



EUROPEAN COURT OF HUMAN RIGHTS  
COUR EUROPÉENNE DES DROITS DE L'HOMME

9 May 2014

## Reply to Committee of Ministers request for comments on the CDDH Report on Execution

### Introduction

1. The Committee of Ministers decided to transmit<sup>1</sup> the report of the Steering Committee for Human Rights (CDDH)<sup>2</sup> on the execution of judgments to the Court for information and for comments on specific proposals.
2. The CDDH report was drawn up in response to the invitation in the Brighton Declaration addressed to the Committee of Ministers “to consider whether more effective measures are needed in respect of States that fail to implement judgments of the Court in a timely manner”.<sup>3</sup>
3. The CDDH concludes that the situation confronting the Committee of Ministers in its role supervising Court judgments is a cause for concern and that measures must be taken to address this situation. The CDDH cites in particular the accumulation of cases pending before the Committee of Ministers.

### General comments

4. The Court first recalls that the binding nature of the Court’s judgments for respondent States and the role of the Committee of Ministers in supervising execution have been part of the Convention scheme since the beginning, originally set out in Articles 53 and 54. These provisions were carried over substantially unchanged by Protocol No. 11, becoming Article 46 of the Convention. They were developed further by Protocol No. 14 which introduced two procedures for the Committee of Ministers to make use of as appropriate. Until now they have remained unused.
5. It is critical for the effectiveness of the Convention system that a judgment finding a violation of human rights be executed in an adequate and timely way. Just as the Court has interpreted the “right to a court” inherent in Article 6 of the Convention as encompassing the enforcement of judgments, so the execution of its own judgments is integral to the right of individual application. Deficiencies here may largely undermine the effective exercise of that right.
6. The phenomena of repetitive applications before the Court is a particular aspect of the importance of prompt and adequate implementation of Court judgments. When a Court judgment reveals a systemic problem within a jurisdiction and when that judgment is not implemented by the State concerned, the risk is that the Court will receive a substantial number of similar applications. The link between deficient execution and the influx of repetitive applications is evidenced by the evolution in the Court’s case-load. When the Interlaken Conference took place in 2010, there were a total of 119,300 applications pending before the Court<sup>4</sup>; 19,859 (17%) of them were identified as repetitive applications. When the Brighton Conference was held in April 2012 these figures were respectively 149,450 and 36,060 (24%).<sup>5</sup> On 1 April 2014, there were 96,050 pending cases and

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1. 1190<sup>th</sup> meeting – 5 February 2014, item 4.3A.

2. CM(2013)174.

3. Paragraph 29 d) of the Declaration.

4. Figures as at 1 January 2010.

5. Figures as at 1 April 2012.

41,375 repetitive cases (43%). Consequently, the number of repetitive applications is an important part of the entire docket. The Court will of course continue to seek to improve the efficiency of its internal processes, and to work with States to manage large groups of repetitive applications making best use of the Protocol 14 reforms. However, it does not change the conclusion that for a number of States, the execution process is not sufficiently effective.

7. In the reform process the issue of execution has rightly occupied a prominent place. As is shown by the Court's statistics, improvement on this front is critical to the overall success of the reform. The Brighton Declaration places emphasis on the effectiveness of execution - effective implementation by the State concerned, effective supervision by the Committee of Ministers, and the availability to it of effective measures in case of failure to comply fully.

8. In contrast to this clear message, with which the Court fully agrees, it is surprising to read (in paragraph 3 of the report) that "there *may be a need* for further efforts at the level of both member States and the Council of Europe" (emphasis added). As the CDDH report recognises, there may be a variety of causes for the failure to execute.<sup>6</sup> In some cases the problem arises because of an evident lack of political will rather than as a result of practical or technical difficulties. The CDDH correctly acknowledges that different tools are required for different situations.

9. In the Court's view it is of paramount importance that the execution stage attain a higher level of effectiveness in order to ease the burden on the Court. It cannot be right that the Court's scarce resources should be invested in dealing with so many repetitive applications.

#### **Specific comments**

10. The Court has been asked to comment in particular on two passages in the report.

11. The first of these is at paragraphs 12 to 14, commencing with the sub-title "The Court being more directive in its judgments on the measures needed". There has indeed been an evolution in the Court's approach. It does not in all cases limit itself to declaring the violation, although, as it has stated many times, its judgments are "essentially declaratory".<sup>7</sup> The Court is mindful both of the freedom of choice that States enjoy under the Convention regarding the means by which they will ensure observance of the rights it guarantees, and of the supervisory function conferred on the Committee of Ministers. It is the latter that makes the Convention a system of "collective enforcement", as its Preamble provides and must be viewed as one of the strengths of the European model.

12. In a development that began some ten years ago, the Court has in certain cases indicated to the respondent State possible measures of execution, typically making these remarks under Article 46 of the Convention.<sup>8</sup> There have been approximately 150 cases of this sort, and they range from quite general suggestions intended to guide the Government in the execution of the judgment to cases in which specific directives are included in the operative provisions of the judgment, thereby binding the respondent State.

13. As the Court has put it, in certain particular situations, with a view to assisting the respondent State in fulfilling its obligations under Article 46, the Court may seek to indicate the type of individual and/or general measures that might be taken in order to put an end to the situation that gave rise to the finding of a violation.<sup>9</sup> In exceptional cases, the nature of the violation found may be such as to

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6. Paragraph 6 of the Report.

