

# ENFORCING ECHR JUDGMENTS

Engaging with the European Court of Human Rights Should Not End with Reading the Judgment

## What is in the Judgment?

It is a very rewarding moment when the European Court of Human Rights issues a favourable judgment. Prior to that, months and years are dedicated to seeking justice in a case via direct legal representation, counselling, or impacting public debate. This focus on winning a case might obscure the work that is still required to ensure the judgment is enforced.

But what are a State's obligations with regard to the execution of judgments and what can be done to monitor their fulfilment? The only outcome that can be explicitly read in the judgment is normally the 'just satisfaction' - compensation in the form of money that can be awarded to successful applicants, along with the finding of one or more violations. However, the arguably more important outcome is that the State should adopt measures to prevent further violations.

## States' Obligations

Under the European Convention on Human Rights Article 46(1), States are legally bound to follow decisions of the Court:

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

Therefore, when the Court concludes that a State has committed a violation of human rights, it binds the State to act according to what frames the whole Convention, Article 1:

*The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention.*

This means that the State is not only expected to remedy actual violations, but also prevent future ones. The character of such measures will vary according to severity and causes of the violation. But ultimately, no judgment allows for ignoring the violation's systemic causes.

## Committee of Ministers –the Principal Actor

Execution of judgments is supervised by the Committee of Ministers of the Council of Europe ('the Committee'). To foster the process, Department for the Execution of Judgments of the European Court of Human Rights is tasked with assisting both the Committee and Member States in assessing the best way to implement the judgment.

After a judgment is published and transmitted to the Committee, it will invite the State to submit an 'action plan' for measures to be taken. When evaluating how the State complies with its obligations, it examines three aspects: just satisfaction, individual measures, and general measures. Individual measures aim to remedy the injury caused to the applicant(s), whereas general measures ought to prevent new violations.<sup>1</sup>

<sup>1</sup> *Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements*, Rule 6 par. 2, adopted 10 May 2006, amended Jan 2017.

After adopting all the measures, the State presents an ‘action report’. Four times a year (usually in March, June, September, and December), Human Rights meetings (‘DH meetings’) of the Committee convene to review the pending cases.

During the DH meetings, ministers’ deputies review action plans and reports, and can decide to close a case when, with regard to just satisfaction, individual measures, and general measures, the State has executed the judgment properly.

However, if the Committee finds that a State is failing to adopt necessary measures, it can accept an ‘interim resolution’, addressing the problems. Such was the case, for example, in 2015 in *Hirst* and three other cases against the United Kingdom, when the Committee expressed its concern ‘that the blanket ban on the right of convicted prisoners in custody to vote remains in place.’<sup>2</sup>

## Infringement Procedure

Ultimately, if the Committee decides that the State is still failing to fulfil its responsibilities in executing the judgment, it may send the State a formal notice. Six months after that, the Committee may lodge an infringement proceeding by a two-thirds majority vote that refers to the Court the question whether the State has failed to execute the judgment.<sup>3</sup>

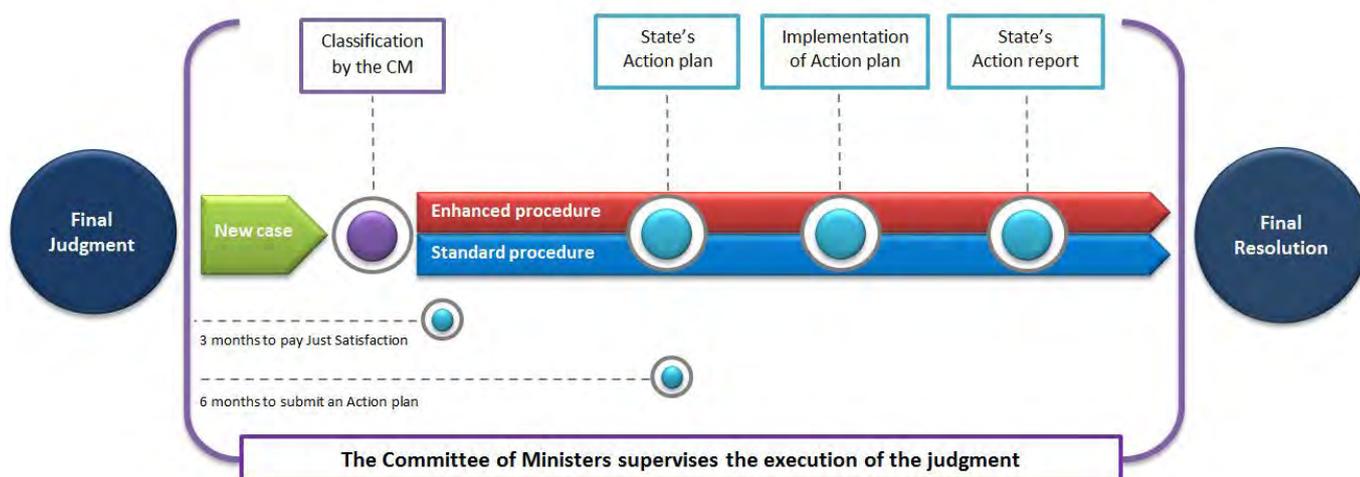
Infringement proceedings are reserved for exceptional circumstances.<sup>4</sup> In fact, such proceedings have only been initiated once, in 2017, when the Committee decided that Azerbaijan had failed to release an imprisoned opposition politician, Ilgar Mammadov. On 29 May 2019, almost exactly five years after the final judgment, the Court ruled that Azerbaijan had indeed violated their obligation under Article 46(1).<sup>5</sup>

