Ministers' Deputies
Information Documents

CM/Inf/DH(2006)19 revised 2 17 October 2006[1]

Non-enforcement of domestic judicial decisions in Russia: general measures to comply with the European Court's judgments

Memorandum prepared by the Department for the execution of the European Court's judgments and first comments by the Russian authorities (Application of Article 46 of the ECHR)

EXECUTIVE SUMMARY

The present Memorandum has been prepared to assist the Committee of Ministers in its supervision of the execution by the Russian Federation of a number of judgments of the European Court relating to the public authorities' failure to comply with domestic judicial decisions delivered against them. These judgments reveal an important structural problem requiring an urgent and comprehensive solution.

The Memorandum examines the special procedure set up from January 2006 to improve the enforcement of such judicial decisions. It also takes into account the experience of other member states in resolving similar problems in response to the Court's judgments and the conclusions reached by the CEPEJ on these issues.

The first version of the Memorandum (CM/Inf/DH(2006)19) has been well received by the authorities and considered to be a positive contribution to the identification of the general measures to prevent new similar violations and further applications to the European Court. In view of the extent of the problem, the authorities have suggested that certain areas are identified where the non-enforcement problems should be solved as a matter of priority taking into account the specific circumstances involved.

This revised version also takes into account the first experiences of the implementation of the enforcement new mechanism, insofar as these have been available to the Secretariat, as well as some answers provided by the Russian authorities to the questions raised in the first version of the Memorandum.

Following this examination, the Memorandum points at a number of outstanding problems and proposes a number of avenues that the Russian authorities may consider in their ongoing search for a comprehensive resolution of the problem. The main avenues dealt with are:

- *Improvement of budgetary procedures and practical implementation of budget decisions;*
- *Ensuring effective compensation for delays (indexation, default interest, specific damages, possibility of reinforcing the obligation to pay in case of unjustified delays);*
- *Increased recourse to judicial remedies;*
- *Ensuring effective liability of civil servants for non-enforcement;*
- *Possible introduction of compulsory execution, including seizure of state*

assets;.

- *Possible reconsideration of the bailiffs' role and increasing their efficiency.*

INTRODUCTION

1. Since 2002 a number of judgments of the European Court of Human Rights ("the Court") have found violations of the European Convention on Human Rights ("the Convention") by the Russian Federation on account of the public authorities' failure to comply with domestic judicial decisions delivered against them (violations of Articles 6§1 and 13 of the Convention and of Article 1 of Protocol No.1). Under Article 46 of the Convention, all these judgments have been transmitted to the Committee of Ministers for supervision of their execution, which notably implies the adoption of general measures preventing new similar violations.

2. It was widely acknowledged in the Committee of Ministers that the Court's findings reveal important structural problems which must be resolved to comply with the judgments. The main elements at the origin of these problems at issue are summarised below:

- the bailiff's inefficiency[2];
- lack of coordination between various enforcement agencies[3];
- lack of clarity in judgments to identify the debtor;
- lack of funds on the debtor's account[4];
- non-availability of budgetary funds[5];
- lack of clarity as to the documents to be sent to the Ministry of Finance[6].

The Committee of Ministers therefore invited the Russian authorities to inform it of the measures taken or envisaged to remedy these structural problems, thus preventing new, similar violations.

3. The Russian authorities expressed their understanding for the concerns expressed in the Committee as regards the importance and complexity of the problems, the large number of people affected by them and the influx of similar applications before the Court (estimated at 40% of all admissible complaints against Russia). They also gave assurance that the current problem is not the lack of funds but the "complicated budgetary relations between the federal authorities and the authorities of the subjects of the Russian Federation". Solutions to the problems are already being sought in close co-operation with the Council of Europe (not least through an ongoing bilateral project with CEPEJ).

4. The Committee has acknowledged that priority should be given to finding urgent solutions to these structural problems and the Secretariat was asked to assist the Committee and the Russian authorities in this matter.

5. The Secretariat has therefore prepared the present Memorandum with a preliminary description and analysis of the underlying problems and presenting certain possible key avenues for their resolution. Without being exhaustive, the Memorandum largely builds upon the experience of other countries, which were confronted with similar problems when executing the Court's judgments.

