The execution of judgments of the European and Inter-American Courts of Human Rights

A execução das sentenças das Cortes Europeia e Interamericana de Direitos Humanos

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ABSTRACT In this paper, we are going to present the status of an ongoing research on the execution of judgments by the European and Inter-American Courts of Human Rights (hereinafter ECtHR and IACtHR). The Inter-American Human Rights Protection System was in large part built on the model of the European System, in particular in what concerns the composition of its institutions. The procedure before both systems was also quite similar until the European System abolished the Commission in the reform introduced by Protocol no. 11 and thus eliminated this filtering mechanism. Despite these similarities, the Courts’ powers to award reparations and the executions procedure were conceived considerably different, which makes a comparison particularly valuable. Before we can dedicate ourselves to the question of how judgments are executed (section 2), we shall first have to conduct a brief analysis of the Courts’ reparations practice (section 1).

Keywords: ECtHR; IACtHR; Execution; Reparations; Comparison.

RESUMO Neste artigo, vamos apresentar o atual status de uma investigação em curso sobre a execução de sentenças pelos Tribunais Europeu e Interamericano de Direitos Humanos (doravante ECtHR e IACtHR). O Sistema de Proteção dos Direitos Humanos Interamericano foi em grande parte construído sobre o modelo do Sistema Europeu, em particular no que diz respeito à composição de suas instituições. O processo perante os dois sistemas também foi bastante semelhante até que o Sistema Europeu aboliu a Comissão no âmbito da reforma introduzida pelo Protocolo nº 11.
e, portanto, eliminando este mecanismo de filtragem. Apesar dessas semelhanças, os poderes dos Tribunais para reparações de adjudicação e do processo de execução foram concebidos de maneira consideravelmente diferente, o que torna a comparação entre os dois sistemas algo particularmente valioso. Antes de nos dedicarmos à questão de como as decisões são executadas (seção 2), primeiramente devemos realizar uma breve análise das reparações praticadas pelos Tribunais (seção 1).

**Palavras-chave:** ECtHR; IACtHR; Execução; Reparações; Comparação

**Reparation Practice**

The European human rights system is governed by the principle of subsidiarity, i.e., the Court shall only become active when national organs cannot or do not want to resolve the consequences of violations of the European Convention on Human Rights (hereinafter ECHR). Article 41 of the ECHR is a clear expression of this principle. Basically, the Court shall only award compensation in the form of “just satisfaction” if the responding state’s internal law does not permit full reparation. The ECHR does not provide it with any further express authority in this area. The IACtHR, on the other hand, may order much broader sets of measures. Nevertheless, the constant struggle of the ECtHR against the flood of repetitive applications had it sail into the uncharted seas of specific reparation orders, an area long known to the IACtHR.

**ECtHR**

In most of the ECtHR’s cases, judgments are limited to awarding monetary satisfaction to the applicant, and in general there is not a word to be found on the states’ obligation to take further measures to repair the harm caused, prevent repetition, or rehabilitate the victim – in short to take any of the actions defined under international law in case of human rights violations. Nevertheless, states are under an obligation to provide *restitutio in integrum* to victims of violations of the ECHR, as has been underlined by the Court in a number of decisions. The fact that this subject still receives rather limited public attention may principally be explained with the fact that reparations are dealt with behind closed doors by the Committee of Ministers (hereinafter Committee), to which every ECtHR decision is transferred to supervise

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its execution and evaluate and eventually indicate specific reparation measures to be adopted by the state. Nonetheless, there is no vivid and creative reparation practice comparable to the IACtHR in Europe.

The ECHR does not define “full reparation”. Guided by the principle of subsidiarity, the Court concluded that the states are generally free to choose the means that are necessary to obtain full reparation for the victims. A typical judgment, i.e., the vast majority of cases except pilot judgments and cases where specific measures have been ordered, thus creates an obligation for the state to achieve a result (full reparation), but does not impose the means (LAMBERT, 1999, p. 100).

**Just satisfaction**

As a consequence of the unclear wording of the Convention and its restrictive interpretation, the Court, having found a violation of the Convention, usually either states that the judgment in itself is sufficient reparation, or awards monetary compensation as just satisfaction under Article 41 of the ECHR. As the Court’s reparation orders are not comprehensive, the state remains obliged to provide full reparation for all damages as far as they were not covered by these orders (FROWEIN; PEUKERT, 2009, p. 541; RUEDIN, 2009, p. 193).

**Specific Reparation Measures**

The repartition of competences under the ECHR, specifically the Committee’s competence for the supervision of judgments, which entails the definition of specific measures, explains the extensive absence of pronunciations on reparations by the Court. Consequently, it is a Committee document – the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements of 2006 – that contains the only guideline as to what can be expected of a state in terms of reparations and compliance with a judgment according to Articles 41 and 46 of the ECHR.

