
Access to Justice in Eastern Europe,
Issue 1 (6) 2020 10.33327/AJEE-18-3.1
ISSN 2663-0575 (Print)
ISSN 2663-0583 (Online)
<http://ajee-journal.com>

V Turkanova 'Open Enforcement: New Approach of Ukraine in Access to Justice' (2020) 1(6) *Access to Justice in Eastern Europe* 58-68.
10.33327/AJEE-18-3.1-p000026

Received 11.12.2019
Revised 20.12.2019
Approved 22.01.2019

OPEN ENFORCEMENT: NEW APPROACH OF UKRAINE IN ACCESS TO JUSTICE

Vladyslava Turkanova
LL.M., MSc in Politics and Communication (LSE),
Taras Shevchenko National University of Kyiv, Ukraine

Doi 10.33327/AJEE-18-3.1-p000026

Summary: 1. – Introduction. – 2. Open Judicial Decisions and Open Enforcement Procedure. – 2.1. *Automated System of Enforcement Proceedings: How Does It Work?* – 2.2. *The Unified Register of Debtors: Who Controls the Information?* – 2.3. *The Register of Decisions Enforcement of Which is Guaranteed by the State.* – 3. Conclusion.

Open justice is one of the fundamental human rights guaranteed by international agreements, as well as by the national legislation of Ukraine. During the reform of justice, the provisions of procedural and judicial legislation have been substantially updated, in particular with regard to ensuring openness and transparency of court proceedings. At the same time, the legislation on enforcement of court decisions does not disclose the essence of these principles, which are enshrined in the relevant laws. Accordingly, the purpose of the article is to identify specific elements of the implementation of the principle of openness and transparency of the enforcement process based on the analysis of the legislation of Ukraine and other countries of the world, national legal doctrine and case law of the European Court of Human Rights.

Keywords: enforcement, public enforcement, a fair trial, open justice.

1. INTRODUCTION

The rule of law and access to open justice are one of the fundamental human rights guaranteed by the Universal Declaration of Human Rights (hereinafter referred to as the Universal Declaration)¹ and the Convention for the Protection of Human Rights and Fundamental Freedoms and Protocols thereto (hereinafter referred to as the European Convention).² The case law of the European Court of Human Rights (hereinafter referred to as the ECtHR or the Court) has developed a number of elements, which are constituent of the right to a fair trial in terms of ensuring the publicity of a court case and the announcement of a judgment.

Ukraine, as a member of the United Nations (hereinafter referred to as the UN) and the Council of Europe (hereinafter referred to as the CE), throughout the years of its independence has endeavoured to approximate national laws and jurisprudence to global and European standards. In particular, the Constitution of Ukraine enshrines the right of a person to defend his/her rights in court (Article 55) in the course of a public court hearing (Article 129),³ which has been further consolidated in the national procedural and judicial legislation.

During the reform of the justice system in Ukraine, the provisions on the openness and the publicity of court proceedings in the case were substantially updated in the relevant procedural codes of Ukraine – the Civil Procedure Code (hereinafter – the CPC),⁴ the Commercial Procedure Code (hereinafter – the Commercial PC)⁵ and the Code of Administrative Procedure (hereinafter – CAP).⁶ In particular, the new wording clarified the provisions on the publicity of the trial and the openness of information about the case (for example, Articles 7 ‘Publicity of the trial’ and 8 ‘Openness of information about the case’ of the CPC).

The publicity, transparency and openness of the trial are inherent features of the judiciary, providing an opportunity for public involvement and an appropriate level of confidence in the judicial activity, as well as guaranteeing the implementation of other principles of justice, such as the equality of parties and competitiveness in the process. But the protection of rights is not only carried out during the trial of the case – it is an integral part of the execution of a court decision, which makes it possible to realize the main purpose of all this activity. Therefore, guaranteeing access to information during the execution of a judgment is also important.

1 The Universal Declaration of Human Rights [1948] <<http://www.un.org.ua/ua/publikatsii-ta-zvityi-global-un-publications/3722-zahalna-deklaratsiia-prav-liudyny>> 15 February 2020.

