The Effectiveness of the Enforcement Mechanism of the ECHR: A Critical Overview

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AİHS İnfaz Mekanizmasının Etkililiği: Eleştirel Bir Bakış

ÖZ

Kararların etkili biçimde infazı, Avrupa İnsan Hakları Sözleşmesi'nin işleyişi bakımından yaşamsal önem taşır. Avrupa İnsan Hakları Mahkemesi'nin kararlarını davalı devletler infaz eder ve onların kararları yerine getirip getirmediğini Bakanlar Komitesi denetler. Her ne kadar tüm kararların yerine getirilmesini sağlayan kusursuz bir infaz mekanizması hiçbir zaman elde edilmeyebilir ise de mevcut mekanizma, var olan birtakım eksikliklere gerçekçi çözümler getirilerek kayda değer biçimde daha iyi hale getirilebilir. Bu bağlamda değinilmesi gereken başlıca hususlar arasında siyasal kaygıların denetim sürecine aşırı müdahalesi, kararın yerine getirilmediği durumlarında harekete geçilmesinin istisnailiği, ihlal prosedürü başlatılmasında ve olası yaptırımların uygulanmasında hukuki öngörülebilirlik olmayışı ve ihlalin yinelenmesini engelleyecek önlemlerin yetersizliği bulunmaktadır. Çözüm önerileri; kararların yerine getirilip getirilmediğinin denetlenmesine yardımcı olup çoğunlukçu olmayan kurumların bağımsızlığını ve etkili katılımını güçlendirmeye, denetim sürecinin olağan ve standart hale getirilmesine ve davalı devletleri ihlali yinelemekten caydıracak usuli güvenceler konmasına odaklanmaktadır.

Anahtar Kelimeler: Avrupa İnsan Hakları Sözleşmesi, Avrupa İnsan Hakları Mahkemesi, kararların infazı, yerine getirmeme, ihlal prosedürü

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ABSTRACT

Effective enforcement of judgments is vital for the functioning of the European Convention of Human Rights. Respondent states enforce the judgments of the European Court of Human Rights, and the Committee of Ministers supervises their compliance. Though a perfect enforcement mechanism that ensures compliance with all judgments may never be achieved, the current mechanism may be made considerably more effective with realistic solutions to some of its existing deficiencies. The key issues to be addressed in this context include the excessive interference of political concerns in the supervision process, the exceptional nature of actionability in cases of non-compliance, the lack of legal foreseeability in initiating infringement procedures and applying potential sanctions, and the insufficiency of measures to prevent the recurrence of a violation. The recommended solutions to the identified problems focus on strengthening the independence and effective participation of non-majoritarian institutions assisting with the supervision of compliance with judgments, normalizing and standardizing the supervision process, and introducing procedural guarantees to deter respondent states from repeating a violation.

Keywords: European Convention on Human Rights, European Court of Human Rights, enforcement of judgments, non-compliance, infringement procedure

INTRODUCTION

Enforcement of judgments of the European Court of Human Rights (Court) is often overlooked, as findings of violation often hold more significance in the eyes of the public than the individual consequences of such decisions. A judgment concerns whether a state is accountable for violating fundamental rights, whereas the enforcement of a judgment concerns holding the respondent state accountable indeed. Without an effective enforcement process, fundamental rights enshrined in the European Convention on Human Rights (ECHR) would merely remain as letters on paper. The effectiveness of the enforcement of the Court's judgments is crucial in the very functioning of the human rights protection mechanism set forth in the ECHR.

This paper starts by briefly explaining the existing procedure for enforcing the judgments of the Court, then discusses two questions related to enhancing the effectiveness of the enforcement mechanism: first, if it is possible at all, then—if the answer is positive—how it is possible. The paper resorts to theoretical analysis to revisit the provisions of the ECHR regarding the enforcement of the Court's judgments. In so doing, it proposes solutions to address certain deficiencies within the current enforcement mechanism. Lastly, it summarizes the answers to the research questions along with concluding remarks.

