



Resolution 1571 (2007)¹

Final version

Member states' duty to co-operate with the European Court of Human Rights

Parliamentary Assembly

1. The Parliamentary Assembly stresses the importance of the European Court of Human Rights (hereinafter "the Court") for the implementation of the European Convention on Human Rights (ETS No. 5) (hereinafter "the Convention") in all member states of the Council of Europe. The right of individuals to apply to the Court is a central element of the human rights protection mechanism in Europe and must be protected from interference at all levels.
2. The Court requires the co-operation of all states parties at all stages of procedure and even before a procedure is formally opened. In view of the subsidiary nature of the Court's intervention, and its lack of investigatory resources in the countries concerned, national authorities have a positive obligation to co-operate with the Court as regards the establishment of facts.
3. The Assembly is satisfied that, in general, states co-operate well with the Court. It commends the national representatives before the Court for their important contribution to maintaining constructive working relations between the competent national authorities and the Court.
4. As most states co-operate smoothly with the Court, it is especially important, as a matter of equal treatment for all member states, to take appropriate steps towards resolving outstanding problems. The Assembly therefore thanks the Committee of Ministers for having taken up this issue in its Resolution ResDH(2006)45 on states' obligation to co-operate with the European Court of Human Rights, adopted on 4 July 2006.
5. As all states parties to the Convention have undertaken not to hinder in any way the effective exercise of the right of individual applications (Article 34 of the Convention), the Assembly is deeply worried about the fact that a number of cases involving the alleged murder, disappearance, beating or threatening of applicants initiating cases before the Court have still not been fully and effectively investigated by the competent authorities. On the contrary, in a significant number of cases there are clear signs of a lack of willingness to effectively investigate the allegations and in some cases the intention of whitewashing is clearly apparent.
6. Illicit pressure has also been brought to bear on lawyers who defend applicants before the Court and who assist victims of human rights violations in exhausting domestic remedies before applying to the Court. Such pressure has included trumped-up criminal charges, discriminatory tax inspections and threats of prosecution for "abuse of office". Similar pressure has been brought to bear on NGOs who assist applicants in preparing their cases.
7. Such acts of intimidation have prevented alleged victims of violations from bringing their applications to the Court, or led them to withdraw their applications. They concern mostly, but not exclusively, applicants from the North Caucasus region of the Russian Federation. Cases of intimidation concerning other regions of the Russian Federation, as well as from Moldova, Azerbaijan, and – albeit less recently – Turkey have also been brought to the attention of the Parliamentary Assembly.

1. Assembly debate on 2 October 2007 (31st Sitting) (see [Doc. 11183](#), report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Pourgourides). Text adopted by the Assembly on 2 October 2007 (31st Sitting).



8. In a significant number of cases, the competent authorities of several countries have failed to co-operate with the Court in its investigation of the facts. This lack of co-operation includes the persistent non-disclosure of the case file or other relevant documents and even the refusal to allow a planned fact-finding visit of the Court to proceed.

9. The Assembly notes that the Court has developed a number of instruments to counteract lack of co-operation by states parties, both regarding interferences with the right of individual application and lack of co-operation in the establishment of facts. In particular, Rule 44 of the Rules of the Court, adopted in 2004, clarifies and strengthens the Court's position as regards failure to co-operate..

10. The Assembly encourages the Court to continue taking an assertive stand in counteracting pressure on applicants and their lawyers as well as on lawyers working on the exhaustion of domestic remedies.

11. The Court has allowed exceptions to the requirement of exhausting domestic remedies in cases where such remedies are either ineffectual or impractical. The Assembly believes that the requirement of exhausting domestic remedies ought to be applied with considerable flexibility in the cases of applicants who are subjected to intimidation or other illicit pressure in order to prevent them from pressing charges against the perpetrators before the local courts or from exhausting all domestic remedies.

12. In certain cases the Court has also given priority to cases involving applicants subjected to undue pressure. In view of experience showing that the period between the registration of an application with the Court and its communication to the authorities of the respondent state may be particularly dangerous for applicants in terms of the exercise of pressure, the Assembly encourages the Court to do its utmost to shorten this period. Granting priority treatment to such cases may provide a disincentive for those tempted to apply undue pressure.

