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Monitoring of the payment of sums awarded by way of just satisfaction: an update of the overview of the Committee of Ministers' practice

Memorandum prepared by the Department for the Execution of Judgments of the European Court of Human Rights

Note: this memorandum is an update of CM/Inf/DH(2008)7-final (15 January 2009) and presents the practice of the Committee of Ministers in supervising payment of sums awarded by way of just satisfaction. It does not bind either the Committee of Ministers, or the member states.

PRELIMINARY COMMENTS

In many cases, the relevant information for the payment of just satisfaction already appears in the Court's judgment.

This information, however, is not always sufficient to resolve a number of - recurrent or one-off - questions as to arrangements for the payment of just satisfaction arises in the context of the supervision process by the Committee of Ministers. This has led to the need for the Committee of Ministers a decade ago to request the Secretariat to draw up a document presenting an overview of the Committee's practice of monitoring the payment of just satisfaction (see document CM/Inf/DH(2008)7-final).

Although in the context of the Interlaken process, the simplified payment control system introduced in 2011, there are still some complex situations which needs clarification. This document, by giving examples, is therefore intended to present the practice followed and developed to date on certain points where the payment of just satisfaction cannot be made effectively.

SUMMARY **Page**

INTRODUCTION

General principles

1. Unconditional obligation to pay in pursuance of the terms of the Convention and of the Court's judgments/friendly settlement decisions

1. In pursuance of Article 41 of the European Convention on Human Rights ("the Convention"):
If the Court finds that there has been a violation of the Convention or the protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.[1]

2. Article 46 of the Convention reads as follows:
1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.
2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution.

3. It is clear from reading these two articles together that the payment of the sums awarded by the Court by way of just satisfaction and the payment of default interest are among the obligations incumbent on respondent states in the framework of the execution of final judgments, and that the Committee of Ministers is therefore responsible for monitoring the payments concerned[2].

4. The Committee of Ministers has regularly pointed out that the obligation to abide by the judgments of the Court is unconditional; a State cannot rely on the specificities of its domestic legal system to justify failure to comply with the obligations by which it is bound under the Convention.

5. Thus, when the amount of the compensation to be awarded, the currency, the beneficiary, the time limit for and place of payment, and the rate of default interest have been clearly set, these elements of the payment cannot be unilaterally altered and are binding on the state, without exception. In specific situations, however, practice has allowed an arrangement for payment other than that for which the judgment provides (such as a different place of payment or currency; see below for more details)[3] to be, with the agreement of the parties, considered as satisfactory.

6. Where default interest, in particular, is concerned, it should be noted that this interest serves only to maintain the value of the just satisfaction and is not considered a penalty.[4]

7. That said, governments sometimes encounter situations where it proves difficult to place the just satisfaction at the applicant's disposal for reasons not connected with the government e.g. the applicant's whereabouts are no longer known or the necessary information for payment is lacking (address, bank account, etc), or even situations in which the payment of interest seems disproportionate on account of the small sums concerned. In practice, these problems can generally be solved easily. First, as explained below, for instance, various ways of placing the just satisfaction at the applicant's disposal are accepted by the Committee, enabling rapid payment to be made in most situations.

2. Simplified payment control by the Committee as from 2011

8. In accordance with the working methods adopted by the Committee in September and December 2010[5] in the course of the Interlaken process, supervision of the payment of just satisfaction has been simplified. The principle agreed at that time by the Committee of Ministers is that the Department for the execution of Judgments of the European Court registers the payment by states of sums awarded by the Court for just satisfaction, and that supervision by the Committee of Ministers is carried out only if the applicant contests the payment or the amount of the sums paid.[6]

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[1] The same provision was included, prior to the entry into force of Protocol No. 11 to the Convention, in Article 50 of the Convention.
[2] *Verein Gegen Tierfabriken Schweiz (VgT) v Switzerland (No.2)* (judgment of 30/06/2009, application No. 32772/02)
[3] In the case of *Raffineries Grecques Stran and Stratis Andreatis v. Greece* (application No. 13427/87), when the Committee of Ministers was informed of an agreement on other modalities of payment than those mentioned in the judgment, in particular as regards currency, it checked that the applicants had expressly accepted the new modalities of payment and that the agreed rules were in conformity with the standards of the Convention (see in particular the summary of the Chair at the 585th meeting (March 1997, CM/Del/Act(97)585)).
[4] The strict nature of the obligation to pay default interest is very clear in judgments, such as that in the case of *Buffalo Srl in liquidation v. Italy* (Article 41 judgment), judgment of 22/07/2004, application No. 38746/97, operative words.
[5] CM/Inf/DH(2010)37, Appendix II and CM/Inf/DH(2010)45-final, §§ 21-25.
[6] Annual Report 2017, p.253, §33; CM/Inf/DH(2010)37
https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016804a327f

Registration of payment therefore has become the rule and supervision by the Committee the exception. It was considered that it will be easier for both governments and the Committee to manage situations that may require verifications.

9. Consequently, as from 2011 a simple, standardised form is at the states' disposal on the collaborative website of the Execution Department.[7] Thus, states fill in and send to the department "the just satisfaction form", which allows the registration of payments. The just satisfaction unit of the department registers the form, which is considered as evidence of payment.

2.1 Two months period after publication of payment information

10. The Execution Department publishes on its website the lists of cases in respect of which the payment information has been received.[8] In line with established practice, the applicant(s) should lodge any complaint related to the payment of just satisfaction and/or default interest within a two-month period following the publication date of the payment information on the web site. Complaints received from the applicant(s) will be brought to the attention of the authorities concerned, for the speedy clarification of any question or solving any problems.

11. If an applicant has not made any complaint[9] within two months since the date of publication of payment information on the department's web site, he or she is considered to have accepted the payment by the state concerned. Although the two-month deadline is applied strictly, in the event a serious problem arises, complaints submitted after the two-month deadline can be examined and if necessary, the Committee of Ministers may reopen the case.

2.2 Overall evaluation of the post-2010 system

12. The post-2010 simplified system introduced a standard just satisfaction payment form in which the authorities should fill the necessary information and send to Execution Department by e-mail. The just satisfaction payment forms unified the procedure of submission of payment information.

13. The submission by states of payment information electronically has reduced paperwork and accelerated the control and registration of just satisfaction payment information. Also, the systematic publication of payment information on the Execution Department's website the supervision of just satisfaction payment became more transparent. The applicants and any other interested party now have the possibility to search their cases to find out whether the authorities have sent information on payment.

14. Between 2001 and 2010 the Committee had received information on 8 100 cases. Under the post-2010 system the cases on which payment information was received, and published on the Internet between 2011-2020 exceeded 13 000.

3. Placement at the beneficiary's disposal equates to payment

15. It is the Committee's practice to consider "payment" as meaning the "placement (of the sums due) at the disposal" of the beneficiary, by any method whatsoever, provided that it is reasonably efficient. Thus, in cases where the beneficiary refuses to take possession of the sum awarded[10] or does not co-operate by transmitting the information needed to make payment (bank details, in particular) within the time limit for payment laid down by the Court,[11] or where he or she cannot be found or contacted,[12] the Committee recognises several ways of paying just satisfaction.

[7] https://www.coe.int/en/web/execution/collaborative-space.
[8] See just satisfaction webpage: https://www.coe.int/en/web/execution/payment-information
[9] According to Rule 9.1 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements, the applicant can submit a complaint with regard to the payment of the just satisfaction and/or default interest by sending a simple letter to either by post or by e-mail to the Execution Department. The addresses are available on the web page of the Execution Department.
[10] See for example the case of *Brumarescu v. Romania* (just satisfaction judgments of 28/10/1999 and 23/01/2001, application No. 28342/95).
[11] See for example the *Ruianu v. Romania* case (judgment of 17/06/2003, application No. 34647/97); action report on the *Atanasovic* v. *the "Former Yugoslav Republic of Macedonia*" group of cases, DH-DD(2016)163, §17.
[12] See for example the case of *N.M.T., J.B.B. and L.B.A. v. Spain* (application No. 17437/90, ResDH(95)106), for a case of a fugitive applicant.

It is for the respondent State to discharge its liability to pay by availing itself of one of the following possibilities, in view of its national legal system: it may entrust the sum to a court,[13] place it in escrow with a private bank,[14] the national bank or Treasury[15] or the bank for official deposits,[16] place it at the disposal of the beneficiary of the just satisfaction at a government office,[17] send a cheque to the applicant,[18] send a payment warrant to the applicant,[19] pay the sum into a special account of the lawyer's (provided, if need be, that the lawyer holds power of attorney for this purpose), etc.[20] What counts is that the money should be at the applicant's disposal for a sufficiently long period[21] and that he or she should, to the maximum extent possible, be informed thereof. Given the diversity of the means used to place the money at the applicant's disposal, the evidence or certificates of payment provided by the states – always in writing – are also various (see 4.1.2. c).

16. Provided that the sums are placed at the applicant's disposal within the time limit, there is no obligation to pay default interest, even if the beneficiary withdraws them only after the expiry of the time limit for payment. However, if the sums are placed at the beneficiary's disposal after the expiry of the time limit, default interest is to be paid for the period from the expiry of the time limit to the date on which they are placed at his or her disposal.[22]

4. Method of payment

17. Governments in principle remain free to choose the method of payment as long as the method chosen does not create any unreasonable burden on the applicant (e.g. payment of transfer costs) or other beneficiaries (such hardships could for example arise if the applicant was not a resident of the respondent state and the payment was offered in a country other than the applicant's habitual residence). Generalised practices of paying by bank transfers are thus accepted in the Committee's practice, and thus also the necessity for applicants to produce relevant bank details and other necessary documents in order to receive payment.

1. THE BENEFICIARY OF JUST SATISFACTION

1.1 The principle: payment to the person designated as the beneficiary by the Court

1.1.1 General remarks

18. In the great majority of cases, it is the applicant, the victim of the violation, who is identified as the beneficiary by the Court in the operative part of the judgment. Therefore, it is in principle to him or her that payment must be made to. However, according to the Committee's practice, in the execution phase, it is acceptable for parties to agree payment to beneficiaries other than those mentioned in the judgment.[23]

19. If the applicant is represented by a lawyer, payment is usually made to the lawyer on the basis of a power of attorney given by the applicant to this end (see point 1.2 below). Some states consider payment to the lawyer as a normal method of payment.[24] Sometimes, the Court itself expressly orders the payment to the applicant via his or her lawyer before the Court.

[13] See for example the case of *Walder v. Austria* (judgment of 30/01/2001, application No. 33915/96).
[14] See for example the *Ruianu v. Romania* case (judgment of 17/06/2003, application No. 34647/97).
[15] See for example the case of *Buffalo Srl in liquidation v. Italy* (just satisfaction judgments of 03/07/2003 and 22/07/2004, application No. 38746/97), or the case of *Platakou v. Greece* (judgment of 11/01/2001, application No. 38460/97).
[16] See *inter alia* the case of *Fernandez Fraga v. Spain* (application No. 31263/96, Final Resolution ResDH(2000)151), in which the authorities of the respondent State, before expiry of the time limit for payment, informed the Committee of Ministers of the applicant's manifest lack of co-operation, and that the sum awarded by way of just satisfaction had consequently been placed at his disposal at the bank for official deposits, a fact of which he had been duly informed without delay.
[17] See inter alia the solution finally adopted in the case of *Müller v. Switzerland* (judgment of 05/11/2002, application No. 41202/98, Final Resolution ResDH(2004)17).
[18] See for example the case of *Gennari v. Italy* (Resolution Interim Resolution DH(99)162, application No. 36614/97).
[19] See for example the case of *Müller v. Switzerland* (judgment of 05/11/2002, Final Resolution ResDH(2004)17 of 22/04/2004), in which the Committee of Ministers expressly noted in its final resolution that the warrant had reached the applicant within the time limit set by the Court.
[20] See for example the case of *Mouesca v. France* (judgment of 03/06/2003, application No. 52189/99), in which payment was made to the lawyer's "CARPA" account.
[21] The period during which the just satisfaction is kept in an account varies according to the member states' national law, usually ten years or more.
[22] See also sections 1.4.9 and 4.2.2 for more information on the requirement to pay default interest.
[23] See e.g. *X v. Finland* (judgment of 19/11/2012, application No. 34806/04), still pending
[24] Indication given by the United Kingdom Delegation.

20. Moreover, if the Court is aware of major developments relating to the legal capacity of the applicant or of conflicts of interest between the applicant and the person ordinarily authorised under national law to receive just satisfaction, judgments usually contain indications on the appropriate beneficiary, if necessary, other than the applicant. The indication of another beneficiary than the applicant can also come from a request by the applicant for other reasons, for instance, to secure the payment of his or her lawyers.

21. On several occasions, for example, the Court has awarded just satisfaction in respect of costs and expenses directly to the applicant's representative.[25] In order to avoid conflicts of interest, the Court has also, at times, ordered the payment of sums directly to minor children, thus excluding the ordinary right of the parents or guardians to receive the sums concerned.[26] In order to safeguard, as far as is possible, the interests of a deceased person or of someone who has disappeared, the Court may also award a sum to a third person, who is made responsible for holding it for the benefit of the heirs.[27] Where the monitoring of the efficiency of such payments to persons specially appointed is concerned, the Committee ordinarily relies on the guarantees offered by the government itself and/or by national law, unless more detailed instructions are given in the Court's judgment.

1.1.2 Problems in identifying the beneficiary

22. Some cases raise specific problems of execution when the respondent state is not in a position to know precisely whether the person appearing before the authorities is really the applicant accepted by the Court. This is a factual problem that the state will have to solve on the basis of different elements at its disposal,[28] if necessary, in co-operation with the Court (to check the data in the file). Before the Committee of Ministers, such problems do not, in principle, lift the obligation to pay default interest.

23. Issues may also arise, for instance when the Court's judgment mentions only one applicant while several persons with the same name are mentioned in the domestic judgments underlying the application. It may, in this instance, be possible to raise the issue before the Court to rectify the judgment so as to allow identification of the correct beneficiary of the just satisfaction awarded.[29] Issues may also arise when a person other than the applicant(s) claims to be the beneficiary.[30] Identifying the beneficiaries may also be difficult when they do not have a clear residence. In this case, a household or a group of applicants who do not have a clear residence can identify a person (e.g. head of household) and authorise him or her to act and receive the awarded sums on behalf of them.[31]

1.2 Power of attorney

1.2.1 Questions relating to the need for power of attorney and its form

24. Other than in certain specific cases (see below, section 1.4), just satisfaction may not, in principle, be paid to a person other than the one expressly designated by the Court, unless this person holds a power of attorney for this.