I. ENFORCEMENT OF JUDGMENTS ACCORDING TO THE ECHR

The primary enforcers of the Court's judgments are the member states themselves, as it is primarily the responsibility of member states to secure the fundamental rights provided in the ECHR.[1] This is an inevitable consequence of its subsidiary character and the fact that the Court lacks its own law enforcement. Moreover, all member states of the Council of Europe (Council) are under an obligation to abide by the Court's

[1] Steven Greer, *The European Convention on Human Rights: Achievements, Problems, Prospects* (Cambridge University Press, 2006), 216.

judgments.[2] However, it would be too naïve to expect the member states to comply with every judgment simply because the ECHR demands so. Just as one cannot expect a convict to voluntarily surrender to the nearest prison after the verdict of a criminal court, or a debtor to willingly pay the compensation ordered in the decision of a civil court—even if those are the cases—the ECHR cannot rely solely on the unilateral declaration made by the state in violation to abide by the judgments. That is why the Committee of Ministers (Committee) is entrusted with the duty and authority to supervise the enforcement of judgments.[3]

The enforcement mechanism is stipulated in Article 46 of the ECHR, according to which the Committee may refer a case to the Court by a two-thirds majority if it is of the opinion that a judgment needs further clarification or that the respondent state has failed to fulfill its obligation to comply with a judgment. The latter is called an infringement proceeding, which is only brought in "exceptional circumstances".[4] If the Court finds a violation in this regard, it refers the case back to the Committee, which may then consider taking measures against the state in violation. The measures are determined by the Committee as a separate organ of the Council and are not expressly stipulated in the ECHR.[5] Practically, they are of a political nature and aim at creating peer pressure for the

[2] Geranne Lautenbach, *The Concept of the Rule of Law and the European Court of Human Rights* (Oxford University Press, 2013), 12.

[3] Başak Çalı and Anne Koch, "Foxes Guarding the Foxes? The Peer Review of Human Rights Judgments by the Committee of Ministers of the Council of Europe," *Human Rights Law Review* 14, no. 2 (2014): 308, https://doi.org/10.1093/hrlr/ngu007.

[4] Committee of Ministers of the Council of Europe, *Rules of the Committee of Ministers for the Supervision of the Execution of Judgments and of the Terms of Friendly Settlements*, adopted May 10, 2006, amended January 18, 2017), rule 11, para. 2, https://rm.coe.int/16806eebf0.

[5] Riccardo Pisillo Mazzeschi, *International Human Rights Law: Theory and Practice* (Springer, 2021), 216.

respondent state to enforce a judgment.[6] The most severe measures within the Committee's competence include suspension of the voting rights of the relevant state in the Council or even exclusion from the Council.[7]

II. A BETTER ENFORCEMENT MECHANISM: IS IT POSSIBLE?

There have been prior proposals to elevate the long-term effectiveness of the Court that led to the adoption of Protocol No. 14 amending, *inter alia*, Article 46 of the ECHR, which empowers the Committee to supervise the enforcement of the Court's judgments.[8] The Protocol was adopted in 2004 and entered into force in 2010. According to the amended provision that is still in force, it is within the Committee's discretion to initiate an infringement procedure in cases of non-compliance. The Committee has opted to initiate an infringement procedure twice since the time it was introduced.[9] That said, we are far from concluding that the rest of the judgments have been duly implemented. On the contrary, a considerable portion of the judgments rendered by the Court has not been fully complied with.[10] This may raise doubts as to whether it is possible to better the effectiveness of the enforcement of judgments.

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[6] Fiona de Londras and Kanstantsin Dzehtsiarou, "Mission Impossible? Addressing Non-Execution Through Infringement Proceedings in the European Court of Human Rights," *The International and Comparative Law Quarterly* 66, no. 2 (2017): 485, 489-90, https://doi.org/10.1017/S002058931700001X.

[7] David J. Harris et al., *Law of the European Convention on Human Rights* (Oxford University Press, 2009), 883.