## Getting Involved as an NGO— Submitting a Communication

Considering that there was a total of 7,584 pending cases before the Committee in 2017,<sup>6</sup> it is crucial that civil society plays a role in highlighting those cases which require closer scrutiny.

In Fact, the Council of Europe has signalled a commitment to involving civil society in the process of implementing the Convention and executing the Court’s judgments. Its Copenhagen Declaration states that effective implementation of the Convention system requires interaction with, among others, civil society.<sup>7</sup>

According to Rule 9 for the supervision of the execution of judgments, NGOs and national human rights institutions may submit written communications regarding execution of particular cases at any time during the process.<sup>8</sup> Such



The Committee of Ministers’ supervision of the execution. Source: Department for the Execution of Judgments of the European Court of Human Rights.

2 CM/ResDH(2015)251; the other cases were *Greens and M.T., Firth and others*, and *McHugh and others*.

3 *Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements*, adopted on 10 May 2006, amended in January 2017, Rule 11.1.

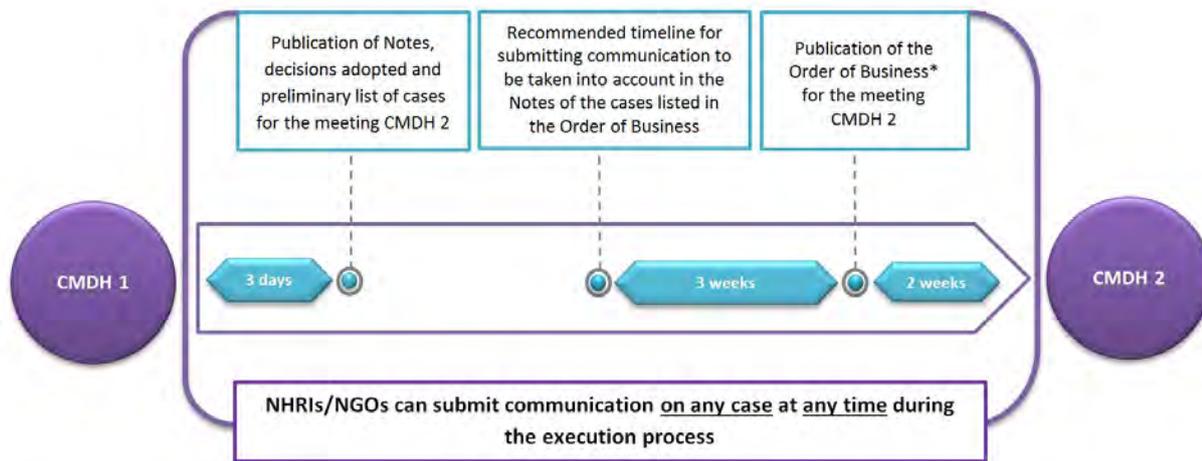
4 *Ibid.* Rule 11.2.

