

Practice of European Court of Human Rights (ECHR) in the enforcement of courts' final decisions

Dr. Alkelina Gazidede, PhD
Faculty of Law, University of Tirana, Albania

Abstract

The paper aims at highlighting the importance of enforcement of judicial decisions as a key factor in building Rule of Law. As courts do not have the opportunity to lead themselves the process of decisions's execution and the respective institutions have performed poor results, many cases are presented in front of European Court of Human Rights due to the lack of efficiency in executing judicial decisions. Obtaining a favorable judicial decision does not imply necessarily the fulfillment of the general purpose, and ECHR through it's judgements has argued that the right to proper administration of justice implies that the enforcement of court decisions should itself be effective and efficient. Being considered as a compulsory provision for the successful conclusion of a legal process, the enforcement of courts' final decisions within a reasonable time is an essential element of a fair trial.

Also, this paper analyses the circumstances when excuses such as case complexity or lack of funds are considered objective and what is the responsibility of the states toward organizing their judicial system so that the justice is awarded.

Keywords: Rule of Law; fair trial; ECHR; enforcement; judicial decisions; compulsory provision; reasonable time; guarantee; complexity

Introduction

Jurisprudence of ECHR regarding enforcement of courts' final decision as a compulsory provision for a fair hearing is related to the articles 6§1, 13 and 41 of ECHR (Convention). Aiming the prevention of future failure of complying the provisions of Convention, European Court of HR not only has identified and acknowledged this violations, but also has decided in favor of remedies in the view of article 13 of the convention.

ECHR provides a wide range of decisions which interpret the terms and conditions of enforcements of court decisions, guaranteeing the right of individuals to a fair hearing.

Strasbourg Court argues that Article 6§1 of the Convention takes precedence as "lex specialis" on issues of non-enforcement of a final decision within a reasonable time. Being considered as a compulsory provision for the successful conclusion of a legal process, the enforcement within a reasonable time of final decisions is an essential element of rule of law and a fair trial. In accordance with the European Convention on Human Rights, no state institution can question the fairness of a judicial decision

and that the relevant state institution are obliged to take appropriate measures for the implementation of these decisions, taking in consideration that the enforcement of a final decision is considered to be the final stage of implementation of a legal right and after this phase it will be considered that the right has been fully established.

It is the obligation of the states to organize its judicial system such that the justice should be awarded not only by the courts' decisions, but also through the enforcement of these decisions within a reasonable time, because the justice system can not be evolved as long as these delays will cause peoples' lack of trust in it.

The timeframe of final decisions' enforcement is a crucial element, because if the implementation of courts' decisions is not complied within a reasonable time, then no fair hearing is guaranteed. Excuses such as case complexity or lack of funds are not considered objective circumstances.

Remedies, within the meaning of Articles 13 and 41 of the Convention, must be "effective" in practice as well as in law in the sense either of preventing the alleged violation or its continuation, or of providing adequate redress for any violation that has already occurred.

Enforcement of court's final decision as the guarantee for a fair trial

European Convention of Human Rights

Article 1

Obligation to respect Human Rights

The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention.

Article 6§1

Right to a fair trial

In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.....

The enforcement of courts' judicial decisions is the most difficult and trapping stage for domestic jurisdiction. The courts do not have the opportunity to engage directly with their own bodies in the process of decisions enforcement; neither the litigant (creditor) nor the public opinion have powers to lead to enforcement of courts' judgments.

Obtaining a favorable judicial decision does not imply necessarily the fulfillment of the general purpose, because the adversary part may refuse to apply the judicial decision.

When we speak about the domestic law system, there is the execution procedure wherein the coercive force of the state is applied and the decision is enforced. ECHR states that the execution of final decision is a compulsory provision for a fair hearing and a successful conclusion of a trial. The right to a court protected by Article 6 would be illusory if a Contracting State's domestic legal system allowed a final, binding judicial decision to remain inoperative to the detriment of one party. Execution of a judgment given by any court, is considered to be an integral part of the "trial" for the purposes of Article 6.

The Court restates that Article 6§1 provides anyone the right to appeal in court, when their rights embodied by the law are violated. Thus the "right to a fair trial" does not only include the right to submit a lawsuit but as well the implementation of the final decision. It would be inconceivable that Article 6§1 should describe in detail the procedural guarantees afforded to litigants and this proceedings should be fair and public. European Court of Human Rights has established a practice of her own stating that "execution of the decision constitutes an essential element of the concept of rule of law and the very idea of a fair trial" and that "no state authority cannot call into question the fairness judicial decisions final. Any public body is obliged to take appropriate measures for their implementation".

