

THE EXECUTION OF JUDGMENTS OF THE EUROPEAN COURT OF HUMAN RIGHTS

VLADIMÍRA PEJCHALOVÁ GRÜNVALDOVÁ

Parlamentní institut, Kancelář Poslanecké sněmovny Parlamentu České republiky

Abstract in original language

The paper analyses basic issues regarding the execution of judgments of the European Court of Human Rights. It sets out both the conditions and the procedure concerning the execution of judgments as well as the obligations which form the subject-matter of the execution. In the conclusion it highlights that the enforcement of judgments is one of the keys to improving the European human rights system, and that effective functioning of the human rights protection system depends to a great extent on execution of the Court's judgments.

Key words in original language

Execution; Judgments; Human rights.

I. The obligation to execute judgments of the European Court of Human Rights

The High Contracting Parties (hereinafter 'the states') to the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter 'the Convention') - have an obligation to *secure to everyone within their jurisdiction the rights and freedoms defined in Section I* of the Convention (Article 1). It follows that securing rights and freedoms is primarily the responsibility of the Parties and the Court's role is subsidiary. This undertaking entails certain obligations for respondent states. The responsibility of a state which failed to fulfil this obligation is threefold. The state subsequently has the obligation:

- 1) to put an end to the violation, which concerns cases of a continuing violation,
- 2) to make reparation, which entails the adoption of individual measures (with first, the application of the principle of *restitutio in integrum*, and second, in cases where *restitutio in integrum* proves to be impossible to apply, the payment of compensation),
- 3) not to repeat the violation, which entails the adoption of general measures (such as cases where the Court impugned legislative provisions or cases where similar violations cannot be avoided in the future without a legislative amendment).

Execution of the Court's judgments is an integral part of the Convention system. The effectiveness of the process of execution has an impact on the Court's authority. The Court's excessive caseload has two main reasons. First, a large number of manifestly ill-founded applications which are

declared inadmissible (more than 90% of all applications) and a large number of repetitive cases. It goes without saying that rapid and adequate execution has an effect on both the influx of new cases and on the number of repetitive applications.

II. Supervision of the execution of judgments

The task of supervising the execution of judgments of the Court is entrusted to the Committee of Ministers (the executive organ of the Council of Europe). The basic provision governing the execution process is Article 46 par. 1 and 2 of the Convention which 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.

The Committee of Ministers has on many occasions stated 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 obligation under the Convention. The content of states' undertaking "to abide by the final judgment of the Court" is contained in the Rules of Procedure of the Committee of Ministers¹. Pursuant to Rule 6 (2) in the supervision of the execution of judgments process the Committee of Ministers examines:

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

¹ Currently called "Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements".

It follows that there are three types of obligations that can be implied from a judgment of the Court incumbent on the state – just satisfaction, individual measures and general measures.

In the case of *Scozzari and Giunta*² the Court, sitting in the Grand Chamber, drew up the obligation of states to take general measures (to prevent further violations) and individual measures (to bestow remedies to the applicant) as follows:

“... 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.”

It is a general practice that the states themselves identify the measures to be taken, whether individual or general, under the supervision of the Committee of Ministers (with the opportunity to find guidance in the Committee of Ministers' practice and relevant recommendations, and in the practice of other states). The guiding principle is the principle of subsidiarity. The states have freedom in the choice of the individual and general measures, however, this freedom is accompanied by the Committee of Ministers monitoring powers. The Committee supervises the choices made and ensures that the measures taken are appropriate and that they meet the requirements in the Court's judgment. The Committee of Ministers exercises its supervisory control with the right to issue interim resolutions or adopt decisions to express concern and to make suggestions with respect to the execution (in the form of press releases, decisions, interim resolutions, or declarations of the Chair).

The Court itself may in its judgments provide guidance regarding execution measures, or even directly order that a certain measure be taken. Although the Court developed this practice in some cases concerning property, e.g. *Papamichalopoulos and others* judgment of 31 October 1995, many years ago, the cases in which the Court directly ordered certain measures to be taken are a recent practice - the first cases appeared only in 2004 and 2005.³

² Judgment of 13 July 2000, (§ 249).