2 The Convention for the Protection of Human Rights and Fundamental Freedoms [1997] <https://zakon.rada.gov.ua/laws/show/995_004> accessed 15 February 2020.

3 The Constitution of Ukraine [1996] <<https://zakon.rada.gov.ua/laws/show/254k/96-bp>> accessed 15 February 2020.

4 The Civil Procedure Code of Ukraine [2004] <<https://zakon.rada.gov.ua/laws/show/1618-15/print>> accessed 15 February 2020.

5 The Commercial Procedure Code of Ukraine [1992] <<https://zakon.rada.gov.ua/laws/show/1798-12/print>> accessed 15 February 2020.

6 The Code of Administrative Procedure of Ukraine [2005] <<https://zakon.rada.gov.ua/laws/show/2747-15/print>> accessed 15 February 2020.

In Ukraine, a new Law ‘On Enforcement Proceedings’⁷ (hereinafter – the Law on Enforcement) was adopted, Article 2 of which enshrined the principles of conducting enforcement proceedings, including the transparency and openness of enforcement proceedings in Ukraine. At the same time, there are no specific provisions in which the essence of this principle is disclosed in said law.

The lack of clear legal regulation of the provisions on taking specific procedural actions in the course of enforcement of court decisions is an urgent problem, which leads to problems of the realization of a person’s right to a fair trial during the execution of enforcement proceedings. At the same time, possible solutions to these problems can be found in the systemic-structural approach to characterizing enforcement as an essential part of justice and the process of protection of rights, which provides specific guarantees for the exercise of the right to a fair trial. In view of the above mentioned, we have chosen the principle of openness and transparency of enforcement proceedings as the subject of our research. In our conclusions we propose to comprehensively improve the enforcement of court decisions and to bring us closer to the modern concept of justice. In this case we may reach it by transforming this basis into the transparency of enforcement actions or, as we propose, into open enforcement of judicial decisions, which helps us to improve the whole system of judiciary in Ukraine. The aim of the article is to identify specific elements for the implementation of the principle of openness and transparency of the enforcement process on the basis of the analysis of the legislation of Ukraine and other countries of the world, national legal doctrine and case law of the European Court of Human Rights.

2. OPEN JUDICIAL DECISIONS AND OPEN ENFORCEMENT PROCEDURE

According to the national legislation of Ukraine, as a general rule, a court hearing is held in public in an open court session, in which any person may be present. Persons may be removed from the courtroom only in case of actions in contempt of court or of the participants in the court process, by reasoned court decision. At the same time, the provisions of Article 11 of the Law ‘On the Judiciary and Status of Judges’ regulate the relationship between the court and the parties of the proceedings in case of a closed trial, which is an absolute exception to the above general rule.⁸

This approach is broadly in line with the concept of a fair trial, since Article 6 of the European Convention and the ECtHR case law also contains provisions on possible restrictions, when the press and the public may not be admitted to the courtroom during all or parts of the hearing, but only in the interests of morality, public order or national security in a democratic society. Also if the interests of minors or the protection of the privacy of the parties so require, or – to the extent that is strictly necessary by the

7 The Law of Ukraine ‘On Enforcement Proceedings’ [2016] <<https://zakon.rada.gov.ua/laws/show/1404-19/print>> accessed 15 February 2020.

8 In the CPC, the grounds for removal of a person from the courtroom are set out in more detail: in particular, pursuant to the provisions of part 3, Article 7, a court may remove from the courtroom persons who impede the conduct of a court hearing, the exercise of rights, or the performance of duties of participants in a trial or judge, violate the order in the courtroom.

court – when under particular circumstances the publicity of the proceedings may harm the interests of justice.⁹

There is currently an unprecedented practice in Ukraine of granting any person the right of free access to all court decisions, which, under the Law ‘On Access to Court Decisions’,¹⁰ is published freely in the Unified State Register of Court Decisions (hereinafter referred to as the ‘USRCD’) /reyestr.court.gov.ua. Such an idea was realized in view of the need to ensure public access to the acts of the judiciary, as well as to prevent any abuse, in particular, by amending an already announced court decision.¹¹

According to Part 2, Article 2 of the said Law, all court decisions shall be open and shall be made public in electronic form, not later than the day after their preparation and signature. In order to access court decisions of courts of general jurisdiction, the State Judicial Administration of Ukraine provides for the maintenance of the USRCD – an automated system for collecting, storing, protecting, recording, searching and providing electronic copies of court decisions (Articles 3 and 2). Court rulings may also be published in printed publications in compliance with the requirements of this law.

