Ministers' Deputies

Information documents

CM/Inf/DH(2008)7 final 15 January 20091

Monitoring of the payment of sums awarded by way of just satisfaction: an overview of the Committee of Ministers' present practice

Memorandum prepared by the Department for the Execution of Judgments of the European Court of Human Rights (DG-HL)

Note: this Secretariat memorandum presents the current practice of the Committee of Ministers in supervising payment of sums awarded by way of just satisfaction. It does not bind either the Committee of Ministers, or the member States. Because of its evolving nature (see the preliminary comments below), this document will be updated as the Committee's practice evolves.

PRELIMINARY COMMENTS

In many cases, the relevant information for the payment of just satisfaction already appears in the Court's judgment.

This information, however, is not always sufficient to resolve a number of - recurrent or one-off - questions as to arrangements for the payment of just satisfaction. This led to the wish that the Secretariat draw up a document recalling the practice followed in the framework of the monitoring of the payment of just satisfaction.

This document is therefore intended to present the practice followed to date on certain points by states and the Ministers' Deputies - in the light of the solutions adopted by the Court - and to highlight the points deserving further clarification.

SUMMARY

Page

INTRODUCTION

General principles

1. Unconditional obligation to pay in pursuance of the terms of the Convention and of judgments

1. In pursuance of Article 41 of the European Convention on Human Rights ("the Convention"):

If the Court finds that there has been a violation of the Convention or the protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.2

2. Article 46 of the Convention reads as follows:

1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.

2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution.

3. It is clear from reading these two articles in conjunction with each other that the payment of the sums awarded by the Court by way of just satisfaction and the payment of default interest are among the obligations incumbent on respondent states in the framework of the execution of final judgments, and that the Committee of Ministers is therefore responsible for monitoring the payments concerned.

4. The Committee of Ministers has regularly pointed out that the obligation to abide by the judgments of the Court is unconditional; a state cannot rely on the specificities of its domestic legal system to justify failure to comply with the obligations by which it is bound under the Convention.

5. Thus, insofar as the amount of the compensation to be awarded, the currency, the beneficiary, the time limit for and place of payment, and the rate of default interest have been clearly set, these elements of the payment cannot be unilaterally altered and are binding on the state, without exception. In specific situations, however, practice has allowed an arrangement for payment other than that for which the judgment provides (such as a different place of payment or currency; see below for more details)3 to be, with the agreement of the parties, accepted as satisfactory.

6. Where default interest, in particular, is concerned, it should be noted that this interest serves only to maintain the value of the just satisfaction, and is not a penalty4.

7. That said, governments sometimes encounter situations where it proves difficult to place the just satisfaction at the applicant's disposal for reasons not connected with the government - the applicant has disappeared or the necessary information for payment is lacking (address, bank account, etc), or even situations in which the payment of interest seems disproportionate on account of the small sums concerned. In practice, these problems can be solved easily. First, as explained below, for instance, various ways of placing the just satisfaction at the applicant's disposal are accepted, enabling rapid payment to be made in most situations. Furthermore, experience shows that most applicants tend to desist from their right to default interests in cases of negligible delays in payment.

2. Placement at the beneficiary's disposal equates to payment

8. To be in a position to verifying that the payment meets the requirements of the Court's judgment, it is necessary to establish precisely the date on which it is made.

9. Even if the obtaining of a receipt for the sums concerned from the applicant is often the best evidence of payment, it has been considered neither possible (on account of the number of cases) nor fair (certain applicants having disappeared or collecting the just satisfaction only a long time after it was placed at their disposal) to require such evidence in order to enable the state to discharge its obligation to pay.

10. It is the Committee's practice to take "payment" to mean the "placement (of the sums due) at the disposal" of the beneficiary of the just satisfaction, by any method whatsoever, provided that it is reasonably efficient. The method of placement at the beneficiary's disposal may vary, such as payment via bank transfer, cheque or warrant, the deposit of the money in a bank account in the applicant's name, the placement of the money in the bank for official deposits, the national bank, a given authority, etc. What counts is that the money should be at the applicant's disposal and that he or she should, to the maximum extent possible, be informed thereof. Given the diversity of the means used to place the money at the applicant's disposal, the evidence or certificates of payment provided by the states – of course always in writing – are also various (see 3.1.2. c).

11. Provided that the sums are placed at the applicant's disposal within the time limit, the obligation to pay default interest does not exist, even if the beneficiary withdraws them only after the expiry of the time limit for payment. However, if the sums are placed at the beneficiary's disposal after the expiry of the time limit, interest is to be paid for the period from the expiry of the time limit to the date on which they are placed at his or her disposal.

1. THE BENEFICIARY OF JUST SATISFACTION

1.1 The principle: payment to the person designated as the beneficiary by the Court

1.1.1 In general

12. In the great majority of cases, it is the applicant, the victim of the violation, who is identified by the Court in the operative part as the beneficiary. Therefore, it is in principle to him or her that payment must be made5.

13. If the applicant is represented by a lawyer, payment is usually made to the lawyer on the basis of a power of attorney given by the applicant to this end (see point 1.2 below). Some states consider payment to the lawyer as a normal method of payment6. Sometimes, the Court itself expressly orders the payment to the applicant via his or her lawyer before the Court.

