



Ref: TIGO IOR 61/2010.009

By EMAIL:
Mr Erik Fribergh
Registrar
European Court of Human Rights

EUROPEAN HUMAN RIGHTS ADVOCACY CENTRE

EHRAC

30 June 2010



Dear Mr Fribergh,

SUBMISSION REGARDING RULES OF THE EUROPEAN COURT OF HUMAN RIGHTS ON THE PILOT JUDGMENT PROCEDURE

In response to your letter of May 2010 inviting submissions to the Standing Committee on Rules of the Court in relation to the development of rules on the Pilot Judgment Procedure, I am delighted to forward to you the following submissions of Amnesty International, the AIRE Centre and the European Human Rights Advocacy Centre.

Pilot Judgments

Amnesty International, the AIRE Centre and the European Human Rights Advocacy Centre (EHRAC) welcome the continuing development of the Court's "pilot judgment procedure" ("PJP") and the proposed drafting of Court Rules on the procedure. We believe that such a procedure has significant potential to encourage Contracting Parties to the European Convention on Human Rights to resolve human rights violations arising from systemic problems, within their own national systems, thereby not only enhancing respect for Convention rights but also lessening the workload of the Court.

We support the provision of Interlaken Declaration highlighting "the need for the Court to develop clear and predictable standards for the "pilot judgment" procedure as regards selection of applications, the procedure to be followed and the treatment of adjourned cases, and to evaluate the effects of applying such and similar procedures".¹

Amnesty International, the AIRE Centre and EHRAC are grateful for the invitation extended to civil society organizations to make submissions to the Standing Committee on Rules of the Court on the future Rules of the Court on the PJP. The organizations suggest that the proposed rules be drafted in the light of particular consideration of the following questions, which we set out in our previous submissions:²

- In what circumstances should the Court issue a pilot judgment?
- What steps should be taken by a respondent state to implement a pilot judgment?
- To what extent has a respondent state introduced measures that effectively address the systemic problem, as well as providing a remedy for the applicant?
- What is the effect on similarly situated persons who have already lodged applications with the Court?

¹ Interlaken Declaration, adopted at the High Level Conference on the Future of the European Court of Human Rights (Interlaken, Switzerland, 18-19 February 2010), CDDH(2010)001, Strasbourg, 4 March 2010

² See: Council of Europe: Comments on Reflection Group Discussions on enhancing the long-term effectiveness of the Convention system, March 2009

Furthermore, we would also encourage consideration of these broader issues:

- Within the domestic arena, what obstacles exist which may hamper effective implementation?
- What measures can be taken by the Committee of Ministers to encourage or facilitate implementation of pilot judgments?

In this letter, we seek to draw attention to particular issues and principles that we urge the Court to consider during the process of drafting Rules of the Court on the PJP.

Selection of Cases for the application of the PJP

Amnesty International, the AIRE Centre and EHRAC consider that the Court should ensure transparency and clarity in selecting cases which are considered to be suitable for the PJP. We consider that the rules for the PJP should indicate the procedures followed in determining whether to handle a case /group of cases under the PJP, which should include among other things consultation with the Applicants as well as the Respondent State(s). We consider that the Court should make clear how and why each case handled under the procedure is chosen. This applies both to the 'diagnosis' of a systemic problem that needs to be addressed, as well as to the individual case to which the PJP is to be applied, in order to tackle the systemic issue in question.

There has been considerable uncertainty as to which judgments constitute pilot judgments (given also the proliferation of 'Article 46 judgments'). Amnesty International, the AIRE Centre and EHRAC consider it essential that each pilot judgment is clearly and unambiguously defined as such by the Court in the judgment itself.

The role of the Court and Committee of Ministers

Concerns have been expressed about the lack of clarity as regards the respective roles of the Court and the Committee of Ministers as regards the application of the PJP. We consider that clear rules and procedures should be adopted so that there is much greater clarity as to the respective roles of the Court and the Committee of Ministers, and so that, as a result of their combined efforts, the effective evaluation of compliance with pilot judgments can be carried out.

We consider that consultation between the Court and the Committee of Ministers is important for the success of the PJP. We consider that such consultation should be undertaken as regards, inter alia, the 'diagnosis' of the systemic issue, the selection of a particular case for application of the PJP and the assessment of the extent to which the national authorities have complied with a pilot judgment.