[25] In order to protect lawyers' costs from the applicant's creditors, or for other convincing reasons. See, for instance, the cases of *Bilgin v. Turkey* (judgment of 16/11/2000, application No. 23819/94), *Ipek v. Turkey* (judgment of 17/02/2004, application No. 25760/94), *Aksakal v. Turkey* (judgment of 15/02/2007, application No. 37850/97, operative part); see also *Scozzari and Giunta v. Italy* (judgment of 13/07/2000, application Nos. 39221/98 and 41963/98).
[26] See for example *Scozzari and Giunta* case (cf. above).
[27] See for example the *Ipek* case (cf. above), in which the Court awarded, in respect of pecuniary damage, a certain sum for each of the applicant's sons (who had disappeared), making the applicant responsible for holding the sums concerned for his sons' heirs. See also *Çelikbilek v. Turkey* (judgment of 31/05/2005, application No. 27693/95).
[28] For public hearing with the applicant, he or she is known by the authorities and the problem at stake here only concerns the sole written proceedings.
[29] See for example *Gavrić and Others v. Bosnia and Herzegovina (*decision of 08/10/2013, application No. 54644/11*)*, where the sister and the daughter of the deceased shared the same name. This issue was raised before the Court which ultimately designated the sister as the beneficiary.
[30] See for example in *Medici and Others v. Italy* (judgment of 05/10/2006, application No. 70508/01), where the daughter of one of the applicants and niece of others claimed before the Court to be the sole holder of all the rights arising from the application. The Court rejected this claim noting that in the present case, there was no waiver of the appeal on the part of the applicants and the notarial deed submitted was signed exclusively by the notary and the third person. During the execution process, the third party, assisted by the applicants' lawyer submitted several notarial deeds from which appears that the applicants or their heirs granted her the right to receive the payment of just satisfaction awarded by the Court. In another communication, they further indicated that the Italian authorities had conditioned the payment of just satisfaction to certain additional undertakings linked to the pending domestic proceedings. Bilateral contacts between the Department for the Execution of Judgments and the Italian authorities are ongoing in order to settle the issue of payment of the just satisfaction.
[31] For instance cases of Roma families, see *Sampani and Others v. Greece* (judgment of 11/12/2012, application No.59608/09)*; Lavida and Others v. Greece* (judgment of 30/05/2013, application No. 7973/10).

25. A question frequently asked is that of whether the authorisation conferred on a representative for the proceedings before the Court is also sufficient to receive the payment of just satisfaction. The Court's standard application form contains an "authority box". A separate, standard, authority form may also be submitted during the proceedings by applicants, if needed. These declarations of authority authorise the person indicated to represent the applicant in the proceedings before the European Court of Human Rights concerning their application lodged under Article 34 of the Convention.

26. While some states accept that this power is sufficient to receive payment of the just satisfaction, others require - special - new authority, in accordance with the requirements of national law (e.g. a document signed before a notary) for any payment.

27. With respect to the question of which law applies to the power of attorney of a beneficiary resident abroad, the normal solution is to apply the law of the respondent state. However, certain specific situations may require ad hoc solutions.

28. Particular problems have arisen in establishing whether older beneficiaries who are non-residents of the respondent state are still alive at the end of the proceedings, and in this regard whether the powers of attorney including the right to receive the awarded sums are valid.[32] Plurality of representatives also has raised problems, especially where each one of them has requested the payment to be made to himself or herself, and the payment has been made to the one who submitted a valid power of attorney but was not determined as the beneficiary of costs and expenses in the judgment.[33] In this case, the best solution is to make the payment to the representative determined in the judgment.

29. In some cases, issues related to the identification of the applicant's correct representative can arise where the applicant has both an appointed guardian and a lawyer to represent himself or herself.[34] In this case, the payment can be made to the person who represented the applicant before the Court.

30. The Committee has accepted a solution where the applicant representatives were unable to provide a valid power of attorney to the authorities, as the applicants were imprisoned in a non-member state. The authorities paid the amount of just satisfaction into an escrow bank account. Then, in conformity with the applicants' representatives' letter of consent, the amount, plus the accrued interest was paid to the applicants' relatives.[35]

1.2.2 Whether or not power of attorney relating to the payment of just satisfaction is binding on the respondent state

31. Another question is whether the respondent state is bound by a power of attorney concerning the payment of just satisfaction. This problem has arisen in a case where the Court indicated the non-pecuniary damage was to be held by the representatives in a trust for the applicants. As the government decided not to proceed with this instruction, and an alternative solution was found by putting the money at the disposal of the applicants on a chapter of state budget. Thus, the just satisfaction was placed in an account at the applicants' disposal, and the applicants' representatives, who were notified of this, did not present any objection to this means of payment.[36]

32. As indicated in the section above, the Court itself sometimes expressly decides in certain cases that the just satisfaction intended for the applicant must be paid to him or her through his or her representative before the Court, i.e. the person who has been given power to act by the applicant. In these situations, the decision of the Court must of course be complied with, on the understanding that at the stage of execution, parties may agree on other modalities of payment than those mentioned in the judgment.

[32] See e.g. *Fellner and Others v. Turkey (judgment of 10/10/2017, application No. 13318/08 and 840 other applications)*, the Court awarded pecuniary damage to all 841 applicants, a great majority of whom were not Turkish nationals and lived abroad. They were all represented by the same attorney in Turkey. The government could not verify whether non-Turkish applicants, some of whom had been born in the early 1900s, were still alive and requested verification from their representative.

[33] *Isikirik v Turkey* (judgment of 14/11/2017, application No. 41226/09), the applicant was represented by the lawyers practising in UK and Turkey. The Court ordered the payment of costs and expenses to the representative practising in UK. However, the authorities made the payment to the lawyer in Turkey who submitted a recent power of attorney. At its 1369th meeting held in March 2020, the Committee of Ministers invited the Turkish authorities and the parties involved to resolve this issue. To resolve this problem, Turkish authorities paid the costs and expenses to the representative in the UK.

[34] See for example *Herczegfalvy v. Austria* (judgment of 24/09/1992, application No.10533/83) concerning a dispute between the appointed guardian and the applicant's representative as to who should receive the just satisfaction awarded to the applicant who had lost legal capacity being mentally ill; in *X. v. Finland* (judgment of 07/02/2012, application No. 34806/04), the payment of costs and expenses has been made to the person who represented the applicant before the Court.

[35] *Mamatkulov and Askarov v. Turkey* (judgment of 04/02/2005, application No.s 46827/99 and 46951/99).

[36] *Hirsi Jamaa and Others v. Italy* (judgment of 23/02/2012, application No. 27765/09).

33. It is nevertheless rare for such details to be given in judgments. It is usually accepted that states have a choice in this respect: either to pay the agreed sums directly to the applicant, or to pay them to his or her representative. Thus, in certain cases, although the applicants' lawyers held special authority, the respondent states nevertheless paid the just satisfaction directly to the applicant.[37] These payments were accepted by the Committee.

1.3. The problem of joint payment to several persons identified

34. In certain judgments, the Court designates several applicants as beneficiaries of the just satisfaction and awards to them, jointly, certain sums, without going into more detail.[38]

35. The Committee therefore encourages agreement whenever possible and to the greatest possible extent between the applicants on the distribution of the sums concerned.[39] Failing agreement, the recommended solution is a decision by the government, in agreement with the Secretariat, on a division of the sums (for instance based on the interests at stake for each applicant including, if this does not seem to be unfair in the case, a balanced share between the applicants), provided that the Committee gives its consent.

36. One alternative may be payment to one of the applicants, with an obligation to share the sums with the others on the basis of arrangements to be defined.[40] As a second alternative, the sum may be paid to the applicants' authorised representative.

37. In one case, the Committee accepted a proposal made by the applicants to distribute the just satisfaction on the basis of proportional application of the sums the applicants had requested from the Court for non-pecuniary damage.[41]

1.4 Payment to a person other than the beneficiary designated by the Court

38. As previously indicated, at the execution stage payment may, be made to a person other than the one designated by the Court. Amongst the commonest of these are:

1.4.1 The beneficiary designated by the Court is a minor

39. The usual practice in this situation is that payment is made to the person or persons bearing "parental responsibility"[42] for the minor (the parents[43] or guardian[44]).

40. In the event of conflicts of interest with the person holding parental responsibility, the payment should be made to a neutral person, ad hoc guardian or other party.[45] Where the Court has ordered payment to a minor in person, payment to the minor's lawyer has been accepted, if the lawyer has agreed to manage the sum for the benefit of the minor, under appropriate supervision. Thus in one case, the government had informed the Committee of Ministers that the payment to the lawyer had been approved by the guardianship judge, who had enjoined the lawyer to safeguard the sums until the child reached majority, or to find another, equivalent investment.[46]

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[37] For example, in the cases of *Chichkov v. Bulgaria* (judgment of 09/01/203, application No. 38822/97) and *Nikolov v. Bulgaria* (judgment of 30/01/2003, application No. 38884/97).
[38] See for example the cases of *Jorge Nina Jorge and others v. Portugal* (judgment of 19/02/2004, application No. 52662/99), of *Nouhaud v. France* (judgment of 09/07/2002, application No. 33424/96), and *Yagtzilar and Others v. Greece* (just satisfaction judgment of 15/01/2004, application No. 41727/98).
[39] In the *Yagtzilar* case (cf above), the applicants reached an agreement on the division based on their respective interests. This case also raised the question of the effect, especially on default interest, of a prohibition of payment for a certain period, issued by a local court in order to protect any sums due to a lawyer of the applicants.
[40] See for example, the cases of *Nouhaud v. France* (judgment of 09/07/2002, application No. 33424/96), *Loyen v. France* (judgment – friendly settlement – of 29/07/2003, application No. 43543/98) or *Lemort v. France* (judgment - friendly settlement – of 26/04/2001, application No. 47631/99).
[41] *Sampsonidis v. Greece* (just satisfaction judgment of 05/11/2009, application No. 2834/05).
[42] This concept is used in the UN Convention on the Rights of the Child (20/11/1989, United Nations) and in the Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in respect of Parental Responsibility and Measures for the Protection of Children (19/10/1996). Within the meaning of this latter Convention, the term "parental responsibility" has very broad scope and encompasses parental authority or any analogous relationship of authority determining the rights, powers and responsibilities of parents, guardians or other legal representatives in relation to the person or the property of the child.
[43] See for example the case of *Eriksson v. Sweden* (judgment of 22/06/1989, application No. 11373/85, Final Resolution ResDH(91)14)
[44] See for example the case of *Scozzari and Giunta v. Italy* (judgment of 13/07/2000, applications Nos. 39221/98 and 41963/98).
[45] See for example *MD and others v Malta* (judgment of 17/07/2021, application No.64791/10), where the authorities made the payment in a deposit account.
[46] See for example the case of *Scozzari and Giunta v. Italy* (cited above); a similar solution also seems to have been adopted in the case of *A v. United Kingdom* (judgment of 23/09/1998, application No. 25599/94).

1.4.2 The beneficiary designated by the Court is a person without legal capacity, or with restricted legal capacity

41. If the beneficiary designated by the Court is a person subject to supervision (a person suffering from mental illness or needing to be represented or assisted in order to carry out the acts of civil life), the practice followed is to pay the just satisfaction to the beneficiary's supervisor or guardian,[47] to other similar institutions which exist to protect the person and/or property of the beneficiary, to a person holding power of attorney established in accordance with the country's specific regulations for this purpose,[48] or to the lawyer[49] (who will subsequently have to ensure that payment is made to the applicant in accordance with the requirements of national law). In the event that there are several persons authorised to receive the sums, the Committee has accepted the government's choice.[50]

1.4.3 The individual who is the beneficiary is deceased

42. In the event of the death of the individual who is the beneficiary,[51] the practice established by the Court and Committee may be summarised as follows:

- *Death occurs before adoption of the judgment:* the Court takes note thereof and itself says that payment must be made to the person or persons closely linked to the beneficiary and having indicated to the Court a wish to continue the proceedings on behalf of the deceased;[52]
- *Death occurs after adoption of the judgment:* it is constant practice for the beneficiary mentioned in the judgment to remain the beneficiary, so the respondent state will pay the just satisfaction to his or her heirs as heirs, with all the fiscal and other consequences that this may entail.[53] If identification of the heirs takes time, the normal solution is to pay the just satisfaction into the assets of the deceased's estate;
- *Death occurs before adoption of the judgment, but is notified to the Court only after the judgment concerned:* it is for the Court, if one of the parties refers the matter to it within the time limit,[54] to indicate, if need be, a new beneficiary, by revising the judgment in respect of the just satisfaction.[55] On the impact of the revision request on the deadline for payment, see items 4.1.1. and 4.2.1 b);[56]
- *Death occurs before adoption of the judgment, but this fact is notified to the Court only after expiry of the time limit for a party to request revision of the judgment (cf. supra), or indeed is not notified to the Court at all, but only to the Committee of Ministers in the framework of its monitoring of execution of the judgment:* this rare situation raises some difficult questions. One simple solution may consist in placing the sum of the just satisfaction at the disposal of the estate, to be shared between the heirs once they have been identified, the problem of inheritance rights being left to the discretion of the state. Another solution could be to suspend the payment and check that no heir has come forward within a reasonable time following notification of the judgment. In such a case, the Committee might conclude that there has been renunciation, and close the case.

1.4.4 The beneficiary designated by the Court is a legal entity being run by a court-appointed administrator/in liquidation/being wound up

43. If the designated beneficiary is a legal entity subject to one of the measures cited in the title, a number of difficult questions may arise.

[47] See for example *Herczegfalvy v. Austria* (judgment of 24/09/1992, application No. 10533/83, Final Resolution ResDH(94)48).
[48] See for example the case of *Magalhaes Pereira v. Portugal* (judgment of 26/02/2002, application No. 44872/98).
[49] See for example the case of *Hutchison Reid v. United Kingdom* (judgment of 20/02/2003, application No. 50272/99).
[50] See for example the case of *Herczegfalvy v. Austria* (cited above).
[51] On this subject, see inter alia document CM/Inf/DH(98)14-rev. (drawn up before the entry into force of Protocol No. 11): "*The beneficiary of just satisfaction in Article 32 cases where the death of the original applicant occurs during the proceedings before the organs of the European Convention on Human Rights"*.
[52] Document CM/Inf/DH(98)14-rev
[53] Document CM/Inf/DH(98)14-rev
[54] Rule 80 of the Rules of Court: "… within a period of six months after [the party] acquired knowledge of the fact …".
[55] See for example the case of *Amassa and Frezza v. Italy* (judgments of 25/10/2001 and 09/01/2003 (revision), application No. 44513/98).
[56] Addition suggested by the Turkish delegation. See e.g *Franciska Stefancic v Slovenia* (judgments of 24/10/2017 and 09/10/2018 (revision), application No 58349/09). *M. Ozel and Others v Turkey* (judgments of 17/11/2015 and 31/03/2020 (revision), application Nos. 14350/05, 15245/05 and 16051/05).