The complex interpretation of the legislation on enforcement proceedings can lead to the conclusion that the enforcement of judgments in Ukraine is carried out according to the conditions of open functioning of the *automated system of enforcement proceedings* (hereinafter referred to as the ASEP).¹²

The ASEP was implemented in Ukraine in accordance with the Regulation on the Automated System of Enforcement Proceedings No. 2432/5,¹³ approved by the Decree of the Ministry of Justice of Ukraine on 5 August 2016 (hereinafter – the Regulation on the ASEP). The Ministry of Justice of Ukraine provides free and open access to the information of the ASEP on its official web site <https://asvpweb.minjust.gov.ua/#/search-debtors> with the ability to view, search, copy and print information through common browsers and editors, without the need for custom technology or software tools, without restrictions and around the clock.

According to the above Regulation, the ASEP is a computer program that provides for the collection, storage, accounting, search, synthesis, submission of information on enforcement proceedings, the formation of the Unified Register of Debtors and protection against unauthorized access. The administrator of the ASEP is the state enterprise ‘National Information Systems’ authorized by law to conduct actions on software creation, technology maintenance, data storage and security information contained therein and the performance of other functions prescribed by the Regulation.

9 The Convention (n 2).

10 The Law of Ukraine ‘On Access to Court Decisions’ [2016] <<https://zakon.rada.gov.ua/go/3262-15>> accessed 15 February 2020.

11 T Lesiuk, ‘The activity of the judiciary will become more transparent’ (2005) 1 (61) Legal Newspaper 5.

12 See also OS Snidevych, ‘Openness as a background for building enforcement procedure’ (2019) 3 Law and Society 124-128.

13 The Regulation on the Automated System of Enforcement Proceedings No. 2432/5 approved by the Decree of the Ministry of Justice of Ukraine on 5 August 2016 [2016] <<https://zakon.rada.gov.ua/laws/show/z1126-16/ed20180828>> accessed 14 February 2020.

It is worth noting that in Ukraine there was a *Unified State Register of Enforcement Proceedings* (hereinafter referred to as the USREP), which today is an archival component of the ASEP and contains information on enforcement proceedings registered prior to its introduction. This register was introduced by the Regulation on the Unified State Register of Enforcement Proceedings, approved by the Decree of the Ministry of Justice of Ukraine of 20 May 2003 No. 43/5,¹⁴ and by the Temporary Procedure for Automatic Distribution of Enforcement Documents between State Enforcement Agents and Control of Time Limits for Execution of Decisions of Courts and Other Bodies (Authorities), approved by the Decree of the Ministry of Justice of Ukraine of 28 April 2015 № 614/5.¹⁵

Other components of the ASEP include the *Unified Register of Debtors* (hereinafter referred to as the URD), which is a systematic database of debtors maintained in order to publish real time information on debtors' outstanding obligations and to prevent the alienation of property by debtors and the *Register of Decisions Enforcement of Which is Guaranteed by the State* (hereinafter referred to as the RDEGS), which records the decisions enforced by the State, inventories the debt set in these decisions and submits them to the Treasury body.

2.1. Automated System of Enforcement Proceedings: How Does It Work?

Accordingly, the said ASEP allows registering and distributing enforcement documents among state executors, provides the parties to enforcement proceedings with information on enforcement proceedings, records enforcement actions, etc. In particular, decisions of executors and officials of state enforcement bodies are made with the help of ASEP (for more details, see section 8 of Article 8 of the Law on Enforcement), which generally meet the requirements set out in the Recommendations on Enforcement,¹⁶ the Guidelines¹⁷ and the Practical Guide¹⁸ for Informing the Parties to the Enforcement Proceedings.

