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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

COMMENTS

**ON RECOMMENDATION 2110(2017)
OF THE PARLIAMENTARY ASSEMBLY
OF THE COUNCIL OF EUROPE**

**ON THE IMPLEMENTATION OF JUDGMENTS
OF THE EUROPEAN COURT OF HUMAN RIGHTS**

IN VIEW OF THE REPLY OF THE COMMITTEE OF MINISTERS

on the basis of comments by

Mr Jan HELGESEN (Member, Norway)

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I. Introduction

1. On 5 July 2017 the Committee of Ministers of the Council of Europe decided to communicate to the Venice Commission the Parliamentary Assembly of the Council of Europe (PACE) Recommendation 2110 (2017) on the “implementation of judgments of the European Court of Human Rights” for information and possible comments.

2. In its Recommendation 2110 (2017) adopted on 29 June 2017, the PACE urged the Committee of Ministers to use all available means to fulfill its tasks arising under Article 46.2 of the European Convention on Human Rights (ECHR). Accordingly, it recommended *inter alia* that the Committee of Ministers continue to step up synergies, within the Council of Europe, between all stakeholders concerned, in particular the European Court of Human Rights (ECtHR) and its Registry, the PACE, the Secretary General, the Commissioner for Human Rights, the Steering Committee for Human Rights, the Venice Commission and the European Committee for the Prevention of Torture.

II. Previous work of the Venice Commission in this field

A. General studies and reports

3. At the request of the Chairperson of the Committee on Legal Affairs and Human Rights of the PACE, the Venice Commission adopted in 2002 an “Opinion on the implementation of the judgment of the European Court of Human Rights”, in which it assessed the existing proposals and made a number of recommendations on this issue. As expressed in this opinion, the Venice Commission attaches high importance to the timely and complete execution of the ECtHR judgments for the effectiveness of the European mechanism of human rights protection.¹

4. The Venice Commission carried out in 2006 a comparative study on existing national remedies with respect to allegations of excessive length of proceedings, with a view to proposing possible improvements in their availability and effectiveness.² The study aimed at assisting States in devising a remedy or improving an already existing one in order for it to be compatible with the requirements of the ECtHR. It was also designed to assist the Committee of Ministers in monitoring compliance with such requirements. In fact, the effectiveness of national judicial remedies with respect to the length of proceedings is of primary importance for the implementation of numerous judgments that found a breach of the reasonable time requirement.

5. In a report adopted in 2014, the Venice Commission analysed, in the broader context of the implementation of international human rights treaties in national law, the role of national courts in implementing ECHR and ECtHR judgments.³

¹ Opinion on the implementation of the judgments of the European Court of Human Rights (CDL-AD(2002)34), § 48.

² Report on the effectiveness of national remedies in respect of excessive length of proceedings (CDL-AD(2006)036rev), § 2.

³ Report on the implementation of international human-rights treaties in domestic law and the role of courts (CDL-AD(2014)036).

B. Country-specific opinions

a. Opinions relating to European Human Rights standards

6. The Venice Commission has repeatedly received from PACE and member States requests for an assessment of the compatibility of a legal act or of a practice with the ECHR. Indeed, most opinions of the Venice Commission are directly or indirectly related to at least one judgment of the ECtHR or one article of the ECHR or the Protocols thereto. This is very well demonstrated by the great number of references made to the ECtHR case-law in the Venice Commission's opinions and studies. Indeed, when it assesses the compatibility of a piece of legislation with European human rights standards, the Venice Commission obviously refers to the ECHR and the ECtHR case-law.⁴

7. By referring to the ECtHR case-law, while assessing a particular legal provision or practice, the Venice Commission draws the national authorities' attention to the incompatibility between the latter and the fundamental rights enshrined by the ECHR or the Protocols thereto.⁵ It makes, where appropriate, specific recommendations on how to amend (draft) legislation or change a practice to be fully in line with the ECHR requirements.⁶ In the event the ECtHR has already identified a shortcoming in a particular piece of legislation or practice, the Venice Commission verifies whether a (draft) amendment subject to its opinion has succeeded or partially or completely failed to address the shortcoming in question.⁷

8. The Venice Commission is aware of the fact that the question of the execution of judgments of the ECtHR is of exclusive competence of the Committee of Ministers. That being said, the aforementioned practice of the Commission may usefully contribute to a better implementation of the ECHR judgments.

b. Opinions specifically requested within the framework of a procedure of execution of judgments of the ECtHR

⁴ See, amongst many others, Opinion on Russian federal law no. 129-fz on amending certain legislative acts (Federal law on undesirable activities of foreign and international non-governmental organisations) (CDL-AD(2016)020); Opinion on the draft Amendments to the Media Law of Montenegro (CDL-AD(2015)004); Opinion on the Draft Law of the Republic of Armenia making a supplement to the Penitentiary Code of the Republic of Armenia (CDL-AD(2011)024).

