

The Consolidation of the System of the European Convention for Human Rights at National Level – Argument*

Abstract: *The rule of law is the central piece of the puzzle of a state's democracy. From the point of view of institutions, the three powers of the State are called, together, to create and strengthen the mechanisms for the functioning of democracy. In this equation, the respect for human rights is the motive of the approach, and parliaments, through their mission and strategic position in relation to governments, can be guarantors of this approach. Based on the principles underlying the European edifice and on the relevant documents of the Parliamentary Assembly of the Council of Europe on the restoration of violated rights and by supervising and monitoring the enforcement of judgments delivered by the European Court of Human Rights, we argue that national parliaments, through internal control structures, can be the foundation of state democracy.*

Keywords: *enforcement of ECHR judgments, national parliaments, shared responsibility, control mechanisms.*

I. Reference elements

The European Convention for the Protection of Human Rights and Fundamental Freedoms represents a guarantee of observing the rule of law and the fundamental principles of democracy, being, at the same time, “*the first instrument of international law that has organised the protection of the individual against its own state, guaranteeing them fundamental rights and freedoms*”¹.

European Court of Human Rights (ECHR) and the Committee of Ministers represent the complex institutional edifices by which the *effective application of the Convention's provisions*² is made.

The European Court of Human Rights (ECHR) has international jurisdiction and full powers to deliver by judgements with imperative, mandatory value on individual claims (submitted by individuals, groups of individuals, companies or non-governmental organisations on the violation of their rights) or of member states, which invoke the violation of the Convention;

The Committee of Ministers is the main political institution of the Council of Europe, to whom the Convention, by article 46, has entrusted the specific responsibility of monitoring and supervising the measures taken by states for the application and execution of the Court's³ judgements.

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monitoring and supervising the measures taken by states for the application and execution of the Court's³ judgements.

In order to become efficient, this monitoring carried out by the Committee of Ministers must be accompanied by a *direct inspection from national institutions* vested with powers for the implementation of the Convention, and of the judgements of the European Court of Human Rights acquiring, due to these reasons, a bivalent nature⁴, which describes the *interdependency between the national jurisdiction and the jurisdiction of the supranational law system*, described by the European Convention and additional protocols.

Currently, it is becoming more and more obvious that the standpoint according to which the efficient implementation of the Convention's provisions in the internal system, the prevention of human rights violation, the guaranteeing and protection of human rights, but also the implementation of effective remedies at national level is the mutual responsibility of all the three powers of the state. Thus, the legal force of the judgements delivered by the European Court is completed by the control function of the judgements' execution, their exercise being doubly structured, vertically, by the Committee of Ministers, and horizontally, at the level of the three powers of the State, legal (by court judgements), legislative (by the regulations it adopts and by parliamentary control), executive (by the Romanian Government Agent for ECHR). Thus, we are discussing about a shared responsibility, where, within the limits of the main separation and legitimacy scopes, the institutions involved consolidate their collaboration for the creation of a Europe of rights and of a united⁵ transnational legal area. Moreover, "*the fundamental rights are the essential element in the process of creation and implementation of regulations*"⁶. Lastly, this regulatory framework maintains, on a long term, the efficiency of the European Convention, this complex and unique system which in 2020 has celebrated 70 years from its signing, on 4 November 1950.

II. Main documents for the exercise of control at parliamentary level

In agreement with the subsidiarity principle, due to reasons of consolidation of the supranational control mechanisms, the Convention's institution has developed subsequent institutions at national level, and the member states have been indirectly bound, within the limits defined by own historical or political transformations, to found *supplementary monitoring institutional mechanisms* for the observance of fundamental human rights and the judgements delivered by ECHR.

Thus, by the judgements and recommendations⁷ of the *Parliamentary Assembly of the Council of Europe (PACE)*, it was adequately formulated and reiterated constantly to party states the request regarding the creation of „*internal mechanisms and procedures – at governments and parliaments level – which would allow the guaranteeing of the application of the Court's judgements in a quick and efficient manner, due to the concerted action of all national players involved and with the necessary support from the highest political level*"⁸.

The decision regarding the involvement of national parliaments in the supervision and control of the execution of the European Court's judgements is also mentioned in most of the PACE documents, with the purpose of concretely improving the activity of the European Court. The Interlaken Conference⁹ (18-19 February 2010), by the *Common Declaration*¹⁰ of the representatives of the 47 states has reiterated the theme of increasing the efficiency of the Court by *increasing the operational efficiency of the national systems for the protection of*

human rights. Parliaments, as well as governments and courts, have a fundamental role in guaranteeing the protection of human rights at national level¹¹.

At the same time, *Judgement 1787 (2011)* of PACE mentions that one of the main causes for the deficiencies of the execution of ECHR judgements is the *lack of internal mechanisms and procedures* in order to ensure the implementation of adequate measures that would enforce the consolidated and coordinated action of internal institutions.

Furthermore, specific conferences and intergovernmental meetings, which have taken place subsequently, have reiterated the stringent need for the party states that they take additional measures for the consolidation of the *involvement of national parliaments* in the monitoring of the execution of judgements delivered by the Strasbourg Court. Thus, the Brighton Conference (2012) encouraged party states “*iii. to facilitate the important role of national parliaments in the monitoring of the full implementation of the measures ordered*” (F. 29. a. iii.)¹².