44. If this situation of the beneficiary is known at the time of the proceedings before the Court, the question of the appropriate recipient of any just satisfaction will often have been dealt with in the Court, and special provisions included in the judgment. For instance, the Court already indicated that payment would have to be made to the applicant company's representative, notwithstanding the fact that this company had been placed under the control of a court-appointed administrator (in this case, the complaint related precisely to this compulsory administration).[57] In another case, where there had been no conflict between the liquidator and the applicant company, payment to the liquidator had been ordered.[58]

45. If the judgment contains no indications, it is for the state, under the supervision of the Committee, to find the appropriate solutions. The Committee's practice as far as possible follows the Court's. Thus, if there is a doubt as to whether the court-appointed administrator/liquidator really represents the applicant's interests, it has been accepted that the payment should be made to the applicant's lawyer.[59]

46. Another frequently connected question is that of whether the state may, in this kind of situation, use its ordinary right as a creditor to effect compensation for any debts the applicant owes the state, thereby obtaining priority over all other creditors, including the applicant's lawyer. This question and others, related to the possibility of attaching the just satisfaction, are dealt with separately in section 5.

1.4.5 The beneficiary designated by the Court is a legal entity which no longer exists in its initial form

47. If the beneficiary designated by the Court is a legal entity which no longer exists in its initial form (e.g. a company which has merged with another or has been liquidated), and if this situation is known at the time of the Court proceedings, the question of the appropriate recipient of any just satisfaction will often have been dealt with in the Court, and special provisions included in the judgment.

48. In the absence of such indications, it results from the practice of the Committee that the payment will have to be made to the legal successor or successors of the applicant legal entity. For example, in a case in which the applicant company had merged with another company, it was accepted that payment should be made to the new company constituted by the merger.[60]

49. In the event of a dispute as to the successor, or its representative, a solution may be to pay the sums into an escrow account in the name of the applicant company pending resolution of the question of its succession or representation.[61]

1.4.6 The beneficiary designated by the Court is detained

50. It is possible that a person in detention has a restricted capacity to receive/manage money as a result of his/her conviction. Thus, the payment of just satisfaction directly to the person in prison may lead to problems. However, these restrictions do not automatically prevent the imprisoned person from nominating a proxy.[62] If guarantees are given concerning the existence of such a possibility to nominate a proxy, but no information is sent to the government on the designation of an administrator, it is accepted that the sum is put in an escrow account in the name of the applicant, with the possible administrator being able to withdraw it.[63]

[57] See e.g. the case of *Credit and Industrial Bank v. Czech Republic* (judgment of 21/10/2003, application No. 29010/95).
[58] In the case of *Buffalo Srl in liquidation v. Italy* (just satisfaction judgments of 03/07/2003 and 22/07/2004, application No. 38746/97), a company headed by a single person having the capacities of administrator and liquidator, the Court said that payment to the applicant would have to take the form of a deposit for the benefit of the administrator/liquidator with the respondent State's central bank.
[59] See for example the case of *Västberga Taxi Aktiebolag and Vulic v. Sweden* (judgment of 23/07/2002, application No. 36985/97). It should be noted that in the case of *Presidential Party of Mordovia v. Russian Federation* (judgment of 05/10/2004, application No. 65659/01), the Russian authorities raised the question of to whom they were to pay the just satisfaction, in view of the fact that the applicant had no legal personality. The Court itself solved the problem by amending the judgment, stating that the sums were to be paid to the lawyer.
[60] *Sovtransavto Holding v. Ukraine* (just satisfaction judgments of 25/07/2002 and 02/10/2003, application No. 48553/99).
[61] *Qufaj Co. Sh.p.k v. Albania*, (judgment of 18/11/2004, application No. 54268/00).
[62] See, for example, the case of *Dorigo v. Italy* (judgment of 16/11/2000, application No. 46520/99), for which the payment had been made to the applicant's brother, the applicant having been sentenced to a lengthy imprisonment.
[63] See, for example, the case of *Demirel v. Turkey* (judgment of 28/01/2003, application No. 39324/98). Payment was made within the time limit to an escrow account in the applicant's name, with assurances being given to the latter by the authorities that she could legally authorise her representative in the proceedings before the Court, notwithstanding the loss of her civic rights and the appointment of a guardian. Given these guarantees, of which the applicant has been informed, it was considered that the date of the payment was when the money had been placed on an escrow account. See the case of *Barut v. Turkey* (judgment of 24/06/2003, friendly settlement, application No. 29863/96), this case also revealed a special problem in that the sum was not in the escrow account when the applicants' representative tried to withdraw them, roughly one year after expiry of the time limit for payment. As the Turkish authorities speedily made the payment after being informed of the problem encountered by the applicant, the Committee considered the sum to have been placed at the beneficiary's disposal on the initial date.

51. Special problems may arise when the applicant is detained abroad, including in a country which is not a member of the Council of Europe. Complex problems have arisen before the Committee in the context of payment of just satisfaction in a case where the applicants were prisoners in a non-member state. This problem was solved by paying the just satisfaction to the beneficiaries' relatives.[64]

1.4.7 Applicants subject to special restrictions as to their capacity to manage the sums awarded

52. Particular issues may arise in cases where the applicants' right to dispose of their possessions is subject to restrictions, notably as a result of decisions of the UN– as for example the restrictions imposed by the UN sanctions committee following the September 11 terrorist attacks in the USA in 2001, as followed up by EU or national regulations. In this situation, the Committee of Ministers has accepted payment into a blocked bank account to which the applicant could be granted access through a special licensing scheme (e.g. in case of an applicant subjected to a "control order").[65]

1.4.8 The beneficiary designated by the Court cannot be contacted (i.e. cannot be found, disappeared)

53. In recent years, the Committee has accepted that sums awarded be placed at the disposal of beneficiaries where reasonable steps have been taken to inform them of the availability of the sums and where the sums remain at the beneficiaries' disposal and can be transferred quickly as soon as they manifest themselves with necessary documentation.[66] This practice is followed in cases where the beneficiary has disappeared,[67] and where the Court's judgment does not contain special indications (such as payment to the applicants' lawyer). In such a situation, the Committee recognises several ways of paying the just satisfaction: it is up to the states to discharge their liability to pay just satisfaction by making use of one of the means or another, depending on their provisions in national law, for example placing the sums due in a special account opened in the applicant's name at the general bank for official deposits,[68] placing the sums at the applicant's disposal with an authority (such as the Government Agent) authorised to make the payment if the applicant comes forward,[69] transferring the money to the State Bailiff's account[70] or placing the money in an escrow bank account in the name of the applicant.

54. Member States have different practices and various length of period that the money may stay in a bank account. While in most member states this period is longer than five years, in some of them it is indefinite. As a result of this general practice among the member states which is supported by the Committee, this duration should not be too short (e.g one year), as at the end of this period, the money is returned to the state budget and the applicants would no longer have access to it. It is thus recommended that the applicants should have access to the money put in a bank account as long as possible in order to facilitate the effective receipt by the applicants of the just satisfaction awarded by the Court.[71]

55. Where the applicant's representative is unable to provide a valid power of attorney to the authorities, the Committee invites the authorities to find solutions to discharge its obligations, for instance to obtain declarations from the applicants designating persons who could either withdraw the amounts (family member) or give valid power of attorney to his representatives.[72]

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[64] See the case of *Mamatkulov and Askarov v. Turkey* (judgment of 04/02/05, application Nos. 46827/99): the applicants were serving a life sentence in Uzbekistan. The Turkish authorities paid the amount of just satisfaction into an escrow account because the applicants' representatives were unable to provide a valid power of attorney to the authorities. The representatives informed the Secretariat that they were unable to withdraw the just satisfaction from the escrow account because it was not possible to communicate to their clients in Uzbekistan, due to security concerns. With the lawyer's written consent, the amount of just satisfaction, plus the accrued interest regarding the first applicant was paid to his wife, and the amount of just satisfaction, plus the accrued interest regarding the second applicant was paid to his sister.

[65] See for example the case of *A. and Others v. UK* (judgment of 19/02/2009, application No. 3455/05), where the just satisfaction was paid into a bank account subject to special control under the financial sanctions regime imposed under the Al-Qaida and Taliban (United Nations Measures Order) 2006. Under this regime, the applicant can be authorised to access the sums paid by HM Treasury.

[66] See for example the cases of *Vuldzhev v. Bulgaria* (judgment of 18/12/2012, application No. 6113/08), *Baisuev and Anzorov v. Georgia* (judgment of 18/12/2012, application No.39804/04), and *Umberto and Pierpaolo Pedicini v. Italy* (judgment of 10/03/2009, application No. 8681/05).

[67] See for example *T.I and Others v. Greece* (judgment of 18/07/2019, application No. 40311/10); *L.E. v Greece* (judgment of 21/01/2016, application No. 71545/12) where the applicants' representatives lost contact with the applicants.

[68] See for example the case of *N.M.T., J.B.B. and L.B.A. v. Spain* (decision of 08/01/1993, application No. 17437/90, ResDH(95)106), for a case of a fugitive applicant.

[69] This solution was based on the one accepted by the Committee in the case of *Müller v. Switzerland* (judgment of 05/11/2002, application No. 41202/98, Final Resolution ResDH(2004)17 of 22/04/2004).

[70] See for example *Belozorov v. Russia and Ukraine* (judgment of 15/10/2015, application No. 43611/02); *Arskaya v. Ukraine* (judgment of 05/12/2013, application No.45076/05) ; *Chernetsky v. Ukraine* (judgment of 08/12/2016, application No. 44316/07).

[71] See for example *Davydov and Others v. Ukraine* (judgment of 01/07/2010, application No. 39081/02); *Chernetskiy v. Ukraine* (cited above); *Belozorov v. Russia and Ukraine* (cited above)

[72] See for example the case of *Ozdil v. the Republic of Moldova* (judgment of 11/06/2019, application No. 42305/18) where the applicants were detained in Turkey and the authorities paid the just satisfaction to the applicants' relatives even in the absence of valid powers of attorney signed by the applicants (the powers of attorney were submitted by the applicants' spouses).

56. On some special occasions, such as in the case of *Hirsi Jamaa and Others v. Italy* where the Court indicated that certain sums should be held in trust by the applicants' lawyer, governments have refrained from paying the just satisfaction to the applicants. In such cases, the Committee has accepted that the authorities may put the money at the disposal of the applicants also in other forms, at least where their representative agrees, for example by securing the existence of relevant sums in the state budget so as to allow speedy payment should the applicants manifest themselves.

1.4.9 The beneficiary refuses to take possession of the sums awarded

57. If the beneficiary refuses to take possession of the sums awarded by the Court, two solutions have been accepted: either the applicant is considered to have forgone his or her right[73] (in this case renunciation has to be made clear in writing[74]), in which case no payment is due, or one of the solutions provided for cases in which the applicant cannot be contacted is applied.[75] In such cases the Committee often been satisfied that the applicants are informed of the deposit of just satisfaction by registered letter, this could be considered a good practice however such a step is not a requirement.[76] The Committee has accepted that default interest is not owed by the State, provided that it had made other efforts, within the time limit, to let the applicant know that the just satisfaction was at his disposal.[77]

1.4.10 Erroneous payment

58. Excluding the cases mentioned above, it has happened in certain other cases that, in spite of the clear wording of the Court's judgments naming the beneficiary of the just satisfaction, or of a part thereof, just satisfaction has in practice been paid to another person.[78] Such payments have in practice been accepted only when it has been possible to confirm that the amount concerned had actually been transferred to the beneficiary designated by the Court, and if applicable increased so as to offset any loss of value suffered as a result of the passage of time and the devaluation of the currency in which the payment was made.

59. In some cases, issues relating to the double payment of just satisfaction may arise. When such a situation is encountered by a state, it may make an application before the European Court to rectify the judgment and avoid double compensation, at the national and European level. The European Court will take into account the sums already paid at the national level.[79] When a rectification is not possible, the applicants and the government may agree that only moral damages should be paid in the execution process.[80]

60. In some cases, if the conversion to national currency and the payment have not been made on the same day, and depending on the currency fluctuation, there might be over or under payments as a result of the difference between the exchange rates applied on the date of conversion and the date of actual payment of the just satisfaction amount (the conversion of euro to national currency a few days before the payment, while issuing the payment order may cause payment problems).[81] If there is an overpayment, the authorities and the Committee cooperate together to find the best solutions for both the applicant and the Government.[82]

[73] See for example the case of *Janiashvili v. Georgia* (judgment of 27/11/2012, application No.35887/05), the applicant informed the authorities (written letter) that he refused to take possession of the just satisfaction. Hence, the Committee of Ministers considered that the government was lifted of its obligation in this matter. *Sirc v. Slovenia* (judgment of 29/09/2008, Action report DH-DD(2016)1212 and Final Resolution CM/ResDH(2016)354), the applicant clearly informed the competent authorities in writing that he had renounced his right to receive the awarded amount of just satisfaction. In *Gaspari v Armenia* (judgment of 20/09/2018, application No.44769/08, CM/ResDH(2020)94), by a letter the applicant refused to take possession of the sums awarded. See also *Ferencne Kovacs v. Hungary* (judgment of 20/12/2011, application No. 19325/09), where the applicant refused to provide her bank account number.

[74] This contrasts with the more informal practices developed in respect of more minor renunciations of default interest.

[75] See *inter alia* the case of *Müller v. Switzerland* (judgment of 05/11/2002, Final Resolution ResDH(2004)17 of 22/04/2004); *Naumoski v. the Former Yugoslav Republic of Macedonia* (judgment of 05/12/2013, application No. 25248/05), DH-DD(2017)629, §§10-17; See Action report on *Seagal v. Cyprus* (judgment of 26/04/2016, application No. 50756/13), DH-DD(2018)840;

[76] See e.g. the case of *Naumoski v. the Former Yugoslav Republic of Macedonia* (cited above), Action report (DH-DD(2017)629 on the basis of the information that the applicant who refused to provide his banking details and receive the sum awarded by the Court was informed of the deposit of just satisfaction by simple letters, in addition to other efforts made to let him know that just satisfaction was at his disposal (i.e. a meeting with him and a telephone call).

[77] See e.g. *Ferencne Kovacs v. Hungary* (judgment of 20/12/2011, application No. 19325/09).

[78] See for example the *Bilgin v. Turkey* or *Ipek v. Turkey* cases (cited above), in which the lawyer himself was the beneficiary designated by the Court for part of the sum awarded, but in which all these sums were in fact paid to the applicant. See also *Işıkırık v. Turkey* (judgment of 14/11/2017, application no. 41226/09), cited above in footnote 34.

