

CDDH comments on the Parliamentary Assembly Recommendation 2110(2017) “The implementation of judgments of the European Court of Human Rights”

88th meeting - 5/7 December 2017 - CDDH(2017)R88

1. The Steering Committee for Human Rights (CDDH) takes note of the Parliamentary Assembly Recommendation 2110 (2017) – “*The implementation of judgments of the European Court of Human Rights*”.

2. The CDDH notes that the issue of implementation of the Convention, including the execution of the Court’s judgments, was highlighted in several declarations of Ministerial conferences from 2010 onwards, the most recent one being the 2015 Brussels Declaration. The issue of execution of judgments and its supervision by the Committee of Ministers is one of the main themes of the CDDH’s on-going work under its terms of reference to examine the longer-term future of the Convention system and the Court.¹

3. In 2013, the CDDH identified three general causes of failure to execute judgments in a timely manner: (i) reluctance on the part of either the executive to propose measures or parliament to adopt legislation; (ii) substantive problems and technical complexity, e.g. need for a wide range of measures requiring co-ordination or extensive legal reforms; and (iii) inertia, being a simple failure to take action not linked to any particular political or technical consideration, but e.g. to a shortage of staff.²

4. Since 2014, regular exchanges of information on various issues connected to the execution of judgments have taken place within the relevant bodies of the CDDH, regarding *inter alia* the re-examination or reopening of cases following judgments of the Court³ as well as verification of the compatibility of legislation with the Convention.⁴ The CDDH has also taken an active part in a number of extraordinary events concerning execution.⁵

5. Concerning in particular rapid execution of judgments of the Court, the CDDH has in 2017 elaborated a *Guide to good practices on the implementation of the Recommendation (2008)2 on efficient domestic capacity for rapid execution of judgments of the European Court of Human Rights*. The Guide includes an inventory of good practices relating to implementation of the Recommendation.⁶

6. Regarding the ideas put forward by the Assembly in its Recommendation 2110 (2017) to the Committee of Ministers, the CDDH wishes to submit the following comments:

- 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*

¹ See the terms of reference for the biennium 2018–2019 for the CDDH and the DH-SYSC. In the 2015 CDDH report on the longer-term future of the system of the European Convention on Human Rights, execution of judgments and its supervision were identified as one of four overarching areas that are crucial for the longer-term effectiveness and viability of the Convention system. In its contribution to the Brussels Conference, the CDDH affirmed that full and rapid execution of judgments of the Court, in accordance with Article 46, is essential for the effective functioning of the Convention system.

² CDDH report on whether more effective measures are needed in respect of States that fail to implement Court judgments in a timely manner, 2013, document CDDH(2013)R79 Addendum I, §§ 6–7.

³ See document DH-GDR(2014)R6, Item 5.

⁴ “Overview of the exchange of views held by the DH-SYSC at its 1st meeting (25–27 April 2016) on the verification of the compatibility of legislation with the Convention (arrangements, advantages, obstacles)”, document DH-SYSC(2016)013REV.

⁵ In particular, the Multilateral Round Table on “Reopening of proceedings following a judgment of the European Court of Human Rights” (Strasbourg, 5–6 October 2015) and the International Conference “Enhancing national mechanisms for effective implementation of the European Convention on Human Rights” (Saint-Petersburg, 22–23 October 2015). In addition, a conference on “The long-term future of the European Court of Human Rights” was organized in Oslo in April 2014 by the Norwegian research center *PluriCourts* under the aegis of the Council of Europe with the active participation of the CDDH.

⁶ See document CDDH(2017)R87 Addendum I.

implementation of a judgment encountering strong resistance from the respondent State

7. It is worth recalling the CDDH's 2008 *Practical proposals for the supervision of the execution of judgments of the Court in situations of slow execution*.⁷ This text contributed to the Committee of Ministers' introduction of the 'twin-track' (standard and enhanced) supervision process. In 2013, the CDDH submitted its report on whether more effective measures are needed in respect of States that fail to implement Court judgments in a timely manner.⁸ The 2017 *Guide to good practices on the implementation of the Recommendation CM/Rec(2008)2* examined in particular the role of the co-ordinator in identifying execution measures, practices ensuring the visibility of and promoting sufficient acquaintance with the execution process, the co-operation of member States with the Committee of Ministers and the Department for the Execution of Judgments, as well as the means to prevent or resolve a significant persistent problem in the execution process.

8. The CDDH is following with interest the recent developments in the area the of procedures provided for in Article 46, paragraphs 3 to 5, of the Convention, regarding both individual measures⁹ relating to individual applicants and general measures¹⁰ to address systemic shortcomings.