³ *Assanidze v. Georgia*, judgment of 8 April 2004; *Ilascu v. Moldova and the Russian federation*, judgment of 13 May 2005.

In these cases the Court ordered the release of applicants who were being arbitrarily detained. The Court provides recommendations as to general measures in the 'pilot judgments'⁴ where it examines the causes of systemic problems that cause an influx of new applications.

III. Just satisfaction

The payment of just satisfaction (compensation in the form of a sum of money) may be awarded by the Court under Article 41⁵ of the Convention. It covers pecuniary and non-pecuniary damage and/or costs and expenses. The obligation to pay just satisfaction is stated in the judgment. The detailed conditions (e.g. currency, deadlines, default interests) regarding the payment of just satisfaction are usually set out in the judgments of the Court. These elements of the payment cannot be unilaterally altered and are binding on the state. It should be noted that as concerns default interest, this interest serves only to maintain the value of the just satisfaction, it is not a penalty. There is no obligation to pay default interest provided that the sum is put at the applicant's disposal within the time limit. Since 2000 the Court has made increasingly frequent use of the euro as the single reference currency.

However, the negative consequences resulting from the violation of the rights guaranteed by the Convention can not always be remedied by the payment of just satisfaction. Therefore, depending on the circumstances of the case, the respondent state may also be required to take individual measures or general measures.

IV. Individual measures

Individual measures concern the applicants and relate to the obligation to rectify the consequences suffered by them due to the violations established by the Court in view of achieving *restitutio in integrum* as far as possible. Individual measures come into play in cases where the consequences of the violation would not be adequately remedied by awarding just satisfaction or by a simple statement of a violation. The purpose of these means of redress is to achieve *restitutio in integrum* as far as possible. The individual measures always depend on the nature of the violation and the situation of the applicant. Depending on the circumstances of the case, the actions may involve for example the reopening of unfair proceedings, the enforcement of a domestic judgment not yet enforced, destruction of documents containing information obtained in breach of the right to privacy (*Amann v. Switzerland*), or the introduction of a new legislation giving access to the Court (*The Holy Monasteries v. Greece*).

⁴ e.g. *Hutten-Czapska v. Poland* [GC] judgment of 19 June 2006.

⁵ *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.*

Re-opening of proceedings in the national courts may prove to be an effective means in redressing the adverse consequences in cases of unfair national proceedings or in rectifying a decision of a national court which is incompatible with the Convention. The Committee of Ministers issued a recommendation⁶ in which it invited the states to ensure that there are adequate possibilities for achieving *restitutio in integrum* at national level. It invited the states *to ensure that there exist at national level adequate possibilities to achieve, as far as possible, restitutio in integrum and adequate possibilities of re-examination of the case, including reopening of proceedings, in instances where the Court has found a violation of the Convention.*

In the Czech Republic the Czech Constitutional Court Act provides for reopening of proceedings in criminal matters in cases where an international court finds infringement of human rights or fundamental freedoms by a public authority (§ 119(1)).

V. General measures

The purpose of general measures is either to prevent similar violations to occur in the future or to put an end to continuing violations. In some cases the violation is the result of the lack of national legislation, incompatibility between national legislation and the Convention, or the way in which the national courts interpret the legislation and the Convention. In such cases it is necessary to amend the existing legislation, introduce new legislation or to change judicial practice.

Therefore, general measures may include the obligation to review legislation and/or judicial practice, improve administrative procedures, or even to make constitutional changes in order to prevent similar violations. Within the system of general measures, the importance of effective remedies is more and more frequently raised. The Committee of Ministers regards at the efficiency of domestic remedies, where either the Court's judgment or the Committee of Ministers' examination reveals important systemic or structural problems.⁷

For example, in the *Hutten-Czapska* case, which involved a violation of the applicant's right of property due to limitations on use of property by landlords, and in particular the rent control scheme, the Committee of Ministers stated that further information was awaited on the development of domestic courts' case-law concerning the definition of "decent profit" ... as well as other measures to prevent new, similar violations ". It also required the Polish government to clarify "the scope of the notion of "basic rent" and its introduction into the legislative framework". The Committee of Ministers

⁶ Recommendation Rec (2000) 2 on the re-examination or reopening of certain cases at domestic level following judgments of the European Court of Human Rights and Explanatory memorandum.