[79] See for example the case of *Medici and Others v. Italy* (judgment of 05/10/2006, application No.70508/01)

[80] See for example the case of *Pennino v. Italy* (judgment of 05/10/2006, application No. 43892/04)

[81] *Mehmet Yaman v. Turkey*, (judgment of 24/02/2015, application No. 36812/07); *Halime Kilic* v Turkey (judgment of 28/06/2016 revised on 25/06/2019 - application No. 63034/11)

[82] See for instance *Agrokompleks v. Ukraine* (judgment of 09/12/2013, application No. 23465/03), Government's Communication DH-DD(2019)165, where following the overpayment, the authorities and the applicant reached an agreement that the overpaid amounts would be taken into account for the payment of further instalments of the just satisfaction.

2. PROBLEMS RELATING TO GLOBAL AWARDS OF JUST SATISFACTION

61. Certain questions may arise where the Court awards a global sum without determining the amounts of pecuniary, non-pecuniary damage or costs and expenses [83] or taxation issues.

62. Sometimes, the just satisfaction to be awarded based on different, alternative outcomes identified in the judgment may also raise problems. In some cases, the Court gives a choice to the respondent state for example to either reopen proceedings, return an immovable property, execute a domestic judgment[84] or pay just satisfaction. Complexities may arise if the applicant requests the payment, stating that he or she would not waive the right to submit an application to reopen the proceedings, and if the applicant requests the payment, even though the authorities reopen the proceedings.[85] In these cases, the authorities and the Committee cooperate together to find a Convention-compliant solution.

3. PLACE OF PAYMENT

The beneficiary's place of residence by default

63. The practice is that payment is made at the beneficiary's place of residence. Given that most payments are made at present by bank transfer, very few problems remain related to identification of means of payment to allow the applicant to receive the sums due at his or her place of residence.[86]

64. When the Court awards just satisfaction to a person not resident in the respondent state and does not expressly specify the place of payment, it is generally accepted that the just satisfaction must be paid in the beneficiary's state of residence[87] or in accordance with his or her reasonable requests.[88]

4. TIME LIMIT FOR PAYMENT OF JUST SATISFACTION

4.1 Obligation to pay within the time limit set by the Court

4.1.1. The principle of payment within the time limit set by the Court

65. The process of payment of just satisfaction is not instantaneous, but may last several weeks, or even months.

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[83] For costs and expenses, the Committee's practice is to safeguard the representation fees. This is not evident whether the sum relates to costs and expenses when there is a global sum.

[84] See for example *Mutishev and Others v Bulgaria* (judgment of 3/12/2009, application No. 18967/03) where the restitution was finalised after courts proceedings concerning the applicants' appeals against the decisions of the local authorities.

[85] *Claes and Others v Belgium* (judgment of 02/06/2005, application No. 46825/99), Resolution CM/ResDH(2012)5: just satisfaction for non-pecuniary damage was awarded since the impugned proceedings were not reopened. In this case, the two applicants, although they did not waive their right to request reopening of the proceedings, after the payment of just satisfaction amount, did not submit such a request. See also *Kabanov v Russia* (judgment of 28/05/2019, application No. 17506/11-still pending)

[86] This problem still may arise when the just satisfaction is put at the applicant's disposal, for instance with an agency of the national central bank. The practice being that it should be an agency near the applicant's place of residence in order to avoid a long journey to receive the sums (see for example, the Italian practice in the 90's in this respect). Similarly, if it is for some reason difficult for the applicants to obtain just satisfaction awarded from the bank accounts in the respondent state, the authorities may pay the amount through postal remittance (see e.g. *Chabrowski v. Ukraine* (judgment of 17/01/2013, application No. 61680/10), Action plan DH-DD(2020)909.

[87] In its judgment (interpretation) on the application of former Article 50 in the case of *Ringeisen v. Austria* (judgment of 23/06/1973, application No. 2614/65), the Court said that (§ 14): "*in affording just satisfaction to the applicant in a sum expressed in German marks, the Court intended that the compensation should be paid to him in that currency and in the Federal Republic of Germany and not otherwise. In so deciding, the Court took into account…*" among other things "*…the uncontested fact that Ringeisen was resident in the Federal Republic of Germany*". The Court confirmed this practice in recent judgments, for example *Sroub v. Czech Republic* (judgment of 17/01/2006, application No. 5424/03), § 32, in which, given that the applicant was residing abroad and had calculated in Canadian dollars the total of the costs incurred, the Court considered it expedient to pay him that amount in Canadian dollars and not in the respondent state's national currency. As regards the Committee's practice, see amongst numerous examples the case of *Osu v. Italy* (judgment of 11/07/2002, application No. 36534/97), in which the payment was made in Germany, where the applicant was living; that of *Ciobanu v. Romania* (judgment of 16/07/2002, application No 29053/95), in which the payment was made in Canada, where the applicant was living; that of *Sylvester v. Austria* (judgment of 24 April 2003, application No. 36812/97), in which the payment was made in the United States, where the applicant was living, to his lawyer; that of *Labzov v. Russia* (judgment of 16/06/2005, application No. 62208/00), in which the payment was made in France, where the applicant was living; and that of *Bianchi v. Switzerland* (judgment of 22/06/2006, application No. 7548/04), in which the payment was made in Italy, where the applicant is living ; *Aoulmi v. France* (judgment of 17/01/2006, application No. 50278/99), in which the payment was made in Algeria, where the applicant is living.

[88] See for example the case of *Poitrimol v. France* (judgment of 23/11/1993, application No. 14032/88) in which the applicant was living in the United States and had requested payment to his lawyer in Switzerland. The payment was made in Switzerland. See also the case of *Munari v. Switzerland* (judgment of 12/07/2005, application No. 7957/02), in which the applicant, an Italian national living in Germany, requested the payment to be made on a bank account in Italy; payment was done in line with this request.

Several factors may be responsible for this: the collection from the applicant of the information needed to make the payment, compliance with the rules of public accounting, the technical delays inherent in bank transactions, the choice of transfer arrangements, etc.

66. To encourage respondent states to manage payment transactions diligently, and in order to facilitate the execution of judgments, that the Court has, since 1991, indicated in its judgments the time limit within which the respondent state must pay the just satisfaction.

67. In exceptional cases, the date may be changed if the judgment is revised, under the Rules of the Court. In the Committee's practice, a request for revision or even for rectification or interpretation may suspend the obligation to pay until the issue is settled by the Court, on condition that the request can reasonably have an incidence on the obligation to pay or on the modalities of payment. Once the issue is settled by the Court, it should be respected with the consequences stemming from it, in particular default interest.

4.1.2 The relevance and determination of the date of payment

a) The relevance of the date of payment

68. It must be possible to determine accurately the date the just satisfaction was placed at the applicant's disposal, particularly in order to establish whether default interest is due, whether the correct exchange rate was used and whether payment was actually made to an authorised person.

b) The determination of the date of payment

69. The payment of just satisfaction is the obligation incumbent on the respondent states, hence, in order to discharge states from this obligation, it is important to determine when the payment of just satisfaction has been validly made. The basic principle is for payment to be considered to have been validly made once the just satisfaction has effectively been "placed at the disposal" of the beneficiary meaning that it is under his or her control, either directly (when the money has been transferred to his or her bank account) or indirectly (for example when the money is available for withdrawal from a claims office and the applicant has been informed of this (in so far as this is possible, for instance by a registered letter sent to his or her last known address or place of residence or by e-mail with read receipt confirmation/delivery notifications)).[89]

70. It is, however, not easy to determine this date with accuracy, in view of the difficulty to obtain this information from the applicants and of the variety of the payment procedures used by the states and the divergent public accounting practices. For reasons of administrative economy, the Committee agrees to accept estimates, as accurate as possible, in the light of the payment methods used, provided, however, that a case revealing to have been closed on the basis of false information, might be re-opened. This "practical" approach has been particularly encouraged since 2002, in view of the constantly increasing number of cases. It nevertheless remains that the ultimate aim is to obtain information which is as accurate as possible as to the actual date on which the sum is placed at the beneficiary's disposal.

71. In any event, if a doubt exists as to the date of payment in a case, and if that may have significant effects on, for instance, default interest, the exchange rate used, the action to be taken as a consequence of a currency devaluation, etc, it is still possible to seek more detailed information from the government or from the beneficiary of the just satisfaction.

72. In this practical vein, the methods of confirming payment most frequently used at the moment are listed below. It should be noted that changes in payment methods occur, and that this list is therefore only an indicative one.

c) Evidence of payment

73. In line with the post-2011 simplified payment supervision system, the Secretariat does not *a priori* ask states to provide a special kind of document to prove payment (see also above section *2)*. In principle, it is sufficient that the government attests that the payment has been made, adding all the details necessary to verify that it has been made in accordance with the judgment's requirements (precise date, amount, exchange rate used, comments if any, by filling the standard just satisfaction payment form). However, practice has shown that supervision is facilitated when the state provides also a supporting document.

[89] In the Committee of Ministers' experience, this definition of the date of payment corresponds with the concepts used by the Court, in particular those of "settlement" and "effective payment".

74. Evidence of payment is needed and requested only if there is a conflict between the parties concerning the payment. A survey of the most commonly used evidence (if they correspond to modalities of payment which can be used by the states, in view of their national law) is summarised below.

75. **Receipt from the applicant:** The evidence of payment is clear if the state can provide the Committee with a statement by the applicant or his representative indicating the date on which the sums awarded by the Court reached him, and that he is satisfied with the payment.[90]

76. **Bank transfers:** When payment is made by bank transfer, many states (France, Croatia, the Slovak Republic, Poland and Russian Federation, amongst others) inform the Secretariat of the date on which the public accounts were debited, and this date is normally accepted as being the date of payment, in view of the promptness of bank transfers (the money is often on the applicant's account on the same day, or within a very short period). In this context it may be noted that, when payment is made by bank transfer within a state, the transaction usually takes place very rapidly, with debiting and crediting possibly taking place on the same day. Some states (such as Belgium and the United Kingdom) also request, or at least for a long time used to request, formal confirmation from the beneficiary or his or her representative of the date of receipt, and also supply this information to the Secretariat.

77. **Payment warrants:** In a number of cases in certain states (e.g. Greece, Switzerland and Italy), the Treasury issues a payment warrant to the beneficiary, on the basis of which the latter may withdraw the relevant sum from the Treasury office closest to his or her home[91] or from a bank;[92] in such cases, the date of payment communicated by the respondent state is that on which the beneficiary was advised that the sums had been placed at his or her disposal at his or her place of residence.

78. **Cheques:** Finally, certain states pay beneficiaries by cheque.[93] The date of payment is considered to be the one on which the cheque reached the applicant (e.g. if the cheque is sent by registered letter with acknowledgment of receipt, the acknowledgment of receipt may be adduced as an evidence of payment, with a copy of the cheque), or, failing that, the date on which the cheque was sent.

79. **Evidence that the applicant has been informed that sums due have been deposited or are otherwise available:** (e.g. in an escrow account[94] or at a government office[95]): this solution is often used when the applicant cannot be found or refuses to co-operate with the authorities or cannot provide the necessary documents within the time limit. The date of payment is the date from which the sums are effectively at the disposal of their beneficiary. In order to be able to consider that the sums are effectively at the disposal of the beneficiary, several conditions must be met. In particular:

- the respondent state must have carried out all the formalities required by domestic law to make the payment of the sums due to the beneficiary, so that they can be paid within a very short time if the applicant presents him or herself to the relevant authority;

- the respondent State must also, as far as was possible, have informed the beneficiary or his or her representative that the just satisfaction is at his or her disposal (e.g. by a registered letter), or must at least have taken another reasonable measure intended to enable the beneficiary to become aware of this fact.

[90] See e.g. *Magee v. United-Kingdom* (judgment of 06/06/2000, application No. 28135/95).
[91] See for example the case of *Platakou v. Greece* (judgment of 11/01/2001, application No. 38460/97).
[92] See *inter alia* the case of *Müller v. Switzerland* (cited above, Final Resolution ResDH(2004)17 of 22/04/2004), in which the Committee of Ministers expressly noted that the warrant had reached the applicant within the time limit set by the Court. Another aspect of this case was the applicant's refusal to take possession of the sums in question.
[93] See for example the case of *Gennari v. Italy* (judgment of 08/12/2009, application No. 36614/98, Resolution DH (99) 162); *Kolakovic v Malta* (judgment of 19/03/2015, application No. 76392/12), the cheque was handed personally to the applicant.
[94] See for example the cases of *Ruianu v. Romania* (judgment of 17/06/2003, application No. 34647/97) – just satisfaction in escrow at a private bank; *Buffalo Srl in liquidation against Italy* (just satisfaction judgments of 03/07/2003 and 22/07/2004, application No. 38746/97) – just satisfaction in escrow at the national bank; *Fernandez Fraga v. Spain* (decision of 16/10/1996, application No. 31263/96, Final Resolution DH(2000)151) – just satisfaction in escrow at the bank for official deposits.
[95] See for example the case of *Platakou v. Greece* (judgment of 11/01/2001, application No. 38460/97).

80. **Copies of payment orders:** Certain states which are for the time being unable to supply accurate information about the date at which sums are placed at beneficiaries' disposal, instead present the payment orders issued by the relevant authority. To the extent that the Secretariat obtains assurances that this date is very close to the effective date of payment,[96] the date of the payment order is considered to be the date of payment, so as to allow, at least to a certain extent, a control of the of payment.

4.1.3 Who bears the risk in the event of an incident during the payment process

81. It is in principle the respondent state that is responsible in the event of incidents (devaluation, exchange rate variations, etc) which occur before the date ordinarily chosen for payment/placement at the beneficiary's disposal.

82. If the incident occurs during the payment process, i.e. between the date actually chosen for payment/placement at the beneficiary's disposal and the moment when the money effectively comes into his or her possession, it must be possible to determine whether the consequences of the incident must be borne by the respondent state or the beneficiary.

83. In the pragmatic spirit governing the supervision of payment, it is current practice in this area, provided that the state uses a reasonably secure and rapid transfer method for the sums concerned,[97] that it does not in principle bear the risk relating to the occurrence of an incident during the payment process.[98] This risk is therefore borne by the applicant.[99] However, it would not seem fair to apply this principle in the event of major losses for the applicant - such as those stemming from a major devaluation of the currency during the transfer - unless it was the applicant who specifically requested the place and/or currency of payment.

4.2 Payment outside the time limit set by the Court

4.2.1 The principle of the payment of default interest in the event of payment outside the time limit

a) The basis of the principle

84. The general principle that, in the event that an obligation to pay a sum of money in accordance with a judgment of the European Court is not met, the value of the sums due must be preserved, has been accepted from the very earliest days of the Convention system. In practice, prior to 1996, before any specific provision on default interest had been introduced into Court judgments, governments or other national authorities nevertheless ordinarily paid default interest in the very few cases in which payment was late.[100] Information on the subject thus appeared in the report on execution measures taken provided to the Committee of Ministers by the respondent state. The importance of the obligation to preserve the value of the just satisfaction in the event of late payment, in particular, was emphasised by the Committee of Ministers in the context of its supervision of execution in the case of *Stran Greek Refineries* (1994-1997).[101]

85. Following practical problems caused putting into practice of this general principle, however, the Committee of Ministers took the initiative so that both the Court and the Committee itself in its decisions started to include specific clauses about default interest. Such clauses were included from 1996 onwards. The rate chosen was ordinarily the default interest rate ordinarily applied in the country concerned, it being understood that the applicant could challenge this before the Court if he or she considered the rate in force to be inadequate to preserve the value of the sums to be awarded.

