



A woman with Delta Bank cards hanging on her neck attends a rally of depositors of collapsed banks in front of parliament on Nov. 15. (Volodymyr Petrov)

to claims of Hr 13.4 billion (\$510 million).

Despite losing all seven lawsuits, the fund has come under fire for failing to further pursue the civil route against bank leadership, which has proven effective in many other countries, including Russia.

Andriy Olenchuk, the Deposit Guarantee Fund deputy managing director, admitted that the organization struggled in its pursuit of civil claims.

Both banking sector experts and anti-corruption authorities have criticized the organisation for repeatedly forwarding criminal cases to the Prosecutor General's office, where the investigations typically stall.

Even in the cases of Mikhailovsky and Delta banks, where top officials called for the arrest of the their owners, neither Viktor Polishchuk nor Mykola Lagun have been arrested to this day.

According DLA Piper partner Oleksandr Kurdydyk, on average civil claims took 30 to 40 percent less time to reach a resolution compared to criminal.

Furthermore, Igor Budnik, head of the risk management department of the National Bank of Ukraine, at Kyiv Post's 5th Tiger Conference on Nov. 29, said the evidence bar for civil lawsuits is lower -- requiring only to prove guilt in civil cases by a preponderance of evidence rather than beyond a reasonable doubt, the criminal standard.

Olenchuk said the fund was currently renewing its efforts to pursue civil lawsuits with the help of international agencies, but legislative amendments in this area were also key if the fund was to have any chance of success.

He said in one case against Forum Bank, co-owned by former Party of Regions members of parliament Vadim Novinsky, the court decided that the real sum of the losses could not be determined until all the assets were sold.

"(We would have to) finish the liquidation, and then after a few years we'd be able to understand the difference between creditor's demands and assets...this is all without long-term prospects."

"Other lawsuits were based on lack of evidence and often the emphasis was on the fact that guilt wasn't proven."

Olenchuk said by the time a bank is declared insolvent and the

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Artem Taranowski
advocate, partner
Golovan & Partners



Stanislav Kuniansky
advocate,
Golovan & Partners

An Ultimate Obstacle for the Execution of the European Court's Judgments Against Ukraine

Golovan and Partners Law Firm provides legal support to the applicant in the group of cases pending before the Grand Chamber of the European Court of Human Rights mentioned as an indication of failure in solving the problem of non-enforcement or delayed enforcement of Ukrainian courts' judicial decisions.

It is obvious that the court ruling in ones favour worth nothing without it's being enforced. For instance, during 2006-2011 only near 30 % of court decisions in Ukraine were enforced.

In 2007 one of Ukrainian commercial courts found in favour of our client and ordered to recover assets from the state-owned enterprise. After numerous legal actions, made in order to enforce this court decision, we initiated an insolvency proceedings against the state-owned enterprise based on the demands under the court order.

From 2007 till present time the court decision in favour of our client remains unenforced. And it seems that all legal actions made by our client and by us as its legal advisors in a past 9 years, all brand new and reformist legislature in bankruptcy sphere, all efforts to implement European Court's practise in Ukrainian law system — looks like desperate and chaotic moves in an ocean of irresponsibility.

For now we can say for sure, that there is no difference for Ukrainian officials on how to enforce law: by direct, common sense and good faith-applying of positive law and generally acknowledged law principles, or by long and exhausting struggle in a court rooms and even longer efforts to execute judgment.

In a vast number of cases there are no any negative legal consequences for officials, responsible for violations of human rights, even if the courts directly points at such violations and at responsible officials.

Unfortunately, despite the binding position of the European Court that not just Ukraine's legislation but administrative practice too should be reformed, we would take the liberty of arguing that there is no reform of administrative practice taking place here.

Under the law and supporting regulations the Ministry of Justice of Ukraine is to bring to light those liable for the violations of the Convention, and initiate legal actions against them; the Ministry of Justice of Ukraine also must consolidate information on measures taken to recover the state budget losses from violations of the Convention. According to information provided by the Ministry of Justice of Ukraine upon our request several years ago, during 2006-2012 there were UAH 64,884,885.28 of loses awarded.

Alongside with that, according to information provided by the Ministry of Justice of Ukraine, the whole amount of money recovered was UAH 30,404.93 in 2008, and UAH 76,564.07 in 2009.

One way or another, the existing administrative practice seems to contribute nothing to resolving the problem of violations of the Convention on the whole and the problem of non-enforcement or delayed enforcement of domestic judicial decisions in particular, if not worsen the problems at all.

It seems that Ukrainian state bodies just do nothing to punish it's own officials responsible for violations of Ukrainian law. It's mush easier for state to pay just satisfaction under decision of the European Court from time to time, than eliminate the true root of this problem — personal irresponsibility of bureaucrats.

GOLOVAN & PARTNERS
law firm

Golovan & Partners Law Firm
33B Bulvarno-Kudriavska (Vorovskoho) St., Kyiv 01054,
Ukraine; info@golovan.ua, www.golovan.ua