This message of substantial involvement of national parliaments has also been given by the Brussels Conference (2015) which, “*especially encourages the direct involvement of national parliaments in the execution process of the judgements delivered by ECHR*” (Action Plan B. 2. h).

The implementation of the Convention on national level from the *Action Plan* contained in the *Brussels’ Declaration*¹³ launched in the high level conference carried out in March 2015 also reminds of the responsibility of the party States for the effective application of the Convention. Thus, within the effective application of the Convention’s provisions, the first level of responsibility is borne by the courts, which ensure the direct application of the Convention and of the ECHR case law within internal law, according to the subsidiarity principle.

The action plan invites the party states:

1. Before and independently from the analysis of the cases carried out by the Court;
 - a) To make sure that potential claimants have access to information about ECHR and about the content of the Convention, especially regarding the scope and limits of protection ensured by the Convention, the limits of the Court’s jurisdiction and regarding admissibility criteria;
 - b) *To consolidate, at national level, the efforts of awareness of parliaments’ members*, in order to improve the training of prosecutors and judges, lawyers and law practitioners in the *implementation of the Convention and the execution of the Court’s judgements*, ensuring that this represents an integrant part of the constant professional training of law practitioners;
 - c) To take the adequate measures to improve the verification and compatibility of draft acts, of regulations and of the internal administrative practice with the provisions of the Convention and in line with the Court’s case law;
 - d) To ensure the effective implementation of the Convention at national level, in order to prevent the violations of its provisions;
 - e) To take necessary and efficient measures so that the national legal systems ensure the existence of effective internal remedies for the settlement of the alleged violations of the Conventions’ provisions;
 - f) To take the necessary measures to found, at national level, independent institutions for human rights.

2. After the delivery of the Court’s judgement, among others, the *Action Plan* entails the development and involvement of sufficient internal resources in the full and effective execution of the Court’s judgements. At the same time, it proposes the facilitation of accessibility to the Court’s judgements, action plans and reports, decisions and judgements of the Committee

of Ministers by disseminating all necessary information to executives, parliaments and courts and, if applicable, to non-governmental institutions and organisations with activity in the protection of human rights, so that all these entities be fully involved in the process of execution of the judgements of the Strasbourg Court.

With the same idea, in the relation on the long-term future of the Convention system, the Board of Directors for Human Rights (BDHR) mentioned, in 2015, that “*by adopting regulations, national parliaments have a key responsibility in the protection of human rights internally*” and that “*national parliaments have an important role in this system, by examining the compatibility with the Convention’s standards of all regulations issued at government level and by increasing the involvement in the execution of the Court’s judgements*”¹⁴.

III. Concrete involvement of national parliaments in the process of monitoring the execution of ECHR judgements

In the same context, the role of national parliaments has been more and more recognised as being essential in the effective performance of the implementation of the Convention at national level. As we have already mentioned, traditionally, the legal system is the one with the main responsibility for the remediation of damages regarding the violation of human rights at national level.

It is obvious that there is no access to justice without guaranteeing the rights of individuals¹⁵. Also, it is more and more concretely recognised the fact that the implementation of the Court’s judgements is often in a complex legal and political process, including the supplementary and cumulative coordinated actions of all the powers of the state¹⁶. The Committee of Ministers finds in its documents¹⁷ that the ECHR judgements implementation mechanism has acquired an immense benefit from the involvement of national parliaments, at the same time encouraging the parliamentary control mechanisms. This involvement of national parliaments needs robust structures and procedures in order to ensure an effective and rigorous parliamentary control, at national level, and at European level, a subject also mentioned in the *2020 Report on the implementation of the judgements of the European Court of Human Rights*¹⁸. The report presents a part of the *roles of the national parliament within the Convention’s application system*:

- involvement in the procedures for the verification of compatibility of draft acts, regulations in force and administrative procedures with the standards of the Convention and the Court’s case law;
- creation of permanent parliamentary structures dedicated to the monitoring of the execution of the Strasbourg Court’s judgements;
- notification, organisation of regular debates at parliamentary level, regarding the Court’s judgements;
- creation and consolidation of effective internal control mechanisms for the implementation of judgements;
- adopting regulations which review the complex structural issues to which the Court’s judgements are referring;

Beyond all these, the PACE documents mention Romania as having major issues in the fulfilment of the Convention’s standards in several fields of activity (non-execution or late exe-

cution of court judgements, excessive duration of legal procedures, precarious detention conditions). Furthermore, the statistics¹⁹ made for the period 1994-2020 on the compliance with the Convention's provisions and with its protocols by Romania indicates the repeated violation of article 6 of the Convention (*right to a fair trial*) and of article 1 of Protocol 1 to the Convention (*protection of property*), with a total of 495 and, respectively, 462 judgements delivered against Romania. Other violations have been for *degrading or inhuman treatments* (302 judgements delivered against Romania), *excessive duration of legal procedures* (150 judgements delivered against Romania) *the right to an effective appeal* (145 judgements) and the *right to freedom and security* (123 judgements).

