Interpretation of Judgments: European Court of Human Rights (ECtHR)

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A. Introduction

1 The topic of interpretation of judgments of the → *European Court of Human Rights (ECtHR)* ('Court') is relevant in different circumstances. Clearly, it is of theoretical and scholarly interest as manifested in the vast literature available on the topic. In this literature scholars attempt to classify legal arguments used in judgments and decisions of the ECtHR into methods or canons of interpretation and strive to clarify the complex fabric of different, methods, approaches, and ideologies (→ *Interpretative Rules*). Another more practical aspect of the issue, from the point of view of legal practitioners, is the interpretation of judgments on their behalf to find support for their arguments in cases before the national courts as well as before the ECtHR. Moreover, national judges are frequently involved in interpretation of judgments of the ECtHR to support their findings. In addition, national authorities may have to interpret judgments in relation to their implementation on the national level on their behalf (→ *Judgments of International Courts and Tribunals, Interpretation Of*). Lastly it should be pointed out at this stage that the ECtHR refers to its own judgments and decisions in almost every judgment and decision it adopts. This involves the Court's own interpretation of the judgments and decisions referred to and their relevance for the case at hand. These aspects of interpretation of the ECtHR's judgments and decisions will not be considered further in this entry as it focuses on situations where the Court may be involved in interpretation of a specific judgment in relation to its enforcement on the national level.

2 Regarding this aspect, it is suggested here that this is relevant in three types of situations. The first is Article 46 (3) → *European Convention for the Protection of Human Rights and Fundamental Freedoms (1950)* ('Convention' or 'ECHR') which provides the Committee of Ministers ('CM') to the → *Council of Europe (COE)* with possibility to refer to the Court questions concerning interpretation of a judgment in relation to its enforcement. This aspect is the most relevant for the purpose of this entry. The second is Article 46 (4) ECHR under which the CM can bring an enforcement procedure against the respective State to obtain the Court's opinion as to whether a state has failed in abiding by a judgment. This involves an interpretation of the judgment, as the Court must identify and interpret the legal obligations flowing from it and assess whether they have been fulfilled. The third aspect is linked to the enforcement of the Court's pilot-judgments (→ *Pilot-Judgment Procedure: European Court of Human Rights (ECtHR)*). This may be of some relevance due to some specific characteristics of pilot-judgments as will be clarified further below.

B. Article 46: General Remarks

3 Under Article 1 ECHR, the parties have agreed to subject themselves to international judicial supervision of their obligations to secure to everyone within their jurisdiction the rights and freedoms set out in the Convention. Three important features of the ECHR should be mentioned. The first is Article 34 ECHR stating that the Court may receive complaints from any person, nongovernmental organization or group of individuals claiming to be the victim of a violation on behalf of a Contracting Party of the rights set forth in the Convention (→ *Inter-State Claims: European Court of Human Rights (ECtHR)*). The second is the binding nature of the judgments provided for in Article 46 (1) stating that the Contracting Parties undertake to abide by the final judgment in any case to which they are parties. The third feature is the measures set up to enforce judgments, a task which has been assigned to the CM (→ *Execution of Judgment: European Court of Human Rights (ECtHR)*).

4 More specifically Article 46 contains provisions relating to enforcement of judgments on the national level. By Article 46 (1), the high Contracting parties undertake to abide by the final judgment of the Court in any case to which they are parties. This provision provides for the binding nature of judgments under international law. According to Article 46 (2), the final judgment of the Court shall be transmitted to the CM, which shall supervise its execution.