[96] Thus, for instance, for the Italian cases, particularly where payments are ordered by the Ministry of Justice (the majority of cases, including those on excessive length of proceedings) the authorities have been able to establish that, on average, the amounts transferred in such cases reached the beneficiary at most five days after final validation of the payment order.
[97] See above the information expected by the Committee of Ministers as evidence of placement at the beneficiary's disposal. Practice in this respect is relatively flexible, for reasons of administrative economy.
[98] See for example the case of *Ciobanu v. Romania* (judgment of 16/07/2002, application No. 29053/95), in which a change in the exchange rate to the applicant's disadvantage occurred between the time at which the sums left the state's account and the time at which they reached the applicant's account. The respondent state was not required to accept responsibility for this incident.
[99] *Pospekh v Russia* (judgment of 02/05/2013, application No.31948/05), after the submission of a wrong bank account number, the sum returned to the authorities, and the applicant submitted the new bank account two years later.
[100] Interest of this kind was thus paid in the cases of *Sporrong and Lönnroth v. Sweden* (Resolution DH(85)17), *Delta v. France* (Resolution DH(91)31), *Pine Valley v. Ireland* (Resolution DH(93)43) and *Papamichalopoulos v. Greece* (Resolution DH(98)309).
[101] See for example Interim Resolution DH(96)251 and final resolution DH(97)184.

86. In its recent judgments, therefore, the Court states that “from the expiry of the [time limit] until settlement simple interest shall be payable” at a rate also set by the Court itself, usually, in current judgments “equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points".[102] Most of the friendly settlements of which the Court takes note of now also contain a clause on the payment of default interest if payment is made outside the time limit.[103]

b) Implementation of the principle

87. The default interest due according to judgments of the Court is calculated on a daily basis.[104] If payment of the principal sum is made after the deadline for payment has expired, default interest should be paid at the same time as the principal. This interest is “simple”, i.e. the interest does not itself entitle to further interest (compound interest). It should also be emphasised that the period to be covered by default interest extends "from the expiry of the [time limit] until settlement"[105], according to the formula generally used in Court judgments,[106] or from the expiry of the time limit until the sum in question is effectively paid, as recently specified in respect of friendly settlements.[107] Partial payments of the award in due time, do not freeze the default-interest of unpaid sum.[108]

c) Special problems in case of revision, rectification or interpretation[109]

88. In the following circumstances, supervision of the payment of just satisfaction may be interrupted pending a decision by the Court:

- **Revision[110]**: There are many requests for revision which may influence the obligation to pay just satisfaction. They rely on the discovery, after the judgment is delivered, of elements which might have had a decisive influence on the obligation to pay if they had been known to the Court before it rendered judgment. In such cases, the Court delivers a new judgment in revision (for example, in case of the applicant’s death,[111] or facts undermining the applicant’s quality as victim (for the purpose of the Article 34)[112] or altering the substance of the case);

- **Rectification[113]**: clerical errors, errors of calculation or obvious mistakes may lead to a straightforward rectification which may influence the obligation to pay just satisfaction (possible examples include mis-spelling the applicant’s name[114] or incorrectly quoting the amount requested by the applicant by way of just satisfaction[115] or even the failure through procedural omission to award just satisfaction to applicants who had requested it in due time[116]). In addition, the Court might clarify in the rectified judgment to whom the payment should be made [117];

[102] Among many examples, see the case of *Xenides-Arestis v. Turkey* (judgment of 07/12/2006, application No. 46347/99); *Sahin Alpay v Turkey* (judgment of 20/03/2018, application No. 16538/17)
[103] See for example the case of *Paulescu v. Romania* (friendly settlement, judgment of 20/04/2004, application No. 34644/97).
[104] It is pointed out that this was not so in the cases which came under former Article 32, where the interest was calculated per complete month of delay.
[105] If, for example, the time limit for payment expired on 02/10/XXXX, and payment of the principal was made on 26/10/XXXX, default interest will have to cover 24 days, even if this itself is paid only three months later.
[106] See for example the *Xenides-Arestis* judgment mentioned above.
[107] See for example the *Paulescu* judgment mentioned above.
[108] See in the case *Majidli v. Azerbaijan* (judgment of 26/09/2019, application No. 56317/11) where the authorities made the payment in instalments, and they paid default interest for the amounts which were paid outside the deadline.
[109] Issue dealt with following a suggestion by the Turkish delegation.
[110] Rules of the Court, Rule 80 (Request for revision of a judgment)
“*1. In the event of the discovery of a fact which might by its nature have a decisive influence and which, when a judgment was delivered, was unknown to the Court and could not reasonably have been known to that party, request the Court, within a period of six months after that party acquired knowledge of the fact, to revise that judgment.”*
[111] See, for example *Franciska Štefančić* (judgment (revision) of 09/10/2018), application No. 58349/09).
[112] See for example the case of *N.A. v. Finland*, judgment (revision) of 13/07/2021, application No. *25244/18* .
[113] Rules of the Court, *Rule 81* (Rectification of errors in decisions and judgments). “Without prejudice to the provisions on revision of judgments and on restoration to the list of applications, the Court may, of its own motion or at the request of a party made within one month of the delivery of a decision or a judgment, rectify clerical errors, errors in calculation or obvious mistakes.”
[114] See for example *Singh and Others v. Greece* (judgment of 19/01/2017, application No. 60041/13) or *Pop and Others v Romania* (judgment of 24/03/2015, application No. 31269/06)
[115] See for example *Meh v. Slovenia* (judgment of 09/03/2006, application No. 75815/01).
[116] *See for example Siffre, Ecoffet and Bernardini v France*, (judgment of 12/12/2006, application No. 49699/99+) or *Colacrai v. Italy (judgment of* 23/10/2001, application No. 44532/98).
[117] See for example *Mihaylova and Malinova v. Bulgaria* (judgment of 24/02/2015, application No. 36613/08) where the Court clarified in the revised judgment that the payment of just satisfaction should be made to the mother of the applicant who was a minor.

- **Interpretation**[118]: Requests for interpretation of a judgment influencing the obligation to pay just satisfaction are very rare (for example, the question of whether the just satisfaction may be seized[119], or the place or currency of payment[120]). When examining requests for interpretation, "the Court is exercising inherent jurisdiction: it goes no further than to clarify the meaning and scope which it intended to give to a previous decision which issued from its own deliberations, specifying if need be what it thereby decided with binding force".[121]

89. If a judgment is subject to revision concerning the obligation to pay just satisfaction, the Court in principle pronounces explicitly on the deadline for payment and on the question of default interest. Normally, the deadline is fixed at three months from the date upon which the revised judgment becomes final.[122] Usually no problem arises at the execution stage: the Committee of Ministers follows the indications given by the Court. Complexities may arise when the revision is requested for some of the applicants in a group.[123] In this case, there are two different payment deadlines: for the applicants in respect of which the judgment is revised the deadline is fixed according to revised judgment; for the rest the date of previous judgment should be taken into consideration.[124]

90. If a judgment is subject to rectification, legally this produces no modification of the date upon which the judgment is presumed to become final or, by the same token, of the deadline for payment – even where rectification takes place after the judgment has become final[125] and the payment deadline is running or even expired. It would appear that unless the Court indicates otherwise, default interest should be calculated according to the wording of the rectified judgment, the purpose of this interest being to preserve the value of the just satisfaction for the applicant. However, in certain specific circumstances, another solution may be required.[126] It should nonetheless be noted that, despite rectification, states often manage to pay on time or with a minimum delay.[127]

91. Finally, it may be deduced that where the Court refuses a request for revision, rectification or interpretation by the respondent state, the initial judgment remains valid and all questions of payment, including default interest, are to be assessed in relation to that judgment.

4.2.2 Relaxation of the principle in certain cases

a) Cases of negligible delays in payment

92. Without prejudice to the authority of judgments or to the derived principle that default interest is due where payment falls outside the time limit, a certain allowance is made in practice for a delay in payment which may be described as "negligible". In some cases, in which payment of the just satisfaction was made just a few days late, in fact, entitling the beneficiary to the payment of a modest amount of default interest, respondent States have occasionally not paid the default interest due, without this hindering the closure of the cases concerned. Notwithstanding the unconditional nature of the obligation to abide by the Court's judgments, and with a view to adopting a pragmatic approach, negligible delay or non-payment of a small default interest may thus be exceptionally tolerated.

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[118] Rules of the Court, *Rule 79* (Request for interpretation of a judgment)
"1. A party may request the interpretation of a judgment within a period of one year following the delivery of that judgment."
[119] See for example the judgment of *Ringeisen v. Austria of* 23/06/1973 (interpretation of the judgment of 22 June 1972), the judgment of *Allenet de Ribemont v France* of 07/08/1996 (interpretation of the judgment of 10/02/1995, application No. 15175/89).
[120] *Ringeisen* judgment, cited above.
[121] *Ringeisen* judgment, cited above, § 13.
[122] See for example the judgment of *Dimitrijoski v. North Macedonia* (judgment – revision of 21/05/2015), in which the Court held that the respondent State was to pay to the heir of the late applicant, within three months from the date on which the revised judgment became final in the circumstances set out in Article 44 § 2 of the Convention.
[123] See for example *Cangoz and Others v Turkey* (judgment-revision of 19/09/2017, application No. 7469/06), the applicants' representative requested the revision of the judgment as five applicants amongst seventeen died during the proceedings before the Court. The judgment was revised for five of the applicants. During this procedure the authorities made the payment to an escrow bank account, the applicants' representative waited for the revision to collect the total sum, however there is shortage in payment caused by the exchange rate differences. It is still pending.
[124] See for example *Jakimovski and Kari Prevoz v. North Macedonia* (judgment of 14/11/2019, application No. 51599/11), where the authorities requested revision of the Court's judgment indicating that the that the second applicant (company) ceased to exist while they paid the amount awarded to the first applicant within the deadline of the initial judgment.
[125] See for example *Siffre, Ecoffet and Bernardini v. France*, (cited above) in which, by means of a rectification, a just satisfaction was added for two of the applicants (on 27/04/2007, the Section Registrar wrote to the parties that, no request having been made for a referral of the case to the Grand Chamber, the judgment delivered on 12/12/2006, rectified on 27/03/2007, became final on 23/03/2007.
[126] See for example *Tsfayo v. United-Kingdom* (judgment of 14/11/2006, application No. 60860/00), or *Siffre, Ecoffet and Bernardini v. France* (cited above).
[127] See for example *Matuschka and Others v. Slovakia* (judgment of 27/06/2017-rectified on 19/09/2017-, application No. 33076/10), the Court rectified the judgment by increasing the total just satisfaction amount. It was paid in two instalments, the first awarded amount was paid in time limit, the difference was paid out of deadline but in few weeks after rectification of the judgment.

The assessment to this effect is made on an *ad hoc* basis, in light of the concrete circumstances of each case and under the strict condition that the applicant does not object to the delay in payment or does not request the payment of interest amounts.[128]

93. Regarding what can be considered a "negligible delay", and particularly the number of days of delay or the amount of euros in interest which may reasonably be allowed, there are no formal rules. Hitherto, in practice, an allowance has been made, in particular where the default interest in principle due could be described as modest in the light of the applicant's situation. As a general rule, the beneficiary's silence has been interpreted as renunciation of the interest only when he or she has failed to complain to the Committee of Ministers by approximately one year after payment of the principal amount of just satisfaction.

94. A different view might be taken if the State concerned regularly paid after the time limit, which would reveal a "structural" problem. In such a situation, the payment of default interest, even of a modest nature, will in principle be requested much more emphatically.

b) The question of the beneficiary's possible responsibility

95. If the payment procedure is complicated, for instance by allegations that the applicant is not co-operating, some awkward questions may arise.[129] As mentioned above,[130] the obligation to abide by judgments is in principle unconditional, and the obligation to pay default interest (until the date of payment) is clearly set down in judgments. However, the Committee's practice has accepted that default interest is not owed by the State when the delay is clearly due to the applicant's fault or negligence, provided that, as mentioned above,[131] the respondent State has taken other measures that are accepted as equal to payment, and has made efforts, within the time limit, to inform the applicant that the just satisfaction was at his disposal as a result of such action.[132]

96. That said, should this practice be wrongly applied, it would still be possible to examine the necessity of reopening the matter under the guidelines issued by the Deputies.[133]

5. CURRENCY USED

5.1 Currency in which payment is made

5.1.1 General considerations

97. It has been the Court's long-standing practice to determine just satisfaction not only in the respondent State's national currency but also in other currencies, for example in those cases where the applicants had incurred costs in "foreign" currency or were living outside the respondent State, or wanted to protect themselves against the consequences of significant inflation or depreciation of the national currency. Since 2000, the Court has made increasingly frequent use of a single reference currency, the euro. Today it would appear that the euro is the reference currency used in all cases.[134]

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[128] See action report in *Ormancı* and Others v Turkey group of cases, DH-DD(2014)1468, §2 ; action report in *Atanasovic* v. "the Former Yugoslav Republic of Macedonia" group of cases, DH-DD(2016)163, §16; action report in *Bijelić v. Montenegro* case, DH-DD(2016)807, §6; action report in *Momčilović v. Serbia case,* DH-DD(2020)62, §13;.

[129] See e.g. *Giorgi Nikolaishvili v. Georgia* (judgment of 13/01/2009, application No. 37048/04), action report DH-DD(2017)1184, where it was impossible to make the just satisfaction payment because, as the applicant was wanted by Interpol, the respondent State authorities had not been provided with his bank details so as to make a timely payment. In March 2017, the applicant returned to Georgia, and submitted his bank details. The payment was made in May 2017.

[130] See General principles, §16.

[131] See § 58.

[132] See e.g. *Ferencne Kovacs v. Hungary* (judgment of 20/12/2011, application No. 19325/09), action report DH-DD(2018)600, where the applicant was refusing to provide her bank details for the payment of the just satisfaction awarded by the Court because she disagreed with the content of the judgment. After several timely yet unsuccessful efforts by the authorities to contact the applicant and to send her a money order, the amount was finally transferred to the deposit account of the Tribunal of Budapest-Capital (former Budapest Regional Court) as a deposit past the time-limit set for the payment. The applicant was informed of the deposit by a letter of the Ministry of Justice. The Committee of Ministers did not insist on the payment of default interest in this case. In the same vein, see also *Dorić v. Bosnia and Herzegovina* (judgment of 07/11/2017, application No. 68811/13), action report (DH-DD(2018)733).