[8] Costas Paraskeva, "Reforming the European Court of Human Rights: An Ongoing Challenge," *Nordic Journal of International Law* 76, no. 2-3 (2007): 205-06, https://doi.org/10.1163/090273507X225747.

[9] Başak Çalı, "The Present and the Future of Infringement Proceedings: Lessons learned from Kavala v Türkiye," *European Human Rights Law Review*, no. 2 (2023): 159, http://dx.doi.org/10.2139/ssrn.4424579.

[10] Andreas von Staden, *Strategies of Compliance with the European Court of Human Rights: Rational Choice Within Normative Constraints* (University of Pennsylvania Press, 2018), 5.

The problems faced by the Court evolve and ramify as new rights emerge and new dimensions are included in the existing catalog of human rights with each passing day. Therefore, the Court's interpretation of the ECHR is open to change.[11] There may not be—and perhaps will never be—a perpetually perfect enforcement mechanism. This, however, does not necessarily prevent us from seeking solutions to improve the status quo. The question of whether the enforcement mechanism may be made more effective is doomed to remain without an answer unless the system's flaws are determined accurately, and concrete steps are taken to resolve them. Any potential solution is only as achievable as how much the member states of the Council wish and allocate resources for it.

What is certain for the moment is that Europe does not have a second international human rights instrument as effective as the ECHR based on its binding character, established institutions, and prevalence.[12] It is thus an indispensable part of the European human rights framework. The enforcement mechanism of the ECHR is impeded by certain observable problems that are not impossible to overcome. It would be utopian to seek an ideal enforcement mechanism that is free from all defects. Therefore, aiming for the better rather than the best would be a realistic approach in this context. Revealing and addressing the roots of major impediments within the current mechanism on a theoretical basis may lead to applicable solutions.

III. A BETTER ENFORCEMENT MECHANISM: HOW IS IT POSSIBLE?

A dilemma relating to enforcing the Court's judgments is that the

[11] George Letsas, "The ECHR as a Living Instrument: Its Meaning and Legitimacy," in *Constituting Europe: The European Court of Human Rights in a National, European and Global Context*, ed. Andreas Føllesdal, Birgit Peters and Geir Ulfstein (Cambridge University Press, 2013), 139.

[12] Henry Lovat and Yuval Shany, "The European Court of Human Rights," in *Assessing the Effectiveness of International Courts*, Yuval Shany (Oxford University Press, 2014), 253-54.

compliance rates are usually higher in relatively more liberal democracies where fewer human rights violations occur.[13] The societies of such countries are relatively more welcoming towards concepts that may be found outrageous or controversial in other places. Correspondingly, their governments are under less pressure while enforcing progressive judgments of the Court, knowing they might face reactions from a narrower portion of the population. This indicates that the enforcement process is intertwined with the internal political dynamics of the member states.

The simplest way to ensure a more effective enforcement process is to have a government that would not refrain from enforcing the judgments, thus a people that would not make their elected policymakers refrain from enforcing the judgments. However, not only is this a question of politics, but also an unrealistic expectation to have for all the states under the Court's jurisdiction. Furthermore, even if that were the case, systemic deficiencies at the international level could still hinder the effective enforcement of judgments. The following is a critical overview of such systemic deficiencies within the enforcement mechanism of the ECHR and a discussion of potential solutions to increase its effectiveness from a legal standpoint.

A. COUNTERBALANCING THE POLITICAL CONSTRAINTS

The Court is inherently a counter-majoritarian institution, but the enforcement of its judgments is supervised by the Committee, which is a majoritarian institution. The Committee consists of the foreign affairs ministers of each member state. Besides its regular meetings, the executive tasks of the Committee are carried out by career diplomats who uphold the policies of their respective governments.[14] The judges, on the other hand, ought to apply and interpret the ECHR as it is, without reflecting any governmental policy. In most cases, the mandate of the Court requires it to

[13] Eric Posner, *The Twilight of Human Rights Law* (Oxford University Press, 2014), 48-49; von Staden, *Strategies of Compliance*, 25-26.