9. In its work on civil society and National Human Rights Institutions, the CDDH has noted that in the case of systemic shortcomings in the protection and promotion of human rights, many of the judgments of the Court concerning such situations have yet to be implemented through the adoption of general measures.¹¹

10. At the same time, the CDDH is continuing its work by producing a compilation of good practices regarding the general measures taken by member States aimed at executing judgments of the Court concerning human rights defenders, National Human Rights Institutions, and freedom of assembly and association.¹²

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

11. The Brussels Declaration¹³ reiterated the need to involve National Human Rights Institutions and civil society where appropriate in the supervisory mechanism established by the Convention. In the same light, the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements¹⁴ make provision for the involvement of national human rights protection bodies and civil society in the process of the supervisory mechanism concerning the implementation of judgments of the Court. The CDDH relied significantly upon the jurisprudence of the Court in its analysis on the impact of current national legislation, policies and practices on the activities of civil society organisations, human rights defenders and National Human Rights Institutions. NHRIs can improve the implementation of human rights at the national and local level through their broad mandate to

⁷ See document CDDH(2008)014 Addendum II.

⁸ See document CDDH(2013)R79 Addendum I. The text was examined by the Ministers' Deputies following receipt of comments by the Court. For the Court's comments, see "Reply of the European Court of Human Rights to Committee of Ministers request for comments on the CDDH Report on Execution", document DD(2014)650.

⁹ See notably the case of *Ilgar Mammadov v. Azerbaijan*, Application no. 15172/13, Judgment of 22 May 2014, European Court of Human Rights.

¹⁰ See notably the case of *Burmych and Others v. Ukraine*, Applications nos. 46852/13 et al., Judgment of 12 October 2017 (Grand Chamber), European Court of Human Rights.

¹¹ "Analysis on the impact of current national legislation, policies and practices on the activities of civil society organisations, Human Rights defenders and national institutions for the promotion and protection of Human Rights", see document CDDH(2017)R87 Addendum IV, § 276.

¹² *Ibid.*, § 277.

¹³ Brussels Declaration, 2015, Preamble, Recital 7.

¹⁴ Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements, Rule 9 – Communications to the Committee of Ministers, as amended by the Ministers' Deputies at their 1275th meeting, 18 January 2017.

protect and promote human rights. According to the Paris Principles, they also cooperate with civil society, other national bodies and the international human rights system. Applicants could be invited, when appropriate, to actively collaborate in the execution of judgments.

- *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 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*

12. The CDDH, through its subcommittee the DH-SYSC, will work in close synergy and cooperation with other relevant Council of Europe instances and activities.¹⁵ One example of such synergy in practice, albeit in a different area than the execution of the Court's judgments, is the close interaction between the CDDH, the Court and its Registry, the PACE and the Advisory Panel of Experts on Candidates for Election as Judge to the Court in the work undertaken within the CDDH concerning the process of selection and election of judges of the Court.¹⁶ The CDDH and its subcommittees work in their activities in close synergy with the Department for the Execution of Judgments. One example of this cooperation is the latter's presentation of the search tool HUDOC-EXEC and of information on the state of execution of the Court's judgments prior to the 2nd meeting of the DH-SYSC in 2016.¹⁷

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

13. In its 2015 report on the longer-term future of the Convention system, the CDDH has underlined the significance of the bodies dealing with the supervision of the execution of judgments of the Court (e.g. the Committee of Ministers assisted by its Secretariat and the Department for the Execution of Judgments of the Court) having sufficient capacity to process effectively the high number of cases decided by the Court.¹⁸ Support for increased resources for the Department of Execution of Judgments was also expressed in the 2015 Brussels Declaration.

Conclusion

14. The CDDH emphasises to the Parliamentary Assembly that the long-term efficacy of the Convention, including the implementation of the Court's judgments, rests on the enhanced dialogue between all actors of the Convention. In this regard, the Council of Europe will continue its work in the upcoming months with the aim of enhancing, at every stage of the process, this dialogue which is beneficial to the execution of judgments.

¹⁵ CDDH report on the longer-term future of the system of the European Convention on Human Rights, 2015, document CDDH(2015)R84 Addendum I, §§ 158, 170 ii), vi).

¹⁶ This work is currently being undertaken within the framework of follow-up to the 2015 CDDH report on the longer-term future of the system of the Convention, which in turn is the result of intergovernmental work undertaken in response to §§ 35.c-f of the Brighton Declaration.

¹⁷ See document DH-SYSC(2016)R2, § 3.

¹⁸ CDDH report on the longer-term future of the system of the European Convention on Human Rights, 2015, document CDDH(2015)R84 Addendum I, §§ 136, 156, 170 iii).

Text of Recommendation 2110(2017)

The implementation of judgments of the European Court of Human Rights

Parliamentary Assembly

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 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.