5 Proceedings under Article 46 par. 4 in the case of *Ilgar Mammadov v. Azerbaijan* 15172/13, par. 218.

6 Department for the Execution of Judgments of the European Court of Human Rights, Pending cases 2017, <https://rm.coe.int/6-pending-cases-2017-state-by-state/16807b8666>

7 *Copenhagen Declaration*, adopted by the High Level Conference meeting on 12 and 13 April 2018, par. 14.

8 *Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements*, Rule 9.



\*restricted document made available on the CM website to all delegations only

The most appropriate time to submit communications to the Committee between two Human Rights (DH) meetings. Source: Department for the Execution of Judgments of the European Court of Human Rights.

submissions can, for instance, cover issues in the State's action plan, the way the measures are implemented, or reflect on whether a case can truly be closed.

The Respondent State has the option to address the submissions. If it does so within 10 working days since it was notified of a submission by the Secretariat, both the submission and the State's response are published jointly. If the State responds later, its communication is published separately.

## Highlighting a Case

Civil society can also play a part in bringing a case to the attention of a DH meeting. Because the number of pending cases is so large, only a minority of them are closely examined. These cases are supervised under the 'enhanced procedure', as opposed to the 'standard procedure'. According to the Committee, there can be four reasons for classifying a case under the enhanced category:

- judgments requiring urgent individual measures;
- pilot judgments;<sup>9</sup>
- judgments disclosing major structural and/or complex problems as identified by the Court and/or the Committee;
- interstate cases.<sup>10</sup>

Only States or the Secretariat of the Committee can propose a case to be reclassified one way or another, however, civil society may work with State delegations to bring important cases to the forefront of attention. As some of the listed reasons contain an element of ambiguity, it is necessary to build strong arguments for their application. States can be particularly keen on following certain cases if they had intervened in them as Third Parties.

Following each DH meeting, a deadline is set for the States to propose new cases for examination. It is before this deadline that NGOs can work most effectively to push for proper supervision of important cases. DH meetings are attended by the deputy level of the State's foreign ministry, hence contacting a country's permanent representation at the Council of Europe may prove to be an important step in impacting the supervision.

Ultimately, Member States enjoy a high degree of freedom in implementing ECHR judgments. This gives civil society a decisive role in ensuring that State authorities take their commitments seriously, and that their measures indeed improve the human rights situation in the country.

9 Pilot judgments are issued in instances where there are repetitive cases connected to a common issue. These judgments also specifically address underlying structural problems causing such issues. See ECHR Factsheet – Pilot Judgments, [https://www.echr.coe.int/Documents/FS\\_Pilot\\_judgments\\_ENG.pdf](https://www.echr.coe.int/Documents/FS_Pilot_judgments_ENG.pdf)

10 iGuide, Committee of Ministers: Procedures and working methods.



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## What You Can Do

### Get more familiar with important institutions and documents

- Department for the Execution of Judgments of the European Court of Human Rights<sup>11</sup>
- The Committee of Ministers' Human Rights meetings<sup>12</sup>
- Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements<sup>13</sup>
- iGuide – Committee of Ministers: Procedures and working methods<sup>14</sup>
- Supervision of the execution of judgments of the European Court of Human Rights: procedure and working methods for the Committee of Ministers' Human Rights meetings<sup>15</sup>

### Submit a communication

Writing communications to the Committee of Ministers can highlight important judgments and address deficiencies in a State's approach to fulfilling its obligations. See the webpage of the Department for the Execution of Judgments for the recommended structure of a submission and other useful guidelines.

### Get in touch with States' delegations to the Committee

Raising awareness with political representatives can help them select important judgments among the overwhelming caseload and bring the Court's/the public's? attention to these. Establishing contact with the Permanent Representation of your country (or others) at the Council of Europe can help in achieving this.

### Build an alliance

Identify and contact political actors, national human rights institutions, NGOs, academics, and journalists who share your concern about a particular case to increase your impact

### Organize an event

Organize an event or a conference to discuss action that can be taken to help a State enforce a judgment or to make a case more visible to political actors and institutions.

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<sup>11</sup> <https://www.coe.int/en/web/execution>

<sup>12</sup> <https://www.coe.int/en/web/execution/committee-of-ministers-human-rights-meetings>

<sup>13</sup> <https://rm.coe.int/16806eebf0>

<sup>14</sup> [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=090000168058d922](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=090000168058d922)

<sup>15</sup> [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=090000168075f7c2](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=090000168075f7c2)