Enforcement of judicial decisions should take place within a reasonable time; Enforcement proceedings shall be subject to an effective judicial review making it possible to challenge acts by civil servants delaying or denying enforcement; Non-compliance with a court final decision violates the Convention thus appropriate mechanism should exist to implement civil servants' responsibility for lack of or delay in enforcement. Problems and delays in the execution of court decisions, are dedicated to the complexity of the domestic enforcement procedure or of the State budgetary system, the lack of funds or other resources (such as housing) as an excuse for not honouring a judgment debt. ECHR states that this arguments cannot relieve the State of its obligation under the Convention to guarantee to everyone the right to have a binding and enforceable judicial decision enforced within a reasonable time. It is for the Contracting States to organise their legal systems in such a way that the competent authorities can meet their obligation in this regard.

Timeframe of the of judicial decisions' enforcement in the view of Article 6§1 of ECHR

ECHR restates that the lack of effectiveness of domestic policies has riched the number of appeals headed to ECHR regarding non-implementation or delayed implementation of court decisions. Implementation of i final judicial decisions presents different barriers, all mentioned in the respective court decixions. Deadline for the execution

of court decisions has become the subject of many decisions of ECHR, in which it is addressed how the delay affects the individual's right to a fair trial.

Authorities need time in which to make payment. However, the period should not generally exceed six months from the date on which the decision awarding compensation becomes enforceable. Remedy alone would not provide sufficient redress as it can only compensate damage resulting from monetary depreciation. Non-enforcement or delayed enforcement of domestic judgments has led to numerous violations of the Convention. The respondent State must introduce a remedy which secures genuinely effective redress for the violations of the Convention on account of the State authorities' prolonged failure to comply with judicial decisions delivered against the State or its entities. Such a remedy must conform to the Convention principles and be available within six months from the date on which the present judgment becomes final. Moreover, a person who has obtained an enforceable judgment against the State as a result of successful litigation cannot be required to resort to enforcement proceedings in order to have it executed.

An unreasonable prolonged delay to implement a final and binding decision may breach the Convention and that it (the delay) harms the complainant's right to a fair hearing in court. In case *Raylyan against Russia*, No. 22000/03, § 31, February 15th 2007, the Court stated that the reasonableness of such delay must be determined, taking in considerate complexity of the implementation process, the behavior of the complainer and competent authorities, the extent and nature of compensation determined by the court.

Execution of court decisions should be considered as an integral part of the judicial process in the view of Article 6§1 of the European Convention on Human Rights. An unreasonable delay in the implementation of these decisions, violates the European Convention.

For the assessment of the complexity of the proceedings all aspects of the issue are important, including here subject of the matter, disputed facts, the volume of written evidence. The complexity of the issue, in balance with the principle of ensuring the proper administration of justice, can justify the considerable length of time. However, no circumstance can provide reasonable grounds that leads to the failure of applicant's right to a fair hearing by refusing to comply with a final decision by the competent authorities. It is the obligation of the debtor to execute the disposition of judicial decision, but if the debtor does not show willingness to execute an obligation under a final court judgment, then it's the respective state institution's responsibility to correctly implement the judicial decision in order to, effectively ensure the right to compensation while setting fair balance between different interests. Regarding the

obligation to implement the final judicial decisions, all entities, whether private or public must enforce the same measures.

Sometimes, a claimant may be required to take certain procedural steps to apply for financial compensation, but it is not acceptable that an unsuccessful claimant in a preceding given year should be required to re-submit another application in the subsequent year(s). The burden to comply with a final decision against the State lies primarily with the State authorities, which should use all means available in the domestic legal system in order to speed up the enforcement, thus preventing violations of the Convention. It is for the respondent State to organise their legal system in such a way that it is able to cope with the technical and logistical infrastructure for processing the large number of claims. This is of major importance for ensuring that the compensation scheme is at all times “effective and expeditious”.

ECHR restates that it is the obligation of the states to organize it’s judicial system such that the justice should be awarded not only by the courts’ decisions, but also through the enforcement of these decision within a resonable time, because the justice system can not be evolved as long as these delays will cause peoples’ lack of trust in it.

he court assesses its complexity, the behaviour of the parties and other actors in the proceedings, and the acts or inaction of judicial or prosecution authorities, the parties to enforcement proceedings or the enforcement authorities. The court also assesses the duration of the violation and the importance of its consequences for the person affected (section 12). If the court finds a violation, it makes a monetary award for damage to be determined taking account of the specific circumstances of the case, of the requirements of equity and of the Convention standards (section 14). The court may take a separate decision finding a breach of law by a court or State official and order specific procedural actions to be taken, with a request to report back within a month (section 15).