14. Moreover, if the Court is aware of major developments relating to the legal capacity of the applicant or of conflicts of interest between the applicant and the person ordinarily authorised under national law to receive just satisfaction, judgments usually contain indications about the appropriate beneficiary, if necessary, other than the applicant. The indication of another beneficiary than the applicant can also come from a request by the applicant for other reasons, for instance, to secure the payment of his or her lawyers.

15. On several occasions, for example, the Court has awarded just satisfaction in respect of costs and expenses directly to the applicant's representative7. In order to avoid conflicts of interests, it has also happened that the Court has ordered the payment of sums directly to minor children, thus excluding the ordinary right of the parents or guardians to receive the sums concerned8. In order to safeguard as far as is possible the interests of a deceased person or of someone who has disappeared, the Court may also award a sum to a third person, who is made responsible for holding it for the benefit of the heirs9. Where the monitoring of the efficiency of such payments to persons specially appointed is concerned, the Committee ordinarily relies on the guarantees offered by the government itself and/or by national law, unless more detailed instructions are given in the Court's judgment.

1.1.2 Problems in identifying the beneficiary

16. Some cases raise special problems of execution when the respondent state is not in a position to know precisely whether the person appearing before the authorities is really the applicant accepted by the Court. This is a factual problem that the state will have to solve on the basis of different elements at its disposal10, if necessary in co-operation with the Court (to check the data in the file). Before the Committee of Ministers, such problems do not in principle lift the obligation to pay default interest

1.2 Power of attorney

1.2.1 Questions relating to the need for power of attorney and its form

17. Other than in certain specific cases (see below, section 1.4), just satisfaction may not, in principle, be paid to a person other than the one expressly designated by the Court, unless this person holds power of attorney for this.

18. A question frequently asked is that of whether the power to act conferred for the proceedings before the Court is also sufficient to receive the payment of just satisfaction. This power (standard form proposed by the Registry of the Court) authorises the applicant's representative "to represent [him or her] in the proceedings before the European Court of Human Rights, and in any subsequent proceedings under the European Convention on Human Rights, concerning [his or her] application introduced under Article 34 of the Convention…".

19. While some states accept that this power is sufficient to receive payment of the just satisfaction11, others require - special - new authority, in accordance with the requirements of national law (e.g. a document signed before a notary) for any payment.

20. With respect to the question of which law applies to the power of attorney of a beneficiary resident abroad, the normal solution is to apply the law of the respondent state. However, certain specific situations can request ad hoc solutions.

1.2.2 Whether or not power of attorney relating to the payment of just satisfaction is binding on the respondent state

21. Another question is that of whether the respondent state is bound by power of attorney concerning the payment of just satisfaction, or whether that authority is a mere authorisation.

22. As indicated in the section above, the Court itself expressly decides in certain cases that the just satisfaction intended for the applicant must be paid to him or her through his or her representative before the Court, i.e. the person who has been given power to act by the applicant. In these situations, the decision of the Court must of course be complied with, on condition that at the stage of execution, parties may agree on other modalities of payment than those mentioned in the judgment.12 .

23. It is nevertheless rare for such details to be given in judgments. It usually accepted that states have a choice in this respect: either to pay the agreed sums directly to the applicant, or to pay them to his or her representative. Thus, in certain cases, although the applicants' lawyers held special authority, the respondent states nevertheless paid the just satisfaction directly to the applicant13. These payments were accepted by the Committee.

1.3. The problem of joint payment to several persons

24. In certain judgments, the Court designates several applicants as beneficiaries of the just satisfaction and awards them jointly certain sums, without going into more detail14. The practice shows that the execution of such decisions poses problem15.

25. The Committee therefore encourages agreement to the greatest possible extent between the applicants on the distribution of the sums concerned16. Failing agreement, the recommended solution is a decision by the government in agreement with the Secretariat on a division of the sums (for instance based on the interests at stake for each applicant including, if this does not seem to be unfair in the case, a balanced share between the applicants17), provided that the Committee of Ministers gives consent to it. One alternative may be payment to one of the applicants, with an obligation to share the sums with the others on the basis of arrangements to be defined18.

1.4 Payment to a person other than the beneficiary designated by the Court

26. Notwithstanding the binding nature of judgments, payment may nevertheless, in a number of situations, be made to a person other than the one designated by the Court with the effect of discharge from the obligation. Among the commonest of these are:

1.4.1 The beneficiary designated by the Court is a minor

27. The usual practice in this situation is that payment is made to the person or persons bearing "parental responsibility"19 for the minor (the parents20 or guardian21).

28. In the event of conflicts of interest with the person holding parental responsibility, the payment should be made to a neutral person, ad hoc guardian or other party. The Committee has in most cases to date, however, relied on the government's assessment of the situation and the solutions offered by national law. Where the Court has ordered payment to a minor in person, payment to the minor's lawyer has been accepted, if the lawyer has agreed to manage the sum to the benefit of the minor, under appropriate supervision. Thus in one case, the government had informed the Committee of Ministers that the payment to the lawyer had been approved by the guardianship judge, who had enjoined the lawyer to safeguard the sums until the child reached majority, or to find another, equivalent investment22.

