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Implementation of judgments of the European Court of Human Rights

Introductory memorandum

Committee on Legal Affairs and Human Rights

Rapporteur: Mr Erik Jurgens, Netherlands, Socialist Group

I. Introduction: the Assembly's involvement in the implementation of judgments

1. Ratification of the European Convention of Human Rights (ECHR), including the compulsory jurisdiction of the European Court of Human Rights and the binding nature of its judgments, has become a requirement for membership of the Organisation. Indeed, the binding nature of the Court's judgments, with the Committee of Ministers' acting as the guarantor of their proper execution by states, is the main pillar of the ECHR's system and its effectiveness.

2. The ECHR's mechanism does not, however, operate in a legal vacuum: the Court's judgments are implemented and translated into real life through a complex legal and political process, which involves a number of domestic and international institutions. National parliaments and the Parliamentary Assembly are also called upon to play an important role in this process and can be instrumental in ensuring proper implementation of the Court's judgments.

3. Past experience convincingly shows that the Assembly has contributed, in various ways, to a quicker resolution of often difficult issues of non-compliance with the Court's judgments. This has taken the form of reports, resolutions, recommendations, the holding of debates and of oral and written parliamentary questions. More generally, the Assembly has privileged relations with national legislators, although there is room for improvement in this connection. Special attention to the implementation of the Court's judgments has also been given in the context of the Assembly's monitoring procedure.

4. Examples of such work are plentiful and can be illustrated by the Assembly's contribution with regard to non-payment of just satisfaction (e.g. *Stran v. Greece*, *Loizidou v. Turkey*), reopening of domestic proceedings (e.g. *Hakkar v. France*, *Sadak & Zana v. Turkey*) and the adoption of comprehensive constitutional and legal reforms to prevent new violations similar to those found by the Court (e.g. cases concerning the action of security forces and violations of - the still unresolved issue of - the freedom of expression in Turkey).

5. To-date, five reports and Resolutions and four Recommendations concerning specifically the implementation of Strasbourg Court judgments have been adopted by the Assembly since 2000¹. The Assembly's involvement in problematic cases has often been followed, within one or two years, by the adoption of satisfactory measures implementing judgments.

6. The Rapporteur considers that the Assembly should continue, and indeed have a more prominent role, in promoting compliance with the Court's judgments. By helping to ensure that member states rapidly comply with judgments, it provides tangible assistance to victims of human rights violations. It also helps the Committee of Ministers to discharge more speedily and effectively its responsibilities in this respect. Lengthy compliance procedures and, still worse, the non-compliance with judgments over long periods of time, affect and undermine the credibility of both the ECHR's system and the Council of Europe. By contrast, rapid compliance with judgments, especially those requiring legislative action, to which the Assembly is best placed to contribute, helps the Strasbourg Court cope with the avalanche of applications by attacking the root causes for repetitive applications ("clone cases"). Hence the urgent need for the Assembly to give these matters priority treatment, in line with the 2005 Warsaw Summit Heads of State and Government's decision to improve the efficiency and implementation of the ECHR, the jewel in the crown of the Council of Europe's human rights mechanisms.

II. Cases selected for the present report

7. The present 6th report is to cover a number of judgments of the European Court, and decisions under former Article 32 of the Convention, which have been selected in accordance with the standard criteria applied by the Parliamentary Assembly for this exercise:

- judgments and decisions which have not been fully implemented more than five years after their delivery;
- other judgments and decisions raising important implementation issues, whether individual or general, as highlighted notably in the Committee of Ministers' Interim Resolutions or other documents.

8. The list of judgments selected, with respect to 13 Contracting State Parties, is reproduced in the appendix to the present memorandum, which must be read together with the separate background information document issued by the secretariat (Doc.AS/Jur(2005)32 and Addendum thereto). The detailed annotations of the judgments and of the outstanding issues in their execution are clearly presented in the latter Secretariat document, and need not be repeated here.

9. That said, the Rapporteur wishes to bring to the attention of the Assembly issues of substantial concern with respect to three states in particular, namely Italy, Turkey and Poland.