5 Protocol 14 to the Convention entered into force 1 June 2010 and introduced important measures to facilitate prompt and effective enforcement of judgments. The most important in this respect are those provided for in Article 16 of the Protocol amending Article 46 ECHR, in which three new paragraphs were inserted, namely paragraphs 3–5. They read as follows:

> (3) If the Committee of Ministers considers that the supervision of the execution of a final judgment is hindered by a problem of interpretation of the judgment, it may refer the matter to the Court for a ruling on the question of interpretation. A referral decision shall require a majority vote of two-thirds of the representatives entitled to sit on the committee.
>
> (4) If the Committee of Ministers considers that a High Contracting Party refuses to abide by a final judgment in a case to which it is a party, it may, after serving formal notice on that Party and by decision adopted by a majority vote of two-thirds of the representatives entitled to sit on the committee, refer to the Court the question whether that Party has failed to fulfil its obligation under paragraph1.
>
> (5) If the Court finds a violation of paragraph 1, it shall refer the case to the Committee of Ministers for consideration of the measures to be taken. If the Court finds no violation of paragraph1, it shall refer the case to the Committee of Ministers, which shall close its examination of the case.

6 These provisions have attracted little attention of scholars and the literature is scant and mostly in passing. This entry is therefore mostly based on available official documents. The Explanatory Report to Protocol No 14 (2004) ('Explanatory Report') offers an account of the rationale behind these measures. Two new measures were introduced, which were meant to facilitate enforcement and assist the CM in fulfilling its task. *First*, Article 46 (3) opens the possibility of the CM to ask the Court for an *interpretation* of a judgment in situations where problems relating to its interpretation may hinder its prompt execution. *Second*, Article 46 (4) provides for the possibility to bring *infringement procedure* against the State for alleged lack of execution on the national level.

7 In the Preamble to the Protocol, it is stated that there was an 'urgent need to amend certain provisions of the Convention to maintain and improve the efficiency of the control system for the long term, mainly in the light of the continuing increase in the workload of the ECtHR and the CM'. It was also needed to ensure that the Court could continue to play its prominent role in protecting human rights in Europe. It is stressed in the Explanatory Report that effective execution of judgments is an integral part of the Convention system, and its credibility depends on it. Moreover, rapid, and adequate execution would have an effect on the influx of new cases, as when States need to execute judgments which point to a structural problem fewer repetitive applications would follow. In addition, it was considered useful that the Court be involved in the execution process. To further these aims

the paragraphs referred to above were inserted into Article 46. They will now be considered.

C. Article 46 Paragraph 3: Interpretation

1. General Features

8 There are some important features of the measure in Article 46 (3) which should be mentioned. *First* it is important to note that the Article 46 (3) is meant to enable the Court, upon the request from the CM, to give an *interpretation* of a judgment. The use of the word 'interpretation' is intended to achieve prompt execution of the judgment. It means that the Court is not called upon to pronounce on the measures which have been taken or are to be taken by the respective state. The idea is that the Court's reply would serve to settle any argument concerning the meaning of the judgment being executed. *Second*, no time limit is set for making requests for interpretation. This is reasonable as questions of interpretation of a judgment may arise at any stage during the CM's examination and execution of it. *Third*, the provision does not provide rules on the manner and form in which the Court should reply to the request made under Article 46 (3), although normally, as indicated in the Explanatory Report, it would be for the formation of the Court which delivered the original judgment to rule on the question of interpretation. *Fourth*, Article 46 (3) provides for a qualified majority vote of the CM which indicates, as averred in the Explanatory Report, that the CM should use this possibility sparingly, to avoid overburdening the Court with Article 46 (3) requests.

9 As regards other international Human Rights Courts the possibility or right to request an interpretation of judgments was provided for in Article 67 American Convention on Human Rights (1969) ('ACHR') from the outset. The Article states that the judgments of the Court shall be final and not subject to appeal. In case of disagreement as to the meaning or scope of the judgment, the Court shall interpret it at the request of any of the parties. The primary inspiration for this was Article 60 Statute of the International Court of Justice (1945) (see Carlos Lima, 2022; → *Interpretation of Judgments: Inter-American Court of Human Rights (IACtHR)*). The Rules of the → *African Court on Human and Peoples' Rights (ACtHPR)* (2020), established on the basis of the African Charter on Human and Peoples' Rights (1981), also provide in Rule 77 for a possibility of any party, for the purpose of executing a judgment, to apply to the Court for an interpretation of the judgment within twelve months from the date of notification of the judgment, unless the Court, in the interest of justice, decides otherwise. These will not be considered further in this entry as they are being dealt with in separate entries.

