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## Committee on Legal Affairs and Human Rights

# Implementation of judgments of the European Court of Human Rights: preparation of the 8<sup>th</sup> report

## Stock-taking and proposals by the Rapporteur

Rapporteur: Mr Klaas de Vries, Netherlands, Socialist Group

### 1. Overview of the Assembly's involvement in the implementation of Strasbourg Court judgments

1. The recent High Level Conference on the Future of the European Court of Human Rights held in Brighton, the United Kingdom, has underlined the importance of the Parliamentary Assembly in the execution of Strasbourg Court judgments:

*Each State Party has undertaken to abide by the final judgments of the Court in any case to which they are a party...The Committee of Ministers is supervising the execution of an ever-increasing number of judgments. As the Court works through the potentially well-founded applications pending before it, the volume of work for the Committee of Ministers can be expected to increase further...The Conference therefore...[w]elcomes the Parliamentary Assembly's regular reports and debates on the execution of judgments.*<sup>1</sup>

2. The monitoring of the implementation of Strasbourg Court judgments became a key focus of the work of the Parliamentary Assembly's Committee on Legal Affairs and Human Rights ("the LAHR Committee"/"the Committee") following the adoption, by the Committee on 27 June 2000, of the first report on the matter by Mr Erik Jurgens. On the basis of this report, the Assembly adopted Resolution 1226 (2000), highlighting the need for effective synergy between the Court, the Committee of Ministers and national authorities, and undertaking to play a more prominent role in supervising judgments of the Court.

3. Since 2000, the Assembly has adopted seven reports and resolutions and six recommendations on the subject of the implementation of judgments of the European Court of Human Rights. Between the years 2006 and 2010, the rapporteurs on this issue adopted a relatively proactive approach, conducting *in situ* visits to States Parties with particularly problematic instances of non-implementation (Mr Erik Jurgens visited five states - Italy, the Russian Federation, Turkey, Ukraine and the United Kingdom - in preparation for the sixth report; and Mr Christos Pourgourides visited eight states - Bulgaria, Greece, Italy, the Republic of Moldova, Romania, the Russian Federation, Turkey and Ukraine - in preparation for the seventh report). During these visits the rapporteurs discussed the reasons for failure to execute Strasbourg Court judgments with members of the national parliaments and government representatives, and underlined the urgent need to find solutions to problems raised. The aim of the visits was to see how, with the aid of parliamentarians in the relevant countries, the national authorities could be 'encouraged' to speed up the implementation of the reforms and measures needed for the prompt and complete execution of judgments.

\* Document declassified by the Committee on 28 May 2013.

<sup>1</sup> Brighton Declaration, Part F. Execution of judgments of the Court, §§ 26, 28 and 29 e), at <https://wcd.coe.int/ViewDoc.jsp?id=1934031>.

4. On the basis of the 7<sup>th</sup> report prepared by Mr Pourgourides, on 26 January 2011, the Parliamentary Assembly adopted [Resolution 1787 \(2011\)](#) and [Recommendation 1955 \(2011\)](#) drawing attention to the difficult situation of non-implementation or delays in full implementation of the Strasbourg Court judgments in a number of states. Letters were sent to the national parliamentary delegations of ten states, requesting information on action taken by the states' respective national parliaments to implement the resolution.

5. In January 2012, I was appointed the third, successive, rapporteur on this subject. At the same time, the LAHR Committee considered the introductory memorandum on 'Ensuring the viability of the Strasbourg Court: structural deficiencies in States Parties' by Mr Serhii Kivalov (see, in this connection, [Parliamentary Assembly Resolution 1914 \(2013\)](#) and [Recommendation 2007 \(2013\)](#)). Based on the information provided in that memorandum and Mr Pourgourides' 7<sup>th</sup> report, between April 2012 and January 2013, the LAHR held a series of hearings in Strasbourg with the heads of the parliamentary delegations of ten states identified in the 7<sup>th</sup> report, to discuss their progress with regard to the enforcement of judgments. Upon my request, the summary records of these hearings were declassified by the Committee on 19 March 2013 and have been issued in document AS/Jur (2013) 13.