I – Changing enforcement procedure between 1997 and 2005

6. The procedure for enforcement of domestic judicial decisions ordering public authorities to pay money has changed several times since the entry into force of the Convention in respect of Russia (5 May 1998):

7. **Between 1997 and 2001**, **the bailiff service was by virtue of the 1997 Law on Enforcement proceedings - hereinafter the "1997 Law**" - **the only authority competent to ensure enforcement of all judgments**, including of those delivered against the state, its regions, municipalities or their organs and legal entities of public law (hereinafter referred to altogether as "Public Authorities"). The 1997 Law empowered bailiffs to take all necessary measures to that effect, including the attachment of goods or accounts.
The violations found by the Court during this period mainly originated from the inefficiency of the bailiff service[7].

8. **Between 2001 and 2005**, **the enforcement of judgments against the public authorities was mainly based on a special execution procedure established by government decrees entrusting execution to the Ministry of Finance**[8]. In addition, the Ministry of Finance was duly empowered to make the necessary payments by yearly Laws on the Federal Budget (starting with the Law No. 150-ФЗ of 27 December 2000).

9. The bailiffs' competence in this area under the 1997 Law was explicitly excluded as from 2003 (Law No. 176- ФЗ of 24 December 2002). No compulsory means existed to secure the execution of judgments.

10. The Supreme Court held on several occasions between 2001 and 2003, that the existence of special execution procedure did not, in principle, prevent claimants from seeking enforcement through the bailiff service under the 1997 Law, if necessary. However, the enforcement of such decisions through bailiffs did not appear to work effectively in practice.

11. On 14 July 2005, the Constitutional Court challenged the government decree on special execution procedure adopted in 2002 - Decree No. 666, stating that the special system set up required a legislative basis. The Constitutional Court gave the authorities until 1 January 2006 to set up the appropriate enforcement procedure, respecting the following principles:

- enforcement of judicial decisions shall take place within a reasonable time;
- enforcement proceedings shall be subject to an effective – not only formal – judicial review making it possible to challenge acts by civil servants delaying or denying enforcement;
- non-compliance with a court decision shall give rise to debtors' responsibility under the federal law and a special mechanism must exist to implement civil servants' responsibility for lack of or delay in enforcement.

12. **As from the end of 2005,** in the wake of the Constitutional Court's judgment, Parliament adopted the **Law of 27 December 2005 - hereinafter referred to as "the 2005 Law"** (Law No. 197 - ФЗ of 27 December 2005 amending the Budgetary Code, the Code of Civil Procedure, the Arbitration Code and the Federal Law on Enforcement proceedings) **which confirmed the special execution procedure,** but entrusted execution at the federal level primarily to the **Federal Treasury** in respect of legal entities funded by the federal budget, and to the **Ministry of Finance** in respect of the State itself, with corresponding systems at regional and municipal levels.

II – The special execution procedure set up by the Law of 2005

13. The new procedure for enforcement of judgments delivered against the public authorities under the 2005 Law **is largely based on the presumption that the responsible state organs (the Federal Treasury with its territorial offices, the Ministry of Finance, the financial departments of regions and municipalities) will henceforth effectively ensure, upon the claimant's request, compliance with judgments. The 2005 Law does not contain any right for claimants to use coercive enforcement mechanisms against the public authorities.**

A. General principles underlying the new procedure

a) Bailiffs' competence considerably restricted

- Bailiffs no longer have competence forcibly to recover funds deposited on accounts held with the Federal Treasury by the public authorities;

- Bailiffs conserve competence forcibly to recover funds only where they are deposited by state entities with private banks;

b) Uniform procedure introduced

- The 2005 Law establishes a uniform list of documents to be submitted by claimants to the Treasury offices with a view to enforcement of judgments (e.g. a writ of execution together with a certified copy of the judgment and claimant's request including his bank details);

- The 2005 Law also specifies an exhaustive list of grounds and upheld the previously existing 5-day time-limit for considering the claim and returning the file to the claimant;

- The time-limit for enforcement of the judgment is extended from two to three months from receipt of the claim by the Treasury office;

c) Specific rules identifying defendants in the proceedings brought against the public authorities

- The 2005 Law identifies defendants in judicial proceedings brought against the State and its entities. They shall be represented by the principal superintendent of the federal budgetary funds and principal superintendent of the budgetary funds depending on the departmental affiliation of the debtor, respectively.

d) Responsibilities for non-enforcement

- The 2005 Law provides the civil servants' responsibility for non-enforcement may be engaged through court proceedings in accordance with existing laws.

