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EXECUTION OF JUDGMENTS OF THE EUROPEAN COURT OF HUMAN RIGHTS – INTRODUCTION

One of the key articles of the European Convention for the Protection of Human Rights and Fundamental Freedoms is Article 46 which provides that

"The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.

The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution."

A unique and effective mechanism

The European Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") is the concrete expression at European level of a collective guarantee for some of the rights set out in the Universal Declaration of Human Rights of 10 December 1948.

This collective guarantee is based not only on the contracting parties' resolve to uphold a number of universal values but also on their common interest in safeguarding democratic security throughout Europe and securing the foundations of an ever closer union among European states.

The Convention is designed to ensure that states respect human rights, the rule of law and the principles of pluralist democracy. Acceptance of the Convention, as well as the compulsory jurisdiction of the Court and the binding nature of its judgments, has become a requirement for membership of the organisation (Resolution DH(2001)80). The Convention is now also an integral part of member states' domestic legal systems. Although the question of European Union accession to the system of protection established by the Council of Europe remains open, the EU also ensures that the Convention is observed.

From a practical standpoint, much of the Convention's success is due to its well-developed monitoring machinery, which has made it possible, in practice, effectively to safeguard the rights and freedoms enshrined in it.

The Convention machinery is currently based on two institutions:

- European Court of Human Rights (“the Court”), an international court that delivers binding judgments on applications from individuals and states alleging violations of the Convention,
- the Committee of Ministers, the main political body of the Council of Europe, to which the Convention assigns the specific and very precise responsibility of supervising the execution of the Court’s judgments.

The execution of the Court’s judgments is an aspect of the Convention system about which the public still knows very little but which is obviously of prime importance. The Convention is now one of the keystones of the European political framework precisely because the execution of each individual judgment in which a state is found to have violated the Convention is closely and systematically monitored by the other states through their representation in the Committee of Ministers.

Obligation to comply with judgments

Under Article 46 § 1 of the Convention, states “undertake to abide by the final judgment of the Court in any case to which they are parties”. This undertaking entails precise obligations for respondent states. On the one hand they must take measures in favour of the applicants to put an end to violations and, as far as possible, erase their consequences (*restitutio in integrum*), and, on the other hand, they must take the measures needed to prevent new, similar violations.

A first obligation is therefore the payment of just satisfaction (normally a sum of money), which the Court may award the applicant under Article 41 of the Convention and which covers, as appropriate, pecuniary and non-pecuniary damage and/or costs and expenses. The payment of such compensation is a strict obligation which is clearly defined in the judgment.

However, the adverse consequences of the violation suffered by an injured party are not always adequately remedied by the payment of just satisfaction. Depending on the circumstances, the execution of the judgment may also require the respondent state to take individual measures in favour of the applicant, such as the re-opening of unfair proceedings, the destruction of information gathered in breach of the right to privacy or the revocation of a deportation order issued despite the risk of inhumane treatment in the country of destination. It may also require general measures – such as a review of legislation, rules and regulations or judicial practice - to prevent new, similar violations. There are many examples of such obligations imposed by the Court and the Committee of Ministers (see, for example, the judgment of the Court in the case of [Scozzari and Giunta](#) and Resolutions DH(99)245 in the *Socialist Party and Others against Turkey* case and DH(99)434 concerning the activities of the security forces in Turkey, as well as the Rules for the application of Article 46 § 2 adopted by the Committee of Ministers).

Indeed, under the Convention, states have considerable freedom in the choice of the individual and general measures they take to meet these requirements. However, this freedom goes hand in hand with the monitoring by the Committee of Ministers (assisted by the Department for the execution of judgments), which ensures that the measures taken are appropriate and actually achieve the outcome sought in the Court’s judgment (see the aforementioned [Scozzari and Giunta](#) judgment). Where the notion of a choice of measures is in practice theoretical, since it is constrained by the nature of the violation, the Court can itself directly require certain steps to be taken. It has made use of this possibility for the first time in 2004 in two cases, ordering the release of applicants who were being arbitrarily detained in breach of Article 5 of the Convention (see the [Assanidze v. Georgia](#)

judgment and the [Ilaşcu and others v. Moldova and Russia](#) judgment). Recently, in response notably to a Resolution by the Committee of Ministers on judgments revealing an underlying systemic problem, Res (2004)3, the Court has also started to provide better identification of systemic problems underlying violations found and also to give indications as to the execution measures required.

