fair trial, put forward in the case-law of the European Court of Human Rights (hereinafter the ECHR, or the Court) on the application and interpretation of this article, is the requirement for compulsory execution of the court decisions, that is, the guarantee of their enforcement.

One might think that the all-round improvement of the procedural law aimed at bringing it in line it with the international standards should significantly increase the efficiency of enforcement proceedings, but statistics reveal systemic problems in this area. For example, in 2018 Ukraine was ranked third by the total number of pending applications to the Court, accounting for 12.9% (7,250 applications),[1] and also ranked third (behind Russia and Turkey) by the number of decisions taken against it in 2018 (91, or 8.97%

[1] Analysis and statistics 2018. – European Court of Human Rights, January 2019, p.8, *https://www.echr.coe.int/Documents/Stats_analysis_2018_ENG.pdf*.

of all decisions made in 2018).[2] As of 30 June 2019, as many as 7,850 complaints were filed against Ukraine, representing 13.8% of the total number of applications in 2019.[3] During the entire period of the ECHR operation up until 2018, the Court considered 82,557 complaints against Ukraine,[4] and at least 29 thousands of which arising from different systemic problems in the enforcement of judgements.[5]

According to the ECHR statistics for the period from 1959 through 2018, nearly 40% of the violations found by the Court were related to Article 6 of the Convention, whether on account of the fairness (17.01%) or the length (20.06%) of the proceedings.[6] This points at the presence of problems in observing a reasonable time of a trial and in enforcing the court decisions in the European region in general.

The Court's pilot decision in the case of *Yuriy Mykolayovych Ivanov v. Ukraine*[7] in 2009 was of major importance. The failure to enforce the domestic decisions was recognised as a systemic problem of the national legal order and recommendations were made to introduce effective remedies for the entitlement to the hearing and enforcement of judgments within a reasonable time. Despite the aforementioned Court decision and the long period since its adoption, it is yet to be enforced in Ukraine. This delay and endless applications of the similar nature, filed after the pilot decision, forced the Court to take a drastic action, which resulted in the decision in the case of *Burmych and Others v. Ukraine*.[8] It was unique because the Court changed its practice and, for the first time, without investigating the factual situations, added to five pending applications another 12,143 regarding the excessive length of the non-enforcement of decisions, recognising them as part of a previous pilot decision and referring these cases to the Committee of Ministers of the Council of Europe (CMCE) to afford just satisfaction.

The above suggests that only partial steps have actually been taken towards the harmonisation of national procedural law with the relevant international standards to guarantee everyone's right to a fair trial. Therefore, along with the issues related to ensuring a reasonable time for hearing, there is a problem of using effective remedies for the right to a fair trial and the enforcement of court decisions within a reasonable time in the national legal order, based on the Court's case-law in applying Article 6, para. 1 and Article 13 of the Convention.

The Enforcement of Court Decisions in the Context of Article 6 para. 1 of the Convention and other Convention Rights

The execution of judicial decisions as an element of the right to fair trial per se is not included in the text of Article 6, para. 1 of the Convention but owing to the evolutionary interpretation of this article in the ECHR case-law, it is increasingly recognised as an integral guarantee of this right. For the first time, said provision was duly substantiated in the judgement in the case of *Hornsby v. Greece*, in which the ECHR has re iterated that, according to its established case-law, Article 6 para. 1 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 Article 6 should describe in the detail the procedural guarantees afforded to litigants – proceedings that are fair, public and expeditious – without protecting the implementation of judicial decisions; to construe Article 6 as being concerned exclusively with an access to a court and the conduct of proceedings would be likely to lead to the situations incompatible with the principle of the rule of law which the Contracting States undertook to respect when they ratified the Convention. The execution of a judgment given by any court must therefore be regarded as an integral part of the "trial" for the purposes of Article 6.[9]

It should be noted that the ECHR's case-law in the context of Article 6 para. 1 is quite extensive and enables tracking the immanent links between the compulsory enforcement of decisions and other guarantees of the right to a fair trial. For example, the ECHR reiterated that the right to a court also means that the execution of a judicial decision cannot be unduly delayed. In the case of *Immobiliare Saffi v. Italy*, the Court has recognised a failure to enforce a domestic court decision to terminate the lease and evict the tenant for 11 years as violation of not only the reasonable length of the court proceedings but also the right of access to a court.[10]

2 The ECHR in Facts and Figures 2018. – European Court of Human Rights, 2019, p.5, *https://www.echr.coe.int/Documents/Facts_Figures_2018_ENG.pdf*.

3 Pending Applications Allocated to a Judicial Formation. – European Court of Human Rights, 2019, *https://www.echr.coe.int/Documents/Stats_pending_month_2019_BIL.pdf*.

4 Overview 1959-2018. ECHR. – European Court of Human Rights, March 2019, p.5, *https://www.echr.coe.int/Documents/Overview_19592018_ENG.pdf*.

5 *Burmych v. Ukraine* [GC], №46852/13 and others, 12 October 2017, par.44, *http://hudoc.echr.coe.int/eng?i=001-178082*.

6 Overview 1959-2018. ECHR, p.6

7 *Yuriy Nikolaevich Ivanov v. Ukraine,* №40450/04, 15 October 2009, *http://hudoc.echr.coe.int/eng?i=001-95032*.

8 *Burmych v. Ukraine* [GC], №46852/13 та інші, 12 October 2017, *http://hudoc.echr.coe.int/eng?i=001-178082*.

9 *Hornsby v. Greece*, №18357/91, §40, 25 February 1997, *http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-57988*.

10 *Immobiliare Saffi v. Italy,* №22774/93, §66, 28 July 1999, *http://hudoc.echr.coe.int/eng?i=001-58292*.

In so far as the enforcement proceedings constitute an integral part of the trial, the Court considers that the right to a court, along with the access to first-instance and appeal courts for the determination of civil rights and obligations, likewise protects the right of access to the enforcement proceedings, that is, the right to have the enforcement proceedings initiated.[11]

For example, the ECHR has noted that the excessive payment of a court fee may restrict the right of access to a court. Similar approach is applied to the enforcement proceedings. In the case of *Apostol v. Georgia*, the Court recognised that the applicant's right of access to a court was restricted by obliging him to bear excessive preliminary expenses for the enforcement proceedings. In this case, the Court has considered 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 the enforcement of judgments that is effective both in law and in practice.

The authorities' stance of holding the applicant responsible for the initiation of the 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.[12] Therefore, in the Court's view, the lack of flexible legal norms on the effective mechanism for the instalment, deferral and exemption from advance payments puts access to the court at risk in the context of Article 6 para. 1 of the Convention.

In this context, it is worthy to review the Decision of the Constitutional Court of Ukraine (CCU) in the case on the constitutional complaint of Vira Khlipalska on the conformity of the provisions of Article 26.2 of the Law of Ukraine "On the Enforcement Proceedings" (regarding the provision of the enforcement of a court decision by the state) to the Constitution of Ukraine (constitutionality). In this case, the CCU has declared relevant legislative provisions that oblige an applicant to pay the advance payment in the enforcement proceedings as not complying with the Constitution of Ukraine. The CCU specifically noted that "the imposition of the mandatory advance payment by a person in whose favour the court decision was adopted, as a necessary condition for the commencement of the enforcement of such decision by the state executive service, shoulders this person with the financial burden to ensure the functioning of the court enforcement system, implemented by the state, which does not guarantee the access of each such person to the specified system, therefore, does not provide in all cases and under any conditions full and timely enforcement of this decision, and its mandatory nature".[13] Therefore, the CCU has in fact offered stronger guarantees than those provided by the ECHR, since the latter does not recognise the need to pay an advance as a violation of the right of access to a court, pointing only at the need to respect the principle of proportionality when applying relevant legal provisions at the national level.

At the same time, the ECHR case-law reveals very strong links between the need to enforce the court decisions and requirement regarding a hearing within a reasonable time in civil cases. Specifically, in the case of *Stadnyuk v. Ukraine* the Court has reiterated that the court proceedings and the enforcement proceedings are stages one and two in the total course of proceedings within a reasonable time.[14] According to the established practice, the expiration of a reasonable time of a litigation is always linked to the final decision in the case and its enforcement.[15]

In cases involving breaches of a reasonable time of the enforcement in civil cases, the Court has formulated basic standards to be applied in the enforcement proceedings at the level of the national legal orders of the Contracting States. In particular, the Court notes that the enforcement by its nature needs to be dealt with expeditiously,[16] while its length and the lengths of proceedings are to be considered in the light of circumstances of the case and the following criteria: (1) the complexity of the case, (2) the conduct of the applicant, (3) the conduct of the relevant authorities, and (4) the importance of what is at stake for the applicant in the litigation.[17] While the Court has due regard to the domestic statutory time-limits set for the enforcement proceedings, their non-respect does not automatically amount to a breach of Article 6, para. 1 of the Convention,[18] as some delays may be justified in particular circumstances. But it may not, in any event, be such as to impair the essence of the right protected.[19]

[11] *Apostol v. Georgia*, №40765/02, §56, 28 November 2006, *http://hudoc.echr.coe.int/eng?i=001-78157*.

[12] Ibid, § 56-65.

[13] Decision of the CCU No. 2-r (II) dated 15 May 2019 in the case upon the constitutional complaint of Vira Khlipalska on the conformity of the provisions of Article 26.2 of the Law of Ukraine "On the Enforcement Proceedings" (regarding the provision of enforcement of a court decision by the state) to the Constitution of Ukraine (constitutionality).

[14] *Stadnyuk v. Ukraine,* №30922/05, §21, 12 November 2008, *http://hudoc.echr.coe.int/eng?i=001-89881*.

[15] *Estima Jorge v. Portugal*, №24550/94, §35, 21 April 1998, *http://hudoc.echr.coe.int/eng?i=001-58155*.

[16] *Comingersoll S.A. v. Portugal* [GC], №35382/97, §23, 6 July 2000, *http://hudoc.echr.coe.int/eng?i=001-58562*.

[17] *Nuutinen v. Finland*, №32842/96, §110, 27 June 2000, *http://hudoc.echr.coe.int/eng?i=001-58736*.

[18] *Burdov v. Russia* (№2), №33509/04, §67, *http://hudoc.echr.coe.int/eng?i=001-90671*.

[19] *Jasiuniene v. Lithuania*, №41510/98, §27, 6 March 2003, *http://hudoc.echr.coe.int/eng?i=001-60975*.

The ECHR has always considered the State to be responsible for ensuring the effective enforcement. Thus, according to the ECHR, 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,[20] as State has a positive obligation to organise a system for the enforcement of judgments that is effective both in law and in practice.[21] Instead, the Court's task is to consider whether the measures taken by the national authorities to have the decisions concerned executed were adequate and sufficient, for when the competent authorities are required to take action to execute a judicial decision and fail to do so – or to do it properly – their inertia engages the responsibility of the State under Article 6 para. 1 of the Convention.[22]

However, there is a difference between cases where the debtor in the enforcement proceedings is an individual or a private entity, as well as cases where the State is a debtor.

In cases of the execution of a final court decision rendered against private actors, the State is not, as a general rule, directly liable for debts of private actors and its obligations under Article 6 and Article 1 of Protocol No. 1 are limited to providing the necessary assistance to the creditor in the enforcement of the respective court awards, for example, through the enforcement proceedings or bankruptcy procedures. When the authorities are obliged to act in order to enforce a final court decision and they fail to do so, their inactivity may, in certain circumstances, engage the State's responsibility. The Court's task in such cases is to examine 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.[23]

Other approach is applied in cases where an applicant has obtained a final judgement against the State. According to the Court, this person may not be expected to bring the 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 the enforcement of judgment. A successful litigant, however, 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 measures.

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 judgment. In the Court's view, 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 Convention 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.[24]

Proceeding from the above, the Court considers that the burden of the enforcing judgements against the State shall rest with the state authorities and begin from the date on which the decision becomes binding and enforceable. At the same time, the complexity of the national enforcement procedure or the State's budgetary system cannot relieve it from obligation under the Convention to guarantee everyone the right to obtain enforcement of a binding and enforceable judgment within a reasonable time. Nor can the State refer to the absence of funds or other resources as grounds for non-payment of debt established by a court decision.[25] Similar approach should be applied to the execution of final court decisions rendered against the entities that do not enjoy "sufficient institutional and operational independence from the State".[26]

The Court's consideration of cases in the context of other Convention rights is important for understanding the nature of requirement for the strict enforcement of judgements that have become final. Thus, in accordance with Article 1 of the Protocol No. 1 to the Convention, every natural or legal person is entitled to a peaceful enjoyment of his possessions. In the decision on the case of *Burdov v. Russia*, the Court has reiterated that a "claim" can constitute a "possession" within the meaning of Article 1 of the Protocol No.1 if it is sufficiently established to be enforceable. In this case, the Court has admitted that the court decisions provided the applicant with the enforceable claims and not simply a general right to receive support from the State. Accordingly, the impossibility for the applicant to obtain the execution of these judgements constitute the interference with his right

[20] *Marinković v. Serbia*, №5353/11, §37, 22 October 2013, *http://hudoc.echr.coe.int/eng?i=001-127124*.
[21] *Fuklev v. Ukraine*, №71186/01, §84, 7 June 2005, *http://hudoc.echr.coe.int/eng?i=001-69261*.
[22] *Garcia Mateos v. Spain*, №38285/09, §44, 19 February 2013, *http://hudoc.echr.coe.int/eng?i=001-116985*.
[23] *Marinković v. Serbia*, №5353/11, §38, 22 October 2013, *http://hudoc.echr.coe.int/eng?i=001-127124*.
[24] *Akashev v. Russia*, №30616/05, §21-22, 12 June 2008, *http://hudoc.echr.coe.int/eng?i=001-86953*.
[25] *Burmych v. Ukraine* [GC], №46852/13 та інші, §70, 12 October 2017, *http://hudoc.echr.coe.int/eng?i=001-178082*.
[26] *Marinković v. Serbia*, №5353/11, §39, 22 October 2013, *http://hudoc.echr.coe.int/eng?i=001-127124*.

to a peaceful enjoyment of his possessions, as set out in the first sentence of the first paragraph of Article 1 of the Protocol No. 1 to the Convention.[27]

In addition, the non-enforcement of judgment may be also considered as a violation of Article 13 of the Convention, which enshrines the right to effective remedies. In particular, in the case of *Kudla v. Poland*, the Court agrees that the time has come to review its case-law, according to which violations of Article 6, para. 1 of the Convention excluded a possibility to examine the applicant's complaint under Article 13 taken separately, given "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.[28] Currently the Court determines a simultaneous violation of Article 6 para. 1 and Article 13 of the Convention if the applicant's right to enforce the judgment within a reasonable time has been violated and there were no effective domestic remedies available.

The non-enforcement of court decisions under specific categories of cases, such as child's return cases, can be also viewed as a violation of Article 8 of the Convention, which establishes every person's right to respect for his or her private and family life. In such cases, the Court usually "skips" Article 6 in consideration of such violations, giving preference to Article 8.

Specifically, in the case of *Sylvester v. Austria* the Court noted that while Article 6 affords a procedural safeguard, namely the "right to a court", Article 8 serves a wider purpose of ensuring a proper respect for, *inter alia*, the family life. The difference between the purpose pursued by the respective safeguards afforded by Articles 6 and 8 may, in the light of particular circumstances, justify the examination of the same set of facts under both Articles. In this case, however, the Court found that the lack of respect for the applicant's family life resulting from the non-enforcement of the final return order was in the heart of the complaint. Having regard to its findings under Article 8, which focus on the non-enforcement of a final court order, the Court considered that it was not necessary to examine the facts also under Article 6 of the Convention.[29]

Therefore, the issue of the enforcement of judgments in the light of the ECHR's case-law leads us to a conclusion that the **Court interprets the requirement to enforce the final judgments in the context of at least several Convention rights,** including **the right to a fair trial** (Article 6 para. 1 of the Convention), **the right to peaceful enjoyment of possessions** (Article 1 of Protocol No. 1 to the Convention), **the right to an effective remedy** (Article 13 of the Convention) and **the right to respect for private and family life, his home and his correspondence** (Article 8 of the Convention). In this context, however, Article 6, para. 1, which establishes the right to a fair trial in civil cases, should be considered as playing the leading role, and it is the interpretation of said right that allowed the Court formulating basic standards in the sphere of the enforcement proceedings arising from its practice.

Effective Remedies for the Right to Enforce a Judgment Within a Reasonable Time in the Context of Article 13 of the Convention

In accordance with Article 13 of the Convention, anyone whose rights and freedoms as set forth in the Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity. This right has to be interpreted against the principle of subsidiarity as one of key principles of the Convention system, under which the State's positive obligation is to protect human rights and freedoms and establish additional guarantees first and foremost within their own legal system, before having to set in motion the international machinery of complaint before the Court.[30] In other words, the task of ensuring respect for the rights enshrined in the Convention lies first and foremost with the authorities in the Contracting States rather than with the Court. The latter can and should intervene only where the domestic authorities fail in this task.[31]

Within the Convention system, the principle of subsidiarity implicitly originates from the provisions of Articles 1, 13, 35 and 41 of the Convention, which reflect two main aspects of subsidiarity – procedural (functional) and substantive (material). The procedural aspect of subsidiarity governs the working relationship between the Court and the national authorities and the division of responsibility for action and intervention.[32] It regulates the procedure for the use of the Convention mechanism of protection and provides for the need to appeal to the domestic authorities capable of providing effective and adequate protection before applying to the Court.

In the literature, this aspect of subsidiarity is linked, *first*, to exhausting all domestic remedies

[27] *Burdov v. Russia,* №59498/00, §40, 7 May 2002, *http://hudoc.echr.coe.int/eng?i=001-60449*.

[28] *Kudla v. Poland*, №30210/96, §148, 26 October 2000, *http://hudoc.echr.coe.int/eng?i=001-58920*.

[29] *Sylvester v. Austria,* №36812/97, 40104/98, §76-77, 24 April 2003, *http://hudoc.echr.coe.int/eng?i=001-61054*.

[30] *Kudla v. Poland*, №30210/96, §152, ECHR 2000-XI, *http://hudoc.echr.coe.int/eng?i=001-58920*.

[31] Interlaken Follow-Up. Principle of Subsidiarity, 2010, p.20, *https://www.echr.coe.int/Documents/2010_ Interlaken_Follow-up_ENG.pdf*.

[32] Ibid, § 17.

before applying to the Court (para. 1 of Article 35 of the Convention), and *second*, to respecting further requirements to the admissibility of application in the Court (Articles 1, 34 and 35 of the Convention).[33] The substantive aspect of subsidiarity governs responsibilities of the Court for decision-making and redress,[34] providing that when a person seeks protection, the Convention authorities should make, as far as possible, a proper conclusion about legal and factual features which characterise the life of society in the State concerned.[35] This aspect of subsidiarity includes two so-called jurisprudential "doctrines" (as they have been developed by the Court): the fourth-instance doctrine and the margin of appreciation of domestic authorities. Substantive subsidiarity is also understood as underpinning a third rule: the principle of favour.[36] Some authors, along with the procedural and substantive aspects of subsidiarity, under the provisions of Article 13 of the ECHR, also distinguish the remedial aspect, which reflects the need for an effective remedy at the national level for which the applicant is protected. asks for a complaint to the ECtHR. Along with the procedural and substantive aspects of the subsidiarity based on the provisions of Article 13 of the Convention, some authors also distinguish the third aspect related to remedies (*remedial*)[37], which implies the need for effective remedies at the national level for a particular right which the applicant asks to protect in his application to the Court.

It is worthy to consider the correlation between provisions of Article 6 para. 1 and Article 13 of the Convention, given that both articles include the procedural safeguards. There is no doubt that Article 6 provides broader safeguards than Article 13. In many previous cases in which the Court has found a violation of Article 6, para. 1, it did not consider as necessary to rule on the accompanying complaint made under Article 13, as Article 6, para. 1 was deemed to constitute a *lex specialis* in relation to Article 13. In the past, the Court noted that since the requirements of Article 6 para. 1 of the Convention are stricter than those laid down in Article 13, where the Court has found a breach of Article 6 para. 1, it considered it unnecessary to verify whether it Article 13 has been breached, as the requirements of the latter were absorbed by those of the former.[38]

In light of the continuing accumulation of applications linked to the excessive length of the judicial proceedings, in the case of *Kudla v. Poland* the Court has drawn attention to the "important danger that exists for the rule of law within the national legal orders when the excessive delays in the administration of justice occur in respect of which litigants have no domestic remedy".[39] In this case, the Court found a simultaneous violation of Article 6, para. 1 and Article 13 of the Convention, ECHR, suggesting that there was no absorption of one article by another, as "the question of whether the applicant did benefit from a trial within a reasonable time in his case […] is a separate legal issue from that of whether there was available to the applicant under the domestic law an effective remedy to ventilate a complaint on that ground".[40] Against this background, the Court perceives the need to examine the applicant's complaint under Article 13 taken separately, notwithstanding its earlier finding of a violation of Article 6 § 1 for failure to try him within a reasonable time.

To date, the ECHR has adopted four pilot judgements in respect of the non-execution or delayed execution of the judicial decisions against Ukraine (*Yuriy Mykolayovych Ivanov v. Ukraine*[41]), Russia (*Burdov v. Russia (#2)*[42] and *Ilyushkin and Others v. Russia*[43]) and Moldova (*Olaru and Others v. Moldova*).[44] All of these decisions concern two recurring issues at the level of domestic law: *first*, the excessive delays in the

[33] Besson S. Subsidiarity in International Human Rights Law – What is Subsidiary about Human Rights? – *The American Journal of Jurisprudence*, Vol.61. Issue 1. June 2016, p.80.

[34] Interlaken Follow-Up. Principle of Subsidiarity, p.6.

[35] Petzold H. Convention and the principle of Subsidiarity. – The European system for the protection of Human Rights, Dordrecht, Boston, London: Martinus Nijhoff Publishers, 1993, p.60.

[36] Besson S. Subsidiarity in International Human Rights Law – What is Subsidiary about Human Rights?

[37] Ibid, § 78.

[38] *Giuseppe Tripodi v. Italy*, №40946/98, §§14-15, 25 January 2000, *http://hudoc.echr.coe.int/eng?i=001-63466*.

[39] *Kudla v. Poland*, №30210/96, §148, 26 October 2000, *http://hudoc.echr.coe.int/eng?i=001-58920*.

[40] Ibid, § 147.

[41] *Yuriy Nikolaevich Ivanov v. Ukraine*, №40450/04, 15 October 2009, *http://hudoc.echr.coe.int/eng?i=001-95032*.

[42] *Burdov v. Russia* (№2), №33509/04, §131, 15 January 2009, *http://hudoc.echr.coe.int/eng?i=001-90671*.

[43] *Ilyushkin and Others v. Russia*, №5734/08, §74-75, 14 April 2012, *http://hudoc.echr.coe.int/eng?i=001-110439*.

