



Specific orders given by the European Court of Human Rights to states on how to execute its judgments

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Judgments of the European Court of Human Rights (the Court) are “essentially declaratory in nature, and leave to the state concerned the choice of the means to be used in its domestic legal system for performance of its obligation” to abide by the judgment.¹ The Court has not considered itself competent to make recommendations as to which steps should be taken to remedy the consequences of a violation of the European Convention on Human Rights (the Convention) ² and had always abstained from making any consequential orders or declaratory statements, arguing that it falls to the Committee of Ministers to supervise the execution of its judgments.³ The Court did not have the power to order the respondent State to take specific measures in order to remedy the violation, unlike the Inter-American Court of Human Rights which, pursuant to Art. 63§1 of the American Convention on Human Rights, “may rule, if appropriate, that the consequences of the measure or situation that constituted the breach of [a provision of the American Convention] be remedied”. In numerous cases successful applicants have asked the Court to direct the

respondent state to introduce arguably necessary legislative amendments so as to bring into conformity with the Convention the national law which was found to have been at the source of a violation.⁴ Each time the Court categorically replied that the Convention did not empower it to order the respondent state to alter its legislation.⁵ In *Soering v the United Kingdom*, the applicant submitted that just satisfaction of his claims would be achieved by effective enforcement of the Court's ruling and he invited the Court to give directions in relation to the operation of its judgment to the respondent government. The Court responded that it was not empowered under the Convention to give directions of the kind requested by the applicant: "By virtue of Article 54 [now Article 46], the responsibility for supervising execution of the Court's judgments rests with the Committee of Ministers of the Council of Europe."⁶

The absence of an injunctive power on the part of the Court has often been criticised by academics⁷ and by the Parliamentary Assembly of the Council of Europe as not being conducive to the proper and rapid execution of judgments.⁸ Gradually the Court has itself assumed more responsibility for the proper execution of its judgments, by giving indications as to what the best remedy would be, or by clearly giving orders for reparation.

There were some indications of developments in the Court's approach in earlier judgments such as *Iatridis v Greece*, concerning the withdrawal of a cinema license, where the Court recommended that the best course of action would be to give the applicant a new cinema license.⁹ However, the Court has never directly pronounced such an order in the operative part of the judgment.¹⁰ In the case of *Papamichalopoulos and others v Greece* the Court for the first time offered the respondent Government an alternative: either to make *restitution in integrum* or to pay compensation for the pecuniary damage, within six months. This was a "first serious assault on the doctrine that the [Court] has no power to issue directions to the states in respect

of the execution of its judgments".¹¹ Subsequently, the Court has, in a number of property cases, held that the respondent state was to return to the applicant within a period from three to six months, the property concerned.¹² However, it almost always left open an alternative for the state in that it ordered that, failing restitution, a fixed sum in respect of pecuniary damage was to be paid to the applicant by way of just satisfaction.

Since 23 October 2003, the Court has indicated in more than 60 cases against Turkey¹³ (in which the applicants had been convicted by a security court, which was found not to be independent and impartial within the meaning of Art. 6 of the Convention) what the respondent state must do in order to comply with the judgment. For example, in *Alfatli v Turkey* the Court stated, in relation to Art. 41 that "in principle, the most appropriate form of relief would be to ensure the applicant in due course a retrial by an independent and impartial tribunal".¹⁴

More precise indications were recently given in the case of *Assanidze v Georgia* where the Grand Chamber of the Court ordered for the first time an applicant's release at the earliest possible date, in addition to the payment of just satisfaction for pecuniary damage.

The Court held that, by its very nature, the violation found (the continued deprivation of liberty despite the existence of a court order for release) did not leave any real choice as to the measures required to remedy it, in contrast to the usual discretion a State enjoys in these matters.¹⁵ In *Ilascu and others v Moldova and Russia*, the Court ordered the release of the arbitrarily detained applicants and held that "any continuation of the unlawful and arbitrary detention of the three applicants would necessarily entail a serious prolongation of the violation of Art. 5 found by the Court and a breach of the respondent States' obligation under Art. 46 §1 of the Convention to abide by the Court's judgment".¹⁶ Moreover, the Court stated that "the respondent States are to take all necessary measures to put an end to the arbitrary detention of the applicants still imprisoned and secure

their immediate release”.¹⁷
Judge Ress is convinced that the Court rightly considers that it has the inherent power to give such precise orders when the respondent state clearly has no discretion in the relevant case.¹⁸
According to Steven Greer there are three particular advantages to the Court being more specific about the kind of systemic action required by national authorities: compliance with the judgment is less open to political negotiation in the Committee of Ministers; it is easier to monitor objectively both by the Committee and by other bodies such as NGOs and other domestic human rights agencies; and a failure by relevant domestic public authorities to comply effectively is, in principle, easier to enforce by both the original litigant, and others, through the national legal process as an authoritatively confirmed Convention violation.¹⁹

1 *Marckx v Belgium* (No. 6833/74), 13/6/79, Para. 58.

2 Barkhuysen, T. & Van Emmerik, M., L., “Improving the Implementation of Strasbourg and Geneva Decisions in the Dutch Legal Order: Reopening of Closed Cases or Claims of Damages Against the State” in, T., Christou & J., Raymond (eds) *Court Remedies and Execution of Judgments*, The British Institute of International and Comparative Law, 2005, p.7.

3 Polakiewicz, J., “The Execution of Judgments of the Court”, in Blackburn, R., & Polakiewicz, J. “Fundamental Rights in Europe”, Oxford University Press, 2001, p.57.

4 Ryssdal, R., “The Enforcement System Set Up Under the Convention”, eds Bulterman, M., K., & Kuijer, M., “*Compliance With Judgments of International Courts*”, The Hague-Boston-London: Nijhoff, 1996, p. 50.

5 See *Pelladoah v The Netherlands* (No. 16737/90) 22/9/94.

6 *Soering v The United Kingdom* (No. 14038/88) 7/7/89 para.25.

7 See Cassese, A., *International Law* (Oxford University Press, 2002), pp.366-367; Clayton, R., and Tomlinson, H., *The Law of Human Rights* (Oxford University Press, 2000), p.1554.

8 Lambert-Abdelgawad, E., “The Execution of Judgments of the Court”, *Human Rights Files No.19*, 2003, p.7.

9 *Iatridis v Greece* (No. 31107/96) 19/10/00, para.35.

10 Ress, G., “The Effect of Decisions and Judgments of the Court in the Domestic Legal Order”, *Texas International Law Journal*, Vol. 40:359, 2005, p.372.

11 Lambert-Abdelgawad, E., “The Execution of Judgments of the Court”, *Human Rights Files No.19*, 2003, p.27.

12 See *Brumarescu v Romania* (No. 28342/95) 28/10/99.

13 Vandenhole, W., “Execution of Judgments” in Lemmens, P., & Vandenhole, W., (eds) “*Protocol No. 14 and the Reform of the Court*”, Intersentia, 2005, p.109.

14 See *Alfatli v Turkey* (No. 32984/96) 30/10/03,

Para. 52.

15 *Assanidze v Georgia* (No. 71503/01) 8/4/04,
Para. 202-204 and operative Para. 14(a).

16 *Ilascu and others v Moldova and Russia* (No.
48787/99) 8/7/04, Para. 490.

17 *Ibid*, operative Para. 22.

18 Ress, G., "The Effect of Decisions and
Judgments of the Court in the Domestic Legal Order",
Texas International Law Journal, Vol. 40:359, 2005,
p.373.

19 Greer, S., "The Convention, Achievements,
Problems and Prospects", Cambridge University Press,
2006, p.160.