Parliamentary Assembly
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COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

**Resolution 1226 (2000)**[1]

# Execution of judgments of the European Court of Human Rights

Parliamentary Assembly

1. The Assembly considers that the European Convention on Human Rights (hereafter referred to as "the Convention") offers a unique mechanism for the protection of human rights and contributes substantially to maintaining democratic security and to the principle of the rule of law throughout the European continent. In order to maintain this standard of protection, it is essential that states fully comply with their formal undertaking to abide by the final judgments of the European Court of Human Rights (hereafter referred to as "the Court") in cases to which they are parties.

2. The system of the Convention is based in particular on two principles: subsidiarity and solidarity. The principle of subsidiarity implies that the primary responsibility for ensuring the rights and freedoms laid down in the Convention rests with the national authorities. Only if they fail to fulfil their responsibility is the Court called upon to take a decision.

3. The principle of solidarity implies that the case-law of the Court forms part of the Convention, thus extending the legally binding force of the Convention erga omnes (to all the other parties). This means that the states parties not only have to execute the judgments of the Court pronounced in cases to which they are party, but also have to take into consideration the possible implications which judgments pronounced in other cases may have for their own legal system and legal practice.

4. The Committee of Ministers, according to Article 46.2 of the Convention, supervises the execution of the Court's judgments. Furthermore, Article 52 of the Convention provides that "On receipt of a request from the Secretary General of the Council of Europe any High Contracting Party shall furnish an explanation of the manner in which its internal law ensures the effective implementation of any of the provisions of the Convention." However, the Convention does not provide for a sanction in a case where a state does not execute a judgment of the Court. The measures to be taken in such cases are those foreseen in the Statute of the Council of Europe, in particular in its Article 8.

5. The Assembly is concerned that the execution of some judgments is causing considerable problems that threaten to undermine what has been achieved over the fifty years during which the Convention has operated. Some judgments of the Court have still not been executed several years later.

6. The Assembly is of the view that the responsibility for this situation rests mainly with the states parties which must execute the Court's judgments. In that regard, members of national delegations to the Assembly have a role to play. However, the Court, whose judgments are sometimes not sufficiently clear, and the Committee of Ministers, which does not exert enough pressure when supervising the execution of judgments, share part of the responsibility.

7. In spite of some progress made in giving direct effect to the Court's judgments, the present situation gives cause for serious concern. On the one hand, the Court faces an increase in the number of cases due to the accession of a number of new member states; on the other, the situation is aggravated by the numerous cases which relate to violations of human rights which have already been judged, but the judgments of which have not been followed by the necessary reforms which would avoid further violations.

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1. Assembly debate on 28 September 2000 (30th Sitting) (see Doc. 8808, report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Jurgens). Text adopted by the Assembly on 28 September 2000 (30thSitting).

8. The problems of implementation are at least seven-fold: political reasons; reasons to do with the reforms required; practical reasons relating to national legislative procedures; budgetary reasons; reasons to do with public opinion; judgments which are casuistical or unclear; reasons relating to interference with obligations deriving from other institutions.

9. The possible solutions are at both national level and Council of Europe level.

10. At national level:

10.1. legislators should ensure that new legislation fully complies with the Convention;

10.2. governments should take the necessary action to execute the Court's judgments in order to avoid any recurrence of violations;

10.3. governments should remedy the applicant's individual situation and, where necessary, they should ensure that their legislation provides for the revision of a trial following a judgment of the Court;

10.4. judges and administrators should work towards giving direct effect to the Court's judgments so that national court authorities can directly apply them;

10.5. national authorities should make sure that the Court's case-law is adequately circulated in the language(s) of the country;

10.6. until definitive reforms come into effect, domestic authorities and courts should adopt interim measures.

11. At Council of Europe level:

*a.* the Committee of Ministers should:

1. amend the Convention so as to have the power exceptionally to ask the Court for a clarifying interpretation of its judgments in cases where the execution gives rise to reasonable doubts and serious problems regarding the correct mode of implementation;

2. amend the Convention to introduce a system of "astreintes" (daily fines for a delay in performance of a legal obligation) to be imposed on states that persistently fail to execute a Court judgment;

3. ask the governments of High Contracting Parties to make more use of their right to intervene in cases before the Court, so as to promote the clarity of the decisions of the Court;

4. be more strict towards member states which fail in their obligation to execute decisions and take the measures provided for in Article 8 of the Statute in case of continued refusal;

5. ensure that measures taken are effective means of preventing further violations;

6. keep the Assembly informed of progress in the execution of judgments, in particular by more systematic use of interim resolutions setting a timetable for carrying out the reforms necessary within signatory states in view of their execution;

7. instruct the Secretary General to reinforce assistance programmes for the training of judges and lawyers in member states;

*b.* the Court should:

1. ensure that its judgments are clear and its case-law coherent;

2. oblige itself to indicate in its judgments to the national authorities concerned how they should execute the judgment so that they can comply with the decisions and take the individual and general measures required;

3. more frequently indicate in a judgment whether a previous judgment has not been executed at all, not been completely executed, or not been executed in time by the state concerned.

*c.* the Assembly decides to:

1. draw the attention of the public at large to the execution of judgments of the Court;

2. keep a permanent updated record of the execution of judgments, noting:

*a.* the just satisfaction afforded to applicants;

*b.* any legislative or even, possibly, constitutional reforms needed to avoid further violations;

3. hold regular debates about the execution of judgments, on the basis of the aforementioned permanent record, and in the case of the non-executed judgments referred to in this report, organise a debate within one year of the date of this resolution;

4. adopt recommendations to the Committee of Ministers, and through it to the relevant states, concerning the execution of certain judgments, if it notices abnormal delays, or if the state in question has neglected to execute or deliberately refrained from executing the judgment – if necessary holding an urgent debate to this end;

5. invite the parliamentary delegations of the states concerned to do their utmost to bring about the quick and efficient execution of judgments;

6. invite the minister for justice, or another relevant minister of the responding state to give the Assembly an explanation in person, in case of refusal to execute a judgment or in case of excessive delays;

7. consider as a reason to open a monitoring procedure the case of a member state refusing to implement a decision of the Court;

8. envisage, if these measures fail, making use of other possibilities, in particular those provided for in its own Rules of Procedure and/or of a recommendation to the Committee of Ministers to make use of Article 8 of the Statute.

*d.* National delegations within the Assembly should be regularly informed about the Court's case-law and problems concerning the execution of judgments in their country.

12. Accordingly the Assembly:

12.1. invites the High Contracting Parties:

*a.* to take the necessary action to execute the Court's judgments in order to avoid any recurrence of violations;

*b.* in the case of a reasonable doubt as to the correct way a judgment should be executed, to make use of their right, in accordance with Article 79, paragraph 1, of the Rules of the Court, to request from the Court an interpretation of its judgment within a year of its delivery;

*c.* to ensure that new legislation fully complies with the Convention;

*d.* to take the necessary steps to give direct effect to the Court's judgments so that national courts can apply them;

*e.* to remedy the applicant's individual situation and to ensure that their legislation provides for the revision of a trial following a judgment of the Court;

*f.* to adopt interim measures until definitive reforms come into effect;

*g.* to proceed with the legislative, and if necessary constitutional, reforms required to bring their national legislation fully into conformity with the European Convention on Human Rights and the case-law of the Court;

12.2. invites the national delegations to the Assembly to carefully follow the execution of judgments of the Court in which their governments are involved in their respective parliaments and to take all necessary measures for their quick and efficient execution.