1.4.2 The beneficiary designated by the Court is a person without legal capacity, or with a restricted legal capacity

29. If the beneficiary designated by the Court is a person subject to supervision (a person suffering from mental illness or needing to be represented or assisted in order to carry out the acts of civil life), the practice followed is to pay the just satisfaction to the beneficiary's supervisor or guardian23, to other similar institutions which exist to protect the person and/or property of the beneficiary, to a person holding power of attorney established in accordance with the country's specific regulations for this purpose24, or to the lawyer25 (who will subsequently have to ensure that payment is made to the applicant in accordance with the requirements of national law). In the event that there are several persons authorised to receive the sums, the Committee has accepted the government's choice26.

1.4.3 The individual who is the beneficiary is deceased

30. In the event of the death of the individual who is the beneficiary27, the practice established by the Court and Committee of Ministers may be summarised as follows:

· Death occurs before adoption of the judgment: the Court takes note thereof and itself says that payment must be made to the person or persons closely linked to the beneficiary and having indicated to the Court a wish to continue the proceedings on behalf of the deceased;

· Death occurs after adoption of the judgment: it is constant practice for the beneficiary mentioned in the judgment to remain the beneficiary, so the respondent state will pay the just satisfaction to his or her heirs as heirs, with all the fiscal and other consequences that this may entail28. If identification of the heirs takes time, the normal solution is to pay the just satisfaction into the assets of the deceased's estate;

· Death occurs before adoption of the judgment, but is notified to the Court only after the judgment concerned: it is for the Court, if one of the parties refers the matter to it within the time limit29, to indicate, if need be, a new beneficiary, by revising the judgment in respect of the just satisfaction30. On the impact of the revision request on the deadline for payment, see items 3.1.1 and 3.2.1 b)31 ;

· Death occurs before adoption of the judgment, but this fact is notified to the Court only after expiry of the time limit for a party to request revision of the judgment (cf. supra), or indeed is not notified to the Court at all, but only to the Committee of Ministers in the framework of its monitoring of execution of the judgment: this rare situation raises some awkward questions. One simple solution may consist in placing the sum of the just satisfaction at the disposal of the estate, to be shared between the heirs once they have been identified, the problem of inheritance rights being left to the discretion of the state. Another solution could be to suspend the payment and check that no heir has come forward within a reasonable time following notification of the judgment. In such a case, the Committee might conclude that there has been renunciation, and close the case.

1.4.4 The beneficiary designated by the Court is a legal entity being run by a court-appointed administrator/in liquidation/being wound up

31. If the designated beneficiary is a legal entity subject to one of the measures cited in the title, a number of difficult questions arise.

32. If this situation of the beneficiary is known at the time of the proceedings before the Court, the question of the appropriate recipient of any just satisfaction will often have been dealt with in the Court, and special provisions included in the judgment. For instance, the Court already indicated that payment would have to be made to the applicant company’s representative, notwithstanding the fact that this company had been placed under the control of a court-appointed administrator (in this case, the complaint related precisely to this compulsory administration)32. In another case, where there had been no conflict between the liquidator and the applicant company, payment to the liquidator had been ordered33.

33. If the judgment contains no indications, it is for the state, under the supervision of the Committee, to find the appropriate solutions. The Committee's practice as far as possible follows that of the Court. Thus, if there is a doubt as to whether the court-appointed administrator/liquidator really represents the applicant's interests, it has been accepted that the payment should be made to the applicant's lawyer34.

34. Another frequently connected question is that of whether the state may, in this kind of situation, use its ordinary right as a creditor to effect compensation for any debts the applicant has to the state, thereby

obtaining priority over all other creditors, including the applicant's lawyer. This question and others related to the possibility of attaching the just satisfaction are dealt with separately in part 535.

1.4.5 The beneficiary designated by the Court is a legal entity which no longer exists in its initial form

35. If the beneficiary designated by the Court is a legal entity which no longer exists in its initial form (e.g. a company which has merged with another or has been liquidated), and if this situation is known at the time of the Court proceedings, the question of the appropriate recipient of any just satisfaction will often have been dealt with in the Court, and special provisions included in the judgment.

36. In the absence of such indications, it results from the general principles and from the practice of the Committee that the payment will have to be made to the legal successor or successors of the applicant legal entity. For example, in a case in which the applicant company had merged with another company, it was accepted that payment should be made for the benefit of the new company constituted by the merger36.

37. In the event of a dispute as to the successor, or its representative, a solution may be to pay the sums into an escrow account in the name of the applicant company pending resolution of the question of its succession or representation37.

38. Company successions may also give rise to conflicts of interest. While the victims of the violation may be the former owners of the company, an enforced transfer may have led to a change of ownership. In such situations, it is not certain that payment to the company in its new form will genuinely compensate the true victims.

