From Final Judgment to Final Resolution

Effectiveness of the Execution of Judgments of the European Court of Human Rights in Finland

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"Un arrêt de la Cour européenne des droits de l'homme
n'est pas une fin en soi:
il est la promesse d'un changement pour l'avenir,
le début d'un processus
qui doit permettre aux droits et libertés
d'entrer dans la voie de l'effectivité."

*Françoise Tulkens**

* See Tulkens, Françoise: L'exécution et les effets des arrêts de la Cour européenne des Droits de l'Homme. Le rôle du judiciaire, in Cour européenne des Droits de l'Homme: Dialogue entre juges, Conseil de l'Europe, Strasbourg 2006, pp. 9-18 (hereinafter Tulkens 2006), p. 12.

Abstract

This book focuses on the execution of the judgments of the European Court of Human Rights in Finland and especially on its effectiveness. By the end of January 2016, the Court delivered 138 judgments against Finland in which one or more violations of the Convention articles were found. The aim of this book is to study how these judgments have been executed by the Finnish authorities. Since the starting point for the execution of judgments is the Court's judgment, the book examines first the nature of the Court's judgments, their finality and binding force, and studies what kind of obligations flow from a final judgment of the Court under Articles 46 and 41 of the Convention. Then the execution procedure and its effectiveness before the Council of Europe organs as well as the domestic authorities are examined. The next two chapters of the book examine in detail all the individual and general measures taken in the Finnish cases and their effectiveness.

Methodologically the aim of this book is to find quantitative and qualitative empirical information on the execution of judgments in Finland by going through, in an analytical manner, all the above-mentioned 138 judgments rendered against Finland and to identify any sources of ineffectiveness in temporal and material senses. The effectiveness of the execution procedure is also examined. In addition to those 138 judgments, the research material consists of, *inter alia*, all final resolutions adopted in Finnish cases by the Committee of Ministers. The initial hypothesis was that the execution of judgments is fairly effective in Finland.

The study showed that in Finland the national execution procedure was not very bureaucratic and that it seemed to work well. Most of the procedural shortcomings identified at the European level did not exist in Finland, and the majority of the proposed new ideas for increasing the procedural effectiveness seemed to already be in use. The research revealed that the overall effectiveness of execution in Finland was therefore at a very advanced level compared to some other countries. However, in absolute terms, there still seemed to be room for some improvement, especially in the co-operation between the Committee of Ministers and the Finnish government.

When looking at the payment of just satisfaction and the taking of individual measures, the study showed that their execution was fairly effective in Finland, except in a few exceptional cases. In general the domestic authorities acted quickly and effectively when executing the Court's judgments as far as the payment of just satisfaction and the taking of individual measures were concerned. In these respects the execution could be qualified as effective both in the temporal and in the material sense. However, as far as reopening was

concerned, it appeared that the Supreme Court's interpretations did not always demonstrate the most effective attitude towards the execution of judgments. It could thus be deduced that there was still some reluctance on the part of the Supreme Court to actively give full effect to the Convention and the Court's case-law, especially in the context of reopening.

The study also revealed that although the taking of general measures in Finland was mostly – sometimes even extremely – effective, both in a temporal and a material sense, in some situations there were certain visible signs of reluctance to take execution measures. This manifested itself as a certain "wait and see" mentality, which was visible in particular in situations in which more proactive attitudes would have been required. However, most of the general measures were taken effectively in Finland. One of the best examples of the effectiveness of the Finnish execution of general measures was the execution of the *ne bis in idem* cases, in which the execution was done long before the first judgments against Finland were even rendered. On the other hand, the taking of general measures in the length of proceedings cases represented a group of cases in which the temporal and material effectiveness of the execution was at its lowest.

Key words: European Court of Human Rights, execution of judgments, effectiveness, Finland

Résumé

D'un arrêt définitif à une résolution finale – L'efficacité de l'exécution des arrêts de la Cour européenne des droits de l'homme en Finlande