III. Italy: persistent problems of compliance with the Court's judgments

10. The problem of Italy's compliance with the Court's judgments gives rise to serious concerns, both as regards the number of cases pending for a long time before the Committee of Ministers (more than 60% of all cases pending before the CM are Italian cases) and the number and the extent of structural problems that remain to be solved to comply with the judgments. Details relating to the long list of 2,351 cases selected for the report and of problems to be resolved appears in working paper AS/Jur(2005)32. The most important issues are the following:

¹ Doc 8808; Res 1226(2000) and Rec 1477(2000) of 14/01/2000; Doc 9307; Res 1268(2002) and Rec 1546(2002) of 22/01/2002; Doc 9537; Res 1297(2002) and Rec 1576 (2002) 23/09/2002; Doc 10192; Res 1381(2004) of 22/06/2004; Doc 10351; Res 1411(2004) and Rec 1685(2004) of 23/11/2004.

a) Reopening of domestic proceedings impugned by the Court:

Italy is one of the very few countries not to allow reopening or re-examination of domestic proceedings found by the Court to be contrary to the ECHR. Italy has thus not responded to the Committee's repeated demands made since 1999 to reopen the domestic proceedings in the Dorigo case, where the applicant is still in prison as a result of unfair proceedings. Draft laws on the reopening of proceedings have been before Italian Parliament for several years but no general or even *ad hoc* solution has so far been adopted.

b) Structural deficiencies of the judicial system:

The main outstanding problems relate to the structural inefficiency of the judicial system, which results in excessively lengthy proceedings and thus leads to ineffective protection of a wide range of other substantial rights (for example, in bankruptcy proceedings, the rights of individual creditors remain unduly restricted until the end of the excessively long procedure). Notwithstanding a wide range of ongoing reforms engaged since early 90s, the data available do still not demonstrate conclusive results.

c) Non-compliance with domestic judicial decisions, notably as regards respect of legal deadlines and enforcement of eviction of tenants, as well as retroactive legislative validation of the state's illegal acts, notably in the fields of expropriation and town-planning;

d) Other problems that remain to be solved by the authorities in conformity with the Court's judgments concern the freedom of association, effective remedies against imposition of a special prison regime, placement of children in public care, etc.

11. The question of Italy's deficient compliance with the Court's judgments remains a constant and recurrent concern of the Committee of Ministers, which adopted a dozen Interim Resolutions between 1997 and 2004, repeatedly calling for compliance and suggesting specific measures. However, these efforts have not resulted in decisive progress on the part of Italy.

12. In November 2004, the Assembly adopted Recommendation 1684 (2004) and Resolution 1411 (2004) focusing on the aforementioned problems and called for appropriate action to be taken by Italy and by the Committee of Ministers so as to ensure rapid compliance with the the Strasbourg Court's judgments. The Committee of Ministers reply to Recommendation 1684(2004) is still awaited.

13. This worrying situation, which represents a serious danger for the credibility of the ECHR system as a whole, obviously calls for the Assembly's very special attention. The results achieved so far are not conclusive. The Italian delegation to the Assembly has, up to now, not answered the formal request by the President to promote, within their parliament, the implementation of the Court's judgments. The causes of Italy's persistent non-compliance need to be carefully examined. The Italian delegation has not actively cooperated with the Committee on Legal Affairs and Human Rights in the matter of the non-implementation of the Court's judgments by Italy. The Rapporteur hopes that this cooperation will now be forthcoming, as the report – including the replies from the national delegations – will have to propose appropriate measures in the case of Italy.

IV. Turkey: significant progress achieved and outstanding issues

14. 111 of the judgments selected for the present report concern various violations of the ECHR by Turkey. The question of Turkey's compliance with Court judgments has been closely monitored by the Committee of Ministers since 1996. The Assembly has also remained very active in following up the implementation measures required, given the number and the extent of the difficulties encountered. Resolution 1297(2002) and Recommendation 1576(2002) specifically addressed the problem of Turkey's compliance with the judgments and called for a number of comprehensive measures to implement them.

