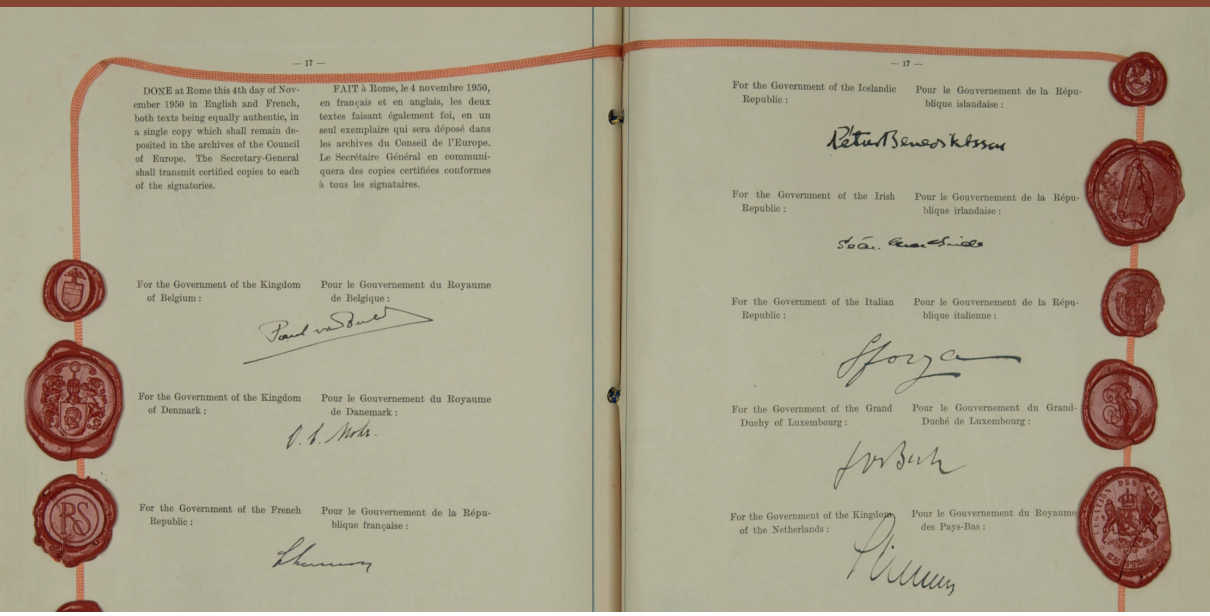
THE IMPLEMENTATION OF JUDGMENTS OF THE EUROPEAN COURT OF HUMAN RIGHTS



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The implementation of judgments of the European Court of Human Rights

Council of Europe

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Foreword

The report by Mr Pierre-Yves Le Borgn' is part of the work done by the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe concerning the implementation of judgments of the European Court of Human Rights ("the Court"). It follows the approach taken in the eighth report on the subject by Mr Klaas de Vries (2015), which focused on the Council of Europe member states with the highest number of non-implemented judgments and on certain structural problems. The ninth report adds a new element compared to the Assembly's previous work, namely detailed analysis of judgments, some of which are relatively recent, where implementation is meeting with a degree of political resistance.

The drafting of the report was a lengthy process. Many Court judgments and statistics and many documents of the Committee of Ministers of the Council of Europe (CM) were consulted. The CM's annual reports on the supervision of the execution of judgments and decisions of the Court, including that for 2016, served as the point of reference for the rapporteur in terms of both the statistics concerning the state of execution of judgments (by country and topic) and the implementing measures taken by states. As the data in the CM's annual report for 2016 refer to the situation as of 31 December 2016, the rapporteur also drew on the data available on the website of the Department for the Execution of Judgments of the Court (www.coe.int/en/web/execution) in order to present the current state of the cases pending before the CM. In the case of judgments which have already been implemented in full, he referred to the CM's final resolutions, in which the CM found that all the implementing measures (individual and/or general) had been taken by the respondent states and therefore decided to close the examination of the cases. As regards the judgments still being examined by the CM, the rapporteur studied the decisions adopted by the CM at the Ministers' Deputies'"human rights" (DH) meetings. In addition, he referred to the communications addressed to the CM by national authorities (in particular "action plans/reports"), civil society representatives, applicants and/or their lawyers and national human rights protection bodies. For almost a year now, research in this area has been greatly facilitated by the HUDOC-EXEC search engine.

Even though all the relevant data are accessible to the public, the report by Mr Pierre-Yves Le Borgn' sums them up in a single document, thereby highlighting the progress made by member states in implementing Court judgments, as well as problems which persist in this area. It also makes key recommendations to the member states and the CM which the Parliamentary Assembly subsequently approved on 29 June 2017 in Resolution 2178 (2017) and Recommendation 2110 (2017) on the implementation of judgments of the European Court of Human Rights.