Cette recherche porte sur l'exécution des arrêts de la Cour européenne des droits de l'homme en Finlande et surtout sur son efficacité. La Finlande a ratifié la Convention européenne des Droits de l'Homme le 10 mai 1990. De l'entrée en vigueur de la Convention en Finlande jusqu'à la fin janvier 2016, la Cour a rendu 138 jugements contre la Finlande par lesquels elle a constaté une ou plusieurs violations des articles de la Convention. L'objectif de cette recherche est d'étudier dans quelle mesure ces arrêts ont été exécutés par les autorités finlandaises. Puisque le point de départ de l'exécution est l'arrêt de la Cour, cette recherche commence par étudier la nature des arrêts de la Cour, les conditions dans lesquelles ils deviennent définitifs ainsi que la force et l'autorité de la chose jugée inhérente à ces arrêts. Les obligations découlant d'un arrêt définitif de la Cour en vertu des articles 46 and 41 de la Convention sont également étudiées. On continue par examiner les aspects procéduraux de l'exécution des arrêts et leur efficacité devant les organes du Conseil de l'Europe, tels que le Comité des ministres et l'Assemblée parlementaire, ainsi que devant les autorités nationales. Les deux chapitres principaux de cette recherche examinent en détail toutes les mesures individuelles et générales prises par les autorités finlandaises et l'efficacité de celles-ci.

Du point de vue méthodologique, l'objectif de cette recherche est de trouver des informations empiriques – aussi bien quantitative que qualitative – sur l'exécution des arrêts en Finlande en examinant, d'une manière analytique, les 138 jugements rendus contre la Finlande, et d'identifier les sources potentielles d'inefficacité. Le problème d'efficacité concerne d'abord l'efficacité temporale (quelle était la durée de la procédure nationale d'exécution) et l'efficacité matérielle (comment l'exécution a réussi matériellement). Ensuite, le problème d'efficacité (ou plutôt d'inefficacité) peut également se manifester au niveau des problèmes rencontrés par les autorités nationales dans l'exécution des certains arrêts. Par ailleurs, on examine également l'efficacité de la procédure nationale d'exécution. En plus des 138 jugements contre la Finlande, cette recherche a comme sources primaires, *inter alia*, toutes les résolutions finales adoptées dans les affaires finlandaises par le Comité des ministres. On a posé l'hypothèse initiale que l'exécution des arrêts de la Cour était assez efficace en Finlande.

Cette recherche montre qu'en Finlande la procédure nationale d'exécution n'est pas très bureaucratique et qu'elle semble bien fonctionner. La plupart d'imperfections procédurales identifiées au niveau européen n'existaient pas en Finlande. Par ailleurs, la majorité de nouvelles idées proposées pour augmenter

l'efficacité procédurale au niveau nationale paraît déjà être en usage en Finlande. Cette recherche montre que globalement l'efficacité d'exécution des arrêts de la Cour en Finlande est à un niveau très avancé par rapport aux autres pays. Cependant, en terme absolu, il existe encore quelques marges d'amélioration, surtout en ce qui concerne la coopération entre le Comité des ministres et le gouvernement finlandais.

Quant au paiement de la satisfaction équitable et la prise des mesures individuelles, la recherche démontre que l'exécution était assez efficace en Finlande, sauf dans quelques cas exceptionnels. En général, les autorités nationales agissent très vite et d'une manière efficace dans la mise en œuvre du paiement de la satisfaction équitable et de la prise de mesures individuelles suite aux arrêts de la Cour. En cas de problème, il existe des mécanismes par lesquels les autorités sont capables de rectifier rapidement les erreurs, comme par exemple dans le contexte du paiement de la satisfaction équitable. En général, à ce niveau-là, l'exécution des arrêts de la Cour peut être qualifiée comme efficace dans le sens temporel ainsi que dans le sens matériel. Cependant, en ce qui concerne la réouverture des procédures nationales, la recherche révèle qu'il n'y avait pas de dispositions *lex specialis* dans la législation finlandaise permettant la réouverture après un arrêt condamnatoire de la Cour. Même si les cours nationales suprêmes ont des moyens à leur disposition pour procéder à la réouverture des procédures nationales, il est parfois difficile de déceler dans l'interprétation de la Cour Suprême une attitude efficace vis-à-vis de l'exécution des arrêts de la Cour. On peut donc en déduire qu'il y a toujours quelques réticences de la part de la Cour Suprême de donner suite activement à la Convention et à la jurisprudence de la Cour, notamment dans le contexte de la réouverture des procédures nationales.

