



**Resolution 1516 (2006)<sup>1</sup>**

## Implementation of judgments of the European Court of Human Rights

### Parliamentary Assembly

1. The Parliamentary Assembly emphasises that respect for the European Convention on Human Rights (ECHR – ETS No. 5), including the compulsory jurisdiction of the European Court of Human Rights (the Court) and its binding judgments, is the main pillar of European public order which guarantees peace, democracy and good government in greater Europe. It is therefore essential for the Assembly to maintain a keen interest in different aspects of the ECHR system and not least in the effective implementation of the Court's judgments, on which the authority of the Court depends.
2. It notes that the implementation of the Court's judgments is a complex legal and political process whose aim is to remedy violations found and to prevent new or similar ones. Such implementation, carried out under the supervision of the Committee of Ministers (CM), can benefit from close co-operation between domestic and other institutions, including the Assembly and the parliaments of member states.
3. Although, according to Article 46 (Binding force and execution of judgments) of the ECHR, it is the Committee of Ministers which supervises the execution of judgments, the Assembly has increasingly contributed to the process of implementation of the Court's judgments. Five reports and resolutions and four recommendations specifically concerning the implementation of judgments have been adopted by the Assembly since 2000. In addition, various implementation problems have been regularly raised by other means, notably through oral and written parliamentary questions. A number of complex implementation issues have been solved with the assistance of the Assembly and of the national parliaments and their delegations to the Assembly.
4. In line with the May 2005 Council of Europe Summit decision that all member states should accelerate the full execution of the Court's judgments, and the Committee of Ministers Declaration of 19 May 2006 indicating that the Parliamentary Assembly will be associated with the drawing up of a recommendation on the efficient domestic capacity for rapid implementation of the Court's judgments, the Assembly feels duty-bound to further its involvement in the need to resolve the most important problems of compliance with the Court's judgments.
5. The Assembly's Committee on Legal Affairs and Human Rights has now adopted a more proactive approach and given priority to the examination of major structural problems concerning cases in which unacceptable delays of implementation have arisen, at this moment in five member states: Italy, the Russian Federation, Turkey, Ukraine and the United Kingdom. Special *in situ* visits were thus paid by the rapporteur to these states in order to examine with national decision makers the reasons for non-compliance and to stress the urgent need to find solutions to these problems. The issue of improving domestic mechanisms which can stimulate correct implementation of the Court's judgments was given particular attention.
6. In eight other members states – namely Bulgaria, France, Germany, Greece, Latvia, Moldova, Poland and Romania – reasons for non-compliance and possible solutions to outstanding problems have been considered, making use of written contacts with these countries' delegations to the Assembly.

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1. Assembly debate on 2 October 2006 (24th Sitting) (see [Doc. 11020](#), report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Jurgens). Text adopted by the Assembly on 2 October 2006 (24th Sitting).



7. The Assembly welcomes the serious attitude and the efforts made by the majority of the 13 member states concerned and their national parliamentary delegations in assisting the Committee on Legal Affairs and Human Rights, yet at the same time it regrets the insufficiency of the response of certain parliamentary delegations (for example, France and Ukraine) to written requests for information.

8. Three member states, in particular, deserve praise for attempts to solve specific implementation problems by improving domestic mechanisms:

8.1. Italy adopted the Azzolini law in 2006, which has created a legislative basis for a special procedure for the supervision of the implementation of judgments by the government and parliament;

8.2. Ukraine adopted a law in 2006 providing for a co-ordinated approach, under the supervision of the government agent before the Court, to ensure the proper implementation of the Court's judgments;

8.3. The United Kingdom introduced a new practice in March 2006 consisting of progress reports on the implementation of Court judgments presented by the Joint Human Rights Committee of the British Parliament.

9. With regard to specific implementation problems raised by the Assembly, it welcomes in particular decisive progress achieved in:

9.1. *Slivenko v. Latvia*, where the applicants' rights of permanent residence in Latvia has recently been restored, in line with the Committee of Ministers requests. Latvia has thus erased the effects of the applicants' expulsion to Russia found by the Court to be in violation of the ECHR;

9.2. *Broniowski v. Poland*, a first "pilot" judgment of the Court, in response to which the Polish Parliament passed a new law (in force since 7 October 2005) regulating the issue of the Bug River claimants' entitlements to compensation, in accordance with the Court's guidance and an interim resolution of the Committee of Ministers;

9.3. *Doğan v. Turkey*, a judgment also raising an important systemic problem: in response, Turkey adopted and implemented a new compensation law, thus providing to all internally displaced persons an effective domestic remedy to obtain compensation for property destroyed (without prejudice to their right to return).