⁵ See in this regard, amongst many others, Joint Opinion of the Venice Commission, the Directorate of Human Rights (DHR) of the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe and the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) on two Draft Laws on Guarantees for Freedom of Peaceful Assembly of Ukraine (CDL-AD(2016)030), §§ 71, 74; Opinion on the issue of the prohibition of so-called "Propaganda of homosexuality" in the light of recent legislation in some Council of Europe Member States (CDL-AD(2013)022), §§ 78-83.

⁶ See, amongst many others, Opinion on the Act of 15 January 2016 amending the Police Act and certain other Acts (CDL-AD(2016)012), § 133; Opinion on the Legal Framework governing Curfews (CDL-AD(2016)010), §§ 98-100; Joint Opinion on the draft Law on the Prosecution Service of the Republic of Moldova (CDL-AD(2015)005), §§ 52, 111, 140; Joint Opinion on the draft Election Code of Bulgaria (CDL-AD(2014)001), §§ 30, 72, 85; Opinion on the Draft Law of the Republic of Armenia making a supplement to the Penitentiary Code of the Republic of Armenia (CDL-AD(2011)024), § 42.

⁷ See in this regard, amongst others, Opinion on the Law on non-governmental Organisations (Public Associations and Funds) as amended of the Republic of Azerbaijan (CDL-AD(2014)043), §§ 38, 83-84, 45-46, 61; Joint Opinion of the Venice Commission and the Directorate General of Human Rights (DHR) and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on the draft law on amending and supplementing certain legislative acts, promoted by the intelligence and security service of the Republic of Moldova (CDL-AD(2014)009), §§ 12, 32, 46, 51, 52, 55, 57, 68, 75, 91; Opinion on the Law on political parties of the Russian Federation (CDL-AD(2012)003), §§ 8, 10, 33, 54; Opinion on the compatibility with human rights standards of the legislation on non-governmental organisations of the Republic of Azerbaijan (CDL-AD(2011)035), §§ 46-47, 64, 109-111, 115; Joint Opinion on the Election Code of Moldova as of 10 April 2008 (CDL-AD(2008)022), §§ 19-21; Joint Opinion on the Electoral Code of Moldova as amended on 22 July, 4 and 17 November 2005 by the Venice Commission and OSCE/ODIHR (CDL-AD(2006)001), §§ 88, 114.

9. The Venice Commission has at times been requested to express its view on general measures adopted with the special purpose to execute judgments of the ECtHR. The following opinions fall under this category:

