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The Parliamentary Assembly of the Council of Europe Monitoring on the Implementation of the European Court of Human Rights Judgments

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ABSTRACT: The European Convention on Human Rights (ECHR) is the most important international treaty to protect fundamental Human Rights and Freedoms at European level. The Convention was adopted on November 4, 1950 in Rome by the governments of the member states at that time of the Council of Europe. Currently all 47 members of the Council of Europe, international European organization founded in 1949 in Strasbourg, France, are party to the Convention. The implementation of the European Court of Human Rights (ECtHR) judgments is supervised by the Council of Europe Committee of Ministers (CM), according to article 46 para 2 of the ECHR. Beyond the primary responsibility of the CM in this field, the Parliamentary Assembly of the Council of Europe (PACE) increased significantly its contribution to this process during the past 10-15 years. Its 10th report on the implementation of ECtHR judgments focuses on a number of member states and cases pending before the CM still to be implemented, that reveals structural problems, complex and difficult issues related for instance to inter-State cases or individual cases displaying inter-State features reflecting particular difficulties for the execution process, sometimes for already more than 10 years after the Court's judgments. The PACE report addresses therefore a number of specific requests and recommendations to the member states and the CM for supporting an accelerated process for the full implementation of these judgments.

KEYWORDS: Parliamentary Assembly, Council of Europe, European Convention on Human Rights, Court, judgments, execution, structural problems

1. Introduction

The protection of Human Rights and Freedoms became increasingly significant in the aftermath of World War II. It was under these auspices that the United Nations General Assembly adopted, on December 10, 1948, The Universal Declaration of Human Rights (UDHR). It is worth noting that this is a political Declaration, hence not legally binding. The contents of the UDHR, however, have been elaborated and incorporated into subsequent international treaties, such as The European Convention on Human Rights (ECHR) (Corlățean 2015, 27-28).

ECHR is the most important international treaty to protect fundamental Human Rights and Freedoms at European level (Alston and Goodman 2013, 891). The Convention was adopted on November 4, 1950 in Rome by the governments of the member states at that time of the Council of Europe. Currently all 47 members of the Council of Europe, European organization established in 1949 in Strasbourg (France) are party to the Convention.

The ECHR lays down a mechanism for *"reviewing compliance to the provisions of the Convention and its protocols"* (Schmahl and Breuer 2017, 501). Thus, it is not enough that State Parties observe and uphold the Convention, a judicial body has been designed and empowered to find violation of it in final judgments, according to art.46 para 1 (Ibidem, pp. 501-502). Moreover, according to art.46 para 2 of the ECHR, the implementation of the European Court of Human Rights (ECtHR) judgments is supervised by the Council of Europe Committee of Ministers (CM), which is *"a political body, the executive organ of the Council of Europe, and consists of the Foreign Ministers, or their deputies, of all the member states"*

(Shaw 2008, 359; Radu 2018, 14). The supervision of execution of judgments mechanism enforced by the CM refers to the control on the individual or general measures taken by the condemned stated in fulfilling its obligations for the execution of the ECtHR decision (de Schutter 2014, p. 990).

Beyond the primary responsibility of the CM in this field, the Parliamentary Assembly of the Council of Europe (PACE) has been significantly increasing its contribution to this process during the past 10-15 years (White and Ovey 2014, 62-63). Its 10th report on the implementation of ECtHR judgments focuses on a number of member states and cases pending before the CM, still to be implemented, revealing structural problems, complex and difficult issues related - *inter alia* - to inter-State cases or individual cases displaying inter-State features reflecting particular delays in enforcement, at times for over 10 years after the Court's judgments have been issued.

2. The implementation of judgments of the European Court of Human Rights

Its 10th report on the implementation of ECtHR judgments was adopted by the plenary of PACE on 26 January 2021 (Doc. 15123/ 15 July 2020; pace.coe.int). The report highlighted the fact that there is a constant progress on the implementation of the Court judgments, especially a constant reduction in the number of judgments pending before the Committee of Ministers (Idem p. 3, see also Resolution 2358, 2021, p.1). This was made possible by the implementation of Protocol No. 14, which entered into force on June 1, 2010 and made it possible *"for a single judge, assisted by the rapporteurs who are members of the Court`s registry, to declare cases inadmissible if the applicant has not suffered a significant disadvantage, unless respect for human rights (...)"* (de Shutter 2014, 989). Before Protocol No.14 has been implemented, there were over 10.000 judgments pending the Committee of Ministers; at the end of 2019 only 5231 cases were recorded (Report no. 15123, p. 3).