It is structurally possible to distinguish the following elements of the implementation of the principle of openness of enforcement proceedings by means of ASEP: it is *information as an object*, in particular, the types and content of information available

14 The Regulation on the Unified State Register of Enforcement Proceedings, approved by the Decree of the Ministry of Justice of Ukraine of 20 May 2003 No. 43/5 [2003] <<https://zakon.rada.gov.ua/laws/show/z03388-03>> accessed 15 February 2020.

15 The Temporary Procedure for Automatic Distribution of Enforcement Documents between State Enforcement Agents and Control of Time Limits for Execution of Decisions of Courts and Other Bodies (Authorities), approved by the Decree of the Ministry of Justice of Ukraine of 28 April 2015 № 614/5 [2015] <<http://zakon.rada.gov.ua/laws/show/z0478-15>> accessed 15 February 2020.

16 Recommendation Rec(2003)17 of the Committee of Ministers to member states on enforcement (adopted by the Committee of Ministers on 9 September 2003 at the 851st meeting of the Ministers' Deputies [2003] <https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016805df0c1> accessed 15 February 2020.

17 *The Guidelines for a better implementation of the existing Council of Europe recommendation on enforcement* (CEPEJ(2009), 11REV2, 17 December 2009, adopted by the CEPEJ at its 14th plenary meeting, in Strasbourg, on 9 and 10 December 2009 [2009] <<https://rm.coe.int/16807473cd>> accessed 15 February 2020.

18 Good practice guide on enforcement of judicial decisions as adopted at the 26th CEPEJ Plenary Session 10-11 December 2015 [2015] <<https://rm.coe.int/european-commission-for-the-efficiency-of-justice-cepej-good-practice-/16807477bf>> accessed 20 February 2020.

for review, as well as *the subjects of access to information* – those who have access to information about enforcement proceedings.

With regard to the subjects of access to information, they can be divided into three categories: authorized persons, parties to the proceedings and the civil society which is granted a free access. Thus, in particular, clause 4 of the Regulation on the ASEP provides for such categories of users as the Ministry of Justice of Ukraine, structural subdivisions of its territorial bodies in the Autonomous Republic of Crimea, districts, cities of Kyiv and Sevastopol, which provide the exercise of authority in the field of enforcement of decisions; officials of the Secretariat of the Government Ombudsman of the European Court of Human Rights, designated by the Ministry of Justice of Ukraine, whose powers include the execution of decisions of the European Court of Human Rights and the representation of the State in cases of non-enforcement of decisions of national courts; and the parties to the enforcement proceedings.

With regard to the subject matter of access, paragraph VI of the Regulation on the ASEP states that the Ministry of Justice of Ukraine provides open and free access to information of the ASEP with the ability to view, search, copy and print information (through common web browsers and editors) without restrictions and around the clock in the form of open data, namely surname, name, patronymic (if any), the day, month, year of birth of the debtor – natural person and the surname, name, patronymic (if any) of the collector – natural person; the name, identification code in the Unified State Register of Legal Entities, Physical Persons – Entrepreneurs and Public Formations for the legal entity – debtor and collector; number, date of opening and status of enforcement proceedings; the name of the body of the public enforcement service (private executor) in which the enforcement proceedings are pending.

Accordingly, based on the general provisions on the publicity of judicial proceedings and the enforcement of a court decision, which is realized in the concept of a person's right to a fair trial, there should be openly available information on the reason of the enforcement proceedings initiation. Within the framework of this scientific research, it is the court decision in a case, on the basis of which enforcement is being carried out. Such information is available in the ASEP, which grants any person the right of free access to all court decisions in accordance with the Law of Ukraine 'On Access to Judgments,'¹⁹ as we have noted earlier in this article.

Placing such information in the public domain will enhance confidence in the judiciary in Ukraine, confirm the integrity and completeness of the judicial process and enforce the final judgments of national courts, ensuring the implementation of the provisions of the European Convention on the Right to a Fair Court and the ECtHR practices.

It should also be borne in mind that the decisions of the courts may affect the rights and / or interests of persons who did not participate in the case and who, in accordance with the procedural law of Ukraine, have the right to appeal such a decision in the manner prescribed by law.²⁰ Accordingly, for the categories of persons mentioned above, the information on

19 The Law (n 11).

20 See Part 2, Article 8 of the CPC, according to which persons who did not participate in the case, if the court resolved the issue of their rights, freedoms, interests and (or) duties, which filed an appeal or

the court decision, if it becomes the basis for opening enforcement proceedings, is a freely available object placed in the ASEP representing the interests of justice.