2. Procedure

10 The CM has adopted Rules of the Committee of Ministers (2017) for the supervision of the execution of judgments and of the terms of friendly settlements. Rules relating to the application of Article 46 (3) are in Article 10 thereof. The first paragraph of this article repeats what is already set down in Article 46 (3) and states that referral decision shall require a majority vote of two thirds of the representatives entitled to sit on the CM. Article 10 (2) further states that a referral decision may be taken at any time during the CM's supervision and that a referral decision shall take the form of an interim resolution which shall be reasoned and reflect the different views within the CM, as well as that of the respective state. Moreover, if need be, the CM shall be represented before the Court by its Chair, unless the Committee decides upon another form of representation.

11 As regards the procedure before the Court, more detailed rules have been included in Rules 96–98 of the Rules of Court (2023). These provisions set out the procedural framework to be followed when processing Article 46 (3) requests made to the Court. Rule 96 states that any request for interpretation under Article 46 (3) of the Convention shall be filed with the Registrar and shall state fully and precisely the nature and source of the question of interpretation hindering execution of the judgment. The request shall also be accompanied by information about the execution proceedings. Rule 97 also states that the request shall be examined by the formation which rendered the judgment in question, it being the Grand Chamber (→ *Grand Chamber: European Court of Human Rights (ECtHR)*), chambers (→ *Chambers: European Court of Human Rights (ECtHR)*), or Committee. This is in line with comments on this issue made in the Explanatory Report. If this is not possible it is stipulated in paragraph 2 that the President of the Court shall complete or compose it by drawing lots. Rule 98 further stipulates that the decision of the Court on the question of interpretation is final, and no separate opinions are allowed (→ *Separate Opinion: European Court of Human Rights (ECtHR)*). Copies of the ruling shall be transmitted to the CM and to the parties concerned as well as to any third party, including the COE Commissioner for Human Rights.

3. Practical Value

12 As stated above the aim of Article 46 (3) of the Convention was to involve the Court to settle any questions of interpretation of judgments to remove any obstacles such problems might raise and hinder effective execution of a judgment. However, despite good intentions, this provision has not turned out to be of practical value as the fact is that, at the time of writing, the CM has, according to available information, never made use of this measure. This was possibly considered in relation to the enforcement of the judgment of the ECtHR in *Mammadov* v *Azerbaijan* (2014).

13 In that case, in 2013 the applicant, an opposition politician, was charged with criminal offences and placed in pre-trial detention after commenting on political issues in his personal blog. In its judgment the ECtHR found a violation of the applicant's rights under Article 5 (1) and (4), Article 6 (2), and Article 18 ECHR. In accordance with paragraphs 1 and 2 of Article 46 the judgment was transmitted to the CM. The Committee adopted a series of decisions and interim resolutions stressing the fundamental flaws in the criminal proceedings revealed by the Court's conclusions under Article 18 of the Convention combined with Article 5 and calling for the applicant's immediate and unconditional release. At the 1273rd meeting of the CM on 6–8 December 2016 the deputies in point 5 recalled their previous decisions and interim resolutions, and their firm determination to ensure the implementation of the judgment by actively considering using all the means at its disposal, including under Article 46 (4) ECHR.

14 These words may be understood as referring, not only to Article 46 (4), but also to Article 46 (3). This, however, is unclear, but in any case, it did not happen, and the measure remains unused at the time of writing. Later this judgment came subject to infringement procedures under Article 46 (4), which will be further described below.