- Joint Opinion of the Venice Commission, the Directorate of Human Rights (DHR) of the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe and the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) on two Draft Laws on Guarantees for Freedom of Peaceful Assembly of Ukraine (CDL-AD(2016)030). This opinion was requested by the Speaker of the *Verkhovna Rada* (Parliament) of Ukraine. It concerns two Draft Laws on “Guarantees for Freedom of Peaceful Assembly” prepared in order to fill the existing legislative lacuna in this area, as highlighted by the ECtHR in its *Vyrentsov v. Ukraine* judgment (application no. 20372/11, 14 April 2013).
- Preliminary Opinion on the Draft Law on the Judicial System and the Status of Judges of Ukraine (CDL-AD(2015)008). This opinion was requested by the Minister of Justice of Ukraine. It relates to the Draft Law on Amending the Law on the Judicial System and the Status of Judges of Ukraine, which aimed to remedy a number of deficiencies in the judicial system that the Venice Commission and the Directorate General of Human Rights and Legal Affairs had pointed out in their 2010 Joint Opinion⁸ and fulfil the requirements of the ECtHR judgment in the case of *Oleksandr Volkov v. Ukraine* (application no. 21722/11, judgment of 9 January 2013).
- Joint Opinion of the Venice Commission and the Directorate of Human Rights (DHR) of the Directorate of Human Rights and Rule of Law (DGI) of the Council of Europe on the Draft Laws amending the Administrative, Civil and Criminal Codes of Georgia (CDL-AD(2014)030). This opinion was requested by the Minister of Justice of Georgia. It relates to the draft amendments to the Administrative, Civil and Criminal Procedure Codes of Georgia which introduced the possibility of cassation appeal in case “the decision of the appeal court contradicts the precedent decision(s) of the European Court of Human Rights in case(s) in which Georgia was a party.”
- Opinion on the Draft Law on making changes and additions to the Civil Code (introducing compensation for non-pecuniary damage) of the Republic of Armenia (CDL-AD(2013)037), requested by the Permanent Representative of the Republic of Armenia to the Council of Europe. The Draft Law had introduced compensation for non-pecuniary damages into the Armenian civil law in specific, limited circumstances, in order to implement Armenia’s obligations under the ECHR and properly execute the judgments of the ECtHR in the cases *Poghosyan and Baghdasaryan v. Armenia* (application no. 22999/06, Judgment of 12 June 2012) and *Khachatryan and Others v. Armenia* (application no. 23978/06, Judgment of 27 November 2012).
- Opinion on the legislation pertaining to the protection against defamation of the Republic of Azerbaijan (CDL-AD (2013)024). This opinion concerning the Draft Law on Defamation was prepared by the Venice Commission following a request from the Presidential Administration of the Republic of Azerbaijan. The latter had requested the assistance of the Venice Commission in drafting a Law on Defamation as part of the execution of two judgments of the ECtHR⁹, in which the Court had found violations by Azerbaijan of Article 10 of the ECHR.

⁸ Joint Opinion on the law on the judicial system and the status of judges of Ukraine by the Venice Commission and the Directorate of Co-operation within the Directorate General of Human Rights and Legal Affairs of the Council of Europe (CDL-AD(2010)026).

⁹ *Mahmudov and Agazade v. Azerbaijan*, application no. 35877/04, Judgment of 18 December 2008, and *Fatullayev v. Azerbaijan*, application no. 40984/07, Judgment of 22 April 2010.

- Opinion on the Draft Law on Amendments and Additions to the Law on Alternative Service of Armenia (CDL-AD(2011)051). This opinion was requested by the Chairman of the Standing Committee on Defense, National Security and Internal Affairs of the National Assembly. It concerns the Draft Law on Amendments and Additions to the Law on Alternative Service of the Republic of Armenia which was an important step forward for the execution of the Grand Chamber Judgment in the case of *Bayatyan v. Armenia* of 7 July 2011 (Application no. 23459/03).

10. In the aforementioned opinions, the Venice Commission and the Directorate of Human Rights made a number of specific suggestions aiming to improve the Draft Laws submitted for assessment in order for them to be fully in line with the relevant ECtHR case-law.

11. The Venice Commission received as well an *amicus curiae* brief request from the President of the Constitutional Court of Albania on the conformity of Law no. 133/2015 of the Republic of Albania “On the treatment of property and finalisation of the process of compensation of property” with the requirements of Article 1, Protocol No. 1 to the ECHR and the respective case-law of the ECtHR. Law no. 133/2015 aimed to resolve the administrative problems concerning the effective restitution of property and concerned, at the time of writing the *amicus curiae* brief, around 230 cases pending before the ECtHR and over 15 cases under the supervision of the Committee of Ministers. The Venice Commission concluded that in Albania’s specific situation, it could well be argued that a new and effective legal framework provided by Law no.133/2015, which may lead to a lower amount of compensation paid to the former owners, meets the requirement of proportionality as set out in Article 1 of Protocol No.1 to the ECHR.¹⁰

12. The Venice Commission has also received similar requests from PACE which, for instance, in its Resolution 1920 (2013) on the state of media freedom in Europe, requested an opinion on “whether the Italian laws on defamation are in line with Article 10 of the European Convention on Human Rights”. The Venice Commission assessed the legislative amendments aimed at limiting the use of criminal sanctions for defamation and introducing the abolishment of imprisonment as a sanction for defamation, in line with the relevant ECtHR judgments against Italy. The Venice Commission considered the aforesaid amendments as a welcome effort to bring the Italian legal framework pertaining to defamation into conformity with the ECHR requirements.¹¹

13. Lastly, the Venice Commission assessed the compatibility of legislative amendments with the ECHR related to the power of the Russian Constitutional Court on declaring the decisions of international courts, notably of the ECtHR, as “unenforceable” when their execution raises issues of constitutionality. In this opinion, requested by PACE, the Venice Commission emphasized once again the utmost importance of the execution of judgments of the ECtHR, which is, in its view, an unequivocal and imperative legal obligation, whose respect is vital for preserving and fostering the community of principles and values of the European continent.¹²

¹⁰ *Amicus Curiae* Brief for the Constitutional Court on the restitution of property (CDL-AD(2016)023), §§ 1, 11, 18, 54.