[133] Information document on Supervision of the execution of judgments and decisions of the European Court of Human Rights: implementation of the Interlaken Action Plan – Modalities for a twin-track supervision system, CM/Inf/DH(2010)37.

[134] See for example the *Christine Goodwin v. United Kingdom* (judgment of 11/07/2002, application No. 28957/95): "the Court finds it appropriate that henceforth all just satisfaction awards made under Article 41 of the Convention should in principle be based on the euro as the reference currency". See also, in the same terms, the judgments *I. v. United Kingdom* of the same date (application No. 25680/94), or *Janosevic* quoted below. It is recalled that on 1 January 2002 began the last phase of introduction of the euro as common currency of the eurozone. As from this date, coins and bills in euros started being used in everyday life; over a certain period of time, they were used simultaneously with national currencies. Euro hence became a parallel currency for transactions in cash, whereas for non-cash transactions its use became mandatory. It officially replaced all national currencies of the eurozone on 30 June 2002.

98. However, the currency in which just satisfaction is determined is not necessarily the one in which payment must be made. The latter is in principle clearly defined in the operative part of the Court's judgment; and it is not always in the respondent State's currency.

99. In view of the Court's practice of stating the amounts payable in euros, respondent States are not required to make conversions for cases involving states, applicants and their lawyers all situated within the eurozone. Sometimes it even happens that the Court instructs respondent States to pay in euros for violations which occurred outside the eurozone but concerning applicants-residents of this zone.[135]

100. On the other hand, judgments usually order a conversion if the respondent State is not part of the eurozone,[136] if the applicant is not resident within this zone,[137] if he/she has been represented by lawyers practicing outside this zone,[138] or in certain cases if a possession has been assessed in a foreign currency.[139]

101. Finally, the currency indicated by the Court must in principle also be used for the calculation and payment of possible default interest.

102. Conversion fees into the currency indicated by the Court must obviously be borne by the respondent state.

5.1.2 Problems that may arise

103. If the state of payment is the respondent State, it is bound by the Court's judgment and it has to find appropriate solutions to make payment in accordance with the indications of the Court.[140] Failing that, it may try to reach an agreement with the applicant. The generally accepted rule that the parties may freely agree on other terms of payment than those laid down in the Court's judgment also applies to the currency. Such agreements should preferably be explicit, but the Committee has also accepted tacit agreements.[141] The Committee nevertheless reserves the right to verify that such arrangements are fully in accordance with the Convention and with the parties' wishes.[142] If, however, the applicant objects to payment in another currency than that specified by the Court, the State must remedy the situation so as to comply with the terms of the judgment.

104. If the payment is not to be made in the respondent State but in another one –the applicant's state of residence, for example – the problems that the regulations on currency exchange may present can be difficult to solve (the State of payment not being bound by the Court's judgment) and an agreement between the parties may turn out to be necessary. [143]

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[135] See for example the case of *Bolat c. Russian Federation* (judgment of 05/10/2006, application No. 14139/03).

[136] If the applicant lives in the respondent State, the Court normally orders a conversion into the national currency of the respondent State. See for example the *Janosevic v. Sweden* judgment of 23/07/2002, application No. 34619/97 (§ 114): "The award is made in euros, to be converted into the national currency at the date of settlement". See also *Pramov v. Bulgaria* (judgment of 30/09/2004, application No.42986/98) in which the Court directed the respondent State to pay the applicant specified sums, to be converted into Bulgarian levs at the rate applicable on the date of settlement, in respect of non-pecuniary damages and of costs and expenses.

[137] If the applicant lives in another country than the respondent State and if his/her state of residence is outside the eurozone, the conversion is normally ordered into the currency of the state of residence. See for example *Sroub v. Czech Republic* (judgment of 17/01/2006, application No. 5424/03) in which, given that the applicant was resident abroad and had calculated the total of the costs incurred in Canadian dollars, the Court considered it expedient to pay him that amount in Canadian dollars and not in the respondent State's national currency. This corresponds to the general rule described in part 3, "Place of payment".

[138] See for example *Aksakal v. Turkey* (judgment of 15/02/2007, application No. 37850/97): the amount awarded in respect of costs and expenses is fixed in euros, to be converted into pounds sterling and paid directly to the lawyer in the United Kingdom.

[139] See for example *Ciobanu v. Romania* (judgment of 16/07/2002, application No. 29053/95) where the respondent State was directed to pay the applicant, within three months of the date when its judgment became final, a specified amount in euros in respect of pecuniary and non-pecuniary damage, to be converted into US dollars at the rate applicable on the date of settlement.

[140] See the case of *Jeličić v. Bosnia and Herzegovina* (judgment of 31/10/2006, application No. 41183/02) in which the applicant claimed the payment in euros which was not accepted, as in its judgment the Court clearly indicated that the payment should be converted into Bosnian mark.

[141] See in particular the case of *Kaya Mehmet v. Turkey* (judgment of 19/02/1998, application No. 22729/93), in which the Court ordered the respondent State to pay the applicant and his brother's widow and children part of the amount in Turkish liras and another part in pounds sterling. Despite this stipulation, the entire sum was paid in Turkish liras. The recipients did not object; the Committee closed the supervision of the case from the standpoint of just satisfaction from the 966th meeting (June 2006) onwards. See also the case of *Tanrikulu v. Turkey* (judgment of 08/07/1999, application No. 23763/94).

[142] In the case of *Stran Greek Refineries and Stratis Andreadis v. Greece* (see final Resolution DH(97)184), when the Committee of Ministers had been informed of an agreement on other terms of payment than the ones specified in the judgment, particularly regarding the currency, it verified that the applicants had indeed accepted the new terms of payment and that the settlement thereby reached was in accordance with the requirements of the Convention; see also the Chairman's summary of the 585th meeting (March 1997).

[143] See for example the case of *Bayev and Others v. Russia* (judgment of 20/06/2017, application Nos. 67667/09, 44092/12 and 56717/12). For one of the applicants, the payment procedure was not completed as the payment was made in rubles to the applicant's Swiss bank account, which was refused by the bank. While keeping his Russian nationality, he became a citizen and resident of the Swiss Confederation. According to Russian Federal Law on currency control, all citizens are automatically considered as Russian residents, irrespective of the place where they actually reside, and payment to a resident can be made only in rubles. See Action plan, DH-DD(2018)1047; Communication from the applicant, DH-DD(2018)1096. The case is still pending and consultations on this matter are ongoing.

105. Otherwise, if conversion into another currency than that indicated by the Court is requested by the applicant themselves, it has been accepted that the applicant must bear the conversion costs.[144]

106. The same rules could apply to possible requests of changes in the currency of payment of default interest.

5.2 Exchange rate

107. When the Court orders conversion in the operative part of a judgment, it also determines the reference date for the exchange rate. It generally specifies the "rate applicable at the date of settlement",[145] or more seldom, "the rate applicable at the date of delivery of this judgment".[146] This reference to the "rate applicable" is not very precise, considering the different rates that apply depending on the method of transfer and the market in which the money is purchased.

108. For the purposes of supervision of just satisfaction payments by the Committee of Ministers, the average exchange rate (average of the buying and selling rates) applied by the respondent State's central bank for inter-bank transfers[147] is normally used.[148]

109. Given the fluctuations of exchange rates, it is also important to be clear about the date when the exchange is to be made according to the terms of the judgment (normally the date of settlement). Thus, if the respondent State uses a different day's exchange rate and this results in payment of an insufficient amount, the Committee of Ministers satisfies itself that the respondent State makes an additional payment so that the terms of the Court's judgment are complied with.[149]

110. In the event of an incident affecting the exchange rate during the payment process, see "4*.1.3 Who bears the risk in the event of an incident during the payment process".*

111. Finally, it is recalled that the exchange rate for the payment of possible default interest is the rate applicable on the date of this payment. If the rate has meanwhile fallen to the applicant's detriment, it would appear to be fair that the State authorities bear the consequences.

5.3 Problems in the conversion of just satisfaction amounts into national currency

112. Problems with the conversion of the amount of just satisfaction into national currency may arise, when the issuance of the payment order and the actual payment are effectuated on different dates. This may result in the overpayment of the amount of just satisfaction owing to the change of the official currency exchange rate. In this case, the authorities and the Committee will cooperate with the Committee and the applicants to find solutions.[150] Conversely, such situations may also result in the payment of an insufficient just satisfaction amount, which may necessitate an additional payment[151].

113. Problems may arise, when the Court awards just satisfaction in euros without indicating that it should be converted into national currency whereas the legislation of the state party does not allow payment in euros and the payment therefore is made in national currency.[152]

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[144] See for example the case of *Labzov v. Russia* (judgment of 16/06/2005, application No. 62208/00): it emerges from the Court's judgment that at the date on which the judgment was delivered, the applicant lived in the Russian Federation; at the stage of execution, the applicant requested to be paid in France, his new country of residence. The – reasonable – costs of the transfer have been borne by the applicant.

[145] As with the amount awarded in non-pecuniary damages in the case of *Tanrikulu v. Turkey* (judgment of 08/04/1999, application No. 23763/94).

[146] As with the amount awarded for costs and expenses in the case of *Tanrikulu* (see above).

[147] The rate applied is thus the average official rate indicated by the national bank of the respondent state. Links to the websites of all central banks may be found on the official site of the Bank of International Settlements at this address: http://www.bis.org/cbanks.htm .

[148] Should this rate be significantly disadvantageous for the applicant, it would seem consistent with the States' general duty of safeguarding the value of just satisfaction to search for a better rate, for example by purchasing the money on a more favourable market, normally in the country of payment (this issue may arise with currencies whose international circulation is not large).

[149] See in particular the case of *Zana v. Turkey* (judgment of 25/11/1997, application No.18954/91): the exchange rate for the date of the Court's judgment was used, instead of the one for the date of settlement – an additional payment of the balance was made.

[150] See for example the case of *Agrokompleks v. Ukraine* (judgment of 09/12/2013, application No. 23465/03) where, due to the fluctuation of the currency exchanges rate on the dates when the payment was ordered and when it was actually effectuated, the respondent State paid to the applicant company a higher amount than what it was entitled to under the Court's judgment. The overpayment also concerned a part of the default interest paid to the applicant company. To resolve this issue, the respondent State proposed to the applicant company that the remaining amount of default interest be paid decreased by the corresponding amount of the overpayment. This was accepted by the applicant company (see action report DH-DD(2020)951).

[151] *Mehmet Yaman v. Turkey* (judgment of 24/02/2015, application No. 36812/07).

[152] See e.g. *Fellner and Others v. Turkey* (judgment of 10/10/2017, application No. 13312/08+), the case is still pending.

5.4 Problems in calculation of default interest

114. Problems may occur when the default interest is calculated on the amount already converted into national currency, in case there is inflation and changes in the exchange rate between the dates of payment of just satisfaction and default interest. This may result in under- or overpayment. The practice is therefore to calculate the default interest on the currency stated in the judgment and convert it into national currency at the date of payment.

6. ATTACHMENT, TAXATION AND PAYMENT FEES

6.1 Attachment

115. Issues relating to the attachment, by the state or private individuals, of sums awarded as just satisfaction are complex. Over the course of time, the Court's case-law and the practice of the Committee of Ministers have developed to address several relevant situations that may arise.

116. It is noted at the outset that a right to exemption from attachment of just satisfaction amounts is not unequivocally and unconditionally recognised by the Convention or the European Court. Indeed, while the European Court has set forth the most important principles in relation to attachment issues thus offering some guidance as to the circumstances in which attachments are precluded,[153] in *Ataun Rojo v. Spain* (application No 3344/13, judgment of 7 October 2014), commenting on the applicant's request addressed to the Court to indicate in its judgment that no seizure of the just satisfaction may be made by the government for debts owed to the state, the Court reiterated that "*it has no jurisdiction to grant such a request*" and concluded that "*it can only defer to the wisdom of the Spanish authorities on this point and to the decision of the Committee of Ministers in the context of the execution of the present judgment"* (§ 52).

117. In this context it is usefully noted that certain states, drawing inspiration from the spirit of the Convention and the Committee of Ministers' evolving practice on attachment issues, have adopted legislation expressly exempting from attachment or seizure awards made by the European Court in the context of just satisfaction. For example, the Enforcement Code of Finland, as amended by Law 521 of 2009 (in force as from 1 January 2010), provided that compensation or reparation granted by a monitoring authority under an international human rights treaty cannot be seized. Thus, the law appears to exclude from seizure all kinds of just satisfaction awarded by the European Court. Also in Poland, under Law 539/2015 (in force as from 17 October 2015), the Code of Civil Procedure and the Law on enforcement in administrative proceedings provide that sums awarded by the European Court are free from attachment in cases where the applicant bears a debt to the state.

118. When dealing with the question whether a certain attachment is in compliance with the Convention standards, there have been so far three crucial points to consider: a) whether the attached debt was related to the violation found by the Court or not; b) whether the debt at issue is owed to the State or to private individuals; and c) which head of the awarded just satisfaction the envisaged attachment is linked to. In practice, the answers to these questions are not always clear-cut and it is ultimately up to the Committee to assess the situation in the light of the circumstances of each specific case. Over decades the Committee's practice has developed significantly to offer certain basic guidelines but, given the wide scope and complexity of possible relevant situations, these solutions are not cast in stone. The Committee's practice thus continues to evolve. On this point, ample clarifications by the state authorities on the nature of the issues at stake in each specific case when an attachment is envisaged are essential.[154]

6.1.1 Violation-related debts

6.1.1.1. Debts to the State

119. In *Piersack v. Belgium* (application No. 8692/79, judgment on the application of the former Article 50, of 26 October 1984), the Court ordered the state to refrain from recovering the additional expenses which the authorities had incurred in the new proceedings engaged with a view to providing the applicant redress for the violation found.

[153] See below, in particular §§120, 122 and 125-126.
[154] *C. v. Finland*, (judgment of 09/05/2006, application No. 18249/02, pending case). The case concerns a violation of the applicant's right to respect for his family life. The Finnish authorities seized the amount awarded to the applicant in respect of costs and expenses to repay alimonies in advance by the State to his children. To decide the nature of the debt, further explanations from the respondent State were necessary. See also *Sévère v. Austria* (judgment of 21/12/2017, application No. 53661/15, pending case) which concerns a similar issue.