7. See for example *Marckx v. Belgium*, 13 June 1979, § 58, Series A no. 31

8. The Court may see fit to make a suggestion without invoking Article 46, e.g. *Vinter and Others v. the United Kingdom* [GC], nos. [66069/09](#), [130/10](#) and [3896/10](#), ECHR 2013 (extracts), where under Article 3 the Grand Chamber simply drew attention to the arrangements made in other Convention States and contemplated in the relevant international instruments (at § 120).

9. See *Broniowski v. Poland* [GC], no. 31443/96, § 194, ECHR 2004 V, and *Stanev v. Bulgaria* [GC], no. 36760/06, §§ 255-258, ECHR 2012

leave no real choice as to the measures required to remedy it and in these circumstances the Court may decide to indicate only one such measure.<sup>10</sup>

14. A recent example of the latter category at Grand Chamber level is *Del Rio Prada v. Spain*.<sup>11</sup> The respondent State's rapid compliance with the judgment is particularly noteworthy.

15. Paragraph 13 of the report reflects divergent views of States, with some said to be supportive of the Court's method but others opposed to it. The Court would observe that, as far as pilot judgments are concerned<sup>12</sup>, the Brighton Declaration struck a very positive note, welcoming the Court's proactivity.<sup>13</sup> It may be recalled that it was the Committee of Ministers itself which encouraged the Court to start the pilot judgment procedure.<sup>14</sup> The pilot judgment procedure has existed for ten years. It has a solid legal basis in the Convention.<sup>15</sup> The defining feature of a pilot case is the inclusion of a directive to the respondent State among the operative provisions of the judgment.<sup>16</sup> The Court's approach proceeds from the concern - clearly expressed in the Brighton Declaration - to safeguard the effectiveness of Convention proceedings, while respecting the competences and prerogatives of the different actors in the system.

16. Paragraph 13 also refers to questions raised within the CDDH concerning the binding nature of a directive in the operative provisions of a judgment. In so far as this relates to the hypothesis in which there is a significant change of circumstances, the Court would first observe that it is sensitive to this possibility and exercises due caution when directing the State to take specified actions, and will consider the views of the Government on the matter. The pilot judgment procedures in which the time-limit set out in the judgment was subsequently extended by decision of the Chamber are an indication that the Court will be flexible.

17. In paragraph 14 the report refers to interaction between the Court and the Committee of Ministers, recognising that this takes place and suggesting further development of it. The Court can only agree that it is in the interest of the Convention system overall for its two institutional pillars to act in a mutually reinforcing way.

18. The second passage on which the Court's comment has been sought comprises paragraphs 25-31 and concerns the idea of financial sanctions of various sorts. Clearly, any such power for the Court would be wholly new for it, fundamentally distinct from its current declaratory and remedial functions. The passage sets out the different sides of the argument, illustrating that the very notion of fines or penalties is a deeply divisive one for States with virtually no prospects of consensus. In such circumstances the Court sees little point in commenting in detail on the matter.

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10. See *Assanidze v. Georgia* [GC], no. 71503/01, §§ 202-203, ECHR 2004 II; *Aleksanyan v. Russia*, no. 46468/06, §§ 239-240, 22 December 2008; and *Fatullayev v. Azerbaijan*, no. 40984/07, §§ 176-177, 22 April 2010.

11. *Del Rio Prada v. Spain* [GC], no. 42750/09, 21 October 2013.

12. For example *Broniowski* (note 7 above).

13. See paragraph 20 c) of the Declaration

14. Resolution Res(2004)3 on judgments revealing an underlying systemic problem, adopted by the Committee of Ministers on 12 May 2004 at its 114<sup>th</sup> session.

15. See in particular Articles 19, 32 and 46 of the Convention. The procedure has moreover been enshrined in the Rules of Court in Rule 61. The adoption of this new Rule which had been called for by Contracting States was expressly welcomed in the Izmir declaration.

16. Rule 61 § 3 of the Rules of Court.

### **Concluding remarks and general overview**

19. The issue of execution is a prominent feature in the reform process; indeed improvement on this front is critical to the overall success of the reform. That is why the Brighton Declaration invites the Committee of Ministers to continue to consider how to refine its procedures so as to ensure more effective supervision of the execution of judgments.

20. Seen in the light of that clear invitation the general tenor of the report reflects the difficulty in securing consensus on concrete measures to enhance the execution process. It therefore appears somewhat hesitant. Thus a number of proposals are referred to as possibilities, but without much enthusiasm and sometimes with express reservations (the Committee of Ministers working in smaller groups, appointment of ad hoc experts, appointment of a special rapporteur, naming and shaming, graduated use of tools, peer pressure etc). Very few of the various ideas that are described in it find much support and it is hard to see how they could have the potential to significantly improve the current system. Yet such improvement is undoubtedly needed.

21. In sum the Court agrees with the CDDH that measures must be taken to address the situation of defective execution. It is not convinced that the present report represents any real progress in this respect. It can therefore only encourage States to continue with, and intensify, their deliberations, this issue being one of the points for comprehensive examination in the next stage of the reform process (paragraph 35 f)(i) of the Brighton Declaration).