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**Entry into force of Protocol No. 14: consequences for the
supervision of the execution of judgments of the European
Court by the Committee of Ministers**

Introduction

1. Following the ratification of Protocol No. 14 to the European Convention on Human Rights (hereinafter "the Convention") by the Russian Federation on 18 February 2010, the Protocol will enter into force on 1 June 2010, the first day of the 1086th meeting of the Ministers' Deputies devoted to human rights. Accordingly, it would seem useful to point out the main changes entailed by its entry into force for supervision of the execution of judgements by the Committee of Ministers.

I. Broadening of the scope of Committee of Ministers supervision

2. Article 15 of Protocol No. 14 amends Article 39 of the Convention concerning friendly settlements. Under the new paragraph 4 of Article 39, the Committee of Ministers will also be competent to supervise the execution of all European Court decisions endorsing the terms of friendly settlements handed down as of 1 June 2010. This is an additional power of supervision devolved to the Committee of Ministers (see paragraph 94 of the Explanatory Report to Protocol No. 14). Until now, the Committee of Ministers supervised only friendly settlements endorsed through Court judgments.

3. The new Article 39 of the Convention seeks to encourage friendly settlements in the spirit of Resolution Res(2002)59 concerning the practice in respect of friendly settlements. The Explanatory Report to Protocol No. 14 (paragraph 93) points out that they "may prove particularly useful in repetitive cases, and other cases where questions of principle or changes in domestic law are not involved". The procedures for supervising the terms of friendly settlements endorsed by decisions of the Court are set out in Section III of the Rules of the Committee of Ministers for the supervision of the execution of judgments. As the Committee already supervised the execution of the terms of friendly settlements endorsed through Court judgments, the same procedures will apply to supervision of those endorsed by Court decisions.

4. At present, it is difficult to make a realistic projection of the additional workload to be handled by the Committee of Ministers following this modification of the Convention¹. Available statistics show that in 2009 the Court accepted some 460 friendly settlements endorsed by decision. In 2008 and 2007, that figure was 464 and 360 respectively. On that basis, and bearing in mind the sustained political will – notably in the Interlaken Action Plan - to encourage friendly settlements, the number of such settlements is likely to be substantial, possibly resulting in an increase in the number of new cases submitted for supervision by around 30%-40%; those cases may not necessarily be straightforward ones.

5. In addition, there is the inevitable interest – notably in the Interlaken action plan – in extending supervisory competence to decisions closing cases on the basis of unilateral declarations. In 2009, the Court took some 167 decisions of this type. Some 48 such decisions were taken up to 1 April 2010. It would appear however that the Court considers that the Committee of Ministers is already competent to supervise the execution of some of these decisions².

6. Furthermore, the Committee of Ministers is already beginning to receive cases ruled on pursuant to the new competence assigned to three-judge committees by Protocol No. 14 (in force since 1 November 2009 pursuant to Protocol No. 14 bis³) to declare individual applications admissible and render a judgment on the merits in the same decision if the underlying question in the case, concerning the interpretation or the application of the Convention or the Protocols thereto, is already the subject of well-established case-law of the Court. As of 14 April 2010, the Committee had before 7 cases ruled on by the Court in the exercise of this competence. The consequences for the supervision of execution are difficult to evaluate at this stage.

¹ Other factors potentially increasing the number of cases include Article 28 of the Convention in its new version (as per Article 8 of Protocol 14): "1. In respect of an application submitted under Article 34, a committee may, by a unanimous vote [...]b. declare it admissible and render at the same time a judgment on the merits, if the underlying question in the case, concerning the interpretation or the application of the Convention or the Protocols thereto, is already the subject of well-established case-law of the Court."

² The Committee of Ministers has already had certain cases of this type referred to it. As pointed out by the Court in its *Uskov v. Russia* decision (application no. 6394/05, decision of 12 November 2009): "As regards the question of implementation of the Government's undertakings raised by certain applicants, the Committee of Ministers remains competent to supervise this matter in accordance with Article 46 of the Convention (see the Committee's decisions of 14-15 September 2009 concerning the implementation of the *Burdov* (no. 2) judgment, CM/Del/Dec(2009)1065). In any event the Court's present ruling is without prejudice to any decision it might take to restore, pursuant to Article 37 § 2 of the Convention, the present applications to the list of cases (see *E.G. v. Poland* (dec.), no. 50425/99)".

³ Protocol No. 14 bis will cease to be in force or to be applied on a provisional basis on the date of entry into force of Protocol No. 14. The aforementioned provision also appears in the latter Protocol.

7. It is important therefore that discussion to be held by the Committee of Ministers on follow-up to the Interlaken process at its 1086th meeting takes these different factors into account and above all the consequences of its extended task of supervision under Article 39, paragraph 4, of the Convention.

II. The new competencies of the Committee of Ministers within the framework of its supervision of the execution of the Court's judgments

8. Since the Ministerial Conference in Rome in 2000, it has been considered necessary to strengthen the means given to the Committee of Ministers to ensure rapid and full execution of the Court's judgments⁴.

9. Accordingly, the new Article 46 of the Convention, as amended by Protocol No. 14, assigns two new competencies to the Committee of Ministers:

[...] "3. If the Committee of Ministers considers that the supervision of the execution of a final judgment is hindered by a problem of interpretation of the judgment, it may refer the matter to the Court for a ruling on the question of interpretation. A referral decision shall require a majority vote of two-thirds of the representatives entitled to sit on the Committee".

