

Folketingets formand
Speaker of the Danish Parliament



Peter Skaarup
Formand for Folketingets Retsudvalg

Retsudvalget
REU alm. del - Bilag 191
Offentligt

7 december 2006
Ref. 05-001773-41

Implementering af Menneskerettighedsdomstolens afgørelser

Kære Peter Skaarup

Jeg har fra René van der Linden, præsident for Europarådets Parlamentariske Forsamling, modtaget vedlagte brev af 16. november 2006 angående parlamentarisk kontrol med Danmarks efterlevelse af Menneskerettighedsdomstolens afgørelser på baggrund af Forsamlingens Resolution 1516(2006), ligeledes vedlagt.

Som det fremgår af mit ligeledes vedlagte svar af d.d. til René van der Linden, tror jeg ikke, at der er behov for detaljerede kontrolmekanismer i Folketinget. Desuagtet vil jeg dog bede Retsudvalget altid holde et vågent øje med, at Menneskerettighedsdomstolens afgørelser bliver efterlevet i Danmark.

Med venlig hilsen

A handwritten signature in cursive script, appearing to read 'Chr. Mejdahl'.

Chr. Mejdahl

bilag



Council of Europe

Dato 28/11 - 06

Kl.

Parliamentary Assembly

The President

16 November 2006

Re: Implementation of judgments of the European Court of Human Rights

Dear Speaker,

On 2 October 2006 the Parliamentary Assembly of the Council of Europe adopted Resolution 1516 (2006) and Recommendation 1764 (2006), based on a report by Mr Erik Jurgens, Rapporteur of the Committee on Legal Affairs and Human Rights (Doc 11020, enclosed).

I would ask you to give special attention to the proposal made in Resolution 1516 (2006) that national parliaments set up an internal system within the parliament to monitor the implementation - by national authorities - of judgments of the European Court of Human Rights finding violations of the European Convention on Human Rights (ECHR) in cases concerning their respective countries.

The authority of the Court is contingent on the effective execution of its judgments, which States Parties have undertaken to abide by under Article 46 of the ECHR. The same Article also specifies that it is the Committee of Ministers, the Organisation's executive organ, which supervises the execution of judgments. Parliamentarians, both in their national parliaments and in the Parliamentary Assembly, can and have been instrumental in resolving a number of complex implementation issues. The Assembly is therefore convinced that special attention given to execution of judgments by national parliaments can ensure that the national authorities implement, without delay, the Strasbourg Court's judgments.

One example of an internal system of a Parliament cited in Mr Jurgens' report is the work of the British Parliament's Joint Committee on Human Rights which issued, in 2006, a specific report on "Implementation of Strasbourg Judgments". This might be a model for other national parliaments when setting up their own monitoring mechanism in this respect.

In Spring 2007, the Assembly intends to revert to the consideration of this subject and take stock of developments within national parliaments, in particular the establishment of internal systems to monitor the implementation of the Strasbourg Court's judgments.

I would therefore appreciate receiving information from your Parliament on the follow-up given to the Assembly's Resolution 1516 (2006) on this specific issue.

Yours sincerely,

René van der Linden

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PARLIAMENTARY ASSEMBLY OF THE COUNCIL OF EUROPE

Resolution 1516 (2006)¹ Implementation of judgments of the European Court of Human Rights

1. The Parliamentary Assembly emphasises that respect for the European Convention on Human Rights (ECHR – ETS No. 5), including the compulsory jurisdiction of the European Court of Human Rights (the Court) and its binding judgments, is the main pillar of European public order which guarantees peace, democracy and good government in greater Europe. It is therefore essential for the Assembly to maintain a keen interest in different aspects of the ECHR system and not least in the effective implementation of the Court's judgments, on which the authority of the Court depends.

2. It notes that the implementation of the Court's judgments is a complex legal and political process whose aim is to remedy violations found and to prevent new or similar ones. Such implementation, carried out under the supervision of the Committee of Ministers (CM), can benefit from close co-operation between domestic and other institutions, including the Assembly and the parliaments of member states.

3. Although, according to Article 46 (Binding force and execution of judgments) of the ECHR, it is the Committee of Ministers which supervises the execution of judgments, the Assembly has increasingly contributed to the process of implementation of the Court's judgments. Five reports and resolutions and four recommendations specifically concerning the implementation of judgments have been adopted by the Assembly since 2000. In addition, various implementation problems have been regularly raised by other means, notably through oral and written parliamentary questions. A number of complex implementation issues have been solved with the assistance of the Assembly and of the national parliaments and their delegations to the Assembly.