[14] Harris et al., *Law of the European Convention on Human Rights*, 871.

render decisions in contrast with the expectations of large masses, whereas the governments of respondent states often feel in need of considering the political consequences of enforcing those decisions, as they rely on popular support. The main concerns differ during the judgment and enforcement processes.

Despite being assisted by legal professionals, the Committee is a political body after all, and its motive in initiating or not initiating an infringement procedure may depend on political grounds rather than a feeling of justice.[15] As a safeguard against the overpoliticization of the Committee's decision-making, the Department for the Execution of Judgments of the European Court of Human Rights (Department) has been included in the supervision process.[16] This distribution of tasks was not set forth in the ECHR but was unilaterally decided by the Committee itself.[17] The Department submits legal recommendations to the Committee before the final decision is made.[18] The Committee's discussions on compliance with judgments mostly revolve around the Department's findings.[19] Although it is eventually the Committee that decides on the result, the Committee hardly ever disregards the Department's recommendations.[20] The increasing involvement of the Department in the supervision process diminishes the dominance of politics in the enforcement mechanism.[21]

The political character of the Committee is a component of the checks and balances within the ECHR system and thus should not be entirely

[15] Posner, *Twilight of Human Rights Law*, 51.

[16] Çalı and Koch, "Foxes Guarding the Foxes?" 304.

[17] Çalı and Koch, "Foxes Guarding the Foxes?" 313-14.

[18] Von Staden, *Strategies of Compliance*, 19-20.

[19] Çalı and Koch, "Foxes Guarding the Foxes?" 317.

[20] Von Staden, *Strategies of Compliance*, 19-20.

[21] Çalı and Koch, "Foxes Guarding the Foxes?" 314.

replaced by the legal mandate of the Court.[22] However, the fact that the Department's involvement in the enforcement mechanism is not stipulated in the ECHR creates an imbalance in favor of political constraints. Since the competencies of the Department are delegated by the Committee, they may be revoked at any time just as they were bestowed.[23] This power dynamic hangs over the Department like a sword of Damocles, as the phrase goes, and potentially delimits the elbow room for its legal deliberations. The inclusion of the Department's counterbalancing role in the ECHR through an additional protocol would serve as a measure against the overpoliticization of the supervision process, which could otherwise hinder the effective enforcement of judgments.

B. STANDARDIZATION OF THE INFRINGEMENT PROCEDURE

In its prenatal steps, it was suggested that the Court would be capable of directly repealing national laws in case they contradict the ECHR, but this idea was initially widely rejected, leaving just satisfaction as the sole measure.[24] The Court later adopted in its case law other sorts of measures that do not involve payment of a monetary sum, some of which are individual measures, e.g., ordering the release of a suspect under arrest, and some of which are general measures, e.g., asking the respondent state to make changes in its legislation.[25] Respondent states may view such judgments, especially those that include a general measure to address systematic violations, rendered by foreign judges sitting in Strasbourg

[22] Björnstjern Baade, "The ECtHR's Role as a Guardian of Discourse: Safeguarding a Decision-Making Process Based on Well-Established Standards, Practical Rationality, and Facts," *Leiden Journal of International Law* 31, no. 2 (2018): 361, https://doi.org/10.1017/S0922156518000110.

[23] Çalı and Koch, "Foxes Guarding the Foxes?" 323-24.

[24] Von Staden, *Strategies of Compliance*, 13.

[25] Valerio Colandrea, "On the Power of the European Court of Human Rights to Order Specific Non-Monetary Measures: Some Remarks in Light of the Assanidze, Broniowski and Sejdovic Cases," *Human Rights Law Review* 7, no. 2 (2007): 397-98, https://doi.org/10.1093/hrlr/ngm011.

as an interference with their sovereignty and use this as a political excuse to prolong the enforcement of a judgment or to not enforce it at all. Irrespective of how accurate or inaccurate these criticisms are, it is ultimately the Court that decides on the measures to be taken in case of a violation, and enforcing a judgment is not a matter of choice for the respondent state from a legal standpoint.