B. Two types of procedures depending on the debtor

14. The 2005 Law also establishes two separate procedures for the execution of judicial decisions depending on the debtor against which the judgment is delivered.

1. Judicial decisions delivered against legal entities of public law funded by state, regional or municipal budgets[9]

15. **The competence** to enforce of such judicial decisions rests within the **Federal Treasury** and its territorial offices.

a) Measures foreseen to ensure execution

- If the debtor lacks funds to comply with a judgment, the Treasury shall request the budgetary authorities, within a 3-month statutory time limit running from the receipt of the claim, to allocate the necessary budgetary funds; this request shall specify the relevant judgment(s);

- Treasury offices are once again empowered to freeze debtors' accounts - i.e. to suspend all expense operations[10] - until the sums awarded by judgments have been paid; It is also specified that the enforcement is guaranteed by all the debtor's funds deposited in the accounts held with the Treasury (including all incomes from non-budget sources);

b) The subsidiary responsibility of the state in case of non-enforcement

- The 2005 Law provides for the state's subsidiary responsibility for non-execution by different authorities after a three-month time-limit has expired, provided that such responsibility is determined by a judge in separate proceedings;

- The 2005 Law does not explicitly deals with claims for compensation in case of delays. It would however appear that such claims can be decided in separate judicial proceedings.

2. Judicial decisions delivered against the treasury of the Russian Federation or against financial departments of regions or municipalities

- In respect of judicial decisions against the Russian Federation, regions and municipalities the writs of execution shall be sent to the Ministry of Finance, regional or municipal financial departments, respectively.

- The duty to execute such judicial decisions shall be fulfilled within the limits of the funds foreseen in the respective budgets of the Russian Federation, regions and municipalities. The 2005 Law does not provide an obligation to seek additional funds if the funds foreseen in the budgets are not sufficient to comply with all judicial decisions.

- The 2005 Law provides no special right to damages or default interest in case of delay. These matters are supposed to be dealt with under ordinary civil law (see Section 2 below).

III. Outstanding issues and key avenues for improvement

16. **It would appear to be common ground that the 2005 Law has not solved all the complex issues at the basis of the violations found by the Court.** In this respect, it **merely upheld some of the previous procedures that have not proved effective** in

practice. For example, the existence of the statutory time-limits in the procedure and the power to suspend operations of debtors' accounts within the State Treasury have not prevented non-enforcement of judicial decisions, as has been amply demonstrated by a number of judgments of the Court (e.g. *Bazhenov against Russia*, judgment of 20/10/2005; *Shvedov against Russia*, judgment of 20/10/2005, all concerning situation post 2001).

17. The Russian authorities themselves are thus actively pursuing their reflection on possible solutions, in particular through a bilateral project with the CEPEJ, on ways and means of improving the existing enforcement procedure.

18. In the context of the Committee's supervision of the implementation of the European Court's judgments at issue, **the Russian authorities have been invited to take particularly into account the experience of other countries confronted with similar problems in the past** (see in particular *Heirs of J. Dierckx v. Belgium* and *Hornsby v. Greece,* which were closed by final Resolutions DH(95)105 and DH(2004)81 respectively) and the Committee's Recommendation Rec(2003)17 setting out guiding principles concerning the enforcement of judgments. The importance of the CEPEJ's conclusions has also been highlighted.

19. In order to provide additional assistance to the authorities' in their reflection and to facilitate the Committee's supervision of the execution of the judgments concerned, **the Secretariat has attempted to identify below, on the basis of existing experience, some key avenues of interest with a view to ensuring Russia's compliance with the Convention's requirements**. The list is not exhaustive and may be subject to changes depending on the Russian authorities' and the Committee's assessment of the effectiveness of various measures adopted to comply with the judgments.

1. Improvement of the regulatory framework of budgetary procedures and practical implementation of budget decisions

a) The problem as acknowledged by the authorities

20. The Russian authorities have repeatedly acknowledged, before both the Committee of Ministers and the CEPEJ, that the non-enforcement of domestic decisions is not due to global lack of funds but results from complicated budgetary procedures within the Russian Federation.