In the current practice of states and of the Committee, this exception is interpreted as meaning that the payment of debts owed to the state, which have a link with the violation(s) found by the European Court, cannot be secured by attachment or seizure of the just satisfaction.[155] In principle, therefore, the state could not, for example, seize the amount awarded as just satisfaction in order to obtain the payment of a fine imposed in violation of the Convention, or compensation for the authorities' legal costs in the proceedings imposing the fine.[156] If the violation of the Convention relates to the unfairness of national proceedings, it would appear that the question of attachment for a debt arising from these proceedings should be dealt with in parallel with the question of a possible reopening of the case.[157] If there is no question of reopening, this would normally signify that there is no link between the violation and the debt in question.[158] If, on the contrary, reopening is seriously considered – and all the more so, if it is agreed to reopen the case – it would seem appropriate to await a final decision on the matter before effecting a possible attachment.

6.1.1.2 Debts to private individuals

120. The Committee of Ministers has not frequently had to deal with situations raising the question of how these principles should be applied in case of private debts. Nonetheless, analogous application of these principles in such cases appears consistent with the spirit of the Convention, for example if the debt has arisen in proceedings tainted by unfairness on account of the conduct of the creditor (e.g. corruption) or if the private debt was imposed in proceedings impugned by the Court. Indeed, attachment of just satisfaction to secure payment of private debts originating in circumstances that were found to be in violation of the Convention would raise important issues of legal certainty and would appear to be inconsistent with the Convention standards.

6.1.2 Debts not linked to the violation found by the Court

a) Attachment of sums awarded for pecuniary damage

121. For debts which have no link with the violation, the question of exemption from attachment has not frequently arisen in respect of sums awarded for pecuniary damage. In the *Ringeisen v. Austria* case (cited above), the Court ruled that the sum awarded for non-pecuniary damage – to which private creditors had laid claim – should be paid to the applicant personally and should be free from attachment. Notwithstanding this judgment, under the Committee's practice to date, there appears to be no restriction on attachment of sums awarded for pecuniary damage, where such attachment is for the benefit of private creditors. For example, in *Klein v. Austria* (application No. 57028/00), the Committee, by Resolution CM/ResDH(2016)281, accepted the payment of part of the pecuniary damages to the insolvency administrator. Similarly, there should be no restriction on attachment of sums awarded for pecuniary damage for the benefit of the state, if the debt is not linked to the violation. This practice may also be grounded in an interpretation *a contrario* of the principles outlined below in section b) on attachment of sums awarded for non-pecuniary damage.

[155] See, for example, the following cases, showing that attachment is potentially permissible only once it has been ascertained that there was no link with the violation:
- *Deixler v. Austria* (application No. 17798/91, Final Resolution DH (99) 247): "*…the amount of just satisfaction [has been set off] against the State's tax claims. The setting off has been carried out in conformity with Austrian Law (…). In the circumstances of the case, there is no link between the State's claims and the violations found*."
- *Hengl v. Austria* (application No. 20178/92, Final Resolution DH (98) 200): "*…the Vienna* Finanzprokuratur *notified the applicant, on 12 December 1997, of the fact that it had set off 76 514 Austrian schillings of the just satisfaction against the State's identical claim in accordance with a judgment from the Döbling Court (No. 1C1481/92g of 27 October 1993) and the remaining 13 486 Austrian schillings against part of a tax claim of over 5 000 000 Austrian schillings due for payment as from 1 January 1998. Those claims bear no relation with the violation found in the present case*."
- *Hauschildt v. Denmark* (application No. 10486/83, judgment of 24/05/1989), where the legal fees incurred by the applicant in respect of the proceedings which violated Article 6 were subject to attachment accepted by the Committee of Ministers, since neither the Court nor the Committee entertained any doubt that the conviction was well-founded, and the applicant himself had not argued before the Court that the outcome of the domestic proceedings would have been more favourable to him had there been no violation, nor had he used existing legal possibilities for requesting a reopening of the case. For the Court's findings, see § 57 of the judgment: "*…with regard to the judges concerned, the Court has excluded personal bias (see paragraph 47 above). What it has found is that, in the circumstances of the case, the impartiality of the relevant tribunals was capable of appearing to be open to doubt and that the applicant's fears in this respect can be considered to be objectively justified (see paragraph 52 above). This finding does not entail that his conviction was not well founded. The Court cannot speculate as to what the result of the proceedings might have been if the violation of the Convention had not occurred (see the above-mentioned De Cubber judgment, Series A no. 124-B, p. 18, para. 23). Indeed, the applicant has not even attempted to argue that the result would have been more favourable to him, and moreover, given the established lack of personal bias, the Court has nothing before it that would justify such a conclusion…*".

[156] See 1280th CM DH meeting, March 2017, Notes on *Khodorkovskiy and Lebedev* [*Klyakhin v. Russia* group, application No. 46082/99, (pending)], CM/Notes/1280/H46-25.

[157] See *Hauschildt*, cited above.

[158] Exceptions could exist where reopening is refused on purely formal grounds, e.g. the non-abolition of the law at the origin of the Convention violation.

b) Attachment of sums awarded for non-pecuniary damage

122. At the outset it is noted that there is at least one member state (Greece) with legislation expressly proscribing seizure or attachment of just satisfaction awarded by the European Court for non-pecuniary damages.[159] Under Law 4370/2016 (Article 60§9), in cases where the applicant bears a debt towards a state entity, the setting off of the amounts awarded by the Court as just satisfaction in respect of non-pecuniary damage is not allowed. However, the setting off of amounts of just satisfaction in respect of pecuniary damage is possible under the same law.

- Debts to private individuals.

123. The practice followed by the Committee of Ministers and States lays down no restrictions on attachment of sums awarded as just satisfaction for non-pecuniary damage where such attachment is for the benefit of private creditors.[160] It is considered that the offset made by the authorities between the applicant's debt towards private parties, including debt which the state holds by subrogation, and the amounts awarded by the European Court is consistent with the practice of the Committee of Ministers in this field. Even if the State became the holder of the debt at issue by virtue of the right of subrogation, the fact remains that this debt was originally a debt towards private parties.[161]

- Debts to the state.

124. The matter has been raised before the Court. In a Grand Chamber judgment of 28 July 1999 *(Selmouni v. France*, application No. 25803/94, § 133), the Court stated the following:

> *"The Court considers that the compensation fixed pursuant to Article 41 and due by virtue of a judgment of the Court should be exempt from attachment. It would be incongruous to award the applicant an amount in compensation for, inter alia, ill-treatment constituting a violation of Article 3 of the Convention and costs and expenses incurred in securing that finding if the State itself were then to be both the debtor and creditor in respect of that amount. Although the sums at stake were different in kind* [the debt owed to the state was a customs fine, the correctness of which was not questioned*], the Court considers that the purpose of compensation for non-pecuniary damage would inevitably be frustrated and the Article 41 system perverted if such a situation were to be deemed satisfactory. However, the Court does not have jurisdiction to accede to such a request (see, among other authorities, the Philis v. Greece judgment of 27 August 1991, Series A no. 209, p. 27, §79, and the Allenet de Ribemont v. France judgment of 7 August 1996, Reports 1996-III, p. 910, §§18-19). It must therefore leave this point to the discretion of the French authorities."*

125. The Court confirmed this approach in the *Velikova v. Bulgaria* judgment of 18 May 2000 (Application No. 41488/98, see § 99). On the basis of these judgments, at the execution stage, respondent States have refrained from implementing the envisaged attachments with regard to non-pecuniary damages awarded by the Court, and state-related debts.

126. Over the years, the Committee of Ministers continued to follow, as a matter of principle, the practice established in *Selmouni* and *Velikova*. For example, in 2011, in *Fatullayev v. Azerbaijan* (judgment of 22/04/2010, application No. 40984/07) the Committee recalled that the European Court considered, in other cases, that the compensation fixed pursuant to Article 41, in particular for non-pecuniary damage, and due by virtue of a judgment of the Court should be exempt from attachment, and strongly invited the Azerbaijani authorities to reconsider their position in view of this principle.[162]

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[159] As mentioned above (§119), the Enforcement Code of Finland in force as from 1 January 2010) also appears to exclude from seizure all kinds of just satisfaction awarded by the European Court.

[160] E.g. *Mironovas and Others group v. Lithuania* (judgment of 08/12/2015, appl. No. 40828/12), *Lelièvre v. Belgium* (judgment of 08/11/2007, application No. 11287/03) where the Committee accepted the attachment of non-pecuniary damages awarded to the applicant for a violation of Article 5§4 to one of the family victims in the "Dutroux" case (CM/ResDH(2012)71), and *Castellino v. Belgium* (judgment of 25/07/2013, application No. 504/08). See also *Unterpertinger v. Austria* (judgment of 24/11/1986, application No. 9120/80), interim resolution DH(89)2, where a national court authorised the attachment of the sum awarded for non-pecuniary damage in order to pay the money owed by the applicant for the maintenance of his son. See also the cases of *Werner v. Poland* (judgment of 15/11/2001, application No. 26760/95), *Jedamski and Jedamska v. Poland* (judgment of 26/07/2005, Application No. 73547/01), *Malisiewicz-Gąsior v. Poland* (judgment of 06/04/2006, application No. 43797/98) and *Lopriore v. Italy* (judgment of 11/12/2001, application No. 51668/99).

[161] See also *Iljina and Sarulienė v. Lithuania* (judgment of 15/03/2011, application No. 32293/05), and *Kashavelov v. Bulgaria* (judgment of 20/01/2011, application No. 891/05). See also *Kuttner v. Austria* (judgment of 16/07/2015, application No.7997/08) which concerns the seizure of the non-pecuniary damages (with default interest) for the settlement of the fees of the applicant's former attorney (action report DH-DD(2018)635).

[162] See CM decision in *Fatullayev v. Azerbaijan* (1108th CM-DH meeting, 8-10 March 2011); see also CM decision in *Mahmudov and Agazade v. Azerbaijan* (judgment of 18/12/2008, application No. 35877/04, 1128th CM-DH meeting, November-December 2011); *Ostroveņecs v. Latvia* (judgment of 05/10/2017, application No. 36043/13), Resolution CM/ResDH(2020)189, *Khodorkovskiy and*

127. However, in cases where just satisfaction awarded by the Court covers jointly pecuniary and non-pecuniary damages, the Committee examines the situation to ensure that the amounts are not unduly seized or that unduly seized amounts are reimbursed.

128. It should be noted that the Committee has accepted the attachment where the applicants themselves proposed that the amount of just satisfaction be set off against the claims of the state towards them,[163] or they have withdrawn their claims.[164]

c) Attachment of sums awarded for costs and expenses

- Debts to private individuals

129. As indicated above, the practice followed by the Committee and by States has in principle laid down no restrictions on attachment, for the benefit of private individuals, of the sums awarded as just satisfaction.

130. Certain respondent states have, however, agreed to protect the just satisfaction awarded in respect of costs and expenses against attachment, to ensure that counsel receives his or her remuneration, as this has been perceived as a means of maintaining the effectiveness of the right of individual petition (see also below). For example, in *Jedamski and Jedamska v. Poland* (application No. 73547/01, judgment of 26/07/2005), where attachment was sought to cover debts of *bona fide* third parties, but the sum awarded in respect of costs and expenses, in contrast, was exempted from attachment in order to secure the payment of the applicants' legal counsel.

- Debts to the state

131. Questions of attachment of just satisfaction awarded in respect of costs and expenses also emerge in the light of the Court's above-mentioned conclusions in the *Selmouni* and *Velikova* cases and the consequences which such attachment could have for the ability of certain applicants – indebted to the state – to obtain legal assistance in lodging and pursuing complaints to the Court.

132. The Committee of Ministers' practice to date indicates that care has to be taken to ensure in one way or another that the applicant's legal representatives are indeed paid the costs and expenses awarded by the Court:

- Some states have refrained from seizing the just satisfaction awarded for costs and expenses in order to ensure that the applicant's counsel is paid;[165]

- Where attachment has been allowed, the applicant's counsel has in fact already been paid through a special arrangement.[166]

133. Some cases have raised no problem as the attachment was accepted by the applicants or their legal representatives.[167]

Lebedev v Russia (judgment of 23/07/2013, application Nos. 11082/06 and 11772/05 (1280th CM DH meeting, 7-10 March 2017, CM/Del/Dec(2017)1280/H46-25)

[163] See for example *Plut and Bičanič-Plut v. Slovenia* (application No.7709/06), CM/ResDH(2016)354.

[164] See *Taggatidis and Others* (judgment of 11/10/2011, application No. 2889/09), *Samaras and Others* (judgment of 28/02/2012, application No.11463/09), *Tzamalis and Others* (judgment of 04/12/2012, application No.15894/09) *v. Greece,* cases closed after the applicants withdrew their claims concerning attachments by the state and the adoption of the aforementioned Law 4370/2016 (Article 60§9) proscribing the setting-off of the amounts awarded by the Court as just satisfaction in respect of non-pecuniary damage

[165] See for example *Selmouni v. France*, judgment (cited above), §133. See also *Ververgaert v. the Netherlands* (judgment of 08/06/1998, application No. 26788/95), Final Resolution DH (2000)7: by virtue of its authority under the former Article 32, the Committee of Ministers ordered the payment to the applicant of sums for non-pecuniary damage and for costs and expenses. The applicant owed money to the State. The State seized the just satisfaction in respect of non-pecuniary damage (prior to the *Selmouni and Velikova* judgments) but not that in respect of costs and expenses, which it paid directly to the applicant's counsel. In *Klein v. Austria* (cited above), the sum awarded for just satisfaction was paid directly to the insolvency administrator except for the sum awarded by the Court in respect of costs and expenses, which was paid to the applicant's (former) legal representative (with the written consent of the applicant), see action report DH-DD(2016)821.

[166] *Janosevic v. Sweden*: (cited above), *cf*. document DD(2004)78, issued on 10/02/2004). Part of the sums awarded in respect of costs and expenses was seized by the State, in compensation for the applicant's tax debts, separate from those at issue in the proceedings before the European Court. However, the lawyer claimed that his costs had already been paid by means of an advance from an association (the Taxpayers' Association, "*Skattebetalarnas förening"*), which the applicant was nevertheless required to reimburse by paying the amount awarded by the Court for costs and expenses. The Government, however, maintained that this allegation was unproven, and this was accepted by the Committee of Ministers.

[167] See *Papon v. France* (judgment of 25/07/2002, application No. 54210/00) where one of the applicant's lawyers complained of the attachment of the sums awarded for costs and expenses. However, this attachment had in fact taken place at the request of the applicant himself – the beneficiary of the just satisfaction award, through the intermediary of another lawyer, in order to offset tax debts which were unconnected with the proceedings before the European Court. See also the *Nakach v. the Netherlands* case (judgment of 30/06/2005, application No. 5379/02), where the government agent informed the applicant's counsel that the state wished to seize the

134. The Court has also in some cases accepted requests made by applicants to award just satisfaction for costs and expenses directly to the lawyer.[168] It should, however, be noted that this solution is realistic only if the debts claimed by the respondent State were foreseeable at the time when matters relating to just satisfaction were being discussed before the Court.