La recherche montre également que la prise des mesures générales par les autorités finlandaises est, dans le plus part des cas, efficace – parfois même extrêmement efficace – du point de vue temporel et matériel. Cependant, dans quelques situations la réticence de prendre des mesures d'exécution affiche des signes visibles. Ce phénomène se manifeste par une certaine mentalité « wait and see », notamment dans les situations où les mesures et attitudes plus proactives auraient été requises. Néanmoins, la plupart des mesures générales sont prises d'une manière efficace. Un des meilleurs exemples de l'efficacité de l'exécution des mesures générales en Finlande est l'exécution dans les affaires *ne bis in idem* pour lesquelles des mesures d'exécution ont été prises même bien avant que les premiers arrêts condamnatoires contre la Finlande soient rendus par la Cour. Ces affaires sont aussi un très bon exemple d'une combinaison efficace de la prise de mesures législatives et du changement de la jurisprudence. Par contre, les mesures générales prises dans les affaires concernant la durée excessive des procédures judiciaires nationales ne font pas preuve ni d'efficacité temporelle ni d'efficacité matérielle.

Au niveau européen, on accepte de plus en plus que le système de l'exécution des arrêts de la Cour souffre toujours des certaines imperfections concernant l'efficacité. L'augmentation du nombre et de la complexité des affaires devant les organes européens de supervision d'exécution des arrêts a mis en lumière le problème d'efficacité ces dernières années. Le système actuel a clairement atteint ses limites et des mesures sont requises pour augmenter son efficacité. Les dernières recommandations pour améliorer l'efficacité l'exécution des arrêts de la Cour ont été exprimées dans la Déclaration de Bruxelles en mars 2015.

Même si la situation est critique au niveau européen, on ne peut pas dire de même sur celle en Finlande. On constate que, en général, l'exécution des arrêts de la Cour est efficace dans la mesure où elle efface les imperfections nationales au point de ne laisser presque aucun travail pour la Cour. Tel semble être le cas actuel pour la Finlande.

Les mots clés : la Cour européenne des droits de l'homme, exécution des arrêts, efficacité, la Finlande

Preface

It is summer 1990, the same year when Finland ratified the European Convention on Human Rights. A young high school graduate is sitting on the pier of the family summer cottage on a surprisingly hot and beautiful summer's day and is trying to decide what she would like to do as an adult. Studying law would interest her but some of her friends think that law is boring. In order to decide for herself, she has borrowed a legal monography from the library to see whether it is boring or not. The book happened to be an introduction to constitutional law. Years later, having obtained all kinds of diplomas in her home country and elsewhere in the world, constitutional law is calling her again, this time in the form of the topic of an academic thesis. The circle has been closed.

During those 25 years that took me, that young graduate, to come to this point in my academic career, Finland quickly developed from being an apprentice to a master in human rights and celebrated in 2015 its 25th anniversary as a Contracting Party to the Convention. My personal contribution to the Convention system started in 2004 when I joined the Council of Europe, and it still continues. It was there where I first got in touch with the execution of the Court's judgments, a topic which was rather exotic for a Finnish lawyer. After several curves on the way and having met with Professor Elisabeth Lambert Abdelgawad, I decided to choose execution of judgments as the topic of my doctoral thesis. This book is based on that thesis. The views expressed in this book are strictly personal and do not represent the views of any of the Council of Europe organs.

My thesis project was extraordinary in the sense that it combined two universities, two legal domains and two different cultures. It was written as part of a double degree between the Universities of Helsinki and Strasbourg. For this reason some compromises were necessary when combining the respective academic requirements. Although these "double standards" occasionally created some confusion and misunderstandings, I feel extremely lucky to have been able to be a part of this double project and to benefit from the know-how of both my home universities. I am proud to be a part of the academic traditions of these excellent universities.

First of all, this study would not have been possible without my co-directors, Professor Elisabeth Lambert Abdelgawad from Strasbourg University and Professor Tuomas Ojanen from Helsinki University. They both provided me with valuable knowledge of their respective legal fields and were always very supportive. I would like to thank them both deeply for their efforts. I would also like to thank Professor Elina Pirjatanniemi and Dr Andrew Drzemczewski, who acted as preliminary examiners and who provided valuable comments on the

thesis. I thank them also for having acted as opponents in the public defence of my thesis.

A research project like this would not have been successful without proper access to information. I feel extremely privileged to have been able to enjoy such easy access to the Court's library, almost on a daily basis, and to use their collections. I am grateful for all the assistance provided by the library personnel who always tirelessly helped me with my numerous requests. I would also like to thank the staff of the library of the Finnish parliament, who assisted me by providing materials concerning the Finnish Constitution. Moreover, my special thanks go to the former Finnish Government Agent Arto Kosonen, who was always helpful in providing me with information on the Finnish execution system, a topic that almost nobody had touched upon in legal literature in Finland before. I'm also greatful Satu-Maarit Tarkkanen from the Supreme Administrative Court and to Fredrik Sundberg from the Execution Department for all their help I received. I would also like to thank Päivi Hirvelä, Finnish Supreme Court Justice and former Judge at the Court, for all your support and all the enthusiastic discussions we had here in Strasbourg.