1.4.6 The beneficiary designated by the Court is detained

39. It is possible that a person in detention has lost his / her civic rights or has a restricted capacity to receive/manage money. Thus the payment of just satisfaction directly to the person in prison may pose problems. However, these restrictions do not automatically prevent the imprisoned person from nominating proxy38. If guarantees are given concerning the existence of such a possibility to nominate a proxy, but no information is sent to the government on the designation of an administrator, it is accepted that the sum is put in an escrow account in the name of the applicant, with the possible administrator being able to withdraw it39.

40. These special problems may arise when the applicant is detained abroad, even in a country which is not a member of the Council of Europe40. This issue, which is rather new, still needs considering.

1.4.7 The beneficiary designated by the Court has disappeared (i.e. cannot be found or contacted)

41. With respect to the cases in which the beneficiary has disappeared, the Committee of Ministers recognizes several ways of paying just satisfaction: it is up to the states to discharge their liability to pay by making use of one of the means or another, in view of its national law, for example placing the sums due in a special account opened in the applicant's name at the general bank for official deposits41, placing the sums at the applicant's disposal with an authority (such as the Government Agent) authorised to make the payment if the applicant comes forward42, and placing the money in an escrow bank account in the name of the applicant.

1.4.8 The beneficiary refuses to take possession of the sums awarded

42. If the beneficiary refuses to take possession of the sums awarded by the Court, two solutions have been accepted at the government's wish: either the applicant is considered to have forgone his or her right (in this case renunciation has to be made clear in writing43), in which case no payment is due, or one of the solutions provided for cases in which the applicant has disappeared is applied44.

1.4.9 Erroneous payment, a case which rarely occurs

43. Outside those cases mentioned above, it has happened in certain cases that, in spite of the clear wording of the Court's judgments designating the beneficiary of the just satisfaction, or of a part thereof, just satisfaction has in practice been paid to another person45. Such payments have in practice been accepted only when it has been possible to confirm that the amount concerned had actually been transferred to the beneficiary designated by the Court, if applicable increased so as to offset any loss of value suffered as a result of the passage of time and the devaluation of the currency in which the payment was made.

2. PLACE OF PAYMENT

The beneficiary's place of residence by default

44. The practice is that payment is made at the beneficiary’s place of residence. Given that most payments are made at present by bank transfer, very few problems remain related to identification of means of payment to allow the applicant to receive the sums due at his or her place of residence46.

45. When the Court grants just satisfaction to a person not resident in the respondent state and does not expressly specify the place of payment, it is generally accepted that the just satisfaction must be paid in the beneficiary's state of residence47 or in accordance with his or her requests, if these are reasonable48.

3. TIME LIMIT FOR PAYMENT OF JUST SATISFACTION

3.1 Obligation to pay within the time limit set by the Court

3.1.1. The principle of payment within the time limit set by the Court

46. The process of payment of just satisfaction is not instantaneous, but may last several weeks, or even months. Several kinds of factors are responsible for this: the collection from the applicant of the information needed to effect the payment, compliance with the rules of public accounting, the technical delays inherent in bank transactions, the choice of transfer arrangements, etc.

47. It is in order to encourage respondent states to manage payment transactions diligently, and in order to facilitate the execution of judgments, that the Court has, since 1991, indicated in its judgments the time limit within which the respondent state must pay the just satisfaction49.

48. In exceptional cases, the date may be changed if the judgment is revised, under the Rules of Court. In Committee of Ministers' practice, a request for revision or even for rectification or interpretation may suspend the obligation to pay until the issue is settled by the Court, under the condition of course that the request can reasonably have an incidence on the obligation to pay or on the modalities of payment50. Once the issue is settled by the Court, it should be respected with the consequences stemming from it, in particular default interest (item dealt with below, §68 ss.).

3.1.2 The relevance and determination of the date of payment

a) The relevance of the date of payment

49. It must be possible to determine the date of payment accurately, particularly in order to establish whether default interest is due, whether the correct exchange rate was used and whether payment was actually made to an authorised person.

b) The determination of the date of payment

50. As stated in the introduction, the basic principle is for payment to be considered to have been validly made once the just satisfaction has effectively been "placed at the disposal" of the beneficiary, meaning that it is under his or her control, either direct (as when the money has been transferred to his or her bank account) or indirect (for example when the money is available for withdrawal from a claims office and the applicant has been informed of this (in so far as this is possible, for instance by a registered letter sent to his or her last known address or place of residence))51.

51. It is, however, not easy to determine this date with accuracy, in view of the difficulty to obtain this information from the applicants and of the variety of the payment procedures used by the states and the divergent public accounting practices. For reasons of administrative economy, the Committee agrees to accept estimates, as accurate as possible, in the light of the payment methods used, provided, however, that a case revealing to have been closed on the basis of false information, might be re-opened. This "practical" approach has been particularly encouraged since 200252, in view of the constantly increasing number of cases. It nevertheless remains the aim to obtain information which is as accurate as possible as to the actual date on which the sum is placed at the beneficiary's disposal.

52. At all events, if a doubt exists as to the date of payment in a case, and if that may have not insignificant effects on, for instance, default interest, the exchange rate used, the action to be taken as a consequence of a currency devaluation, etc, it is still possible to seek more detailed information from the government or from the beneficiary of the just satisfaction.

