

IMPLEMENTATION OF JUDGMENTS OF THE EUROPEAN COURT OF HUMAN RIGHTS BY POLAND

WYKONYWANIE WYROKÓW EUROPEJSKIEGO TRYBUNAŁU PRAW CZŁOWIEKA PRZEZ POLSKĘ

Dr. Sabina Kubas

University of Rzeszów, Poland

e-mail: skubas@ur.edu.pl; <https://orcid.org/0000-0002-6581-7105>

Abstract

Compliance with and enforcement of ECtHR judgments applies to the respondent states and includes an obligation to put an end to the violation, restitute or prevent identical or similar violations that have occurred previously. The detailed content of these obligations is not provided for in the ECHR. It should be interpreted appropriately, taking into account the violation of subjective rights found in the judgment. The national legislator was left to choose the legal path to enforce the judgment (e.g. introducing a special interim regulation, introducing compensatory mechanisms, establishing a legal mechanism enabling: restoring the previous state of affairs, resuming proceedings, using other extraordinary legal measures or holding the State Treasury liable for damages). Nevertheless, as statistics show, in the case of Poland, the implementation of ECtHR judgments is unfortunately not among the leading countries that have signed the ECHR.

Keywords: tribunal, human rights, judgment

Abstrakt

Przestrzeganie, a także wykonywanie orzeczeń ETPCz odnosi się do państw pozwanych i obejmuje zobowiązanie do zaprzestania naruszenia, restytucji, czy też zapobieżenia tożsamym lub podobnym naruszeniom, które miały miejsce uprzednio. Z EKPCz nie wynika szczegółowa treść tychże zobowiązań. Należy ją odpowiednio wyinterpretować z uwzględnieniem stwierdzonego w wyroku naruszenia praw podmiotowych. Prawodawcy krajowemu pozostawiono wybór drogi prawnej, która ma służyć wykonaniu wyroku (np. wprowadzenie specjalnej regulacji

intertemporalnej, wprowadzanie mechanizmów wyrównawczych, ustanowienie mechanizmu prawnego umożliwiającego: przywrócenie stanu poprzedniego, wznowienie postępowania, skorzystanie z innych nadzwyczajnych środków prawnych lub też pociągnięcie do odpowiedzialności odszkodowawczej Skarbu Państwa. Mimo wszystko, jak wskazuje statystyka, w przypadku Polski wykonywanie wyroków ETPCz niestety nie znajduje się w czołówce państw, które podpisały EKPCz.

Słowa kluczowe: trybunał, prawa człowieka, orzeczenie

Introduction

The issue of implementing the judgments of the European Court of Human Rights is still an indispensable area that requires constant research in order to improve the standards of compliance with international norms. Poland, being one of the leading countries whose number of complaints increases every year, is also a subject of international law that does not always fully implement the provisions regarding the enforcement of the above-mentioned judgments. judicial authority.

In 2007, the Prime Minister of the Republic of Poland established an opinion-giving and advisory body, the inter-ministerial Team for the European Court of Human Rights. The work of the Team is managed by the Ministry of Foreign Affairs. The task of this Team is to develop the Government's positions in relation to the complaints communicated and the judgments issued by the Court, to analyze the compliance of the most important draft legal acts with the Convention, and to present appropriate proposals. The team monitors the implementation of the Court's judgments and decisions by ministers and may formulate proposals for appropriate actions. Ministers competent, depending on the subject of the violation of the Convention found by the Tribunal, are obliged to translate and disseminate the Tribunal's judgment, as well as prepare an action plan and a report on its implementation within the deadlines specified in the order (algorithm for the execution of Tribunal judgments).¹

The Team consists of the chairman – Plenipotentiary of the Minister of Foreign Affairs for proceedings before the European Court of Human Rights; members – experts appointed by the ministers in charge of government

¹ <https://www.gov.pl/web/dyplomacja/zespol-do-spraw-etpc> [accessed: 15.02.2024].

administration departments, in accordance with the Act of 4 September 1997 on government administration departments,² the President of the State Treasury Solicitor's Office, the Head of the Chancellery of the Prime Minister and the Government Plenipotentiary for Equal Treatment, and the secretary, i.e. a person appointed by chairman of the Team from among the employees of the organizational unit of the Ministry of Foreign Affairs responsible for representing Poland before international human rights protection bodies.³

The aim of this study is to present the issue of implementing judgments of the European Court of Human Rights, with particular emphasis on the consequences that may arise in relation to a state party that does not implement the provisions of the Convention regarding the obligation to enforce judgments. This study uses the analytical-legal and legal-comparative methods, which allowed for the appropriate interpretation of international and regional regulations and drawing conclusions on their application.