10. At the same time, the Assembly notes with grave concern the continuing existence of major structural deficiencies which cause large numbers of repetitive findings of violations of the ECHR and represent a serious danger to the rule of law in the states concerned. These problems are:

10.1. the excessive length of judicial proceedings in Italy (CM Interim Resolution DH(2005)114), which also leads to ineffective protection of a wide range of other substantial rights;

10.2. major shortcomings in the judicial organisation and procedures in the Russian Federation, most importantly:

10.2.1. deficient judicial review of pre-trial detention, which results in its excessive length and overcrowding of detention facilities (CM Interim Resolution DH(2003)123);

10.2.2. chronic non-enforcement of domestic judicial decisions delivered against the state (CM/Inf(2006)19);

10.2.3. violations of the requirement of legal certainty by extensive quashing of binding judicial decisions through the *nadzor*<sup>2</sup> procedure (CM Interim Resolution DH(2006)1);

10.3. a number of similar systemic problems in Ukraine, aggravated by serious interferences with judicial independence (CM Interim Resolution DH(2004)14).

11. Furthermore the Assembly deplores that the following important and overdue implementation problems, stressed by both the Committee of Ministers and the Assembly, still remain without solution, thus prolonging the situation of non-compliance with the Strasbourg Court's judgments:

11.1. in Italy and, to a certain extent in Turkey, the law still does not allow the reopening of domestic criminal proceedings impugned by the Court, while these governments have taken no other measures to restore the applicants' right to a fair trial despite repeated demands to that effect by the Committee of Ministers and the Assembly (among many other cases, *Dorigo v. Italy* and *Hulki Güneş v. Turkey*);

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2. Supervisory review procedure.

11.2. no progress has been achieved as regards the release of two applicants still detained in the “Moldovan Republic of Transnistria” (the case of Ilașcu and Others v. Moldova and Russia; CM last Interim Resolution DH(2006)26), Russia in this case claiming that it has no influence in Transnistria, a contention which cannot be taken seriously;

11.3. in Greece, no comprehensive plan has been presented to resolve the systemic problem of overcrowding of detention facilities (Dougoz and Peers judgments, CM Interim Resolution DH(2005)2), which has just been highlighted in yet another judgment (Kaja v. Greece) of 27 July 2006;

11.4. the lack of progress towards the solution to the systemic problem of “indirect expropriation” in Italy, an abusive practice – which is in fact illegal confiscation – conducted by local authorities to the detriment of applicants’ property rights under the ECHR;

11.5. Romania has reported no progress concerning the ongoing reform of the law on national security or of other related acts in response to the Rotaru judgment (CM Interim Resolution DH(2005)57).

12. The Assembly reiterates that the initial existence of possible objective difficulties, which may well be understood, does not relieve the states concerned from their obligation to overcome these difficulties and resolve without further delay the aforementioned problems, thus bringing their systems into conformity with the ECHR. The prolongation of such situations of non-compliance puts at stake the effectiveness of the ECHR system and should be seen as a breach of the state’s obligations under the ECHR and under the Statute of the Council of Europe (ETS No. 1).

13. The Assembly pays special attention to the implementation by the Russian Federation, Turkey and the United Kingdom of judgments relating to abuses by security forces and/or the lack of effective investigation into such abuses. It welcomes progress being made by Turkey and the United Kingdom in remedying underlying structural problems as well as the Russian authorities’ willingness to do the same, as demonstrated by the first part of their action plan presented to the Committee of Ministers. The Assembly encourages the Russian authorities to fully exploit the experience of other states and to implement as rapidly as possible judgments concerning action of the security forces, notably in relation to the Chechen Republic.

14. Furthermore the Assembly stresses the continuing obligation of all respondents in the cases referred to in paragraph 13 to remedy specific shortcomings in domestic investigations impugned by the Court in order to provide effective redress to applicants. Conclusive results in this respect remain to be demonstrated by all three respondent states concerned.

15. The issue of Turkey’s compliance with the Court’s judgments in various fields has in the past called for the Assembly’s special attention (see Resolutions 1297 (2002) and 1381 (2004), and [Recommendation 1576 \(2002\)](#)) and the overall progress achieved to date in this respect is most encouraging. Many problems revealed by the Court have been successfully tackled, while others require further efforts. Additional progress is, however, notably awaited to prevent new violations of the right to freedom of expression in Turkey, as doubts still remain as to whether the authorities interpret the new provisions in conformity with the ECHR.