[44] *Olaru and Others v. Moldova*, №476/07, §53-55, 28 July 2009, *http://hudoc.echr.coe.int/eng?i=001-93687*.

execution of the final judgements in which the state or the state-owned enterprise is the debtor; and *second*, the lack of the effective remedies for the right to a fair trial and the enforcement of judgment within a reasonable time. As a result, all these decisions indicate the obligation of States to take the appropriate measures to remedy these shortcomings in the national legal orders.

In its case-law interpretation of Article 6 para. 1 and Article 13 of the Convention, the Court has developed a system of "the effectiveness" criteria of remedies for the right to a fair trial and the enforcement of judgment within a reasonable time, based on the division of the latter into preventive and compensatory remedies. The main provisions within the ECHR case-law are as follows:

(1) the consolidation of the absolute and unconditional terms for the case hearing or execution of judgement is one of the best preventive remedies;

(2) the remedy must be efficient, sufficient and accessible, with the fairly short procedure;

(3) the remedy shall be effective if it can be used to accelerate the decision of the court hearing the case or if it provides the trial participant with an adequate compensation for the delay already taken;

(4) the remedy aimed at reviewing a process to prevent delays should be considered the most effective because it has undeniable advantages compared with remedies of a merely compensatory nature, as it prevents consistent violations in similar cases and does not simply correct *a posteriory* violation;

(5) the combination of two types of remedies, with one aimed at accelerating the process and the other determining compensation, is the best solution, with the preference given to accelerating over compensatory remedies;

6) the remedies should be applied both to pending applications and completed cases, while proceedings under this category of cases should be conducted according to special rules that are different from the ordinary;

(7) the remedy of compensatory nature must ensure the compensation for the material and non-pecuniary damage;

(8) the level of compensation should be adequate and consistent with the level of compensation awarded by the Court.[45]

The literature traditionally focuses more on the compensatory rather than preventive remedies of the right to a trial and enforcement of judgements within a reasonable time.[46] The nature and forms of the compensatory remedies applicable in cases of the breaches of right to a reasonable length of a trial and the right to a reasonable period of the enforcement are similar. This has been confirmed by multiple studies by the Committee of Ministers of the Council of Europe (CMCE), the European Commission for the Efficiency of Justice (*CEPEJ*) and the Venice Commission,[47] which devote plenty of attention to this issue. In cases where the national law guarantees compensation for breach of terms of both judicial proceedings and the enforcement of judgements, the remedies are generally identical. However, not all countries provide the effective remedies in both cases. According to the *CEPEJ* data presented in its 2016 report, 46 participating States have set up specific systems which make it possible for the court users to be compensated following "the dysfunctions within the court system which have affected them"; however, the excessive lengths of the judicial proceedings are subject to compensation in 37 States, whereas the non-enforcement of the court decisions can be subject to compensation in 25 States.[48]

The ECHR set key criteria for verification of the effectiveness of a compensatory remedy in respect of the excessive length of the judicial proceedings in the context of Article 6, para. 1 and Article 13, which are as follows:

(*a*) an action for the compensation must be heard within a reasonable time;

(*b*) the compensation must be paid promptly and generally no later than six months from the date on which the decision awarding the compensation becomes enforceable;

(*c*) the procedural rules governing an action for the compensation must conform to the principle of fairness guaranteed by Article 6 of the Convention;

(*d*) the rules regarding legal costs must not place an excessive burden on litigants where their action is justified;

[45] See: *Vernillo v. France*, 20 February 1991, § 27, Series A №198, *http://hudoc.echr.coe.int/eng?i=001-57672*; *Dalia v.France*, 19 February 1998, §38, ECHR 1998-I, *http://hudoc.echr.coe.int/eng?i=001-58130*; *Kudla v. Poland*, №30210/96, §§157-159, ECHR 2000-XI, *http://hudoc.echr.coe.int/eng?i=001-58920*; *Mifsud v. France*, №57220/00, §15, ECHR 2002-VIII, *http://hudoc.echr.coe.int/eng?i=001-22666*; *Paulino Tomas v. Portugal*, №58698/00, ECHR 2003-VIII, *http://hudoc.echr.coe.int/eng?i=001-23610*; *Scordino v. Italy*, №3681/97, ECHR 2003-IV, *http://hudoc.echr.coe.int/eng?i=001-72925*.

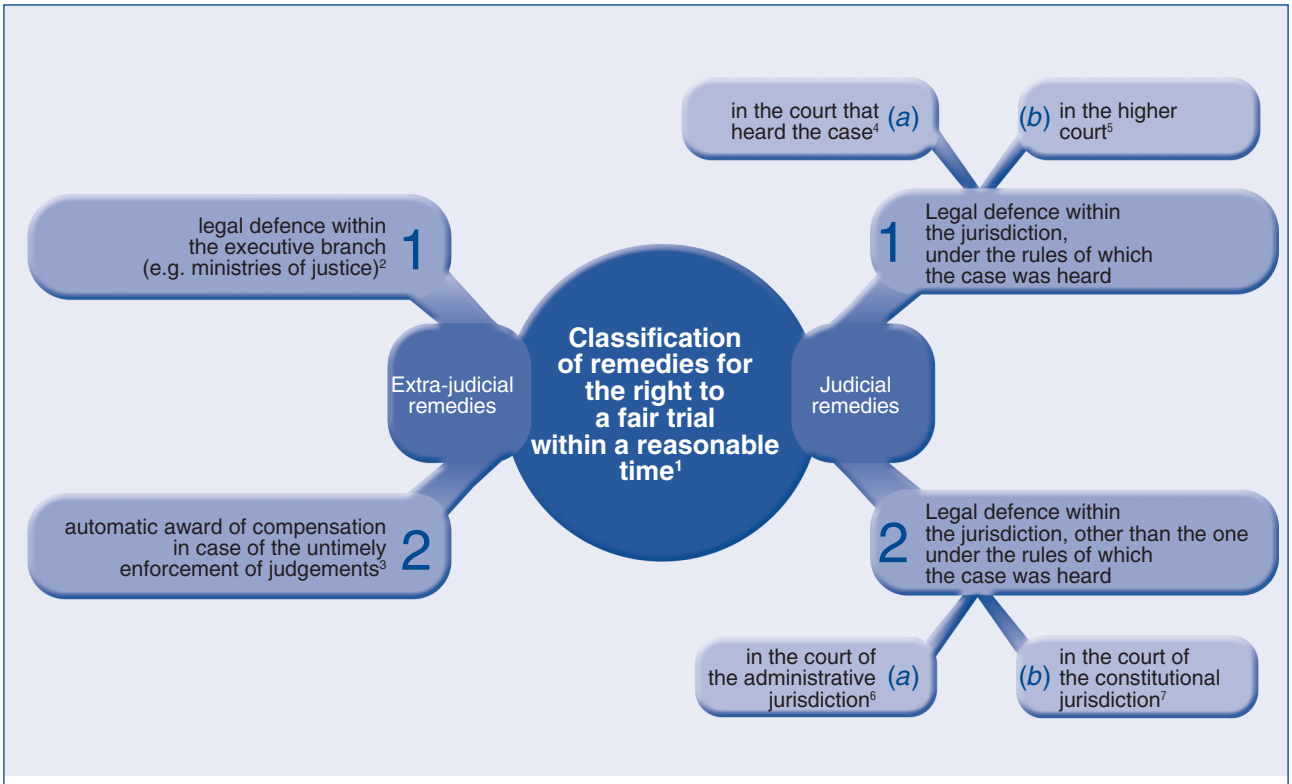
[46] See: The Right to Trial within a Reasonable Time and Short-term Reform of the European Court of Human Rights. – Round Table, organized by the Slovenian Chairmanship of the Committee of Ministers of the Council of Europe, Bled, Slovenia, 21-22 September 2009; Ljubljana: Ministry of Foreign Affairs: Ministry of Justice, 2009; T. Tsuvina. The right to a trial in civil procedure. – Kharkiv, Slovo, 2015, p.255-278; N. Sakara. Protection of the right to a fair trial: Problems and perspectives. – "Juryst Ukrayiny", 2013p., №2. p.57-62.

[47] See: Recommendation Rec(2004)6 of the Committee of Ministers to member states on the improvement of domestic remedies, adopted by the Committee of Ministers on 12 May 2004; Recommendation CM/Rec(2010)3 of the Committee of Ministers to member states on effective remedies for excessive length of proceedings, adopted by the Committee of Ministers on 24 February 2010; Report of the European Commission for Democracy Through Law (Venice Commission) on the Effectiveness of National Remedies in Respect of Excessive Length of Proceedings CDL-AD(2006)036rev; Good practice Guide on Enforcement of Judicial Decisions CEPEJ(2015)10 etc.

[48] European Judicial systems. Efficiency and quality of justice. – CEPEJ Studies №23, Edition 2016 (data 2014), p.179, *http://www.just.ro/wp-content/uploads/2015/09/2016-CEPEJ-Study-Overview-EN.pdf*.

(*e*) the level of the compensation must not be unreasonable in comparison with the awards made by the Court in similar cases.[49]

Having analysed foreign law, the following classification of the remedies for the right to a fair trial within a reasonable time is presented:



[1] For more detail on the specifics of listed remedies in different states see T. Tsuvina. The right to a trial in civil procedure. – Kharkiv, Slovo, 2015, p.255-278.

[2] In Bulgaria, a special inspection department within the Supreme Council of Justice was established to deal with complaints by individuals and l egal entities about the excessive length of court proceedings.

[3] Similar procedure established by the Law of Ukraine "On State Guarantees for Enforcement of Judgments" dated 5 June 2012, which does not meet the criteria of efficiency elaborated by the ECHR, as repeatedly emphasised by the latter.

[4] An opportunity to file an application (complaint, claim) to a court having rendered a decision in a case is possible in Moldova (the Law of the Republic of Moldova "On compensation by the state of damages caused by violation of the right to a fair trial within a reasonable time or the right to enforcement of judgements within a reasonable time"), Slovenia (*Grzincic v. Slovenia*, No.26867/02, § 96, 3 May 2007), Poland (*Charzynski v. Poland*, No.15212/03, §39, ECHR 2005-V) and the like.

[5] In 2001, the so-called Pinto Law entered into force in Italy, which provided for the possibility of filing an application for damages caused by the violation of a fair trial within a reasonable time in a higher court. Compensations can be also obtained in Croatia by filing a complaint in a higher court after the compensatory remedies reform in 2005.

[6] This procedure is provided for in Article 250 of the Code of Administrative Procedure of the Russian Federation.

[7] The constitutional complaint has been used as a remedy for the right to a fair trial within a reasonable time in Croatia, but in the case of *Soc v. Croatia* the ECHR found such remedy ineffective because the constitutional complaint could only be filed before conclusion on the merits of the case (*Soc v. Croatia*, No.47863/99, § 116, 09 May 2003), and then, since 2005, this compensatory remedy has been used within the system of courts of general jurisdiction by filing a complaint in a higher court.

It is more appropriate to introduce – at the national level – a judicial compensatory remedy for the right to a trial and the enforcement of judgment within a reasonable time. This issue requires a special regulation through a dedicated legal act, as well as the amendments to the procedural law. In particular, the legislative regulation is needed to determine the entities entitled to initiate proceedings in this category of cases, a period within which an appropriate application can be filed, conditions for granting and the procedure for calculating the size of compensation, etc. It is advisable that the award of the appropriate compensation to be considered by the court that heard the merits of the case and delivered a judgement. As a result of the trial, the court, having established a violation of the right to a fair trial within a reasonable time, should have the right to award just satisfaction for both material and non-pecuniary damage, as well as court costs at the expense of the state budget. The judgment in the specified category must be enforced within the shortest possible time.

At the same time, the emphasis in this context should shifted from the compensatory to preventive remedies, since the introduction of exclusively compensatory remedies is unable to eliminate the systemic problem of the non-enforcement of court decisions in a particular state. Meanwhile, the preventative

[49] *Burdov v. Russia* (no. 2), №33509/04, §99, 15 January 2009, *http://hudoc.echr.coe.int/eng?i=001-90671*.

remedies for the enforcement of judgment within a reasonable time should be considered broadly and take into account the organisational, procedural, budgetary and other measures.

The key provisions defining the effective remedies are presented in the Recommendations on the enforcement. They essentially provide the following:

(*a*) the enforcement should be defined and underpinned by a clear legal framework, setting out the powers, rights and responsibilities of the parties and third parties;

(*b*) the enforcement should be carried out in compliance with the relevant law and judicial decisions. Any legislation should be sufficiently detailed to provide the legal certainty and transparency to the process, as well as to provide for this process to be as foreseeable and efficient as possible;

(*c*) the parties should have a duty to co-operate appropriately in the enforcement process; in addition, and, in particular, in family law matters, the relevant authorities should facilitate this co-operation;

(*d*) defendants should provide up-to-date information on their income, assets and on other relevant matters;

(*e*) states should set up a mechanism to prevent misuse of the enforcement process by either party which should not be considered as a re-adjudication of the case;

(*f*) there should be no postponement of the enforcement process unless there are reasons prescribed by law. The postponement may be subject to review by the court;

(*g*) during the enforcement process, a proper balance should be kept between claimants' and defendants' interests, bearing in mind, in particular, the provisions of both Articles 6 and 8 of the ECHR. Where appropriate, the interests of the third parties should also be taken into account. When the enforcement process concerns family law matters, the interests of the family members should be taken into account; in addition, when the enforcement process concerns, in particular, the rights of children, the best interests of the child should be a primary consideration, in accordance with the international and national law;

(*h*) certain essential assets and income of the defendant should be protected, such as the basic household goods, key social allowances, money for the essential medical needs and necessary working tools.[50]

The model of the enforcement proceedings is one of the key factors that determines their efficiency. Depending on different criteria, different classifications of models of the enforcement of judgments and decisions of other bodies have been described in the literature. For example, Alan Uzelac distinguishes between the court system of the enforcement, the system of the enforcement by the executive branch of government, and the system of the enforcement by private bailiffs.[51] Burkhard Hess distinguishes between centralised and decentralised systems (depending on the number of the competent enforcement authorities) on the one hand, and the system of private bailiffs, the court enforcement system, the administrative enforcement system, and the mixed enforcement system (depending on the place of the enforcement authority) on the other.[52] Multiple *CEPEJ* studies and foreign publications on this issue point at increasing "privatisation"[53] of the enforcement of judgements and decision of other bodies, as increasingly more countries choose either mixed or private enforcement systems.[54] This trend is also observed in Ukraine, as the mixed system of the enforcement of judgements was introduced in 2016. At the same time, although the reform of the enforcement model in Ukraine should be welcomed, it cannot play a decisive role in addressing

[50] Recommendation Rec 2003(17) of the Committee of Ministers to member states on enforcement, adopted by the Committee of Ministers on 9 September 2003, *https://www.uihj.com/en/ressources/21628/65/council_ of_europe_recommendation_17_on_enforcement.pdf*.

[51] Uzelac A. The Role Played by Bailiffs in the Proper and Efficient Functioning of the Judicial System – an Overview with Special Consideration of the Issues Faced with Countries in Transition. – The Role, Organization, Status and Training of Bailiffs.Varna 2002, p.8.

[52] Hess B. Different Enforcement Structures. – Enforcement and Enforceability – Tradition and Reform. Intersentia Antwerp, Oxford, Poland, 2010, p.44-45.

[53] See: Uzelac A. The Role Played by Bailiffs in the Proper and Efficient Functioning of the Judicial System – an Overview with Special Consideration of the Issues Faced with Countries in Transition. *The Role, Organization, Status and Training of Bailiffs*.Varna 2002. P. 13

[54] See: Enforcement of Court Decisions in Europe. – CEPEJ, Studies №8 (2004), p.21, *https://rm.coe.int/european-commission-for-the-efficiency-of-justice-cepej-enforcement-of/168078829e*; European Judicial systems. Efficiency and Quality of Justice. – Council of Europe, 2010, p.254-255, *https://www.uihj.com/en/ressources/21628/75/european_judicial_systems_-_2010.pdf*; European Judicial systems. Efficiency and Quality of Justice. – Council of Europe, 2012, p.330, *http://www.euromed-justice-iii.eu/document/coe-2012-european-judicial-systems-edition-2012-2010-data-efficiency-and-quality-justice*; European Judicial systems. Efficiency and Quality of Justice. – Council of Europe, 2014, p.406, *https://rm.coe.int/european-judicial-systems-edition-2014-2012-data-efficiency-and-qualit/ 1680785d95*.

the systemic problem of the non-enforcement of judgments, the debtor in which is the state, because pursuant to the current legislation, the enforcement in this category of cases may not be carried out by private enforcement agents.

The effective remedies to be taken by Ukraine to overcome the crisis of the non-enforcement of judgments, the debtor in which is the state, have repeatedly been discussed by the CMCE. Specifically, it suggested a three-step strategy, including:

(1) the calculation of the amount of debt arising from the unenforced decisions;

(2) the introduction of a payment scheme with certain conditions, or containing the alternative solutions, to ensure the enforcement of still unenforced decisions;

(3) the 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 the budgetary constraints are duly considered when passing the legislation to prevent situations of the non-enforcement of the domestic court decisions rendered against the State or state enterprises.[55]

Other preventive measures include the following:

(*a*) the introduction of mechanisms to identify the proceedings that risk becoming excessively lengthy as well as the underlying causes, with a view also to preventing the possible violations of Article 6 of the Convention;[56]

(*b*) the improvement of the budgetary process and better implementation of the budget decisions to ensure the existence of necessary funds;

(*c*) the increased recourse to the judicial remedies to solve disputes and to control bailiffs;

(*d*) the effective liability of civil servants for the non-enforcement;

(*e*) the development of existing rules for the compulsory execution, including the improved procedure for the state assets seizure;

(*f*) the increased efficiency of bailiffs through the introduction of the execution sole responsibility;[57]

(*g*) the automatic enforcement of judgements taken against the state;

(*h*) the improvement of the legislative process through the introduction of the compulsory financial and economic rationale of bills;

(*i*) the full or partial lifting of moratoriums on the compulsory sale of the state-owned enterprises property[58] etc.

In summary, the issue of introducing the effective remedies for the right to a trial and to the enforcement of judgments within a reasonable time in view of the requirements of Article 6 para. 1 and Article 13 of the Convention remains urgent for Ukraine. It is also obvious that the compensatory remedy alone will be unable to resolve the systemic problem of the non-enforcement of judgments in Ukraine. Given the fact that in most cases the ECHR finds the violations of Article 6 para. 1 and Article 13 of the Convention due to failure to enforce judgments in which the debtor is the state, it is impossible to address this issue without the introduction of the effective regulation mechanisms.

In view of the above, it is advisable to introduce the comprehensive remedies, which would combine both judicial compensatory remedy (in cases where the breach of the right to the enforcement of judgment within a reasonable time has already occurred), and the preventive non-judicial remedy. The latter should cover the effective budgetary regulation to prevent future delays in the enforcement of court decisions, in which the debtor is the state or the state-owned enterprises, as well as to reform the model and procedural rules of the enforcement proceedings aiming to improve their efficiency. ■

[55] *Burmych v. Ukraine* [GC], №46852/13 та інші, 12 October 2017, *§128, http://hudoc.echr.coe.int/eng?i=001-178082*.

[56] Recommendation CM/Rec(2010)3 of the Committee of Ministers to member states on effective remedies for excessive length of proceedings, adopted by the Committee of Ministers on 24 February 2010, *https://vm.ee/sites/default/files/content-editors/Rec_2010_3%20_2_eng.pdf*.

[57] Non-enforcement of domestic judicial decisions in Ukraine: general measures to comply with the European Court's judgments (CM/Inf/DH(2007)30-rev) Memorandum prepared by the Department for the Execution of the judgments of the European Court (Application of Article 46 of the ECHR), *https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805ad2b9*.

[58] Report on the results of expert discussion "Enforcement of court decision in Ukraine: problems of the national legislation and practice in the light of the European Court of Human Rights decisions", September 2018 – CoE Project "Supporting Ukraine in the execution of judgements of the European Court of Human Rights", p.14-18.

THE JUDICIARY THROUGH THE EYES OF UKRAINIAN CITIZENS[1]

To assess the Ukrainian citizens' attitude to the judiciary, their perception of the different aspects of court operation, the sociological service of the Razumkov Centre has conducted two surveys.

The representative survey was conducted on 7-14 February 2019 in all regions of Ukraine except Crimea and the temporarily occupied territories of Donetsk and Luhansk oblasts.[2]

We used multistage sampling – random in the first stages of sampling and quota sampling of respondents in the last stage. In the first stage we selected communities for the survey, in the second – selected streets and laid out the routes, in the third – selected households, in the fourth – respondents.[3]

We selected 118 communities (67 urban and 51 rural). There were 2,016 respondents aged from 18 y.o. Theoretical error of the sample does not exceed 2.3%.

In the analysis, this survey's results are compared to the results of two other national studies done by the sociological service of the Razumkov Centre.[4]

Court exit polls were done on 11-25 February 2019.[5]

We used two-stage stratified sampling. In the first stage, we selected courts, in the second – respondents. We polled persons aged from 18 y.o., who came to the court regarding a court case (even if this case was not being heard that day, was postponed) as plaintiffs, defendants, accused, complainants, family members of a court case participant, witnesses, as they exited the courts we have previously selected.[6] There were 1,107 respondents from all regions of Ukraine except Crimea and the temporarily occupied territories of Donetsk and Luhansk oblasts. Theoretical error of the sample does not exceed 3.1%.

In the analysis, this survey's results are compared to the results of court exit polls done by the sociological service of the Razumkov Centre on 30 October – 1 November 2017.[7]

Sources of information on the work of Ukrainian courts

Most (55%) of Ukrainian citizens get their information on the work of Ukrainian courts from mass media only. 22.8% get a combination of information from the experience of relatives, friends and acquaintances and media information, 10.3% – a combination of their own experience, information from the experience of relatives, friends and acquaintances and media information. And just 3% of Ukrainian citizens assess the work of courts based on their own experience and the

1 The study was commissioned by the Council of Europe Office in Ukraine.

2 The results of this survey are representative of the adult population of territories controlled by Ukrainian government according to the main socio-demographic markers: age, gender, type of community, geographic area. Survey sampling was multistage – random in the first selection stages with quota selection of respondents in the last stage.

3 Communities in each oblast were stratified by their size and type (rural, urban). Inclusion probability for each community was proportional to the size of its population. We used a base number (generated by a random number generator) to select streets in the selected communities, where we then laid out interviewers' routes.

4 These surveys were conducted on 15-20 November 2012 (2,010 respondents) and 6-11 October 2017 (2,018 respondents). For more information on survey results, see: The Judiciary Through the Eyes of Ukrainian Citizens. – National Security and Defence, 2018, No.1-2, p.70-87.

5 Court stratification was done according to their judicial authority. From each stratum's general list, we randomly selected a number of courts proportionate to the number of courts of this type in the total amount of all courts. In the first stage, we selected 100 courts.