Thus, access to the ASEP, which is provided only to authorized bodies, as well as to the parties to enforcement proceedings in the case, does not correspond to the general principles of openness of information on the protection of the rights of persons and the administration of justice. Based on the principle of providing open access to information on court decisions, as well as limited access to the case files of persons, who did not participate in the case, provided that the decision affects their rights, as well as taking into account the general principles of the need for public trial and enforcement of the judgment provided for in the provisions of the European Convention, it is necessary to ensure equal and open access to information on enforcement proceedings in a case to persons who did not participate in the case, as well as to persons involved in the case and the court which ruled the decision subject to enforcement.

In order to determine the content and amount of information available at different levels to different groups of subjects of access to enforcement proceedings, the latter should be divided into two groups, depending on their interest in the enforcement proceedings. The *first group* should include persons directly interested in obtaining information on enforcement proceedings, as they are the applicant (s), debtor (s) or the issue regarding their rights and responsibilities is decided by court ruling. The *second group* should include persons whose interest lies in the general access to information on enforcement proceeding, the procedure for its implementation, the peculiarities of the proceedings in specific categories of cases for possible appeal, or others, not related directly to the object of the specific enforcement proceeding.

Thus, the openness of enforcement proceedings is ensured, in particular, through the provision of information on the execution of court decisions and other acts, the procedure for appealing to enforcement agents etc. At the same time, the current national legislation does not contain a procedure for verifying and controlling information on enforcement proceedings that is made public, which may violate a person's rights to the protection of personal data.

Pursuant to paragraph IV of the Procedure for the ASEP, a public or private bailiff, upon receipt of the enforcement document, decides to open enforcement proceedings or to return the enforcement document to the collector without taking them into execution. The bailiff is obliged to submit the information to the ASEP on all enforcement actions and procedural decisions, in particular, information on all documents received at the request of the State Bailiff, statements of the parties to the enforcement proceedings, their replies and their scanned copies, simultaneously with the production of the document on the basis of which the enforcement action is performed, or at the same

cassation appeal against the relevant decision, have the right to see the case files, make extracts from them, take copies of documents attached to the case, receive copies of court decisions; as well as part 1, Article 17 of the CPC, according to which persons who did not participate in the case, if the court resolved the issue of their rights, freedoms, interests and (or) duties, have the right to appeal the case and in cases specified by law – to appeal against a court decision; and Article 352, first part, concerning the right of persons who did not participate in the case, if the court resolved their rights, freedoms, interests and (or) obligations, to appeal in full or in part the decision of the court of first instance.

time as the production of a document that registers execution action. These actions shall be carried out immediately or no later than the following day.

In order to prevent errors during filing in information to be disclosed, as well as to prevent possible misuse of filing information for open access, it is necessary to introduce a mechanism for verification and control of information that is freely available in the ASEP and to provide for the right of persons, about whom such information is posted, to verify such information within a certain period of time since the issue of its placement has been resolved.

2.2. The Unified Register of Debtors: Who Controls the Information?

Another element of the openness of enforcement proceedings²¹ is the URD which was introduced in 2018. The URD is a systematic database of debtors, which is part of an automated enforcement system and is maintained in order to publish real-time information on debtors' outstanding obligations and to prevent the alienation of property by debtors according to Art. 9 of the Law on Enforcement.²² The procedure for maintaining the URD is governed by paragraph X of the Regulation on the ASEP.²³

This register is formed in order to publish real-time information on debtors' outstanding obligations and to prevent the alienation of property by debtors. Accordingly, its creation resulted from the reform and marked the transition to a new stage of openness of enforcement proceedings in Ukraine. Since its introduction, all information about debtors included in the URD is open and published on the official website of the Ministry of Justice of Ukraine <https://erb.minjust.gov.ua/#/search-debtors>.

This register receives information from all state and local self-government bodies, notaries and other entities in the exercise of their managerial functions, in accordance with the legislation.