16. In addition, Turkey has still to fully implement the Court’s judgments regarding the long overdue issue of missing persons in Cyprus as well as that relating to a series of violations of the rights of enclaved Greek Cypriots. The issue of missing persons’ property is also a source of concern. The Assembly attaches particular importance to measures adopted or yet to be taken following the Strasbourg Court’s judgments, as they should constitute a tangible contribution to a comprehensive solution of the Cyprus issue.

17. The overall assessment of this new exercise by the Assembly indicates that respondent states’ lengthy or negligent implementation of the Court’s judgments must be given greater political visibility both within the Council of Europe and in the member states concerned. The Assembly therefore considers that it should remain seized of this matter to ensure regular and rigorous parliamentary oversight of implementation issues both at European and national level. The first initiatives taken to this effect by certain national parliaments are encouraging but much still remains to be done.

18. A major reason for difficulties in the execution of the Strasbourg Court’s judgments is the lack of effective domestic mechanisms and procedures to ensure the swift implementation of required measures, often needing co-ordinated action of various national authorities. The responsible decision makers in member states often ignore implementation requirements, as set out by the Committee of Ministers, or lack the appropriate domestic procedures to permit effective co-ordinated action.

19. The Committee of Ministers' and the member states' methods and procedures should therefore be changed to ensure immediate transmission of information and involvement of all domestic decision makers concerned in the implementation process, if necessary with the assistance of the Council of Europe.

20. The Assembly notes with interest the recommendation in the 2005 Summit's Action Plan addressed to the Council of Europe's Development Bank to facilitate, through the bank's own means of action, the implementation of policies in areas covered by the ECHR. The Assembly strongly encourages the bank and interested states to avail themselves of this possibility when such action can ensure the rapid implementation of judgments revealing important systemic problems.

21. The Assembly also notes with interest the recent development of the pilot procedure before the Court to address systemic problems. It notes, however, with some concern that this procedure has been conducted in respect of certain complex systemic problems on the basis of a single case which may not reveal the different aspects of the systemic problem involved. Under these circumstances, the pilot procedure may not allow a global assessment of the problem and, since all other related cases are "frozen", the risk emerges that this procedure will delay rather than speed up the full implementation of the ECHR. The Assembly also notes that the efficacy of the pilot procedure can only be safeguarded if the Committee of Ministers diligently exercises its competence to assess the adequacy and sufficiency of the implementation measures taken by respondent states.

22. In view of the foregoing, the Assembly:

22.1. invites all national parliaments to introduce specific mechanisms and procedures for effective parliamentary oversight of the implementation of the Court's judgments on the basis of regular reports by the responsible ministries;

22.2. calls upon the member states to set up, either through legislation or otherwise, domestic mechanisms for the rapid implementation of the Court's judgments, and that a decision-making body at the highest political level within the government take full responsibility for and co-ordinate all aspects of the domestic implementation process;

22.3. decides to verify on a regular basis if such mechanisms have indeed been instituted by member states and if they are effective;

22.4. urges the authorities of the 13 states concerned to resolve without delay the outstanding implementation problems identified in the report of the Committee on Legal Affairs and Human Rights;

22.5. urges in particular the authorities of Greece, Italy, Romania, the Russian Federation, Turkey, the United Kingdom and Ukraine to resolve implementation issues of particular importance mentioned in the present resolution and to give this top political priority;

22.6. invites parliamentary delegations of states in which in situ visits were undertaken to present to the Assembly via the Committee on Legal Affairs and Human Rights, within six months, the results achieved in solving substantial problems that have been highlighted in the report or to show the existence of realistic action plans for the adoption of the measures required;

22.7. reserves the right to take appropriate action, notably by making use of Rule 8 of its Rules of Procedure (namely, challenging the credentials of a national delegation), should the state concerned continuously fail to take all the measures required by a judgment of the Court, or should the national parliament fail to exert the necessary pressure on the government to implement judgments of the Court;

22.8. decides to remain seized of the matter and welcomes the Committee of Ministers' recent proposals to increase information sharing with the Assembly and to associate the Assembly with the ongoing preparation of a recommendation to member states on efficient domestic capacity for rapid execution of the Court's judgments;

22.9. in view of the imperative need for member states to accelerate the full execution of judgments of the Court, decides to continue the regular monitoring of the situation and invites its Committee on Legal Affairs and Human Rights to report back to the Assembly when it considers appropriate.