Guided by the main aim to control the growing caseload, the ECtHR started to expand its remedial jurisprudence since 1995, indicating for the first time that restitution was the only appropriate way to repair an illegal expropriation, but still leaving the state the possibility to replace restitution by monetary compensation. Finally, in 2004, the Court for the first time gave a direct order that could not be replaced by

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2 See on this principle: Kudla v. Poland, ECtHR, no. 30210/96, 26 October 2000, 2000-XI, para. 152.
3 M.S.S. v. Belgium and Greece [GC], ECtHR, no. 30696/09, 21 January 2011, para. 398; Papamichalopoulos and others v. Greece (Just Satisfaction), ECtHR, para. 34; Janis, Kay, and Bradley, European Human Rights Law, p. 834, with reference to Ireland v. United Kingdom (Merits and Just Satisfaction), ECtHR, no. 5310/71, 18 January 1978, Series A no. 25.
the payment of a sum of money, ordering a state to release the victim at the earli-
est possible date. The Court, in subsequent decisions, recurred to ordering specific
measures of reparation in a variety of ways, although there is no apparent pattern
according to which it selects the cases in which it makes specific orders.

**General Reparation Measures**

Beyond specific measures, the Court has also begun to order states to adopt
general measures in repetitive cases where it could identify systemic problems un-
derlying a huge number of similar human rights violations. In a pilot judgment the
Court identifies the systemic problem in one exemplary case that has been given
priority treatment over other pending cases and indicates to the state what general
measures must be adopted to resolve the situation.

The idea behind the pilot judgment procedure is that the Committee does not
necessarily have an overview of the number of applications the Court receives con-
cerning similar issues and thus cannot easily identify by itself if there are systemic
problems underlying a situation, which is an important information for the execu-
tions procedure (SZKLANNA, 2010, p. 226). It therefore invited the Court in 2004
to indicate systemic problems and the general measures it deems appropriate for the
state to adopt in order to prevent similar violations from recurring. The Court em-
braced Resolution Res(2004)3 immediately and issued the first pilot judgment in the
case of *Broniowski v. Poland* on 22 June 2004.

No punitive measures are ordered in the judgment if the state fails to comply
within the stipulated deadline. The only consequence with respect of the Court is that
adjourned similar cases will be reopened and the execution of each case will be put
again into the hands of the Committee. The pilot judgment procedure was finally for-
amalized with the entry into force of Rule 61 of the ECtHR Rules on 21 February 2011.

**IACtHR**

The American Convention on Human Rights (hereinafter ACHR) provides the
IACtHR with much broader reparation competences than those given to the ECtHR.
 Particularly, the IACtHR is not subject to a principle of subsidiarity which would
make its competence depend on the question whether national law allows complete

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4 *Assanidze v. Georgia* [GC], ECtHR, no. 71503/01, 8 April 2004, 2004-II, paras. 198ff., in particular
Committee documents are available from www.coe.int/cm.
reparation. Although Article 63(1) of the ACHR only names three of the five ways of reparations known under international law, namely the insurance of enjoyment of the violated right or freedom, remedies, and fair compensation, the Court makes broad use of its remedial powers. The IACtHR orders reparations under the heads of reparation (“enjoyment of the violated right or freedom”), remedies and compensation.

**Restoration**

The restorative injunction is described in Article 63(1) of the ACHR as “enjoyment of the right or freedom that was violated”. The Court has to make use of its restorative powers (“shall rule”), while remedial and compensatory orders depend on appropriateness.

Restoration mainly consists in the cessation of a continuing human rights violation and the re-establishment of the victim to the status quo ante. It has been ordered in particular in the form of immediate liberation or the right to appeal a judgment in cases of illegal detention or violation of the rules of due process.

**Remedy**

Remedial measures clearly stand back to restitution and their application is only alternative. Besides awarding remedies for injuries suffered by the victim because of the violation, the Court today orders states to grant access to justice, investigate the facts of the violation, bring perpetrators to court and take other remedial measures directed at preventing the repetition of similar cases, such as amendments of domestic laws or symbolic measures. Based on Article 2 of the ACHR, the Court orders legal and judicial measures to ensure non-repetition of similar violations (Pasquale-Lucci, 2003, p. 245). Failure to investigate the facts and identify, prosecute and punish the responsible persons is a recurring fault of the states whose responsibility for human rights violations has been established by the Court. The Court ordered in several cases the non-applicability of amnesty laws. Other legislative or symbolic reparation measures are frequently ordered, too.