The UDR holds in open access the information on debtors in respect of which enforcement proceedings are registered in the ASEP after the implementation of the UDR and debtors within enforcement proceedings on collection of periodic payments (alimony) in case of arrears of the respective payments for more than three months. Accordingly, the following information was published in respect of these persons: surname, name, patronymic (if any), date of birth of the debtor – natural person or name, identification code in the Unified State Register of legal entities, natural persons – entrepreneurs and public entities of the debtor – legal entity; name of the body or name, first name, patronymic and position of the official who issued the executive document; the name of the public enforcement authority or the surname, first name, patronymic of the private bailiff, communication tool number and email address of the bailiff; the enforcement number; category of recovery.²⁴

21 See also Snidevych (n 13) 72-75.

22 The Law 'On Enforcement Proceedings' (n 7).

23 The Regulation on the Automated System of Enforcement Proceedings (n 14).

24 About potential of the URD see also Snidevych –(n 13). 72-75.

Therefore, the UDR should be recognized as an element of openness in enforcement proceedings, based on the concept of the right to a fair trial and in accordance with the requirements of the Recommendations on Enforcement,²⁵ the Guidelines,²⁶ and the Practical Guide²⁷ to Informing Parties of the Enforcement Proceeding about the Debtors, the Terms and Procedures for Enforcing Decisions in Their Cases.

At the same time, the legislation does not provide for effective mechanisms for verification and control of information to be disclosed in relation to debtors. Thus, in particular, the Regulation on the ASEP provides for the possibility of excluding information about the debtor (points 6 and 7 of paragraph X), but the procedure for introducing changes to the disclosed information is not provided. In point 8 it is noted that in case of change of the debtor to the assignee or change of his name, the relevant information shall be entered in the UDR at the same time as the information on the replacement of the debtor or the change of his/her name is entered in the ASEP. However, there is no procedure for modifying other disclosed information on the ASEP, in particular, related to the grounds for opening proceedings, the executing authority, etc., which in practice leads to certain problems (see, for example, the decision of the Commercial Court of Odessa region on a complaint of inaction of the state bailiff).²⁸

2.3. *The Register of Decisions Enforcement of Which is Guaranteed by the State*

Another element of the openness of enforcement proceedings is the RDEGS, which contains decisions, execution of which is guaranteed by the State of Ukraine. This register is available at <https://stack.informjust.ua>.

In 2012, the Law of Ukraine ‘On State Guarantees for the Enforcement of Judgments’ (hereinafter – the Law On State Guarantees)²⁹ was adopted, which established the state guarantees for the enforcement of court decisions and executive documents defined by the Law on Enforcement, and specifics of their implementation, namely court decisions on the recovery of funds and the obligation to take certain actions in respect of property, the debtor of which is a public authority; state enterprise, institution, organization; or a legal person whose forced sale of property is prohibited by law.

The procedure for the operation of the RDEGS, namely the mechanism of accounting for the relevant executive documents and court decisions provided for in paragraph 3 of Section II ‘Final and Transitional Provisions’ of the Law On State Guarantees, Inventory and Debt Repayment is provided for by the Debt Repayment Procedure for the Decisions of the Court, Enforcement of which is Guaranteed by the State, approved

25 Recommendation (n 17).

26 *The Guidelines* (n 18).

27 Good practice guide on enforcement of judicial decisions (n 19).

28 The decision of the Commercial court of Odessa region on a complaint (№2-924/19 of 28 February 2019) of inaction of the state bailiff of Kirovohrad Region Division of State Enforcement Service of the Main Territorial Administration of Justice in Kirovohrad region in the enforcement proceeding №53804695 on the enforcement of the decision of the Commercial court of Odesa region of 1 February 2016 in the case №916/4546/15.

29 The Law of Ukraine ‘On State Guarantees for the Enforcement of Judgments’ [2013] <<https://zakon.rada.gov.ua/laws/show/4901-17#n9>> accessed 20 February 2020.

by the resolution of the Cabinet of Ministers of Ukraine of 3 September 2014 No. 440³⁰ (hereinafter – the Debt Repayment Procedure).