53. In this practical vein, the methods of confirming payment most frequently used at the moment are listed below. It should be noted that changes in payment methods occur, and that this list is therefore only an indicative one.

c) Evidence of payment

54. Depending on national practices, the means used to confirm the payment differ. The Secretariat cannot a priori ask delegations to provide a special kind of document to prove a payment. In principle, it should be sufficient that the government attests that the payment has been made, adding all the details necessary to verify that it has been made in accordance with the judgment's requirements (precise date, amount, exchange rate used etc.). However, practice shows clearly that supervision is simplified if the state provides a voucher in evidence of payment. Obtaining of a receipt for the sums concerned from the applicant is often the best evidence of payment, but it has been considered neither possible (on account of the number of cases) nor fair (certain applicants having disappeared or collecting the just satisfaction only a long time after it was placed at their disposal) to require such evidence in order to enable the state to discharge its obligation to pay. Hence, other evidence of payment is also used.

A survey of the most commonly used evidence (if they correspond to modalities of payment which can be used by the states, in view of their national law) is summarised below.

55. Receipt from the applicant: The evidence of payment is clear if the state can provide the Committee of Ministers with a statement by the applicant or his representative indicating the date on which the sums awarded by the Court reached him, and that he is satisfied with the payment53.

56. Bank transfers: When payment is made by bank transfer, many states (France, Croatia, the Slovak Republic, Poland and Russia, amongst others) advise the Secretariat of the date on which the public accounts were debited, and this date is normally accepted today as the date of payment, in view of the promptness of bank transfers (the money is often on the applicant's account on the same day, or within a very short period). In this context it may be noted that, when payment is made by bank transfer within a state, the transaction usually takes place very rapidly, with debiting and crediting possibly taking place on the same day. Some states (such as Belgium and the United Kingdom) also request, or for a long time used to request, formal confirmation from the beneficiary or his or her representative of the date of receipt, and also supply this information to the Secretariat.

57. Payment warrants: In a number of cases in certain states (examples being Greece, Switzerland and Italy), the Treasury issues a payment warrant to the beneficiary, on the basis of which the latter may withdraw the relevant sum from the Treasury office closest to his or her home54 or from a bank55; in such cases, the date of payment communicated by the respondent state is that on which the beneficiary was advised that the sums had been placed at his or her disposal at his or her place of residence.

58. Cheques: Finally, certain states often pay beneficiaries by cheque56. The date on which the cheque reached the applicant (e.g. if the cheque is sent by registered letter with acknowledgment of receipt, the acknowledgment of receipt may be adduced as an evidence of payment, with a copy of the cheque), or, failing that, the date on which the cheque was sent.

59. Sums deposited for the beneficiary of the just satisfaction: (e.g. in an escrow account57 or at a government office58): this solution is often used when the applicant cannot be found or refuses to co-operate with the authorities. The date of payment is that with effect from which the sums are effectively at the disposal of their beneficiary. In order to be able to consider that the sums are effectively at the disposal of the beneficiary, several conditions must be met. In particular:

· the respondent state must have carried out all the formalities required by domestic law to make payment of the sums due to the beneficiary, so that they can be paid within a very short time if the applicant presents him or herself to the relevant authority;

· the respondent state must also, as far as was possible, have informed the beneficiary or his or her representative that the just satisfaction is at his or her disposal (e.g. by a registered letter), or must at least have taken another reasonable measure intended to enable the beneficiary to become aware of this fact.

60. Copies of payment orders: Certain states which are for the time being unable to supply accurate information about the date at which sums are placed at beneficiaries' disposal instead present the payment orders issued by the relevant authority. To the extent that the Secretariat obtains assurances that this date is very close to the effective date of payment59, the date of the payment order is considered to be the date of payment, so as to allow, at least to a certain extent, a control of the of payment. Bilateral contacts are envisaged to improve this situation.

3.1.3 Who bears the risk in the event of an incident during the payment process?

61. It is in principle the respondent state that is responsible in the event of incidents (devaluation, exchange rate variations, etc) which occur before the date ordinarily chosen for payment/placement at the beneficiary's disposal.

62. If the incident occurs during the payment process, i.e. between the date actually chosen for payment/placement at the beneficiary's disposal and that when the money effectively comes into his or her possession, it must be possible to determine whether the consequences of the incident have to be borne by the respondent state or the beneficiary.

63. In the pragmatic spirit governing the monitoring of payment, it is current practice in this area, provided that the state uses a reasonably secure and rapid transfer method for the sums concerned60, that it does not in principle bear the risk relating to the occurrence of an incident during the payment process61. This risk is therefore borne by the applicant. As, however, the date of payment chosen is usually a fiction based mainly on considerations of easy administrative management, it would not seem fair to apply this principle in the event of major losses for the applicant - such as those stemming from a major devaluation of the currency during the transfer - unless it was the applicant who specifically requested the place and/or currency of payment.