15. The most recent assessment by the Committee of Ministers of Turkey's record in this respect is encouraging. This country has indeed achieved significant results in adopting measures required, ranging from various remedial measures granting redress to the applicants to comprehensive constitutional and legislative reforms to prevent new violations similar to those committed by the Turkish security forces and, to a certain extent, violations of the right to freedom of expression. Of importance is the current initiative taken by the authorities to effectively implement new rules and to ensure that direct effect be given to the Court's judgments within the Turkish domestic legal system.

16. However, some important issues remain on the agenda, amongst which:

- a) **The reopening of domestic proceedings in Hulki Güneş case**, in which the applicant continues to serve his prison sentence on the basis of the conviction imposed with serious violations of the right to a fair trial;
- b) **Further progress to be made in implementation of Cyprus v. Turkey judgment** following the Committee of Ministers' recent Interim Resolution ResDH(2005)44, notably to ensure effective investigations into the fate of Greek Cypriot missing persons;
- c) **Strict implementation of the new legal framework aiming at the respect of the ECHR by the security forces in line with the recent Interim Resolution ResDH(2005)43** encouraging Turkey, in particular: to consolidate efforts to mainstream human rights into initial and in-service training of the security forces, judges and prosecutors; to ensure that the new constitutional principle of the Convention's supremacy in Turkish law be translated into daily practice of all authorities; to ensure the prompt and efficient implementation of the new Law on Compensation of Losses Resulting from Terrorism and to reconsider its present limited time-frame; to remove any ambiguity regarding the fact that administrative authorisation is no longer required to prosecute serious crimes allegedly committed by members of security forces;
- d) **Dogan v. Turkey judgment of 29/06/2004 concerning the problem of return to villages in the south-east**; A rapid solution to this problem appears to be of particular importance in view of the very large number of similar complaints pending before the Court. The implementation of this judgment must therefore be given priority.

17. The example of Turkey no doubt illustrates, to an extent, the efficiency of the ECHR's mechanism in resolving long-standing and large-scale problems. The Assembly's contribution to this process, helped by the constructive attitude of the Turkish delegation, has also proved to be instrumental in bringing about changes - with important work being undertaken, in this respect, especially by the AS/Jur and AS/Mon committees in 2004 - and therefore needs to be pursued. Turkey should certainly be encouraged build upon the progress achieved over the last few years and rapidly resolve outstanding problems.

V. Poland: an increasing number of the Court's judgments awaiting full compliance

18. The Rapporteur is concerned, with respect to Poland, of the increasing number of judgments requiring comprehensive general measures to prevent new similar violations. All but one of the 109 judgments selected for the preparation of the present report relate to structural deficiencies in the Polish judicial system, as evidenced most strikingly by the excessive length of judicial proceedings and the lack of effective domestic remedies.

19. A large-scale problem was revealed by the Court's "pilot" judgment delivered on 22/06/2004 in the case of *Broniowski*, which concerned the lack of effective mechanism to implement the applicant's right to compensation for the property he abandoned following changes of the borders after the Second World War. Hundreds of similar applications were adjourned by the Court pending the solution of the said structural problem.

20. The Polish authorities are engaged in comprehensive reforms which are expected to solve the above-referred to issues. The results achieved will need to be assessed in the report. Given the nature of these problems, the great number of similar applications before the Court, and the particular role to be played by the national legislator in completing the necessary reforms, all merit close analysis by the Assembly.

VI. Conclusion: procedure proposed

21. The 6th report on the implementation of the Court's judgment will be prepared in the same fashion as the procedure used in previous reports. The Committee of Legal Affairs and Human Rights is invited to agree with the Rapporteur's suggestion that letters be sent to the national delegations of the 13 States concerned (with copies to all members of the AS/Jur Committee from the countries concerned) requesting information on progress of implementation of the Court's judgments, supplemented by a specific request that colleagues formally put forward questions in parliament about outstanding problems of implementation with respect to their respective countries. These letters would be sent out by end June for reply by 10 September 2005.