135. In the light of the above, it would appear, in the interests of the efficiency of the just satisfaction system as one of the means to ensure the effectiveness of the right of individual petition under Article 34 of the Convention, to be good practice on the part of the States to refrain from seizing just satisfaction awarded in respect of costs and expenses to cover debts to the State where the applicant's representatives have not been paid.

136. Cooperation with member States is essential especially when the seizure takes place as a result of the debts other than those of the beneficiary of the just satisfaction.[169]

137. Lastly, as regards *friendly settlements*, at the moment the Committee's practice is scarce. Whereas on some occasions attachments of the compensation awarded to the applicants in the context of friendly settlements have been accepted,[170] on other occasions such attachments have proven to be problematic, and the respondent State was required to re-pay to the applicant the seized amount. As the Committee's relevant practice is currently evolving, such attachments can be unequivocally accepted only if the applicants have expressly consented thereto. On all other occasions, it would appear to be a good practice on the part of the states to proceed with caution when considering seizing compensations awarded in the context of friendly settlements.

6.2 Taxation

138. In cases where the Court has been seized with questions concerning taxation of just satisfaction, it has frequently dealt with the matter itself in the judgment.[171]

139. Various incidents concerning the levying of taxes and stamp duty as a mere result of the payment by the state of just satisfaction led a number of countries, from the year 2000 onwards, to ask the Court to specify in all cases that the sums awarded were net of any tax.

140. In response, with effect from 2001,[172] the Court, started, more and more frequently, to indicate in its judgments by means of a "global formula" that, where necessary, "any tax which may be chargeable" should be added to the just satisfaction.[173]

141. Today this general indication is used in the vast majority of judgments (in principle, in the operative part). There would appear to be a two-fold aim to this practice: firstly, to avoid interfering in the application of national tax regulations; and secondly, to ensure that the applicant obtains the real value of the just satisfaction awarded. It can be noted that this practice did not affect the fact that it can be necessary for the Court, when defining the amount of just satisfaction, to examine questions of taxation.[174]

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sum awarded for costs and expenses to pay for debts owed to the state, established by a court decision unconnected with the violation of the Convention at issue in the case in question; the lawyer raised no objection. See also *Trabelsi v Belgium* (application No. 140/10), where the attachment concerned only half of the amount awarded by the Court for costs and expenses, with the consent of the applicant's representative, while the full amount of non-pecuniary damages was paid to the applicant.

[168] See, for example, *Ipek v. Turkey* (judgment of 17/02/2004, application No. 25760/94).

[169] See e.g. *Rahmani and Dineva v. Bulgaria* (judgment of 10/05/2012, application No. 20116/08), action report DH-DD(2016)338 and CM/ResDH(2016)54; the attachment was transferred to the account of the applicant's wife because of her debts but it was lifted successfully.

[170] See e.g. *Streltsov v. Estonia* (application No. 25662/10); *Mankevičius and Others v. Lithuania* (application No.64469/13); *Gibronas and Others v. Lithuania* (application No. 56836/14).

[171] It can be noted that such problems did normally not appear concerning the just satisfaction for non-pecuniary damage, as it is usually not taxable.

[172] See, for example, among others, *Rabia Calkan v. Turkey* (judgment of 05/06/2001, application No.19662/92); *Mikulić v. Croatia (*judgment of 07/02/2002, application No.53176/99); *Goc v. Poland* (judgment of 16/04/2002, application No.48001/99); and *Prokopovich v. Russia* (judgment of 18/11/2004, application No.58255/00).

[173] Some governments contributed to this development by incorporating a similar commitment in the friendly settlements to which they were a party: see, for example, the friendly settlements concluded in the *A.S. v. Turkey* case (judgment of 28 March 2002, application No. 27694/95) and the *Özdiler v. Turkey case* (judgment of 27/06/2002, application No. 33419/96), where the Government stipulated that the agreed sum would be subject to no tax or other duty at the relevant time.

[174] In which case, the Court examines taxation issues in the statement of reasons, and generally awards a net sum "plus any tax that may be chargeable." See, for example: *Prodan v. Moldova*, judgment of 18/05/2004, application no. 49806/99 (*cf*. §74 and operative part); *Hirschhorn v. Romania*, judgment of 26/07/2007, application No. 29294/02 (*cf*. §119 and operative part); *Radanović v. Croatia*, judgment of 21/12/2006, application No. 9056/02 (*cf*. §65 and operative part); *Kirilova and others v. Bulgaria* (Article 41), judgment of 14/06/2007, application No. 42908/98+ (*cf.* §31 and operative part); *Bakhshiyev and Others v. Azerbaijan*, judgment of 03/05/2012, application No. 51920/09 (*cf*. §26 and operative part).

142. Notwithstanding the use of the "global formula", the Court still addresses separately, in many judgments, questions concerning the VAT due for the costs and expenses, either in the reasoning or in the operative provisions.[175]

143. The question has thus been raised whether, in cases where the judgment does not provide any indication as to whether VAT is included or not in the award for costs and expenses, the use of the "global formula" entails automatically an obligation to pay the applicant, in addition, the VAT which could be due on the sums awarded for costs and expenses. Experience in the execution of these judgments has shown that in most cases no additional VAT is paid, nor claimed. The usual interpretation of these judgments is therefore that VAT is included in the amount awarded for costs and expenses.[176] Moreover, today, most national legislations compel lawyers and other experts to include VAT in bills submitted to clients. Applicants who request reimbursement of costs and expenses are thus expected to claim the full amount of bills issued. The exception is where there is an express indication in the judgment of the Court to the effect that the tax is not included in the sum awarded, or where otherwise this is clear from the judgment ("exclusive of VAT", "together with any VAT which may be chargeable", for example).[177] Hence, as a principle, the "global formula" ("plus any tax chargeable on this amount") relates in principle not to VAT but to unknown taxes or not claimed before the Court during the procedure.[178]

144. The Court's practice of resorting, in principle, to the "global formula" appears to shift the whole range of questions that may arise from taxation issues to the execution stage.

145. Recent experience shows that this practice can raise many taxation issues, especially where the tax imposed is not based on a flat rate on gross sums (such as VAT), but it depends on global income, the calculation of which can imply complex questions related to possible deductions and to the period concerned. One important practical question relates to the duty to pay within three months. Many taxation issues will not be resolved within that deadline. It is possible that such issues will only be resolved several years after the Court's judgment (after the expiry of the time limit for requesting an interpretation or review of the judgment). In such situations it may be difficult, even impossible, for the state to comply with the three-month deadline. A practical solution in cases where the state levying the tax is the respondent State could be for the state to waive from the outset its right to levy the taxes in question.[179] A similar practice may be applied *mutatis mutantis* for friendly settlements and unilateral declarations.[180]

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[175] In certain cases, the VAT question is clearly the only tax matter which might arise (in particular where the Court has awarded a sum either solely for costs and expenses or for costs and expenses plus non-pecuniary damage, the latter award in principle not being taxable under domestic legislation). Here, the Court does on occasion only refer to the VAT question and does not include in addition the redundant "global formula"; in these cases, the Court sometimes deals with the VAT in the reasoning of the judgment (see, for example *Folgerø and Others v. Norway*, judgment of 29/06/2007, application No. 15472/02; *Janosevic v. Sweden*, cited above), or sometimes directly in the operative provisions (e.g. *Rachdad v. France*, judgment of 13/11/2003, application No. 71846/01; *Kroliczek v. France*, judgment of 02/07/2002, application No. 43969/98). In other types of cases, where there may be other taxes in question, the Court may still deal with the VAT issue separately and use the "global formula" for any other taxes (cf, for example, *Vilho Eskelinen and Others v. Finland*, judgment of 19/04/2007, application No. 63235/00; *Scordino v. Italy (No 3)*, judgment of 06/03/2007 – just satisfaction, application No. 43662/98; *Zentar v. France*, judgment of 13/04/2006, application No. 17902/02; *Akbay and Others v. Germany*, judgment of 15/10/2020, application No. 40495/15).

[176] See, for example, *Klemeco Nord AB v. Sweden*, judgment of 19/12/2006, application No. 73841/01: no reference is made to VAT in the judgment, only the global formula is used; no VAT was paid in addition to the sums awarded, it being considered that this was included therein. The same approach was followed, amongst others, in *Tzekov v. Bulgaria* judgment of 23/02/2006, application No. 45500/99; *Związek Nauczycielstwa Polskiego v. Poland* (judgment of 21/09/2004; *Matheron v. France* judgment of 29/03/2005, application No. 57752/00; *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, judgment of 12/10/2006, application No. 13178/03; *Alliance Capital (Luxembourg) S.A. v. Luxembourg* judgment of 18/01/2007, application No. 24720/03; *Hoffer and Annen v. Germany*, judgment of 13/01/2011, application Nos. 397/07 and 2322/07. See also the *Xenides-Arestis* (Article 41) *v. Turkey* judgment of 22 December 2005 - memorandum CM/Inf/DH(2007)19 and the decision adopted by the Ministers' Deputies at the 1007th meeting, October 2007, document CM/Del/Dec(2007)1007-final of 19/10/2007.

[177] *McKerr v. United Kingdom*, judgment of 04/05/2001, application No. 28883/95; *Luberti v. Italy*, judgment of 23/02/1984, application No. 9019/80; *Halford v. United Kingdom*, judgment of 25/06/1997, application No. 20605/92; *Jokela v. Finland*, judgment of 21/05/2002, application No. 28856/95; *Telegraaf Media Nederland Landelijke Media B.V. and Others v. the Netherlands,* judgment of 22/11/2012, application No. 39315/06).

[178] See Memorandum CM/Inf/DH(2007)19 prepared by the Secretariat on this issue in the framework of the *Xenides-Arestis* case cited above).

[179] See, for example, the issues raised in the *Société de Gestion du Port de Campoloro et société fermière de Campoloro v. France* case, judgment of 26/09/2006, application No. 57516/00. The Court ordered the respondent State to pay the applicants the compensation due to them for failure to enforce the domestic judgments at issue in the case, plus any other tax due on the sums in question. The practical solution was not to subject the said sums to tax, for reasons of simplification (insofar as the State would have been obliged to reimburse the taxes levied) and in pursuance of the principle whereby under French law damages awarded by a court are not liable to tax.

[180] Problems raised with respect to friendly settlements: the respondent State fulfilled its obligation to pay the sums within the three months from the date of notification of the decision, as provided for in the friendly settlement. However, the compensation received by the applicant company contributed to the determination of taxable income. The applicant company thus claimed the payment of additional amounts. The respondent State informed the Committee of Ministers that relevant measures are under consideration to exempt the taxation of sums awarded by the Court on friendly settlements and unilateral declarations (*Pratolungo Immobiliare S.R.L. v. Italy* (application No. 2460/05). See also *Societa Edilizia Immobiliare Bragadin S.r.l., v. Italy* (application No. 2463/05), DH-DD(2017)749, cases still pending.

146. Although this scenario does not appear to have arisen so far, this practice would also make it difficult to resolve the problems that could potentially be raised in cases where the Court awards global amounts of just satisfaction in cases of joined applications, as it would be difficult to define the sums which should be subjected to taxation.

6.3 Taxes and/or costs owed to other States

147. Where the State levying the tax is not the respondent State, the situation may be more complex.[181] The complexity increases when a State imposes taxation on the tax that has been paid by the respondent State. In order to avoid such problems, the member States are encouraged to refrain from applying their tax legislation in respect of sums received by an applicant for the sake of reimbursement of taxes paid on the just satisfaction awarded by the European Court in a judgment against another State[182]. This approach may simplify the procedure of execution on reimbursement of tax owed on just satisfaction in a member State other than the respondent State.[183] By contrast, this approach cannot be imposed to States who are not Council of Europe members, as this approach may have unfair consequences for the applicant. Hence, in this case, adopting another approach may be more reasonable.[184]

6.4 Commission and other payment fees

148. The unconditional obligation to pay the sums awarded by the Court has consistently been interpreted as meaning that the applicant must receive the whole amount of the said sums. Accordingly, it is for the respondent state to bear the cost of all associated fees, including transfer fees, in principle to the applicant's place of residence or up to the point where the money is credited to his or her bank account.[185]

149. In the light of the general principles outlined above, an exception could be made in cases where the applicant himself or herself requests an exception to the payment terms contained in the judgment (*cf*. 4.1.3, above).

[181] See for example, *Sovtransavto v. Ukraine* (judgments of 25/07/2002 and 02/10/2003 - just satisfaction, application No.48553/99). The applicant company complained that the sums awarded as just satisfaction would be taxed at 24% in Russia, the country in which its headquarters were located. In accordance with the Court's global formula "plus any tax that may be chargeable", in this case the respondent State paid an additional amount corresponding to the tax the company would have to pay in Russia. Other cases raising this kind of questions are *Bartik v. Russian Federation* (judgment of 21/12/2006, application No.55565/00) and *Zlinsat, spolt. S.r.o. v. Bulgaria* (judgment of 15/06/2006, and 10/01/2008 – just satisfaction, application No.57785/00). Another possible solution, in line with that outlined in the preceding footnote, would be for the authorities of the respondent State to conclude a special agreement with the authorities of the taxing State to ensure that the sums paid will be exempt from taxation.

[182] It might also be necessary for applicants to use domestic remedies to challenge a taxation of the reimbursement of taxes, to try to safeguard the value of the just satisfaction. See e.g. *Zlinsat, spolt. S.r.o. v. Bulgaria*, cited above, Resolution CM/ResDH(2019)337: "*Having noted that the applicant company did not challenge before the relevant courts and administrative authorities the taxation by the Czech authorities of the sum paid by the Bulgarian authorities as reimbursement of taxes on just satisfaction and considering, therefore, that no further measures are necessary to safeguard the value of the just satisfaction awarded by the European Court*;"

[183] The problem has arisen in *Zlinsat, spolt. S.r.o. v. Bulgaria* (cited above). The European Court awarded the respondent State to pay the applicant EUR 361,500 "plus any tax that may be chargeable on this amount". The applicant company asked for the payment of additional sums in respect to corporate income tax in the amount of 21% in Czech Republic. The respondent State paid the applicant company EUR 75,915, equal to 21% of 361 500 euros. The applicant company stated that they have not received the full amount, because it has been taxed again and they contested the calculation of the taxation.

[184] See *Zlinsat v. Bulgaria* (cited above). One possibility is to perform the so-called "grossing up" calculation: The tax is calculated on the basis of the after-tax amount (i.e the remaining amount after the taxation is imposed), which is to be paid to the applicant. If the tax imposed is based on a flat rate, this may be applicable. On the contrary, where the tax imposed is not based on a flat rate, such calculation may be complex.

[185] For an example as to who bears the transfer costs of the amount see e.g. *Dreyer v. "the Former Yougoslav Republic of Macedonia"* (judgment of 19/07/2011, application No. 2040/04), where the amount was transferred to Germany, the applicant's residence.