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7 Velásquez Rodríguez v. Honduras (Reparations and Costs), IACtHR, 21 July 1989, Series C no. 7, para. 30. All IACtHR judgments are available from www.corteidh.or.cr. See also García Ramírez (2009, p. 130).

8 According to García Ramírez (2009, p. 190) the IACtHR can order at least 30 kinds of reparations.


11 Almonacid-Arellano et al. v. Chile (Merits, Reparations and Costs), IACtHR, 26 September 2006, Series C no. 154, paras. 152ff.
Compensation

Economic loss, which comprises the immediate reduction of economic possessions (*damnum emergens*) and the future reduction of possessions or economic possibilities, including lost salaries and other income (*lucrum cessans*), is awarded under the concept of pecuniary (also called material) damages, compensation for the moral consequences of the human rights violation as non-pecuniary (or immaterial) damages (GARCÍA RAMÍREZ, 2009, p. 145).\(^\text{12}\)

If necessary, the ensuing topic under the Court’s scrutiny are consequential damages. These damages comprehend any deterioration of patrimony or belongings of the victim or its relatives or any other costs incurred in direct consequence of the violation. Consequential damages cannot be estimated but must be proven.\(^\text{13}\) Non-pecuniary or moral damages are reparation for all consequences of human rights violations that do not have a commercial value. Such damages may include both the suffering and distress caused to the direct victims and their next of kin, and the impairment of values that are highly significant to them, as well as other sufferings, of a non-pecuniary nature, related to the conditions of existence of the victim or their family.\(^\text{14}\)

Litigation expenses are not part of the compensation for the victims but “must be granted directly to the person or organization that represented the victim”.\(^\text{15}\)

Execution Procedures

Judgments of both human rights Courts in principle have to be executed by the state without further intervention by any international organ.\(^\text{16}\) The systems rely insofar on the principle of good will, common to public international law.\(^\text{17}\) While in Europe the Committee of Ministers was appointed as the monitoring body, the designation of competences in the phase of execution is so ambiguous in the Americas that it has even been challenged by a state. In practice, however, the role of the IACtHR is predominant. We shall now examine the differences between the political execution system of the Council of Europe and the judicial procedure under the ACHR.

\(^\text{12}\) Aloeboetoe *et al.* *v.* Suriname (Reparations and Costs), IACtHR, 10 September 1993, Series C no. 15, para. 50.

\(^\text{13}\) *Radilla-Pacheco v. Mexico* (Merits, Reparations and Costs), IACtHR, 23 November 2009, Series C no. 209, para. 369.

\(^\text{14}\) “*Street Children*” (*Villagrán-Morales et al.*) *v.* Guatemala (Reparations and Costs), IACtHR, 26 May 2005, Series C no. 77, para. 84, cited in “*Las Dos Erres*” Massacre *v.* Guatemala (Merits, Reparations and Costs), IACtHR, 24 November 2009, Series C no. 211, para. 275, fn. 276.

\(^\text{15}\) “*Cotton Field*” *v.* Mexico (Merits, Reparations and Costs), IACtHR, 16 November 2009, Series C no. 205, para. 594.

\(^\text{16}\) Article 46(1) of the ECHR and Article 68(1) of the ACHR.

EUROPE

The ECHR, unlike the ACHR, contains a clear assignation of the supervisory competence to the Committee of Ministers in Article 46. Nevertheless, almost all organs of the Council of Europe play a role in the monitoring, the most important ones being the Court and the Parliamentary Assembly.

The Council of Ministers

The Committee is the Council of Europe’s decision-making body (DE VEL, 1995). It consists of the ministers of foreign affairs of all member states or their representatives, which in general are the country’s permanent representatives to the Council of Europe. The Committee is not a judicial body but a political one. It accomplishes its human rights-related duties in special human rights meetings (DH/HR). In its day to day business, the Committee is supported by the Execution Department of the Secretariat of the Council of Europe. It is a collegiate organ in which the states sit together as peers. This also applies to the human rights meetings where the state that has failed to observe its obligations under the ECHR participates as a full member even in the sessions concerning itself. The concept of peer review presupposes that, in the spirit of Article 1(a) of the Statute of the Council of Europe, states are generally willing to comply with the Court’s judgments (RUEDIN, 2009, p. 7). In such a situation, the peer states help the failing member to implement the necessary reparation measures and resolve disputes on a collective basis. Should a member be unwilling to implement a judgment, the others could mount political pressure and thus push it towards compliance without having to recur to official means of force such as the suspension of the member from the Council.

Due to the high overall number of cases pending execution – 10,689 at the end of 2011, 1,337 of which were leading cases, the rest repetitive ones – (COMMITTEE OF MINISTERS, 2012, p. 34), the Committee focuses its work on the leading cases, in which the adoption of general measures usually entails the execution of several other clone cases and thus significantly reduces the number of pending cases.