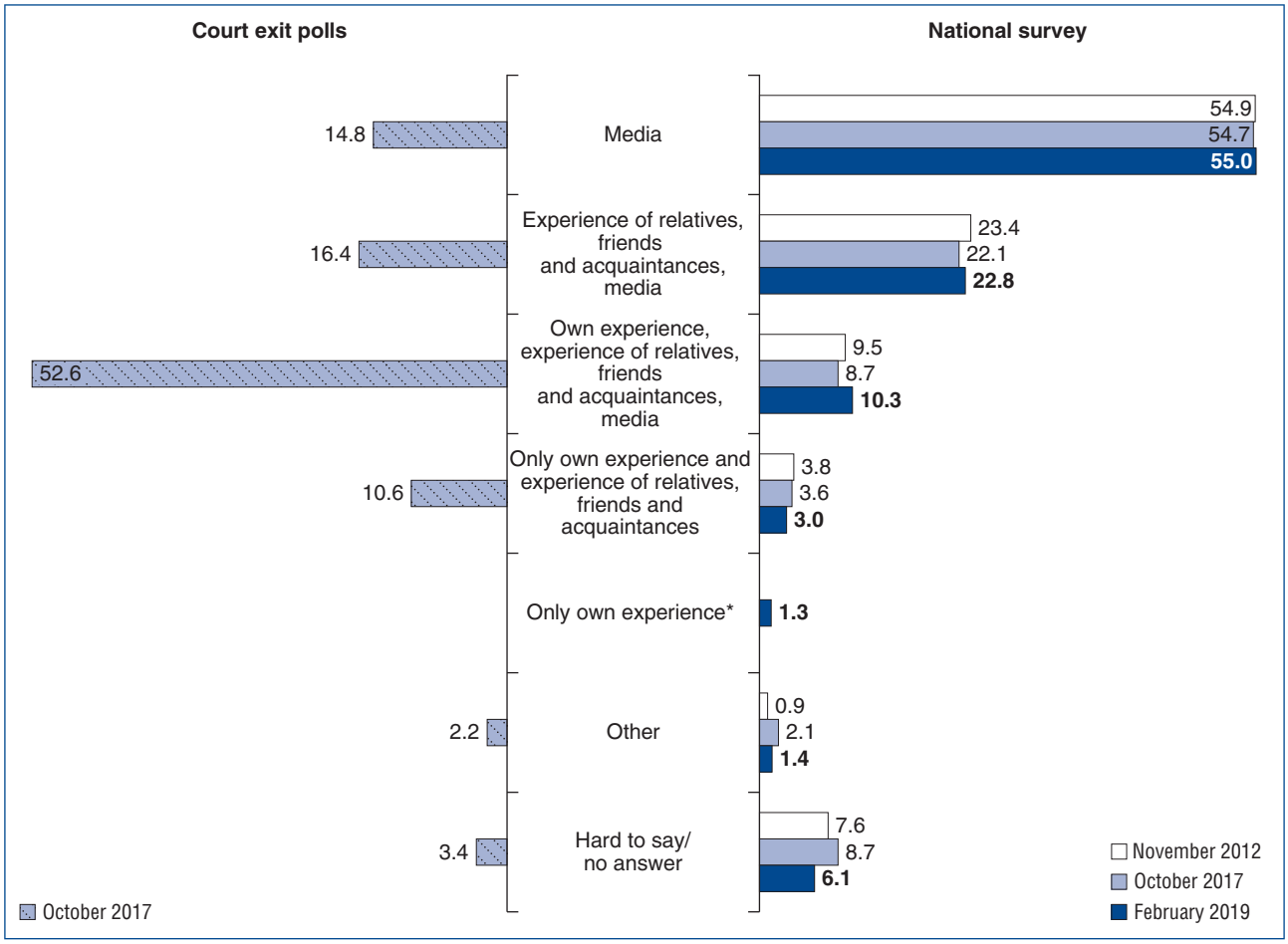
6 We surveyed every third person in this category. Polls were conducted continuously from 10:00 am until the end of the court day. Such sampling process allowed to ensure that the sample is representative of court case participants.

7 For more information on survey results, see: The Judiciary Through the Eyes of Ukrainian Citizens. – National Security and Defence, 2018, No.1-2, p.70-87.

experience of their relatives, friends and acquaintances, while 1.3% – from their own experience only.

Information sources do not differ much for different socio-demographic groups of respondents. There is a slightly larger number of those who get their information only from media among people with incomplete or general secondary education (59.8%) compared to people with a higher level of education (respondents with specialised secondary education – 54.2%, with higher education – 53.2%).

Where do you get your information on the work of Ukrainian courts?
% respondents



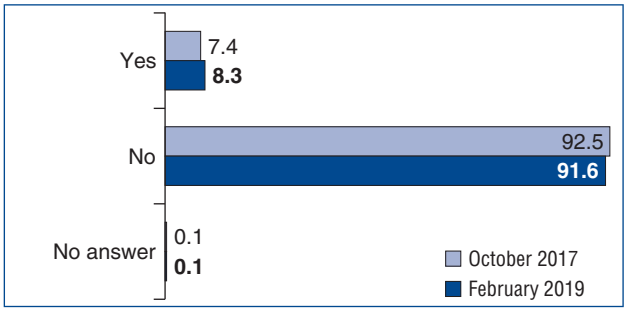
* The 2012 and 2017 surveys did not have this option.

Assessment of courts by citizens with experience of participation in court proceedings

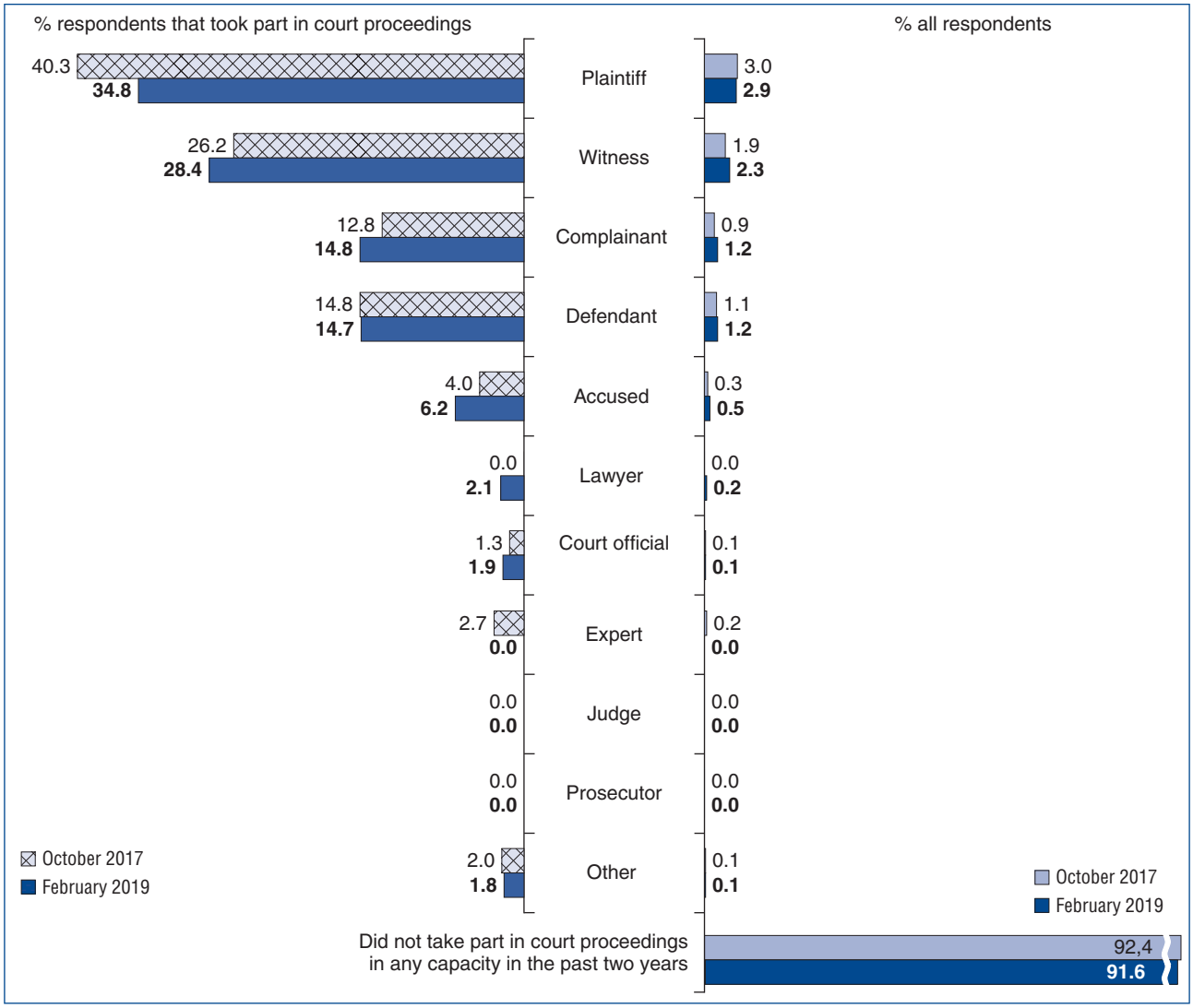
Among respondents of the national survey, 8.3% took part in court proceedings in the past two years in some capacity (plaintiff, defendant, witness, accused, complainant, lawyer, court official). Most of them took part in court proceedings as a plaintiff (2.9% of respondents) and a witness (2.3%) (diagram "*What was your role in the court proceedings?*", p.67).

Among those, who took part in court proceedings as a plaintiff, defendant, accused, complainant, witness or expert, most (52.4%) were part of a civil case, 15.6% – a business case, 11.4% – an administrative case, 11% – a criminal case, 7% – an administrative violation case, 1.8% – a hearing on a claim against a government, local self-government authority or their representatives (diagram "*In what kind of court proceedings did you participate?*", p.68).

Did you take part in court proceedings in the past two years in some capacity (witness, plaintiff, defendant, accused, suspect, complainant, expert, judge, lawyer, court official, etc.)?
% respondents

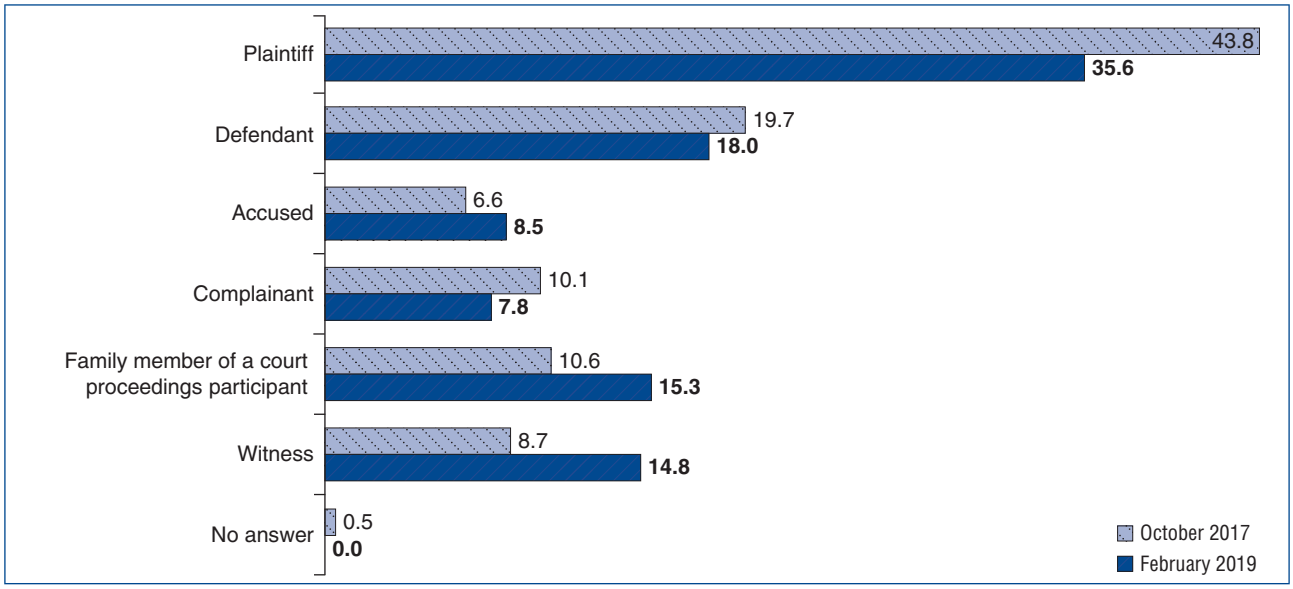


What was your role in the court proceedings?*
% respondents

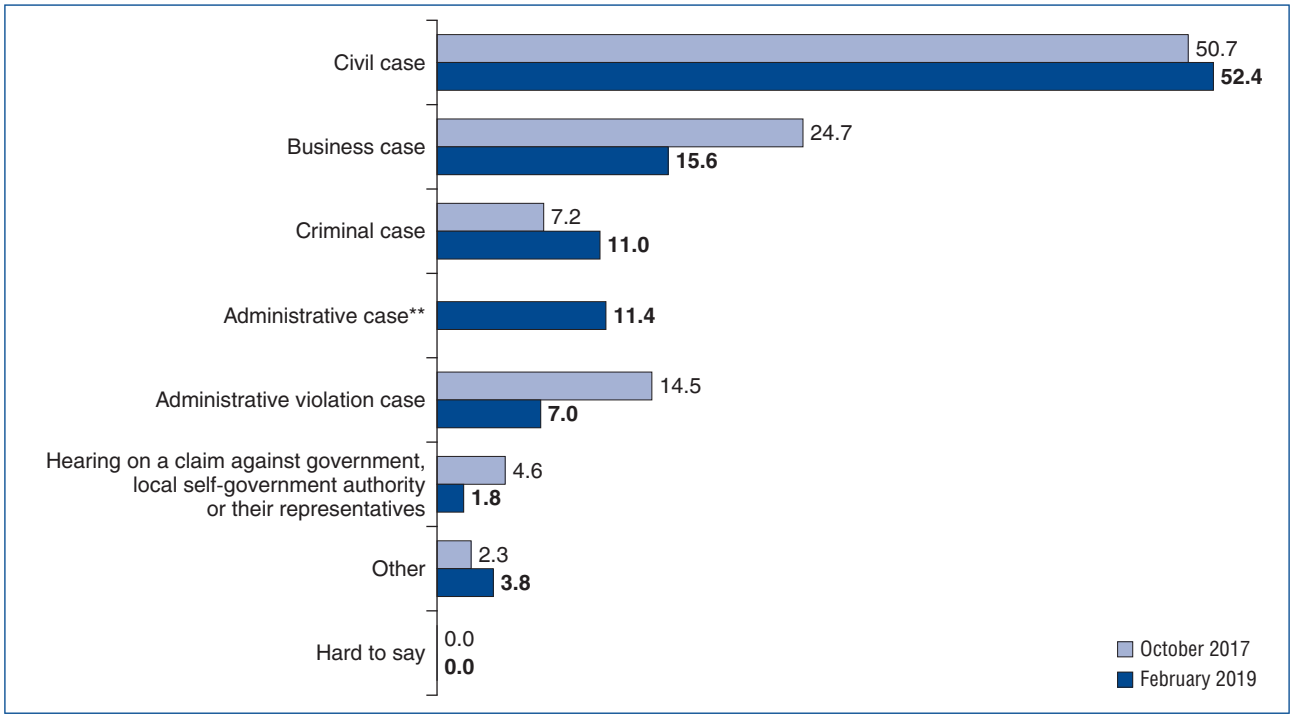


* Respondents were asked to choose all acceptable options.

What was your role in the court proceedings?*
% respondents in court exit polls

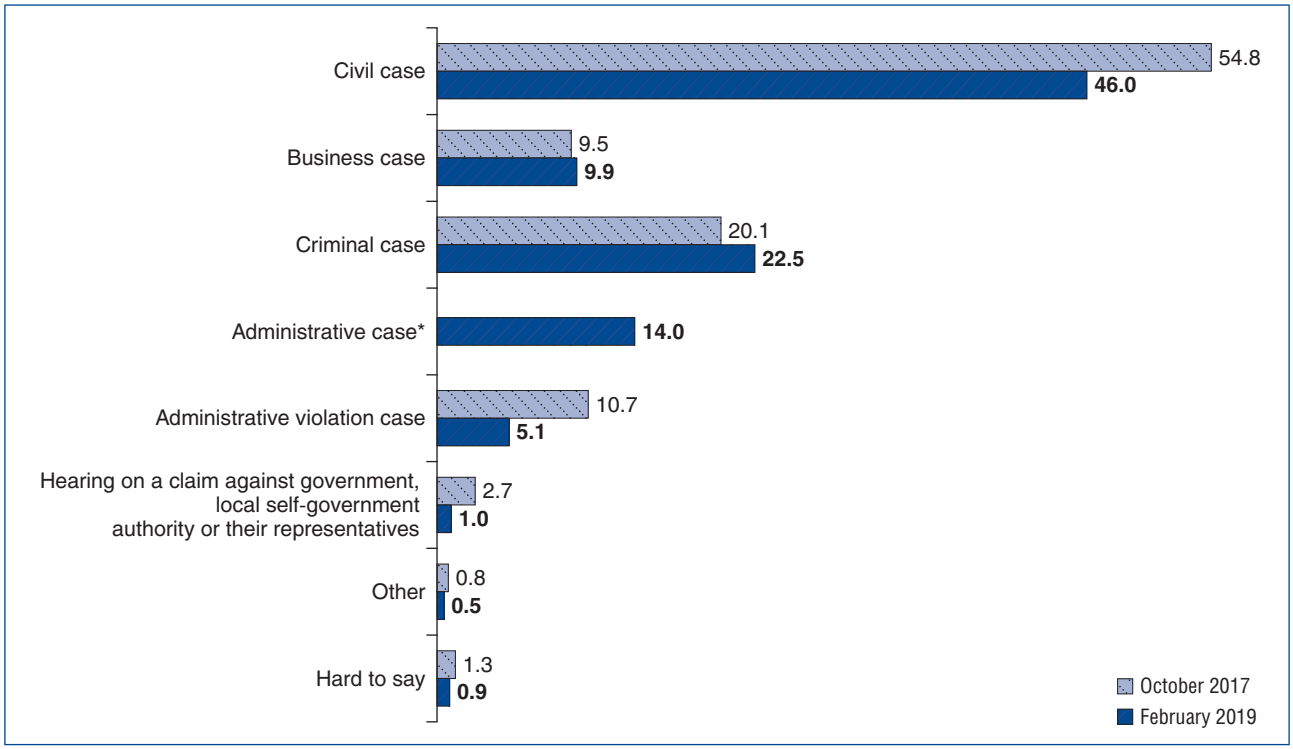


In what kind of court proceedings did you participate?*
% those, who took part in court proceedings as a plaintiff, defendant, suspect, accused, complainant, witness or expert



* Respondents were asked to choose all acceptable options.
** The 2017 survey did not have this option.

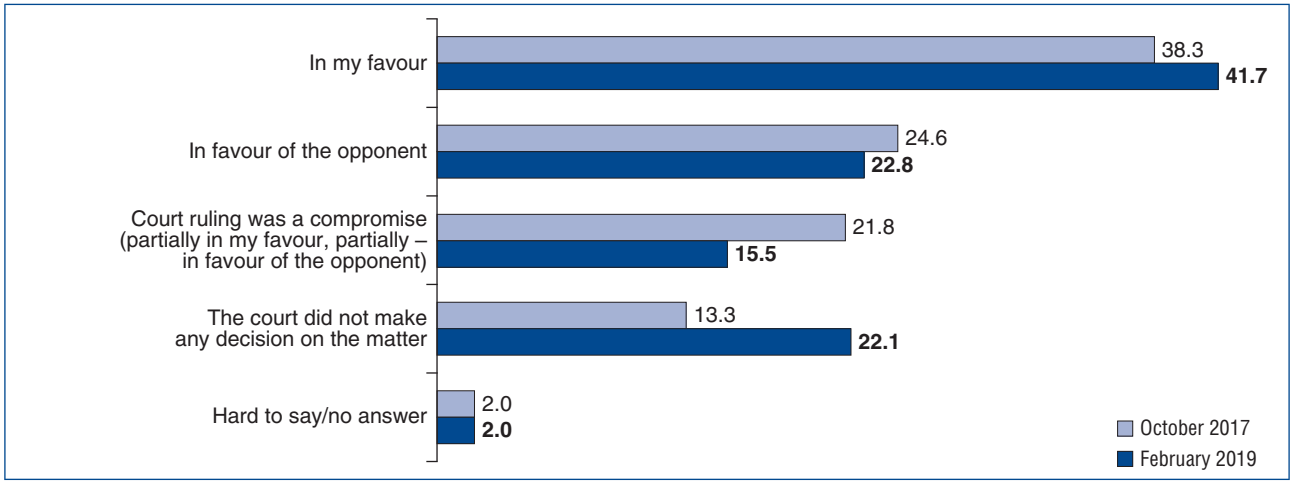
In what kind of court proceedings did you take part today?
% respondents in court exit polls



* The 2017 survey did not have this option.

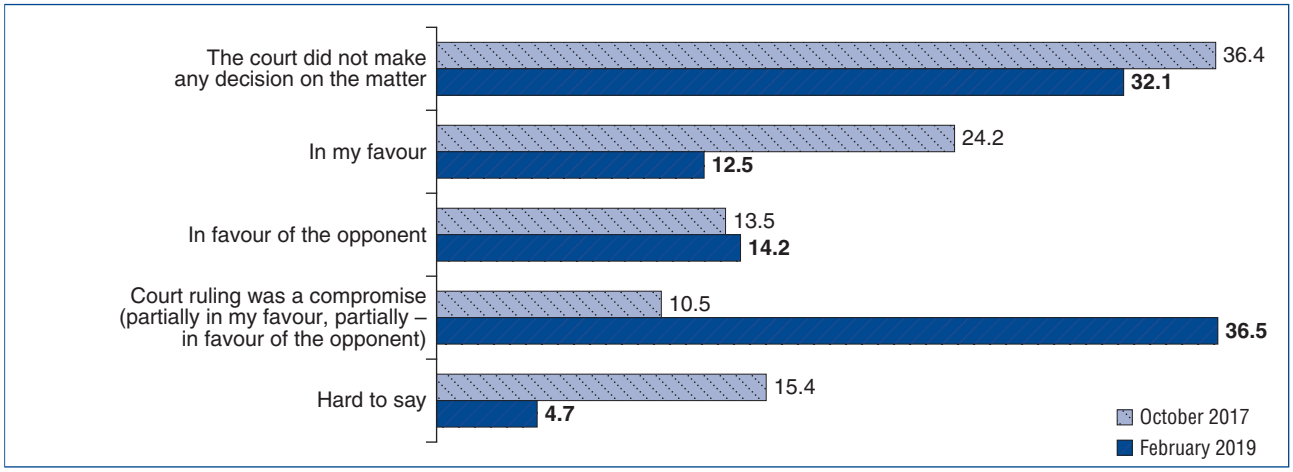
Among those, who took part in court proceedings as a plaintiff, defendant, accused or complainant, 41.7% said that court ruled in their favour, 22.8% – in favour of the opponent, 15.5% – court ruling was a compromise, 22.1% – that court did not make any decision (diagram "*Did the court rule in your or opposing party's favour?*").