6. Three years after the publication of the 7<sup>th</sup> report on this subject by my predecessor, Mr Pourgourides, and in the light of the information collected during the hearings, I believe that the time has come for a fresh examination of the matter.

## 2. The parameters of the 8<sup>th</sup> report

7. The reports presented to the Parliamentary Assembly by my predecessors, Messrs Jurgens and Pourgourides, focused on individual judgments/issues and used certain criteria for their selection. Both reports included in their scope the "judgments (and decisions) raising important implementation issues" as identified, in particular, in the Committee of Ministers' interim resolutions or other documents. Each of them also used one additional selection criterion: "judgments and decisions which have not been fully implemented more than five years after their delivery", for the report by Mr Jurgens, and "judgments concerning violations of particularly serious nature", for the report by Mr Pourgourides<sup>2</sup>. I have decided to slightly readjust the way in which I intend to proceed with respect to the 8<sup>th</sup> report.

8. Since 1996 the number of cases requiring oversight by the Committee of Ministers has been on the rise<sup>3</sup>, making it more and more difficult for the supervisory body to effectively exercise its functions. My future report is to cover eight states which have the highest number of judgments pending execution before the Committee of Ministers, according to the statistics presented by the latter in its annual report for the year of 2012. These states are, in the descending order: Italy (2569 cases), Turkey (1861 cases), the Russian Federation (1211 cases), Ukraine (910 cases), Poland (908 cases), Romania (667 cases), Greece (478 cases), and Bulgaria (366 cases).<sup>4</sup>

9. As an aside, it is to be noted that the above statistics do not necessarily correspond to the 'reality', if considered from the angle of the number of cases pending before the Court, either by total count or by population. In terms of the number of cases pending consideration by the Court at the end of 2012, the following eight states accounted for 75% of the total caseload: the Russian Federation (22.3%), Turkey (13.2%), Italy (11.1%), Ukraine (8.2%), Serbia (7.8%), Romania (6.8%), Bulgaria (3%), and the United Kingdom (2.6%).<sup>5</sup> As one can easily see, the order of importance is not the same as in the statistics provided by the Committee of Ministers; Greece and Poland are absent from the list altogether. If we were to look at the number of applications allocated by the Court's Registry to a judicial formation by the end of 2012, in proportion to the population of the states concerned, the picture would change drastically again: the eight biggest contributors would be Serbia (6.77 *per* 10,000 inhabitants), Liechtenstein (4.44), Croatia (4.35), Romania (3.18), Montenegro (2.91), the Republic of Moldova (2.63), Estonia (2.25), and Slovenia (2.05).<sup>6</sup> Only one state from the above list of the biggest defaulters as identified by the Committee of Ministers – Romania – would also find itself in this group.

<sup>2</sup> See § 6 of the [6<sup>th</sup> report \(PACE document 11020\)](#) and § 5 of the [7<sup>th</sup> report \(PACE document 12455\)](#).

<sup>3</sup> See "Supervision of the execution of judgments of the European Court of Human Rights – Annual Report 2012", at [http://www.coe.int/t/dghl/monitoring/execution/Source/Publications/CM\\_annreport2012\\_en.pdf](http://www.coe.int/t/dghl/monitoring/execution/Source/Publications/CM_annreport2012_en.pdf), p. 27.

<sup>4</sup> *Ibid*, pp. 30-31.

<sup>5</sup> See "Annual Report 2012 of the European Court of Human Rights, Council of Europe", at [http://www.echr.coe.int/NR/rdonlyres/9A8CE219-E94F-47AE-983C-B4F6E4FCE03C/0/2012\\_Rapport\\_Annuel\\_EN.pdf](http://www.echr.coe.int/NR/rdonlyres/9A8CE219-E94F-47AE-983C-B4F6E4FCE03C/0/2012_Rapport_Annuel_EN.pdf), p. 150.