Although the number of judgements pending before CM has decreased, the report mentioned that this is not the case for the judgments revealing structural problems pending before the Committee of Ministers for more than five years. Russian Federation, Turkey, Ukraine, Romania, Hungary, Italy, Greece, the Republic of Moldova, Azerbaijan and Bulgaria have the highest number of non-implemented Court judgments and still face serious structural or complex problems, some of which have not been resolved for over ten years (Ibidem). On February 29, 2020 over two thirds of the applications pending before the Court came from four member states: Russian Federation *(25,2%)*, Turkey *(15,7%)*, Ukraine *(15,1%)* and Romania *(13%)* (Ibidem, p. 9).

3. Specific challenges for the execution of Court judgments

It is worth noting that the inter-State cases are *par excellence* the most difficult ones, given the political and national interests at stake, these are cases regarding unresolved conflicts, post-conflict situations or displaying other inter-State features. The PACE report makes reference also to other problematic cases, the so called "pockets of resistance" affairs. Of seven such cases or groups of cases, mentioned in the previous PACE report from 2017, only the Hirst (No 2) v. United Kingdom case, concerning the blanket ban on voting by prisoners, was closed by the CM on December 4-6, 2018 (Ibidem). Several cases have been selected to illustrate the specific problems facing the implementation of Court judgements.

3.1 Ilgar Mammadov v. Azerbaijan and similar cases concerning politically-motivated persecutions

Azerbaijan seems to deal with a systemic problem concerning certain politically motivated cases and political prisoners, as stressed by the Assembly on its Resolution 2322 (2020). For that

matter, the case of Ilgar Mammadov is emblematic for the inadequate execution of the ECtHR by Azerbaijani authorities.

The case of Ilgar Mammadov was first examined by the CM on December 4, 2014 when the Committee asked the Azerbaijani authorities to release the applicant as soon as possible, as ECtHR held that the applicant's detention was politically motivated. Mr. Mammadov was conditionally released on August 13, 2018. The Grand Chamber of the Court, in its judgment of May 29, 2019, following an appeal launched by the CM, that made use for the first time the infringement procedure established by Protocol No. 14 to the ECHR (Corlățean 2015, 113), held that Azeri State had not acted in a way that would make practical and effective the protection of the Convention rights which the Court found to have been violated in that judgment (Report no. 15123, p. 10).

Thus, the CM is now examining this case along with a group of other cases concerning civil society activists and human rights defenders who have been subjected to criminal proceedings which the Court found to constitute a misuse of criminal law, intended to punish and silence such activists. The Court found that Azerbaijani authorities have used arbitrary arrest and detention of government critics, civil society activists and human rights defenders. The CM highlighted that the negative consequences of the criminal charges brought against each of the applicants were not quashed and they were unable to resume their former professional and political activities; in particular MM. Mammadov, Jafarov and Aliyev could not present themselves as candidates in the parliamentary elections. Moreover, the CM is awaiting confirmation of payments of just satisfaction in cases other than Ilgar Mammadov (Ibidem, pp.10-11).

The Supreme Court of Azerbaijan acquitted MM. Ilgar Mammadov and Rasul Jafarov on April 23, 2020. The CM welcomed the decision and decided to close the supervision of the cases in respect of these two applicants, adopting the Final Resolution CM/ResDH(2020)178 (Addendum to the Report no. 1512*,* Doc. 15123, 26 Nov. 2020, p. 3, pace.coe.int).

There are six more applicants for whom the Council of Europe Secretary General has asked the authorities to restore their rights.