I. Examples of specific measures taken to abide by the judgments of the ECHR

In its judgment of 13 July 2000 (§ 249), in the Scozzari and Giunta case, the Grand Chamber of the Court summarised states' obligation to take general measures to prevent further violations and individual measures to remedy the effects of the violation on the applicant as follows:

“by Article 46 of the Convention the High Contracting Parties undertook to abide by the final judgments of the Court in any case to which they were parties, execution being supervised by the Committee of Ministers. It follows, inter alia, that a judgment in which the Court finds a breach imposes on the respondent state a legal obligation not just to pay those concerned the sums awarded by way of just satisfaction, but also to choose, subject to supervision by the Committee of Ministers, the general and/or, if appropriate, individual measures to be adopted in their domestic legal order to put an end to the violation found by the Court and to redress so far as possible the effects (see, Mutatis Mutandis, the Papamichalopoulos and Others v. Greece (Article 50) judgment of 31 October 1995, Series A no. 330-B, pp. 58-59, § 34). Furthermore, subject to monitoring by the Committee of Ministers, the respondent state remains free to choose the means by which it will discharge its legal obligation under Article 46 of the Convention, provided that such means are compatible with the conclusions set out in the Court's judgment.”

A. Individual measures

If the violation continues to have adverse effects which have not been offset by the just satisfaction awarded to the applicant, the Committee of Ministers examines whether it is necessary for the national authorities to take individual measures. The aim is to put an end to any continuing violations and to redress, as far as possible, their effects (*restitutio in integrum*).

The individual measures depend on the nature of the violation and the applicant's situation.

Re-opening and re-examination of national proceedings

Re-opening proceedings in the domestic courts may be an effective way of redressing the consequences of a violation of the Convention caused by unfair national proceedings (see, for example, Barberà, Messegué and Jabardo, Resolution DH (94) 84).

Re-opening proceedings may also provide the opportunity to rectify a domestic decision which is deemed incompatible with the substance of the Convention, for example, a prohibition on the publication of certain information (see, for example, Open Door and Dublin Well Woman, Resolution DH (96) 368). Similarly, when the Court concludes that an applicant's expulsion from a country is, or would be, incompatible with the Convention, the execution of the judgment may require the authorities to reconsider their decisions to ensure that the applicant can return to the country in question or remain there if the deportation has not yet taken place (see, for example D. v. United Kingdom, Resolution DH(98) 010).

The reopening of domestic proceedings is of fundamental importance for the execution of the European Court's judgments. Indeed, in some cases, this is the only form of "restitutio in integrum" possible, ie the only effective means of redressing the violation of the Convention.

In response to execution problems, caused in certain cases by the lack of appropriate national legislation on the re-opening of proceedings, the Committee of Ministers adopted a Recommendation to member states on the re-examination or reopening of certain cases at domestic level following judgments of the European Court of Human Rights (Recommendation No R (2000) 2), inviting them to ensure that there existed at national level adequate possibilities for achieving, as far as possible, restitutio in integrum, including the reopening of proceedings.

Other measures

Other measures may concern the destruction by the police of all files (or at least those used for operational purposes) containing information obtained in breach of the right to privacy (see, for example, the *Amann v. Switzerland* judgment, annotated agenda and order of business, 757th meeting), the recognition of a Church which had previously been refused recognition, in breach of Article 9 (see, for example, the [Metropolitan Church of Bessarabia and Others v. Moldova](#) judgment, annotated agenda and order of business, 863rd meeting), or the introduction of previously non-existent legislation giving access to the Court (see, for example, *The Holy Monasteries v. Greece*, Resolution (97) 577).