13. The Court has also used the instrument of interim measures (Article 39 of the Rules of the Court) in order to prevent irreparable damage. The Assembly commends the Court for finding that such interim measures are binding on states parties. It considers that this instrument may have still wider potential uses for protecting applicants and their lawyers who are exposed to undue pressure. The Court may find it useful in this respect to examine the practice of the Inter-American Court of Human Rights and the Inter-American Commission on Human Rights, which have used interim measures to enjoin the authorities to place applicants under special police protection in order to shield them from criminal acts by certain non-state actors.

14. As regards national authorities' co-operation in the establishment of facts, the Court has extended – on a case-by-case basis – the notion of “necessary facilities” that member states must put at the disposal of the Court for the effective conduct of investigations (Article 38, paragraph 1.a, of the Convention), to include submitting documentary evidence to the Court, as well as identifying, locating and ensuring the attendance of witnesses at hearings, and making comments on and replying to questions asked by the Court.

15. Finally, in appropriate cases in which the applicant has succeeded in making a *prima facie* case, the Court has made inferences from a respondent state's refusal to co-operate in the establishment of facts, including presumptions of fact or the reversal of the burden of proof.

16. The Assembly commends the Court for its assertiveness in developing case law concerning member states' duty to co-operate in the establishment of facts. In view of further harmonising the application of this case law, it encourages the Court to consider laying down key principles in its Rules of Procedure, similar to the Inter-American Court of Human Rights and the Inter-American Commission on Human Rights.

17. The Assembly therefore calls upon the competent authorities of all member states to:

17.1. refrain from putting pressure on applicants, potential applicants, their lawyers or family members, aimed at obliging them to refrain from submitting applications to the Court or withdrawing those applications which have already been submitted;

17.2. take positive measures to protect applicants, their lawyers or family members from reprisals by individuals or groups including, where appropriate, allowing applicants to participate in witness protection programmes, providing them with special police protection or granting threatened individuals and their families temporary protection or political asylum in an unbureaucratic manner;

17.3. thoroughly investigate all cases of alleged crimes against applicants, their lawyers or family members and to take robust action to prosecute and punish the perpetrators and instigators of such acts so as to send out a clear message that such action will not be tolerated by the authorities;

17.4. assist the Court in fact-finding by putting at its disposal all relevant documents, including the complete case file concerning criminal or other proceedings before the national courts or other bodies, and by identifying witnesses and ensuring their presence at hearings organised by the Court;

17.5. sign and ratify, if they have not already done so, the European Agreement relating to persons participating in proceedings of the European Court of Human Rights (ETS No. 161);

17.6. in all cases where applicants have duly appointed legal representatives, channel all communications with applicants related to the case before the Court, including offers of friendly settlements, through their representatives.

18. The Assembly is of the view that member states' co-operation with the European Court of Human Rights would benefit if the Court were to

18.1. taking appropriate interim measures, including new types thereof, such as ordering police protection or relocation of threatened individuals and their families;

18.2. urgently notifying applications to respondent states in cases where the Court is informed of credible allegations of undue pressure on applicants, lawyers or family members;

18.3. granting priority to such cases;

18.4. taking up cases of alleged unlawful pressure on applicants and lawyers with the representatives of the state concerned and, as appropriate, alerting the Committee of Ministers to any persistent problems;

18.5. wherever possible continuing to process applications that have been withdrawn in dubious circumstances;

18.6. applying with considerable flexibility, or even waiving, the requirement of exhaustion of domestic remedies for applicants from the North Caucasus region (Chechen and Ingush Republics, Dagestan, North Ossetia) until substantial progress has been made in establishing the rule of law in this region;

18.7. making use of presumptions of fact and reversing the burden of proof in appropriate cases, including in cases in which there is prima facie evidence of undue pressure having been exercised on applicants or their lawyers.

19. The Assembly invites the Council of Europe Commissioner for Human Rights to monitor the observance of states' duty to co-operate with the Court.

20. It also invites national parliaments to include all aspects of states' duty to co-operate with the Court in their work aimed at supervising the compliance of governments with obligations under the Convention, and to hold the executive or other authorities accountable for any violations.