

**EXPERT REMARKS**

**DEBATE ON ENFORCEMENT OF PAYMENTS AWARDED BY EUROPEAN COURT OF HUMAN RIGHTS AGAINST RUSSIAN FEDERATION, PACE SUBCOMMITTEE ON IMPLEMENTATION OF ECtHR JUDGMENTS ON 5 JULY 2024**

Thank you, Chairman, members of the Sub-Committee.

I am a Professor of Human Rights and International Law at University College London and a co-Director of its Institute for Human Rights. I have been working on just satisfaction before the European Court of Human Rights since 2016 and for the past eight years I have led a project on the execution of judgments of the European Court of Human Rights.

In my remarks, I will focus on options for the enforcement of compensation awards in the context of judgments against the Russian Federation. Since 2022, when Russia was expelled from the Council of Europe, there are now 1400 individual cases in which the ECtHR has ruled against Russia and in which compensation amounts remains to be paid to the victims. These total 2.75 billion euros for individual claims, including the Yukos case (which was 2.2 billion) and 151 million for the interstate case brought by Georgia. In addition to these, we also have 7500 applications that are pending and awaiting trial.

The Council of Europe usually allows states to decide on a voluntary basis when and how they will enforce decisions of the Court. The Committee of Ministers' job is then to supervise and monitor this process. But the fact that Russia is no longer a member-state makes the available routes complicated. Therefore, we have to explore other options for enforcing these awards against Russia.

(This question fits within the broader debate about seizure and confiscation of Russian assets. Thus far this debate has concentrated on securing funds for Ukraine to fight the war or the establishment of a mechanism that would disburse these assets in the context of war reparations and rebuilding of Ukraine. My comments today concern the more limited and separate question of potentially using these assets to enforce compensation awards rendered by the European Court of Human Rights.)

In this talk, I would first like to map out three ways in which enforcement can be sought – these include existing routes within the Council of Europe; making a claim in domestic courts; or the creation of a new international mechanisms that could be responsible for disbursement of such awards. Second, I will highlight the problems connected to making these claims. Third, I will address what the Parliamentary Assembly can do to help in these efforts.

The first point: mapping out the different options*a) The first option relates to the existing routes within the Council of Europe*

The Convention foresees the option of the Committee of Ministers starting infringement proceedings against a Party. This requires that the Party is served with a formal notice and a decision adopted by a majority of 2/3 of representatives. Given the Russian Federation is no longer a party, there is a question whether infringement proceedings can be triggered in the first place, even if they would relate to those decisions in relation to which Russia was a party. The Committee of Ministers could seek an opinion from the Legal Department, but it could also to turn the issue to the Court, leaving it to decide whether the Convention allows for such a process in relation to a former party. This option would give the Court an opportunity to clarify the scope of the obligations that member states have.

The other option that could be considered is seeking interim measures in response to large pending interstate cases – such as Ukraine v Russia – in which applicants could ask for interim measures relating both to cessation of hostilities, protection of property and securing assets for potential reparations (such as a claim over frozen assets). Applicants could make such a request in relation to both Russia but also ask the Court to clarify the obligations of other member states of the Council of Europe, specifically if these hold frozen Russian assets on their territory. Given that the Council of Europe system requires states to monitor each other in relation to execution of judgments and to hold each other to account, the Court may clarify what obligations states have in ensuring other states (especially those who are no longer members of the Council of Europe) comply with ECtHR judgments.

*b) The Second option*

The second option is seeking enforcement through domestic courts. My colleague, Achilleas Demetridades will say more about that. Making a claim domestically asks domestic courts to treat international decisions – including decisions of the ECtHR as res judicata and to give them force in domestic law. The domestic route has been tried and tested mostly to ensure reopening of proceedings and retrial of individuals. It has however not really been tested in relation to compensation awards. Apart from the Ramon case that Achilleas will speak about, there was one case in Italy – in Trieste that sought to ensure enforcement of an ECtHR award, but that was unsuccessful because the claim was not brought correctly. In the current situation, there are now calls to seek such enforcement in different jurisdictions around the Council of Europe. Of course, the success of these will depend on the laws and practice of those jurisdictions,

on the access to relevant assets, and on the opportunity to lift immunity in these claims.