B. General measures

General measures to prevent further similar violations are sometimes difficult to define and implement. The national authorities must first make a detailed examination of the causes of the violation of the Convention.

In some cases, the circumstances of the case clearly show that the violation is the result of domestic legislation. Sometimes, it is the lack of legislation which has led to the violation. In such cases, it falls to the state concerned to amend the existing legislation or introduce new, appropriate legislation in order to comply with the Court's judgment.

Nevertheless, in many cases, the violation is due not to clear incompatibility between domestic legislation and the Convention but to a problem of judicial practice, ie the way in which the national courts usually interpret domestic legislation and the Convention. In such cases it is necessary to change judicial practice along the lines suggested by the Court in order to execute the judgment.

When courts automatically adjust their legal stance and their interpretation of national law to meet the demands of the Convention, as reflected in the Court's judgments, in the individual cases submitted to them, they make these judgments directly enforceable by virtue of their domestic law. This is what now happens in almost all member states and further similar violations can be effectively prevented by simply ensuring that the judgment is published and transmitted to the national authorities, accompanied, where appropriate, by an explanatory circular.

On the 50th anniversary of the Convention, the Committee of Experts for the Improvement of Procedures for the Protection of Human Rights (DH-PR), which was set up by the Committee of Ministers of the Council of Europe, drew up an inventory of general measures taken by the Contracting States to implement the decisions taken by the Convention bodies since they

were first established. This inventory is regularly updated by the Directorate General of Human Rights.

II. Monitoring arrangements and means used by the Committee of Ministers

Once the Court's final judgment has been transmitted to the Committee of Ministers (Article 46 § 2 of the Convention), the latter invites the respondent state to inform it of the steps taken to pay the amounts awarded by the Court in respect of just satisfaction and, where appropriate, of the individual and general measures taken to abide by the judgment (see the Rules adopted by the Committee of Ministers on this subject). Once it has received this information, the Committee examines it closely. After establishing that the state concerned has taken all the necessary measures to abide by the judgment, the Committee adopts a resolution concluding that its functions under Article 46 § 2 of the Convention have been exercised.

The Directorate General of Human Rights assists the Committee of Ministers in exercising this responsibility under the Convention. In close co-operation with the authorities of the state concerned, the Directorate considers the measures that should be taken to comply with the Court's judgment. At the Committee of Ministers' request, the Directorate offers its opinion and advice, which are based on the experience and practice of the Convention bodies.

In accordance with its well-established practice, until the state in question has adopted satisfactory measures, the Committee of Ministers does not adopt a final resolution striking the judgment off its list of cases, and the state continues to be required to provide explanations or to take the necessary action. During the examination of the case, the Committee may take various measures to facilitate execution of the judgment. It may adopt interim resolutions, which usually contain information concerning the interim measures already taken and set a provisional calendar for the reforms to be undertaken or encourage the respondent state to pursue certain reforms or insist that it take the measures needed to comply with the judgment.

If difficulties are encountered in executing the judgment, the Directorate General of Human Rights often examines possible solutions in greater detail with the authorities concerned.

The Committee of Ministers may fully exercise its influence to persuade the state concerned to comply with the Court's judgments, not least by noting its failure to comply with the Convention and taking appropriate action. In practice, the Committee of Ministers very seldom needs to exert political and diplomatic pressure but functions rather as a forum for constructive dialogue, thus helping states find satisfactory solutions enabling them to execute the Court's judgments.

Internet address: http://www.coe.int/Human_rights/execution/

Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements

(Adopted by the Committee of Ministers on 10 May 2006 at the 964th meeting of the Ministers' Deputies)

I. General Provisions

Rule 1

1. The exercise of the powers of the Committee of Ministers under Article 46, paragraphs 2 to 5, and Article 39, paragraph 4, of the European Convention on Human Rights, is governed by the present Rules.