4. In line with the May 2005 Council of Europe Summit decision that all member states should accelerate the full execution of the Court's judgments, and the Committee of Ministers Declaration of 19 May 2006 indicating that the Parliamentary Assembly will be associated with the drawing up of a recommendation on the efficient domestic capacity for rapid implementation of the Court's judgments, the Assembly feels duty-bound to further its involvement in the need to resolve the most important problems of compliance with the Court's judgments.

5. The Assembly's Committee on Legal Affairs and Human Rights has now adopted a more proactive approach and given priority to the examination of major structural problems concerning cases in which unacceptable delays of implementation have arisen, at this moment in five member

states: Italy, the Russian Federation, Turkey, Ukraine and the United Kingdom. Special *in situ* visits were thus paid by the rapporteur to these states in order to examine with national decision makers the reasons for non-compliance and to stress the urgent need to find solutions to these problems. The issue of improving domestic mechanisms which can stimulate correct implementation of the Court's judgments was given particular attention.

6. In eight other member states – namely Bulgaria, France, Germany, Greece, Latvia, Moldova, Poland and Romania – reasons for non-compliance and possible solutions to outstanding problems have been considered, making use of written contacts with these countries' delegations to the Assembly.

7. The Assembly welcomes the serious attitude and the efforts made by the majority of the 13 member states concerned and their national parliamentary delegations in assisting the Committee on Legal Affairs and Human Rights, yet at the same time it regrets the insufficiency of the response of certain parliamentary delegations (for example, France and Ukraine) to written requests for information.

8. Three member states, in particular, deserve praise for attempts to solve specific implementation problems by improving domestic mechanisms:

8.1. *Italy* adopted the Azzolini law in 2006, which has created a legislative basis for a special procedure for the supervision of the implementation of judgments by the government and parliament;

8.2. *Ukraine* adopted a law in 2006 providing for a co-ordinated approach, under the supervision of the government agent before the Court, to ensure the proper implementation of the Court's judgments;

8.3. The *United Kingdom* introduced a new practice in March 2006 consisting of progress reports on the implementation of Court judgments presented by the Joint Human Rights Committee of the British Parliament.

9. With regard to specific implementation problems raised by the Assembly, it welcomes in particular decisive progress achieved in:

9.1. *Slivenko v. Latvia*, where the applicants' rights of permanent residence in Latvia has recently been restored, in line with the Committee of Ministers' requests. Latvia has thus erased the effects of the applicants' expulsion to Russia found by the Court to be in violation of the ECHR;

9.2. *Broniowski v. Poland*, a first "pilot" judgment of the Court, in response to which the Polish Parliament passed a new law (in force since 7 October 2005) regulating the issue of the Bug River claimants' entitlements to compensation, in accordance with the Court's guidance and an interim resolution of the Committee of Ministers;

9.3. *Doğan v. Turkey*, a judgment also raising an important systemic problem: in response, Turkey adopted and implemented a new compensation law, thus providing to all internally displaced persons an effective domestic remedy

following the Strasbourg Court's judgments, as they should constitute a tangible contribution to a comprehensive solution of the Cyprus issue.

17. The overall assessment of this new exercise by the Assembly indicates that respondent states' lengthy or negligent implementation of the Court's judgments must be given greater political visibility both within the Council of Europe and in the member states concerned. The Assembly therefore considers that it should remain seized of this matter to ensure regular and rigorous parliamentary oversight of implementation issues both at European and national level. The first initiatives taken to this effect by certain national parliaments are encouraging but much still remains to be done.

18. A major reason for difficulties in the execution of the Strasbourg Court's judgments is the lack of effective domestic mechanisms and procedures to ensure the swift implementation of required measures, often needing co-ordinated action of various national authorities. The responsible decision makers in member states often ignore implementation requirements, as set out by the Committee of Ministers, or lack the appropriate domestic procedures to permit effective co-ordinated action.

19. The Committee of Ministers' and the member states' methods and procedures should therefore be changed to ensure immediate transmission of information and involvement of all domestic decision makers concerned in the implementation process, if necessary with the assistance of the Council of Europe.

20. The Assembly notes with interest the recommendation in the 2005 Summit's Action Plan addressed to the Council of Europe's Development Bank to facilitate, through the bank's own means of action, the implementation of policies in areas covered by the ECHR. The Assembly strongly encourages the bank and interested states to avail themselves of this possibility when such action can ensure the rapid implementation of judgments revealing important systemic problems.