Did the court rule in your or opposing party's favour?*
% those, who took part in court proceedings as a plaintiff, defendant, accused or complainant



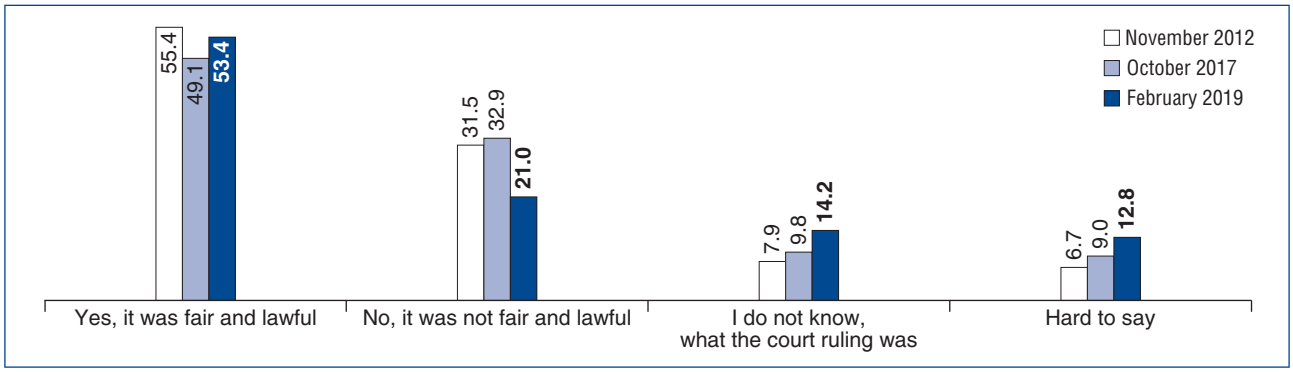
* If there was one decision, the respondent had to choose one option, if several – all acceptable options.

Did the court rule in your or opposing party's favour?
%respondents in court exit polls, for whom the question is relevant
(plaintiff, defendant, accused, complainant, parties' family members)



Among those, who took part in court proceedings as a plaintiff, defendant, accused, complainant, witness or expert, 53.4% said that the ruling was fair and lawful, 21% did not consider it fair and lawful. As seen in the diagram, in 2019, the percentage of those who considered that the ruling was not fair and lawful was slightly smaller than before.

Was the court ruling in the case, in which you took part, fair and lawful?*
% respondents, who took part in court proceedings as a plaintiff, defendant, accused, complainant, witness or expert

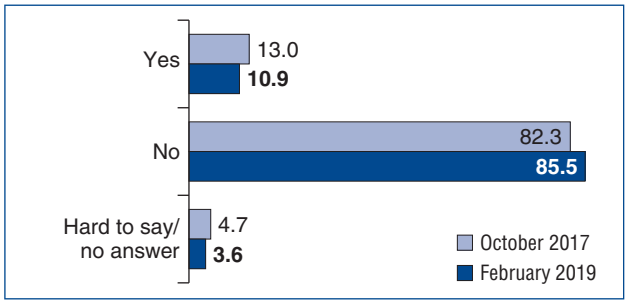


* If there was one decision, the respondent had to choose one option, if several – all acceptable options.

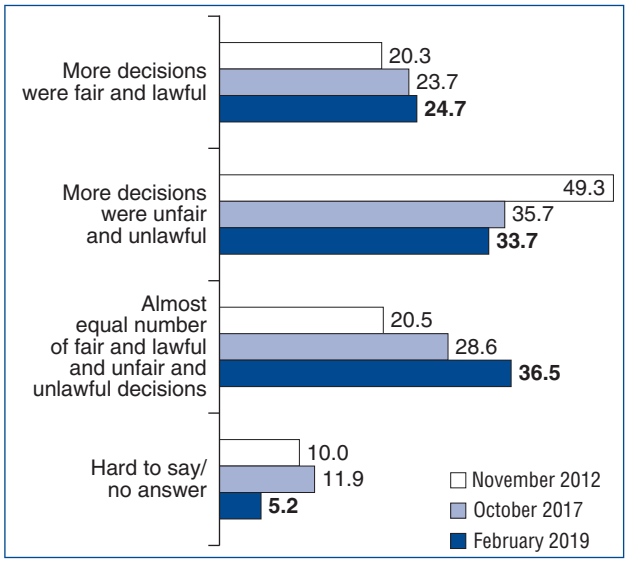
10.9% of all respondents said that in the past two years a family member or a close friend took part in court proceedings in some capacity (witness, plaintiff, defendant, complainant, accused, expert, judge, court official).

Among those, who had such family members or friends, only a quarter said that more decisions in cases, in which they participated, were fair and lawful, 33.7% – said more were unfair and unlawful, 36.5% – almost equally fair and lawful and unfair and unlawful.

In the past two years, did your family member or a close friend take part in court proceedings in some capacity (witness, plaintiff, defendant, complainant, accused, expert, judge, court official)?
% respondents

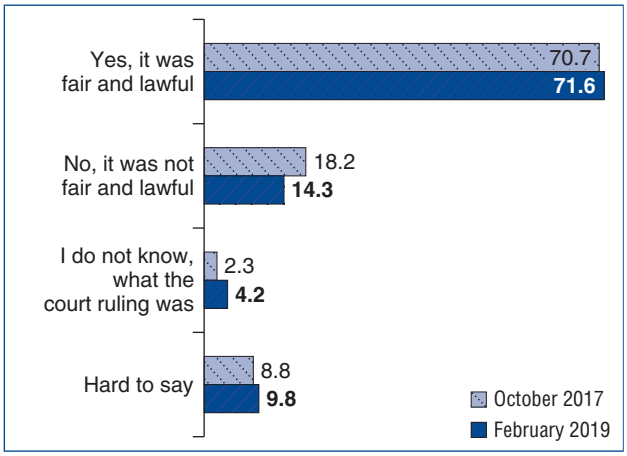


According to them, were more decisions in cases, in which they participated, fair and lawful or unfair and unlawful?
% respondents, whose relative or a close friend took part in court proceedings in some capacity



Among respondents, in whose case a decision was made, 71.6% said that the court ruling was fair and lawful, 14.3% did not consider it fair and lawful (another 4.2% had no information about the ruling). Assessment of the fairness of court rulings mostly depended on the fact, in whose favour it was made – while among those, who said that the court ruled in their favour, 93.5% said the decision was fair and lawful, among those who said that the court ruled in favour of the opposite party – only 32.1%, and among those, who said the decision was a compromise – 67.4%.

Was the court ruling in the case, in which you took part, fair and lawful?
% court exit poll respondents, in whose case the court made a decision



The respondents that believe that the court ruling was not fair and lawful, name the following reasons for this: the judge did not study case materials well enough (26.9%), one party hired a better lawyer, was better prepared for the proceedings (25.4%), one party has connections to government authorities (20.2%), one party has higher social standing than the opponent (17%), one party allegedly bribed the judge (14%), other reasons (7.9%).

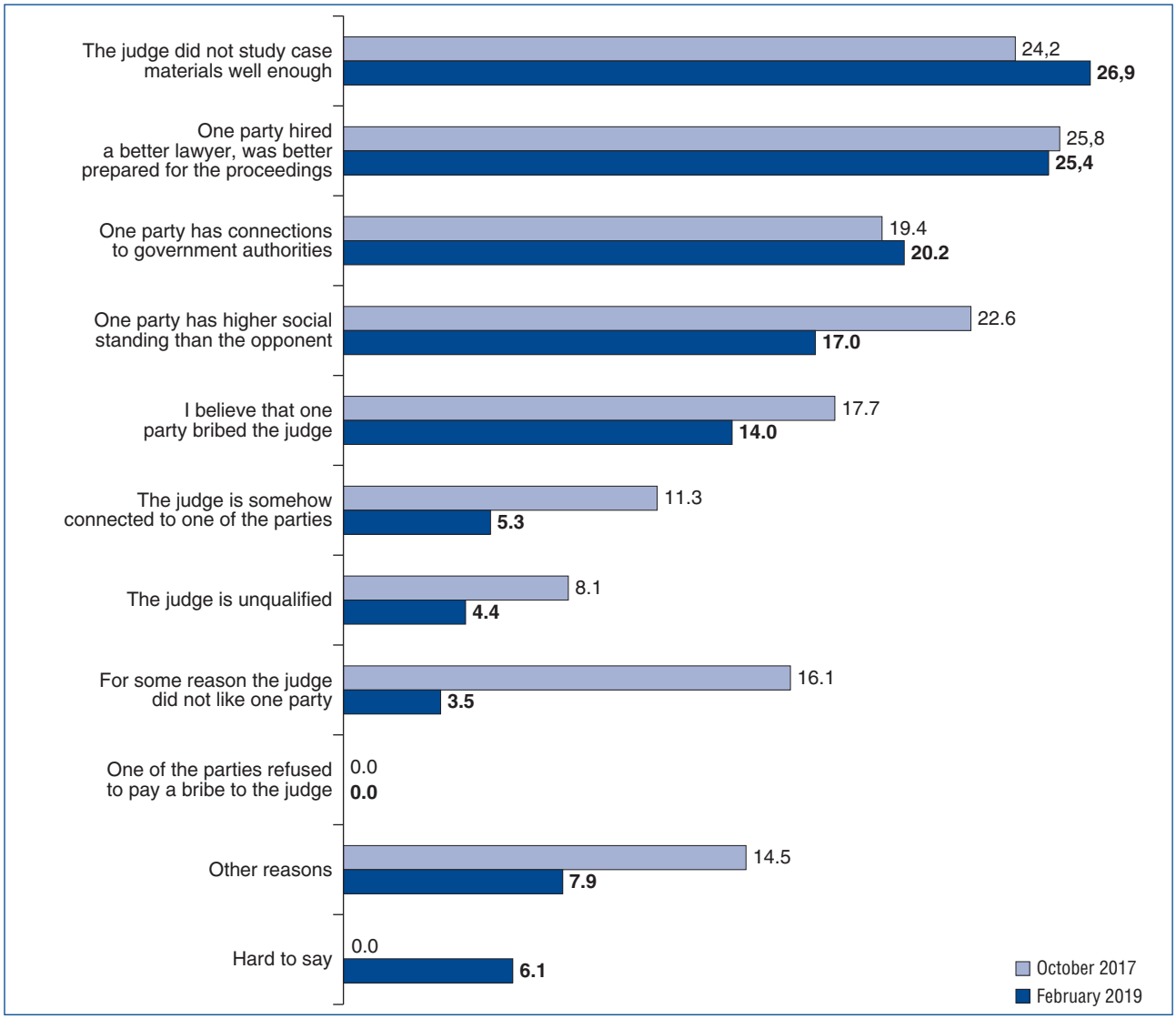
The fact that for some reason the judge did not like one party is the only reason with a statistically significant difference in the number of citings compared to the 2017 survey results (then this reason was named notably more often – 16.1% of those, who had a court ruling and considered it unfair, named this reason) (diagram "*If you consider the court ruling unfair and unlawful, what were the reasons?*", p.71).

Assessing the different aspects of court work, respondents expressed satisfaction more often than dissatisfaction with all of its aspects. Also, most indicators had better results than in 2017.

Assessing the different aspects of court work, more of the court proceedings participants said that reaching the court was easy, waiting conditions, as well as the punctuality and conditions of the hearing were good, the time period between the notice of hearing and the hearing, general attitude and politeness of judges and prosecutors, as well as court workers other than judges, judges' impartiality during hearings were satisfactory, language of the judge/prosecutor, court ruling was comprehensible, the time period for the court ruling was justified.

The cost of access to justice was assessed as comparatively low – percentage of respondents who

If you consider the court ruling unfair and unlawful, what were the reasons?*
% respondents, who had a court ruling and considered it unfair



* Respondents were asked to choose all acceptable options.

thought these costs were high (36.3%) did not have a statistically significant difference compared to those, who thought they were low (37.4%).

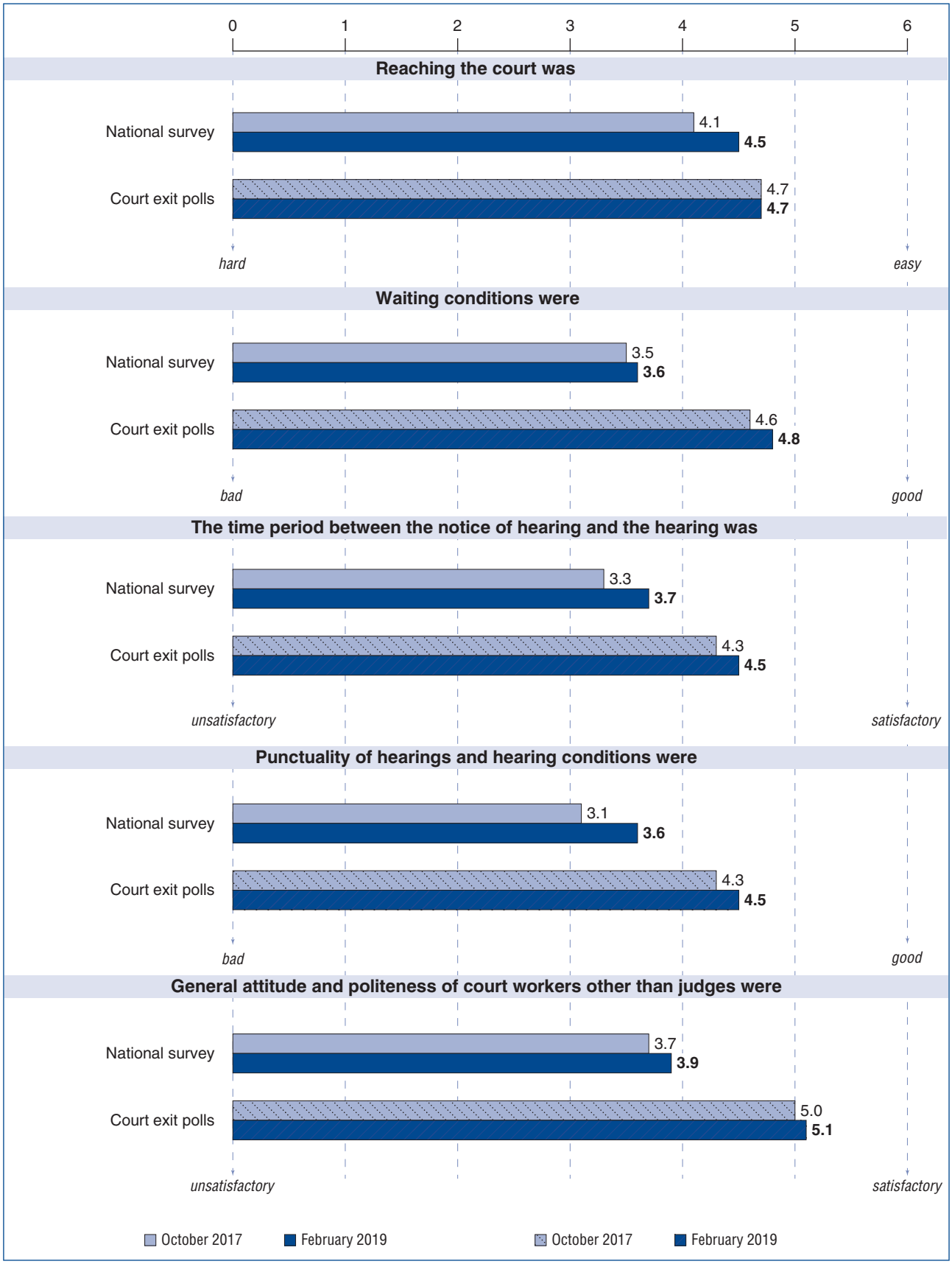
Same as in 2017, assessments from court exit polls were higher for all indicators compared to those of the national survey participants, as they evaluated their experience of participation in court proceedings in the past two years. At the same time, assessment for most indicators did not have any significant changes compared to court exit poll results in 2017. There is only some increase of satisfaction regarding judge impartiality in oral hearings (from 4.5 to 4.8 points).

While in 2017, oblast centre assessments for all the mentioned indicators (except "how hard/easy was it to reach the court") were statistically significantly worse than in other types of communities, the current indicators for different types of communities have levelled out.

Same as in the 2017 survey, according to many indicators, residents in the East stood out with their negative assessments, for instance, for such indicators as punctuality of hearings and hearing conditions, ability to reach the court, waiting conditions, time period for the court ruling, attitude and politeness of judges, prosecutors, court workers, language of the judge/prosecutor, comprehensibility of the ruling[8] (diagram "*In your opinion…?*", p.72).

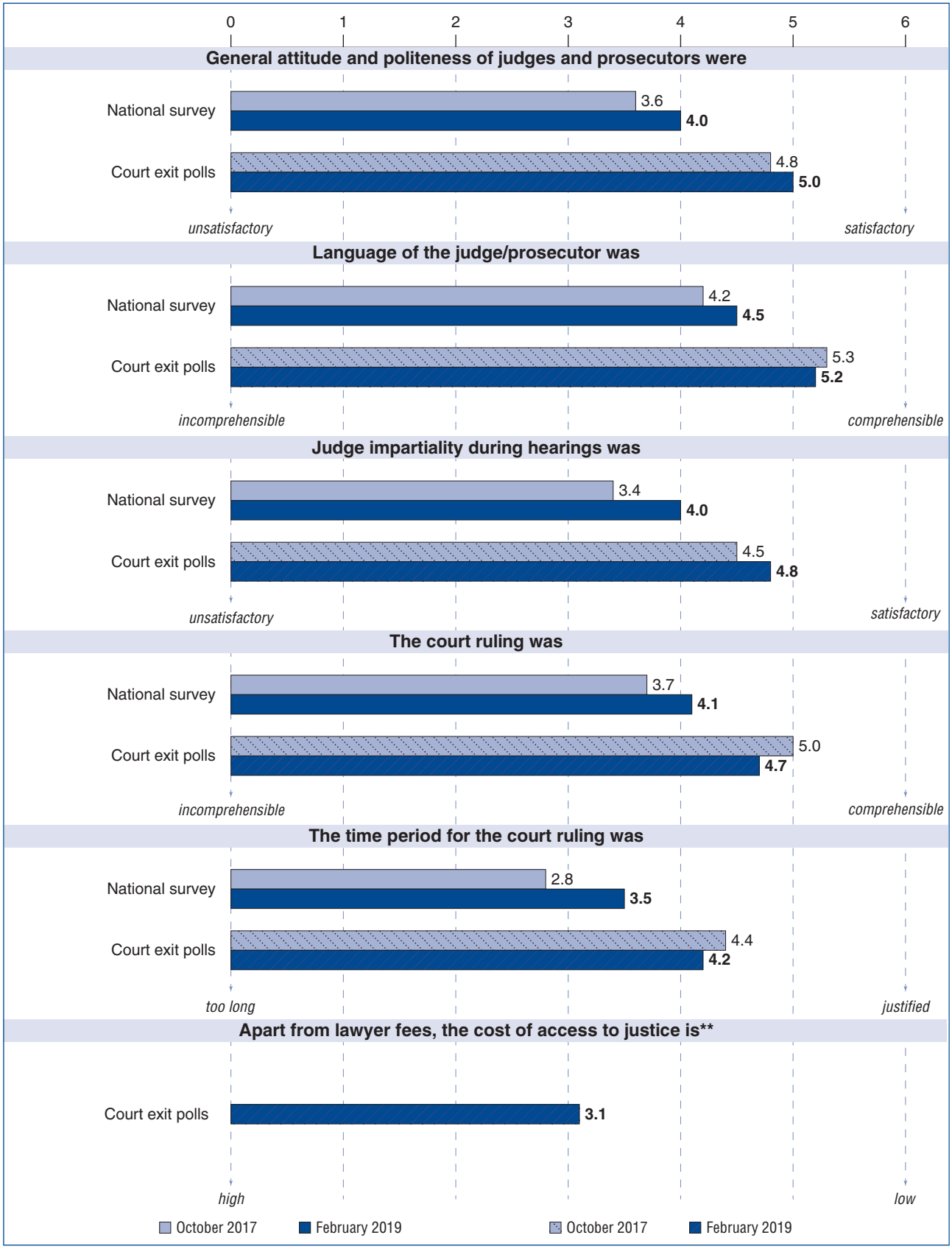
[8] Here and further, the following regional division of oblasts is used: **Centre**: Volyn, Zakarpattya, Ivano-Frankivsk, Lviv, Rivne, Ternopil, Chernivtsi oblasts; **Centre**: Kyiv City, Vinnytsia, Zhytomyr, Kyiv, Kirovohrad, Poltava, Sumy, Khmelnytskiy, Cherkasy, Chernihiv oblasts; **South**: Mykolayiv, Odesa, Kherson oblasts; **East**: Zaporizhzhya, Dnipropetrovsk, Kharkiv, Donetsk and Luhansk oblasts (with the exception of the occupied territories).

In your opinion…?
average score from the answers of those, who took part in court proceedings as a plaintiff, defendant, accused, suspect, complainant, witness or expert*



* On the 7-point scale from "0" to "6", depending on the closest assessment – the one on the left or the one on the right.

In your opinion…?
average score*
(continued)



* On the 7-point scale from "0" to "6", depending on the closest assessment – the one on the left or the one on the right.
** The 2017 survey did not have this option.