Procedure

Once a judgment of the Court has become final, it is transmitted to the Committee which inscribes it on its agenda for DH/HR meetings.18 Cases are then treated according to their pertinence. The basic rules for the Committee’s monitoring procedure date from 2006, an extensive reforms package having been adopted in 2010 in line with the reforms decided at the Interlaken Conference of 2010 wherein the States called the CM to pay greater respect to the priorities each case requires (DIRECTO-

18 Article 46 of the ECHR, Rule 3 of the CM Rules for the Supervision of the Execution of Judgments.
RATE GENERAL OF HUMAN RIGHTS AND LEGAL AFFAIRS, 2010; MOW-BRAY IR, 2010, p. 519-528).\textsuperscript{19} The Committee adopted a twin-track approach to supervision, sorting cases according to their importance into a standard or an enhanced supervision category.\textsuperscript{20} Thus, judgments requiring urgent individual measures, pilot judgments, judgments identifying major structural or complex problems, or interstate cases shall be treated under the enhanced procedure. The enhanced procedure may also be proposed by member states or the Secretariat in other specific cases.\textsuperscript{21}

The applicant does not directly participate in the supervision process, but may send communications of any kind during the supervision phase to the Committee in order to inform it about the state of execution of the judgment. Non-Governmental Organizations or national institutions have a broader possibility to make submissions on every aspect related to the execution of a judgment.\textsuperscript{22} Apart from this possibility, they may not participate in the Committee’s sessions either, as the deliberations are generally held in private.

Action plans or reports are the basis of the new working methods. Under either of the two supervision modalities, the Committee relies principally on the information provided by the state.\textsuperscript{23} The Committee requires submission of such documents within six months after a judgment has become final.\textsuperscript{24} An action plan is “[a] plan setting out the measures the respondent State intends to take to implement a judgment of the Court, including an indicative timetable.”\textsuperscript{25} Upon culmination of the state’s efforts, it submits an action report, which has been defined as “[a] report by the respondent State setting out all the measures taken to implement a judgment of the European Court of Human Rights, and/or an explanation of why no measures, or no further measures, are necessary.”\textsuperscript{26}

The Committee’s activity under the standard procedure is limited to the confirmation of reception of these documents.\textsuperscript{27} In case an action report is presented, the state applies for closure of the supervision process at the next DH/HR meeting

\begin{footnotesize}
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\item \textsuperscript{19} Extract of decisions taken during 1100th CM DH meeting - Item e.
\item \textsuperscript{20} No. 6 of CM/Inf(2010)37 “Supervision of the execution of judgments and decisions of the European Court of Human Rights: implementation of the Interlaken Action Plan – Modalities for a twin-track supervision system”, 6 September 2010.
\item \textsuperscript{21} Nos. 8 and 9 of CM/Inf(2010)37 (\textit{supra} fn. 28) and no. 10 of CM/Inf(2010)45 “Supervision of the execution of judgments and decisions of the European Court of Human Rights: implementation of the Interlaken Action Plan – Outstanding issues concerning the practical modalities of implementation of the new twin track supervision system”, 6 September 2010.
\item \textsuperscript{22} Rule 9 of the CM Rules for the Supervision of the Execution of Judgments.
\item \textsuperscript{23} Rule 6 of the CM Rules for the Supervision of the Execution of Judgments.
\item \textsuperscript{24} No. 3 of CM/Inf(2010)37 (\textit{supra} fn. 28).
\item \textsuperscript{25} Appendix I no. 5 of CM/Inf(2010)37 (\textit{supra} fn. 28).
\item \textsuperscript{26} Appendix I no. 7 of CM/Inf(2010)37 (\textit{supra} fn. 28).
\item \textsuperscript{27} No. 12 of CM/Inf(2010)37 (\textit{supra} fn. 28).
\end{itemize}
\end{footnotesize}
or within six months from the presentation of the report. In case an action plan is presented, more complex activity has to be developed by the Council of Europe’s organs: The Execution Department of the Secretary will make a preliminary evaluation of the plan and the measures proposed therein, before the Committee, at the next DH/HR meeting or no later than six months after submission of the plan, accepts the plan and invites the state to keep it updated on the measures adopted in conformity with the plan. Once the state considers to have adopted all measures, it presents a final action report and requests the closure of the case.²⁸ If a case is transferred to enhanced supervision, the Execution Department is working more closely with the state to adopt the measures required, and in particular provides assistance in the preparation and/or implementation of action plans, expertise assistance as regards the type of measures envisaged, and bilateral/multilateral cooperation programmes (e.g. seminars, round-tables) in case of complex and substantive issues.²⁹ The Committee would, however, not debate the case at each DH/HR meeting but only if it is worthwhile to present developments in the case or outline shortcomings to the public. Both supervision methods are not supposed to be exclusive but shall rather be applied in a flexible way, depending on the progress in the specific case. Enhanced supervision should thus be envisaged in cases where the state does not comply with its obligation to submit an action plan or if there are differences of opinion between the state and the Department of Execution of the Secretariat General. It might serve as a first signal that the Committee is considering the case with higher priority and might consider discussion of the case in a future meeting particularly if slow implementation of action plans persists.³⁰

The CM supervises execution under three topics: payment of just satisfaction, general measures and individual measures.