Timing

Amnesty International, the AIRE Centre and EHRAC consider that it is important that a pilot judgment should be issued as soon as practicable once a systemic issue has been identified – with the aim of ensuring that the violations of the Convention in question cease immediately and the systemic problem is resolved.

In our earlier submissions,³ we supported the Group of Wise Persons' recommendation that time limits should be laid down, to be supervised by the Court. We also welcomed the judgment in *Burdov v Russia* (No. 2)⁴ where the Court laid down a specific timetable for implementation. We consider the imposition of specific time periods (and compliance with such deadlines) to be a very important aspect of the PJP.

³ See *Council of Europe: Ensuring the long-term effectiveness of the European Court of Human Rights – NGO Comments on the Group of Wise Persons' Report*, 16 January 2007, <http://www.amnesty.org/en/library/info/IOR61/002/2007>; and *European Court of Human Rights: NGO Comments on the Group of Wise Persons' Interim Report*, 1 August 2006, <http://www.amnesty.org/en/library/info/IOR61/019/2006>.

See also: Council of Europe: Comments on Reflection Group Discussions on enhancing the long-term effectiveness of the Convention system, March 2009

⁴ No. 33509/04, 15.1.09.

Appropriate and effective redress should be promptly provided to all victims of the systemic violation. It is essential that the Court and Committee of Ministers should work effectively together to ensure that the provision of redress resulting from a pilot judgment is enforced as swiftly as possible for the applicant.

Accessibility of Judgments

Given the importance of pilot judgments (as, by definition, they relate to systemic problems identified within the national system), we consider that it is vital that the Court's rulings on Pilot cases be made available in the national language(s) of the Respondent State(s), in order that they can then be effectively enforced.

It is essential that the terms and implications of a pilot judgment be accessible to all victims of the systemic violation and to all the national authorities to which the judgment has application. In order to ensure that there is effective and timely compliance with a pilot judgment, we consider that the judgment has to be made available (as soon as practicable after it is issued) in languages that both victims and officials will understand. .

Enforcement

It is clear that there needs to be full and open cooperation between the relevant bodies of the Council of Europe and national authorities and courts in order to ensure the success of the PJP. It is critical that the European Court of Human Rights ensure that in any case in which a Respondent State fails to implement the pilot judgment, the applicants retain their right to seek a remedy before the European Court, and that the cases be ruled on promptly.

We are concerned that a sufficient evaluation of the actual implementation of new domestic schemes established in connection with Pilot judgments is not always being carried out.⁵ We recall that concerns about the Court's evaluation were expressed by Judges Zagrebelsky and Jaeger in their separate opinion in *Hutten-Czapska* (2008).⁶

Amnesty International, the AIRE Centre and EHRAC consider that it is particularly critical that no decision to 'repatriate' cases back to the domestic system to be resolved is taken prematurely. We consider that cases should not be "repatriated unless and until the Court has ensured that any mechanism of redress put in place in response to a pilot judgment is sufficient, available and effective in order to remedy the violations in question.

We consider that an effective evaluation should include an evaluation of the implementation in practice of a new system purportedly providing redress at the national level and should include consideration of the time taken to provide redress.⁷

Amnesty International, the AIRE Centre and EHRAC share the views of the Court's Registrar⁸ that the enforcement process in relation to pilot judgments needs to be strengthened.

⁵ For example, following the Court's judgment in *Lukenda v Slovenia*, concerning the excessive length of legal proceedings in domestic courts in Slovenia, the Court evaluated the respondent Government's compliance merely by reviewing the text of new legislation which was enacted in order to solve the problem. Thus in *Korenjak v Slovenia* (No. 463/03, 15 May 2007), the Court found that the new domestic scheme was "effective in the sense that the remedies are **in principle** capable of both preventing the continuation of the alleged violation of the right to a hearing without undue delay and of providing adequate redress for any violation that has already occurred" (emphasis added). Furthermore, following the Court's judgment in *Hutten-Czapska v Poland* (No. 35014/97, 19.6.06) (concerning the inadequacies of housing legislation), the Court was prepared to give its seal of approval to a subsequent settlement of the case on the basis that "the Government have demonstrated an active commitment to take measures aimed at resolving the systemic problem identified in the principal judgment and will rely on their actual and promised remedial action..." (para. 43.).