21. This general problem may obviously require more comprehensive solutions going far beyond the enforcement of judicial decisions. The following two specific issues would however appear of direct relevance to the problem of execution of court decisions:

i) the lack of an appropriate statutory basis for budget planning to ensure in general that funds allocated correspond to the state's payment obligations

22. It seems, for example, that the "state minimal social standards" criterion, which was effectively used for budget planning, had never been defined by law. As a result, effective and consistent budget planning was rendered impossible at all levels, contributing also to the non-execution of court judgments.

23. A solution has been proposed through the introduction of an "expenditure obligation" (*расходное обязательство*) as a new basis for budget planning, particularly so as to take into account expenditures foreseeable under the laws and regulations in force. **More clarification in this respect would be useful to assess the effectiveness of this reform.**

ii) inadequate procedures for distribution of budgetary funds to state organs and entities responsible for payment

24. The federal funds allocated are often not sent in time to the state authority responsible for payments, or the latter spends the federal funds received in an improper manner, later invoking lack of funds to justify refusal to enforce judicial decisions. **No information has been received so far on efforts to deal with this issue.**

b) <u>Possible solutions</u>

i) introduction of a statutory obligation to remedy the lack of funds in the budget by requesting additional funds

25. As non-payment of outstanding debts under judicial decisions may result from the lack of funds in the budget, it would appear important **to impose a clear statutory obligation on relevant financial departments to secure the necessary funding, e.g. by requesting extraordinary appropriations**. It appears important to ensure that such a statutory obligation exists and is effectively brought to the attention of all decision-makers and that it is respected, not least through the imposition of adequate responsibilities (criminal, civil or disciplinary).

ii) Setting up a special federal fund and/or specific reserve budget lines to ensure that sums ordered by judicial decisions are rapidly made available to the debtor service

26. Given the inadequacies of the current budgetary procedures, there are inevitable shortfalls in the budgetary allocations to the state entities responsible for payment ordered by domestic courts. Accordingly, it has been proposed to set up special budget lines within the responsible departments to allow them rapidly to execute judicial decisions delivered against them. The condition of recourse to such funds should be the existence of a valid judgment ordering the payment of sums.

27. Taking account of the changes introduced by the 2005 Law, the authorities may also consider setting up either a special federal fund or decentralised reserve lines within the Federal Treasury which would **allow rapid payments ordered by the courts with a subsequent possibility to claim from the debtor service the relevant sums together with default interest**. The Federal authorities would thus be able forcibly to recover the sums while at the same time avoiding any delay in the execution of court decisions in the individuals' favour.

28. The main advantage of this mechanism would be to shift the burden of litigation to the authorities and to relieve the claimant from the need to multiply court proceedings.

29. In response to the questions raised in the previous version of the present Memorandum (CM/Inf/DH(2006)19 rev), the Russian authorities indicated that such fund is already provided for in the federal budget in the form of a "separate special

article". However, this mechanism is only concerned with the judicial decisions delivered against federal entities of the Russian Federation. More details on the operation of this "separate special article", in particular on the possibility of subsequently recovering the money from the entities at issue, would be useful.

iii) Ascertaining the responsibility for the lack of funds - judicial review of disputes between the federal and local authorities

30. The establishment of the responsibilities of the state organs and officials by an independent judicial body could be helpful to avoid endless disputes between the federal and local authorities as to who is responsible for non-payment. While this role is played in some states by courts of audit, the existing Russian courts at a sufficiently high level could be given responsibility for deciding disputes of this kind. Establishing responsibility may in the longer run go further than merely establishing the identity of the debtor service and could include penalties.

2. Ensuring effective compensation for delays

31. While it is important to improve budget procedures, it is also important to set up **adequate incentives to induce the authorities responsible to comply with their payment obligations**. One such incentive is the duty to pay adequate compensation to the individuals who suffer losses because of the non-respect of domestic judgments.