2. Unless otherwise provided in the present Rules, the general rules of procedure of the meetings of the Committee of Ministers and of the Ministers' Deputies shall apply when exercising these powers.

Rule 2

1. The Committee of Ministers' supervision of the execution of judgments and of the terms of friendly settlements shall in principle take place at special human rights meetings, the agenda of which is public.

2. If the chairmanship of the Committee of Ministers is held by the representative of a High Contracting Party which is a party to a case under examination, that representative shall relinquish the chairmanship during any discussion of that case.

Rule 3

When a judgment or a decision is transmitted to the Committee of Ministers in accordance with Article 46, paragraph 2, or Article 39, paragraph 4, of the Convention, the case shall be inscribed on the agenda of the Committee without delay.

Rule 4

1. The Committee of Ministers shall give priority to supervision of the execution of judgments in which the Court has identified what it considers a systemic problem in accordance with Resolution Res(2004)3 of the Committee of Ministers on judgments revealing an underlying systemic problem.

2. The priority given to cases under the first paragraph of this Rule shall not be to the detriment of the priority to be given to other important cases, notably cases where the violation established has caused grave consequences for the injured party.

Rule 5

The Committee of Ministers shall adopt an annual report on its activities under Article 46, paragraphs 2 to 5, and Article 39, paragraph 4, of the Convention, which shall be made public and transmitted to the Court and to the Secretary General, the Parliamentary Assembly and the Commissioner for Human Rights of the Council of Europe.

II. Supervision of the execution of judgments

Rule 6

Information to the Committee of Ministers on the execution of the judgment

1. When, in a judgment transmitted to the Committee of Ministers in accordance with Article 46, paragraph 2, of the Convention, the Court has decided that there has been a violation of the Convention or its protocols and/or has awarded just satisfaction to the injured party under Article 41 of the Convention, the Committee shall invite the High Contracting Party concerned to inform it of the measures which the High Contracting Party has taken or intends to take in consequence of the judgment, having regard to its obligation to abide by it under Article 46, paragraph 1, of the Convention.

2. When supervising the execution of a judgment by the High Contracting Party concerned, pursuant to Article 46, paragraph 2, of the Convention, the Committee of Ministers shall examine:

a. whether any just satisfaction awarded by the Court has been paid, including as the case may be, default interest; and

b. if required, and taking into account the discretion of the High Contracting Party concerned to choose the means necessary to comply with the judgment, whether:

i. individual measures¹ have been taken to ensure that the violation has ceased and that the injured party is put, as far as possible, in the same situation as that party enjoyed prior to the violation of the Convention;

ii. general measures² have been adopted, preventing new violations similar to that or those found or putting an end to continuing violations.

Rule 7

Control intervals

1. Until the High Contracting Party concerned has provided information on the payment of the just satisfaction awarded by the Court or concerning possible individual measures, the case shall be placed on the agenda of each human rights meeting of the Committee of Ministers, unless the Committee decides otherwise.

2. If the High Contracting Party concerned informs the Committee of Ministers that it is not yet in a position to inform the Committee that the general measures necessary to ensure compliance with the judgment have been taken, the case shall be placed again on the agenda of a meeting of the Committee of Ministers taking place no more than six months later, unless the Committee decides otherwise; the same rule shall apply when this period expires and for each subsequent period.

¹ For instance, the striking out of an unjustified criminal conviction from the criminal records, the granting of a residence permit or the re-opening of impugned domestic proceedings (see on this latter point Recommendation Rec(2000)2 of the Committee of Ministers to member states on the re-examination or reopening of certain cases at domestic level following judgments of the European Court of Human Rights, adopted on 19 January 2000 at the 694th meeting of the Ministers' Deputies).

² For instance, legislative or regulatory amendments, changes of case law or administrative practice or publication of the Court's judgment in the language of the respondent state and its dissemination to the authorities concerned.