Dr Agnieszka Szklanna

Secretary to the Committee
on Legal Affairs and Human Rights
Parliamentary Assembly of the Council of Europe

Preface

Implementing the judgments of the European Court of Human Rights is integral to the role and added value of the Council of Europe. It is a matter that involves all of the Organisation's institutions, including the Parliamentary Assembly. Even though the Committee of Ministers is responsible for monitoring the implementation of the Court's judgments, the Assembly has an important role to play, particularly with regard to national parliaments. It has been following the execution of judgments for nearly 20 years. Mine is the ninth report to focus on this issue. As rapporteur, I follow on from the excellent work carried out by Erik Jurgens, Christos Pourgourides and Klaas de Vries.

On 31 December 2016, 9 941 cases were pending before the Committee of Ministers, slightly fewer than in the previous year. The 10 countries with the most cases were, in descending order, Italy, the Russian Federation, Turkey, Ukraine, Romania, Hungary, Greece, Bulgaria, Moldova and Poland. Regarding cases pending before the Court, 7 of these countries are also in the top 10: Ukraine, Turkey, Hungary, the Russian Federation, Romania, Italy and Poland. The Committee of Ministers closed a record number of cases in 2016. This is welcome news, and I consider that this development reflects both the increased effectiveness of national implementation mechanisms and the impact of the new working methods introduced by the Department for the Execution of Judgments.

Real progress has been made in the implementation of judgments since Klaas de Vries' report in 2015. This concerns groups of cases relating to the length of judicial proceedings (Bulgaria, Greece, Italy, Poland and Romania), poor conditions in detention facilities and the lack of effective remedies (Italy and Poland), use of excessive force by law-enforcement officials (Romania), undue duration of or unlawfulness of remand detention (Russian Federation and Turkey), and also the non-enforcement of domestic judicial decisions and the supervisory review (*nadzor*) procedure in the Russian Federation. Significant advances have also been made with other cases, although they have yet to be closed.

However, I am concerned about the continued growth in leading cases which have been pending for more than five years. They reveal serious structural problems such as a shortage of financial resources (the *Zhovner v. Ukraine* group of judgments), the lack of a common understanding of the scope of the execution measures required (the *Catan v. Russia* group of judgments), cases where execution of a judgment is blocked by disagreement between political parties or national institutions (*Sejdić and Finci v. Bosnia and Herzegovina* and *Hirst v. the United Kingdom (No. 2)*), or an outright refusal to adopt the individual measures required (*Pichugin v. the Russian Federation* and *Ilgar Mammadov v. Azerbaijan*). I am also alarmed by the reluctance of some member states to accept the Court's jurisdiction (the Russian Federation and Hungary).

As laid down in Article 46 of the Convention, each state party is required to implement the judgments of the European Court of Human Rights. The resolution adopted by the Parliamentary Assembly of the Council of Europe on 29 June 2017 calls on states to submit the necessary action plans to the Committee of Ministers, to pay particular attention to cases that have been pending for over 10 years and to strengthen the role of civil society and national human rights institutions in the process of implementing the Court's judgments. The recommendation adopted on the same day highlights the need to make more frequent use of interim resolutions, to work towards greater transparency of the process of supervising implementation and to give civil society a greater role in the process.

Pierre-Yves Le Borgn'
Rapporteur of the Parliamentary Assembly
of the Council of Europe

The implementation of judgments of the European Court of Human Rights

Report[1] of the Parliamentary Assembly of the Council of Europe

Rapporteur: Mr Pierre-Yves Le Borgn', France, Socialist Group, Committee on Legal Affairs and Human Rights

I. Summary

In its ninth report on implementation of judgments of the European Court of Human Rights, the Committee on Legal Affairs and Human Rights highlighted the progress made by certain member states in implementing the Court's judgments. Nevertheless, it also pointed to serious structural problems that have been experienced for over 10 years now by the 10 member states which have the highest number of non-implemented judgments against them (Italy, the Russian Federation, Turkey, Ukraine, Romania, Hungary, Greece, Bulgaria, the Republic of Moldova and Poland). The Committee of Ministers is still supervising the implementation of some 10 000 judgments, although they are not all at the same stage of implementation. The difficulties in implementing certain judgments reveal "pockets of resistance" rooted in political problems.

The committee recommends, *inter alia*, swift implementation of the Court's judgments, condemnation of any kind of political statement aimed at discrediting the Court and the institution of parliamentary procedures to monitor the implementation of the obligations stemming from the European Convention on Human Rights. Among other things, the Committee of Ministers should give renewed consideration to the use of Article 46 paragraphs 3, 4 and 5 of the Convention, co-operate more closely with civil society and ensure greater transparency of its supervision process.

