

TABLE OF CONTENTS

1. Introduction.....	1
2. Recommendations for amending the Rules of the Committee of Ministers for the supervision of the execution of judgments and the terms of friendly settlements (“the Committee of Ministers’ Rules”).....	2
3. Recommendations to the European Court of Human Rights concerning the procedures to be adopted on referrals of final judgments from the Committee of Ministers under Articles 46(3) and Article 46(4) of the Convention, as amended by Protocol 14.....	5
4. Recommendation to the Committee of Ministers on the composition of the “Group of Wise Persons”.....	6
5. Conclusion	6

Council of Europe: Recommendations to facilitate inclusion of civil society in ensuring the implementation of judgments of the European Court of Human Rights and debates on the future of the Court

1. Introduction

The AIRE Centre, (Advice on Individual Rights in Europe), Amnesty International and the European Human Rights Advocacy Centre, (EHRAC), continue to monitor the ongoing work of the Council of Europe and its 46 Member States which is aimed at ensuring the better implementation of the European Convention for the Protection of Human Rights and Fundamental Freedoms (“the European Convention on Human Rights”) by Member States and the related issue of ensuring the long-term effectiveness of the European Court of Human Rights (“the Court”). This includes monitoring the relevant work of both the Committee of Ministers’ Steering Committee for Human Rights and the European Court of Human Rights.

In this context, the organizations welcome a number of the commitments made in the Warsaw Declaration and the Program of Action adopted at the Council of Europe’s Third Summit of Heads of State and Government in Warsaw on 16-17 May 2005 concerning the implementation of the European Convention on Human Rights and the effectiveness of the European Court of Human Rights. In particular, the organizations welcome:

- the commitment made to implement the Committee of Ministers’ Recommendations aimed at ensuring, at the national level:
 - the existence of effective domestic remedies for persons who have an arguable claim that their rights under the European Convention on Human Rights have been violated;
 - the full integration of adequate training on the European Convention on Human Rights and the case-law of the European Court of Human Rights in both university education and professional training;
 - effective and appropriate mechanisms to systematically screen and verify draft and existing laws and administrative practices in the light of the European Convention on Human Rights and the case-law of the European Court of Human Rights;
- the reaffirmation of the commitment that the implementation of these Recommendations will be reviewed on a regular and transparent basis by the Committee of Ministers of the Council of Europe;

- the undertaking to provide the European Court of Human Rights with the necessary support;
- the reminder that all Member States must ensure full and prompt implementation of the judgments of the European Court of Human Rights;
- the commitment to enhance the participation of non-governmental organizations (NGOs) in Council of Europe activities; and
- the commitment to carry out the work of the Council of Europe with greater transparency.

The AIRE Centre, Amnesty International and EHRAC consider that the participation of civil society in all discussions and measures undertaken which aim to ensure better implementation of the European Convention on Human Rights in each of the 46 Council of Europe Member States and the long-term effectiveness of the European Court of Human Rights is essential. To this end, the organizations submit the following recommendations.

2. Recommendations for amending the Rules of the Committee of Ministers for the supervision of the execution of judgments and the terms of friendly settlements (“the Committee of Ministers’ Rules”)

It is widely accepted that effective, full and expeditious implementation of the judgments of the European Court of Human Rights is vital to achieve better implementation of, and respect for, the European Convention on Human Rights in the Council of Europe’s 46 Member States.

The role of the Committee of Ministers in the supervision of the implementation of judgments of the European Court of Human Rights is not only to ensure that any payments due by way of just satisfaction have been made, but also to ensure that all appropriate individual or general measures have been adopted by the State which has been found to be in violation of the European Convention on Human Rights. Frequently the applicants, their legal advisers, non-governmental organizations and National Human Rights Institutions are well placed not only to explain to the Committee of Ministers the underlying problem which gave rise to the violation, but also to make considered suggestions as to what individual or general measures should be adopted if such violations are not to occur again.

The organizations believe that the key role which applicants to the European Convention system, their advisers, and other civil society bodies, ought to be given in this process has, however, for the most part, been under-estimated and under-utilized to date. The AIRE Centre, Amnesty International and EHRAC urge that far greater opportunities for the

involvement in the process be afforded to applicants to the Court and/or their legal representatives, as well as to non-governmental organizations (“NGOs”) and National Institutions for the Promotion and Protection of Human Rights (“NHRIs”).