In your opinion...?*
average score from the answers of those, who took part in court proceedings as a plaintiff, defendant, accused, complainant, witness or expert

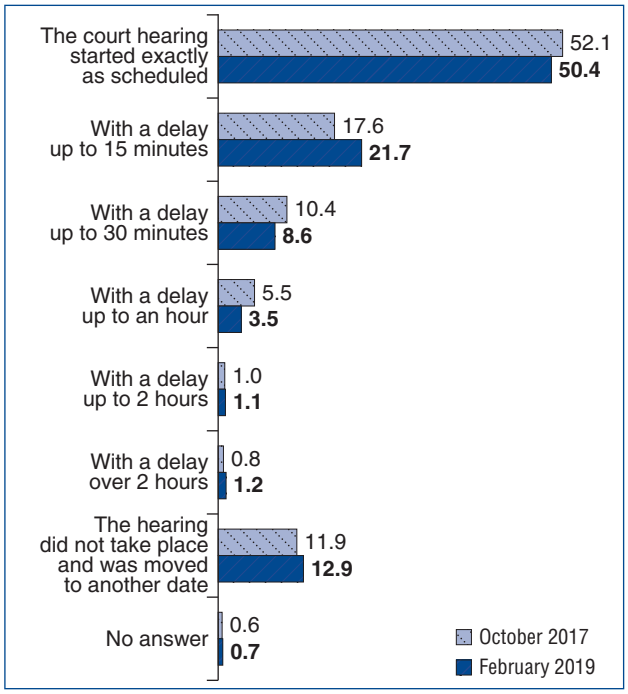
	WEST	CENTRE	SOUTH	EAST	
Reaching the court was	4.7 / 4.9	4.9 / 4.9	4.9 / 5.0	4.4 / 4.2	October 2017 / February 2019
	hard — *easy*	*hard* — *easy*	*hard* — *easy*	*hard* — *easy*	
Waiting conditions were	4.8 / 4.8	4.8 / 4,8	4.5 / 5.1	4.2 / 4.4	October 2017 / February 2019
	bad — *good*	*bad* — *good*	*bad* — *good*	*bad* — *good*	
The time period between the notice of hearing and the hearing was	4.3 / 4.8	4.4 / 4.4	4.6 / 4.6	3.9 / 4.3	October 2017 / February 2019
	unsatisfactory — *satisfactory*	*unsatisfactory* — *satisfactory*	*unsatisfactory* — *satisfactory*	*unsatisfactory* — *satisfactory*	
Punctuality of hearings and hearing conditions were	4.4 / 4.7	4.5 / 4.6	4.3 / 4.4	3.8 / 4.0	October 2017 / February 2019
	bad — *good*	*bad* — *good*	*bad* — *good*	*bad* — *good*	
General attitude and politeness of court workers other than judges were	5.0 / 5.1	5.1 / 5.2	5.2 / 5.4	4.7 / 4.7	October 2017 / February 2019
	unsatisfactory — *satisfactory*	*unsatisfactory* — *satisfactory*	*unsatisfactory* — *satisfactory*	*unsatisfactory* — *satisfactory*	
General attitude and politeness of judges and prosecutors were	4.7 / 5.0	4.9 / 5.1	5.1 / 5.3	4.6 / 4.6	October 2017 / February 2019
	unsatisfactory — *satisfactory*	*unsatisfactory* — *satisfactory*	*unsatisfactory* — *satisfactory*	*unsatisfactory* — *satisfactory*	
Language of the judge/ prosecutor was	5.2 / 5.3	5.3 / 5.4	5.3 / 5.2	5.2 / 4.6	October 2017 / February 2019
	incomprehensible — *comprehensible*	*incomprehensible* — *comprehensible*	*incomprehensible* — *comprehensible*	*incomprehensible* — *comprehensible*	
Judge impartiality during hearings was	4.3 / 4.6	4.6 / 4.9	4.7 / 5.2	4.4 / 4.4	October 2017 / February 2019
	unsatisfactory — *satisfactory*	*unsatisfactory* — *satisfactory*	*unsatisfactory* — *satisfactory*	*unsatisfactory* — *satisfactory*	
The court ruling was	4.7 / 4.6	5.0 / 5.1	5.7 / 5.0	5.0 / 4.3	October 2017 / February 2019
	incomprehensible — *comprehensible*	*incomprehensible* — *comprehensible*	*incomprehensible* — *comprehensible*	*incomprehensible* — *comprehensible*	
The time period for the court ruling was	4.2 / 4.4	4.5 / 4.3	4.9 / 4.4	4.2 / 3.9	October 2017 / February 2019
	too long — *justified*	*too long* — *justified*	*too long* — *justified*	*too long* — *justified*	
Apart from lawyer fees, the cost of access to justice is	2.7	3.4	3.0	2.8	February 2019
	high — *low*	*high* — *low*	*high* — *low*	*high* — *low*	

* On the 7-point scale from "0" до "6", depending on the closest assessment – the one on the left or the one on the right.

For all indicators, assessments of those, who said that the court ruled in their favour, were better than assessments of those, who said the court ruled in favour of the opposite party.

Only half of respondents who participated in court hearings noted that they started on time, although most delays were not long – up to 30 minutes (30.3%). 5.8% of respondents noted that the delay was an hour or longer, and 12.9% – that the hearing did not take place at all and was moved to another date. These results are not significantly different from those received in 2017.

Did today's court hearing start on time/as scheduled or did you have to wait? If so, how long?
% respondents in court exit polls

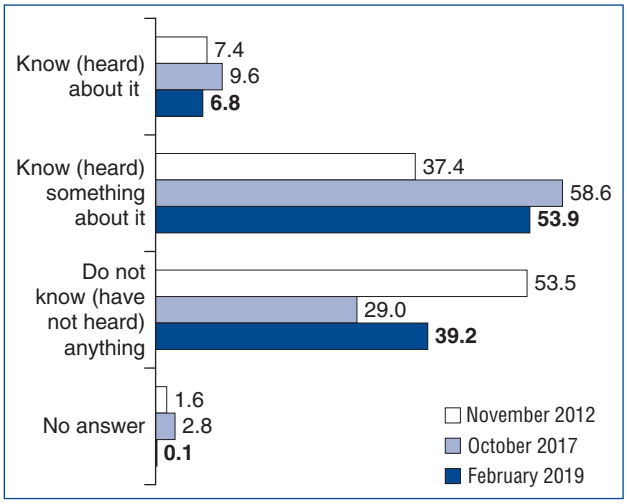


Attitude to the judicial reform

Answering the question about the level of awareness of the judicial reform, 6.8% of the national survey respondents said they knew about it, 53.9% – knew something, 39.2% – did not know about it. Awareness indicators were better than in 2012 (percentage of respondents who knew something about the reform grew from 37.4% to 53.9%). However, compared to 2017, self-assessment of the level of awareness has somewhat decreased – there were less of those, who said they knew about the reform (down from 9.6% to 6.8%), the number of those who said they knew something has also decreased (from 58.6% to 53.9%) and percentage of those who did not know anything – increased (from 29% to 39.2%). This could be caused by less media coverage of the changes in the judiciary than two years ago (diagram "*Do you know (have you heard) anything about the judicial reform in Ukraine?*").

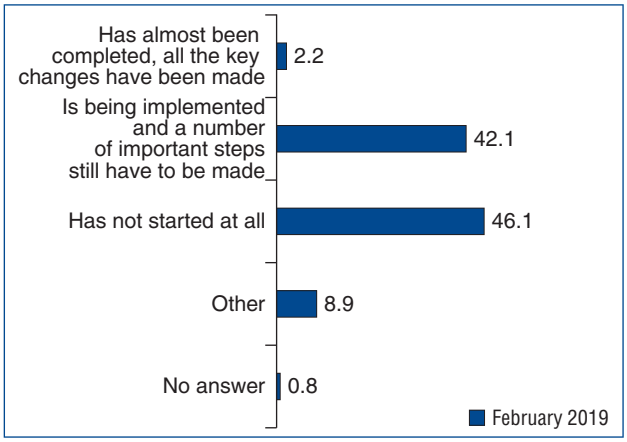
Only 2.2% of respondents believe that the judicial reform in Ukraine has almost been completed and that all the key changes have been made, 42.1% – that it

Do you know (have you heard) anything about the judicial reform in Ukraine?
% respondents



is being implemented and a number of important steps still have to be made, 46.1% – that it has not started at all. Among those who know about the judicial reform, percentage of respondents who believe that the judicial reform has not started at all was noticeably lower (33.8%), while the percentage of those who believe that it is being implemented was higher (55.1%), as well as those who believe that it has almost been completed (7.4%).

Do you think that the judicial reform…?
% respondents



Ukrainian citizens' attitude to the judicial reform is mostly negative – only 13% of respondents had a positive opinion, while 43.4% – negative. There was no statistically significant difference in the percentage of those who had positive attitude to the judicial reform compared to 2017, while the number of respondents with negative attitude has gone down – from 49.1% to 43.4% (due to the increase of respondents number who were indifferent).

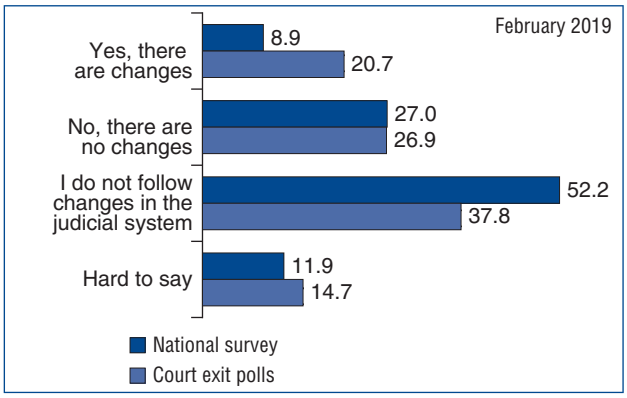
Negative attitude is also typical for all other reforms (land, healthcare, pension, education). Among respondents who are aware of the judicial reform, percentage of people with positive attitude is significantly larger (35.3%), than among those who heard something about it (15.6%) or do not know anything

about it (5.7%) (percentage of negative attitude did not differ much between the three groups and was at 40-46%). While among the respondents who are aware of the reform, percentage of those with positive attitude to it has grown from 21.1% to 35.3% since 2017, among those who know nothing about it – this percentage has not changed much (diagram "*At the moment, Ukraine is implementing a number of reforms…*").

Attitude to the judicial reform, as to all reforms altogether, significantly depends on the level of trust in government. Thus, for example, among those who do not trust the President of Ukraine at all, only 6.4% had positive attitude to the judicial reform, 56.9% – negative, and among those, who completely trust the President – 48.5% and 20.4%, respectively.

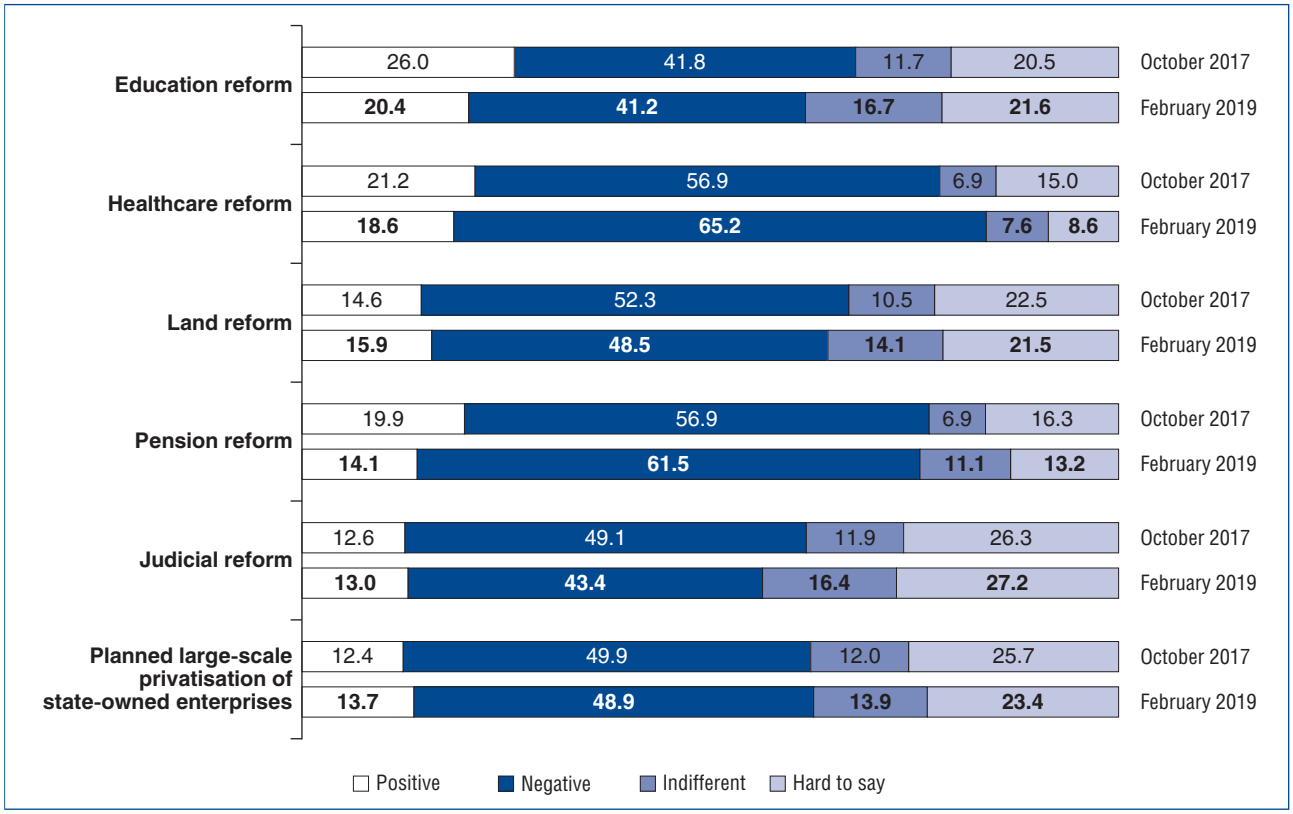
Negative attitude to the judicial reform is also related to the fact that citizens do not see its results. Only 8.9% respondents in the national survey noticed changes that are being implemented in the judicial system of Ukraine during the past four years, 27% believe that there are no changes, while most (64.1%) either do not follow changes in the judicial system, or could not answer this question. While among those, who know about the judicial reform, 42.3% noticed changes in the system of justice, among those who "heard something about it" – only 10.8%, and among those who know nothing about it – 0.6%. Among court exit poll respondents, there were more of those, who thought changes did take place (20.7%) as compared to respondents in the national survey. Almost the same number (26.9%) thought there was no change.

Did you notice the changes that are being implemented in the judicial system of Ukraine during the past four years?
% respondents

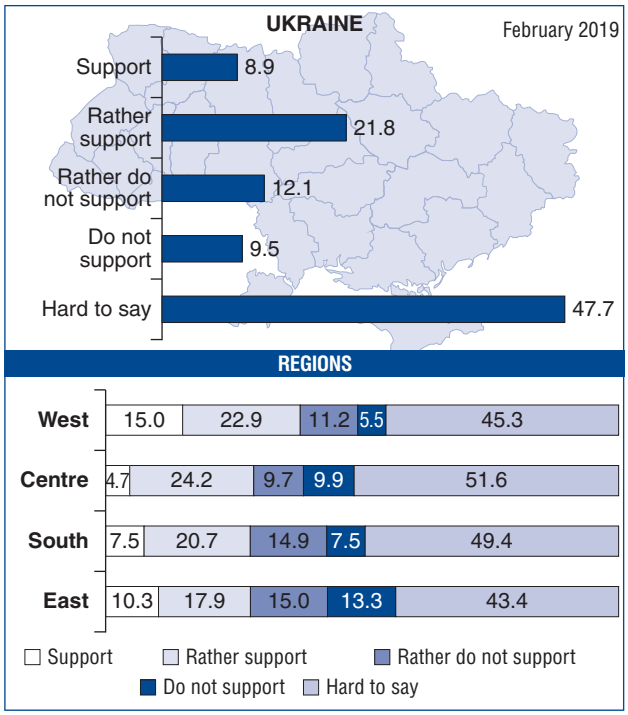


Overall, changes in the judicial system are completely or rather supported by 30.7% of respondents, not supported – by 21.6% (other 47.7% have not decided). Most often these changes are supported in the West (37.9%). Eastern region is the only one, where the percentage of those, who support these changes (28.2%) was not statistically significantly different from the number of those, who do not support them (28.3%) (diagram "*To what extent do you support or not support changes in the judicial system of Ukraine?*", p.77).

At the moment, Ukraine is implementing a number of reforms. Based on the information you have, what is your attitude to these reforms?
% respondents



To what extent do you support or not support changes in the judicial system of Ukraine?
% respondents



Support of changes in the judicial system is most often based on the need to deal with corruption, ensure the rule of law and fairness.

Absence of support for changes in the judiciary is most often based on the fact that there have been no changes for the better so far, as well as on the disbelief in the possibility of overcoming corruption and lack of trust in those who implement reforms.

Only 22% of the national survey respondents think that judges in Ukraine are completely or mostly independent, whereas the opposite point of view has 67.3% of supporters (diagram "*Are judges in Ukraine independent at the moment?*", p.78). Even among respondents with positive attitude to the judicial reform, only 38.6% believe that Ukrainian judges are independent, and 53.4% – disagree with this statement.

Among those who took part in court hearings in the past two years, the number of those who think that judges are independent is slightly higher than among those without such experience (32.8% and 21.1% respectively), although in both groups most people do not support this statement (61.9% and 67.9% respectively).

Among court exit poll respondents, 42.6% believe that Ukrainian judges are currently independent, 44.7% – had the opposite point of view.

While in 2017, most Ukrainians believed that in order for judges to be independent, they have to be elected by citizens (37.7%), according to the latest survey, percentage of those who share this point of view has gone down to 31.3%. Although this is still one of the most supported ideas, it now shares leadership with the idea that judges must be appointed by the Supreme Council of Justice (or another independent judicial body) (28.8%). Percentage of those who support the

Why do you support changes in the judicial system of Ukraine?*
% respondents who support judicial changes

The judicial system is corrupt, corruption inhibits changes	9.9
I hope for the better	9.6
State should be governed by the rule of law, the reform will ensure the rule of law	7.4
We need to change the judiciary	5.5
Changes must be fundamental, we need to have one law for all	5.4
I support fairness, courts must be more impartial	5.2
There have been no changes for the better so far	4.2
To eliminate corruption	3.9
Reforms are good	3.6
We need courts to be independent	3.2
We need to abide by the law	2.9
This is about changes for the better, system reboot	2.7
Reforms bring us closer to the European Union	2.7
Courts should be more transparent	2.6
This will ensure trust in justice	2.3
People do not trust judges at the moment	2.3
Hope for honesty	1.9
To have positive changes	1.8
To create opportunities for young professionals	1.5
To strip judges' immunity	1.5
We need to move towards democratic state	1.0
At the moment, essentially it is the President who appoints judges	1.0
Hard to say/do not know	6.6
No answer	6.5

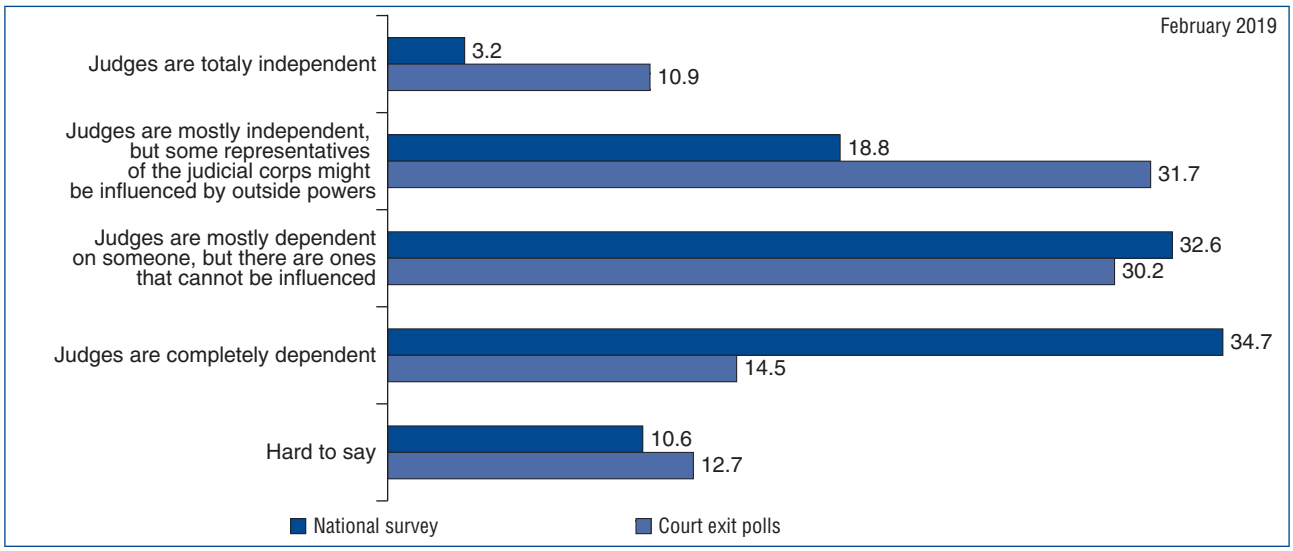
* This was an open question, so the respondents had to give their own answer. Responses presented are those given by over 1% of respondents.

Why do you not support changes in the judicial system of Ukraine?*
% respondents who do not support judicial changes

There have been no changes for the better	43.4
Corruption prevents any change	16.1
Do not trust those who implement the reforms	8.1
There is no abidance by law, there must be one law for all	3.8
No trust in judges and the judicial system	2.8
There is no justice	2.0
Independence of courts is not guaranteed	1.6
Lawyer fees, etc. should be affordable	1.2
Do not like the changes	1.0
Hard to say/do not know	9.6
No answer	9.2

* This was an open question, so the respondents had to give their own answer. Responses presented are those given by over 1% of respondents.

Are judges in Ukraine independent at the moment?
% respondents

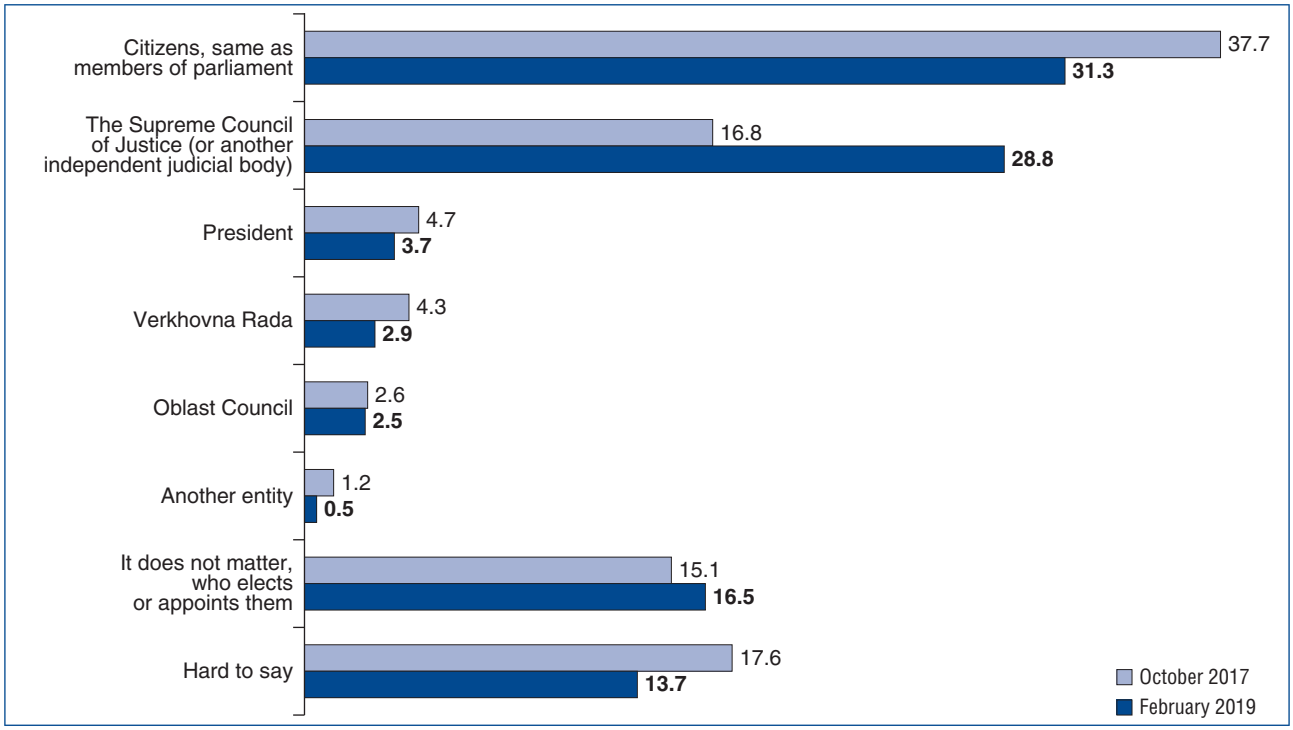


latter has grown as compared to 2017 (16.8% of respondents thought so back then). Similar to 2017, a significantly smaller portion think that judges should be appointed by the President (3.7%), Parliament (2.9%), oblast council (2.5%). Another 16.5% think that it does not matter who appoints/elects them (diagram "*In order for judges to be independent, they must be…?*").