Pursuant to paragraph 2 of the said Debt Repayment Procedure for the Decisions of the Court, Enforcement of which is Guaranteed by the State, these are the enforcement documents under the court decisions on recovery of funds or court decisions that have become enforceable, the debtors for which are subjects defined in Article 2, paragraph 1 of the Law on State Guarantees issued or approved before 1 January 2013.

It should be noted that the information on the implementation of such decisions in the said register is extremely small, especially given their resonant importance and the need to ensure transparent activity of the state and public control over fulfilment of its obligations. In particular, in accordance with the provisions of point 7 of the Debt Repayment Procedure the responsible person shall, within ten working days from the date of receipt of the decision, be obliged to check the enforcement of such a decision according to the ASEB, taking into account the data of enforcement proceedings opened for the enforcement of decisions of the ECtHR for non-enforcement of the decision of a national court to which the complainant applies. In the absence of information on the implementation of the decision, the responsible person shall submit full details of that decision to the RDEGS. In the case when the application on decision enforcement the applicant adds the debtor's certificate of the existing outstanding debt, the responsible person certificate shall submit the data on such decision to the RDEGS.

It is worth noting how important it is for Ukraine to ensure the enforcement of court decisions, since the aforementioned Law on State Guarantees was approved as a result of the adoption of a pilot ECtHR decision against Ukraine in the case of *Yurii Mykolaiovych Ivanov v. Ukraine*.³¹ In this the ECtHR clearly stated that the state cannot justify non-enforcement of judgments against the state, against institutions or enterprises that are state-owned or controlled by the state with the lack of funds. They shall bear responsibility for the enforcement of final decisions, if the factors that delay or hinder their full and timely implementation, are within the control of the authorities. The lengthy delay in the enforcement of a judgment which may constitute a breach of the ECtHR was also considered unjustified and should be assessed in the light of the complexity of the enforcement proceedings, the conduct of the applicant and the competent authorities, as well as the amount and nature of the repayment assigned by the court. The ECtHR also stressed that it is the responsibility of the state to ensure that the final decisions taken against its state-owned or controlled bodies, institutions or enterprises are enforced in accordance with the aforementioned requirements of the ECHR.

The information on the order of execution of the decision shall be sent to the applicant and the debtor at their location or e-mail no later than ten working days from the date of the decision being sent to the RDEGS. In order to provide access to this information,

30 The Debt Repayment Procedure for the Decisions of the Court, Enforcement of which is Guaranteed by the State, approved by the resolution of the Cabinet of Ministers of Ukraine of 3 September 2014 No. 440 [2014] <<https://zakon.rada.gov.ua/laws/show/440-2014-n>> accessed 20 February 2020.

31 *Yurii Mykolaiovych Ivanov v. Ukraine* [2009], The decision of the ECtHR <http://zakon.rada.gov.ua/laws/show/974_479> accessed 20 February 2020.

the address of the relevant website on the Internet and the identifier for access to information on the RDEGS is attached to the message.

3. CONCLUSION

In conclusion we should note the following. The openness and transparency of enforcement proceedings must be consistent with the openness and transparency of the administration of justice, which is enshrined in fundamental acts guaranteeing the rule of law and access to justice, as well as in national law on the judiciary and on justice. Based on the above, the provisions regarding the transparency of specific procedural actions and openness of access to information should be both extended to the process of judicial protection of a person's rights and be reflected in the execution of a court decision. Given that public participation appropriately affects public confidence in the courts and promotes the preventive purpose of justice, open access to information will significantly simplify the work of the executor and provide him/her with a greater level of credibility that will enhance confidence in the justice system.

The lack of free access to at least limited information on state enforcement of relevant decisions excludes the possibility of exercising any public control and significantly reduces the confidence in the judiciary in the state. Free access to such information is indispensable and reflects the right of a person to a fair trial, as well as this embodies his/her belief in a state guaranteed effective protection of rights.

The free access to information on enforcement, authorities and persons empowered to enforce court decisions, other information necessary to effectively protect the rights of the individual at this stage, namely through the implementation and functioning of the ASEP and the UDR, should, in our opinion, be designated to a special provision that discloses the essence of the principles of transparency and openness enshrined in the laws on enforcement and executors.