

CHAPTER 5

The Execution of Judgments

The Parties to the European Convention on Human Rights have committed themselves to secure to everyone within their jurisdiction the rights and freedoms defined in the Convention and have undertaken 'to abide by the final judgment of the Court in any case to which they are parties' (Article 46). The same Article also provides that the final judgment shall be transmitted to the Committee of Ministers, 'which shall supervise its execution'.

Once the Committee of Ministers has received the judgment, it invites the respondent State to inform it of the measures taken in order to comply with its undertaking to abide by the judgment. Such measures may be individual or general. Documents submitted to the Committee of Ministers are public unless the Committee decides otherwise in response to a reasoned request for confidentiality. In addition, the Committee has always made public the resolutions it has adopted in the course of its execution supervision. Relevant information is available through the Committee of Ministers' Internet site. Resolutions are also available in HUDOC.

The Nature of the Measures Required

The first type of measures, individual measures, concerns the applicants. They relate to the obligation to erase the

consequences suffered by them because of the violations established so as to achieve, as far as possible, *restitutio in integrum*. The second type of measures, general measures, relates to the obligation to prevent violations similar to that or those found or to putting an end to continuing violations. In some circumstances they may also concern the setting up of remedies to deal with violations already committed.

The obligation to take individual measures and provide redress to the applicant has two aspects. The first is to pay any just satisfaction (normally a sum of money) that the Court may have awarded. The consequences of the violation for the applicant are, however, not always adequately remedied by the Court's award of money or the finding of a violation. It is here that a further aspect of individual measures intervenes. Depending on the circumstances, the basic obligation of achieving, as far as possible, *restitutio in integrum* may thus require further actions involving, for example, the reopening of unfair criminal proceedings, the destruction of information gathered in breach of the right

Opposite: The Committee of Ministers of the Council of Europe is entrusted with ensuring that the respondent government found to be at fault complies with the Court's judgment.





Piers Gardner, of the London Bar, reviews his pleadings in the *Streletz, Kessler and Krenz v. Germany* case (2000).

awarded and the like. The nature and scope of other execution measures, whether individual or general, have in principle, as has been stressed also by the Court on numerous occasions, to be identified by the State itself under the supervision of the Committee of Ministers. This situation is explained by the principle of subsidiarity, by virtue of which respondent States have freedom of choice as regards the means to be employed in order to meet their obligations under the Convention. Nevertheless, this freedom goes hand in hand with the Committee's control so that in the course of its supervision of execution it may also, where appropriate, adopt decisions or interim

resolutions to express concern, encourage and/or make suggestions with respect to the execution.

In recent times, however, the Court has tended in its judgments to provide guidance itself as to relevant execution measures, a practice that has been welcomed by the Committee of Ministers. Thus, it has provided recommendations as to individual or even general measures it considered as appropriate. Furthermore, sometimes the Court directly orders the taking of the relevant measure. The first cases of this kind were decided in 2004–5, when the Court ordered the release of applicants who were being arbitrarily detained. Moreover, in the context of the 'pilot' judgment procedure the Court examines in greater detail the causes of certain systemic problems likely to lead to, or having already led to, a massive influx of new applications and provides recommendations as to general measures, most importantly as regards the necessity of setting up efficient domestic remedies. The Court has in certain 'pilot' judgments also ordered that such remedies be set up and has 'frozen' its examination of all similar pending applications while it waits for the remedies to start to function.

General Remarks

When evaluating the need for specific execution measures and their scope, as well as the adequacy of the execution measures adopted, the Committee of Ministers and the respondent State are assisted by the Directorate General of Human Rights and Legal Affairs, represented by the Department for the

to privacy, the enforcement of an unenforced domestic judgment or the revocation of a deportation order issued despite a real risk of torture or other forms of ill-treatment in the country of destination. The Committee of Ministers issued a specific recommendation to member States in 2000 inviting them 'to ensure that there exist at national level adequate possibilities to achieve, as far as possible, *restitutio in integrum*' and, in particular, 'adequate possibilities of re-examination of the case, including reopening of proceedings, in instances where the Court has found a violation of the Convention' (Recommendation No. R (2000) 2).

