Introduction

Within the Council of Europe institutions there has been an ongoing discussion on how to tackle situations where an established violation of the European Convention on Human Rights in an individual case is a part of a systemic problem, and insufficient legislation and judicial practices in a Member State affect a large group of individuals. In such a situation the alleged violation is not rooted in a single incident or decision on behalf of the authorities, but follows from general administrative and regulatory shortcomings. It may therefore happen that after one individual is successful before the Court, many others, even thousands, may follow with similar complaints arising from the same systemic problem.

This paper focuses on the so called “pilot-judgment” procedure of the European Court of Human Rights, which must be viewed as one of the possible means to alleviate the situation, and help the Court in coping with its overwhelming case-load. But, despite good intentions, the adoption of this procedure also raises interesting questions. Firstly it brings to the forefront issues concerning the legal basis of the procedure, namely questions of legal reasoning and interpretation. Secondly, it raises issues concerning the borderline between the judicial powers of the Court, as defined by the Convention and the Committee of Ministers and of the national authorities in the respective countries, especially in the light of the subsidiary role of the Convention and the Court, as institutions under public international law.

Execution of judgments under the Convention and the role of the Committee of Ministers

Article 46(1) of the Convention provides that the Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties. Furthermore,
paragraph 2 stipulates that the final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution.

In general terms, the role of the Committee in the enforcement of judgments can be divided into: (1) control of payment, in case where damages have been awarded, (2) other individual measures (e.g. reopening of a case before the national courts, lifting of convictions, striking convictions out of the criminal record, etc.), (3) general measures to prevent new violations, (4) interim resolutions. It goes without saying that respect of the Court’s judgments is a crucial element of the Council of Europe’s system for the protection of human rights.\(^1\)

The new Protocol 14\(^2\) provides for certain improvements, for instance to Article 46. In general the changes put into effect by Protocol 14 aim at speeding up the procedures before the Court and securing more effective execution of judgments. Three main elements are of importance in this regard: a) the institution of the single judge in a final way that a case is inadmissible (Article 7 of Protocol 14), b) new admissibility criteria under which an application is to be declared inadmissible if the applicant has not suffered significant disadvantage, unless the respect for human rights as defined by the Convention requires an examination of the application (Article of 12 Protocol 14), c) provisions concerning the execution of judgments (Article 16 of Protocol 14).

It is this last point which is of importance for this paper. Clearly the drafters of the Protocol were aware of the need for improvement in this area. The new Protocol 14 offers two new alternatives. First, if the Committee of Ministers considers that problems concerning the interpretation of a judgment stand in the way for its execution, it may, with a two-thirds majority, request from the Court a ruling on interpretation of the judgment (Article 16(3)). Secondly, the Committee of Ministers is invested with a power to refer to the Court the non-compliance of the State Party with a final judgment (Article 16(4)). Following such a reference the Court can consider and decide whether a State has failed to fulfil its obligation to abide by specific judgments of the Court.\(^3\)

As a part of the overall framework provided for by Protocol 14, the Committee of Ministers has adopted Resolution (2004)\(^3\) on judgments revealing what is termed as an underlying systemic problem.\(^4\) In the Resolution the Committee stresses the importance of the Convention as the most important point of reference when it comes to the definition of a common standard for the protection of human rights in Europe. In addition, it is emphasised that execution of judgments of the ECHR would be facilitated if

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1. As further reading on the general role of the Committee of Ministers in the enforcement of judgments a reference is made to the article, by Fredrick G. E. Sundberg in this book.
3. For a more detailed account of the changes provided for by Protocol 14 see the Explanatory Report (*CETS* 194).