United Nations Workshop (21/10/2015)

Welcome

Video

Execution of judgments rendered by an international court raises a number of **complex issues**.

**Unlike national systems** which provide for clear rules on how execution of judicial decisions shall take place, international courts do not have same type of mechanisms.

Most importantly, international courts cannot take **coercive action** against a member state: they do not have a **bailiff**, nor do they have a **police force** to ensure that their judgments are executed.

So, how can it be **ensured** that judgments of the European Court of Human Rights are **executed**?

To answer that question, we have to take a look at **Article 46** of the European Convention on Human Rights.

**Article 46** of the European Convention on Human Rights is very clear:

“The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties”.

In other words, what Article 46 says is that when a state becomes a party to the Convention, that member state is **under the obligation** to abide by the judgments of the European Court.

This is an obligation expressed at **international level** and all the powers and organs of the state are responsible to fulfil it.

The respondent States are, in principle, **free to choose** the means to be put in place in order to meet this international obligation.

However, this freedom goes **hand-in-hand** with the Committee of Minister’s control.

Consequently, the **scope** of the execution measures required is defined in each case on the basis of the **conclusions** and the **findings** of the European Court in its judgment.

The Committee of Minister’s **practice** and the **legal situation** in the member state concerned are also **taken into consideration** in this respect.

What is the **nature of the measures** that member States should take to execute a judgment?

There are **two types** of measures:

Individual and general measures

**Individual measures**: 1) payment of just satisfaction; 2) other measures (we have seen some examples of types of individual measures in the **video** clip so I will not repeat them)

It is important to note that the **main idea** behind the individual measures is to bring the applicant, as much as possible, to the **same legal situation** if he or she would be if the violation had not occurred.

**General measures**: Change of legislation, administrative practice, and domestic courts’ case-law all fall under the general measures.

The **main idea** behind the general measures is the prevention of similar violations and enforcement of common Convention rights in all member States of the Council of Europe.

It is also important to note that taking of general measures will **prevent new applications** to be brought before the European Court of Human Rights.

**Therefore** full and timely execution of all judgments of the European Court of Human Rights is a **fundamental safeguard** to ensure the effective protection of the rights enshrined in the European Convention on Human Rights.

------

I would like to say a few words on the **new working** that the Committee of Ministers adopted in 2011.

Since the number of judgments finding a violation of the European Convention has **increased** significantly in recent years, the Committee of Ministers was **compelled** to change its working methods on the supervision of execution of judgments.

These new working methods have brought important changes (i.e. **twin track approach**) to the working methods that were inforce since 2004.

The main aim was to **improve** the efficiency and transparency of the supervision process.

In practical terms, under the new system, all cases will be examined under the **standard procedure** unless, because of its **specific** nature, a case warrants consideration under the **enhanced** **procedure**.

The types of cases that should be followed under the **enhanced** **procedure** are the **following**:

* Judgments requiring **urgent individual measures**;
* **Pilot judgments**;
* Judgments raising **structural and/or complex problems** as identified by the Court or by the Committee of Ministers;
* **Interstate cases**.

The new working methods also introduced a mechanism of **continuous supervision** of execution of judgments.

In practical terms this means that all cases examined for execution control are under the **permanent supervision** of the Committee of Ministers which should receive, **in real time**, relevant information on the measures taken or envisaged by the member States.

The member States are expected to present this information to the Committee of Ministers in the form of **action plans or reports** (as we have seen in the video).

**Four meetings** of the Committee of Ministers in a year are **reserved** for the supervision of execution of judgments.

The Committee **only** examines the cases examined **under the enhanced procedure** at these meetings but **transfer** of cases from enhanced to standard procedure or from standard to enhanced procedure is possible **under certain conditions**.

The Committee of Ministers shall decide to **close** the examination of a case when it is **convinced** that all the necessary measures are taken for the full execution of a judgment.

The question might arise at this juncture as to what happens if a member State **fails** to execute a judgment.

What are the **consequences** of non-execution of a judgment?

When I started my presentation, I mentioned that the member states are under the obligation to **abide** by the judgments of the Court and this obligation is expressed at **international level**.

However, there might be situations where a member state **cannot** fulfil its obligation because of **political**, **economic** or **other reasons**.

In such situations, the Committee of Ministers might invite the member state concerned to **cooperate** with the relevant instances of the Council of Europe.

This can take the form of **cooperation activities** or **providing technical assistance** to the authorities of the member State.

The aim is to ensure that the **obstacles** to the execution of a judgment are **eliminated**.

If a member state fails to cooperate and eventually fails to execute a judgment, the Committee of Ministers will exercise **political and diplomatic** **pressure** on the Member State.

This pressure shall take the form of **strong worded decisions** or **interim resolutions** urging the authorities of the member State to execute.

The Committee might also exercise **other means of diplomatic pressure** which it shall **increase gradually** if the member state persists in not executing a judgment.

------

I would like to say a few words on the **work** carried out by the **Department** for Execution of Judgments.

The Department’s primary task is to **assist** the Committee of Ministers to exercise its task in the supervision of execution of judgments.

In addition to that, the Department **works in close cooperation** with the authorities of the member states and **provides them technical assistance**, if they need such assistance.

This cooperation is an **ongoing process** and is **essential** to ensure timely execution of judgments.

The Department for Execution issues an **annual report** every year.

This report, which can be found on the Department’s website, provides **statistical information** relating to the Committee of Ministers’ action.

The statistical information is **divided into different categories**: new cases, cases examined under enhanced and standard procedure, main themes under the enhanced procedure and main states with cases under the enhanced procedure.

The annual report also provides the most important cases examined by the CM in a given year.

Thank you