⁶ See further: Council of Europe: Comments on Reflection Group Discussions on enhancing the long-term effectiveness of the Convention system, March 2009

⁷ See: *E.G v Poland No. 50425/99 and 175 other Bug River applications*, 23.9.08, para. 28.

⁸ He said, inter alia: "Enforcement issues are becoming more and more judicial and it would seem to me that in the future reform work, one issue that could be taken up is whether the enforcement issues should not be entrusted to a more quasi-

We consider it important that both the Court and the Committee of Ministers monitoring the enforcement of a pilot judgment to ensure that the requisite steps to solve the systemic issue and provide adequate redress are taken.

It is important that all victims are afforded the appropriate redress. In situations where the Court issues a pilot judgment but the domestic authorities and/or courts fail to comply with it, it is vital that there be an appropriate, accessible and prompt mechanism for the applicants to obtain a remedy. With that in mind, the Committee of Ministers must have adequate capacity in order to effectively monitor the implementation of redress.

Order of dealing with cases

We suggest that there should be much greater clarity and transparency as to the order in which pilot judgments are processed by the Court. As a rule, pilot judgments should be one of the highest priority categories of judgments. In determining the order in which cases are to be dealt with, the Court should also consider the importance and urgency of particular cases (when applying Rules 40 and 41).

Adjournment of cases

Amnesty International, the AIRE Centre and EHRAC urge the Court to ensure that there is much greater clarity and transparency as to the circumstances in which the Court adjourns or “freezes” other pending cases which are based on the same underlying cause as lies at the root of the case chosen as the pilot case.

Furthermore, we consider that the Court should not adjourn a case where the applicant’s safety or well-being is under immediate and irreparable threat, or where there are other foreseeable consequences militating against further delay in the processing of the case.

Adjournment of cases should not cause unnecessary uncertainty for applicants and should not result in unreasonable delay in the processing of their cases.

Applicants whose cases have been frozen should be informed promptly of the Court’s intention to freeze their case, the reasons therefore, an explanation of the process that will be followed, the likely timeframe therefore and the effect on their application. They should be afforded an opportunity to respond. In addition, they should be kept regularly informed of the progress towards resolution of the pilot case, the substance of the resolution of the pilot case, its effect on their case and the likely timeframe within and process by which the violation at the root of their application will be redressed.

It is important that the Court ensures that any resolution of a pilot judgment not only ensures an effective remedy to the victim in that particular case, but also genuinely remedies the systemic flaw. If all pending “clone” cases are frozen until the resolution of the pilot judgment, it is necessary that once the systemic problem is resolved, the remedy be applicable not only to the lead case but to all other frozen cases.

Additionally, the Court must ensure that any adjourned cases are also satisfactorily resolved within a reasonable time, failing which the case should proceed for adjudication before the European Court. If the domestic authorities fail to resolve an applicant’s case fairly and in a timely manner, the applicant should still be afforded the opportunity to seek just satisfaction before the European Court.

Dissemination of information about the PJP and its application

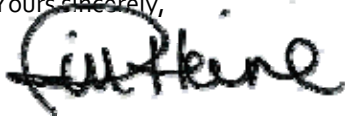
Amnesty International, the AIRE Centre and EHRAC consider it to be very important that there is widespread understanding of the PJP and awareness of its application in particular circumstances. Accordingly, the Court, Committee of Ministers and other Council of Europe bodies should work together to ensure that there is an

judicial organ. This could be a separate body, or one operating under the auspices of the CM. I think a lot could be achieved to solve many enforcement issues if for instance a Panel of five to seven legal/judicial experts were entrusted with that duty”, E. Fribergh, *Pilot Judgments from the Court’s perspective*, Stockholm Colloquy, 9-10 June 2008.

effective system of notification of the application of the PJP to states, and within the states to relevant national authorities (including parliaments and the judiciary), to national human rights institutions, bar associations and to civil society.

Amnesty International, the AIRE Centre and EHRAC are hopeful that this submission will be helpful to the Standing Committee on Rules of the Court in their work to develop rules on the Pilot Judgment Procedure.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Jill Heine". The signature is written in a cursive style with a large, looped initial "J".

Jill Heine
Legal Adviser
Amnesty International

cc: David Milner