3.2 Payment outside the time limit set by the Court

3.2.1 The principle of the payment of default interest in the event of payment outside the time limit

a) The basis of the principle

64. The general principle that, in the event that an obligation to pay a sum of money in accordance with a judgment of the European Court is not met, the value of the sums due must be preserved, has been accepted from the very earliest days of the Convention system. In practice, prior to 1996, before any specific provision on default interest had been introduced into Court judgments, governments or other national authorities nevertheless ordinarily paid default interest in the very few cases in which payment

was late62. Information on the subject thus appeared in the report on execution measures taken provided to the Committee of Ministers by the respondent state. The importance of the obligation to preserve the value of the just satisfaction in the event of late payment, in particular, was emphasised by the Committee of Ministers in the context of its supervision of execution in the case of Stran Greek Refineries (1994-1997) 63.

65. Following practical problems thrown up by the putting into practice of this general principle, however, the Committee of Ministers took the initiative so that both the Court and itself started to include specific clauses about default interest. Such clauses were included from 1996 onwards. The rate chosen was ordinarily the default interest rate ordinarily applied in the country concerned, it being understood that the applicant could challenge this before the Court if he or she considered the rate in force to be inadequate to preserve the value of the sums to be awarded.

66. In its recent judgments, therefore, the Court states that "from the expiry of the [time limit] until settlement simple interest shall be payable" at a rate also set by the Court itself, usually, in current judgments "equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points"64. Most of the friendly settlements of which the Court takes note now also contain a clause on the payment of default interest if payment is made outside the time limit65.

b) Implementation of the principle

67. The default interest due according to judgments of the Court is calculated on a daily basis66. If payment of the principal sum is made after expiry of the deadline for payment, default interest should be paid at the same time as the principal. This interest is "simple", i.e. the interest does not itself entitle to further interest (compound interest). It should also be emphasised that the period to be covered by default interest extends "from the expiry of the [time limit] until settlement"67, according to the formula generally used in Court judgments68, or from the expiry of the time limit until the sum in question is effectively paid, as recently specified in respect of friendly settlements69.

c) Special problems in case of revision, rectification or interpretation70

68. In the following circumstances, supervision of the payment of just satisfaction may be interrupted pending a decision by the Court:

• Revision71: There are many requests for revision which may influence the obligation to pay just satisfaction. They rely on the discovery after the judgment is delivered of elements which might have had a decisive influence on the obligation to pay if they had been known to the Court before it rendered judgment. In such cases, the Court delivers a new judgment in revision (for example, in case of the applicant's death72, or facts undermining the applicant's quality as victim (for the purpose of the Article 34)73 or altering the substance of the case74);

• Rectification75: clerical errors, errors of calculation or obvious mistakes may lead to a straightforward rectification which may influence the obligation to pay just satisfaction (possible examples include mis-spelling the applicant's name76 or incorrectly quoting the amount requested by the applicant by way of just satisfaction77 or even the failure through procedural omission to award just satisfaction to applicants who had requested it in due time78);

• Interpretation79: Requests for interpretation of a judgment influencing the obligation to pay just satisfaction are very rare (for example, the question of whether the just satisfaction may be seized80, or the place or currency of payment81). When examining requests for interpretation, "the Court is exercising inherent jurisdiction: it goes no further than to clarify the meaning and scope which it intended to give to a previous decision which issued from its own deliberations, specifying if need be what it thereby decided with binding force" 82.

69. If a judgment is subject to revision concerning the obligation to pay just satisfaction, the Court in principle pronounces explicitly on the deadline for payment and on the question of default interest. Normally, the deadline is fixed at three months from the date upon which the revised judgment becomes final83. No problem arises at the execution stage: the Committee of Ministers follows the indications given by the Court.

70. If a judgment is subject to rectification, legally this produces no modification of the date upon which the judgment is presumed to become final or, by the same token, of the deadline for payment – even where rectification takes place after the judgment has become final84 and the payment deadline is running or even expired. It would appear that unless the Court indicates otherwise, default interest should be calculated according to the wording of the rectified judgment, the purpose of this interest being to preserve the value of the just satisfaction for the applicant. However in certain specific circumstances, another solution may be required85. It should nonetheless be noted that, despite rectification, states often manage to pay on time or with a minimum delay (see below).

71 With regard to interpretation, it is not easy to draw conclusions from the small number of instances in which the Court has agreed to give an interpretation of a judgment in respect of just satisfaction. In its final resolution in the case of Ringeisen, the Committee took note that " pursuant to its obligation under Article 53 of the European Convention on Human Rights, the Government of Austria has executed the judgment of the Court of 22 June 1972, as interpreted by the judgment of 23 June 1973"; that is, the Committee evidently considered that the meaning and scope of the judgment had only been made definitively clear by the interpretation, and it was only from that moment that the state had been in a position to execute that part of the judgment.

72. Finally, it may be deduced that where the Court refuses a request for revision, rectification or interpretation by the respondent state, the initial judgment remains valid and all questions of payment, including default interest, are to be assessed in relation to that judgment.

3.2.2 Relaxation of the principle in certain cases

a) Cases of negligible delays in payment

73. Without prejudice to the authority of judgments or to the derived principle that default interest is due where payment falls outside the time limit, a certain allowance is made in practice for a delay in payment which may be described as "negligible". In cases in which payment of the just satisfaction is made just a few days late, in fact, entitling the beneficiary to the payment of a modest amount of default interest, some states do not automatically pay the default interest due. Notwithstanding the unconditional nature of the obligation to abide by the Court's judgments, this situation is acceptable if the applicant him or herself accepts it, i.e. if he or she foregoes entitlement to the interest concerned.