"4. If [...] a High Contracting Party refuses to abide by a final judgment in a case to which it is a party, it may, after serving formal notice on that Party and by decision adopted by a majority vote of two-thirds of the representatives entitled to sit on the Committee, refer to the Court the question whether that Party has failed to fulfil its obligation under paragraph 1".

Where infringement proceedings are concerned, it is stipulated that "5. If the Court finds a violation of paragraph 1, it shall refer the case to the Committee of Ministers for consideration of the measures to be taken. If the Court finds no violation of paragraph 1, it shall refer the case to the Committee of Ministers, which shall close its examination of the case".

10. The Explanatory Report points out that the Committee of Ministers should make careful use of the new possibility of a referral of a judgment for interpretation to the Court and that infringement proceedings should be brought only in exceptional circumstances⁵. The latter consideration was spelt out in specific terms in the new Rule 11 (see § 16 below).

11. It should be noted that from the date of entry into force of Protocol No. 14, these two new competencies (referral of a judgment for interpretation, infringement proceedings against a State) shall apply to "all judgments whose execution is under supervision by the Committee of Ministers" (article 20, paragraph 1 of Protocol No. 14), in other words to all the cases pending before the Committee of Ministers as of 1 June 2010. Rules 10 (referral for interpretation) and 11 (infringement proceedings of the Committee of Ministers' Rules) also enter into force on that date.

12. The exercise of these two new competencies requires a majority vote of two-thirds of the representatives entitled to sit on the Committee of Ministers, which differs from the majority required by the Committee of Ministers to adopt decisions, interim resolutions and final resolutions, set out in article 20 (d) of the Statute of the Council of Europe.

13. Under Rule 10 (paragraph 2), a decision to refer a judgment to the Court for a ruling on the question of interpretation may be taken at any time during Committee of Ministers supervision of the execution of the judgments. The Explanatory Report (paragraph 97) states in this respect that "the aim of the new paragraph 3 [of article 46] is to enable the Court to give an interpretation of a judgment, not to pronounce on the measures taken by a High Contracting Party to comply with that judgment. No time-limit has been set for making requests for interpretation, since a question of interpretation may arise at any time during the Committee of Ministers' examination of the execution of a judgment."

⁴ See the Explanatory Report to Protocol No. 14, §§ 98 and 100.

⁵ Following a request for clarification by the Permanent Representative of the Russian Federation, the Deputies, in a decision adopted at its 1073rd meeting (9 and 14 December 2009, CM/Del/Dec (2009)1073),

"[...]2. took due note of the declaration of 7 December 2009 by the Russian Federation regarding paragraphs 3 and 4 of Article 46 of the Convention, introduced by Protocol No. 14, and confirmed that in line with its established practice, the Committee of Ministers engages in a dialogue with the state concerned with a view to securing the full execution of the Court's judgment and that nothing in the text or the drafting history of Protocol No. 14 indicates that this should be different as regards the question of a possible application of new paragraphs 3 and 4 of Article 46, or that these provisions aim at giving the Court a new power to prescribe a particular manner of implementing a judgment".

14. The referral decision takes the form of an interim resolution, which must be reasoned and reflect the different views within the Committee of Ministers, in particular that of the High Contracting Party concerned.

15. According to the Explanatory Report (paragraph 97), "the Court is free to decide on the manner and form in which it wishes to reply to the request. Normally, it would be for the formation of the Court which delivered the original judgment to rule on the question of interpretation. More detailed rules governing this new procedure may be included in the Rules of Court."

16. Rule 11, (paragraph 2), concerning infringement proceedings, stipulates that these "should be brought only in exceptional circumstances. They shall not be initiated unless formal notice of the Committee's intention to bring such proceedings has been given to the High Contracting Party concerned. Such formal notice shall be given ultimately six months before the lodging of proceedings, unless the Committee decides otherwise, and shall take the form of an interim resolution. This resolution shall be adopted by a majority vote of two-thirds of the representatives entitled to sit on the Committee".

17. Accordingly, the combined effects of article 46 paragraph 4 of the Convention and paragraph 2 of Rule 11 mean that infringement proceedings follow a two-phase procedure, given their exceptional nature and this new means of pressure available to the Committee⁶, namely:

i) formal notice given to the State concerned, in the form of an interim resolution informing it of the intention to bring infringement proceedings, through an interim resolution;

ii) if necessary, within six months of formal notice being given at the latest, a decision to refer infringement proceedings to the Court, also requiring a majority vote of two-thirds of the representatives entitled to sit on the Committee, via a reasoned interim resolution, concisely reflecting the views of the High Contracting Party concerned.

18. It should be noted that, under the new paragraph b of Article 31 of the Convention, it is for the Grand Chamber to rule on infringement proceedings.

19. The Explanatory Report to Protocol No. 14 states, in paragraph 99, that "this infringement procedure does not aim to reopen the question of violation, already decided in the Court's first judgment. Nor does it provide for payment of a financial penalty by a High Contracting Party found in violation of Article 46, paragraph 1. It is felt that the political pressure exerted by proceedings for non-compliance in the Grand Chamber and by the latter's judgment should suffice to secure execution of the Court's initial judgment by the state concerned".

20. These new competencies of the Committee of Ministers do not appear to call for more in-depth discussion, at this stage, of working methods or the rules for supervision. It should be borne in mind that the Court has published its new Rules of Court on its internet site and these set out, under Title II (Procedure) – in force as of 1 June 2010 – a Chapter X (Rules 91-99) entitled "Proceedings under Article 46 §§ 3, 4 and 5 of the Convention".

⁶ See paragraphs 98 and 100 of the Explanatory Report to Protocol No. 14.