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Execution of Judgments of the European Court of Human Rights – the Case Of Ilascu And Others v Russia and Moldova

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Legal Force of the Judgment of the European Court of Human Rights

Under Article 46 §1 of the European Convention on Human Rights (the Convention) the State parties have undertaken to abide by any final judgment of the European Court of Human Rights (the Court). A judgment in which the Court finds a breach imposes on the respondent State not only a political but also a legal obligation[1]. The international application of the Convention is based on the assumption that the national legal systems differ. Therefore, generally, the judgments of the Court are essentially declaratory and leave to the states the choice of the means to be utilized in the domestic legal systems for performance of the obligation under Article 46 §2 and it cannot of itself annul or repeal inconsistent national law and judgments[2]. The State is, however, under an obligation to put an end to the violation found, to make reparation for its consequences and to prevent the repetition of similar violations. Where possible, reparation will take the form of

restitutio in integrum[3]. However, if *restitutio in integrum* is impossible the respondent States are free to choose the means whereby they will comply with a judgment in which the Court has found a breach[4].

Supervision of the examination of execution of judgments of the European Court

The President of the Chamber will forward a judgment, once it has become final, to the Committee of Ministers in order for the latter to supervise, in accordance with Article 46 §2 of the Convention, the execution of any undertakings which may have been attached to the discontinuance, friendly settlement or solution of the matter[5]. The President of the Chamber forwards the final judgment to the Committee of Ministers, without the need for a particular request from the applicant's representative.

The Committee of Ministers is required, for its part, in carrying out its functions under Article 46 §2, to supervise the implementation by respondent States of the - strictly legal - obligations arising out of the judgments of the Court. When a judgment is transmitted to the Committee of Ministers, the case inscribed on the agenda of the Committee. The Committee invites the State concerned to inform it of the measures which the State has taken in consequence of the judgment[6]. Usually the decision is rendered at the next monthly meeting of the Committee and consideration of it cannot be adjourned for more than six months.

The Committee of Ministers will not indicate which measures the respondent state has to take, but it is empowered under Article 46 §2 to give directions to the Governments concerned[7]. This freedom of the respondent State 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 to achieve the outcome sought in the Court's judgment. Where a choice of measures is not possible because of the nature of the violation, the Court can itself directly require certain steps to be taken. To date, the Court has used this power only very rarely[8].

The applicant has no standing, as such, before the Committee of Ministers and cannot influence the course it takes. The deliberations of the Committee of Ministers are confidential even for the applicant. The Committee of Ministers is entitled however to consider any communication from the injured party with regard to the payment of just satisfaction or the taking of individual measures.

In the course of its supervision of the execution of a judgment, 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 relevant suggestions with respect to the execution. When the Committee is satisfied that the judgment has been complied with it will pass a resolution to that effect. The Committee can re-open the supervision of the execution of the judgment if, after passing a final resolution on the execution of the judgment, new circumstances arise which impair the essence of the judgment.

If a state party does not meet its obligations the Committee of Ministers can decide (by a two-thirds majority of the votes cast) to take certain measures. In practice there is very little that may be done under the Convention to persuade the state to respect its obligations. However, the Committee has the power to suspend or even expel any contracting party from the Council of Europe, which is found guilty of serious human rights abuses[9]. The Committee of Ministers is extremely reluctant to make full use of

the powers it possesses – no member state has ever been suspended or expelled.

Ilaşcu Judgment

The application[10] was lodged with the Court against the Russian Federation and the Republic of Moldova in 1999 by 4 Moldovan citizens (Ilie Ilaşcu, Andrei Ivanţoc, Alexandru Leşco and Tudor Petrov-Popa) who were detained from 1992 in the "Moldavian Republic of Transdniestria" ("the MRT"), a region of Moldova known as Transdniestria, which declared its independence in 1991, and is not under the control of the Chişinău authorities. On 9 December 1993 the "Supreme Court of the MRT" sentenced the first applicant to death, the second and the fourth applicant to 15 years' imprisonment, and the third to 12 years' imprisonment.

The applicants complained that due to the political, financial, economic and military support of the Transdniestrian regime, the Russian Federation, in fact, exercised effective control over the Transdniestrian region. They also alleged that the Republic of Moldova did not discharge its positive obligation under Article 1 of the Convention to take all the steps necessary to ensure their freedom. They complained of violations of Articles 2 (in respect of the first applicant), 3, 5, 6, 8 and 34 of the Convention and Article 1 of Protocol No. 1.

On 5 May 2001 the first applicant was transmitted by the Transdniestrian forces to the Moldovan authorities and was released on 2 June 2004 after the expiration of the "sentence".

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The other two applicants are, at the time of writing, still in detention in the Transdniestrian region. The judgment of the Court delivered on 8 July 2004 found that the applicants were under the "effective authority or at the very least under the decisive influence" of the Russian Federation (§392). The Moldovan Government had also failed to discharge its positive obligations under Article 1 of the Convention with regard to the acts complained of which had occurred after May 2001. The Court found that Articles 3, 5 and 34 of the Convention had been violated by both respondent States and ordered both Governments to pay the total sum of €190,000 in respect of pecuniary and non-pecuniary damages, and costs and expenses.

