РОЗДІЛ 2

ПРАВОВЕ ЗАБЕЗПЕЧЕННЯ ЕФЕКТИВНОГО ВИКОНАННЯ РІШЕНЬ ЄВРОПЕЙСЬКОГО СУДУ З ПРАВ ЛЮДИНИ

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PILOT JUDGMENT PROCEDURE BEFORE THE EUROPEAN COURT OF HUMAN RIGHTS: COMPLIANCE WITH THE PILOT JUDGMENTS DELIVERED BY THE EUROPEAN COURT OF HUMAN RIGHTS

The recent introduction of changes to the Rules of the Court, which followed earliest entry into force of Protocol No. 14 of the Convention, confirmed strong intention of the European Court of Human Rights to deal with the problem of repetitive cases. Such a confirmation appeared in the Rule 61 of the Rules of the Court [1] in the form of procedural directives as to the pilot judgment procedure, already developed by the Court in its case-law and operational since adoption of the first pilot judgment case against Poland [2]. The Rule 61 of the Rules of the Court confirms the use of the pilot-judgment procedure for situations «where the facts of an application reveal in the Contracting State concerned the existence of a structural or systemic problem or other similar dysfunction which has given rise or may give rise to similar applications» (Rule 61 paragraph 1). It also sets out the aim of the use of the pilot-judgment procedure, which is mainly focused along the following lines (Rule 61 paragraphs 3–7):

– identification of the nature of the structural or systemic problem or other dysfunction as established;

[1] The views expressed in this article are solely of the author and do not represent any official opinions of any institution or organisation.

– choice of the type of remedial measures which the Contracting State concerned is required to take at the domestic level by virtue of the operative provisions of the judgment;

– setting of a time-limit for a remedial action;

– reservation of the issue of just satisfaction either in whole or in part pending the adoption by the respondent State of the individual and general measures specified in the pilot judgment;

– adjourning all similar applications pending the adoption of the remedial measures required by virtue of the operative provisions of the pilot judgment (the Court may at any time examine an adjourned application where the interests of the proper administration of justice so require);

– facilitating friendly settlement in cases relating to pilot-judgment procedure [3].

The legal basis for using the pilot-judgment procedure had been derived from the existing Article 46 of the Convention. In the first pilot judgment – *Broniowski v Poland* (2004) – the Court interpreted Article 46 to include the obligation «not just to pay those concerned the sums awarded by way of just satisfaction under Article 41 but also to select the general and/or if appropriate individual measures to be adopted in their domestic legal order to put an end to the violation found by the Court».[1]

The idea behind the pilot-judgment procedure was to deal with a large number of repetitive cases, raising Convention issues, such as for instance, length of proceedings, conditions of detention, failure to enforce domestic court judgments, etc. The idea was based on the principle of subsidiarity and the obligation of the State to cooperate with the Court in enforcing the Convention and the Court's case-law domestically. The pilot judgment procedure presupposes that the relevant respondent State is cooperating in enforcing the judgment delivered against it. The State should be also willing and able to respond to the demands within the pilot judgment [4]. However, there has been a general acceptance by governments of the utility of the procedure, with only one government

[1] Broniowski v. Poland (1st pilot judgment) 22 June 2004, after Poland's eastern border had been redrawn in the aftermath of the Second World War, Poland undertook to compensate Polish citizens who had been repatriated and had had to abandon their property situated beyond the Bug River and now in Ukrainian, Belarusian or Lithuanian territory. Following an application by a Polish national who complained that he had not received the compensatory property to which he was entitled, the Court found that the case disclosed the existence, within the Polish legal order, of a structural deficiency which denied a whole class of individuals (some 80,000 people) the peaceful enjoyment of their possessions.

(Italy) challenging its legal basis. The objective behind the pilot judgment procedure was to assist the State Parties that have ratified the Convention in solving systemic and structural problems at the domestic level, offer a possibility of speedier redress to the individual concerned and help the European Court to manage its workload more efficiently and diligently by reducing the number of similar cases that have been examined in detail [5].

