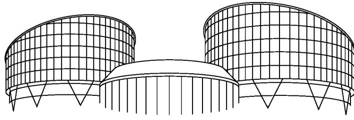

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Q&A – When the ECHR asks a State to take action under Article 46

Does the European Court ever make recommendations to States on how to implement a judgment?

If there is a judgment against a State, there are legal obligations such as a Government's having to pay damages or costs to an applicant. However, sometimes the Court goes further. Sometimes it will ask a State to take specific actions in the domestic context.

What sort of specific actions?

There are many possibilities. An example is that sometimes the Court might suggest that a State reopen proceedings in its domestic legal system where it finds that there has not been a fair trial, especially if the outcome remains very detrimental to the applicant. Similarly, it might insist that an individual be released from detention. These examples obviously only have implications for the case in question.

Sometimes however the Court will ask for more complex actions to be taken, such as changes in the domestic legal system or law, more training for or changes of policies of the police, improvements in prison conditions, broad-based compensation to be paid or changes in how compensation is addressed in property cases, and so forth. This often happens in cases where the Court sees structural or systemic problems in the country in question that it wants its Government to address.

Why does the Court ask for actions to be taken?

The Court asks States to take action primarily in order to generally improve the level of protection of human rights in the country concerned, and to reduce the number of violations of human rights there.

There is an additional consideration too, which is to see the domestic authorities resolve human-rights problems within the domestic legal system so as to spare potential applicants the burden of having to come to Strasbourg to seek justice, and to spare the Court the burden of a large number of repetitive cases on its docket.

Could you give a specific example?

There are examples across nearly every State in Europe concerning subjects as diverse as property rights, residence status following the wars in the former Yugoslavia, and non-enforcement of judgments.

A key example was the case of *Broniowski v. Poland* (no. 31444/96). This concerned inadequate compensation for property lost by individuals who had been transferred after the Second World War from territory that had previously belonged to Poland to the west of the new border on the Bug River, despite State guarantees to that effect. The Court found in favour of Mr Broniowski. However, it also saw that the number of potential applicants ran to at least 80,000 and that the relevant Polish legislation and legal practice was inadequate. With that in mind, it asked the Polish Government to take "appropriate legal and administrative measures, to secure the effective and expeditious

realisation of the entitlement in question in respect of the remaining Bug River claimants or to provide equivalent redress in lieu". The Court found Poland's introduction of new legislation and a compensation scheme effective, and Poland had therefore resolved a problem that would have led to the Court finding hundreds – and potentially thousands – of human-rights violations.

Another interesting example is that of *Rumpf v. Germany* (56344/06). This concerned a systemic problem (there were scores of applications at the time) in the German court system of delays in proceedings before the administrative courts which were leading to recurring delays or even denials of justice on a broader scale. Applicants in the German courts were unable to get compensation for these delays. The Court asked that Germany "introduce without delay, and at the latest within one year … an effective domestic remedy against excessively long court proceedings". Germany introduced new legislation to address both compensation and delays, which the Court later found to be successful in reducing systemic violations of the right to have one's case decided within a reasonable time.

Where do we see this in the judgment?

The Court makes its recommendations towards the end of the judgment under the heading Article 46 (binding force and enforcement of judgments).

What happens to these requests afterwards in the Court?

If the Court makes recommendations to the State, it can then adjourn other similar cases so as to give the Government time to make the changes necessary to address the situation. It can then redirect applications back to the national legal system once action has been taken.

What happens to these requests afterwards outside the Court?

There is a legal obligation on States (stemming from Article 46 § 1) to comply with the judgments of the Court, that is to say to stop the violation and compensate the individual involved. The Court's requests for actions to be taken carry real weight in that light.

The supervision of the enforcement of the judgments is carried out by the Committee of Ministers (the executive body of the Council of Europe) with the support of the Department for the Execution of Judgments of the European Court of Human Rights. This latter body is also available to give expert advice to member States on how best to enforce the judgments and eliminate the issues causing violations of human rights. They take the Court's recommendations into account.

The successes in enforcing judgments of the Court and implementing the changes requested by it have had a transformative impact on the lives of millions of Europeans.

There is also the very rarely used infringement procedure (Article 46 § 4) that the Committee of Ministers can use to get a State to comply with a judgment of the Court in the event its Government is unwilling.

Where can I read more about the Court requesting that States take specific actions?

Do read our Guide to Article 46 if you want to learn more about this procedure.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.