⁷ Recommendation (2004) 6 on the improvement of domestic remedies.

further pointed out that “the violation found was the result of a structural problem linked to a malfunctioning of national legislation and that the respondent state must secure in its domestic legal order a mechanism maintaining a fair balance between the interests of landlords and the general interest of the community in accordance with the principles of the protection of property rights under the ECHR”.

VI. The procedure of the execution supervision

The procedure of the execution supervision of the Committee of Ministers is enshrined primarily in the Rules adopted by the Committee of Ministers for the application of Article 46 par. 2 of the Convention (adopted on 10 May 2006).

Final judgments of the Court, in which the Court finds a violation of the Convention or in which a friendly settlement is accepted, are submitted to the Committee of Ministers for examination (at human rights meetings). Once the Court finds a violation of a right enshrined in the Convention and awards the applicant just satisfaction under Article 41 of the Convention, then the state, whose government is to pay the sum awarded, must answer to the Committee for its execution. Likewise, cases where violation was found but no compensation was awarded are also called for supervision as measures to prevent further violations need to be taken. According to the Court’s case-law, the execution of judgments should be considered as an integral part of the trial for the purposes of Article 6 of the Convention.⁸ Provided that the judgment of the Court is precise, it is self-executing in the domestic legal system and directly applicable by domestic courts. However, the Court lacks power to determine which measures need to be taken in order to execute the judgment and leaves the choice of the means to the state.⁹

Once the Court’s final judgment has been transmitted to the Committee of Ministers, it appears on its agenda. Cases are normally placed on the agenda of the Committee of Ministers 3-6 months after the judgment has become final. The supervision of execution of judgments takes place at special human rights meetings. The Committee invites the respondent state to inform it of the measures taken (payment of just satisfaction, individual or general measures) so as to abide by the judgment. The Committee then examines the information submitted by the respondent state. The deliberations of the Committee of Ministers are private (Article 21 of the Statute of the Council of Europe). The cases are examined primarily on the basis of information submitted by the governments, regard being had to the communications made by the applicant regarding individual measures, as well as to non-governmental organizations and national human rights institutions.

⁸ *Hornsby v. Greece*, 19 March 1997, § 40.

⁹ *Scordino v. Italy* [GC], 29 March 2006, § 233.

The cases where the execution of judgments proceeds smoothly are normally examined without debate. The criteria which are considered in decisions on holding or not holding a debate are as follows:

- a) the applicant's situation because of the violation warrants special supervision,
- b) the case marks a new departure in case-law,
- c) the case discloses a potential systemic problem which is anticipated to give rise to similar cases in the future.

In the process of examination of cases the Committee of Ministers may take various actions to facilitate execution of judgments – it may adopt interim resolutions or insist that the responded state put forward certain reforms or take other measures in conformity with the judgment. The Committee of Ministers does not strike the judgment off the lists of cases by virtue of a final resolution until the respondent state has adopted measures that would be satisfactory. Until then the Committee of Ministers requires the state to provide explanations or to take an action.

The Committee of Ministers requires a written proof that just satisfaction and any default interest have been paid to the applicant. It may also require adoption of individual non-pecuniary measures in order to achieve *restitutio in integrum*, or evidence that the government has adopted general measures needed to prevent further violations. In cases where the situation has not improved, it may ask the respondent state to take further measures. This practice also applies in cases where a friendly settlement has been reached.

When the Committee of Ministers finds that the state has taken all the measures necessary to fulfil the obligations set out in the judgment, it ends the examination and adopts a final resolution. The Committee of Ministers may require the respondent state to present a written report on the measures adopted. If difficulties arise in executing the judgment, the Committee of Ministers may exert its powers and by way of a dialogue persuade the state to take appropriate action in order to comply with the judgment. Only as the last resort, and rare in practice, the Committee of Ministers exerts political and diplomatic pressure to compel the state to fulfil the requirements stipulated in the judgment.

In cases where the state objects or delays taking the necessary measures, the Committee of Ministers may either adopt interim resolutions or threaten to apply Article 8 of the Statute of the Council of Europe. The practice of interim resolutions was first introduced in the *Ben Yaacoub*¹⁰ case. There are various forms of interim resolutions:

¹⁰ *Ben Yaacoub v. Belgium*, judgment of 27 November 1987, Series A no. 127-A.