21. The Assembly also notes with interest the recent development of the pilot procedure before the Court to address systemic problems. It notes, however, with some concern that this procedure has been conducted in respect of certain complex systemic problems on the basis of a single case which may not reveal the different aspects of the systemic problem involved. Under these circumstances, the pilot procedure may not allow a global assessment of the problem and, since all other related cases are "frozen", the risk emerges that this procedure will delay rather than speed up the full implementation of the ECHR. The Assembly also notes that the efficacy of the pilot procedure can only be safeguarded if the Committee of Ministers diligently exercises its competence to assess the adequacy and sufficiency of the implementation measures taken by respondent states.

22. In view of the foregoing, the Assembly:

22.1. invites all national parliaments to introduce specific mechanisms and procedures for effective parliamentary

oversight of the implementation of the Court's judgments on the basis of regular reports by the responsible ministries;

22.2. calls upon the member states to set up, either through legislation or otherwise, domestic mechanisms for the rapid implementation of the Court's judgments, and that a decision-making body at the highest political level within the government take full responsibility for and co-ordinate all aspects of the domestic implementation process;

22.3. decides to verify on a regular basis if such mechanisms have indeed been instituted by member states and if they are effective;

22.4. urges the authorities of the 13 states concerned to resolve without delay the outstanding implementation problems identified in the report of the Committee on Legal Affairs and Human Rights;

22.5. urges in particular the authorities of Greece, Italy, Romania, the Russian Federation, Turkey, the United Kingdom and Ukraine to resolve implementation issues of particular importance mentioned in the present resolution and to give this top political priority;

22.6. invites parliamentary delegations of states in which *in situ* visits were undertaken to present to the Assembly via the Committee on Legal Affairs and Human Rights, within six months, the results achieved in solving substantial problems that have been highlighted in the report or to show the existence of realistic action plans for the adoption of the measures required;

22.7. reserves the right to take appropriate action, notably by making use of Rule 8 of its Rules of Procedure (namely, challenging the credentials of a national delegation), should the state concerned continuously fail to take all the measures required by a judgment of the Court, or should the national parliament fail to exert the necessary pressure on the government to implement judgments of the Court;

22.8. decides to remain seized of the matter and welcomes the Committee of Ministers' recent proposals to increase information sharing with the Assembly and to associate the Assembly with the ongoing preparation of a recommendation to member states on efficient domestic capacity for rapid execution of the Court's judgments;

22.9. in view of the imperative need for member states to accelerate the full execution of judgments of the Court, decides to continue the regular monitoring of the situation and invites its Committee on Legal Affairs and Human Rights to report back to the Assembly when it considers appropriate.

1. *Assembly debate* on 2 October 2006 (24th Sitting) (see Doc. 11020, report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Jurgens).
Text adopted by the Assembly on 2 October 2006 (24th Sitting).
2. Supervisory review procedure.

Folketingets formand
Speaker of the Danish Parliament



Mr. René van der Linden
President of the Parliamentary Assembly
of the Council of Europe
F-67075 Strasbourg Cedex
France

7 December 2006
Ref. 05-001773-40

Implementation of judgments of the European Court of Human Rights

Dear Mr. President

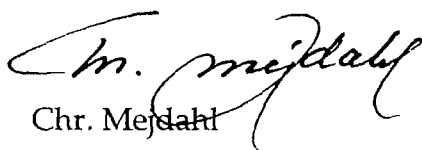
I refer to your letter of 16 November 2006 concerning the Danish Parliament's follow-up to the Assembly's Resolution 1516 (2006).

First of all I would like to emphasize that all Danish governments irrespective of their political complexion ~~always have shown and – I am convinced – always will show great re-~~ spect for the judgments of the European Court of Human Rights. In this context I have even remarked with pleasure that Mr Jurgens in his report, on which the resolution is based, has found no reason to mention Denmark.

Furthermore, the Danish media show great interest in the fortunately few occasions where Denmark has lost a case at the European Court of Human Rights. Such a judgement will never pass unnoticed by the media. It means that no government would have a chance to consign implementation of judgments of the European Court of Human Rights to oblivion.

Although I am thus convinced that judgments of the European Court of Human Rights will always be implemented in Denmark, I have all the same asked the Parliament's Legal Affairs Committee to pay special attention to the Assembly's Resolution 1516 (2006).

Yours faithfully


Chr. Mejdahl