Among those who believe that judges are currently independent, compared to those, who support the opposite point of view, percentage of respondents that support judge election by citizens is smaller (24.5% and 34.4% respectively), with a higher percentage of those who support their appointment by the Supreme Council of Justice (34.8% and 28.8% respectively) and the President (7% and 2.2% respectively).

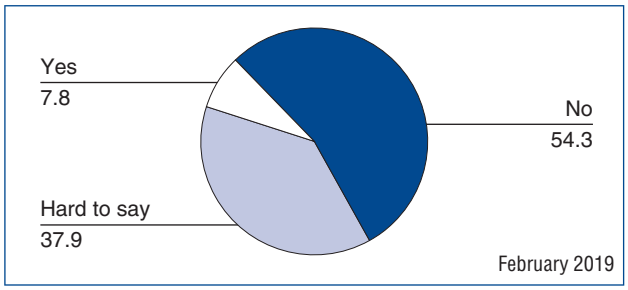
Percentage of those, who support judge election by citizens is noticeably higher among respondents with negative attitude to the judicial reform as compared to those with positive attitude (38.3% and 21.7% respectively). Respondents with negative attitude to the judicial reform more rarely support judge appointment by the Supreme Council of Justice (25.5% and 44.1% respectively).

In order for judges to be independent, they must be appointed (elected) by...?
% respondents



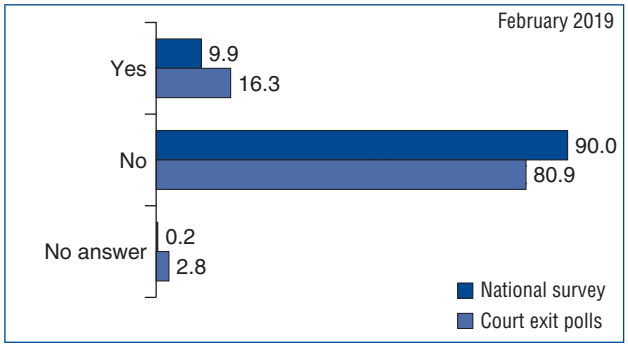
Only 7.8% of respondents think that execution of court rulings is adequate, 54.3% support the opposite point of view.

Do you think that the enforcement of court rulings is adequate?
% respondents

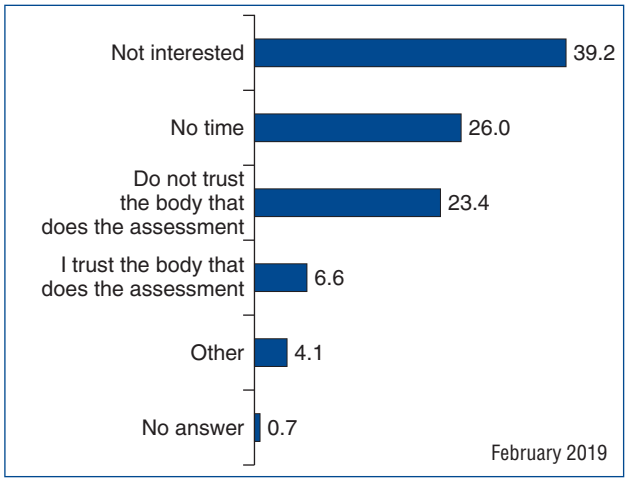


Only 10% of respondents in the national survey and 16.3% of court exit poll respondents said that they follow the process of qualification assessment of judges. National survey respondents that do not do it most often say that they are not interested in it (39.2%), have no time (26%) and do not trust the body that does the assessment (23.4%) (diagrams "*Do you follow the process of qualification assessment of judges?*", "*If not, why?*").

Do you follow the process of qualification assessment of judges?
% respondents

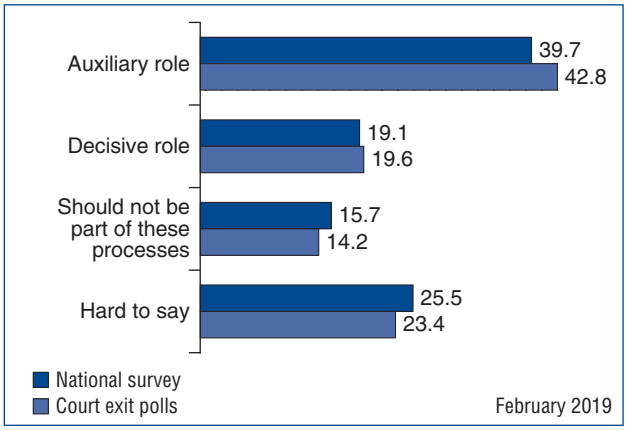


If not, why?
% respondents that do not follow the process of qualification assessment of judges



Assessing what role civil society representatives must play in qualification assessment and competition procedures for judges, most respondents (39.7% in the national survey and 42.8% in court exit polls) said they should have an auxiliary role, 19.1% and 19.6% respectively – that they should have the decisive role, and 15.7% and 14.2% respectively – that they should not be part of these processes (diagram "*What role should civil society representatives have in…?*").

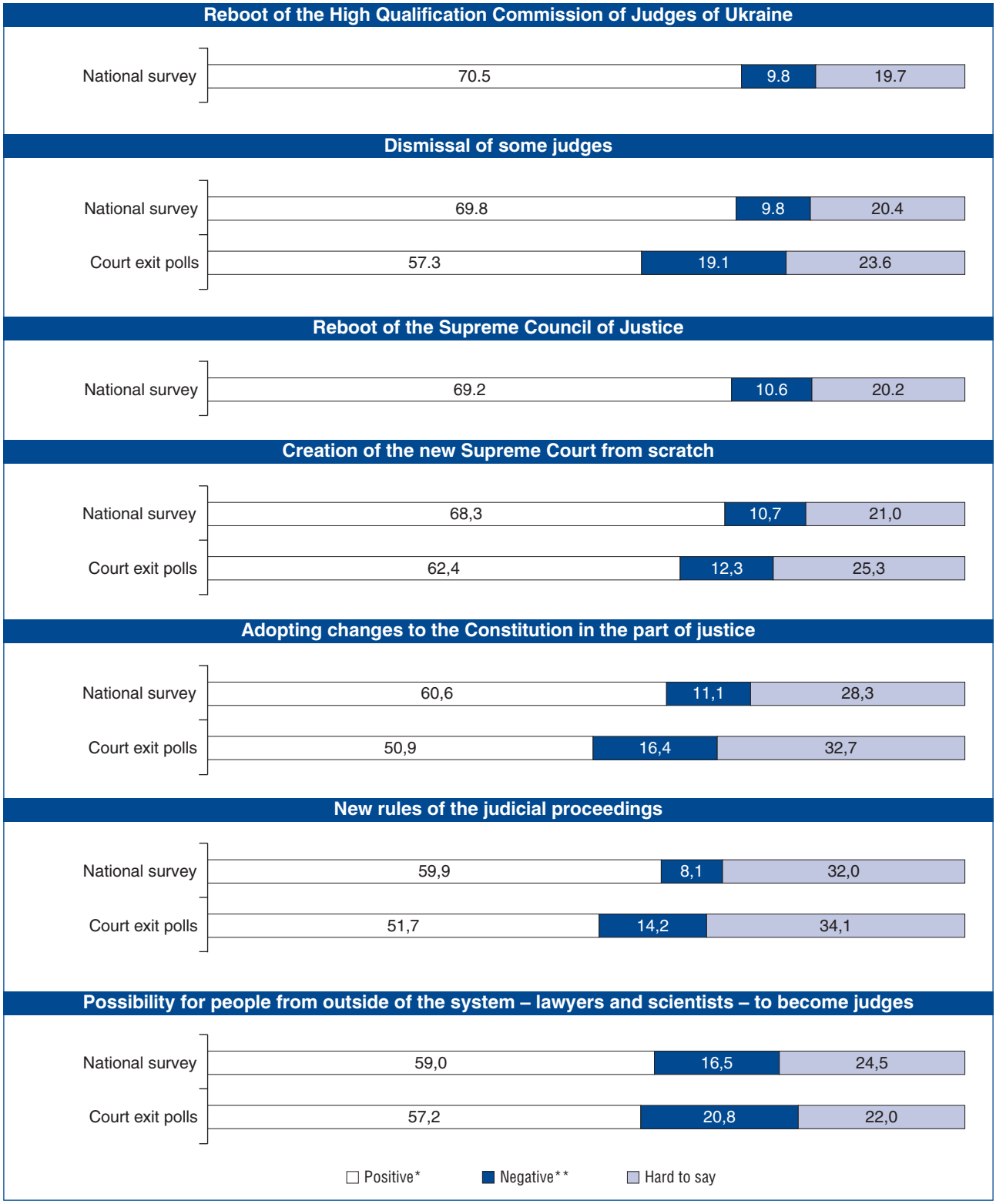
What role should civil society representatives have in qualification assessment and competition procedures for judges?
% respondents



Evaluating changes in Ukraine's judiciary, respondents had mostly positive remarks about all changes: the reboot of the High Qualification Commission of Judges was positively or mostly positively evaluated by 70.5% of respondents in the national survey, the reboot of the Supreme Council of Justice – 69.2%, dismissal of some judges was positively or mostly positively evaluated by 69.8% national survey respondents and 57.3 % of court exit poll respondents, creation of the new Supreme Court from scratch – 68.3% and 62.4% respectively, adopting changes to the Constitution in the part of justice – 60.6% and 50.9% respectively, new rules of judicial proceedings – 59.9% and 51.7% respectively, possibility for people from outside of the system – lawyers and scientists – to become judges – 59% and 57.2% respectively (diagram "*Are the following changes positive or negative for Ukraine's judicial system?*", p.80).

Appraising whether each of the changes to the Constitution of Ukraine in the part of justice is positive or negative, respondents saw all changes listed in the survey as positive: raising qualification requirements for judges (85.7% national survey respondents and 77.1% of court exit poll respondents), competition for appointment and transfer of judges (81.7% and 71.4% respectively), limitation of judicial immunity (80.4% and 66.5% respectively), distancing political bodies (Parliament and President) from making decisions on judges' careers (78.1% and 65.8% respectively), introduction of the institute of constitutional complaint (73.6% and 64.9% respectively), creation of the

Are the following changes positive or negative for Ukraine's judicial system?
% respondents

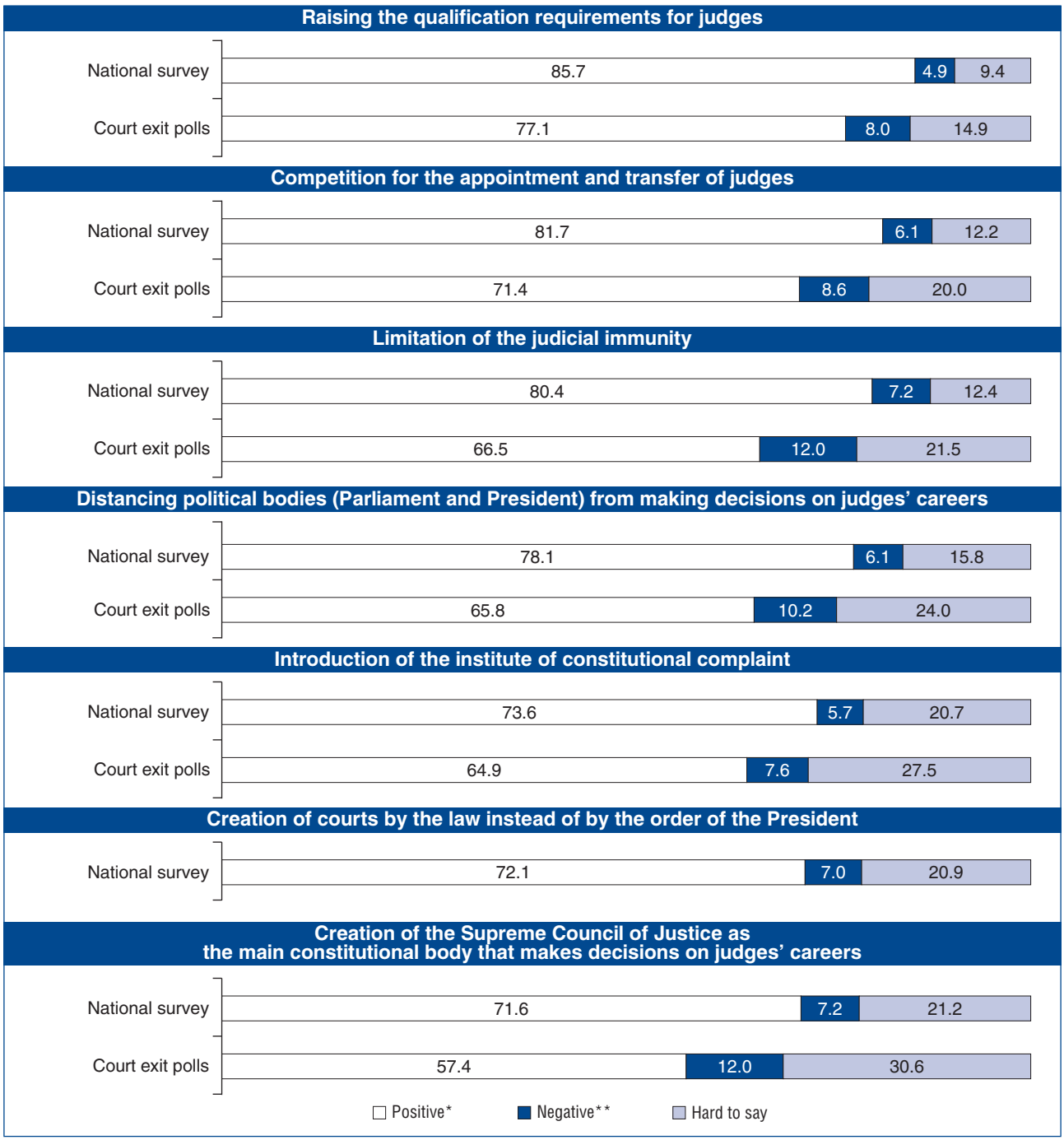


* Sum of answers "positive" and "rather positive".
** Sum of answers "negative" and "rather negative".

February 2019

the Supreme Council of Justice as the main constitutional body that makes decisions on judges' careers (71.6% and 57.4% respectively), creation of courts by the law instead of by the order of the President (72.1% among national survey respondents) (diagram "*Do you see each of the following changes to the Constitution of Ukraine in the part of justice as positive or negative for Ukraine's judicial system?*", p.81).

Do you see each of the following changes to the Constitution of Ukraine in the part of justice as positive or negative for Ukraine's judicial system?
% respondents



* Sum of answers "positive" and "rather positive".
** Sum of answers "negative" and "rather negative".

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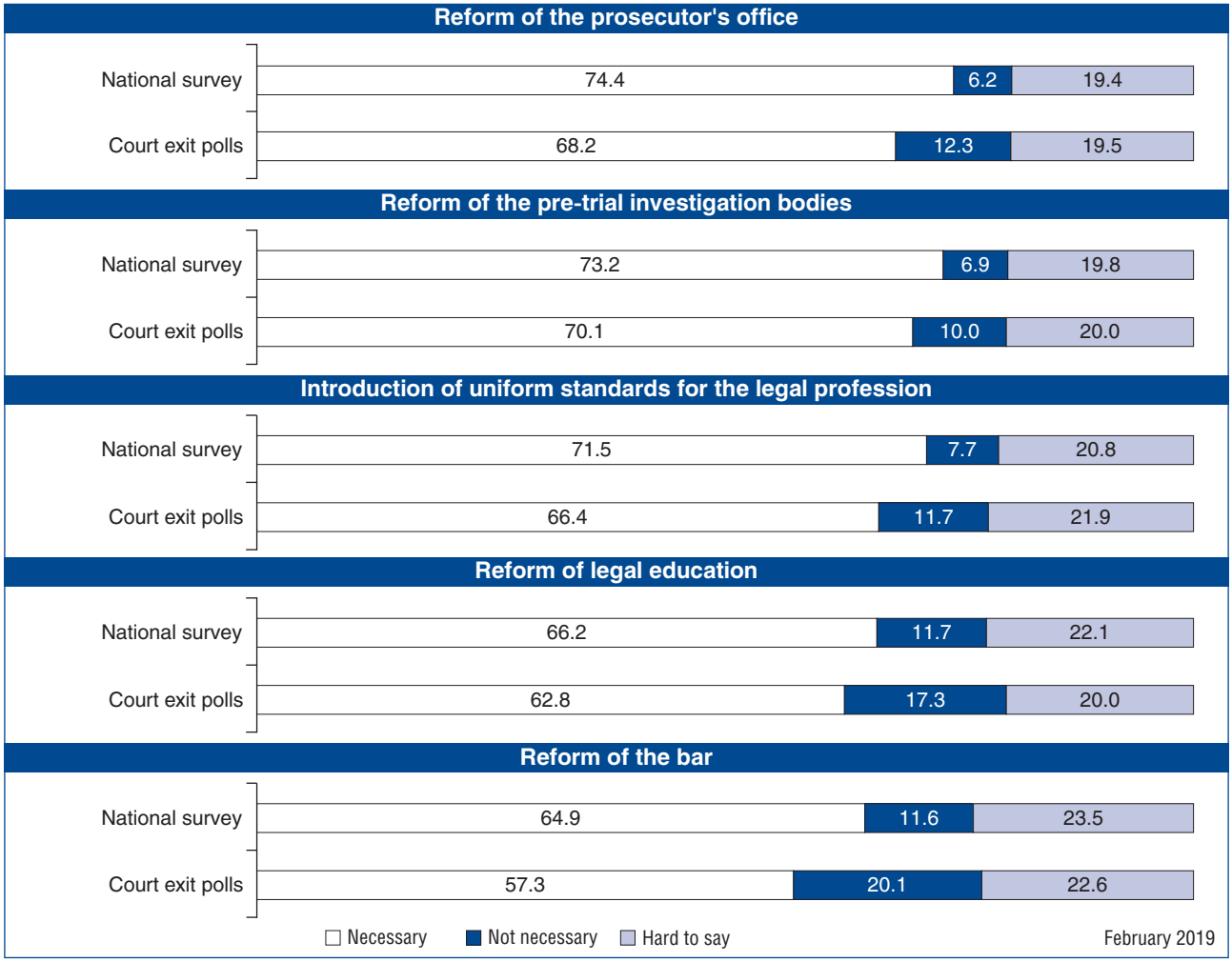
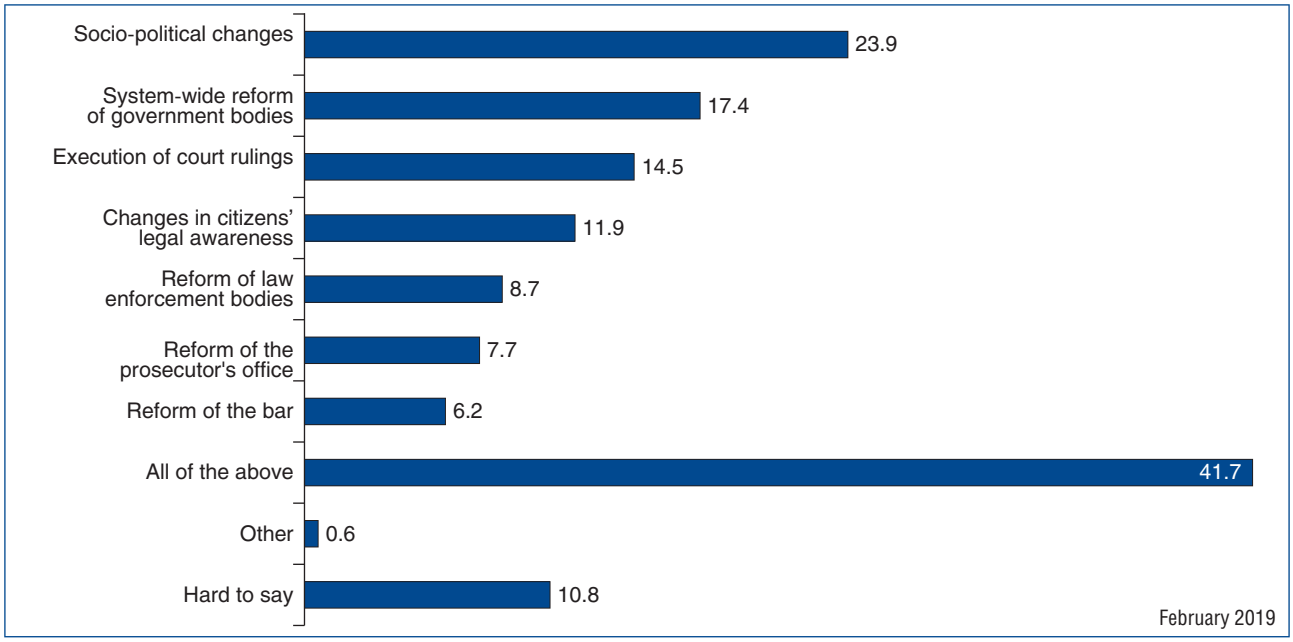
Answering the question about other legislative changes that must be introduced for successful implementation of the judicial reform, most respondents talked about the necessity of reforming the prosecutor's office (74.4% of the national survey respondents and 68.2% of court exit poll respondents), reforming pre-trial investigation bodies (73.2% and 70.1% respectively), introducing uniform standards for the legal profession (71.5% and 66.4% respectively), reforming legal education (66.2% and 62.8% respectively), reforming the bar (64.9% and 57.3% respectively) (diagram "*What other legislative changes must be introduced for successful implementation of the judicial reform?*", p.82).

Most often citizens in the national survey thought that success of the judicial reform depends on the integrated influence of a number of factors: socio-political changes, system-wide reform of government bodies, execution of court rulings, a change in the citizens' legal awareness (this is the opinion of 41.7% of respondents) (diagram "*What are the factors that contribute to the success of the judicial reform?*", p.82).

What other legislative changes must be introduced for successful implementation of the judicial reform?
% respondents



What are the factors that contribute to the success of the judicial reform?*
% respondents



* Respondents were asked to choose all acceptable options.

Trust in the judicial power and overall assessment of the work of courts by citizens

Most Ukrainians do not see Ukrainian courts as impartial and independent. For example, if opposing parties in a case include a citizen with high level of income and a citizen with low level of income, 78.9% of respondents believe that the former has a better chance of winning the case. Only 1.8% of respondents had the opposite opinion. Others believed that their chances are equal or could not decide. People's belief in the courts' propensity to take the side of the rich is rather strong and stable. Public opinion regarding this almost has not changed since 2012. There were no significant differences on these issues based on respondents' age, gender or region. Also, the answers of those who said they have had a personal experience with such cases did not differ from the total mass of responses.