<sup>6</sup> *Ibid*, p. 156-157. The Council of Europe member states had a combined population of approximately 822 million inhabitants on 1 January 2012. The average number of applicants allocated to a judicial formation per 10,000 inhabitants was 0.79 in 2012.

10. All of the eight states selected on the basis of the Committee of Ministers' annual statistics were identified as having difficulties with the implementation of the Strasbourg Court judgments in the 2010 report prepared by Mr Pourgourides and have been the subject of the hearings before our Committee held between April 2012 and January 2013, as indicated in paragraph 5, above. The main issues detected for each of the above states are as follows:

#### **Italy**

- excessive length of judicial proceedings and lack of an effective remedy in that regard
- the expulsion of foreign nationals in violation of the Convention

#### **Turkey**

- failure to re-open judicial proceedings
- repeated imprisonment for conscientious objection
- violations of the right to freedom of expression
- excessive length of detention on remand
- actions of security forces
- issues concerning the northern part of Cyprus

#### **Russian Federation**

- non-enforcement of domestic judicial decisions
- violation of the principle of legal certainty on account of the quashing of final judicial decisions through the "supervisory review procedure"
- poor conditions of detention on remand, in particular in pre-trial detention centres
- excessive length of and lack of relevant and sufficient reasons for detention on remand
- torture and ill-treatment in police custody and lack of effective investigation in that respect

#### **Ukraine**

- non-enforcement of domestic judicial decisions
- excessive length of judicial proceedings and lack of an effective remedy in that regard
- issues concerning detention on remand
- unfair trial, inter alia, due to lack of impartiality and independence of judges

#### **Poland**

- excessive length of judicial proceedings and lack of an effective remedy in that regard
- excessive length of detention on remand

#### **Romania**

- failure to restore or compensate for nationalised property
- excessive length of judicial proceedings and lack of an effective remedy in that regard
- non-enforcement of domestic judicial decisions
- poor conditions of detention

#### **Greece**

- excessive length of judicial proceedings and lack of an effective remedy in that regard
- use of lethal force and ill-treatment by law enforcement officials and lack of effective investigation into such abuses

#### **Bulgaria**

- deaths and ill-treatment taking place under the responsibility of law enforcement officials and lack of effective investigation into such abuses
- excessive length of judicial proceedings and lack of an effective remedy in that regard
- violations of the right to respect for family life due to deportation/orders to leave the territory.

11. The above issues are described, in much more detail, in the Addendum to the present document.

### **3. Proposals by the Rapporteur**

12. On the basis of the information provided above and in the Addendum to this document, I firstly invite the Committee on Legal Affairs and Human Rights to agree to my proposal to introduce a new criterion – the number of judgments awaiting execution – for the selection of the states to be included in the scope of the 8<sup>th</sup> report on the implementation of the Strasbourg Court judgments.

13. I further request the Committee's authorisation to visit four or five of the States identified above, which continue to demonstrate persistent difficulties in the implementation of Court judgments. During these visits I intend to address the reasons for this continuous non-compliance with Strasbourg Court judgments by, in particular, national executive and legislative authorities. Before determining which states I ought to visit, I seek the Committee's agreement to submit, to all of the states mentioned above, extracts from the Addendum to the present document, requesting them to provide me with their comments/observations by the end of August 2013. I will then decide which states are to be visited and inform the Committee of my decision at its meeting on 3 September 2013 or, at the latest, during the Assembly's October 2013 part-session.

14. My mandate is to follow up non-enforcement or dilatory enforcement of Strasbourg Court judgments. Nevertheless, I would like to seek the Committee's views as to the need for the Assembly - already now – to determine the extent to which we should also analyse the situation in states which have significant problems with Convention standards, but where the number of cases pending before the Committee of Ministers has not yet reached unmanageable proportions. In my view, it is often too late for us, parliamentarians, to deal with, for example, structural problem in States Parties to the Convention which are known to everyone, but which we are not mandated to work on until 5, 10, or even 15 years later, once a case has reached the Committee of Ministers for determination.