The examples of pilot judgments vary. They usually concern a particular dysfunctioning within the domestic legal system, which is at the root of multiple and numerous findings of a violation of the Convention and is resulting in the rise of applications lodged with the Court. Such judgments concerned prohibition from ill-treatment under Article 3 of the Convention, right to a fair trial within a reasonable time under Article 6 of the Convention, Such judgments related to structural problem of inadequate conditions of detention (acute lack of personal space in the cells, shortage of sleeping places, limited access to light and fresh air and non-existent privacy when using the sanitary facilities)[1], prolonged non-enforcement of court decisions and lack of domestic remedy in that respect (consistent practice of the Russian public authorities in which the Russian State failed to execute judgment debts[2], failure to comply by the final judgments by the Moldovan authorities[3], prolonged non-enforcement of judgments in Ukraine[4], unreasonable

[1] Ananyev and Others v. Russia, judgment of 10 January 2012, where the Russian authorities had to produce within six months from the date on which the judgment became final, a binding time frame for implementing preventive and compensatory measures in respect of the allegations of violations of Article 3. Also, in view of the fundamental nature of the right not to be treated inhumanly or degradingly, the Court decided not to adjourn the examination of similar applications pending before it.

[2] Burdov v. Russia (no. 2), judgment of 15 January 2009, where the Russian State had to set up, within six months from the date on which the judgment became final, an effective domestic remedy or combination of such remedies which would secure adequate and sufficient redress for non-enforcement or delayed enforcement of judgments given against the State and for the excessive length of judicial proceedings.

[3] Olaru and Others v. Moldova, judgment of 28 July 2009, relating to Moldovan social housing legislation, where the Court ordered the Moldovan Government to grant enforcement to judgments ordering provision of social housing to the applicants.

[4] Yuriy Nikolayevich Ivanov v. Ukraine, judgment of 15 October 2009, recurring practice of the Ukrainian authorities to comply with final judgments given against the State.

length of proceedings before national courts in Germany[1], Greece[2] [3], Bulgaria[4] and Turkey[5]. Some other problems concerned a structural issue under Article 8 of the Convention (right to private and family life) of not providing a legal status to the group of «erased persons», who did not obtain Slovenian citizenship shortly after dissolution of the former Yugoslavia or who were refused citizenship in the beginning of 90s.[6] In another complex case against Poland the Court had to deal with a structural problem of deficiencies in the rent-control provisions of the housing legislation, which concerned some 100,000 in comparison with the *Broniowski* case, which concerned 80,000 persons.[7] In a case against Bosnia and Herzogovina, the Court had to deal with an issue of repayment scheme for foreign currency deposited before the dissolution of the Socialist Federal Republic of Yugoslavia, whereas Bosnia failed

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1 Rumpf v. Germany, judgment of 2 September 2010, relating to recurring failure by Germany, consistently observed since 2006, to ensure that cases before the administrative courts were handled within a reasonable time and to introduce a domestic remedy by which to obtain redress for the excessive length of proceedings.

2 Athanasiou and Others v. Greece, judgment of 21 December 2010, deficiencies in the justice system at the root of excessive length of proceedings before the administrative courts and the lack of a remedy affording the applicants the possibility of obtaining recognition of their right to have their case heard within a reasonable time. Between 1999 and 2009 the Court had delivered about 300 judgments in similar cases.

3 Michelioudakis v. Greece, judgment of 3 April 2012, finding a structural problem in deficiencies in the justice system at the root of excessive length of proceedings.

4 Dimitrov and Hamanov v. Bulgaria and Finger v. Bulgaria, judgment of 10 May 2011, deficiencies in the justice system at the root of excessive length of civil/criminal proceedings and lack of domestic remedy giving applicants the possibility of obtaining recognition of their right to have their case heard within a reasonable time.

5 Ümmühan Kaplan v. Turkey, judgment of 20 March 2012, the Court had already found in numerous cases that the length of proceedings (in administrative, civil, criminal and commercial cases and before the employment and land tribunals) was excessive. This case concerned proceedings brought in 1970 by the applicant's father, who had since died, before the land tribunal concerning the classification of plots of land.

6 Kurić and Others v. Slovenia, Grand Chamber Judgment of 26 June 2012, in which the Court found that, despite the efforts made since 1999, the Slovenian authorities had failed to remedy comprehensively and with the requisite promptness the situation of the «erased» former Yugoslavia nationals.

7 Hutten-Czapska v. Poland, judgment of 19 June 2006, the Court established that the rent-control legislation imposed a number of restrictions on landlords' rights, in particular setting a ceiling on rent levels which was so low that landlords could not even recoup their maintenance costs, let alone make a profit. The Court has instructed the Polish government to introduce changes to the domestic legal order, i.e. a mechanism maintaining a fair balance between the interests of landlords and the general interest of the community, in accordance with the principles of the protection of property rights under the Convention.