4. Evaluation

15 One may speculate why the CM has not availed itself of this measure. At the outset it is reiterated that the adoption of this possibility was linked the to the problems related to the heavy workload of the Court as well as the CM at the time of the adoption. This has now been considerably alleviated. However, it is not likely that this explains why this measure

has never been used. In any case it has not contributed to the improved situation in this regard since it has never been used.

16 The measure provided for in Article 46 (3), as related above, was meant to tackle alleged lack of clarity in a judgment which could be detrimental to its execution (Lambert Abdelgawad, 2009, 495). This is relevant in a situation in which a state needs to do more than simply paying damages and legal costs and where the authorities and the lawmaker are called upon to take measures to eradicate the problem causing the violation. The main features of the measure under Article 46 (3) shows that it is rather narrow in scope and confined to interpretation while it is stressed that the Court cannot pronounce on specific implementation measures. This inbuilt limitation is linked to certain concerns expressed during the preparation of Protocol 14. They relate to the different roles of the Court on the one hand and the CM on the other, which again relate to the idea of separation of powers between the judiciary and the executive. A concern was expressed that the Court might drift towards indicating the means of executing its judgments, a matter for the CM. This is reflected in the fact that at first the idea was that the CM would inform the Court of difficulties which could arise with certain of its judgments during the execution stage. The aim was not to give the CM authority over the work of the Court (Steering Committee for Human Rights, Activity Report, 2001, Appendix I, item 5). Similar reservations on this subject were expressed by others (see Lambert Abdelgawad, 2008, 54; Lambert Abdelgawad, 2009, 496). The Venice Commission had also expressed a view on the matter considering that it might be advisable to encourage the Court to indicate the means of executing its judgments, which would be preferable over the creation of the power of the CM to ask for formal clarification as suggested by the Parliamentary Assembly (Opinion No 209/2002, 163). These considerations, reflected in the relatively narrow scope of the provision, may have discouraged the CM to make use of it. Moreover, comments in the Explanatory Report to the effect that this measure should be used sparingly is likely to have had similar impact.

17 Another aspect, and related to the one mentioned, is that a request can be referred to the Court only by the CM, thus excluding the applicant or respondent state. This is in line with the separation of powers between the Court and the CM, as it is for the Court to give final judgment and the CM to execute it. Allowing the applicant or the respondent state to enter into a 'dialogue' with the Court by requesting interpretation as to the actual meaning of a judgment does not sit well with such ideals. Nevertheless, excluding this, which is not hard to agree with, limits its usefulness. It is also worth bearing in mind that the CM is composed of government representatives. The overall approach of the CM to use this measures, as well as the measure under Article 46 (4), may be seen as a manifestation of a certain reluctance to give the Court additional powers in the matter of execution, and to a leave a margin for finding a diplomatic, rather than judicial, and, for that matter political, solution to problems of execution. This mixture of politics and judicial enforcement has given rise to suspicion as to the effectiveness of the system. It has however been argued that hybrid models of → *compliance* monitoring which combine political as well as judicial and technocratic elements may be more effective in facilitating human rights compliance than direct international court orders or expert recommendations (Çalı and Koch, 2014, 301).

18 Finally, it is worth mentioning in this context that earlier versions of the Rules of Court (see for example the initial version, Rule 53 (1)) stated that a Party or the → *European Commission of Human Rights (ECommHR)* ('Commission')—abolished in 1998—could request an interpretation of a judgment within a period of three years following the delivery of that judgment. The Commission availed itself of this possibility on at least three occasions, in *Ringeisen v Austria* (1973), *Allenet de Ribemont v France* (1996), and *Hentrich v France* (1997). In *Ringeisen* and *Hentrich* the Government opposed the

admissibility of the application since it would encroach upon the jurisdiction of the CM. More precisely the Government argued in *Ringeisen* that the Commission was not in fact requesting the Court to interpret the judgment of 22 June 1972 but seeking to induce it to unlawfully supplement the entirely clear operative provisions and reasons thereof and even to encroach on the supervisory function conferred on the CM. In reply to this argument the Court stated:

> In considering the request, the Court is exercising inherent jurisdiction: it goes no further than to clarify the meaning and scope which it intended to give to a previous decision which issued from its own deliberations, specifying if need be what it thereby decided with binding force. Such competence is therefore in no wise irreconcilable with Article 52 or, moreover, with Article 54 which makes the Committee of Ministers responsible for supervising the execution of the Court's judgments (*Ringeisen v Austria*, 13; see also Lambert Abdelgawad, 2009, 495).

Of interest in these words is the Court's reference to its 'inherent jurisdiction' as well as its understanding of its role when exercising it. Although the measure under the earlier Rule 53 (1) and (2) is not the same as in Article 46 (3) ECHR it may still be a guide to the Court's understanding of its role when the Court receives a request under the latter.

D. Article 46 Paragraph 4: Infringement Procedure

19 The measure provided for in Article 46 (4) is relevant for this entry. The reason is that in infringement proceedings the Court is required to make a legal assessment of the question of compliance. In so doing, the Court will have to identify and interpret the legal obligations flowing from a final judgment, as well as the conclusions and spirit of that judgment with a view to determining whether the respondent State has failed to fulfil its obligations under Article 46 (1).

1. General Features

20 Paragraph 4 was also inserted into Article 46 by Protocol 14. The provision, cited above, empowers the CM to bring infringement proceedings in the Court for alleged failure of the respondent state to implement a judgment. The purpose of such proceedings would be to obtain a ruling from the Court as to whether that Party has failed to fulfil its obligation under Article 46 (1) ECHR. The rationale behind this is in most aspects in line with what has already been said in relation to Article 46 (3) and need not to be repeated. In addition, this procedure was considered as a useful means of putting further pressure on a state to fulfil its obligations under the Convention. In the Explanatory Report this aspect is discussed. It is pointed out that the ultimate measure available to the CM, in case of non-compliance, was a recourse to Article 8 Statute of the Council of Europe (1949), ie suspension of voting rights in the CM or even expulsion from the COE. These were considered extreme measures, which might prove to be counter-productive in most cases, as a state which finds itself in the situation foreseen in Article 46 (4) would seem to need, more than others, the discipline of the COE. It is also worth pointing out that such a measure would disadvantage the citizens of the respective state as they would be deprived of the protection of the Convention and the system set up by it. In this light, infringement proceedings represent an attempt to find an effective compromise (Lambert Abdelgawad, 2008, 54).

21 It is to be noted that an infringement procedure under Article 46 (4) does not aim to reopen the question of violation found in the Court's first judgment. Nor does it provide for payment of a financial penalty by the state found in violation of Article 46 (1). It was felt in the Explanatory Report that the political pressure exerted by proceedings for noncompliance should suffice to secure execution of the Court's initial judgment. It is

moreover reiterated that the CM should bring infringement proceedings only in exceptional circumstances. This last point is in line with the reservations expressed above relating to the different roles of the CM on one hand and the Court on the other.

2. Procedure

22 Rules of the CM for the supervision of the execution of judgments, referred to above, contain rules relating to the application of the procedure provided for in Article 46 (4) of the Convention. Article 11 (1) of these Rules states that, when the CM considers that if a state refuses to abide by a final judgment it may, after serving formal notice on that party and by decision adopted by a majority vote of two-thirds of the representatives sitting on the Committee, refer to the Court the question whether that Party has failed to fulfil its obligation. The second paragraph of Rule 11 reiterates that infringement proceedings should be brought only in exceptional circumstances. Moreover, they shall not be initiated unless formal notice of the Committee's intention to bring such proceedings has been given to the respective state. Such formal notice shall be given six months before the lodging of proceedings, unless the Committee decides otherwise, and shall take the form of an interim resolution. The resolution must be reasoned and reflect the views of the state concerned. Lastly, in Article 11 (4) the rule stipulates that the CM shall be represented before the Court by its Chair unless the Committee decides upon another form of representation.