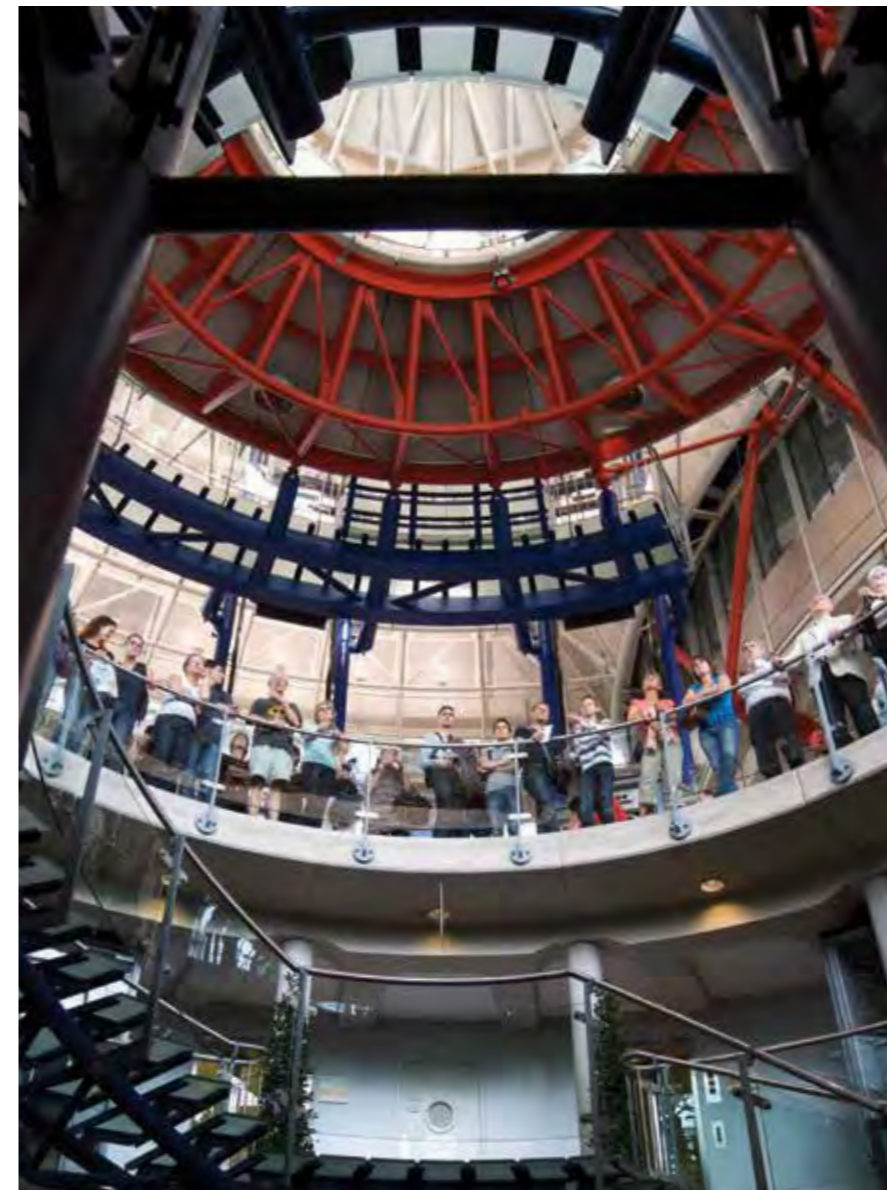
The obligation to take general measures may, depending on the circumstances, imply a review of legislation, regulations and/or judicial practice to prevent similar violations. Some cases may even involve constitutional changes. In addition, other kinds of measures may be required, such as the refurbishing of a prison, an increase in the number of judges or prison personnel or improvements of administrative arrangements or procedures. The Committee of Ministers also expects competent authorities to take interim measures to the extent possible both to limit the consequences of violations as regards individual applicants and, more generally, to prevent similar violations, pending adoption of more comprehensive or definitive measures. The Committee of Ministers also today pays particular attention to the efficiency of domestic remedies, in particular where the judgment reveals important systemic or structural problems. The direct effect more and more frequently

accorded the judgments of the Court by domestic courts and authorities largely facilitates both providing adequate individual redress and the necessary development of domestic law and practices to prevent similar violations. When execution through such direct effect is not possible, other avenues will have to be pursued, most frequently legislative or regulatory.

The Scope of the Measures Required

The scope of the execution measures required is defined in each case primarily on the basis of the conclusions of the Court in its judgment, considered in the light of the Court's case-law and Committee of Ministers' practice, and relevant information about the domestic circumstances. In some situations it may be necessary to await further decisions by the Court to clarify outstanding issues – for example, decisions declaring new, similar complaints inadmissible as general reforms adopted are found to be effective or decisions concluding that the applicant continues to suffer the violation established or its consequences.

As regards the payment of just satisfaction, the execution conditions are usually laid down with considerable detail in the Court's judgments in terms of deadline, recipient, currency, default interest and so on. Payment may nevertheless raise complex issues – for instance, as regards the validity of powers of attorney, the acceptability of the exchange rate used, the incidence of important devaluations of the currency of payment, the acceptability of seizure and taxation of the sums



The Interlaken Declaration* stated that there was an urgent need for the Committee of Ministers to:

(a) develop the means that will render its supervision of the execution of the Court's judgments more effective and transparent. In this regard, it invites the Committee of Ministers to strengthen this supervision by giving increased priority and visibility not only to cases requiring urgent individual measures, but also to cases disclosing major structural problems, attaching particular importance to the need to establish effective domestic remedies;

(b) review its working methods and its rules to ensure that they are better adapted to present-day realities and more effective for dealing with the variety of questions that arise.

