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The Role of Civil Society in the Execution of ECtHR Judgments

By Guest contributor | 13 May 2013 | Case Analysis, Legal Developments

By Victoria Prais

European Court of Human Rights (ECtHR) judgments can have a huge impact in Member States by highlighting systemic and serious problems in human rights protection. But what happens once the initial furor over an ECtHR judgment dies down? The implementation process is critical to the success of the ECtHR system.

The Committee of Ministers (CM) of the Council of Europe is charged with supervising the implementation of ECtHR judgments under Article 46 of the Convention. In *Papamichalopoulos v Greece* ([34]) the ECtHR expanded the obligation, maintaining that while Member States have an obligation to end the breach and make reparations, Member States are 'free to choose the means whereby they will comply'.

This principle establishes that Member States are primarily responsible for ensuring the protection of human rights and the ECtHR should only intervene if a member state fails in that regard.

Moreover, rule 9 of the rules of the CM allows for civil society engagement in the implementation of ECtHR judgments, particularly in respect to 'general measures' that seek to redress systematic reasons for the Member State's breach. Civil society is becoming more involved in the execution of ECtHR judgments. The Department for the Execution of Judgments of the ECtHR has received a steady stream of rule 9 submissions from NGO's, National Ombudsmen and other national human rights organisations. Civil society organizations (CSOs) have also provided critical "shadow reports" to the CM about the situation on the ground in various countries.

However, as a lawyer at the Department managing cases from the UK, Ireland & Cyprus, I saw mixed levels of civil society engagement. In *Hirst v United Kingdom* (prisoner voting) and *McKerr v United Kingdom* CSOs have been actively engaged and have filed Rule 9 submissions.

The case of *A, B & C v Ireland* offers another positive example of CSO engagement. The case involved three applicants, all of whom had crisis pregnancies, and challenged Ireland's restrictive abortion regulations. In December 2010, the Grand Chamber of the Court unanimously held that Ireland's failure to implement abortion legislation in spite of existing case law constituted an Article 8 violation. The Court highlighted particular issues that needed to be addressed.

In this case, CSOs have acted as a 'critical friend' throughout the implementation process and have, on occasion, been strident in their criticism of the government's proposed measures. They critiqued the government's initial Action Plan. They criticized the lack of interim measures to give effect to the judgment, and the general delay in implementation of the judgment. In one submission, an NGO provided detailed recommendations for legislation and guidelines to meet the terms of the judgment.

However, the case of *Rantsev v Cyprus/Russia* provides a stark contrast to these examples of positive CSO engagement. The case concerned the trafficking of the applicant's daughter, a young woman who arrived on an "artistes" visa from Russia to Cyprus where she then died. The Court found Cypriot authorities failed to conduct an effective investigation into the death, that Cypriot authorities had failed in their positive obligation to create an appropriate framework to combat trafficking and also that police failed to protect the young woman. The Court found that Russian authorities failed to effectively investigate the recruitment of the applicant's daughter in Russia.

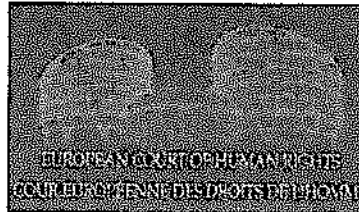
The paucity of civil society engagement on the case is noteworthy; there were no Rule 9 submissions on general measures. CSOs could have provided "shadow" reports with relevant statistics or analysed the effectiveness of the current legislative framework on trafficking. There was no independent analysis of how authorities dealt with trafficking victims in Cyprus and whether operational staff were suitably trained.

It is difficult to explain civil society's silence in some cases and active engagement in others. There may be a lack of CSO knowledge on how they can be practically involved in the execution of ECtHR judgments. Civil society may also be more developed and confident in certain countries than others. Alternatively, some CSOs may see little value in engaging on repetitive cases whereas they could actually play a vital role.

That said, progress has been made in making civil society a partner in the execution process, and the relationship continues to grow and flourish. It may take time to get "buy in" from certain quarters, but there is certainly CSO will to be involved in the process.




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This blog is largely based on an article by Lucia Miara and Victoria Prais in the European Human Rights Law Review.



Civil society is a necessary partner in the implementation of ECtHR judgments

"The Role of Civil Society in the Execution of Judgments of the European Court of Human Rights", Issue 5, 2012 pp 528-537.

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