

Still Time for Some Technical Improvements in the Supervision of the Execution of Court Judgments by the Committee of Ministers' CMDH

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1. One of the major inter-Governmental work products of the Council of Europe is Recommendations of the Committee of Ministers (CM). There are many made during the ten year 'Interlaken Reform Process', or even before Interlaken, such as Recommendation CM/Rec(2008)2 on efficient domestic capacity for rapid execution of judgments of the Court. Normally the CM has no means of investigating or assessing the extent and degree of national compliance with its recommendations².
2. On 10 June 2022 the CMDH adopted **Resolution [CM/ResDH\(2022\)132](#)** in respect of two cases against the Russian Federation concerning the arbitrary disbarment of practicing lawyers, one in 2005 and one in 2012, which had generated judgments in 2011 and 2018. In both cases the CMDH concluded that it had 'exercised its functions under Article 46, paragraph 2, of the Convention in these cases' and so closed its examination of them. Bearing in mind the likelihood that the Russian Federation will not co-operate with the CMDH following its expulsion from the Council of Europe, will those be the last two cases where the CMDH can close its examination with a clear conscience?
3. The CMDH is faced with a dilemma. A high number of judgments in decided cases, which typically take 6 years or more to be decided by the Court, have been pending, incompletely resolved, for five years, many for ten, after the judgment becomes final. Many more judgments will be given in cases against Russia which are still pending before the Court. Given Russia's poor record of executing judgments, what should the CMDH do with them now:
 - a. Continue to adopt increasing numbers of Interim Resolutions, which Russia will not heed; or
 - b. Adjourn all but a small number of cases indefinitely and use the resulting capacity to address the dire backlog of other judgments awaiting execution by other States?
4. This debate, like that in the Court itself about what it should do with pending and new cases lodged against Russia in the past and in months to come, has no simple answer, but it provides stark relief for the practical question: how can the CMDH perform its task of supervising the execution of judgments better?

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² Exceptionally, CM/Rec(2008)2 was made the subject of specific follow up, not by the CMDH, which was considered too busy with the supervision of the execution of judgments, but by the Rapporteur Group (of the CM) on Human Rights, see GR-H(2008)5 of 26 February 2008 at [5(a)] and [5(b)].

5. The Council of the Bars and Law Societies of Europe (CCBE) has made some modest but practical suggestions for improvements to the way the CNDH works: there is room for improvement.
6. First, in June 2019, as part of the review of the Interlaken process, the CCBE adopted detailed proposals for reforms of all the machinery of the European Convention on Human Rights ([EN/FR](#)), from national courts, to the Court and the CMDH. In short these proposals relating to execution were that the CMDH should:
 - a. Increase transparency as to the allocation of new judgments to existing grouped cases or ‘lead’ judgments. The criteria are opaque and their application is inconsistent;
 - b. Develop and publish criteria for priority in the examination of judgments, and apply them consistently;
 - c. Inform the legal representative who acted before the Court that the case is allocated to enhanced supervision, which the relevant ‘lead’ case is and invite brief submissions under Rule 9;
 - d. Publicly identify the cases selected for debate in advance of each CMDH meeting; and
 - e. Increase the length of the CMDH meetings and their frequency, so that difficult cases can be examined more frequently than the present average rate of once in five years.
7. Some or those ideas are germinating.
8. Then in June 2021 the CCBE adopted further specific proposals aimed at improving the execution of the Court’s judgments³. Those proposals concentrate first on widening the opportunity to make submissions to the CMDH under Rule 9 and secondly on the status of Court judgments, and particularly awards of just satisfaction, under domestic law.
9. The status of Court judgments as a cause of action under domestic law is a seriously neglected subject. However, it is a natural corollary of the Court’s subsidiarity, that aspects of its judgments might better be implemented in the national legal system by national courts, than by the over-worked and under-resourced CMDH.
10. Of approximately 20,000 judgments ever given by the Court in which a violation has been found⁴, over 5,200 remain to be fully implemented⁵. 1,370 payments of

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https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/PD_STRAS/PDS_Position_papers/EN_PDS_20201113_CCBE-Proposals-to-DH-SYSC-V.pdf

⁴ https://www.echr.coe.int/Documents/Overview_19592020_ENG.pdf

⁵ <https://rm.coe.int/2020-cm-annual-report-eng/1680a1f4e8>

compensation, fees and settlements are late and still outstanding⁶; individual redress and lasting general measures to avoid future breaches of the Convention are all chronically delayed. These delays add to the notorious delays of five to six years before the Court even gives judgment⁷, after lengthy domestic remedies have been exhausted. New thinking is needed and the CCBE proposals provide it.

11. The CCBE's existing reform proposals need an additional focus on the 'tricky cases', where delays are worst. Lawyers, Bar associations and law societies need a clearer opportunity to be heard and to contribute to addressing the backlog.
12. Two new additional steps are crucial in the continuing effort to make execution effective:
 - a. The Rules of the Committee of Ministers for the supervision of the execution of judgments and settlements (the Rules) should allow lawyers, Bar Associations and law societies to make proposals for all aspects of the execution of Court judgments; and
 - b. Member States should allow the enforcement in their national courts of the payment of just satisfaction (compensation and fees) awarded by the Court and friendly settlements agreed to by the parties as a debt.
13. I hope that these suggestions may be the subject of debate under the auspices of EIN on 22 June 2022.

⁶ https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680a06354

⁷ https://www.echr.coe.int/Documents/Court_that_matters_ENG.pdf