to issue State bonds that as provided by law would compensate for savings deposited by the individuals with the Bosnian banks.[1] Similar restitution issues, under Article 1 of Protocol No. 1 to the Convention (right to peaceful enjoyment of posessions) were discussed in several Romanian pilot judgment cases. In these cases the Court examined effectiveness of the system of compensation or restitution, which was a wide-spread problem in Romania.[2] The same issue of compensation for property confiscated under the communist regime in Albania, which concerned a number of persons and gave rise to 80 similar cases pending before the Court, had been examined in the course of the pilot-judgment procedure in the case of *Manushaqe Puto and others v. Albania*.[3] Finally, in a case against the United Kingdom, which concerned right to free elections under Article 3 of Protocol No. 1, the Court ruled that the United Kingdom's blanket ban on voting for convicted persons breached the requirements of that provision. The Court pointed out to the fact that the United Kingdom had not complied with the previous judgment of the Court on the same issue – *Hirst v. the United Kingdom* for a period of more than five years. It also Stated that the Court received some 2,500 applications raising similar legal issues. It further ordered the Government to remedy the situation with introduction of relevant changes to the legislation.[4] As to the potential new pilot-judgment procedure cases, the Court has recently announced that a large group of almost 8,000 applications coming from the Hungarian pensions, who

[1] Suljagic v. Bosnia and Herzegovina, judgment of 3 November 2009, in this case the Court ordered the Government, within six months from the date on which the judgment became final, to issue State bonds, pay outstanding instalments and that, in the case of late payment, pay default interest in case it was not paid.

[2] Atanasiu and Poenaru v. Romania and Solon v. Romania, judgment of 12 October 2010, ineffectiveness of the system of compensation or restitution, a recurring and widespread problem in Romania, which concerned delays on the part of the Romanian authorities in giving a decision on applications for restitution or compensation of property nationalised or confiscated by the State before 1989. The Court ordered the Romanian government to secure effective and rapid protection of the right to restitution.

[3] Manushaqe Puto and others v. Albania, judgment of 31 July 2012, despite the fact that the applicants inherited title to plots of land having been recognised by the authorities, final administrative decisions awarding them compensation in one of the ways provided for by law in lieu of restitution had never been enforced.

[4] Greens and M.T. v. the United Kingdom, judgment of 23 November 2010, which concerned blanket ban on voting in prisons and introduced pilot-judgment procedure on the issue ordering the UK to remedy the situation domestically by introducing relevant changes to the legislation.

complained about a very unfavourable change in the legislation would be soon subjected to pilot-judgment procedure in priority [6].

The follow-up to various pilot-judgment cases that were pending before the European Court of Human Rights differed. For instance, in a Ukrainian pilot-judgment procedure, the Court, having stayed its examination of more than 2,000 similar applications, eventually decided on 21 February 2012 that, although a number of cases had been dealt with, Ukraine had not adopted the required general measures to solve the issues of non-enforcement at domestic level. Accordingly, the Court decided to resume the examination of applications raising similar issues [7]. On the contrary, following the pilot judgment against Moldova, the Moldovan Government reformed its legislation by introducing a new domestic remedy in July 2011 against non-enforcement of final domestic judgments and unreasonable length of the proceedings [8]. The Russian Federation also introduced new remedies for the complaints against lengthy non-enforcement of the domestic judicial decisions, which were examined by the Court in two inadmissibility decisions and found to be compatible with the requirements for the accessible and effective remedies for such complaints [9]. The Court held in particular that the Russian Federation was under an obligation to implement the necessary reforms in the area of enforcement of judgments and that the Court could review its position as to the remedy in the future depending on the development of the domestic case-law. Similar measures were asked by the Court for the cases concerning length of proceedings that were decided against Greece, Bulgaria, Germany and Turkey. These States were asked to introduce, within a specific period of time, which usually is a year, an effective remedy or a combination of effective remedies capable of affording adequate and sufficient redress where the length of proceedings before the administrative courts had exceeded reasonable time. Albania and Slovenia were asked to remedy the situation relating to compensation and «erased», the proceedings upon such pilot-judgments still pending. As to Polish cases, the Polish Government successfully introduced relevant measures with respect to the Bug River claimants, providing them with a remedy at the domestic level allowing for compensation. Also, the Court closed the pilot-judgment procedure in the second pilot-judgment case, *Hutten-Czapska v. Poland*, being satisfied that Poland had changed its domestic laws in such a manner that landlords previously breached rights could be restored.