The Court further held, unanimously, that Moldova and Russia were to take all necessary steps to put an end to the arbitrary detention of the applicants still imprisoned and secure their immediate release. Moreover, it emphasised the urgency of this measure in the following terms (§490): "any continuation of the unlawful and arbitrary detention of the applicants would necessarily entail a serious prolongation of the violation of Article

5 found by the Court and a breach of the respondent States' obligation under Article 46 §1 of the Convention to abide by the Court's judgment". This is the first time that the Court has pronounced in such terms on Article 46 §1.

On 8 July 2004 the Minister of Foreign Affairs of the Russian Federation made a statement describing the judgment as wrong and obviously politically-motivated. He also stated that Russia had always complied with its international obligations, and would continue to do so, including complying with this judgment, but if the Russian Federation were to take steps to secure the applicants' release, this would constitute a grave interference with the internal affairs of the Republic of Moldova[11].

Given the terms of the judgment, the Committee of Ministers decided at its meeting of 9 September 2004 to continue examining the urgent measures ordered by the Court not only at their meetings devoted mainly to the supervision of the execution of judgments, but also at their regular meetings. Between 9 September 2004 and 7 February 2005 the issue of the execution of the judgment was considered 13 times at its meetings, leading to the preparation of a draft interim resolution in February 2005.

Measures taken by the respondent Governments to conform to the judgment

Both governments complied with their obligation under the Convention to pay the sums indicated in the judgment, by 8 October 2004.

The Moldovan Government translated the judgment and published it in the Official Gazette of the Republic of Moldova on 21 September 2004. The representative of Moldova at the Committee of Ministers also provided the Committee with a number of documents addressed to the Russian authorities, the Secretary General of the Council of Europe, the Norwegian Chairmanship of the Committee of Ministers and Transdniestrian "authorities" requesting their assistance in obtaining the release of the applicants.

At the meetings of the Committee of Ministers, the Russian authorities' informed the Delegates of the statement of the Ministry of Foreign Affairs of 8 July 2004 and made clear Russia's disagreement with the judgment on both legal and political grounds. The Russian authorities stated that they were not in a position to execute the judgment, since releasing the applicants through the use of force was out of the question. At the 907th meeting (24 November and 1 December 2004) of the Committee of Ministers, the Permanent Representative of the Russian Federation emphasized that his authorities considered that they had fulfilled their obligations completely by paying the just satisfaction awarded to the applicants; the examination of the case should therefore be closed as regards any measures to be taken by the Russian Federation. The execution of the second part of the judgment should, in the view of the Russian authorities, be dealt with in the framework of the political resolution of the situation in Transdniestria.

Comments

Respondent States have the opportunity to defend all cases in full before the Court. At the execution stage, judgments are a fact which can no longer be open to dispute. This principle applies equally to questions of jurisdiction. Any statements emanating from Governments which question the findings of a final European Court judgment are not compatible with Article 46 §1 of the Convention.

States are not at liberty to choose whether or not to execute

certain parts of a judgment. Moreover, the question whether the lives of the applicants are at risk has no bearing on the respondent States' obligation to take the necessary measures.

Although this might in effect amount, in classical international law terms, to interference in their internal affairs, after the judgment of the Court has been delivered that is no longer the case. *A fortiori*, the principle of non-interference in the internal affairs of a State cannot be invoked so as to prevent the proper execution of a judgment of the European Court.

The obligation of States arising from the present Court's judgments is one of results and not of means; thus, as regards the individual measures required in the present case, the applicants should be released. It appears the Moldovan Government has taken some political steps aimed at the release of the two applicants still in detention. However, it would appear that the Russian Government has done nothing, at least at the political level, to release the applicants.

As is noted above, the detention of the two applicants after 8 July 2004 would appear to be incompatible with Article 46 §1 of the Convention and constitutes a continuing violation of Article 5 of the Convention. It is not clear whether the two applicants can claim in the Court compensation for non-execution of the judgment but it is clear they can claim compensation for their detention after the judgment in their case was adopted.

Endnotes

1. *Papamichalopoulos and Others v. Greece*, 31.10.1995, (art.50), §34
2. See *inter alia Markx v. Belgium*, 13.07.1979, §58
3. R.St.J. Macdonald, F. Matscher, H. Petzold "The European System for the Protection of Human Rights" (1993), p 793
4. *Akdivar and Others v. Turkey*, 01.04.1998, (Art. 50), §47.
5. Rule 43 p.3 of the Rules of the Court. Rules of the Court can be accessed at (http://www.echr.coe.int/Eng/EDocs/RULES%20OF%20COURTNOV2003.htm).
6. Rules for the application of article 46, paragraph 2, of the European Convention on Human Rights adopted at the 736th meeting of the Ministers' Deputies the Committee of Ministers (see http://www.coe.int/T/E/Human_Rights/Execution/02_Documents/CMrules46.asp#TopOfPage).
7. T.Barkhuysen a.a. The Execution of the Strasbourg and Geneva Human Rights Decisions in the National Legal Order (1999), p.81
8. See *Assanidze v.Georgia*, of 08.04.2004; *Broniowski v. Poland*, 22.06.2004 and *Ilascu and others v. Russia and Moldova*, 08.07.2004.
9. Art.8 Statute of the Council of Europe.
10. Application no. 48787/99
11. It can be accessed at http://www.ln.mid.ru/brp_4.nsf/sps/7D1BEC3C25B34D7EC3256ECB004647E4