I would not have been able to realise a book like this on my own. I would like to give my warmest thanks to Richard Savage for his excellent work as a language checker of my text. It was a great pleasure to work with you. I am also grateful to Willem-Jan van der Wolf and Wolf Legal Publishers for agreeing to publish this study and for all your flexibility in reaching this end in no time at all.

A research project like this is usually a project lasting for many years and it can effectively disturb one's private life. However, I have been extremely lucky also in this sense. I am thankful to my parents for their ever so supportive attitude and all encouragement they have given me during all the long years of research and drafting. However, my biggest and warmest thanks go to my spouse LL.D. Şerif Yilmaz, whose daily life my project profoundly influenced for many years. I thank you for all your love, patience and continuous support. This book is dedicated to you.

In sunny Strasbourg, in October 2017

Satu Heikkilä

Table of contents

List of tables

1. Introduction

The Council of Europe is the oldest organisation for intergovernmental co-operation in Europe.[1] The Convention for the Protection of Human Rights and Fundamental Freedoms (commonly known as the European Convention on Human Rights and hereinafter referred to as "the Convention")[2] establishes a pan-European human rights legal system which covers 47 member states and about 820 million Europeans.[3] This human rights system is based on the shared competences within the Council of Europe: it is the European Court of Human Rights (hereinafter "the Court") which renders binding judgments and the Committee of Ministers of the Council of Europe (hereinafter the Committee of Ministers) which supervises their execution. This convention system is based on the idea that both parts of the system – namely the Court and the Committee of Ministers – complement each other.[4]

The Convention was adopted in 1950 and it entered into force in 1953. It was clearly influenced by the Universal Declaration of Human Rights[5] adopted in 1948.[6] It is a "closed" convention which states can sign and ratify only if they have

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1 See Machińska, Hanna: The Significance of Co-operation between the Council of Europe and the European Union for Countries Preparing for Membership in the European Union, in Haller, Bruno – Krüger, Hans Christian – Petzold, Herbert (Eds.): Law in Greater Europe, Towards a Common Legal Area, Kluwer Law International, The Hague 2000, pp. 294-309 (hereinafter Machińska 2000), p. 294.

2 The Convention for the Protection of Human Rights and Fundamental Freedoms, adopted in Rome on 4 November 1950, entered into force on 3 September 1953, ETS No. 5.

3 See the internet site of the Council of Europe at the address http://hub.coe.int, under presentation, read on 30 June 2015. The Council of Europe covers all European countries, including the Russian Federation and Turkey, together with some countries which are sometimes classified geographically as non-European countries, such as Armenia, Azerbaijan and Georgia. Of the European states only Belarus and Vatican City State are not member states of the Council of Europe. The last country to accede to the Council of Europe was Montenegro in 2007.

4 Pierre-Henri Imbert calls this a "compulsory" relationship. See Imbert, Pierre-Henri: Complementarity of Mechanisms within the Council of Europe/Perspectives of the Directorate of Human Rights, Human Rights Law Journal, vol. 21, no. 8/2000, pp. 292-295 (hereinafter Imbert 2000), p. 293.

5 See the Universal Declaration of Human Rights, adopted by United Nations General Assembly Resolution A/RES/217 A (III) of 10 December 1948.

6 See Carrillo Salcedo, Juan Antonio: The Place of the European Convention in International Law, in Macdonald, R. St. J. – Matscher, F. – Petzold, H. (Eds.): The European System for the Protection of Human Rights, Kluwer Academic Publishers, Dordrecht 1993, pp. 15-24 (hereinafter Carrillo Salcedo 1993), p. 16.

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This study focuses on the execution of the judgments of the European Court of Human Rights in Finland and especially on its effectiveness. The Court has so far delivered 138 judgments against Finland in which one or more violations of the Convention articles were found.

The aim of this research is to study how these judgments have been executed by the Finnish authorities. Since the starting point for the execution of judgments is the Court's judgment, the study examines first the nature of the Court's judgments, their finality and binding force, and studies what kind of obligations flow from a final judgment of the Court under Articles 46 and 41 of the Convention. Then the execution procedure and its effectiveness before the Council of Europe organs as well as the domestic authorities are examined. The next two chapters of the research examine in detail all the individual and general measures taken in the Finnish cases and their effectiveness.

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