3.2 Catan and Others v. Moldova and Russia and Bobeico and Others v. the Republic of Moldova and Russia

In the view of CM, the right to education, as fundamental human right (Protocol to the Convention for the protection of Human Rights and Fundamental Freedoms 2020, echr.coe.int), was violated in the Transnistrian part of the Republic of Moldova for 170 children from Latin-script schools located in that region. It is important to stress that even though the Court found no evidence of direct participation of Russian agents in the measures taken against the applicants, nor of Russian involvement in the language-related policies in general, the Russian Federation incurred responsibility under the Convention for the violation in question (Report no. 15123, p. 16).

The Court found that the right of children to learn in their native language (Romanian language) and with Latin-script texts was again violated in Transnistria, according to another judgment issued in 2018 - Bobeico and Others v. the Republic of Moldova and Russia.

The Russian authorities stated that they have no responsibility for violations occurring in the territory of another State. In fact, because of the Russian authorities' position, the execution of the Court judgment is blocked and the payment of the non-pecuniary damages and the legal costs and expenses have not been not paid (Ibidem, p. 17).

In its most recent examination of this case the CM disputed the arguments of Russian authorities and asked its Secretariat to prepare a draft *interim* resolution *(which would be the fourth in this case)*, eventually adopted by the CM during the September 2020 meeting (Addendum to the Report, p. 4).

Such a case is relevant for its inter-State features, as the Republic of Moldova has little to no authority in the Transnistrian region following the 1992 Transnistrian War. In the aftermath of the conflict, the Russian 14th Army moved to the Transnistrian region as *"peacekeeping force"*, and have been controlling the region ever since. It is under these circumstances that the Court found the responsibility of the Russian authorities to enforce its decision.

3.3 OAO Neftyanaya Kompaniya YUKOS v. Russia: the increasing legal and political difficulties surrounding the implementation of the judgment on just satisfaction

Over a quarter of the applications pending before the Court originate in the Russian Federation. The report indicated multiple legal and political difficulties surrounding the implementation of the judgments against the Russian Federation.

The execution of the judgements became more difficult following the amendments to the Constitution of the Russian Federation, particularly the amendment adding to Article 79: *"Decisions of interstate bodies adopted on the basis of the provisions of international treaties are not enforceable in the Russian Federation if they contradict the Constitution."*(Ibidem, p. 2).

Regarding the amendments to the Constitution, the Venice Commission concluded that *"There is no choice whether or not to execute a judgment of the European Court of Human Rights: under Article 46 of the Convention, judgments of the Court are binding and the legal obligation to implement them can even require changes in a State's constitution."* (Ibidem, p. 3).

In the case of OAO Neftyanaya Kompaniya YUKOS, the Court allocated a total amount of nearly 1.9 billion euros to the shareholders of the applicant company, but on January 19, 2017, the Russian Constitutional Court delivered a judgment concluding that it was impossible to implement the Court's judgment on just satisfaction without contravening the Russian Constitution. The Russian authorities paid 300.000 euros to the Yukos International Foundation as costs and legal expenses on December 2017, yet omitting the interest owed (Report no. 15123, p. 15).

The Committee of Ministers adopted Interim Resolution CM/ResDH(2020)204, in which it *"strongly regretted"* that the comprehensive plan for the distribution of the just satisfaction award in respect of pecuniary damage required by the Court was still awaited and that the payment of just satisfaction in this respect was still pending (Addendum to the Report, p. 4).

3.4 The implementation of judgments against Romania

One of the outstanding problems regarding the implementation of judgments against Romania is the overcrowding and poor conditions in detention centers.

Before that, it is important to be mentioned that the previous systemic or structural problem sanctioned repeatedly after 1998 by the ECtHR in the case of Romania, that means the need for an appropriate national legislation and mechanism for just compensation following the procedures related to nationalized properties during the communist period, was solved in the end through a new legislation, the Law 165/ 2013 (Corlățean 2015, 234).

The 10th PACE report on the implementation of ECtHR judgments highlighted that even though the conditions of detentions in Romania are a longstanding structural problem, a *"significant progress"* has already been achieved, in particular in reducing overcrowding.