23 As regards the procedure within the Court, Article 31 (b) ECHR was amended by Protocol 14 and stipulates that the Grand Chamber shall decide on issues referred to the Court by the CM in accordance with Article 46 (4). Further rules are in Rule 99 of the Rules of Court. It states that the Court shall apply, in addition to the provisions of Article 31 (b) and Article 46 (4) and (5) of the Convention, the provisions which follow in Rule 100 as well as other provisions of the Rules to the extent to which it considers appropriate. Rule 100 states that any request made pursuant to Article 46 (4) of the Convention shall be reasoned and shall be filed with the Registrar. It shall be accompanied by: (a) the judgment concerned; (b) information about the execution proceedings before the CM in respect of the judgment concerned, including, if any, the views expressed in writing by the parties concerned and communications submitted in those proceedings; (c) copies of the formal notice served on the respondent Contracting Party or Parties and the decision referred to in Article 46 (4) of the Convention; (d) the name and address of the person or persons appointed by the CM to give the Court any explanations which it may require; (e) copies of all other documents likely to elucidate the question. Furthermore, Rule 101 states that a Grand Chamber shall be constituted, in accordance with Rule 24 (2) (f), to consider the question referred to the Court. According to Rule 102, the President of the Grand Chamber shall inform the CM and the parties concerned that they may submit written comments on the question referred. Rule 103 stipulates that the President of the Grand Chamber shall lay down the time-limits for filing written comments or other documents.

3. Practical Value

24 The measure under Article 46 (4) has been used twice at the time of writing. The first was in the *Mammadov* case cited above. This was done by the CM in 2017 (Interim Resolution CM/ResDH (2017) 429). After having served formal notice on the respondent State in an earlier Resolution, infringement proceedings under Article 46 (4) were initiated before the Court (Interim Resolution CM/ResDH (2017) 379). The Court was asked whether the respondent State had refused to comply with the Court's final judgment. At an earlier stage the CM had asked the Azerbaijani authorities to release the applicant as soon as possible. Given that the applicant remained in detention based on the flawed criminal proceedings, the CM considered that Azerbaijan was refusing to comply with the Court's judgment and called on the Court to rule on whether the respondent State had failed to fulfil its obligation under Article 46 (1) ECHR. Although the applicant was conditionally

released on 13 August 2018, the Grand Chamber in its judgment of 29 May 2019, went on with the case and found a violation of Article 46 (1) of the Convention, as the respondent State had a not acted in 'good faith', in a manner compatible with the 'conclusions' and spirit of the first *Mammadov* judgment, or in a way that would make practical and effective the protection of the Convention rights which the Court found to have been violated in that judgment (see *Mammadov v Azerbaijan*, 2019, para 2017). Hence, under Article 46 (5) ECHR, the case was sent back to the CM 'for consideration of the measures to be taken', namely both by the respondent State and the CM in response to the finding of infringement. The second time the CM resorted to this procedure is in the case of *Kavala v Turkey* (2019). The facts of the case bear some similarities to the *Mammadov* case. On the basis of the judgment the CM made numerous requests to Turkey to release Kavala from detention. In December 2021, the CM issued a formal notice to Turkey by Interim Resolution CM/ResDH (2021) 432 of its intention to start infringement proceedings against Turkey for non-compliance with its obligation under Article 46 (1) ECHR. By Interim Resolution CM/ResDH (2022) 21, the CM formally referred the case to the Grand Chamber. In a similar fashion as in the *Mammadov* case, the Court found by 16 votes against one, in its Proceedings under Article 46 (4), in the case of *Kavala v Turkey* (2022) that it was unable to conclude that the State Party had acted in 'good faith', in a manner compatible with the 'conclusions and spirit' of the *Kavala* judgment, or in a way that would make practical and effective the protection of the Convention rights which the Court found to have been violated in that judgment (paras 173–74). It therefore held that Turkey had failed to fulfil its obligation under Article 46 (1) to abide by the *Kavala v Turkey* judgment of 10 December 2019. As of 12 October 2022, after almost exactly five years of his unlawful deprivation of liberty and despite the original judgment and additional proceedings under Article 46 (4) requiring Kavala's his immediate release, he remains behind bars at the time of writing.