The absence of enforced sanctions for non-compliance potentially encourages states to ignore the judgments that they are not satisfied with. This risk is furthered by the fact that the Committee is usually reluctant to initiate infringement procedures and to apply measures against states in violation despite the prevalence of non-compliance.[26] This problem stems from the fact that the Committee limits itself to exceptional circumstances to resort to its powers stipulated in Article 46 of the ECHR. Considering that Article 46 of the ECHR states that cases of non-compliance *may*—and not *shall*—be referred to the Court, the Committee is granted discretion over whether to initiate an infringement procedure. As a result, perhaps due to economic or political concerns, most instances of non-compliance remain unsanctioned, which ultimately leads to the idea that some human rights violations may be tolerated. In an ideal system, infringement procedures would be the ordinary response to non-compliance. Infringement procedures should not be limited to exceptional circumstances if a more effective enforcement mechanism is to ever be achieved.

C. A SEPARATE TREATY REGARDING THE ENFORCEMENT

The immense number of applications before the Court reflects negatively upon the Committee with respect to the supervision of the enforcement of judgments. The Committee is able to review only a small portion of the judgments scheduled for each of its sessions due to its workload.[27] In addition, the supervision of a judgment is not a one-time activity,

[26] De Londras and Dzehtsiarou, "Mission Impossible?" 483.

[27] Steven Greer, "Europe," in *International Human Rights Law*, ed. Daniel Moeckli, Sangeeta Shah and Sandesh Sivakumaran (Oxford University Press 2014), 434.

and the duration of the whole procedure depends on the complexity of the judgment and the type of measures taken therein. A state's ability to fully enforce a judgment, especially those in which the violation results from systemic failures, may require lengthy and complicated bureaucratic processes before competent national authorities.[28] For these reasons, it may take years for the Committee to be satisfied that a judgment has been enforced.[29] Although the workload problem of the Court and possible solutions for its reduction are beyond the scope of this paper, it may be said that a binding set of rules regarding the enforcement of judgments of the Court at the national level would provide certainty, which would subsequently accelerate the enforcement process.

In most cases, implementing a piece of legislation or amending an existing one in accordance with a judgment by the Court requires an allocation of resources by the relevant state. An amelioration in one field may cause a lack of funds in another field, paving the way for other but further violations.[30] Therefore, the judgments of the Court usually do not contain thorough wording as to how the judgment is to be enforced by the respondent state. Likewise, there is not a single textbook guideline clarifying the steps to be taken upon a judgment, as this would concern domestic administrative and financial affairs. The Court is attentive in its jurisprudence not to intervene in that field. Although it is reasonable for the Court as a judicial body to refrain from allocating resources on behalf of a state, the member states themselves may in fact decide on this matter collectively. The current system set up by the ECHR enables unity among member states of the Council in judicial determination of whether a protected right has been violated, but it lacks a similar unity

[28] Greer, "Europe," 434.

[29] Greer, "Europe," 434.

[30] Posner, *Twilight of Human Rights Law*, 72.

with regard to enforcement upon a finding of violation.[31] The Committee has a duty to supervise the enforcement of judgments, but a sufficiently effective supervision procedure cannot be expected when the means and methods of enforcing the judgments are not always clear. As an analogy, each codification in national laws is accompanied by a separate piece of legislation on its enforcement or execution, which prescribes rules and procedures for the implementation of judgments and provides sanctions and legal remedies in cases of non-compliance. A similar system may be implemented to get rid of the ambiguity in enforcing the judgments of the Court.