32. Such compensation also constitutes a direct requirement of the Convention (in particular Article 1 of Protocol No. 1). The European Court has thus held that the mere fact of enforcing a domestic judgment does not deprive the applicant of his/her victim status under the Convention since no redress or compensation has thereby been offered to him/her for the delay (see e.g. *Petrushko v. Russia*, judgment of 24/02/2005, §15).

33. The adequate compensation eventually paid after the delay has to take into account various circumstances with a view to compensate the gap between the sum due and the sum finally paid to the creditor and to compensate for losses of use (see e.g. *Akkus v. Turkey*, judgment of 9/07/1997; *Angelov v. Bulgaria*, judgment of 22/04/2004; *Eko-Elda Avee v. Greece*, judgment of 9/03/2006). Also compensation for non-pecuniary damages may be required (see e.g. *Sandor v. Romania*, judgment of 24/03/2005). The absence of state responsibility for delay under these different heads of prejudice could not be justified by the impossibility of establishing any *culpa* or fault on the part of public authorities (cf. *Solodyuk v. Russia*, judgment of 12/07/2005, §16).

34. This compensation required by the Convention may be achieved in different ways: indexation, default interest or damages. Also sanctions may be required in certain circumstances to provide adequate protection against unjustified delays or payment refusals.

35. The present legal situation in Russia does not appear to entirely satisfy the Convention's requirements.

a) Regular indexation of the principal sum awarded by a judicial decision

36. The indexation procedure for unpaid debts is governed, *inter alia*, by Article 208 of the Code of civil procedure.

37. In an explanatory note of 22/06/2005 regarding the application of this provision to debts by a private person to the state, the Ministry of Finance has indicated that **the purpose of the indexation provided for by this Article is to restore to the creditor a sum having the same purchasing power that it had when that sum was awarded by a judicial decision**. According to the Ministry of Finance's note, the indexation does not modify the character of the payment but only ensures the protection of rights of the creditor in the context of inflation and **prevents the depreciation of sums between the date of the judgment and the date of its enforcement**[11].

38. **It is unclear to what extent this indexation procedure is also applicable to debts owed by the state arising from court judgments delivered in favour of individuals. Clarification of this issue appears important.**

39. Indexation is also governed by 183 of the Code of arbitration procedure. However, this only allows indexation if the contract or federal law provides such a possibility. In this respect, it has to be mentioned that only Article 1091 (Damages caused to the life or health) of the Civil Code contains precise rules of indexation clearly applicable to arbitration proceedings. In the absence of other legislation, arbitration courts are usually reluctant to grant indexation. **A change of the applicable rule and practice in this area would appear necessary.**

40. However, mere indexation, even if automatically applied to state debts, is insufficient for the purposes of the Convention as it appears only to cover inflation losses. It does thus not compensate for the loss of use of the sums owed during the time of delay. Yet compensation for such loss is also required under the Convention (see e.g. *Popescu Sabin v. Romania*, judgment of 24/03/2005, § 92) and would in general appear to contribute to create adequate incentives for relevant state authorities to execute outstanding judgments in a timely manner. The way of achieving this goal is default interest.

b) Appropriate default interest - Possible change of practice under Article 395 of the Civil Code

41. There is no specific provision governing the state's duty to pay default interest. A general provision on the matter is Article 395 of the Civil Code. However, it seems that courts systematically refuse to apply this Article to state debts. In so doing, courts rely on Article 2 of the civil Code which provides that civil legislation is not applicable to the legal relationships ruled by administrative law unless otherwise provided by law.

42. The common guidelines of the Plenia of the Supreme Court and of the Supreme Arbitration Court N°6/8 of 1/07/1996 confirmed that Article 395 is inapplicable to state debts (see §2 of the decision). This position was not overruled in subsequent proceedings by the Constitutional Court (Ruling N°99-O of 19/04/2001).

43. The State's duty under the Convention to compensate for delays may thus be implemented, at least in part, by a change of practice under Article 395. Such change might be ensured through appropriate legislative amendments or changes of **interpretation to be operated by the Plenia of the Supreme Court and the Supreme Arbitration Court** in order to bring the courts practice in line with the Convention's requirements**.**

c) Compensation of specific damages (pecuniary and non-pecuniary) which may result from delays

44. **A complementary avenue to obtain adequate compensation is the civil liability of the state.** The present Russian Civil Code also provides for state civil liability for "acts or omissions of state organs, municipalities or their agents" (Article 1069).