In a case when opposing parties are an employer and an employee, most (69.2%) respondents believe that the employer has a better chance of winning. If parties in a court case are a regular citizen and a government representative, the majority (73.4%) of respondents believe that the government representative has a better

Who has a better chance of winning a case in the Ukrainian court, when the opposing parties are…?
% respondents

A citizen with high level of income and citizen with a low level of income				
	November 2012	**October 2017**	**February 2019**	**February 2019,** *% respondents who personally know specific cases*
A citizen with high level of income	79.1	81.1	**78.9**	80.0
A citizen with low level of income	0.7	0.7	**1.8**	2.5
Equal chances of winning the case	13.1	10.6	**13.6**	15.2
Hard to say	7.0	7.6	**5.8**	2.3
An employer (business owner) and an employee				
	November 2012	**October 2017**	**February 2019**	**February 2019,** *% respondents who personally know specific cases*
The employer (business owner)	73.5	74.7	**69.2**	66.8
The employee	1.2	2.2	**3.9**	5.0
Equal chances of winning the case	17.0	14.2	**19.2**	24.1
Hard to say	8.4	8.8	**7.7**	4.0
Regular Ukrainian citizen and a government representative				
	November 2012	**October 2017**	**February 2019**	**February 2019,** *% respondents who personally know specific cases*
Regular Ukrainian citizen	3.5	4.6	**5.5**	10.4
Government representative	78.1	78.1	**73.4**	68.3
Equal chances of winning the case	11.4	9.4	**14.5**	18.0
Hard to say	6.9	7.8	**6.5**	3.3
Owner of large enterprise and government body				
	November 2012	**October 2017**	**February 2019**	**February 2019,** *% respondents who personally know specific casesи*
Owner of a large enterprise	19.0	19.5	**18.7**	25.7
Government body	33.5	37.3	**33.8**	29.8
Equal chances of winning the case	33.4	28.2	**34.5**	36.5
Hard to say	14.1	15.0	**13.0**	8.0
A foreign state citizen and a citizen of Ukraine				
	November 2012	**October 2017**	**February 2019**	**February 2019,** *% respondents who personally know specific cases*
Foreign state citizen	22.7	29.1	**21.6**	26.2
Citizen of Ukraine	12.0	10.3	**11.4**	15.3
Equal chances of winning the case	36.9	33.5	**40.2**	44.1
Hard to say	28.4	27.0	**26.8**	14.5

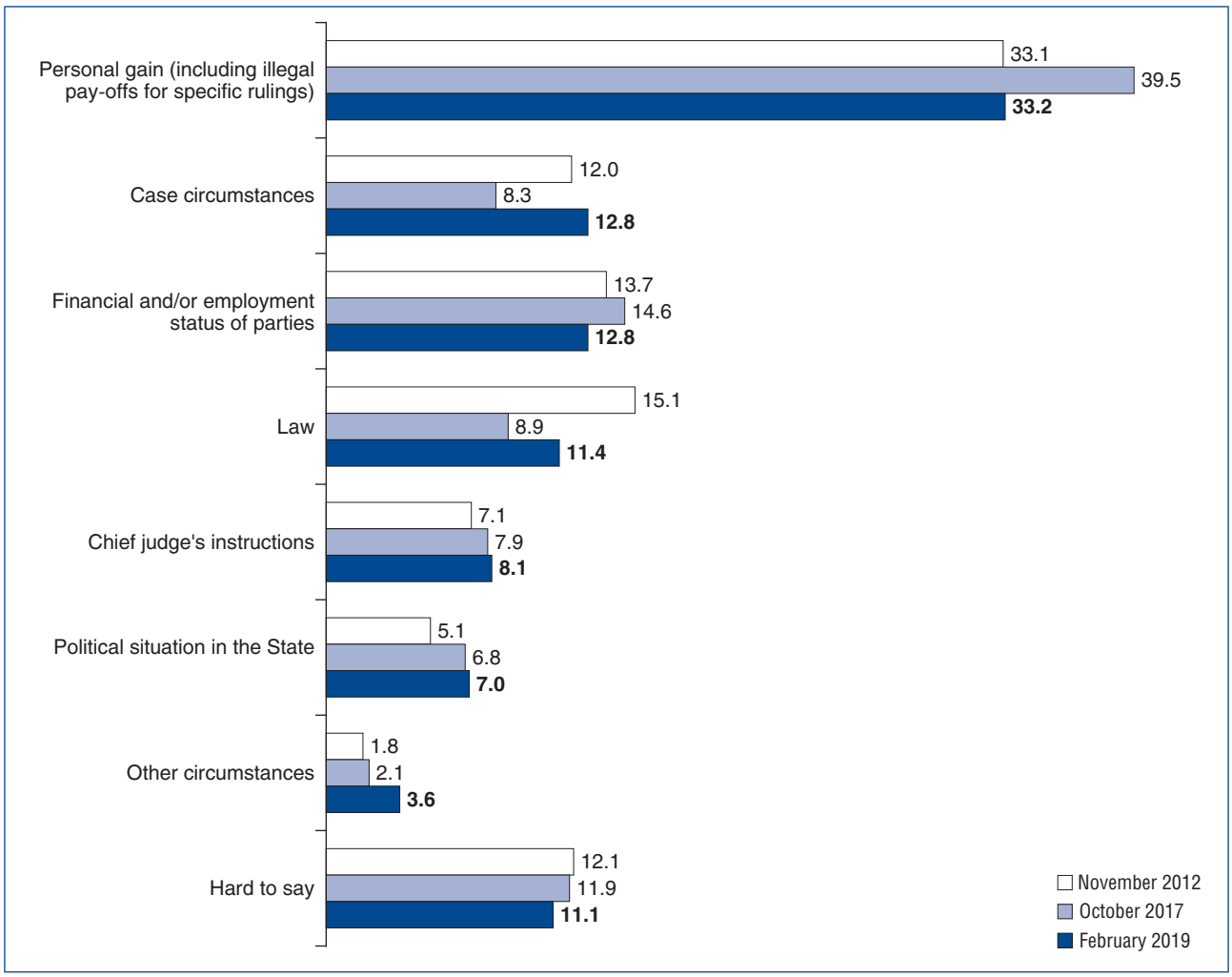
chance of winning. This is slightly less than in 2012 and 2017. Besides, respondents who had a personal experience with such cases mentioned the employer's (66.8%) or government representative's (68.3%) higher chances slightly less often than the population overall. Yet the belief that courts tend to side with employers or government bodies more than with regular citizens is still prevalent in all population groups.

Respondents' assessments of the situation with a large business owner and a government body on the opposite sides of a case were not so unanimous. A third of respondents (33.8%) thought that in this situation the government body has a better chance of winning, and 18.7% – the large business owner. Another third (34.5%) thought that chances were almost equal. These percentages are essentially the same as 2012 answers and are only slightly different from the 2017 results. However, answers of respondents who knew about specific instances of such cases were different. Almost equal percentages of representatives of this group thought that the owner of a large enterprise (25.7%) or a government body (29.8%) have a better chance at winning. Another 36.5% thought that their chances were equal.

If a citizen of Ukraine and a foreign state citizen are parties to a case, the relative majority (40.2%) of respondents think their chances are equal. This is slightly more than in 2012-2017 (33-37%). 21.6% of respondents think that a foreign national has a better chance of winning, and 11.4% – a Ukrainian citizen. Slightly more than a quarter (26.8%) of respondents did not have an answer. Among respondents that know about specific instances of such cases, percentages were similar, but slightly more people gave specific answers instead of having no answer.

Answering the question about judges motivation in making a ruling, most respondents thought they were driven by personal gain (33.2%). This number has somewhat decreased since 2017 (39.5%) – down to the 2012 level (diagram "*What are judges most often guided by in making a ruling?*"). Less people thought that judges are most often guided by the law (11.4%), case circumstances (12.8%), financial and/or employment status of the parties (12.8%). Even less citizens said that judges are following instructions of the chief judge (8.1%), political situation in the state (7%). Compared to 2017, there was a statistically significant growth of the number of respondents who thought that

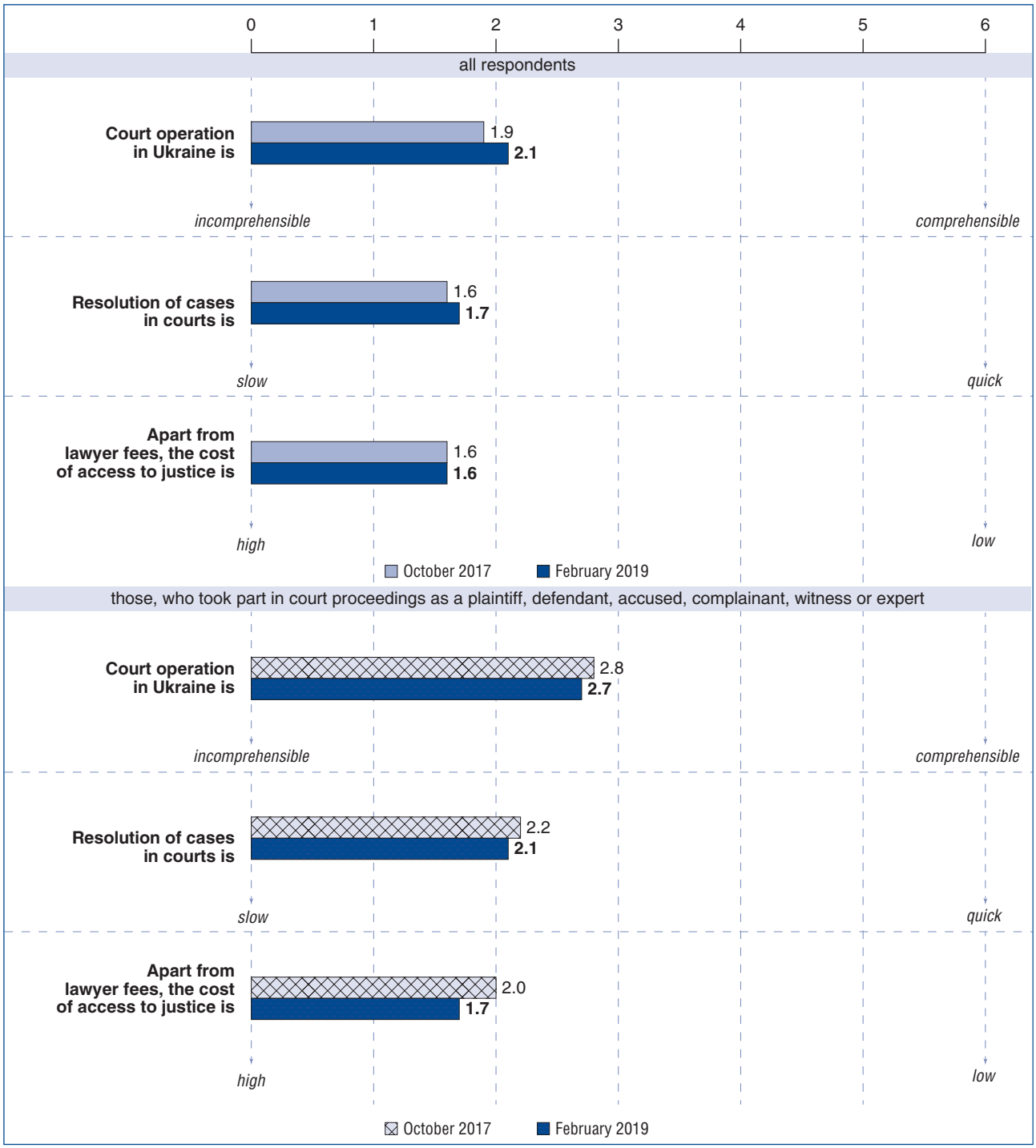
What are judges most often guided by in making a ruling?
% respondents



judges are guided by the law and case circumstances, while the number of those who thought that judges are driven by personal gain has gone down.

Most citizens do not understand the way courts operate in Ukraine, they think that cases are resolved slowly, and the cost of access to justice is high.[9] The average score for comprehensibility of court operation was 2.1, pace of case resolution – 1.7, cost of access to justice – 1.6. Respondents who took part in court hearings in the past two years gave higher scores (except the scores for the cost of access to justice). In this category of respondents, the average score for comprehensibility of court operation was 2.7 (which is a medium score), for the pace of case resolution – 2.1, and for the cost of access to justice in Ukraine – 1.7. As seen in the diagram, the scores did not change much compared to 2017.

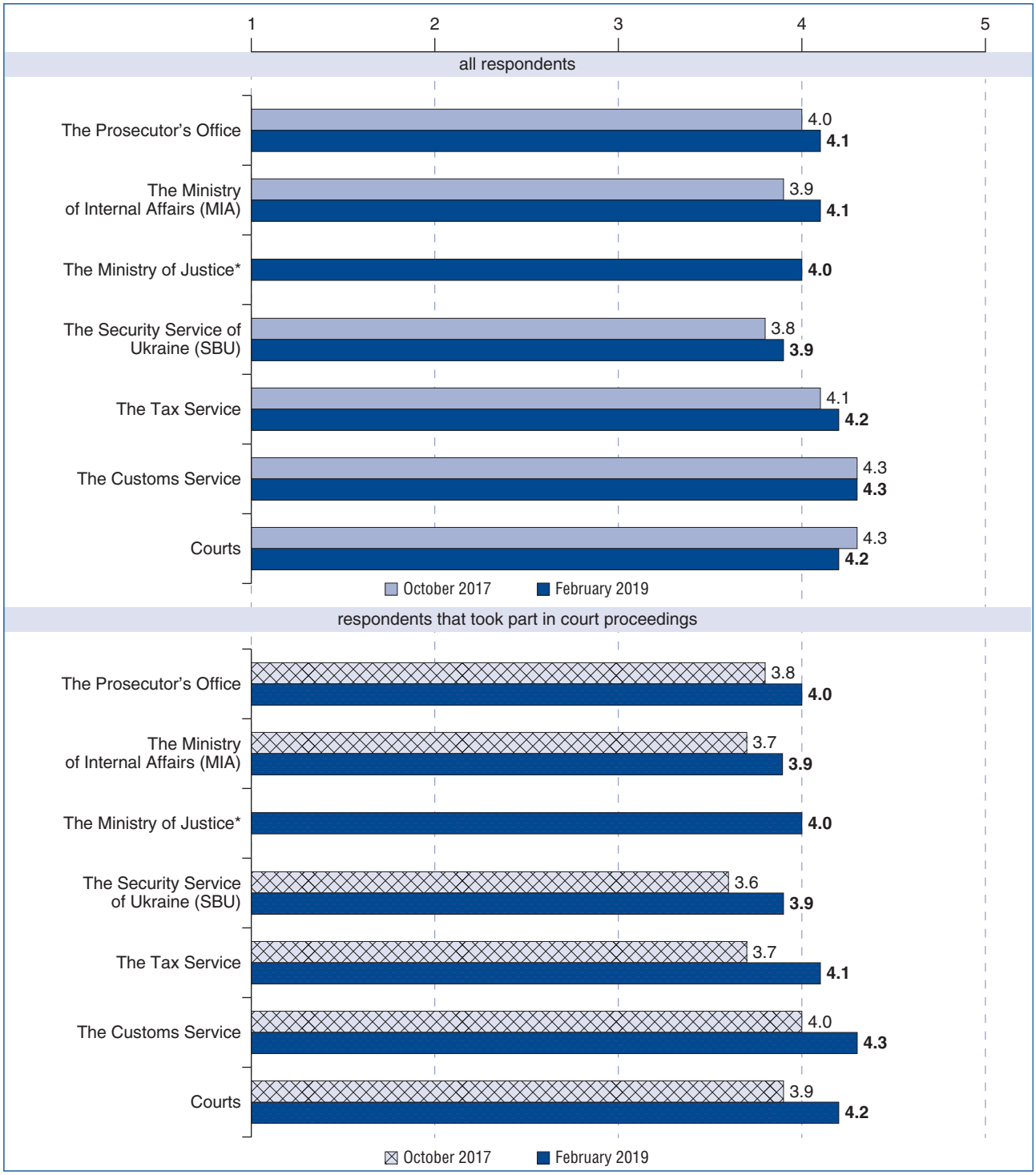
In your opinion…?
average score[9]



[9] Scores were marked on a 7-point scale from 0 to 6, where "0" means "*incomprehensible*", "*slow*", "*high cost*", respectively, and "6" – "*comprehensible*", "*quick*", "*low cost*", respectively.

There is a heated debate in the Ukrainian society on corruption in government bodies. Average assessment of the level of corruption in all the proposed government bodies was high.10 Thus, the average score for the SBU (Security Service of Ukraine) was 3.9, for the Ministry of Justice – 4.0, for MIA and prosecutor's office – 4.1 each, tax service and courts – 4.2 each, customs service – 4.3. Scores given by respondents who took part in court proceedings in the past two years were almost the same. Compared to 2017, citizens' assessment did not undergo statistically significant changes (diagram "*Assessment of the level of corruption…*").

Assessment of the level of corruption in the government bodies below,
average score[10]

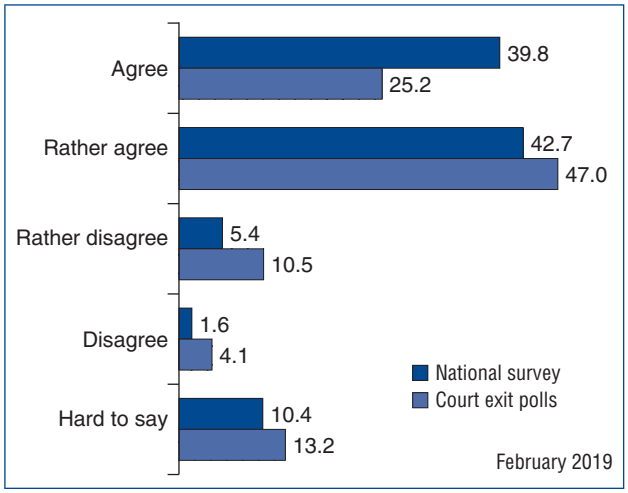


* The 2017 survey did not have this option.

[10] Respondents were evaluating the level of corruption in government bodies on a 5-point scale from 1 to 5, where "1" means no corruption, and "5" – the respective body is completely corrupt.

82.5% of Ukraine's population agree or rather agree with accusations of corruption, political dependence and biased approach against Ukrainian courts.

Today Ukrainian courts are often accused of corruption, political dependence and biased approach. Do you agree with these characteristics of Ukrainian courts?
% respondents

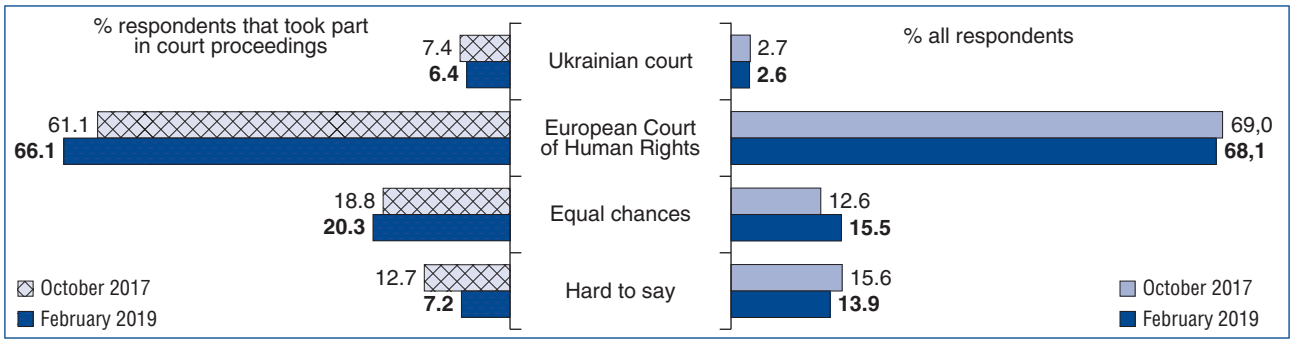


Most respondents of court exit polls, i.e. those with recent personal court experiences, also agree with these characteristics of Ukrainian courts. Yet, the picture is somewhat more optimistic among them: 72.2% of court exit poll respondents agree with accusations against courts, 14.6% – disagree with them.

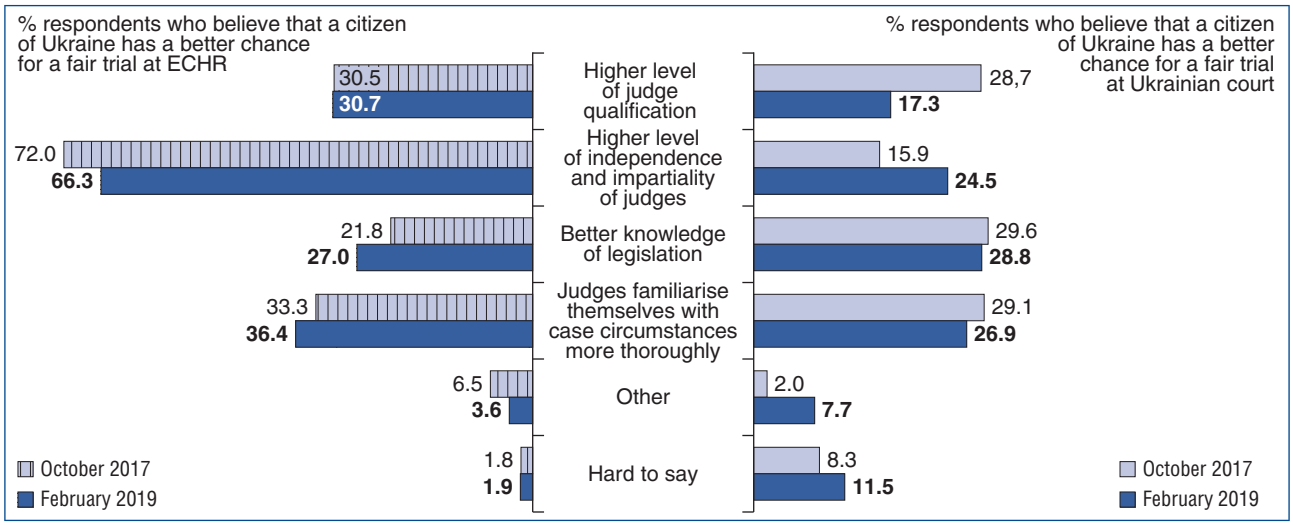
Over two thirds (68.1%) of respondents believe that a citizen of Ukraine has a better chance of getting a fair court decision at the European Court of Human Rights (ECHR), than at Ukrainian court. 2.6% of respondents had the opposite opinion. 15.5% of respondents believe that chances in both courts are equal. Among citizens that took part in court proceedings in the past two years the situation is somewhat more optimistic: 66.1% of them think that ECHR provides a better chance for a fair decision, 6.4% – Ukrainian court, while 20.3% think that chances are equal.

Among respondents who think that ECHR provides a better chance for a fair trial, most explain their choice by the higher level of independence and impartiality of judges (66.3%). Among few respondents who thought Ukrainian courts gave a better chance for a fair trial, most explained this by better knowledge of legislation (28.8%). Also, these respondents explained this by the higher level of independence and impartiality of judges more often than in 2017 (24.5% vs 15.9%).