D. ADDRESSING THE "HIDDEN" NON-COMPLIANCE

The amounts of compensation ordered by the Court are notoriously insignificant compared to the magnitude of violations, which may—and in fact does—allow some states to continue the violation despite seemingly abiding by the judgment by paying the ordered compensation.[32] This creates a hidden sort of non-compliance, the negligence of which may affect the effectiveness of the enforcement mechanism of the ECHR. In practice, the Court asks for documentation of each specific material damage incurred by applicants. This constitutes an almost unsurmountable standard of proof, especially in cases where there are convincing indications that the victim has suffered material damages, but specifying the exact amount or further documentation thereof is beyond the victim's ability or capacity. The Court is parsimonious in compensating moral damages resulting from violations as well, even in the most serious cases.[33] While compensating the victim of a violation, the Court should lower the standard of proof sought for material damages and should not enchain itself with low amounts of compensation for moral damages that do not

[31] Alon Harel, "The Tension Between the National and ECHR Human Rights Adjudication: A Normative Account," *Human Rights Law Review* 24, no. 1 (March 2024): 9, https://doi.org/10.1093/hrlr/ngad033.

[32] Posner, *Twilight of Human Rights Law*, 72.

[33] Posner, *Twilight of Human Rights Law*, 49.

correspond to the severity of violations.

Upon a recommendation by the Committee in 2004,[34] the Court introduced the pilot judgment procedure in cases of systemic violations that may hinder the functioning of the entire ECHR system.[35] In this procedure, the Court delivers its judgment in a selected pilot case and adjourns other cases resulting from the same systemic deficiency until the respondent state enforces the general measure ruled by the Court.[36] Similarly, while supervising the enforcement of a judgment, the Committee should take into account whether the same violation has been repeated, or whether similar violations have occurred in the relevant state as of the date of the judgment. If the relevant state seemingly abides by a judgment, but there are reasonable grounds that it continues the same violation on a systemic scale, the Committee should be able to treat it as an infringement. However, this alone would not guarantee that no respondent state can *purchase* violations, i.e., insist on a violation by bearing its pecuniary consequences.

The Court's rulings in cases of violation, especially those that are repeated, should not only be compensatory but also deterring. The possibility of awarding punitive damages, which is in addition to the damage actually incurred, comes into question here. This concept stemming from the common law tradition is alien to and is thus rarely seen in most European private laws.[37] In the civil law tradition, compensation as the sanction

[34] Committee of Ministers of the Council of Europe, *Recommendation Rec(2004)6 of the Committee of Ministers to Member States on the Improvement of Domestic Remedies*, adopted May 12, 2004, https://rm.coe.int/16805dd18e.

[35] Markus Fyrnys, "Expanding Competences by Judicial Lawmaking: The Pilot Judgment Procedure of the European Court of Human Rights," *German Law Journal* 12, no. 5 (2011): 1240-41, https://doi.org/10.1017/S2071832200017284.

[36] Fyrnys, "Pilot Judgment Procedure," 1239.

[37] Maria Veronica Saladino, "The Enforcement of Punitive Damages Awards Between United States and Europe: An Introduction for U.S. Practitioners," *The International*

for a tort is usually limited to actual losses.[38] Although the liability of a state from violating a human right that is stipulated in the ECHR technically differs from the tortuous liability in domestic private laws, the Court adopts the same approach when determining a just satisfaction.[39] Despite the scholarly argument that it is within the Court's mandate to award punitive damages for gross or repeated human rights violations,[40] the ECHR and its additional protocols lack a normative legal ground supporting that conclusion. Within the context of international law, there is also no sufficient state practice or *opinio juris* to justify the awarding of punitive damages for human rights violations in the absence of a binding international treaty that allows so. Therefore, a separate protocol that enables awarding gradually increasing punitive damages is necessary to deter respondent states from repeatedly failing to enforce an individual or general measure ordered by the Court.

CONCLUSION

Effective enforcement of the Court's judgments stands at the core of the effectiveness of the ECHR system as a whole. The ECHR is currently an indispensable safeguard for human rights protection in Europe, and thus, it is vitally important to identify and propose solutions to the problems within its enforcement mechanism. For practical purposes, this paper prefers addressing the deficiencies in the enforcement mechanism instead

Lawyer 52, no. 3 (2019): 475, http://dx.doi.org/10.2139/ssrn.3510339.