45. The extent of this civil liability and its effects in practice remain to be demonstrated. The state's subsidiary responsibility under the 2005 Law does not seem to include the obligation to pay damages resulting from prolonged non-enforcement. In addition, the possibility to obtain non-pecuniary damage for the frustration caused by non-enforcement remains to be clarified.

46. **Application by all courts of the Article 1069 consonant with the Convention requirements appears, if need be, possible through common guidelines of the Supreme Court and the Supreme Arbitration Court.**

d) Reinforcing the obligation to pay in case of unjustified delays

47. Merely ensuring full compensation for losses caused by delays may not be sufficient to ensure timely compliance by public authorities with court judgments and more coercive measures have also been introduced by states (see for example the new system introduced in Greece following the Hornsby group of judgments and explained in the Committee of Minister's Final Resolution, ResDH(2004)81).

48. In view of the size of the non-execution problem in Russia, the Russian authorities might consider similar measures. Such measures would appear to require **new legislation introducing e.g. punitive default interest, money penalties or extra-ordinary damages.**

49. Amendments to the Budgetary Code, might provide for a higher interest rate penalising non-execution of judicial decisions, or at least unjustified non-execution established by a judicial decision (as to the need for judicial review - see Section 3 below).

50. Future legislation might alternatively provide that, if the execution of a judicial decision is delayed or denied, the debtor body or the Ministry of Finance should pay the claimant a standard sum for each day of delay as compensation. This sum might be calculated on the basis of a certain percentage of the sum remaining unpaid under the court decision concerned.

3. Increased recourse to judicial remedies

a) Judicial review of the execution proceedings

51. The need for efficient judicial review of enforcement proceedings under the 2005 Law has already been raised above (e.g. in respect of refusals to freeze accounts or to postpone execution).

52. More generally, the authorities are invited **to pursue consideration in consultation with the judicial community of the ways and means of involving the courts in the enforcement process**.

b) Other judicial remedies

53. Given the increasing number of similar cases pending before the European Court, the Russian authorities may wish to consider **a possibility of setting up at a national level a simplified judicial remedy allowing claimants to obtain prompt compensation** (or at least indexation) proportionate to the delay in execution as compared to the statutory time-limits (over and above the statutory default interest dealt with above) or the acceleration of such proceedings, as had been done in other countries (e.g. Interim Resolutions ResDH(2005)114 and ResDH(2004)72 concerning certain judgments against Italy and Resolution ResDH(2005)60 concerning the *Horvat v. Croatia* judgment).

54. That said, the Committee's consistent position of principle concerning domestic remedies should be recalled: while setting up such remedies is important and contributes to states' compliance with their obligations under the Convention, "it does not dispense states from their general obligation to solve the structural problems underlying the violation" (see the abovementioned Interim Resolution ResDH(2005)114).

4. Ensuring effective liability of civil servants for non-enforcement

a) Present background

55. The 2005 Law provides that non-enforcement of court decisions gives rise to responsibility under federal law. The large range of provisions governing the responsibility for non-compliance with judicial decisions is recalled below:

- The Code on Administrative Offences provides liability for not complying with decisions taken by courts or bailiffs (Art. 17.3) and for interfering with legitimate acts of bailiffs (Art. 17.8) or for late compliance with an order from the supervising organ (Art. 19.5);

- The Law on enforcement proceedings of 1997 authorises bailiffs to hold state agents directly liable (Art. 85 and 87);

- The Criminal Code, in particular Article 315 ("Non-enforcement of a conviction, judgment or a court decision"), constitutes a powerful tool to ensure the enforcement of judicial decisions;

- The Budget Code includes an entire section dedicated to the responsibility of the civil servants for breaches of the budgetary law.

b) Possible measures

i) The effectiveness of the existing provisions yet to be assessed

56. While these provisions appear to constitute a solid basis for state officials' responsibility for non-enforcement of judicial decisions, their effectiveness remains to be demonstrated in practice. The authorities are therefore invited to provide detailed statistics and examples of domestic judgments showing how the said responsibility is implemented in practice.

ii) Clarify the roles and competences for engaging responsibility for non-enforcement

57. Prior to the entry into force of the 2005 Law, bailiffs were the main actors in the implementation of the above-mentioned sanctions as their reports served as grounds for further prosecution of persons responsible for the lack of or delay in enforcement.

