



Doc. 13087 – Compendium of written amendments

(Final version)

Ensuring the viability of the Strasbourg Court: structural deficiencies in States Parties

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A. Draft Resolution

1. The Parliamentary Assembly considers that the viability of the human rights protection system based on the European Convention on Human Rights (ETS No. 5, "the Convention") falls within the scope of the shared responsibility, alongside the Committee of Ministers, of both States Parties and the European Court of Human Rights ("the Court"). However, it is the primary responsibility of States Parties to ensure that the Convention is applied effectively at national level.
2. The Assembly recalls its previous work on this subject, in particular its resolutions and recommendations on the implementation of the Court's judgments, including Resolutions 1516 (2006) and 1787 (2011) and Recommendations 1764 (2006) and 1955 (2011), and its Resolution 1856 (2012) on guaranteeing the authority and effectiveness of the European Court of Human Rights.
3. The Assembly deplores the fact that the Court is still overloaded with a large number of repetitive cases revealing widespread dysfunctions in national legal orders. Most of them relate to structural issues identified by well-established case law, such as the excessive length of judicial proceedings, chronic non-enforcement of domestic judicial decisions, deaths and ill-treatment attributable to law enforcement officials and lack of effective investigation thereof, unlawful detention on remand and its excessive length. In addition, there are specific systemic/structural deficiencies in States Parties. Some of them only exist within one national legal system.
4. The Assembly confirms (as underlined in Resolution 1787 (2011)) that Bulgaria, Greece, Italy, the Republic of Moldova, Poland, Romania, the Russian Federation, Turkey and Ukraine face major structural problems leading to worrying delays in the execution of the Court's judgments. However, in order to ensure the viability of the Strasbourg Court, States Parties which have a high proportion of complaints in relation to their population size should not be excluded from the scope of the investigation into structural deficiencies.

Amendment 1

Tabled by Mr Boriss CILEVIČS, Ms Svetlana ZHUROVA, Mr Mevlüt ÇAVUŞOĞLU, Mr Ivan POPESCU, Mr Samad SEYIDOV, Mr Sabir HAJIYEV, Mr Rovshan RZAYEV, Mr Egidijus VAREIKIS, Mr Emanuelis ZINGERIS

In the draft resolution, at the end of paragraph 3, add the following words : "The judge from the relevant State Party should be empowered to identify cases raising important and systemic legal issues so as to prioritize them and secure their prompt consideration in order to terminate a continuing violation."

Amendment 4

Tabled by Mr Piotr WACH, Mr Tadeusz IWIŃSKI, Mr Egidijus VAREIKIS, Mr Latchezar TOSHEV, Mr Marek KRZĄKAŁA, Mr Jarosław GÓRCZYŃSKI, Mr Zbigniew GIRZYŃSKI, Mr Robert BIEDROŃ, Mr Marek BOROWSKI

In the draft resolution, replace paragraph 4 with the following paragraph:

The Assembly confirms (as underlined in Resolution 1787 (2011)) that inter alia Bulgaria, Greece, Italy, the Republic of Moldova, Poland, Romania, the Russian Federation, Turkey and Ukraine (in alphabetical order) face major structural problems requiring prompt execution of the Court's judgements. The Assembly notes also the progress achieved in respect of some of these countries.

Sub-amendment 1 to amendment 4

Tabled by the Committee on Legal Affairs and Human Rights

In amendment 4, replace the words "(in alphabetical order) face major structural problems requiring prompt execution of the

Court's judgements" with the following words: "face major structural problems which lead to delays in the execution of the Court's judgements."

5. The Assembly insists on the fact that, where the Strasbourg Court has identified major and complex structural deficiencies in States Parties, regular and stringent national supervision must be ensured to adequately deal with them, in addition to their examination by the Committee of Ministers under the latter's "enhanced supervision procedure".

Amendment 5

Tabled by Mr Piotr WACH, Mr Tadeusz IWIŃSKI, Mr Egidijus VAREIKIS, Mr Latchezar TOSHEV, Mr Marek KRZĄKAŁA, Mr Jarosław GÓRCZYŃSKI, Mr Zbigniew GIRZYŃSKI, Mr Robert BIEDROŃ, Mr Marek BOROWSKI

At the end of paragraph 5, add the following sentence: "The supervisory procedure of the CM should be able to effectively address structural problems leading to worrying delays in the execution of the Court's judgements but also effectively promote those states that diligently comply with the individual or general measures stemming from the Court's judgements."