For this purpose, this intervention is calling attention to the imperative need of founding and consolidating a mutual structure (Senate – Chamber of Deputies) for the monitoring of the execution of judgements delivered by the European Court of Human Rights. This, in consolidating the role of control over the Executive, according to art. 111 and 112 of the Fundamental Law – within the limits defined by the principle of separation of the powers of the state. And, beyond this, for the consolidation of the rule of law and the “*responsibility for exercising of the act of power*”²⁰.

IV. Conclusions

This short incursion represents only an open path towards new directions of political action. Debates and compared law can be means of fulfilling the proposed goals, as well as the real separation of the powers within the state. Moreover, the principle of balancing the powers in a state generates the active involvement of state players in the complete undertaking of the role of member with full rights of an international organisation. There are only a few arguments – an alarm signal which should be carefully analysed and put into practice.

Notes

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¹ Ovidiu Predescu, Mihail Udroi, *European Convention on Human Rights and Romanian Case Law*, C.H. Beck Publishing House, Bucharest, 2007, p. 14.

² See Irina Moroianu Zlătescu, Elena Marinică, *European Union Law*, Universul Academic Publishing House, University Publishing House, 2017, page 42: 1. The high level contracting parties undertake to comply with the definitive judgements of the Court in the disputes to which they are parties; 2. The definitive judgement of the Court is sent to the Committee of Ministers, who supervises its execution.

³ Article 46 – Mandatory force and judgements execution

⁴ We are referring to the nature of the two levels of monitoring and control of the execution of judgements delivered by the European Court of Human Rights, the international level and the national level.

⁵ See Irina Moroianu Zlătescu, *Execution of the judgements of the European Court of Human Rights*, *Human Rights Magazine*, year XXIII, no. 2, 2013, IRDO, page 26-30

⁶ See Constanța Mătușescu, *The scope of application of fundamental rights guaranteed by European Union law on member states' action*.

⁷ Judgement 1226 (2000), Recommendation 1764 (2006), Judgement 1516 (2006), Judgement 1787 (2011), Judgement 1823 (2011), Recommendation 1955 (2011), Recommendation 2079 (2015), Judgement 2075 (2015), Judgement 2178 (2017), Recommendation 2110 (2017)

⁸ Section 1, par. 4 – Rec. 1764 (2006) – <https://pace.coe.int/en/files/17471/html>; Par. 17, 22 – Rés.1516 (2006) – <https://pace.coe.int/en/files/17472/html>

⁹ https://www.echr.coe.int/Documents/2016_Interlaken_Process_ENG.pdf

¹⁰ High Level Conference on the Future of the European Court of Human Rights – Interlaken Declaration – 19 February 2010 http://www.eda.admin.ch/etc/medialib/downloads/edazen/topics/europa/euroc.Par.0133.File.tmp/final_en.pdf

¹¹ *Interlaken Declaration*, par 6, see previous note

¹² https://www.echr.coe.int/Documents/2012_Brighton_FinalDeclaration_ENG.pdf

¹³ <https://rm.coe.int/enhancing-the-national-implementation-of-the-system-of-the-european-co/16809e41b3> – Action Plan B.

¹⁴ The Conference “Parliaments and the European Court of Human Rights”, co-organised by Middlesex University London and Helsinki Foundation for Human Rights, in Warsaw, 12 May 2015; Conference “Role of parliaments in the protection and performance of the rule of law and of human rights”, Westminster, 7 September 2015.

¹⁵ University Professor Irina Moroianu Zlătescu PhD, University Professor Dan Claudiu Dănișor PhD, University Lecturer Marius Nicolae Bălan PhD, University Lecturer Raluca Bercea PhD, University Lecturer Victor Alistar PhD, University Lecturer Daniela Anca Deteșeanu PhD, University Assistant Cristina Tomuleț, Av. University Assistant, Raluca Ștefania Lazăr PhD, Comparative study on the access to justice, assistance and legal counselling, alternative ways of solving disputes, including administrative disputes in member states of the European Union and of the European Council, Bucharest, December 2019, Transparency International Romania, page 6

¹⁶ Progress report of the Rapporteur of the Committee on Legal Affairs and Human Rights, Implementation of judgments of the European Court of Human Rights, AS/Jur (2009) 36, para. 14 (Mr.Christos Pourgourides), September 2009.

¹⁷ *Implementation of judgments of the European Court of Human Rights*, Parliamentary Assembly Recommendation 1764 (2006), CM/AS (2007) Rec 1764 final 30 March 2007, Reply adopted by the Committee of Ministers on 28 March 2007 at the 991st meeting of the Ministers’ Deputies, par. 1.

¹⁸ <https://www.ecoi.net/en/file/local/2033883/document.pdf>

¹⁹ <https://www.statista.com/statistics/1098872/violations-of-the-echr-by-romania/>

²⁰ See Emil Bălan, *Rule of Law and the Quality of Regulation – Institutions, procedures, resources of the public administration*, Wolters Kluwer Publishing House, Bucharest, 2016, page 39

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