The organizations consider that the current process of amending the **Committee of Ministers’ Rules for the supervision and execution of judgments and the terms of friendly settlements**, (including the incorporation of new procedures arising from the proposed Convention amendments contained in Protocol 14) provides a good opportunity to address this gap.

Under Rule 6 of the current **Rules adopted by the Committee of Ministers for the application of Article 46(2) of the European Convention on Human Rights**, of 10 January 2001, the Committee of Ministers is “entitled to consider any communication from the injured party with regard to the payment of just satisfaction or the taking of individual measures.”

The organisations consider, however, that applicants to the European Court and/or their legal representatives are not currently being provided with adequate information either about the overall supervision process undertaken by the Committee of Ministers or about the opportunity to make submissions under Rule 6 relating to the payment of just satisfaction or the taking of individual measures. This possibility, thus, remains largely theoretical and illusory rather than practical and effective. The marked lack of transparency in the process leads to applicants’ insufficient participation in it. The organizations believe that there is a real absence of awareness and understanding amongst many lawyers and NGOs across the Council of Europe region about the Committee of Ministers’ supervision process. Many applicants are, in effect, being excluded from the process because they are not aware of their right to make representations to the Committee of Ministers about the execution of the judgment in their own case. They are not even notified of the dates on which the Committee of Ministers will review their case.

The organizations are fully aware of the pressures being placed upon the European Court of Human Rights as a result of its increasing caseload. We welcome a number of the steps which have already been taken to improve the effectiveness of the Court, such as the identification of underlying systemic problems and the broader application of Article 46 by the Court in order to ensure the resolution of systemic issues. We consider that there is widespread recognition that an effective process for the supervision of the enforcement of European Court judgments is critical to ensuring the on-going effectiveness of the European Convention system. We consider that the full participation in the process of applicants, their legal advisers, NGOs and NHRIs would assist the Court and the Committee of Ministers in responding more effectively to the human rights violations which have been found by the Court.

In particular, such participation is vital in the process of supervising pilot judgments in ‘systemic’ cases, where an effective and rapid response is needed in order to try to prevent further such violations and to stem the flow of repetitive cases being taken to the Court. The Court’s first pilot judgment, *Broniowski v Poland*, called on the Polish government to take measures in order to remedy the systemic defect affecting a group of nearly 80,000 people, who claim that have not been fully compensated for land they had lost in the aftermath of the Second World War.¹ A few months later, the Court decided to adjourn the 167 pending cases on the same issue (as well as all future applications), in anticipation of the measures which were to be taken by the Polish Government. The organizations consider that in this type of case, in particular, the participation of the applicants, NGO’s and NHRI’s would greatly assist the Committee of Ministers in the supervision process which should lead to the State concerned adopting measures (such as new laws and procedures) to address the underlying problem and to reducing the number of “clone” cases. NGOs and NHRIs possess local knowledge which can significantly assist the Court and Committee of Ministers in assessing the nature and extent of systemic human rights problems. In respect of pilot judgments, we also consider it important that both the Council of Europe’s Commissioner for Human Rights and the Parliamentary Assembly of the Council of Europe should have an opportunity to participate in the supervision process.

Therefore, The AIRE Centre, Amnesty International and EHRAC urge that the **Committee of Ministers’ Rules on the supervision and execution of judgments and the terms of friendly settlements** be amended to enhance the possibility of involvement of applicants to the Court, NGOs and NHRIs in the process of supervision of the execution of judgments and the terms of friendly settlements, and to ensure greater transparency in these processes as a whole.

In particular, The AIRE Centre, Amnesty International and EHRAC urge that the amended **Committee of Ministers’ Rules for the supervision of the execution of judgments and of the terms of friendly settlements** should require the Committee of Ministers:

- to send a letter to applicants and/or their representatives which summarises and explains the Committee of Ministers’ supervision process, within 2 weeks of the date on which a judgment or decision of the Court becomes final;
- to notify applicants and/or their representatives of the date(s) on which their case will be considered by the Committee of Ministers;
- to consider communications from any source, (such as applicants and their legal representatives, NGOs and NHRIs) about the taking of both individual measures and general measures;

¹ *Broniowski v Poland*, No. 31443/96, 22 June 2004. See also: “*Bug River*” case adjourned, European Court Press Release, August 31, 2004; P. Leach, *Beyond the Bug River – A New Dawn for Redress Before the European Court of Human Rights?* [2005] EHRLR 148.