1. Reference to committee: Resolution 1268 (2002). Report: Doc. 14340 of 12 June 2017; presentation and discussion of the report on 29 June 2017 during the third part of the 2017 session of the Parliamentary Assembly of the Council of Europe (26th sitting).

II. Adopted texts

A. Resolution 2178 (2017)[2]

1. Since its Resolution 1226 (2000)[3] on the execution of judgments of the European Court of Human Rights, the Parliamentary Assembly has been duty-bound to contribute to the supervision of the implementation of judgments of the European Court of Human Rights ("the Court"), on which the efficiency and authority of the human rights protection system based on the European Convention on Human Rights (ETS No. 5, "the Convention") depend. Primary responsibility for supervision of the implementation of Court judgments lies with the Committee of Ministers, in accordance with Article 46.2 of the Convention. However, the Assembly considers that it has a key role in this process, as it can encourage proactive involvement from national parliaments.

2. The Assembly recalls its previous work on this subject, in particular its Resolutions 2075 (2015), 1787 (2011) and 1516 (2006), its Recommendations 2079 (2015) and 1955 (2011) on the implementation of judgments of the European Court of Human Rights and its Resolution 1823 (2011) on national parliaments: guarantors of human rights in Europe.

3. Since last examining this question in 2015, it notes some progress in the implementation of Court judgments, notably the reduction in the number of judgments pending before the Committee of Ministers and the increased number of cases closed by final resolutions, including cases concerning structural problems such as excessive length of judicial proceedings, poor conditions in detention facilities and the lack of domestic remedies in this regard, non-enforcement of domestic judicial decisions or the unlawfulness or excessive length of detention on remand.

4. The Assembly welcomes the measures taken by the Committee of Ministers to make its supervision of the implementation of Court judgments more transparent, and the synergies that have been developed within the Council of Europe to make this process more rapid and effective.

5. However, the Assembly remains deeply concerned about the number of judgments pending before the Committee of Ministers, even though not all of these judgments are at the same stages of execution. It notes that there are nearly 10 000 such cases, and that the number of leading cases – revealing specific structural problems – awaiting execution for more than five years has increased. Nearly half of the cases under the "enhanced supervision" of the Committee of Ministers relate to violations of Articles 2 (right to life), 3 (prohibition of torture) and 5 (right to liberty and security) of the Convention.

2. Text adopted by the Assembly on 29 June 2017 (26th sitting).
3. All the reports, resolutions and recommendations of the Parliamentary Assembly mentioned in this text are listed in Appendix 2, and are available at http://assembly.coe.int; the resolutions of the Committee of Ministers on the execution of judgments of the European Court of Human Rights are also listed in Appendix 3 and are available at http://hudoc.exec.coe.int.

6. The Assembly also notes that, even though considerable progress has been made since its Resolutions 1787 (2011) and 2075 (2015), Italy, the Russian Federation, Turkey, Ukraine, Romania, Hungary, Greece, Bulgaria, the Republic of Moldova and Poland have the highest number of non-implemented judgments and still face serious structural problems, some of which have not been resolved for over ten years.

7. The Assembly further notes that some cases involving other States Parties to the Convention also reveal "pockets of resistance", in particular concerning deeply ingrained political issues. The difficulties in implementing these judgments relate to the adoption not only of general measures (aimed at preventing fresh violations) but also of individual measures (aimed at *restitutio in integrum* for applicants) or payment of just satisfaction. Moreover, the Assembly observes that in some States parties the execution of the Court's judgments is surrounded by bitter political debate as certain political leaders seek to discredit the Court and undermine its authority.

8. The Assembly once again deplores the delays in implementing the Court's judgments, the lack of political will to implement judgments on the part of certain States parties and all the attempts made to undermine the Court's authority and the Convention-based human rights protection system. It reiterates that Article 46.1 of the Convention sets out the legal obligation for the States parties to implement the judgments of the Court and that this obligation is binding on all branches of State authority.

9. Thus, the Assembly once again calls on the States parties to fully and swiftly implement the judgments and the terms of friendly settlements handed down by the Court and to co-operate, to that end, with the Committee of Ministers, the Court and the Department for the Execution of Judgments of the European Court of Human Rights, as well as with other Council of Europe organs and bodies where applicable. For this cooperation to be fruitful, the Assembly recommends that the States parties, *inter alia*:

9.1. submit action plans, action reports and information on the payment of just satisfaction to the Committee of Ministers in a timely manner;

9.2. pay particular attention to cases concerning structural problems, especially those lasting over ten years, as well as all related cases;

9.3. provide sufficient resources to national stakeholders responsible for implementing Court judgments and encourage them to co-ordinate their work in this area;

9.4. provide more funding to Council of Europe projects that could contribute to improved implementation of Court judgments;

9.5. raise public awareness of issues relating to the Convention;

9.6. condemn any kind of political statement aimed at discrediting the Court's authority;

9.7. strengthen the role of civil society and national human rights institutions in the process of implementing the Court's judgments.