4. Evaluation

25 It is worth reiterating that after the infringement procedure was brought to the Court, Mr Mammadov was indeed released from prison (see *Mammadov v Azerbaijan*, 2019, para 73). This may indicate that the added pressure asserted on the Azerbaijani government may have worked. However, it is too early to draw any conclusions from this example as regards the overall effectiveness of this procedure under Article 46 (4). In any case it did not work in the *Kavala* case as mentioned above. All in all, the fact remains that this measure has not turned out to be very practical. When speculating on the reasons for this it is necessary to first mention is that the Explanatory Report for Protocol 14 strongly suggests that this avenue should only be used in exceptional circumstances. This is also reflected in the rules applying to this procedure. Another reason is that, despite good intentions, it is in practical terms not evident that additional proceedings before the Court, in a case it has already decided, is of added value in facilitating full execution of the judgment. Normally it is to be expected that the CM will not resort to this measure until it has unsuccessfully used all other measures at its disposal. It is not to be taken for granted that a further reiteration on behalf of the Court within the framework of an infringement procedure could add much to the original judgment (Rainey and others, 2017, 59).

E. Enforcement of Pilot Judgments

26 The concept of 'pilot judgment' is not clear and is not defined in the Convention. It has rather evolved as an internal procedure construed by the Court itself to address what is termed as a systemic problem in a contracting State. The first pilot judgment is usually

considered to be *Broniowski v Poland* (2004). It is useful to say few words about this case for the purpose of this entry.

27 The case relates back to World War 2. After the war, the Polish State undertook to compensate persons who had been repatriated from the so-called 'territories beyond the Bug River', which no longer formed part of Poland, in respect of property which they had been forced to abandon there. The State did not, for variety of reasons, honour the obligations against the claimants which gave rise to hundreds of cases being brought before the Court under Article 1 of Protocol No 1 to the ECHR on Protection of Property. Out of these cases the case of *Broniowski* was selected by the Court as a 'test case' and at the same time postponed the examination of all the other similar cases. The Grand Chamber found a violation of the said provision. In point 3 of operative provisions of the judgment, the Court held that the 'violation has originated in a systemic problem connected with the malfunctioning of domestic legislation and practice caused by the failure to set up an effective mechanism to implement the "right to credit" of Bug River claimants.' In held moreover in point 4:

> that the respondent State must, through appropriate legal measures and administrative practices, secure the implementation of the property right in question in respect of the remaining Bug River claimants or provide them with equivalent redress in lieu, in accordance with the principles of protection of property rights under Article 1 of Protocol No. 1 (*Broniowski v Poland*, 2004).

28 Clearly these parts of the provisions are subject to various interpretations as to whether general measures adopted are sufficient to fulfil the obligations flowing from the judgment. Following the judgment, legislation was adopted in Poland, which in short provided for payment of a maximum 20% of the original claims of the Bug River claimants, and the Court had to assess whether a friendly settlement reached with the Government with regard to the rest of the Bug River cases pending before the Court would satisfy the obligations flowing from the earlier judgment (*Broniowski* v *Poland*, 2005; → *Friendly Settlement: European Court of Human Rights (ECtHR)*). After having assessed the friendly settlement in light of the obligations flowing from the first judgment (paras 39–42), the Court in the second judgment accepted the settlement as satisfying those obligations (see further Lambert Abdelgawad, 2008, 48–53) and struck the case off the list. In the wake of this decision the rest of the cases of the 'Bug River claimants' were declared inadmissible.