74. Regarding what can be considered a "negligible delay", and particularly the number of days of delay or the amount of euros in interest which may reasonably be allowed, there are no formal rules; this is justified by the fact that formalisation of such a rule would mean not following to the letter the judgments of the Court.

75. Hitherto, in practice, an allowance has been made, in particular where the default interest in principle due could be described as modest in the light of the applicant's situation. As a general rule, the beneficiary's silence has been interpreted as renunciation of the interest only when he or she has failed to come forward by approximately one year after payment of the principal of the just satisfaction. However, if the payment of default interest is the only question of execution remaining under examination, it would appear appropriate to contact the applicant before the expiry of this time-limit to check with him / her whether monitoring of the payment of the just satisfaction can cease.

76. A different view might be taken if the state concerned regularly paid after the time limit, which would reveal a "structural" problem. In such a situation, the payment of default interest, even of a modest nature, might have a deterrent effect.

b) The question of the beneficiary's possible responsibility

77. If the payment procedure is complicated, for instance by allegations that the applicant is not co-operating, some awkward questions may arise. The obligation to abide by judgments is in principle unconditional, and the obligation to pay default interest (until the date of payment) is clearly set down in judgments. However, it may be noted that before the Committee of Ministers several states contest their legal obligation of paying default interest when the delay is clearly due to the applicant’s fault or negligence.

78. At this stage, the Committee of Ministers has not settled the questions raised by such a position but has, instead, developed its practice concerning the measures which equate to payments, even where the applicant fails to co-operate effectively.

79. Most of these have already been referred to above. Thus, in cases where the beneficiary refuses to take possession of the sum awarded86 or does not co-operate by transmitting the information needed to make payment (bank details, in particular) within the time limit for payment laid down by the Court87, or where he or she cannot be found or contacted88, the Committee of Ministers recognizes several ways of paying just satisfaction: it is for the respondent state to discharge its liability to pay by making use of one or another of these means, in view of its national legal system89: it may entrust the sum to a court90, place it in escrow with a private bank91, the national bank or Treasury92 or the bank for official deposits93, place it at the disposal of the beneficiary of the just satisfaction at a government office94, send a cheque to the applicant95, send a payment warrant to the applicant96, pay the sum into a special account of the lawyer's (provided, if need be, that the lawyer holds power of attorney for this)97, etc.

80. In many cases, this issue can also be avoided when the applicant's behaviour clearly indicates that he must be considered as renouncing to default interest (e.g. in case of negligence in submission of the necessary documentation). Should this practice be wrongly applied, it would still be possible to reopen the matter under the guidelines issued by the Deputies in 200298.

4. CURRENCY USED

4.1 Currency in which payment is made

4.1.1 General considerations

81. It has been the Court's long-standing practice to determine just satisfaction not only in the respondent state's national currency but in other currencies besides, for example in those cases where the applicants had incurred costs in "foreign" currency or were living outside the respondent state, or wanted to protect themselves against the consequences of significant inflation or depreciation of the national currency. Since 2000 the Court has made increasingly frequent use of a single reference currency, the euro. Today it would appear that the euro is the reference currency used in all cases99.

82. However, the currency in which just satisfaction is determined is not necessarily the one in which payment must be made. The latter is in principle clearly defined in the operative part of the Court's judgment; it is not always the respondent state's currency.

83. In view of the Court's new practice of stating the amounts payable in euros, respondent states are not directed to make conversions for cases involving states, applicants and their lawyers all situated within

the euro zone. Sometimes it even happens that the Court directs to pay in euros for violations committed outside the euro zone but concerning applicants resident of this zone100.

84. On the other hand, judgments usually order a conversion if the respondent state is not situated within the euro zone101, if the applicant is not resident within this zone102, if he/she has been represented by lawyers exercising outside this zone103, or in certain cases if a possession has been assessed in a foreign currency104.

85. Finally, the currency indicated by the Court must in principle also be used for the payment of possible default interest.

86. Conversion fees into the currency indicated by the Court must obviously be borne by the respondent state (see also CM/Inf/DH(2008)7 revised Addendum (restricted), part 5.3).

4.1.2 Problem situations

87. It may nevertheless happen that the modalities of payment indicated by the Court present problems at the stage of execution, mainly under the regulations on currency exchange (it may be prohibited to make a payment to a person residing in the country in anything but the national currency)105.

88. But if the state of payment is the respondent state, it is bound by the Court's judgment and it has to find opportune solutions to make payment following the indications of the Court. Failing that, it may try to reach an agreement with the applicant. The generally accepted rule that the parties may freely agree on other terms of payment than those laid down in the Court's judgment also applies to the currency. Such agreements should preferably be explicit, but the Committee has also accepted tacit agreements106. The Committee nevertheless reserves the right to verify that such arrangements are fully in accordance with the Convention and with the parties' wishes107. If, however, the applicant objects to payment in another currency than that specified by the Court, the state must put the situation in order so as to comply with the terms of the judgment.