Human rights violations arising from a systemic problem in the States Parties to the Convention account for a considerable proportion of the Court's workload. In all these cases, despite their similarity, the Court is obliged on each occasion to repeat the same message, something that could be avoided if the State concerned were to rectify the problem as soon as it was identified by the Court. For that reason ... the Committee of Ministers invited the Court [in 2002] to identify, in its judgments finding a violation of the Convention, what it considered to be an underlying systemic problem and the source of that problem, in particular when it was likely to give rise to numerous applications ...

Faced with a structural situation, the Court is in effect saying to the respondent State and to the Committee of Ministers that they too must play their role and assume their responsibilities. This is surely also in the interests of the individual applicants who may secure redress more rapidly through the general measures to be introduced by the respondent State than if the Court were to attempt to process and adjudicate each application in turn. In sharing out the burden of Convention enforcement, this approach is entirely consistent with the aim of restoring the balance in the relationship between international and domestic protection of fundamental rights; the failure of States to provide adequate remedies at national level is a significant, though not the sole, source of the current overloading of the Court's docket.

Luzius Wildhaber*
President of the Court, 1998–2007

Execution of Judgments of the Court. Like the Court itself, the Committee of Ministers is faced with an ever-increasing workload in this area, and in fact the number of cases pending before it at the end of 2009 was 8,614.

In addition to the traditional political mechanisms for ensuring respect, including notably appeals for collective member State action against the recalcitrant State, the Committee of Ministers may since June 2010, under Protocol No. 14, also refer to the Court the question whether a State has abided by a judgment.

The execution of the Court's judgments is an integral part of the Convention system, with both the Court's authority and the system's credibility depending on the effectiveness of the process. Indeed, it would be legitimate



to ask what purpose the Court would serve if its judgments were to remain a dead letter. Moreover, if the matter that gave rise to a finding of violation of the Convention is not corrected or eliminated there is every possibility that further

applications concerning the same issue will be lodged, thus unnecessarily increasing the Court's workload with a series of repetitive cases. This is especially so where a structural or systemic problem in the respondent State is involved – the unreasonable length of proceedings in domestic courts, for example.

In the light of these considerations, the Committee of Ministers has stressed that it is essential to ensure the full, effective and rapid execution of judgments and has made a number of recommendations to this end, including notably a special recommendation on efficient domestic capacity for rapid execution of judgments of the European Court of Human Rights (Recommendation CM/Rec(2008)2). Again, the need to enhance the efficiency of the process of supervision by the Committee and the Department for the Execution of Judgments was emphasized in the Declaration issued by the Interlaken High Level Conference (see Chapter 14).

JUST SATISFACTION

Article 41 of the Convention empowers the Court to afford 'just satisfaction to the injured party' if a violation is found.

From the perspective of a successful applicant, this Article is perhaps the most important. After all, it alone empowers the Court to afford individual redress for any violation found, and without it, one is left with a toothless declaratory judgment. The Court awards just satisfaction under three headings: pecuniary damage, non-pecuniary damage and costs and expenses.

Pecuniary damage is straightforward in principle. The material damage caused by the violation found is calculated, and the resulting sum is awarded. The calculations involved may, however, be complicated in practice. The Court has sometimes resorted to the use of expert opinions to determine the precise value of the loss incurred. However, it can no longer spare the time and effort to drag out proceedings for the purpose of ruling on property and money matters, and there is, therefore, no real substitute for a clear and detailed statement of a claim with supporting documents.

Non-pecuniary damage is often misunderstood. In the public eye, awards in this category are sometimes seen as 'fines' payable by the respondent government. It is not so. The respondent State is convicted of no crime, and the Court does not mete out

punishment. In fact, the idea is to compensate for any pain, stress or inconvenience resulting from the violation.

To place a monetary value on suffering is hard in itself – there is no objective measure available – and to do so even-handedly across 47 countries with vastly divergent economic development is especially difficult. The Court strives for consistency, which has proved easiest to achieve in 'repetitive' cases where the harm suffered is moral not physical (as in length-of-proceedings cases, for example). In the end the award is necessarily determined individually in each case, on the basis of 'equity'. Sometimes awards can be very high, as in torture cases. Conversely, the Court has on many occasions considered it 'equitable' for an applicant to be satisfied with the bald finding of a violation of their rights without any additional compensation whatsoever.

Costs and expenses are those legal and other costs that have been incurred by an applicant in attempting to prevent the violation found or, if that is not possible, to obtain redress for the wrong. For the Court to be able to make an informed decision it is important for applicants to submit detailed and specific claims.

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