58. Given the radical restriction of bailiffs' competence by the 2005 Law, the authorities are invited to clarify the respective roles of the Bailiff's Department, the Federal Treasury and the Prosecutor's Office in effective implementation of state officials' responsibility in this area.

iii) Closer supervision of compliance and "zero tolerance" towards deliberate non-compliance with court decisions

59. As one of the urgent measures, the competent authorities may be encouraged, through the appropriate means, closely to supervise and to take the appropriate proceedings against deliberate violations of state officials' duty to execute court decisions.

5. Possible introduction of compulsory execution, including seizure of state assets

60. In order to stress the legal obligation to respect court judgments and make it fully effective, a number of states have accepted that state assets may be seized.

a) Appropriateness of creation of compulsory enforcement mechanism through seizure

61. The present system, as upheld by the 2005 Law, seems virtually to exclude the compulsory enforcement procedure against the public authorities in case of non-execution of court decisions through the existing procedure.

62. While the Russian authorities indicated that the powers of Federal Treasury to freeze debtors' accounts was used 4 106 times in 2005 and 806 times within first 3 months in 2006 in different regions of the Russian Federation, **it must be noted that this has not prevented the continuous influx of new applications before the European Court.**

63. Moreover, this measure has a very limited effect in ensuring enforcement and in preventing new, similar violations since it does not apply to the enforcement of judicial decisions delivered against the Ministry of Finance or the financial organs of regions and of municipalities (e.g. *Shilayev v. Russia*, judgment of 06/10/2005).

64. **Therefore, introduction of compulsory execution against the the state, regions and municipalities should not be excluded.** Indeed, the practice of certain states has convincingly shown that compulsory execution with the ensuing possibility of seizing state assets constitutes a powerful tool to render the state's subsidiary responsibility for non-enforcement of judicial decisions effective (see *Dierckx v. Belgium,* Resolution DH(95)105 and *Hornsby v. Greece,* Resolution DH(2004)81). This furthermore constitutes an additional incentive for state officials to do everything in their power to comply with court decisions.

65. **The Russian authorities are therefore invited to consider the introduction of a similar mechanism into Russian Law.**

b) Extension of enforcement guarantees to state assets

66. In addition, the 2005 Law only guarantees the execution of judicial decisions by funds held with either the Treasury or private banks. The extension of this guarantee to the other state assets (except those manifestly necessary for performing the state's duties) may explicitly be envisaged. Indeed, Articles 126 and 214 of the Civil Code even seem to imply such a possibility. They provide that the Russian Federation guarantees its undertakings – in particular those resulting from final judicial decisions – with all assets which have not been granted to state companies or institutions.

67. A special legislative basis to ensure compulsory execution at the expense of state assets needs therefore to be set up, as appropriate. The authorities may wish to take account in this respect the experience of other countries which established a list of state assets which may be seized (see, *inter alia*, the abovementioned Resolution DH(95)105 in *Dierckx v. Belgium*).

6. Possible reconsideration of the role of bailiffs and increasing their efficiency

a) Determination of the exact role of bailiffs

68. Article 239 of the Budgetary Code (as modified by the 2005 Law) provides that bailiffs do not have competence to enforce judicial decisions against public authorities, except in the cases specified by the Code. These exceptions are examined below.

69. On 23/03/2006, the Federal Bailiff's Service issued an Order approving principles of enforcement of judicial decisions delivered against public authorities under the 2005 Law.

i) Bailiffs lack competence as regards

- the enforcement of judgments over the funds deposited on **accounts held within the Treasury** by the public authorities.

ii) Bailiffs have competence as regards

- the enforcement of judgments over the funds deposited on **accounts opened in private banks** by **legal entities of public law**.

iii) Grey area as regards the bailiffs' competence

70. In response to the questions raised in the previous version of the present Memorandum (CM/Inf/DH(2006)19 rev), the Russian authorities indicated that no further conflicts of jurisdiction between the Treasury office and the bailiffs arise. **However it remains unclear**

- whether bailiffs are competent to ensure enforcement on account of funds deposited in a private bank by the Russian Federation, regions and municipalities ;
- whether the creditors of the legal entities of public law still **have a choice**

between sending a writ of execution to the Federal Treasury or to bailiffs (*see in this respect the notice available on the website of the Federal Tax Department for the Arkhangelsk region*);
- whether the legal entities of public law may still hold **accounts in private banks** since

- Article 215 of the Budgetary Code provides that all state legal entities hold all their accounts with the Federal Treasury, also presumable including funds gained from their commercial activities.