¹¹ Opinion on the legislation on defamation of Italy (CDL-AD(2013)038), §§ 1, 59, 83.

¹² Final Opinion on the Amendments to the Federal Constitutional Law on the Constitutional Court of the Russian Federation (CDL-AD(2016)016), § 38.

C. Conferences and other similar events

14. Furthermore, the Venice Commission has co-organised¹³ in co-operation with various partners or simply participated¹⁴ in a number of conferences, seminars, and similar events on the European Convention mechanism including the issues linked to the execution of the ECtHR judgments.

III. Conclusions

15. The Venice Commission has, on so many previous occasions, emphasised the legal aspects involved in the execution of judgments by ECtHR. At this juncture, the Commission reiterates the statements presented already in 2002:

“49. The issue of execution is central in any system of judicial review. It is, however, especially pertinent and problematic, and indeed “the crucial question”, for international jurisdictions, since execution lies mainly in the hands of sovereign States. And this the more so if the cohesiveness within the community of States concerned is weak or has weakened, and if the international judicial body has no power to put a sanction on non-execution of its judgments.

50. It may be argued that since the Court has so far seen itself as having almost no means to promote the execution of its judgments and the supervision is in the hands of the Committee of Ministers, the issue of execution is a political rather than a legal issue. However, States are under a legal obligation to execute the judgments of the Court (see para. 28 above). In that respect, the issue of execution and its supervision is also a legal one and, consequently, justifies also a legal approach.”¹⁵

16. The Venice Commission stands ready to play a more active role in this field, within the framework of the procedures of execution of judgments of the ECtHR. The Commission’s legal opinions can be useful for the Committee of Ministers in deciding whether general measures taken by member States should be considered as sufficient to close the supervision of the execution of a judgment or a group of judgments. They can, on the other hand, assist the member States in bringing their existing legislation which generated violations of the ECHR into conformity with the latter and in ensuring compliance of their draft legislation with the ECHR before being adopted, thus avoiding further violations.

17. The Venice Commission has the possibility of preparing these opinions jointly with other services of the Council of Europe, thus streamlining the synergies already existing within our organization.

¹³ For instance the 13th International Forum on Constitutional Justice “ECHR in the 21st Century: Practice, Problems and Prospects of Implementation” co-organised with the Constitutional Court of the Russian Federation, the Institute of Law and Public Policy and the St Petersburg State University in St Petersburg from 18 to 20 November 2010; the Conference on “Remedies for unduly lengthy proceedings: a new approach to the obligations of Council of Europe Member States” co-organised with the Ministry of Foreign Affairs of Romania in Bucharest on 3 April 2006; the Conference on “The interaction of National Courts with European Courts” co-organised with the Constitutional Court of Georgia, USAID Georgia, ABA Rule of Law Initiative and the Open Society Georgia Foundation in Batumi from 6 to 7 November 2007; the Conference on “Remedies for unduly lengthy proceedings: a new approach to the obligations of Council of Europe member States” organised in cooperation with the Romanian Minister of Justice in Bucharest on 3 April 2006.

¹⁴ Representatives of the Venice Commission participated in a conference on “The impact of the European Convention on Human Rights on the Constitution of Bosnia and Herzegovina and the Electoral Code” held on 28 January 2010 in Sarajevo and in a conference on “Challenges of Implementation of the Judgments of the European Court of Human Rights: Dialogues about Prisoner’s Voting” co-organised by the Council of Europe, Moscow State University, PluriCourts/University of Oslo, University of Durham, Higher School on Economics and University of Surrey, in Moscow, on 30 October 2015.

¹⁵ Opinion on the implementation of the judgments of the European Court of Human Rights (CDL-AD(2002)34), §§ 49-50.

18. The Commission is also well placed to carry out research and prepare general studies, notably from a comparative perspective, with the aim of contributing to the implementation of judgments of the ECtHR.

19. The Venice Commission therefore encourages the relevant organs of the Council of Europe as well as member States to take full advantage of its expertise for strengthening the execution of judgments of the ECtHR.

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