It has been argued, and not without any valid basis, that the pilot-judgment procedure should be used for a large number of cases raising the same legal issue [10]. Examples above do show that such a procedure is used more and more often by the Court and has reasonable prospects of success with some minor exceptions mentioned above. The pilot-judgment procedure allows to determine whether there had been a violation of the Convention in a particular case, identify the dysfunction under the national law that is at the root of the violation, give clear indications to the Government as to how it can eliminate this dysfunction as well as it would bring about the creation of a domestic remedy capable of dealing with similar cases, including those that are pending before the Court or at least to bring a friendly settlement for these cases [11]. The pilot judgment procedure cannot claim to be the ultimate solution to the Court's ever increasing workload, but it can indeed be useful in a number of situations, where there are systemic and structural problems existing at domestic level, which are at the root of lodging of large groups of repetitive applications with the Court. It might seem that the pilot-judgment procedure is a «magic solution» found by the Court for mass claims and repetitive applications lodged with it, however, even several years after introduction of this procedure and notwithstanding its successful results for certain States, it still remains to be seen how fully successful and effective the pilot-judgment procedure is [12]. In any case both the critics and advocates of the use of such procedure jointly underline that pilot-judgment procedure requires serious engagement of the State in the process of its enforcement. Delivery of such judgments requires not only political will on behalf of the State to enforce the judgment within a period of time indicated by the Court, as well as to ensure that it has necessary «logistics» for enforcement of the judgment, i.e. necessary legislative, administrative or financial means. According to some experts, the pilot-judgment procedure of the European Court of Human Rights is a necessary tool to refocus the Court's attention from the legal issues it has already decided to legal issues of higher importance. Thus, the repetitive cases pose a danger both to the Court and the Committee of Ministers in that they clog the activities of the Court and the Committee of Ministers and a pilot-judgment procedure allows to break through the ever-increasing workload, allowing for dialogue between the Court and the respondent State on the issues of compliance with the Convention, making this dialogue more transparent and systematic. Such a dialogue should be welcomed and maintained.

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Summary

Pushkar P.V. **Pilot judgment procedure before the European Court of Human Rights: compliance with the pilot judgments delivered by the European Court of Human Rights.** – Article.

Pilot-judgments of the European Court of Human Right are proposing an effective and important solution for repetitive cases pending before the European Court of Human Rights. The practice of adoption of these judgments, their number and legal procedures, established in the Rules of the Court, have grown and developed in the recent years, allowing State whether the procedure is well-functioning. While the procedure of pilot-judgments remains an important mean of dialogue on compliance with the Convention between the Court and the respondent State, the efficiency in their enforcement depends not only on the willingness, but also on ability of the State to comply with specific indications in such a pilot-judgment.

Keywords: European Court of Human Rights; pilot-judgment procedure; enforcement of a pilot-judgment; repetitive cases.

Анотація

Пушкар П.В. **Процедура пілотних рішень в практиці Європейського Суду з прав людини: до питання виконання пілотних рішень Європейського Суду з прав людини.** – Стаття.

Пілотні рішення Європейського Суду з прав людини розглядаються як ефективний та дієвий механізм вирішення проблеми навантаження Європейського Суду з прав людини з точки зору опрацювання справ, що стосуються повторюваних порушень Конвенції. Практика постановлення таких рішень, їх кількість та правова процедура, закріплена в Регламенті Суду, значно розвинулися за останні роки, надаючи можливість оцінити наскільки дієвою є процедура пілотних рішень. Однак, незважаючи на те, що процедура пілотних рішень залишається важливим елементом діалогу з питань дотримання Конвенції між Судом та державою-відповідачем, ефективність виконання таких рішень залежатиме не тільки від бажання, а й від реальних можливостей держави дотриматися вимог зазначених у такому пілотному рішенні.

Ключові слова: Європейський Суд з прав людини, процедура пілотних рішень, виконання пілотного рішення; справи, що стосуються повторюваних порушень.

Аннотация

Пушкар П.В. **Процедура пилотных решений в практике Европейского Суда по правам человека: к вопросу исполнения пилотных решений Европейского Суда по правам человека.** – Статья.

Пилотные решения Европейского Суда по правам человека рассматриваются как эффективный и действенный механизм разрешения проблемы нагрузки Европейского Суда по правам человека с точки зрения работы с делами, которые касаются повторяющихся нарушений Конвенции. Практика постановления таких решений, их количество и правовая процедура, закрепленная в Регламенте Суда, значительно изменились за последние годы, предоставляя возможность оценить насколько действенной является эта процедура. Однако, несмотря на то что процедура пилотных решений остается важным элементом диалога относительно соблюдения Конвенции осуществляющего между Судом и государством-ответчиком, эффективность исполнения таких решений будет зависеть не только от желания, но и реальных возможностей государства исполнить требования, изложенные в таком решении.

Ключевые слова: Европейский Суд по правам человека; процедура пилотных решений, исполнение пилотного решения; дела, касающиеся повторяющихся нарушений.