29 There are several other pilot judgments which could be mentioned. One with a similar provision as in *Broniowski* is the judgment in the case of *Hutten-Czapska v Poland* (2016). After the principal judgment, the parties made a friendly settlement under the terms of which the Government were to pay the applicant a certain amount in damages. Moreover, the Government identified various general measures that had been taken to resolve the underlying problem. The friendly settlement came again before the Grand Chamber (see *Hutten-Czapska v Poland*, 2008). In its assessment the Court noted that the Government had adopted various measures and examined them in light of the obligations flowing from the principal judgments. The Court was satisfied that the settlement was based on respect for human rights. The case was struck off the list and other cases relating to the same problem declared inadmissible. Since *Broniowski* and *Hutten-Czapska* it has been the practice of the Court to include, in its decision to initiate a pilot procedure, a decision on how to proceed with other similar cases pending the implementation of general measures by the respondent State. Various approaches have been used. Among those are adjournment of further examination and discontinuation thereof, with the reservation that their examination may be resumed. Moreover, it may declare them inadmissible in accordance with the Convention (*Suljagić v Bosnia and Herzegovina*, 2009, para 65). In some cases, it has decided to communicate them (*Rutkowski and ors v Poland*, 2015, paras

226–27 and point 9 in the dispositive of that judgment). These different solutions reflect one of the main aims of the pilot-judgment procedure that these cases should be incorporated into the execution process of the pilot judgment *(Burmych and ors v Ukraine,* 2017, para 166). It goes without saying that in situations where the State's response to the pilot judgment has not been sufficient the Court may be actively involved in interpretation of its own judgments. In several instances this has raised questions relating to the Court's actual role in the execution process. It is hardly surprising that this procedure has raised questions as to the appropriate separation of roles between the CM on one hand and the Court on the other (see *Hutten-Czapska v Poland,* partly dissenting opinion of Judge Zagrebelsky; see further ECtHR Registry, 2022, pages 11–12; → *Pilot-Judgment Procedure: European Court of Human Rights (ECtHR)).*

F. Concluding Remarks

30 This entry discusses situations in which the ECtHR is involved in interpretation of its own judgments in relation to their enforcement on the national level. It is suggested that this is relevant in three types of situations. The first is Article 46 (3) of the Convention which provides the CM with possibility refer to the Court questions concerning interpretation of a judgments in relation to its enforcement. The second is Article 46 (4) under which the CM can bring an enforcement procedure against the respective State with a view of obtaining the Court's opinion as to whether a State has failed in abiding by a judgment. This involves an interpretation of the judgment as it must identify and interpret the legal obligations flowing from that judgment. The third aspect is linked to the enforcement of pilot-judgments of the Court.

31 As related above, the first two were inserted into the ECHR by Protocol 14 to the Convention. It was believed that this might assist the CM to effectively execute judgments mainly in situations where a judgment might call for response of the respective State doing more than simply paying damages and legal costs with the aim of eradicating the problem and preventing similar violations. It is fair to say that these measures have not turned out be of the practical value hoped for when they were implemented. It is hard to pinpoint the actual reasons for this. The measures under Article 46 (3) and (4) ECHR are relatively narrow in scope, although for somewhat different reasons. What they have in common is that both raise questions as to the different roles of the CM and the Court and separation of powers between the two, where it is for the Court to give final judgments and the CM to execute them. In very general terms it is suggested that the preparations and view expressed in the Explanatory Report manifest a certain reluctance to give the Court further powers to interfere with the execution of judgments as this is seen as being a 'political' matter especially in situations where reaction to a judgment requires a response on the national level beyond paying of damages and costs. These considerations may also explain what may seem to be a certain hesitation on behalf of the CM to make use of these measures.

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