[38] Immaterial—or moral—damages cannot be calculated as precisely as material damages. However, the overall amount awarded for moral damages in the civil law tradition is still expected to be reparatory and should not punish the tortfeasor nor enrich the injured party.

[39] European Court of Human Rights, *Rules of Court*, April 28, 2025, 74, https://www.echr.coe.int/documents/d/echr/rules_court_eng.

[40] Paulo Pinto de Albuquerque and Anne van Aaken, "Punitive Damages in Strasbourg," in *The European Convention on Human Rights and General International Law*, ed. Anne van Aaken and Iulia Motoc (Oxford University Press, 2018), 246.

of rebuilding it from the ground up. The primary impediments to effective enforcement include the predominantly majoritarian character of the supervision process, the exceptionality of infringement procedures, the inconsistency of responses to non-compliance with the Court's judgments, and the insufficiency of just satisfactions ordered by the Court.

Due to the subsidiarity of the ECHR system, the involvement of politics in the enforcement mechanism cannot be avoided. This fact, however, does not justify any case of non-compliance with a judgment. Among the judgments of the Court, those that depend the most on procedural safeguards to be effectively enforced are usually the ones that confront the majority's opinion. Although the Department consisting of legal experts has played an undeniable role in diminishing the politicization of the supervision process, its existence still relies upon a unilateral decision by the Committee, which is a majoritarian institution. Instead, the Department's competence and duties should be stipulated in an additional protocol. This would solidify the legitimacy of the Department's inclusion in the enforcement mechanism as well as its independence from the Committee.

The Committee adopts a self-limiting approach by initiating infringement procedures only in exceptional circumstances. The exceptionality of infringement should be agreed upon by at least a two-thirds majority to be referred to the Court. This tacitly indicates that non-compliance with the Court's judgments is negligible as a rule. The Committee does not define or describe the exceptional grounds for initiating an infringement procedure either. The Committee's discretion in this regard is so wide and vague that it is prone to lead to arbitrariness in practice. The Court does not consider a judgment's political significance in the finding of a violation, while the Committee unilaterally seeks such a criterion to act upon cases of non-compliance. This discrepancy only encourages respondent states not to enforce the Court's judgments. The reason that a judgment has not been enforced should be sufficient alone for the initiation of an infringement procedure, without any other procedural

obstacles or political considerations.

Once an infringement procedure is initiated and the Court establishes that a judgment has not been complied with, the Committee may or may not choose to apply a sanction. Moreover, although the range of potential sanctions is predictable, no legal instrument prescribes which specific sanctions apply in particular cases of non-compliance. Therefore, the sanction for not enforcing a judgment is unforeseeable, which not only harms the binding character of judgments but also evidently creates arbitrariness. A separate convention or an amendatory additional protocol standardizing the means and methods of enforcing the Court's judgments and setting foreseeable sanctions for its breach should accompany the ECHR.

This paper considers instances in which a respondent state insists on a violation by not preventing its repetition despite paying relatively insignificant amounts of compensation for the damages individual applicants incur as a hidden deficiency within the ECHR's enforcement mechanism. The pilot judgment procedure partially constitutes a relief for systemic violations, but as long as the procedural difficulties for applicants to prove their material damage stand and the Court continues to order minimal amounts of compensation for moral damages, respondent states will remain less likely to enforce the judgments in a way that prevents repeating the same violation. A solution might be the introduction of punitive damages that gradually increase in each failure by a respondent state to prevent a violation on a systemic scale.

None of the suggestions above is intended to permanently solve all the deficiencies within the ECHR's enforcement mechanism. A quest to design a *perfect* mechanism would be in vain due to the dynamic character of human rights law. However, this should not deter us from addressing the current impediments to the effective enforcement of the Court's judgments. The ECHR is a crucial achievement for human rights protection and deserves sincere contributions to improve the effectiveness

of its enforcement mechanism. Therefore, constant and more research into the potential causes of and solutions to non-compliance with the Court's judgments is needed.

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