- whether the competence of bailiffs on funds deposited in a private bank may also be excluded due to the special assignment of such funds (*see the example of the Pskov region where on 30/06/2006 a prosecutor lodged a protest against a bailiff who seized 4 accounts of a medical public institution held at Sberbank*)[12].

71. **Detailed answers from the authorities to the above questions would be necessary** to allow a thorough assessment of the bailiffs' role in the new procedure and an identification of possible avenues for improvement.

b) <u>Improvement of means allocated to bailiffs</u>

72. As bailiffs appear to conserve a certain role, albeit a limited one, in the enforcement of court decisions against the public authorities, their inefficiency remains an issue of current interest. The procedure governing their activities of the Bailiffs' department and insufficient means allocated to them were in the past problems at the basis of the non-execution or inefficient execution of domestic judgments. Therefore, the reform of the relevant legislation as well as other measures to make the institution of bailiffs more efficient would appear appropriate.

IV – The Russian authorities' comments on the first version of this Memorandum

73. The Russian authorities have highlighted the complexity of the problem and indicated that it requires comprehensive and thorough reforms at all levels over a longer period. Therefore, the authorities have suggested that certain areas are identified where non-enforcement problems should be solved as a matter of priority taking into account specific circumstances involved, such as

- the nature of the non-complying entity (Federal Treasury, State's subdivisions, municipalities) and/or
- the kind of obligation imposed by domestic judgments (welfare payments, pension increases, disability allowance increases, etc).

74. This "area-by-area" approach would not, however, preclude the parallel consideration and adoption of more comprehensive reforms aiming at improving the existing enforcement procedures in general along the avenues proposed in the present Memorandum.

Note [1] **This document has been classified restricted at the date of issue. It was declassified at the 976th (DH) meeting of the Ministers' Deputies (17-18 October 2006).**

Note [2] E.g. *Timofeyev (58263/00), judgment of 23/10/2003, Wasserman (15021/02), judgment of 18/11/2004*

Note [3] E.g. *Reynbakh, judgment of 29/09/2005, 23405/03*

Note [4] E.g. *Plotnikovy (43883/02), Makarova & others (7023/03), Poznakhirina (25964/02), judgments of 24/02/2005; OOO Rusatommet (61651/00), judgment of 14/06/2005,; Yavorivskaya (34687/02), judgment of 21/07/2005; Gerasimova (24669/02), judgment of 13/10/2005*

Note [5] E.g. *Gorokhov and Rusyayev (38305/02), judgment of 17/03/2005; Bazhenov (37930/02), judgment of 20/10/2005;*

Note [6] E.g. *Shilyayev (9647/02), judgment of 6/10/2005*

Note [7] E.g. *Timofeyev (58263/00), judgment of 23/10/2003, Wasserman (15021/02), judgment of 18/11/2004*

Note [8] **The Decree of 22 February 2001 N 143 concerning the Rules of enforcement of the judgments on the basis of writs of execution delivered by courts against the entities which receive their funds from the federal budget followed by the Decree NO.666 of 22/09/2002.**

[9] The introduction of a special execution mechanism in case of debts owed by entities funded by federal, regional and municipal budgets, raises certain questions of what bodies are subjected to this enforcement mechanism. A major question is to what extent state enterprises are covered. Even if this point is not at the centre of the present examination, a clarification could be helpful.

Note [10] Previously foreseen by the Decree of 22 February 2001 N 143 and not explicitly mentioned by the Decree NO.666

Note [11] Explanatory note of the Ministry of Finances of 22/06/2005 NO.03-05-01-05/97

Note [12] This arrest would have violated Article 239 of the Budgetary Code since the money transferred on these accounts was assigned to the payment of salaries and pregnancy allowances. This notice is available on the website of the General Prosecutor office.