1. European Court of Human Rights – characteristics

The European Court of Human Rights is an international court with jurisdiction over the member states of the Council of Europe and deciding on complaints about violations of individual rights and freedoms protected by the European Convention on Human Rights.⁴ In this sense, it is a body that equalizes the chances of an individual in a confrontation with the state, in which the individual always has a weaker position. Moreover, the ECtHR provides another opportunity for an objective examination of the case by a competent judicial body appointed for this purpose [Bisztyga 2002, 825]. Its jurisdiction extends to all matters relating to the interpretation and application of the Convention and its Protocols which have

² Journal Laws of 2019, item 945, 1248 and 1696.

³ See Report of the meeting of the Team for the European Court of Human Rights of 29 September 2023, <https://www.gov.pl/web/dyplomacja/zespol-do-spraw-etpc> [accessed: 15.02.2024].

⁴ Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950, Journal Laws of 1993, No. 61, item 284.

been submitted to it by way of an application, whether individual or international [Banaszak, Bisztyga, Complak, et al. 2003, 129].

Individual cases are heard by a single-member Tribunal. This is a panel appointed solely to examine the admissibility of the complaint. If the Registry of the Court considers that the case is manifestly inadmissible, the application is heard by a single judge who issues a decision on inadmissibility. This panel cannot include a judge elected on behalf of the state against which the complaint is directed (the so-called national judge). The applicant will then receive a short one-page letter informing him or her of the Court's decision, together with a copy of the decision. The decision issued by a single-member panel is final and the complaint and attached documents are destroyed. The Tribunal may also adjudicate as part of the Committee. It is a three-person panel that receives complaints whose inadmissibility is not obvious and requires more detailed analysis. This panel also does not include a national judge, although he or she may be invited to join the Committee – in which case he or she will replace another judge in order to maintain a three-member committee. The Committee has the power to issue a decision on inadmissibility, but such a decision requires unanimity. In addition, an important function of the Committees is to consider the so-called repetitive complaints, i.e. repeated complaints. Sometimes a problem with national law or practice generates a large number of complaints that differ only in the details of the facts, while the essence of the allegations contained in them is the same. The position of the Tribunal in such cases is known and stable, and there is no need to involve too many judges in the decision. The Tribunal, sitting in three-person Committees, may issue a substantive decision (judgment) in matters that are already the subject of well-established case law. In the case of Poland, the repetitive complaints were or are: complaints about the length of court proceedings, about the conditions in places of detention, and about the long and unreasonably applied dangerous prisoner regime. The judgment of the Committee is final. The composition of the Tribunal is the adjudication of the Chamber. It is a seven-person team. This panel will always include a national referee. The task of this panel is to examine the admissibility of the application (the Chamber may issue a final decision on inadmissibility) and the substantive allegations (i.e. allegations of violation by the national authorities

of certain provisions of the ECHR). The Chamber may waive its jurisdiction – if the parties do not object – the case will go to the Grand Chamber. The judgment of the Chamber may be appealed against by the applicant or the state to the Grand Chamber of the Court within 3 months of its issuance. The last possible composition is the adjudication of the Grand Chamber. This is a panel of 17 judges of the Tribunal. The Grand Chamber will hear the case in one of two cases. Firstly, when the House waives its jurisdiction. Secondly, when one of the parties uses the above-mentioned right to appeal against the Chamber’s judgment. In the latter case, a panel of five judges of the Grand Chamber decides whether to accept the request for reconsideration. The judgment of the Grand Chamber is final [Kozikowski, Lubiszewski, Ośko, et al. 2020, 15].

2. Obligation to implement the judgments of the European Court of Human Rights

Pursuant to Article 1 of the Convention “The High Contracting Parties shall ensure to every person within their jurisdiction the rights and freedoms set out in Chapter I of the present Convention.” Each state party to the above-mentioned agreement is therefore obliged to implement its provisions. It is an international obligation resulting in legal subordination, which is an important element of established international relations. Moreover, in Article 46 section 1 of the Convention states that “the High Contracting Parties undertake to abide by the final judgment of the Court in all cases to which they are parties.” The body that supervises the execution of judgments is the Committee of Ministers of the Council of Europe.⁵ He has a statutory obligation, which is unfulfilled as long as he does not receive an appropriate information note from the state, and in the case of awarding just compensation, information about its grant. This type of information is considered and assessed by KMRE itself in the form of a resolution [Banaszak 2003, 135].

⁵ Regulations of the Committee of Ministers on supervising the execution of judgments and terms of settlements (adopted by the Committee of Ministers on 10 May 2006 at the 964th meeting of Deputies of Ministers), <https://www.msz.gov.pl/resource/5ea3ced1-af2c-4ecd-82fb-932b25394cd5> [accessed: 15.02.2024].