22. As regards the three aforementioned countries presenting more serious problems, the Committee of Legal Affairs and Human Rights may agree with the Rapporteur's suggestion that the Chairmen of the said countries delegations, in addition, be asked to provide oral reports of (lack of) progress achieved at a forthcoming meeting of the AS/Jur.

23. Finally, the Rapporteur proposes that this report and the secretariat background working paper (Doc. AS/Jur (2005) 32) be placed on the PACE's website within the next few weeks. The Committee may also wish to permit the Rapporteur to assess the seriousness of the situation in each of the 13 countries concerned – in the light of replies received – and, in his Report, propose such measures as may be appropriate in each case, including the proposal to commence specific monitoring procedures in the most serious cases of non-compliance.

APPENDIX

Summary of principal problems encountered in the execution of judgments with respect of 13 Contracting State Parties to the ECHR²

Country	Case / Date of Judgment(s) or decision(s)	Violation(s)	Outstanding problem(s) in the execution of the judgment(s)/decision(s)
1. Bulgaria	Al-Nashif and others (20/06/02)	Art.5§4, Art.8, Art.13	Domestic proceedings still pending with a view to allowing the applicant's return to the country; Reform of the Alien Act to be completed.
2. France	Lemoine Daniel (17/06/99)	Art.6§1	Adoption of remedial measures vis-à-vis the applicant who was denied access to a court/
3. Germany	Görgülü (26/02/04)	Art.8	A father is still to be granted access to his 5-year old child born out of wedlock.
4. Greece	Dougoz (06/03/01) Peers (29/09/99)	Art.3, Art.5§1 Art.5§4 Art.8	Improvement of detention conditions.
5. Italy	see Part III above, and document AS/Jur (2005) 32		
6. Latvia	Slivenko (09/10/03)	Art.8	Restoring the applicants' residence rights in Latvia.
7. Moldova and Russia	Ilaşcu and others (08/07/2004)	Art.3, Art.34, Art.5§1	Applicants who are still in detention to be released.
8. Poland	see Part V above, and document AS/Jur (2005) 32		
9. Russia	Kalashnikov (15/07/02)	Art.3, Art.5§3, Art.6§1	Improvement of detention conditions.
10. Romania	Rotaru (04/05/00)	Art.8, Art.13, Art.6§1	Reform of the laws regulating the activities of secret services.
	Dalban (28/09/99)	Art.10	Entry into force of the new provisions of the criminal code concerning defamation.
11. Turkey	see Part IV above, and document AS/Jur (2005) 32		
12. United Kingdom	McKerr (04/05/01) Finucane (01/07/03) and 4 other cases	Art.2	Effective investigations to be carried out in the applicants' cases; Legislative and other reforms to be completed to ensure that adequate procedural safeguards surround such investigations.
	Murray John (08/02/96) and 4 other cases	Art.6§1, Art.6§3	Entry into force of Section 36 of the Criminal Evidence (Northern Ireland) Order 999, on non-permissible inferences from suspects' silence prior to their access to a lawyer.
	A. (23/09/98)	Art.3	Legislative or other reforms to prohibit effectively the physical punishment of children in breach of Article 3 in Scotland and Northern Ireland; Possible further measures to ensure effective deterrence of such ill treatment throughout the United Kingdom.
	Hashman and Harrup (25/11/99)	Art.10	Legislative or other reforms to ensure "binding over" orders are sufficiently clear and precise.
	Faulkner Ian (30/11/99)	Art.6§1	Adoption of a statutory scheme for legal aid in civil cases in Guernsey.
	Johnson Stanley (24/10/97)	Art.5§1	Adoption of a new Mental Health Bill, currently before Parliament.
13. Ukraine	Sovtransavto Holding (25/07/02)	Art.6§1, Art.1 of Protocol 1	Concrete measures to prevent impermissible interference by the executive with the administration of justice; Further development of training of judges on the ECHR; Reform of the civil procedure to be completed to abolish prosecutors' power to apply for quashing of final judgments.

² For more details consult document AS/Jur (2005)32 and Addendum thereto.