- a) invitation of the state to comply with the judgment and stating that no measures have been adopted¹¹,
- b) encouragement of the state to adopt measures in the future and commenting on the state of progress (the most common type of resolution),
- c) threatening the state with more serious measures (exceptional type of resolution).¹²

At the extreme, a state can be excluded from the Council of Europe where it refuses to execute a judgment. Under Article 8 of the Statute of the Council of Europe “any member of the Council of Europe which has seriously violated Article 3 may be suspended from its rights of representation and requested by the Committee of Ministers to withdraw under Article 7. If such member does not comply with this request, the Committee may decide that it has ceased to be a member of the Council as from such date as the Committee may determine.” If a state continues to fail to execute a judgment, it could be interpreted as a serious violation of the principles of the rule of law and of human rights and fundamental freedoms within the meaning of Article 3 of the Statute of the Council of Europe. The first case in which the Committee of Ministers threatened of exclusion was *Loizidou v. Turkey*. In reality, however, this measure has never been used.

The willingness of the states to execute the judgments of the Court depends rather on their political aims and interests than on the prospects of possible sanctions. In reality, it is rather late executions, the delays of which have been constantly increasing, than non-compliance with judgments that raises difficulties. It is not common that the states would systematically refuse to execute judgments. While the habitual reasons for non-compliance are intricate national legislative procedures and reforms, political reasons are not common (one of the exceptions is the pending case of *Cyprus v. Turkey*¹³). The Parliamentary Assembly of the Council of Europe summed up the problems of execution of judgments as follows: “The problems of implementation are at least seven-fold: political reasons; reasons to do with the reforms required; practical reasons relating to national legislative procedures; budgetary reasons; reasons to do with public opinion;

¹¹ In the case of *Matthews v the United Kingdom* the Committee of Ministers in its interim resolution ResDH (2001) 79 stated that “... no adequate measures have yet been presented with a view to preventing new similar violations in the future; urges the United Kingdom to take the necessary measures to secure the rights ...”.

¹² It was adopted, for instance, in the case of *Loizidou v. Turkey*. The Committee of Ministers stated that “... declares the Committee’s resolve to ensure, with all means available to the Organisation, Turkey’s compliance with its obligations under this judgment; calls upon the authorities of the member states to take such action as they deem appropriate to this end.”

¹³ *Cyprus v. Turkey*, judgment of 10 May 2001.

judgments drafted in a casuistical or unclear manner; reasons relating to interference with obligation deriving from other institutions.”¹⁴

There have also been numerous delays in payments of just satisfaction. The delays in executing judgments correspond to an ever increasing workload of the Committee of Ministers, which has almost quadrupled from 2000 up to today. The major challenge is a prompt implementation of general measures so that repetitive cases are avoided.

VII. Protocols No. 14 and 14bis

The enormous growth of litigation before the Court (on 1 January 2009 there were about 97 000 pending cases compared to 65 000 as of 1 January 2004) over the past ten years has posed a threat to the effective functioning of the Court. The prospect of a continuing increase in the workload of the Court and consequently the Committee of Ministers’ supervision of the execution of judgments necessitated adoption of certain measures to preserve the system in the future. At the same time, it was vital that the principal and unique features of the Convention system – the judicial character of supervision and the right of individual application¹⁵ - would not be affected by the reform measures.

The necessary reform process, which begun in 2001, resulted in the adoption of a new protocol to the Convention, Protocol No. 14, opened for signature in May 2004. The purpose of the Protocol is to guarantee the long-term efficiency of the Court and to reduce the Court’s excessive caseload giving the Court the procedural means and flexibility and allowing it to concentrate on the most important cases. Protocol No. 14 does not make radical changes to the control system established by the Convention. The changes relate more to the functioning than to the structure of the system. The Protocol No. 14, which will enter into force once all State Parties to the Convention have ratified it, has not yet come into force due to resistance from the part of the Russian Federation. In the meantime, in order to provide a temporary solution to the Court’s enormous caseload, Protocol 14bis was adopted and open for signature in May 2009. It does not require ratification by all the State Parties to Convention. Intended to be only a provisional measure pending entry into force of Protocol No. 14, the scope of Protocol 14bis is limited to those procedural measures contained in Protocol No. 14 that would increase the Court’s case-processing capacity in the most immediate manner pending entry into force of Protocol No. 14. It is the introduction of the single-judge formation to deal with plainly inadmissible applications and the extended competence of three-judge committees to handle clearly well-founded and repetitive cases deriving from structural or systemic defects. Protocol 14bis thus does not explicitly touch on the system

¹⁴ Resolution 1226 (2000).