Based on the Interim Resolution of the Committee of Ministers of the Council of Europe on Poland's implementation of the judgments of the European Court of Human Rights of 8 December 2023,⁶ or the Resolution of the Committee of Ministers of the Council of Europe of 26 June 2001,⁷ it should be concluded that the implementation of ECtHR judgments is a condition for membership for state parties in the Council of Europe. This is a formal aspect of participation in the structures of this organization. A country that applied for membership in the CoE should, at the initial stage, respect the provisions of the Convention, which was to become a binding act in the future.

Article 46 of the Convention introduces two obligations towards the state party. These are the unquestionable violation of the Convention formulated in the operative part of the judgment and the taking of actions aimed at implementing the judgment of the ECtHR [Kamiński, Kownacki, and Wierczyńska 2011, 93]. Judgments of the Grand Chamber, judgments of chambers that have not been appealed to the Grand Chamber within three months from the date of issuance (on the day the judgment is issued, if the parties make a declaration that they will not apply for the case to be transferred to the Grand Chamber) or were appealed unsuccessfully are considered final. (the Grand Chamber panel rejected the request to refer the case to the Grand Chamber), as well as review judgments. The obligation to implement ECtHR judgments usually applies to judgments that decide the case on the merits. Execution is not subject to, among others: procedural decisions, advisory opinions, judgments on the jurisdiction of the ECtHR and interpretative judgments [Mik 2012, 9].

ECtHR judgments are binding *inter partes*, but due to the fact that, in addition to decisions in a specific case, they contain views on the compliance of a given legal regulation or practice with the Convention, states parties should systematically familiarize themselves with ECtHR judgments

⁶ Temporary Resolution of the Committee of Ministers of the Council of Europe ResDH(2023)487 of 8 December 2023, <https://www.coe.int/en/web/cm/documents> [accessed: 15.02.2024].

⁷ Temporary Resolution of the Committee of Ministers of the Council of Europe ResDH(2001)80 of 26 June 2001, <https://www.coe.int/en/web/cm/documents> [accessed: 15.02.2024].

also issued against other states. ECtHR judgments indicate to national authorities the desired direction in the interpretation of the Convention, therefore the standards contained in the justifications of ECtHR judgments issued in individual cases are addressed to the situations they concern and to all countries where such situations occur. Taking into account judgments issued in cases against other countries may also have a preventive nature. Changing the interpretation of certain provisions may contribute to avoiding the ECtHR finding similar violations of Convention rights in other state parties in the future [Cizińska-Pałosz 2020, 14].

The practice of state behavior shows that many of them allow many years of delays in the implementation of ECtHR judgments, which results in a threat of reducing its authority, even though, as stipulated in the ECHR, states parties undertake to comply with the final judgment of the ECtHR in all cases in which they are pages. According to J. Jaskiernia, the reasons for this state of affairs may be political reasons resulting from the scale of required reforms, related to national legislative and budgetary procedures, and, in addition, the position of public opinion, casuistic or unclear content of judgments or conflict with obligations assumed in relation to other institutions [Jaskiernia 2002, 53].⁸

3. Consequences of failure to implement the judgments of the European Court of Human Rights

The Committee of Ministers of the CoE is one of the two statutory bodies of the CoE, alongside the Parliamentary Assembly of the CoE. Pursuant to Art. 13 of the Council's statute, it is a decision-making body acting on behalf of the entire Organization. Its powers include the implementation of measures appropriate to achieve its objectives, including the preparation of draft agreements and the adoption by governments of common policies on certain issues. In justified situations, specified in the regulations, KMRE issues resolutions to countries, and in other cases it acts, primarily by adopting decisions, declarations and issuing recommendations. However, notwithstanding the above terminological differences defining the manner in which KMRE addresses Member States, in accordance with

⁸ See Garlicki 2007, 36-77.

Article 16 of the CoE statute, only resolutions relating to internal organizational issues are formally binding. The other ways in which the Council of the European Council communicates its position are calls - on the part of the Council of Europe and commitments - on the part of the states, of a political nature. In addition to the indicated competences, as mentioned earlier, the Committee of Ministers also exercises competences arising from other international agreements, including: with the ECHR - in the scope of supervision over the implementation of ECtHR judgments by states parties to the ECHR [Mężykowska 2021, 55].