6. The Assembly is deeply concerned about this situation, which undermines the effectiveness of the Convention system and prevents the Court from focusing on new and important questions of interpretation and application of the Convention.

7. The Assembly therefore calls on States Parties to:

- 7.1. strengthen their efforts to execute fully and rapidly the Court's judgments, including through the implementation of the Interlaken Declaration and Action Plan of 19 February 2010 as well as the Izmir Declaration of 27 April 2011 and the Brighton Declaration of 20 April 2012, and in particular:

- 7.1.1. set up, as a matter of priority, comprehensive strategies aimed at solving structural problems, and co-ordinate these strategies at the highest political level;

- 7.1.2. rapidly provide action plans to the Committee of Ministers;

Amendment 6

Tabled by Mr Piotr WACH, Mr Tadeusz IWIŃSKI, Mr Egidijus VAREIKIS, Mr Latchezar TOSHEV, Mr Marek KRZĄKAŁA, Mr Jarosław GÓRCZYŃSKI, Mr Zbigniew GIRZYŃSKI, Mr Robert BIEDROŃ, Mr Marek BOROWSKI

In the paragraph 7.1.2, after the words "the Committee of Ministers" insert the following words: "for its prompt and effective examination".

- 7.1.3. consider establishing a national body responsible solely for the execution of the Court's judgments, in order to avoid a conflict of responsibilities with the agent representing the government before the Court;

Amendment 7

Tabled by Mr Piotr WACH, Mr Tadeusz IWIŃSKI, Mr Egidijus VAREIKIS, Mr Latchezar TOSHEV, Mr Marek KRZĄKAŁA, Mr Jarosław

- 7.2. amend legislation according to standards stemming from the case law of the Court and ensure that the Convention is implemented by all relevant national authorities;
- 7.3. put in place effective domestic remedies, primarily in areas affected by structural problems;
- 7.4. take comprehensive measures with a view to raising awareness of the Convention standards as interpreted by the Court. In States Parties with major structural problems, these measures could consist, in particular, in:
- 7.4.1. creating a publicly available database containing the Court's case law, including judgments pertinent to the State Party concerned in official translation;
- 7.4.2. improving legal education with a view to deepening knowledge about the Convention among legal professionals;

GÓRCZYŃSKI, Mr Zbigniew GIRZYŃSKI, Mr Robert BIEDROŃ, Mr Marek BOROWSKI

In the draft resolution, replace paragraph 7.1.3 with the following paragraph:

"consider strengthening resources and competences related to the execution of the Court's judgment of the agent representing the government before the Court or if appropriate establishing a national body responsible solely for the execution of the Court's judgements, in order to increase the effectiveness;"

Amendment 8

Tabled by Mr Piotr WACH, Mr Tadeusz IWIŃSKI, Mr Egidijus VAREIKIS, Mr Latchezar TOSHEV, Mr Marek KRZĄKAŁA, Mr Jarosław GÓRCZYŃSKI, Mr Zbigniew GIRZYŃSKI, Mr Robert BIEDROŃ, Mr Marek BOROWSKI

In the draft resolution, paragraph 7.2, after the words "the Court" insert the following words: ", ensure mechanisms for verifying the compliance of new legal acts with the Convention".

Amendment 9

Tabled by Mr Piotr WACH, Mr Tadeusz IWIŃSKI, Mr Egidijus VAREIKIS, Mr Latchezar TOSHEV, Mr Marek KRZĄKAŁA, Mr Jarosław GÓRCZYŃSKI, Mr Zbigniew GIRZYŃSKI, Mr Robert BIEDROŃ, Mr Marek BOROWSKI

In the draft resolution, paragraph 7.4, second sentence, delete the words "In State Parties with major structural problems,"

Amendment 10

Tabled by Mr Piotr WACH, Mr Tadeusz IWIŃSKI, Mr Egidijus VAREIKIS, Mr Latchezar TOSHEV, Mr Marek KRZĄKAŁA, Mr Jarosław GÓRCZYŃSKI, Mr Zbigniew GIRZYŃSKI, Mr Robert BIEDROŃ, Mr Marek BOROWSKI

In the draft resolution, paragraph 7.4.2, after the words "legal professionals" add the following words: "and the relevant authorities".