Rule 8

Access to information

1. The provisions of this Rule are without prejudice to the confidential nature of the Committee of Ministers' deliberations in accordance with Article 21 of the Statute of the Council of Europe.
2. The following information shall be accessible to the public unless the Committee decides otherwise in order to protect legitimate public or private interests:
 - a. information and documents relating thereto provided by a High Contracting Party to the Committee of Ministers pursuant to Article 46, paragraph 2, of the Convention;
 - b. information and documents relating thereto provided to the Committee of Ministers, in accordance with the present Rules, by the injured party, by non-governmental organisations or by national institutions for the promotion and protection of human rights.
3. In reaching its decision under paragraph 2 of this Rule, the Committee shall take, *inter alia*, into account:
 - a. reasoned requests for confidentiality made, at the time the information is submitted, by the High Contracting Party, by the injured party, by non-governmental organisations or by national institutions for the promotion and protection of human rights submitting the information;
 - b. reasoned requests for confidentiality made by any other High Contracting Party concerned by the information without delay, or at the latest in time for the Committee's first examination of the information concerned;
 - c. the interest of an injured party or a third party not to have their identity, or anything allowing their identification, disclosed.
4. After each meeting of the Committee of Ministers, the annotated agenda presented for the Committee's supervision of execution shall also be accessible to the public and shall be published, together with the decisions taken, unless the Committee decides otherwise. As far as possible, other documents presented to the Committee which are accessible to the public shall be published, unless the Committee decides otherwise.
5. In all cases, where an injured party has been granted anonymity in accordance with Rule 47, paragraph 3 of the Rules of Court; his/her anonymity shall be preserved during the execution process unless he/she expressly requests that anonymity be waived.

Rule 9

Communications to the Committee of Ministers

1. The Committee of Ministers shall consider any communication from the injured party with regard to payment of the just satisfaction or the taking of individual measures.
2. The Committee of Ministers shall be entitled to consider any communication from non-governmental organisations, as well as national institutions for the promotion and protection of human rights, with regard to the execution of judgments under Article 46, paragraph 2, of the Convention.

3. The Secretariat shall bring, in an appropriate way, any communication received in reference to paragraph 1 of this Rule, to the attention of the Committee of Ministers. It shall do so in respect of any communication received in reference to paragraph 2 of this Rule, together with any observations of the delegation(s) concerned provided that the latter are transmitted to the Secretariat within five working days of having been notified of such communication.

Rule 10

Referral to the Court for interpretation of a judgment

1. When, in accordance with Article 46, paragraph 3, of the Convention, the Committee of Ministers considers that the supervision of the execution of a final judgment is hindered by a problem of interpretation of the judgment, it may refer the matter to the Court for a ruling on the question of interpretation. A referral decision shall require a majority vote of two thirds of the representatives entitled to sit on the Committee.

2. A referral decision may be taken at any time during the Committee of Ministers' supervision of the execution of the judgments.

3. A referral decision shall take the form of an interim resolution. It shall be reasoned and reflect the different views within the Committee of Ministers, in particular that of the High Contracting Party concerned.

4. If need be, the Committee of Ministers shall be represented before the Court by its Chair, unless the Committee decides upon another form of representation. This decision shall be taken by a two-thirds majority of the representatives casting a vote and a majority of the representatives entitled to sit on the Committee.

Rule 11

Infringement Proceedings

1. When, in accordance with Article 46, paragraph 4, of the Convention, the Committee of Ministers considers that a High Contracting Party refuses to abide by a final judgment in a case to which it is party, it may, after serving formal notice on that Party and by decision adopted by a majority vote of two thirds of the representatives entitled to sit on the Committee, refer to the Court the question whether that Party has failed to fulfil its obligation.

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

3. The referral decision of the matter to the Court shall take the form of an interim resolution. It shall be reasoned and concisely reflect the views of the High Contracting Party concerned.

4. The Committee of Ministers shall be represented before the Court by its Chair unless the Committee decides upon another form of representation. This decision shall be taken by a two-thirds majority of the representatives casting a vote and a majority of the representatives entitled to sit on the Committee.