**Just Satisfaction**

The ECHR does not contain a norm similar to Article 68(2) of the ACHR that stipulates that compensatory damages are to be executed according to the states’ national proceedings concerning judgments against the state. Compensatory orders under the ECHR are purely international and it is up to the states to determine the procedure of compliance. Consequently, applicants in Europe do not necessarily have an established procedure to claim just satisfaction awarded by the Court from the state.

In the 2010 Working Methods, the Committee has mostly relinquished control of the payment of just satisfaction and placed it into the hands of the applicants. Ap-

²⁸ Nos. 16f of CM/Inf(2010)37 (supra fn. 28).
²⁹ No. 20 of CM/Inf(2010)37 (supra fn. 28).
Applicants are henceforth informed by the Court in letters accompanying the judgment that it is their responsibility to contest information submitted by the state to the Committee concerning payment of just satisfaction (COMMITTEE OF MINISTERS, 2011, p. 19). It is up to the applicant to verify the information submitted by the state, because the Execution Department’s activity is limited to registering and publishing payment notices on the Council of Europe’s website.\(^{31}\) The applicant has two months to contest the payment. Beyond this term they are supposed to have accepted the payment and the issue will be closed (COMMITTEE OF MINISTERS, 2011, p. 19). As set out in no. 11 of appendix II to CM/Inf(2010)\(^37\), the Committee nevertheless reserves the right to reopen cases “if necessary”. Although payment of just satisfaction should be the easiest form of reparation to be complied with, the Committee’s Annual Report on Execution for 2010 (2011, p. 49) indicates that payments were made on time only in 28% of all judgments pending execution (a decrease from 37% in 2009) and in 13% of all judgments after the deadline. The number of cases pending for control of more than six months has increased by 20% from 29% in 2009 to 35% in 2010.

The supervision of execution of individual and general measures is followed more closely by the Committee, as the Court does not usually indicate which measures are to be adopted by the state. It is therefore principally the Committee’s task to decide whether the state has fulfilled the obligations emanating from the Court’s judgments.

**Individual Measures**

We have seen the scope of what may be required as individual reparation from the reparation practices of the IACtHR. Nonetheless, due to the prevalence of the principle of subsidiarity in Europe, the European human rights organs usually do not impose specific measures on the states. The Committee therefore is not in a position to define specific measures and acts very cautiously on the supervising stage. If, however, monetary compensation awarded is insufficient or inappropriate to entirely remedy the violation, it insists that the state take further measures. It has received support in making such requests to the states by the Court, that, as we have seen, has begun to require the adoption of specific measures by the states. The further the Court extends this practice, the more will the Committee’s work be facilitated by reducing the states’ leeway to determine how to discharge their obligation to provide *restitutio in integrum*. The Committee’s supervisory responsibilities will consequently be reduced to discussing only measures within the leeway determined by the Court and spare it from general discussion over whether certain measures are required or not.

\(^{31}\) http://www.coe.int/t/dghl/monitoring/execution/Themes/Satisfaction_equitable/SE_EN.asp.
Individual measures are of much less importance to the European organs than they are in Latin America. Symbolic measures have never been ordered. We can only speculate whether this is caused by a general reluctance of the European organs or whether due to cultural differences monetary reparation plays a much more important role, replacing other more symbolic acts.

**General Measures.**

While individual measures ensure relief in the specific case, general measures are paramount to prevent the recurrence of similar cases and are an important instrument in the European System’s fight against suffocation. It is therefore in this area that Court and Committee are most effectively exerting pressure on the states. Systemic problems are nowadays being tackled under the pilot judgment procedure; but also in cases that were not decided in this way, the adoption of general measures is of great concern to the Committee. Typical general measures are legislative modifications, adaptations in the domestic courts’ interpretation of the laws, allocation of funds to improve the functioning of the public or judicial administration, training of public servants etc. Most of these measures require complex processes and political discussions, postponing their adoption and extending the Committee’s supervisory activities in time.