It is worth mentioning that within six months from the date on which the ECtHR judgment becomes final, the state party is obliged to submit to the Committee of Ministers of the CoE an action plan to implement the judgment, or an action report [Rainey, Wicks, and Ovey 2017, 58]. If the Committee of Ministers of the CoE finds that a state party does not take action within a reasonable time to implement the judgment of the ECtHR, it may use diplomatic measures (e.g. meetings of representatives of the Secretariat of the Committee of Ministers of the CoE with representatives of the state party) or media measures (e.g. sending messages press releases regarding a given case) [Jaskiernia 2011, 324].⁹

Moreover, pursuant to Article 8 of the Statute of the Council of Europe,¹⁰ any member state of the Council of Europe which has seriously breached the provisions of Article 3 of the Convention on the observance of human rights, may be suspended in the rights of a member of the organization and then be called upon by the Committee of Ministers of the CoE to withdraw from the Council of Europe, notifying its decision to the Secretary General. If a Member State fails to comply with such a request, the Committee of Ministers of the CoE may decide that it has ceased to be a member of the Council of Europe from a date specified by the Committee of Ministers of the CoE. For a long time, these were the only sanctions that could be imposed on a member state of the Council of Europe for violating its obligations, including failure to implement ECHR rulings [Kamiński, Kownacki, and Wierczyńska 2011, 94]. However, there was

⁹ See Liżewski 2015.

¹⁰ Statute of the Council of Europe of 5 May 1949, in: *European Documents*, Vol. II, edited by A. Przyborowska-Klimczak, E. Skrzydło-Tefelska, Morpol, Lublin 1999, p. 66-72.

a certain risk that the above-mentioned measures could have the opposite effect than intended, i.e. deprive the citizens of the country that would be deprived of membership in the Council of Europe of the protection of the ECtHR and other bodies of the Council of Europe. For this reason, the Committee of Ministers of the European Council did not use these measures in practice, hence it had to be equipped with other tools to force states to implement the rulings [Cizyńska-Pałosz 2020, 15].

Pursuant to Protocol No. 14¹¹ to Article 3 new paragraphs have been added to Article 46 of the Convention. Pursuant to Article 46 section 3 of the Convention, if the Committee of Ministers of the European Council finds that monitoring the implementation of the final judgment of the ECtHR is hampered by a problem with the interpretation of this judgment, it may refer this issue to the ECtHR for a decision on the issue of interpretation. The effectiveness of the supervision of the Committee of Ministers of the CoE over the execution of ECtHR judgments has been increased by the possibility for the Committee of Ministers of the CoE to refer a case to the ECtHR against a state that fails to fulfill its obligations arising from the judgment (Article 46(4) of the Convention). Before submitting an inquiry to the ECtHR as to whether a given State party has failed to fulfill its obligation under Article 46 section 1, it is necessary to provide that country with a formal notification of the decision taken. If the ECtHR finds that there has been a breach of the obligation incumbent on a given state, the case is referred to the Committee of Ministers of the European Council to consider the measures to be taken (Article 46(5) of the Convention).

For the first time, the measure provided for in Article 46 section 4 of the Convention, the Committee of Ministers of the European Council announced in December 2016 against Azerbaijan due to failure to respect the ruling regarding a political prisoner – Ilgar Mammadov.¹² However, the Committee of Ministers of the European Council did not decide

¹¹ Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms amending the control system of the Convention of 13 May 2004, http://bip.mkidn.gov.pl/media/download_gallery/20141028Protokol_nr_14.pdf [accessed: 14.02.2024].

¹² Judgment of the ECtHR of 22 May 2014, *Ilgar Mammadov v. Azerbaijan*, application no. 15172/13.

to refer the case to the ECtHR because, as a result of the announcement to use this power and thanks to subsequent diplomatic contacts, the President of Azerbaijan signed an implementing regulation on 10 February 2017, providing for various measures enabling the execution of the judgment in the case of *Ilgar Mammadov v. Azerbaijan*, i.e. for example, measures to prevent arbitrariness in the penal system and introduce alternatives to imprisonment [Rainey, Wicks, and Ovey 2017, 59].

Summary

States parties to the ECHR are obliged to implement all ECtHR judgments issued in cases in which they are parties to the proceedings. The requirements related to the enforcement of ECtHR judgments are a consequence of states voluntarily joining the system of supranational human rights protection, which entails a limitation of national sovereignty. Even though the conventional system of human rights protection has some drawbacks, the implementation of ECtHR judgments by the state parties should be assessed positively. The number of judgments supervised by the Committee of Ministers of the European Council is decreasing every year. This proves the high degree of legitimacy of the ECtHR. Nevertheless, the Committee of Ministers of the European Council, which supervises the implementation of ECtHR judgments, must remain constantly vigilant, especially in the case of judgments found to have violated fundamental human rights. The persistent failure to implement ECtHR judgments is unacceptable. For this reason, the Committee of Ministers of the Council of Ministers should sometimes use more radical measures to force a given state party to implement outstanding ECtHR judgments. From this perspective, a valuable power of the Committee of Ministers of the European Council is the ability to refer a case to the ECtHR against a state that fails to fulfill its obligations arising from the judgment (Article 46(4) of the Convention).

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