III. Supervision of the Execution of the Terms of Friendly Settlements

Rule 12

Information to the Committee of Ministers on the execution of the terms of the friendly settlement

1. When a decision is transmitted to the Committee of Ministers in accordance with Article 39, paragraph 4, of the Convention, the Committee shall invite the High Contracting Party concerned to inform it on the execution of the terms of the friendly settlement.
2. The Committee of Ministers shall examine whether the terms of the friendly settlement, as set out in the Court's decision, have been executed.

Rule 13

Control intervals

Until the High Contracting Party concerned has provided information on the execution of the terms of the friendly settlement as set out in the decision of the Court, the case shall be placed on the agenda of each human rights meeting of the Committee of Ministers, or, where appropriate,³ on the agenda of a meeting of the Committee of Ministers taking place no more than six months later, unless the Committee decides otherwise.

Rule 14

Access to information

1. The provisions of this Rule are without prejudice to the confidential nature of the Committee of Ministers' deliberations in accordance with Article 21 of the Statute of the Council of Europe.
2. The following information shall be accessible to the public unless the Committee decides otherwise in order to protect legitimate public or private interests:
 - a. information and documents relating thereto provided by a High Contracting Party to the Committee of Ministers pursuant to Article 39, paragraph 4, of the Convention;
 - b. information and documents relating thereto provided to the Committee of Ministers in accordance with the present Rules by the applicant, by non-governmental organisations or by national institutions for the promotion and protection of human rights.
3. In reaching its decision under paragraph 2 of this Rule, the Committee shall take, *inter alia*, into account:
 - a. reasoned requests for confidentiality made, at the time the information is submitted, by the High Contracting Party, by the applicant, by non-governmental organisations or by national institutions for the promotion and protection of human rights submitting the information;

³ In particular where the terms of the friendly settlement include undertakings which, by their nature, cannot be fulfilled within a short time span, such as the adoption of new legislation.

b. reasoned requests for confidentiality made by any other High Contracting Party concerned by the information without delay, or at the latest in time for the Committee's first examination of the information concerned;

c. the interest of an applicant or a third party not to have their identity, or anything allowing their identification, disclosed.

4. After each meeting of the Committee of Ministers, the annotated agenda presented for the Committee's supervision of execution shall also be accessible to the public and shall be published, together with the decisions taken, unless the Committee decides otherwise. As far as possible, other documents presented to the Committee which are accessible to the public shall be published, unless the Committee decides otherwise.

5. In all cases, where an applicant has been granted anonymity in accordance with Rule 47, paragraph 3 of the Rules of Court; his/her anonymity shall be preserved during the execution process unless he/she expressly requests that anonymity be waived.

Rule 15

Communications to the Committee of Ministers

1. The Committee of Ministers shall consider any communication from the applicant with regard to the execution of the terms of friendly settlements.

2. The Committee of Ministers shall be entitled to consider any communication from non-governmental organisations, as well as national institutions for the promotion and protection of human rights, with regard to the execution of the terms of friendly settlements.

3. The Secretariat shall bring, in an appropriate way, any communication received in reference to paragraph 1 of this Rule, to the attention of the Committee of Ministers. It shall do so in respect of any communication received in reference to paragraph 2 of this Rule, together with any observations of the delegation(s) concerned provided that the latter are transmitted to the Secretariat within five working days of having been notified of such communication.

IV. Resolutions

Rule 16

Interim resolutions

In the course of its supervision of the execution of a judgment or of the terms of a friendly settlement, the Committee of Ministers may adopt interim resolutions, notably in order to provide information on the state of progress of the execution or, where appropriate, to express concern and/or to make suggestions with respect to the execution.

Rule 17

Final resolution

After having established that the High Contracting Party concerned has taken all the necessary measures to abide by the judgment or that the terms of the friendly settlement have been executed, the Committee of Ministers shall adopt a resolution concluding that its functions under Article 46, paragraph 2, or Article 39 paragraph 4, of the Convention have been exercised.