According to information available from the Committee, the execution rate of general measures ordered by the Court in the framework of the pilot judgment procedure has been satisfactory, with all but one decision having been implemented within the timeframe established (COMMITTEE OF MINISTERS, 2012, p. 10). The huge number of cases resulting from the Chechen war, in which the Court has found unlawful killings, the disappearing of persons and other severe violations, and in almost all of which the state had failed to establish a proper investigation of the facts, is a good example that the pilot judgment procedure in fact is not applied to all cases presenting massive violations and obvious systemic dysfunctions (LEACH, 2011).

**Instruments**

The Committee may make use of several instruments during the monitoring phase, particularly interim and final resolutions. Interim resolutions, according to Rule 16 of the CM Rules for the Supervision of the Execution of Judgments, serve “notably in order to provide information on the state of progress of the execution or, where appropriate, to express concern and/or to make suggestions with respect to the execution”. Final resolutions, according to Rule 17 of the CM Rules for the Supervision of the Execution of Judgments, formally finish the Committee’s monitoring.

The Committee makes use of interim resolutions to give public notice of advances and shortcomings in the execution of judgments, thus encouraging the state to
continue its efforts on outstanding issues. In case of recalcitrant states, interim resolutions may also be used to threaten with further measures, particularly suspension from the Council according to Article 8 of the Statute of the CoE. This threat usually comes accompanied by a call to the other members to take all measures against the state as they deem appropriate. Only after just satisfaction has been paid or sufficient other individual measures have been taken, is the case deleted from the Committee’s agenda by way of a final resolution concluding that the Committee has exercised its functions under Article 46(2) of the ECHR. Resolutions are adopted by a two-thirds majority of all members on the Committee, including the affected state.

**Infringement Proceedings**

Protocol no. 14 has introduced two new instruments for the Committee: a request for interpretation and an infringement procedure in case of non-execution of a judgment. Both procedures shall have an extraordinary character. Consequently, the Committee may launch them only if two-thirds of its members are in support. This is consistent given that the aim of Protocol no. 14 is to resolve the problem of the Court’s caseload, not add new cases to it. In the first case, the Committee may, “if [it] considers that supervision is hindered by a problem of interpretation, refer the case to the Court for a ruling on the question of interpretation”. The particularity of the new request for interpretation in the execution phase is that, unlike the request for interpretation a party to the case may lodge under Rule 79 of the Rules of the ECtHR, the Committee’s competence is not subject to temporal limitation. Interpretation shall facilitate supervision by finally settling differences between the state and the Committee as to the obligations arising from the judgment. It shall explicitly not be used to evaluate measures already taken by the state (DOCUMENTATION, 2005, p. 100).

In the second case, upon serving the recalcitrant state a formal notice as a last warning, the Committee may “refer to the Court the question whether that Party has failed to fulfil its obligation under paragraph 1”. This possibility was introduced as an answer to the cases where states consistently refuse to implement a judgment and, hitherto, the only possibility available to the Committee was suspension or exclusion from the Council – an undesired consequence given its exclusive character. The infringement proceeding, which is held before the Grand Chamber, shall cause additional publicity to the case and thus press the state to implement the judgment.

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33 Article 20(c) of the Statute of the Council of Europe.

34 Article 46(3)–(5) of the ECHR.

35 Article 31(b) of the ECHR.
The member states assumed that the mere existence and the threat of applying the procedure should be sufficient to have states comply with their obligations (DOM-CUMENTATION, 2005, p. 100).

Neither of the two proceedings has so far been applied, so that their effectiveness remains to be seen.

**Expulsion from the Council of Europe.**

The Committee’s last remedy against states that constantly deny to execute judgments is suspension or expulsion according to Article 8 of the Statute of the CoE, which states that the Committee may suspend any member state that has seriously violated the principles of the Council from being represented on the Council and ask it to withdraw in the terms of Article 7 of the Statute of the Council of Europe. If the member state concerned does not withdraw by itself, the Committee may, as an ultima ratio, expel the member from the Council.

Article 8 has never been applied, but was at issue within the context of the Greek coup d’état in 1967, but the Greek Government preceded its exclusion from the Council by denouncing the Statute and the Convention and withdrawing (GOVERNMENT OF GREECE, 1970). In *Loizidou v. Turkey*, the Committee indirectly threatened Turkey with expulsion, declaring “the Committee’s resolve to ensure, with all means available to the Organisation, Turkey’s compliance with its obligations under this judgment”.36

**Recommendations.**

On a general level, the Committee can issue recommendations to the member states on how better implementation of the Court’s judgments should be ensured.37 These recommendations do not have binding force, nonetheless the Committee frequently refers to them in resolutions concerning specific cases. According to the Committee, these recommendations may have positive effects on the development of the issue they address in the states and serve as a basis for bilateral relations maintained between the Department of Execution and the states (COMMITTEE OF MINISTERS, 2012, p. 28).