Execution of a final judicial decision, either is accomplished voluntarily by the debtor, or will be implemented through binding legal tools, but it is not reasonable for the authorities to require additional documents to the applicant, as the creditor cooperation should not exceed the limit of the neccessity, and under no circumstances the authorities are relieved from the obligation to take measures within a reasonable time.

A person who has obtained a judgment against the state can not be expected to initiate a another process requiring the implementation and in such cases, the correspondent state authority must be aware of the decision thus it can either enforce the judicial decision or transfer it to another state authority that is responsible for the execution.

ECHR states that the burden of implementation of the judicial decisions originally belongs to the state authorities from the date on which the judgment becomes final.

The complexity of procedures or lack of funds does not relieve the country from its obligations to fulfill its execution. It is the duty of the signatory states of European Convention on Human Rights to organize their legal system in such a way that competent authorities successfully meet their obligations.

Remedy for the failure to comply with the final judicial decision within a reasonable time

Article 41 of the Convention provides that if the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

Among the matters which the Court takes into account when assessing compensation are pecuniary damage (loss caused as a direct result of the alleged violations) and non-pecuniary damage (compensation for the anxiety, problems or insecurities suffered as a result of the breach) and other intangible damages (costs expenses and default interest). Furthermore, if one or more elements of the damage can not be calculated precisely or if the distinction between pecuniary or non-pecuniary damage is done, the Court may decide to make an overall assessment.

Article 13 of the European Convention on Human Rights expresses the obligation of states defined in Article 1 of the Convention, to protect human rights in their legal system. Also it charges states with the responsibility to provide a national system of compensation, in order to ensure fair reward for individuals due to damages caused to them. The effectiveness of compensation in the view of Article 41 of the ECHR does not depend on the certainty of a favorable outcome for the applicant. At the same time, compensation aims to prevent future violations or restore, to the extent of possible and appropriate manners, the right violated in the view of the Convention. Even if a single remedy does not satisfy the requirements of Article 41 of the Convention, the total remedy alongside with the one specified by domestic law can fulfill the obligations arising from this article.

In cases dealing with non-enforcement of court decisions, the decisions of the ECHR forcing state to indemnify the applicant within a specified period is in principle a great value, which can prevent any abuse of execution in the future. However, it is primarily the responsibility of the state to execute the court decision with all legal means in order not to violate the provisions of the European Convention of Human Rights.

When the remedy is foreseen in the domestic legal system of a country, then ECHR allows a wider range of state assessment regarding the implementation of decisions. However ECHR verifies whether the ways in which domestic law is interpreted

and applied produces consequences that are consistent with the principles of the Convention. The Court has set key criteria for verifying the effectiveness of a compensatory remedy in connection with the excessive length of judicial proceedings.

These criteria are as follows:

- The remedy should be paid not later than six months from the date on which the decision becomes final
- Procedural rules to be followed during the execution of indemnity shall be in accordance with Article 6 of the ECHR
- The rules concerning legal costs should not add monetary burden to litigants if their actions are justified
- The level of compensation must not be unreasonable regarding other judicial precedents when Indemnity took place

Finally, the Court notes that the indemnity is calculated on the basis of an official index price target, which reflect an underestimation of the national currency, making it possible to compensate losses because of a possible inflation.

European Court of Human Rights's jurisprudence regarding enforcement of courts' final decisions - Cases versus Republic of Albania

The increasing number of appeals handled by the ECHR against Albania reflects the legal situation, where many Albanian citizens currently face the non-execution of judicial decisions, therefore the implementation of these executive orders remain in legal limbo. This gap in our legal system has taken a legal response, through the Constitutional Court's decision which are binding to the authorities to implement within a timeframe set by the court. The decisions of the Constitutional Court of Republic of Albania are a product of the principles and contents of ECHR's decisions.

The first case versus Republic of Albania regarding the non-enforcement of judicial decisions was the case *Qufaj Co. sh.p.k. vs. Albania* (No.54268/00, November 18-th). In this case ECHR stated that the Republic of Albania had violated the right of the complainant for a fair trial due to the non-enforcement of court's final decision.

Until ECHR decided on the case *Qufaj Co. sh.p.k. vs. Albania*, the representatives of the Albanian state would state that the demand for "a fair trial", within the meaning of Article 131/f of the Albanian Constitution does not include the execution of the decision by arguing that this was the spirit of the jurisprudence of Albanian Constitutional Court at the time.