10. Referring to its Resolution 1823 (2011), the Assembly calls on the national parliaments of Council of Europe member States to:

10.1. establish parliamentary structures guaranteeing follow-up to and monitoring of international obligations in the human rights field, and in particular of the obligations stemming from the Convention;

10.2. devote parliamentary debates to the implementation of the Court's judgments;

10.3. question governments on progress in implementing Court judgments and demand that they present annual reports on the subject;

10.4. encourage all the political groups to concert their efforts to ensure that the Court's judgments are implemented.

11. The Assembly calls on the European Parliament to engage with the Assembly on issues related to the implementation of the Court's judgments.

12. In view of the urgent need to speed up implementation of the Court's judgments, the Assembly resolves to remain seized of this matter and to continue to give it priority.

B. Recommendation 2110 (2017)[4]

1. Referring to its Resolution 2178 (2017) on the implementation of judgments of the European Court of Human Rights, the Parliamentary Assembly welcomes the measures taken by the Committee of Ministers to improve the process of its supervision of the implementation of judgments of the Court.

2. The Assembly once again urges the Committee of Ministers to use all available means to fulfil its tasks under Article 46.2 of the European Convention on Human Rights (ETS No. 5, "the Convention"). Accordingly, it recommends that the Committee of Ministers:

2.1. give renewed consideration to the use of the procedures provided for in Article 46, paragraphs 3 to 5, of the Convention, in the event of implementation of a judgment encountering strong resistance from the respondent State;

2.2. make more frequent use of interim resolutions with a view to pinpointing the difficulties in implementing certain judgments;

2.3. tackle urgently systemic problems identified in pilot judgments delivered by the Court, with particular attention paid to all related cases;

2.4. do more work towards greater transparency of the process of supervising the implementation of judgments;

2.5. give applicants, civil society, national human rights protection bodies and international organisations a greater role in this process;

2.6. continue to strengthen synergies, within the Council of Europe, between all the stakeholders concerned, in particular the European Court of Human Rights and its Registry, the Assembly, the Secretary General, the Commissioner for Human Rights, the Steering Committee for Human

4. Text adopted by the Assembly on 29 June 2017 (26th sitting).

Rights, the European Commission for Democracy through Law (Venice Commission) and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment;

2.7. increase the resources of the Department for the Execution of Judgments of the European Court of Human Rights;

2.8. encourage the Department for the Execution of Judgments to increase exchanges with the Court and its Registry and also to consult more with national authorities in cases where particular difficulties arise over the definition of implementation measures.

III. Explanatory memorandum

by Mr Pierre-Yves Le Borgn', rapporteur

1. Introduction

1.1. Procedure

1. The Parliamentary Assembly has taken a keen interest in the issue of implementation of judgments of the European Court of Human Rights ("the Court") since 2000.[5] In its last resolution on the topic – Resolution 2075 (2015) – it resolved to "remain seized of this matter and to continue to give it priority".[6] Consequently, on 2 November 2015, the Committee on Legal Affairs and Human Rights appointed me as the fourth successive rapporteur on this subject following Messrs Erik Jurgens (Netherlands, SOC), Christos Pourgourides (Cyprus, EPP/CD) and Klaas de Vries (Netherlands, SOC). My report is the ninth one on the subject. At its meeting in Strasbourg on 23 June 2016, the committee held a hearing with the participation of Mr Giorgio Malinverni, former judge of the Court and honorary professor at the University of Geneva, Mr Guido Bellatti Ceccoli, Ambassador, Permanent Representative of San Marino to the Council of Europe and Chair of the Rapporteur Group on Human Rights of the Committee of Ministers, and Ms Betsy Apple, Advocacy Director of the Open Society Justice Initiative in New York. In addition, at its meeting in Paris on 13 December 2016, the committee authorised me to carry out fact-finding visits to Bosnia and Herzegovina, Hungary and Ukraine, and, at its meeting in Strasbourg on 24 January 2017, it also authorised me to visit Poland. Owing to time constraints, I was unfortunately unable to carry out all these visits. I did however visit Warsaw (Poland) on 20 and 21 March 2017 and Budapest (Hungary) on 22 and 23 March.[7]

5. The first report was approved by our committee on 27 June 2000 (Doc. 8808 and Resolution 1226 (2000)). Since 2000, the Assembly has adopted eight resolutions and seven recommendations concerning the implementation of judgments of the Court.
6. See Doc. 13864 and addendum (rapporteur: Mr Klaas de Vries).
7. See press release of 24 March 2017 following that visit, available at http://assembly.coe.int/nw/xml/News/News-View-EN.asp?newsid=6561&lang=2&cat=5.