The Committee of Ministers called into question some of the measures adopted by the Parliament: *"Concerning the issue of effective remedy, in December 2019 and March 2020, the Committee of Ministers regretted the abolition of the compensatory mechanism in the form of reduction of sentences without providing alternative Convention-compliant remedies, which had resulted from a decision of the parliament of 4 December 2019; it stressed that this measure would imply a risk of a new massive influx of repetitive applications before the*

Court, which would pose threat to the effectiveness of the Convention system" (Report no. 15123, p. 22).

Despite having been stressed by the CM that the Romanian authorities have to put forward a plan to mitigate such situations and create effective domestic remedies with compensatory effect pending the adoption of the necessary reforms, an institutional feedback on behalf of the Romanian authorities is yet to be delivered.

3.5 Inter-State cases: Cyprus v. Turkey and Georgia v. Russia

Although the inter-State cases reflect particular difficulties in the enforcement process, it is worth noting that some progress has been achieved, especially in the case of Cyprus v. Turkey. In its 2001 judgment, the Court found multiple violations of the Convention in connection with the situation in the northern part of Cyprus, that is under effective control of Turkey since the 1974 military intervention in Cyprus (Ibidem, p. 17).

The Turkish authorities have remedied a number of violations, but two issues remain unsolved: Greek-Cypriot missing persons and the property rights of displaced Greek Cypriots and of those enclaved in the northern part of Cyprus.

Regarding the first problem, the Turkish authorities granted access to 30 additional sites in military areas in the northern part of Cyprus and assisted the Committee on Missing Persons in Cyprus in its activities by facilitating its exhumation activities, contributing financially to its work and submitting information on possible burial sites. The CM welcomed the assistance provided by the Turkish authorities but stressed that further work needs to be done (Ibidem, p. 18).

Regarding the second problem, the Committee of Ministers decided to close the examination of the issue of the property rights of Greek Cypriots living in the northern part of Cyprus and their heirs (Addendum to the Report, p. 4).

The problem of just satisfaction awarded by the Court in its judgment of May 12, 2014 is still pending. According to the judgment, Turkey has to pay to Cyprus €30 000 000 for non-pecuniary damage suffered by the relatives of the missing persons and €60 000 000 for non-pecuniary damage suffered by the enclaved Greek-Cypriot residents of the Karpas peninsula (Report no. 15123, p. 18). To this day, the Turkish authorities have not yet paid the just satisfaction awarded to the applicants by the Court.

In the case of Georgia v Russia, little progress, if any, was made. This case is about 1500 Georgian nationals who were arrested, detained and expelled from the Russian Federation from the end of September 2006 until the end of January 2007, amidst political tension between the two countries. The Court held that the Russian Federation was to pay the Government of Georgia 10 000 000 euros in respect of non-pecuniary damage suffered by the Georgian nationals involved (Ibidem, p. 19).

The CM stressed that the deadline for the payment expired on 30 April 2019 and urged the Russian authorities to pay the just satisfaction directly to the Georgian government or to commit to using the Council of Europe as an intermediary for that payment (Addendum to the Report no.15123, 2020, p. 5).

4. Conclusions and recommendations

The 10th report on the implementation of ECtHR judgments noted that there was a real progress in the reduction of the cases pending before the Committee of Ministers after the high-level Conference in Interlaken on the future of ECtHR (2010) and commended the impact of Protocol No.14 to the Convention, specifically by reducing the number of cases from over 10.000 to 5 231 at the end of 2019.

The report also stressed that, regarding to the execution of the judgments, there are still structural problems, complex and difficult issues related for instance to inter-State cases or

individual cases displaying inter-State features. With regard to the enforcement of the Court judgments delays of over 10 years have been registered. For that matter, the Assembly issued a series of recommendations to the Committee of Ministers, including the use of interim resolution or the use of procedures provided for in Article 46, paragraphs 3 to 5, of the Convention, in the event of implementation of a judgment encountering strong resistance from the respondent State (Recommendation 2193, 2021).

It also recommended to the Committee of Ministers to prioritize leading cases pending for over five years and regularly inform the Assembly about judgments of the Court whose implementation reveals complex or structural problems and requires legislative action (Ibidem).

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