**Non-formalized Measures.**

On a lower scale, the Committee has also acted through non-official means, such as communications by its President to the respondent state. This has the ad-

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37 Article 15(b) of the Statute of the CoE. Recommendations are available from https://www.coe.int/t/dghl/monitoring/execution/Documents/CMRec_en.asp.
vantage that issues can be addressed informally on a bilateral level, without raising public attention, so that the ground for viable solutions can be probed or the particular determination of the Committee be underlined. Applying other means than resolutions also bears the advantage that the Committee can react quickly to specific problems or positive aspects in the execution process. In such cases, a simple decision can be adopted in the DH/HR meeting, accompanied by the subsequent issue of a press release. The presentation of the status of pending cases on the website of the Department of Execution is another way to make the execution process more transparent. The publication of the DH/HR meetings’ annotated agendas which contain information not cast into resolutions, information received by the state (action plans, action reports) and by the party, reports elaborated by the Department of Execution, as well as summaries of the current status of execution for each case makes it easy for the interested public, press and the party to quickly get an overview of the progress of each case or group of cases. Additionally, each year in April, since 2006, the Committee publishes an Annual Report.

The Court

The Court does not have, apart from the aforementioned applications by the Committee under Article 46(3)–(5) of the ECHR, an original competence to review cases on the execution stage for failure to execute them. The question persists whether in cases where the violation continues after a judgment has been handed down because no or insufficient individual measures have been adopted, the situation may be brought before the Court again in a new application. This depends on whether, according to Article 35(2)(b) of the ECHR, an application “is substantially the same as a matter that has already been examined by the Court […]”.

In VgT v. Switzerland (no. 2), the Committee had officially terminated its supervision of the case satisfying itself with the mere reopening of domestic procedures instead of awaiting the outcome. As the domestic court maintained the decision under attack, the applicant brought the case again to Strasbourg. The Court admitted the case holding that it had to receive the case as it was originating in facts that had occurred after the Committee had adopted a final resolution because otherwise there would be no opportunity to scrutinize such facts under the Convention.

It may be concluded that the Court assumes competence 
ratione materiae
for cases presenting continuing violations.

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40 http://www.coe.int/t/dghl/monitoring/execution/default_en.asp.
41 See VgT v. Switzerland (no. 2), ECtHR, no. 32772/02, 4 October 2007, para. 43.
42 Ibid., para. 67.
The situation is different when a state does not implement general measures. These situations may give rise to high numbers of parallel similar applications by different applicants in the same situation as the original applicant. As these situations are never exactly the same, they are not likely to fall under Article 35(2)(b) of the ECHR, but must be treated by the Court. The measure of choice introduced for these cases is the pilot judgment procedure that has already been explained supra.

The Parliamentary Assembly

The Parliamentary Assembly is a relatively new actor in the field of monitoring which can intervene in a variety of ways in the execution process. It can pose oral or written questions to the Committee either on specific cases or in relation to more general matters such as the execution of judgments in a certain country or area or the state of compliance with certain measures such as the payment of just satisfaction. Being composed of members of the national parliaments, it can also make use of the national parliaments’ possibilities to control their respective governments. The Assembly has designated the Committee on Legal Affairs and Human Rights (AS/Jur) to monitor the implementation of judgments and report to the Assembly when considered appropriate. AS/Jur’s activity has resulted in a number of reports, resolutions and recommendations, which focus on specific states where the most serious execution-related problems persist (DRZEMCZEWSKI, 2010, p. 170). Its means of action are in situ visits and a continuing dialogue with the parliaments there on the problems encountered, and cooperation with national parliaments. Although the Parliamentary Assembly’s intervention in the monitoring process was not taken seriously by the states at the beginning and was met with rejection by the Committee as an interference with its dominion (JURGENS, 2010, pp. 844f.), a viable practice of support for monitoring has evolved. It is based on the one hand on the fact that the Assembly is tackling the issue of non-execution on the parliamentary level, while the Committee is working on the governmental level, and that the deputies in the Assembly, due to their liberties as members of parliament, can act with less restrictions. Thus, an essential axis of the Assembly’s work is “naming and shaming”, a practice unthinkable for the diplomats on the Committee. But also the influence by the rapporteur on the national parliaments either directly or through the national

43 Article 25(a) of the Statute of the Council of Europe.
44 Explanatory Memorandum no. 18ff of the Doc. 8808 - Execution of Judgments of the European Court of Human Rights.
45 Parliamentary Assembly, Resolution 1268 (2002).
46 See also the Parliamentary Assembly’s homepage at http://assembly.coe.int.
48 Ibid., p. 843.
delegation in the Parliamentary Assembly may (and has) taken execution in several cases decisive steps forward.49

**THE AMERICAS**

As the principle of subsidiarity does not apply on the reparations stage in the inter-American system, the IACtHR can resolve some of the issues the Committee of Ministers has to deal with in cooperation with the states during the monitoring process in the judicial phase, namely determine the reparation modalities and the beneficiaries. Furthermore, the very absence of subsidiarity and the detailed reparation practices by the IACtHR leaves almost no margin of appreciation to the states.