Which court – a Ukrainian one or the European Court of Human Rights – provides better chances for a fair trial for a citizen of Ukraine?



What is the reason?*



* Respondents were asked to choose all acceptable options.

Ukrainian citizens' trust in courts and the judiciary is a rather complex and controversial phenomenon. To understand it better, it is worth looking at the issue of trust in the broad range of government and public institutions. Currently, there is a group of government and social institutions with a high level (positive balance) of trust – i.e. there are more citizens that trust them than those who do not. They include the Church (talking about the institution in general, trust is traditional and hardly depends on current events), institutions directly involved in protecting Ukraine, and civil society organisations. Among government and civil society organisations, most trusted ones are volunteer organisations (completely or rather trusted by 67% of respondents), the Church (60.6%), the Armed Forces (61.6%), the State Emergency Service (60.8%), the volunteer battalions (57%), the State Border Guard Service (52.1%), the National Guard of Ukraine (50.1%), Ukrainian media (49%) and NGOs (44.9%) – the number of respondents that trust these institutions statistically significantly exceeds the number of those, who do not.

To what extent do you trust the following social institutions?
% respondents

	Trust*		Do not trust**		Hard to say		Balance of trust***	
	2017	2019	2017	2019	2017	2019	2017	2019
Volunteer organisations	66,7	67,0	20,0	23,1	13,3	9,9	*46,7*	***43,9***
The Church	64,4	60,6	22,5	27,9	13,1	11,5	*41,9*	***32,7***
The State Emergency Service	50,5	60,8	32,6	29,0	16,9	10,2	*17,9*	***31,8***
The Armed Forces of Ukraine	57,3	61,6	33,3	29,9	9,3	8,5	*24,0*	***31,7***
The Volunteer battalions	53,9	57,0	31,2	32,6	14,9	10,4	*22,7*	***24,4***
The State Border Guard Service	46,4	52,1	40,6	35,5	13,0	12,4	*5,8*	***16,6***
The National Guard of Ukraine	52,6	50,1	34,2	38,3	13,2	11,6	*18,4*	***11,8***
Ukrainian media	48,3	49,0	42,7	43,2	9,0	7,8	*5,6*	***5,8***
Civil society organisations	48,0	44,9	37,0	41,0	15,1	14,1	*11,0*	***3,9***
The Ukrainian Parliament Commissioner for Human Rights	25,4	37,0	40,7	39,5	33,9	23,5	*-15,3*	***-2,5***
Patrol police (new)	40,9	40,4	43,0	49,1	16,0	10,5	*-2,1*	***-8,7***
SBU	35,2	37,2	46,8	46,5	17,9	16,3	*-11,6*	***-9,3***
Western media	34,1	34,6	43,8	44,3	22,1	21,1	*-9,7*	***-9,7***
National police	39,3	37,8	46,2	51,2	14,4	11,0	*-6,9*	***-13,4***
Trade unions	26,5	23,1	50,6	57,5	22,8	19,4	*-24,1*	***-34,4***
The Constitutional Court of Ukraine	14,9	18,6	66,8	61,7	18,4	19,7	*-51,9*	***-43,1***
The Supreme Court	13,1	17,5	72,0	64,9	15,0	17,6	*-58,9*	***-47,4***
The National Bank of Ukraine	15,3	20,8	75,2	68,2	9,5	11,0	*-59,9*	***-47,4***
President of Ukraine	24,8	23,4	68,2	70,9	7,0	5,7	*-43,4*	***-47,5***
The Anti-Corruption Court****	13,7	14,2	61,1	62,3	25,1	23,5	*-47,4*	***-48,1***
The National Anti-Corruption Bureau of Ukraine	20,1	16,0	57,6	64,3	22,3	19,7	*-37,5*	***-48,3***
The National Agency for Prevention of Corruption	14,8	13,6	57,7	63,9	27,5	22,5	*-42,9*	***-50,3***
The Specialised Anti-Corruption Prosecutor's Office	17,6	13,3	57,5	64,5	24,9	22,2	*-39,9*	***-51,2***
The Prosecutor's Office	14,2	16,6	74,1	70,4	11,7	13,0	*-59,9*	***-53,8***
Local courts	11,9	14,0	77,4	69,7	10,8	16,3	*-65,5*	***-55,7***
Government of Ukraine	19,8	18,5	73,1	75,3	7,1	6,2	*-53,3*	***-56,8***
Commercial banks	13,9	15,5	75,5	74,8	10,6	9,7	*-61,6*	***-59,3***
Political parties	13,0	12,3	75,1	76,8	11,9	10,9	*-62,1*	***-64,5***
Courts (judicial system as a whole)	9,3	11,4	80,9	77,7	9,8	10,9	*-71,6*	***-66,3***
Verkhovna Rada of Ukraine	13,8	12,7	80,7	82,0	5,6	5,3	*-66,9*	***-69,3***
The State apparatus (government officials)	9,1	11,2	82,9	80,7	8,0	8,1	*-69,5*	***-73,8***
Russian media	4,4	6,0	82,8	82,8	12,9	11,3	*-78,4*	***-76,8***

* Sum of answers "trust" and "rather trust".
** Sum of answers "do not trust" and "rather do not trust".
*** Difference between the number of those who trust and those who do not trust.
**** In 2017, this option was proposed as an experiment. As of October 2017, the Anti-Corruption Court has not been created yet; as of February 2019, it has not yet started its work as well

The balance of trust in the Ukrainian Parliament Commissioner for Human Rights is close to zero (-2.5%), i.e. the number of citizens who trust the Ombudsperson is almost equal to the number of those, who do not.

Trusting police is a separate story. For many years before the reform, Ukrainian police has had one of the lowest levels of trust in the society. The reform and the change of name from "militia" to "police" have had a positive influence on the institution's image. At first, citizens had a positive reaction to new patrol police. While the trust in police was not much different from the trust in the pre-reform police, the level of trust in the new patrol police was drastically different: the balance of trust was positive. After this, we have observed a gradual approximation of trust levels in police and new patrol police, with trust in the former being on the rise and in the latter – decreasing. At the moment, the level of trust in these previously different branches of police established on almost the same level. And this level is rather high against the background of trust levels in other government institutions: the balance of trust in police is insignificantly negative. The Security Service of Ukraine has similar scores.

The level of trust in government bodies is much lower. 23.4% of respondents trust President of Ukraine, 70.9% – do not trust him; the National Bank – 20.8% and 68.2% respectively; Government – 18.5% and 75.3% respectively; Verkhovna Rada – 12.7% and 82% respectively. 9.1% of respondents expressed their trust in the state apparatus (government officials), 82.9% – said they do not trust it. The level of trust in the prosecutor's office is very low: 16.6% have varying degrees of trust in it, and 70.4% – do not trust it.

The level of trust in anti-corruption bodies is low. Overall, 16% of respondents trust the National Anti-Corruption Bureau, National Agency for Prevention of Corruption – 13.6%, Specialised Anti-Corruption Prosecutor's Office – 13.3%. Approximately 64% of respondents do not trust either of these bodies.

Courts have one of the lowest levels of trust in the society. 77.7% of respondents said they do not trust courts (judicial system in general), 11.4% – said they do. 69.7% of respondents do not trust local courts, 14% – trust them; 64.9% of citizens do not trust the Supreme Court, 17.5% – do; 61.7% do not trust the Constitutional Court, 18.6% – do.

Citizens were also asked to define their level of trust in the Anti-Corruption Court, which at that time has not started its operation yet. 14.2% of respondents expressed varying degrees of trust in the Anti-Corruption Court, while 62.3% – varying degrees of mistrust. These results may be a sign that citizens make their decision on trusting/not trusting the Anti-Corruption Court, as well as other courts and the court system in general based on political considerations, not on the grounds of their own experience or other real facts. It is highly probable

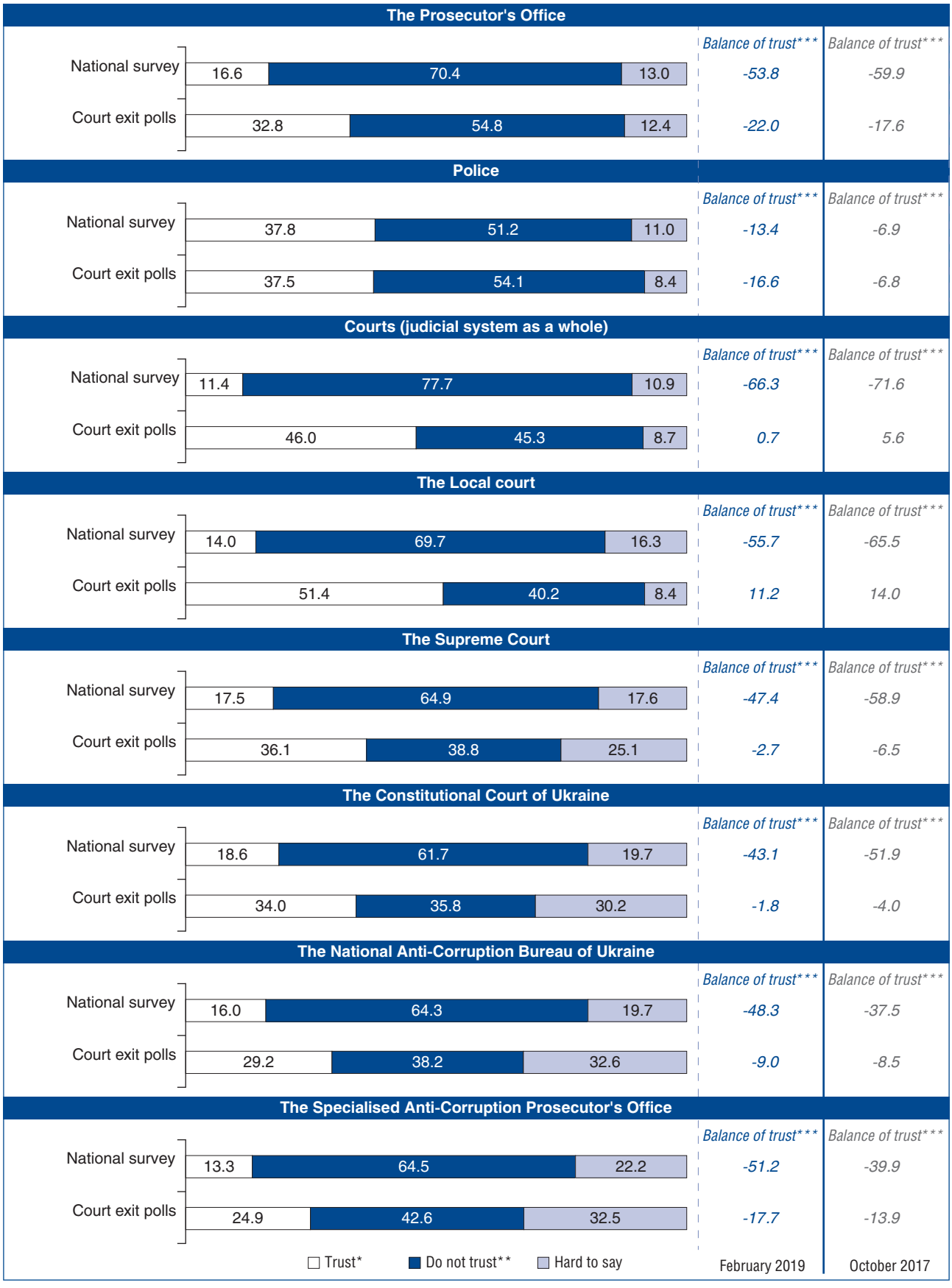
that the low level of trust in courts is the consequent effect of the extremely low level of trust in government bodies in general.

This idea is confirmed by results of court exit polls – answers of people who have had a personal experience of dealing with courts. Thus, we can state that among citizens with recent experience of dealing with courts, trust in the court system prevails: the balance of trust in the court system in general is close to zero, but still positive, i.e. the number of respondents that trust courts was higher than those, who do not (diagram "*To what extent do you trust…?*", p.90). The level of trust in local courts among citizens who came in contact with courts is even higher: the majority of respondents expressed their trust in local courts 51.4%, mistrust – 40.2%. These respondents' level of trust in the Supreme Court and the Constitutional Court is somewhat lower, but still much higher than among the general population. Besides, it is very likely that the respondents had no experience in dealing with the Supreme or Constitutional Court, so approximately a quarter of respondents could not give an answer talking about their trust in these institutions.

Talking about how the judicial reform affected the level of trust in the judiciary, positive expectations somewhat prevail in the society. The relative majority (38.1%) of respondents believe that steps already taken in the judicial reform will or are likely to facilitate the growth of people's trust in the judiciary, 25% – have the opposite opinion. Another 20.2% of respondents said that trust in the judiciary does not depend on the judicial reform (diagram "*Will the steps already taken in the judicial reform…?*", p.91).

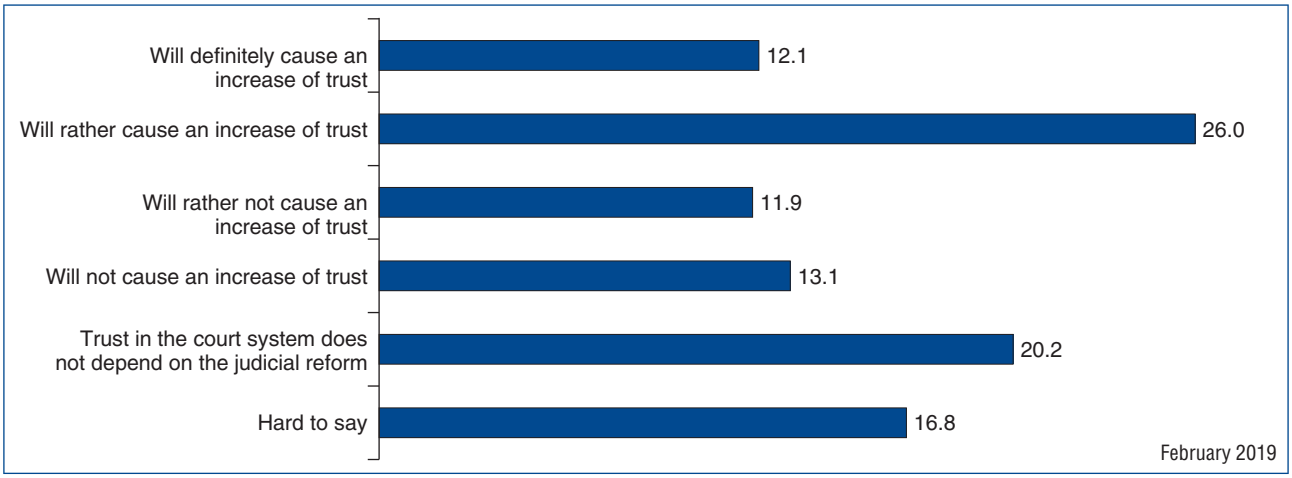
Respondents believe that among the steps already taken in the judicial reform, growth of trust will be positively affected mostly by openness and comprehensibility of court procedures (28%) and increased court openness in relations with public (23.8%). 19% of respondents believe that trust will grow along with the start of selection of new judges. Equal parts of respondents expect that trust will grow as a result of dismissal of judges appointed before the reform (16.5%) and creation of the Supreme Court from scratch (16.4%). Another 14.8% of respondents think that effective cooperation between judicial bodies can lead to increased trust (14.8%).

To what extent do you trust these social institutions?
% respondents

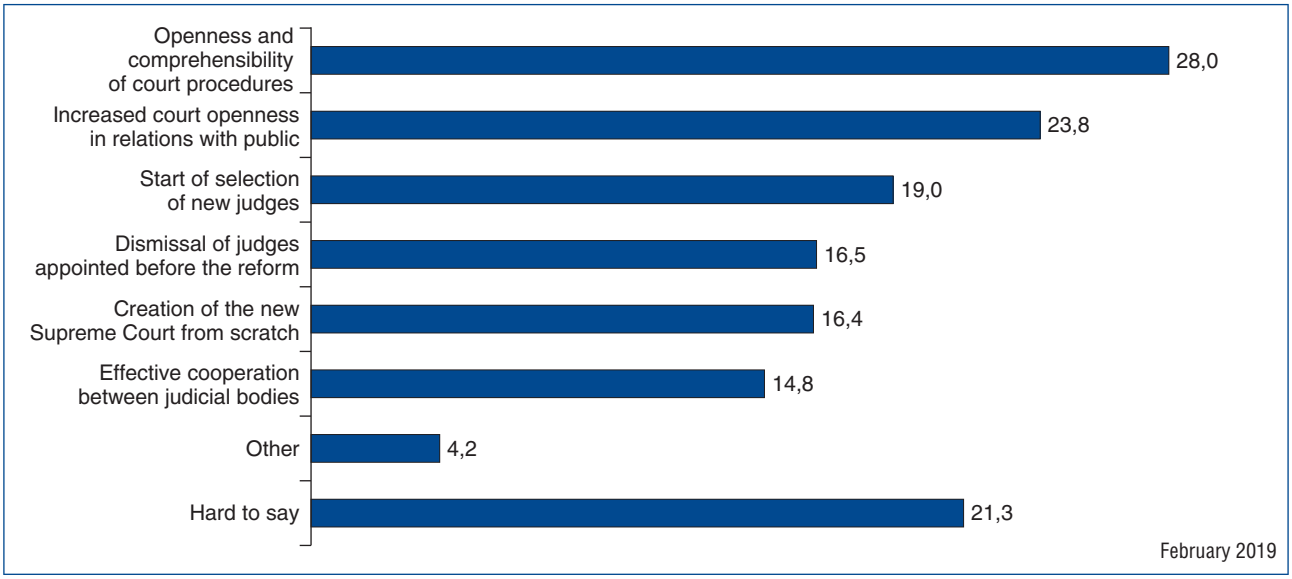


* Sum of answers "trust" and "rather trust".
** Sum of answers "do not trust" and "rather do not trust".
*** Difference between the number of those who trust and those who do not trust.

Will the steps already taken in the judicial reform cause an increase of citizens' trust in the court system?
% respondents



Which of the steps already taken in the judicial reform will help to mostly increase people's trust in the court system?*
% respondents



* Respondents were asked to choose up to three acceptable options.

Conclusions

Media play the defining role in shaping public opinion regarding the judicial system in Ukraine and court system reform, as this is where most citizens get their information about operation of Ukrainian courts.

Comparing court exit poll results (when respondents were evaluating the work of courts on the day of the survey) to the national survey results (when respondents who participated in court hearings evaluated their experience in the past two years), we saw that opinions of respondents surveyed in court exit polls were better on almost all aspects.

Both, in the national survey and in the court exit polls, percentages of those who thought that the court ruling was fair and lawful did not have a statistically significant difference compared to the results received in the respective survey in 2017. However, in both of these surveys in 2019, percentage of those who thought that the court ruling was not fair and lawful was slightly smaller than in 2017.

Assessing the different aspects of court operation, national survey respondents expressed satisfaction more often than dissatisfaction with all of its aspects. Also, most indicators had better results than in 2017.

Respondents in court exit polls, same as in 2017, gave higher scores to all aspects compared to respondents in the national survey. At the same time, assessment for most indicators did not have any significant changes compared to court exit poll results in 2017. There was only a certain growth of satisfaction with judges' impartiality during hearings.

Evaluating their experience of participation in court hearings of their closest social environment representatives in the past two years, national survey respondents expressed negative opinions about fairness and lawfulness of court rulings more often, although negative opinions have decreased since 2012.

Compared to 2017, citizens' self-assessment of their level of awareness of the judicial reform somewhat decreased. This could be caused by less media coverage of the changes in the judiciary than two years ago.

Only 2% of respondents believe that the judicial reform in Ukraine has almost been completed and that all the key changes have been made.

Attitude to the judicial reform is mostly negative. There was no statistically significant difference in the percentage of those who had positive attitude to the judicial reform compared to 2017, while the number of respondents with negative attitude has gone down (due to an increase of the number of respondents who were indifferent).

Negative attitude is also typical for all other reforms (land, healthcare, pension, education). Attitude to the judicial reform, as to all reforms altogether, significantly depends on the level of trust in government. Also, attitude to the judicial reform is strongly improved by the increasing amount of information about it.

Negative attitude to the judicial reform is connected with the fact that citizens do not see its results – only 9% of the national survey respondents noticed changes in the judiciary that were being implemented in the past four years. These changes were noticed more often (21%) by respondents in court exit polls (i.e. by those, who came in direct contact with the judicial system).

At the same time, the number of those, who support the changes already introduced into the judicial system exceeds the number of those who do not support them – evaluating changes that have already taken place in Ukraine's judiciary, most respondents view all changes as positive.

Support of changes in the judicial system is most often based on the need to deal with corruption, ensure the rule of law and fairness.

Absence of support for changes in the judiciary is most often based on the perception that there have been no changes for the better so far, as well as on disbelief in the possibility of overcoming corruption, and lack of trust in those who implement reforms.

While the majority of citizens in the national survey thought that at the moment judges in Ukraine are not independent, court exit poll participants had almost equal percentages of opposite opinions (those who believe they are and they are not independent).

More citizens of Ukraine think that execution of court rulings is inadequate.

Assessing the potential role of civil society representatives in qualification assessment and competition procedures for judges, most respondents thought that they should have an auxiliary role.

Answering the question about other legislative changes that need to be introduced for the judicial reform to be successful, most respondents included reforms of the prosecutor's office, pre-trial investigation bodies, legal education, the bar, introduction of uniform standards for the legal profession.

Most citizens thought that success of the judicial reform depends on the integrated influence of a number of factors: socio-political changes, system-wide reform of government bodies, execution of court rulings, a change in the citizens' legal awareness, reforms of law enforcement, prosecution and the bar.

Because most citizens have no personal experience of dealing with courts and define their attitude to the court system based on somebody else's experience or media information, the overall attitude to the court system is negative and the level of trust – one of the lowest among government and social institutions. The level of trust among citizens with recent personal experience of dealing with courts it much higher. Moreover, the balance of trust in local courts and the court system in general is positive among these citizens – i.e. the number of those who trust courts is higher than those who do not.

There is a number of issues in the work of Ukrainian courts, to which both the overall population and the people with recent personal experience of dealing with Ukrainian courts, have negative attitude. For instance, respondents tend to think that in cases against regular citizens courts take the side of wealthier citizens, government bodies and their representatives more often. Most citizens believe that a Ukrainian citizen has better chances of getting a fair ruling at the ECHR than at Ukrainian court. Most of those, who think like this, indicated a higher level of independence and impartiality of judges as the reason.

Thus, the high level of negative attitude to courts is mostly formed by two factors: negative media image and financial-political influence on judges. Study results showed that the influence of the former is rather easily eliminated during citizens' personal interaction with courts. Influence of the second factor can be decreased through the introduction of measures for increasing real independence of courts.

Citizens' attitude to individual steps implemented or planned as part of the judicial reform is mostly positive. However, influence of the judicial reform on people's overall attitude to the judiciary is extremely low. ■