¹⁵ Any person claiming to be the victim of a breach of the rights and freedoms protected by the Convention may refer the matter to the Court.

of execution of judgments of the Court. Protocol No. 14bis would cease to exist once Protocol No. 14 to the Convention enters into force.

The state of affairs, however, changed on 23 September 2009 when the Russian Federation's State Duma adopted (with 353 votes in favor and 17 against) a statement to resume the question of ratification of Protocol No. 14 to the Convention. Thus, the ratification of Protocol No. 14 by the Russian Federation, which would enable the entry into force of Protocol No. 14, has approached reality.

VIII. Changes brought by Protocol No. 14 in respect of the execution of judgments

In May 2006 the Ministers' Deputies adopted the new *Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements*. Some major changes in the rules were introduced in relation to the adoption of Protocol No. 14. The changes concern the following: the introduction of priority treatment of judgments revealing an underlying systemic problem (Rule 4¹⁶), the Committee of Ministers' obligation to adopt an annual report on its activities which shall be made public (Rule 5¹⁷), the referral of a case to the Court for interpretation of a judgments (Rule 10¹⁸), and the referral of a case to the Court for infringement proceedings when a state refuses to abide by a final

¹⁶ 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.*

¹⁷ *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.*

¹⁸ 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 ...*

judgment (Rule 11¹⁹). Both the referral decision and the decision resulting from the infringement proceedings shall take the form of a reasoned interim resolution.

It follows that by virtue of Protocol No. 14 the Committee of Ministers has two new remedies before the Court: a) referral to the Court in the event of a problem of interpretation of a judgment, b) referral to the Court for a state's failure to execute a judgment.

The lack of clarity of judgments often makes their execution difficult. Difficulties sometimes arise due to disagreement as to the interpretation of judgments. Therefore, the new Article 46 par. 3²⁰ of the Convention allows the Committee of Ministers to refer a case to the Court by a two thirds majority vote when it "considers that the supervision of the execution of a final judgment is hindered by a problem of interpretation of the judgment". There is no time-limit as the need for interpretation of a judgment may arise a long time after the date on which the judgment was delivered. This procedure shall apply to that sort of cases where the Court has not subsequently clarified its case-law or where it has not indicated the general measures to be taken. The Court gives an interpretation of a judgment and does not rule on the measures already taken by the state to comply with the final judgment. The required qualified majority vote shows that the Committee of Ministers should use this provision seldom with regard to eventual over-burdening of the Court.

¹⁹ 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 ...*

²⁰ *If the Committee of Ministers considers that the supervision of the execution of a final judgment is hindered by a problem of interpretation of the judgment, it may refer the matter to the Court for a ruling on the question of interpretation. A referral decision shall require a majority vote of two thirds of the representatives entitled to sit on the Committee.*

The most important provision, according to the explanatory report, introduced by Protocol No. 14 is Article 46 par. 4²¹ and 5²² which provides for infringement proceedings in the Court against any state which refuses to comply with a final judgment. This supplies the Committee of Ministers with an additional means of applying political pressure. In fact, and as states the explanatory report to Protocol No. 14, in the event of persistent resistance from a state, the Committee of Ministers can dispose of either interim measures or “heavy weapons” (ultimate measures) such as Articles 3²³ and 8²⁴ of the Statute of the Council of Europe (suspension of voting rights in the Committee of Ministers, or even expulsion from the Council of Europe). Infringement proceedings may thus fill out the gap of missing intermediate measures. In cases where a continuing infringement is established by the Committee of Ministers, a decision to instigate infringement proceedings before the Court, sitting in the Grand Chamber, shall be taken in the form of a reasoned interim resolution issued no sooner than 6 months after a notice to comply is served on the affected state. The Committee of Ministers’ decision requires a qualified majority of two thirds of the representatives entitled to sit on the Committee. The party to the proceedings is neither the applicants nor the respondent state, but only the Committee which is represented before the Court by its Chair. The Court renders a decision in which it rules whether the state has taken the measures required by the judgment that found the violation. The question of violation decided already in the Court’s first judgment is not reopened. The Court finds either a state’s failure to comply with the judgment (payment of just satisfaction, individual measures, general measures) and sends the case back