The ACHR, unlike the ECHR, does not provide for a dedicated monitoring system.50 Article 65 of the ACHR is the only hard-law rule that makes an allusion to non-compliance. The General Assembly’s obvious lack of interest in the IACtHR’s reports induced the latter to derive from the ACHR a proper monitoring competence that, despite having been challenged by Panama, is nowadays a generally accepted practice and has even been introduced into the Rules of Procedure of the IACtHR.

The supreme organ of the Organization of American States (hereinafter OAS) is the General Assembly. Unlike the Parliamentary Assembly of the Council of Europe, the General Assembly is an executive organ that is governed by the “one state one vote” principle. In order to assure the day-to-day business in periods when the General Assembly is not in session and to prepare the Assembly’s sessions, the Charter of the OAS has instituted the Permanent Council. The Assembly’s jurisdiction in the monitoring process derives from the already mentioned Article 65 of the ACHR. In practice, however, it is not the Assembly itself but the Permanent Council’s Committee of Juridical and Political Affairs (hereinafter CAJP) that takes notice of the report and submits a proposal resolution to the Assembly at its following session.

Although the IACtHR, in a variety of annual reports to the Assembly, has mentioned cases in which states were not complying with judgments and did not inform the IACtHR about what plans they had to fulfil their obligations, the Assembly hardly ever commented on the issue. There has never been a political will of the General Assembly to support the IACtHR. The IACtHR assumed that it had to find proper solutions to the issue of non-execution and developed proper strategies. A first step was a round of discussions on the effectiveness of the IACtHR’s jurisprudence held under the presidency of Judge Cançado Trindade. He defended in several articles and speeches the position that Article 65 of the ACHR should be amended as to contain a new sentence according to which reports of cases of non-execution that are sub-

49 See examples at *ibid.*, pp. 847ff.

50 *Baena-Ricardo et al. v. Panama* (Competence), IACtHR, 28 November 2003, Series C no. 104, para. 88.
mitted by the IACtHR to the Assembly were presented to the CAJP for it to study the matter and inform the Assembly. This way, permanent supervision of execution could be assured. The proposal did not find support in the OAS. Next, the IACtHR had the possibility to develop in detail the legal grounds of a proper supervisory function when Panama in 2002 challenged its competence to remain seized of a case after the judgment on reparations was handed down. On 29 June 2005 it adopted a general resolution on execution wherein it announced to stop requesting information on execution from the member states in cases where it decided to apply Article 65 of the ACHR. As long as it was not informed by the state of the full compliance with the judgment, it would include the case under Article 65 of the ACHR in every subsequent annual report. Nevertheless, as of October 2012, Article 65 of the ACHR has not been applied again. In 2007, the IACtHR for the first time applied the instrument of hearings on monitoring, conducting the first such private hearing in the case of Bulacio v. Argentina. It extended the practice to public hearings in 2009 in the Sawhoyamaxa Indigenous Community v. Paraguay case, applying since then public and private hearings according to the case. In 2010 it then began to join hearings on different cases per country that present similar problems of execution.

**Summary**

The subject of execution of judgments, even more so on a comparative level, is a very complex one, including a variety of actors in the Council of Europe and the OAS. The increasing case-load of both the ECtHR and the IACtHR also requires constant review of the procedures under the aspect of effectivity. This article could therefore not be more than a mere *tour de force* of the subject. A number of issues could only be touched upon superficially and require further investigation.

The organizational differences within the Council of Europe and the OAS and the broader competences of the IACtHR on the reparations stage lead to fundamentally different approaches to reparations as well as to the implementation of judgments by the states. Interestingly, while subsidiarity is paramount to the procedure before the ECtHR, execution of judgments is much more formalized and has been put on stronger foots by the authors of the ECHR. The situation is completely opposite in the Americas, where the IACtHR was endowed with the competence to develop a very detailed reparations practice, but no procedure was foreseen to effectively supervise the implementation of its judgments. A supervisory competence effectively had to be created by the Court from the ACHR.

51 *Baena-Ricardo et al. v. Panama (Competence),* IACtHR (*supra* fn. 68).
It remains to be seen, which approach proves to be more effective. Dealing with reluctant states might become the litmus test for both systems. The Ukraine crisis in Europe and dealings with Venezuela in South-America might already be providing the settings for this test.

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