Amendment 2

Tabled by Mr Mevlüt ÇAVUŞOĞLU, Ms Svetlana ZHUROVA, Mr Ivan POPESCU, Mr Samad SEYIDOV, Mr Sabir HAJIYEV, Mr

- 7.5. strengthen national authorities' co-operation with civil society, bar associations, experts and national human rights institutions.

Rovshan RZAYEV, Mr Boriss CILEVIČS, Mr Egidijus VAREIKIS, Mr Emanuelis ZINGERIS

In the draft resolution, after paragraph 7.4.2, insert the following paragraph:

"establishing non-governmental permanent centres for potential applicants in order to advise them on Convention standards;"

Amendment 3

Tabled by Mr Mevlüt ÇAVUŞOĞLU, Mr Boriss CILEVIČS, Mr Sabir HAJIYEV, Ms Svetlana ZHUROVA, Mr Ivan POPESCU, Mr Samad SEYIDOV, Mr Rovshan RZAYEV, Mr Egidijus VAREIKIS, Mr Emanuelis ZINGERIS

In the draft resolution, after paragraph 7.5, insert the following paragraph:

"strengthen legal guarantees of independence of the Court's judges and secure their immunity by:
- providing them and their families with diplomatic immunity ad vitam, including immunities, exemptions and facilities accorded to diplomatic envoys and to national judges of the highest level; - securing that, after the replacement of a judge on the Court, the former judge be entitled to a similar position, if he or she has not yet reached retirement age; - including a judge's term of office at the Court onto his or her national employment record in judicial or other occupation; - securing that, when the former judge reaches retirement age, he or she is entitled to a pension equivalent to that of judges of the highest courts or that of state agents of a similar position."

8. The previous work of the Assembly has shown the need for an increased role of national parliaments in monitoring the effective implementation of the Convention standards at national level. The Assembly therefore:
- 8.1. reiterates its call on States Parties to put into practice the basic principles for parliamentary supervision in this field, as set out in its Resolution 1823 (2011) on national parliaments: guarantors of human rights in Europe;
- 8.2. invites parliaments to ensure that their committees monitoring compliance with human rights obligations are actively involved in the execution of the Court's pilot judgments and other judgments revealing structural problems;
- 8.3. invites the members of the Assembly, in their capacity as national parliamentarians, to question regularly their governments regarding execution of the Court's judgments.

B. Draft Recommendation

1. The Parliamentary Assembly, referring to its Resolution (2013) on ensuring the viability of the Strasbourg Court: structural deficiencies in States Parties, urges the Committee of Ministers to continue to use all available means to ensure the viability of the European Court of Human Rights ("the Court") and to that effect recommends that it:
 - 1.1. consider further developing the Court's HUDOC database into a comprehensive database of the Court's case law, including cases pending before the Court and its own database on information concerning the implementation of its judgments; the latter database should also include information on the Court's recourse to the "pilot judgment" procedure and supervision procedures undertaken by the Committee of Ministers;
 - 1.2. continue to afford priority treatment to the implementation of the Court's pilot judgments and other judgments revealing structural problems;
 - 1.3. consider the possibility of regularly providing statistical analyses with respect to progress made in the elimination of structural deficiencies, as identified by the Court and the Committee of Ministers;

2. The Assembly reiterates its call in Recommendations 1764 (2006) and 1955 (2011) on the implementation of judgments of the European Court of Human Rights, to increase pressure and take firmer measures in cases of dilatory and continuous non-compliance with the Court's judgments by State Parties.

Amendment 11

Tabled by Mr Piotr WACH, Mr Tadeusz IWIŃSKI, Mr Egidijus VAREIKIS, Mr Latchezar TOSHEV, Mr Marek KRZĄKAŁA, Mr Jarosław GÓRCZYŃSKI, Mr Zbigniew GIRZYŃSKI, Mr Robert BIEDROŃ, Mr Marek BOROWSKI

In the draft recommendation, after paragraph 1.3, insert the following paragraph:

"ensure appropriate staff resources to the Secretariat dealing with the execution of judgments;"