²¹ *If the Committee of Ministers considers that a High Contracting Party refuses to abide by a final judgment in a case to which it is a party, it may, after serving formal notice on that Party and by decision adopted by a majority vote of two thirds of the representatives entitled to sit on the Committee, refer to the Court the question whether that Party has failed to fulfil its obligation under paragraph 1.*

²² *If the Court finds a violation of paragraph 1, it shall refer the case to the Committee of Ministers for consideration of the measures to be taken. If the Court finds no violation of paragraph 1, it shall refer the case to the Committee of Ministers, which shall close its examination of the case.*

²³ *Every member of the Council of Europe must accept the principles of the rule of law and of the enjoyment by all*

persons within its jurisdiction of human rights and fundamental freedoms, and collaborate sincerely and effectively

in the realization of the aim of the Council as specified in Chapter I.

²⁴ *Any member of the Council of Europe which has seriously violated Article 3 may be suspended from its rights of representation and requested by the Committee of Ministers to withdraw under Article 7. If such member does not comply with this request, the Committee may decide that it has ceased to be a member of the Council as from such date as the Committee may determine.*

to the Committee of Ministers, or no such failure which obliges the Committee of Ministers to close the case. The purpose of the infringement proceedings is to obtain a ruling from the Court as to whether the state has failed to fulfil its obligation under Article 46 par. 1 of the Convention. The political pressure exerted by those proceedings in the Grand Chamber and by the judgment is considered to be sufficient to secure execution of the Court's initial judgment by the infringing state. Although the Committee of Ministers should bring infringement proceedings only in exceptional circumstances, the new provisions of Article 46 bring another possibility to exert pressure on the infringing state to execute the Court's judgment by the mere existence of the procedure and the threat of using it.

IX. Conclusion

Enforcement of judgments is regarded as one of the keys to improving the European human rights system. Effective functioning of the human rights protection system depends to a great extent on execution of the Court's judgments. Speedy and adequate execution has an effect on both the number of applications submitted to the Court and on the number of repetitive applications.

The obligation to execute a judgment is binding on the states. As regards the payment of just satisfaction, the Court usually lays down with considerable detail the execution conditions in its judgments. It is usually not so as regards the other execution measures, whether individual or general. By virtue of the principle of subsidiarity, the states have freedom of choice as regards the measures to be taken in order to meet their obligations. This freedom, however, is not limitless and falls under scrutiny of the Committee of Ministers within the framework of its supervision of execution.

In the supervision of execution the Council of Europe has adopted an approach of persuasion and co-ordination of the national and the Council of Europe competent bodies. In cases of unwillingness of the states to comply with their obligation to abide by the judgments of the Court, the Committee of Ministers may exert political and diplomatic pressure. The ultimate measures that may be applied are suspension of voting rights in the Committee of Ministers, or expulsion from the Council of Europe. With the entry into force of Protocol No. 14 to the Convention the Committee of Ministers would dispose of another means of applying political pressure - the right to instigate infringement proceedings before the Court against a state which refuses to comply with a final judgment of the Court.

Literature:

- Lambert Abdelgawad, E.: The execution of judgments of the European Court of Human Rights, 2nd ed., Council of Europe, 2008, 91 pages, ISBN 978-92-871-6373-8
- Stolfi, F.: Future developments of the European Court of Human Rights in the light of the Wise Persons' Report: proceedings of the colloquy, San Marino, 22-23 March 2007, Council of Europe, 2007, 110 pages
- Supervision of the execution of judgments of the European Court of Human Rights, 2nd annual report 2008, Council of Europe, 2009, 215 pages

Contact – email

pejchalovav@psp.cz