*c) The Third option*

The final option is an international one, which includes the creation of a new mechanism responsible for disbursement of funds to victims of human rights violations. Such a mechanism would act as a sort of a claims-commission and would allow access to victims who had successfully obtained ECtHR judgments. The creation of a commission is not without issues, a point I will come back to.

The second point: The open questions

There are several issues with each of the different routes outlined. The first one relates to who the victims of human rights violations are. The majority of victims in individual cases are Russian and may in fact still be in Russia. For these victims, obtaining money in compensation of a judgment may be dangerous or unlawful under domestic law. In other cases – such as interstate cases and pending cases, the applicants are Georgian and Ukrainian, and so they would more easily (without fear of repercussions) make a claim before domestic courts or an international mechanism. One of the crucial questions, therefore is, to decide who any new mechanism or route is for and whether distinctions may be drawn and if so, on what basis.

Second, the money aspect. The enforcement of awards requires access to Russian funds. These funds can be secured through a peace agreement or – and this is the argument currently made – they are generated from frozen assets that are currently located in other member states of the Council of Europe. The monies are generated either from interest on these assets or by confiscating the actual assets – whether Russian state asset or sovereign wealth funds. Although the precedents supporting confiscation of assets are mostly in the US (*Bulgaria v US* 1955), the views of whether this is legal under international law of countermeasures are split, with many experts arguing that confiscation is irreversible and does not “induce” compliance as required by Articles on State Responsibility. The second problem is therefore whether to forcibly confiscate funds or whether to keep the assets frozen until a peace agreement is reached and then within that agreement, agree how and for what they can be used.

The third aspect relates to the question of priorities. If claims are being made against the same “pot of money”, we need to consider which of the claims is to be given priority. There is competition between different uses – from supporting Ukraine in the war, to ensuring war reparations for rebuilding of Ukraine, and finally enforcing ECtHR judgments against Russia. With each of these purposes,

the group of beneficiaries becomes larger. For example, the creation of a new claims commission is one of the options proposed. However, claims commissions are usually created only for specific events or to address specific type of violations (such as the invasion of Ukraine), not for general non-compliance with international judgments. And so, If such a commission with a broader jurisdiction were to be established, then we need to consider what precedent it would set for other instances of non-compliance.

### The third point: A role for PACE?

Council of Europe is leading the efforts on the establishment of the new tribunal for crimes committed in Ukraine, the Register of Damage, but also the potential creation of a commission mechanism intended to disburse funds for war reparations. Thus far the discussion within PACE has focused on encouraging states to impose sanctions on Russian Federation and to secure reparations for Ukraine after the end of the war.

In relation to non-implementation of awards by the Russian Federation, PACE should consider whether a wider discussion is needed. The issue is particularly ripe for discussion since the enforcement of some of these judgments may be sought through the commission mechanism and may thus compete with other claims. Any discussion should consider whether the jurisdiction of the new mechanism should be limited to 2022 events in Ukraine, or also the invasion of Crimea, or indeed whether the list of beneficiaries should be expanded – from Ukrainians also to other groups whose human rights have been violated by Russia.

Separately, within the available routes for enforcement, PACE could encourage the Committee of Ministers to explore the option of infringement proceedings. In addition, the domestic route currently available to all victims of human rights violations – without distinction and without discrimination. In this regard, PACE can call on states to enable and facilitate the domestic route in two ways: on one side, by making sure ECtHR decisions have *res judicata*, *exequatur* status; and by calling on them to lift immunity over state assets for purposes of enforcement of ECtHR judgments.

So to conclude: we have several options available, none of them straightforward, but with PACE efforts and state willingness, important progress can be made. Thank you for your attention.