



In partnership with Memorial Human Rights Centre (MHRC), the Slavic Centre for Law and Justice (SCLJ) and the Georgian Young Lawyers' Association (GYLA)

Enforcement and implementation of European Court judgments in Georgia

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The enforcement and implementation of European Court judgments is a legally binding obligation upon contracting states.¹ To maintain standards of protection, it is essential that states fully comply with the final judgments of the European Court of Human Rights (ECtHR) in cases to which they are parties.² What measures must states take in order to achieve full compliance?

Three aspects of the term 'full compliance' can be observed: 1) payment of *just satisfaction* awarded by the Court under Art. 41 of the ECHR; 2) taking *individual measures* to ensure the violation has ceased and that the injured party, as far as is possible, is in the same situation they were prior to the violation; 3) adopting *general measures* to prevent similar violations occurring or to put an end to continuing violations.³

Full compliance has raised numerous challenges in Georgia. Georgia has comparatively recently ratified the ECHR⁴ and the European Court has delivered only 10 judgments against it so far. Gaps in existing legislation

and practice have been identified that require prompt action on behalf of state authorities. In order to be in full compliance, various measures have been carried out by Georgian authorities that address not only the individual cases, but also tackle the more general problems that underlie the judgments.

Payment of just satisfaction

Although the sums awarded to applicants in the 10 cases were substantial, the Georgian authorities have managed to pay just satisfaction on time. The procedure for awarding just satisfaction has been prescribed under the 'Law on Execution Proceedings of Georgia'. Under Art. 21 Para. 5 of the statute, the Minister of Justice issues an order on execution of the final judgment of the ECtHR within two weeks of a judgment becoming final. Subsequently, requests for a wire transfer are sent to the Ministry of Finance of Georgia and then applicants are invited to obtain their monetary awards.

Individual measures

Contracting states are under an obligation to ensure that the violation has ceased and that the injured party, as far as is possible, is in the same situation they were prior to the violation. In order to achieve this, the Government has prepared draft amendments to the Criminal and Civil Procedural Codes. Under the draft amendments, the findings of the Strasbourg supervisory body serve as the legal basis for reopening proceedings at a national level. However, the right to request the reopening of proceedings is not absolute; two criteria apply to the admissibility stage: 1) that the violation of the ECHR can only be fully remedied through reopening and re-examining the case at a national level; and 2) that by reopening the proceedings, the applicant will not be put in a worse situation. The competent authority to deal with admissibility is the Grand Chamber of the Supreme Court of Georgia. However, if the violation of the ECHR was directly caused by legislation in force, then the Constitutional Court of Georgia is the body to be addressed. The Constitutional Court will examine the compliance of the impugned

legislation with the rights and freedoms enshrined in the second chapter of the Georgian Constitution.⁵ The time limit for submitting requests for reopening proceedings has been set at six months from the date when an ECtHR judgment becomes final.

General measures

Several ECtHR judgments against Georgia have identified both practical and legal problems. To avoid cases being lodged with the ECtHR, the Georgian authorities have taken action to fill legislative gaps and tackle the practical problems.

The first case to demonstrate a legislative gap was *Shamayev and 12 Others v Georgia and the Russian Federation*.⁶ The case concerned the extradition of Chechens to the Russian Federation following their arrest in Georgia. According to legislation existing at the time, the decision on extradition was made by the Prosecutor General of Georgia who did not have any obligation to inform the detained about the decision on their extradition. Simultaneously, the Criminal Procedural Code of Georgia did not give the detainees a right to challenge the lawfulness of the decision. There was a general Article in the Criminal Procedural Code (Art. 242) but the European Court remained unpersuaded that this allowed a person to effectively challenge an extradition order. As soon as the legislative problem became apparent the Chamber of Criminal Cases of the Supreme Court of Georgia through its judgment in *Abdulhamit Aliev*⁷ established new practices to be followed in extradition cases. The Supreme Court of Georgia stated:

“Notwithstanding the absence of relevant provisions in the procedural legislation of Georgia, concerning the judicial procedure pending extradition ... relying on Article 13 of the ECHR, the Supreme Court has to grant to Mr. Aliev the possibility of defence through the judicial review of the decision on extradition.

...the Chamber considers that the complaint of Mr. Aliev, on the basis of the analogy of the law, has to be examined by the Court.”

Following the delivery of the judgment

of the European Court, amendments were then introduced to Criminal Procedural Legislation in Georgia. The amendments granted the right to challenge extradition decisions before the domestic courts.

The second case which required general measures concerned the failure of Georgian authorities to execute judgments delivered by its domestic courts.⁸ Following the judgment by the European Court, relevant sums were paid to the individual applicant on time. The Government is currently in the process of implementing general measures to establish an effective remedy for other persons who were awarded sums by national courts, but who have not yet received them. What measures have been taken so far to tackle the problem?

Firstly, the relevant sums have already been included in the 2007 budget of Georgia to cover state debt. Bearing in mind the amount of debt in relation to such cases, it is obvious that all those affected will not be satisfied.

Secondly, a set of criteria has been created to establish who should receive their payment and when. The criteria include the time when the sum was awarded to a person, the amount of the sum and the circumstances of the person in question.

Thirdly, new amendments are proposed that will grant people the right to challenge the non-execution of judgments and request damages for delays. Although individually these remedies may not be satisfactory, collectively they will address the problem.

Conclusion

Proper implementation and execution of European Court judgments is one of the most important factors for the protection of human rights guaranteed under the European Convention. Despite relatively recent ratification of the ECHR and lack of extensive practice, the Georgian authorities have acknowledged that payment of just satisfaction alone is not sufficient to achieve full compliance. The more rapidly general measures are taken by Georgia to remedy the legislative or practical problems highlighted in judgments the fewer repeat applications

there will be.

1 Art. 46, ECHR.

2 Parliamentary Assembly of the Council of Europe, Resolution 1226 (2000).

3 Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements, 10 May 2006, Rule 6(2).

4 On 20 May 1999 the instruments of ratification were deposited with the Secretary General of the Council of Europe.

5 All rights and freedoms in the ECHR are guaranteed under this Chapter.

6 (No. 36378/02), 12/4/05.

7 Judgment of 28 October 2002.

8 *Amat-G Ltd and Mebagishvili v. Georgia* (No. 2507/03), 27/9/05.