



INTERNATIONAL CONFERENCE ON ELECTORAL LAW “Implementation and Application of International Human Rights Treaties”, Mexico City

Panel: Presentation of the report on the Implementation of International Treaties on Human Rights by the Sub-Commission on Latin America of the Venice Commission.

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The Effects of Judgments: A Comparison

A. ECtHR

1. Contents of a judgment

Art. 46(1) ECHR: “The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.”

1.1. Finding of violation and (possibly) just satisfaction

Art. 41 ECHR.

1.2. Individual measures

Examples: release of a detained person, the return of property, additional investigations on the circumstances of the death of a victim, reopening of legal proceedings, reinstatement of a dismissed Supreme Court Judge.

Legal basis: implied power of the Court based on Art. 19, 41 and 46 ECHR.

1.3. General measures (incl. pilot judgments): rule 61 RoP

Since *Broniowski v. Poland* (2004).

Court identifies systemic problem and suggests general measures.

If appropriate, adjourns pending parallel “similar applications” (rule 61(6) of the RoP).

2. Effects of a judgment

2.1. From the international law perspective

Res iudicata inter partes (Art. 46(1)ECHR).

Cf. Art. 30 lit b) ILC Articles on State Responsibility (2001).

2.2. From diverse domestic perspectives

Specific domestic provisions on the reopening of criminal proceedings.

Binding on each organ/institution of the state = direct effect?

German Constitutional Court, *Görgülü* (2004).

2.3. For third states: ‘de facto orientating effect’

3. “Political” supervision of the execution of judgments by the Committee of Ministers: Art. 46(2) ECHR

CoM is a “political” plenary organ of the Council of Europe.

2006: rules of the Committee for the supervision of the execution of judgments and of the terms of friendly settlements.

Since 2011: twin track supervision.

- Involvement of other institutions of the Council of Europe, e.g. PACE.
- Role of the member states.
- Transparency and role of NGOs.
- Role of the applicants.

Coercion to ensure execution: Art. 3 and 8 Statute CoE (in theory).

New infringement proceedings under Art. 46(4) (5) ECHR (14th protocol, in force since 1st June 2012).

B. Comparison: preliminary findings

1. Contents of the judgments

1.1. Findings of violations and imposition of remedies

Based also on general international law.

1.2. Imposition of individual and systemic measures (as a part of the remedy)

- (a) Power of courts now accepted. IACtHR first, and more creative.
- (b) Pilot procedure only in Europe.
- (c) America : The specific remedy of criminal investigations.
- (d) “Human right to punishment”?

1.3. Pecuniary damages/just satisfaction

2. Effects of judgments

Res iudicata inter partes and de facto guideline for third member states.

3. Supervision of execution/compliance with judgments

3.1. Difference between “legal” and “political” scheme eroding

Cf. IACtHR, *Case of Baena Ricardo et al. v. Panama* (competence), Series C No. 104, 28th November 2003, part D (paras. 84-104).

3.2. Increasing formalisation and publicity

3.3. Coercion: not really available

3.4. Factual trends on compliance