- to notify applicants and/or their representatives, if the Committee of Ministers is minded, under Article 46(3) of the European Convention as amended by Protocol 14, to request the Court to interpret a final judgment for the purpose of facilitating the supervision of its execution and to notify them of their opportunity to put forward submissions to the Committee of Ministers on that issue;
- to consider views received from any source, including applicants and their representatives, NGOs and NHRIs in respect of a referral of a final judgment to the Court for interpretation under Article 46(3) of the European Convention (as amended by Protocol 14) and to reflect such views, together with the views of the Ministers and the High Contracting Party or Parties concerned, in any related Committee of Ministers Interim Resolution;
- to notify applicants and/or their representatives if it considers that a High Contracting Party has refused to abide by a final judgment of the European Court and of its intention to exercise its powers, under Article 46(4) of the European Convention on Human Rights, as amended by Protocol 14, to refer the case to the Court for a ruling as to whether the state has failed to fulfil its obligation under Article 46(1) of the Convention;
- to consider the views from any source (including applicants and/or their representatives, NGOs, NHRIs, the Parliamentary Assembly of the Council of Europe and the Council of Europe's Commissioner for Human Rights) concerning a referral of a final judgment to the Court for a ruling, pursuant to Article 46(4) of the European Convention as amended by Protocol 14, as to whether a state has fulfilled its obligation under Article 46(1) and to reflect such views, along with the views of the Ministers and the High Contracting Party concerned, in any related Interim Resolution of the Committee of Ministers.

3. Recommendations to the European Court of Human Rights concerning the procedures to be adopted on referrals of final judgments from the Committee of Ministers under Articles 46(3) and Article 46(4) of the Convention, as amended by Protocol 14

The AIRE Centre, Amnesty International and EHRAC urge the European Court of Human Rights to ensure that:

- applicants, and/or their representatives are promptly notified of any referral to the Court of a final judgment of a case in which they are a party under Articles 46(3) or 46(4) of the European Convention on Human Rights, as amended by Protocol 14;

- applicants and their representatives are provided with the opportunity to make representations on the issues before the Court in relation to referrals under Articles 46(3) or 46(4) of the European Convention on Human Rights, as amended by Protocol 14;
- the Court will consider a request from any source (including individuals, NGOs, NHRIs, the Parliamentary Assembly of the Council of Europe and the Council of Europe's Commissioner for Human Rights) to make representations to the Court on issues before the Court in any case referred to it under Articles 46(3) or 46(4) of the European Convention on Human Rights, as amended by Protocol 14.

4. Recommendation to the Committee of Ministers on the composition of the “Group of Wise Persons”

The AIRE Centre, Amnesty International and EHRAC urge the Committee of Ministers to ensure that there is adequate representation of both NGOs and lawyers who regularly represent applicants before the Court on the “Group of Wise Persons” to be established “to consider the issue of the long term effectiveness of the Convention’s control mechanism”. Being familiar with the Court’s procedures and the current challenges it faces from the view point of the applicant and civil society, they have an important contribution to make, along with that of governments, academics and members of the Court, in the discussion of its future.

Appointment of such persons to the “Group of Wise Persons” would be consistent with the commitments made at the Council of Europe’s Third Summit of Heads of State and Government on 16-17 May 2005 to enhancing the participation of NGOs in the Council of Europe’s activities. Appointing such persons will ensure that there is representation of those who are currently applying to the Court, and of those who will do so in the future. We believe that such appointments are essential in ensuring that the voice of the potential Court applicant is heard and is able to contribute to these important processes of reform.

5. Conclusion

The AIRE Centre, Amnesty International and EHRAC consider that the voice of ‘civil society’ should be heard early and often in all discussions and measures proposed which aim to ensure better implementation of the European Convention in each of the 46 Council of Europe Member States and the long-term effectiveness of the European Court.

We consider that implementation of the above-mentioned recommendations will ensure greater transparency of the process of execution of judgments of the European Court, and ultimately better implementation of the European Convention in each of the member states of the Council of Europe.