The principle "The execution, within a reasonable time, of a court final decision is an integral part of the right to a fair hearing" would be enhanced in further cases versus Albania such as case "*GJYLI vs Albania* (Appeal No. 32907/07)", Case " *Manushaqe*

Puto and others vs Albania". Thus, Constitutional Court of Republic of Albania, based on the above mentioned cases versus Albania, has held many judgements in which has reflected the general principles generated by ECHR, specifically: Final Decisions No. 6, date 31.03.2006; No. 27 date 20.06.2007, No. 43 date 19.12.2007, No. 1 date 19.01.1009; No. 6 date 06.03.2009; No. 9 date 01.04.2009; No.6 date 04.03.2010; No.35 date 27.10.2010; No.2 date 01.02.2011; No.1 date 20.01.2012; No.4, date 20.02.2013, No. 7 date 27.02.2012; No. 10 dt 01.03.2012; No. 30 dt 16.05.2012; No.10 date 01.03.2013, No. 12 date 16.04.2013 and No. 9 date 27.02.2014. In these final decision Constitutiton Court of RA has underlined the importance of the enforcmnt of courts' final decisions, not only as a guarantee but also as the conclusion of legal proceedings. Articles 42, 142/3 of Constitution of RA and article 6 of ECHR underline the fact that every citizien, who is adressed to the court for the implementation of a right, can not wait indefinitely for that to happen. The execution, within a resonable time, of a court final decision is an integral part of the right to a fair hearing within the meaning of the Constitution of the Republic of Albania and the ECHR. The non-enforcement of the courts' final decisions within a reasonable time would emphasize the necessity of an efective execution system, which should ensure correct implementation of judicial decisions as the conclusion of a legal process.

Conclusions

The diversity of issues addressed by the European Court of Justice regarding non-execution of court decisions, has established a binding legal practice on the signatory States under Article 1 of the ECHR, regulating the domestic gap regarding execution of judgments that contain an obligation, mainly, monetary.

The enforcmnt of courts' final decisions, is not only a guarantee but also as the conclusion of legal proceedings in view of the jurisprudence of the Constitutional Court of Republic of Albania.

Article 6 of ECHR underlines the fact that every citizien, who is adressed to the court for the implementation of a right, can not wait indefinitely for that to happen. The execution, within a resonable time, of a court final decision is an integral part of the right to a fair hearing within the meaning of the European Convention of Human Rights.

The non-enforcement of the courts' final decisions within a reasonable time emphasizes the necessity of an efective execution system, which should ensure correct implementation of judicial decisions as the conclusion of a legal process.

The implementation within a resonable time of courts' final decisions is a crucial component of a fair trial, an approach which has been affirmed from the jurisdiction of Constitutional Court of Republic of Albania, stressing that no state institution can

question the legality of a court decision and therefore every public institution is obliged to take appropriate measures for their implementation.

Finally, it is the obligation of the states to organize it's judicial system such that the justice should be awarded not only by the courts' decisions, but also through the enforcement of these decision within a resonable time, because the justice system can not be evolved as long as these delays will cause peoples' lack of trust in it.

Bibliography

1. Ledi Bianku - Human Rights in Europe (Legal bulletin), 2009, European Center,Tirana
2. Ledi Bianku - Jurisprudence of the Strausbourg Court (Legal bulletin), 2005, European Center,Tirana
3. Luan Omari - Shteti i se Drejtes, Botimet "Elena Gjika", 2004
4. Sur-International Journal on Human Rightsv, Vol 8, Nr 15, 2011
5. Case Aka versus Turkey, September 1998
6. Case Akashev versus Russia, No. 30616/05, June 2008
7. Case Akkuş versus Turkey
8. Case Burdov versus Russia (No.2), No.33509/04, January 2009
9. Case Comingersoll versus Portugal [GC], No. 35382/97, ECHR 2000
10. Case Frydlender versus France, No. 30979/96, ECHR 2000-VII
11. Case Ernestina Zullo versus Italy, No.64897/01, November 2004
12. Case Georgiadis versus Grece, March 2000.
13. Case "Gjyli versus Albania" No. 32907/07, September 2009
14. Case Hornsby versus Grece, March 1997;
15. Case Kudła versus Poland, No. 30210/96, ECHR 2000
16. Case Kukalo versus Russia, No. 63995/00, November 2005
17. Case "Manushaqe Puto and others versus Albania", No. 604/07, No. 43628/07, No.46684/07 dhe No. 34770/09, July 2012
18. Case Metaxas versus Grece, No. 8415/02, May 2004)
19. Case Mutatis Mutandis, Kosmidis and Kosmidou versus Grece, No. 32141/04, November 2007
20. Case "Qufaj versus Albania", No.54268/00, November 2004
21. Case Romashov versus Ukraine, No. 67534, July 2004;
22. Case Shvedov versus Russia No.69306/01, 20 October 2005
23. Case Wasserman versus Russia (No. 2), No. 21071/05, April 2008