89. If the payment is not to be made in the respondent state but in another –the applicant's state of residence, for example – the problems that the regulations on currency exchange may present can be difficult to solve (the state of payment not being bound by the Court's judgment) and an agreement between the parties may turn out to be necessary.

90. Otherwise, it conversion into another currency than that indicated by the Court is requested by the applicant himself, it has been accepted that the applicant must bear the conversion costs108.

91. The same rules could apply to possible requests of changes in the currency of payment of default interest.

4.2 Exchange rate

92. When the Court orders conversion in the operative part of a judgment, it also determines the reference date for the exchange rate. It generally specifies the "rate applicable at the date of settlement"109, or more seldom, "the rate applicable at the date of delivery of this judgment"110. This reference to the "rate applicable" is not very precise, considering the different rates that apply depending on the method of transfer and the market in which the money is purchased.

93. For supervision of payment by the Committee of Ministers, the average exchange rate (average of the buying and selling rates) applied by the respondent country's central bank for inter-bank transfers111 is normally used112.

94. Given the fluctuations of exchange rates, it is also important to be clear about the date when the exchange is to be effected according to the terms of the judgment (normally the date of settlement). Thus, if the respondent state uses a different day's exchange rate and this results in payment of an insufficient amount, the Committee of Ministers satisfies itself that the respondent state makes an additional payment so that the terms of the Court's judgment are complied with113.

95. In the event of an incident affecting the exchange rate during the payment process, see "3.1.3 Who bears the risk in the event of an incident during the payment process?".

96. Finally, it is recalled that the normal exchange rate for the payment of possible default interest is the rate applicable on the date of this payment. If the rate felt to the applicant's detriment, it would appear to be fair that the government supports the consequences.

5. ATTACHMENT, TAXATION AND PAYMENT FEES

5.1 Attachment114

97. Issues relating to the attachment, by the state or private individuals, of sums awarded as just satisfaction are complex. The basic framework is of course that set by domestic law and practice. The Court's case-law115 and the practice of the Committee of Ministers have, however, introduced certain additional requirements and considerations, which will be developed below.

5.1.1 Violation-related debts

98. In the Piersack case (judgment on the application of the former Article 50, of 26 October 1984), the Court ordered the state to refrain from recovering the additional expenses which the authorities had incurred in the new proceedings engaged with a view to providing the applicant redress for the violation found. In the current practice of states and the Committee, this exception is interpreted as meaning that the payment of debts owed to the state, which have a causal link with a violation found, cannot be secured by attachment or seizure of the just satisfaction116. In principle, therefore, the state could not, for example, seize the amount awarded as just satisfaction in order to obtain the payment of a fine imposed in violation of the Convention, or compensation for the authorities' legal costs in the proceedings imposing the fine. If the violation of the Convention relates to the unfairness of national proceedings, it would appear that the question of attachment for a debt arising from these proceedings should be dealt with in parallel with the question of a possible reopening of the case117: if there is no question of reopening, this would normally signify that there is no causal link between the violation and the debt in question118; if, in contrast, reopening is seriously considered – and all the more so, if it is agreed to reopen the case – it would seem appropriate to await a final decision on the matter before effecting a possible attachment.

99. The Committee of Ministers has not frequently had to deal with situations raising the question of how these principles should be applied in case of private debts. Nonetheless, application of these principles does not appear ruled out, for example if the debt has arisen in proceedings tainted by unfairness on account of the conduct of the creditor (e.g. corruption) or if the private debt was imposed in the proceedings impugned by the Court119.

5.1.2 Other debts (with no causal link with the violation)

a) Attachment of sums awarded for pecuniary damage

100. For debts which have no causal link with the violation, the question of exemption from attachment has not arisen in respect of sums awarded for pecuniary damage.

b) Attachment of sums awarded for non-pecuniary damage

- Debts to private individuals.

101. In the Ringeisen case (interpretative judgment on the application of the former Article 50, of 23 June 1973), the Court ruled that the sum awarded for non-pecuniary damage – to which private creditors had laid claim – should be paid to Mr Ringeisen personally and should be free from attachment.

102. Notwithstanding this judgment, the practice subsequently followed by the Committee of Ministers and states has laid down no restrictions on attachment of sums awarded as just satisfaction for non-pecuniary damage where such attachment is for the benefit of private creditors 120.

· Debts to the state.

103. There has been no clear Committee of Ministers' practice with regard to the possibility of attachment, for the benefit of the state, of the sums awarded for non-pecuniary damage. Up to the 1990s, depending on the circumstances, the sums awarded to the applicant have on occasion been declared free from attachment121, whereas on other occasions, they have been declared not to be122.

104. Subsequently, the matter was raised before the Court. In a Grand Chamber judgment of 28 July 1999 (Selmouni v. France, § 133), the Court stated the following:

"The Court considers that the compensation fixed pursuant to Article 41 and due by virtue of a judgment of the Court should be exempt from attachment. It would be incongruous to award the applicant an amount in compensation for, inter alia, ill-treatment constituting a violation of Article 3 of the Convention and costs and expenses incurred in securing that finding if the State itself were then to be both the debtor and creditor in respect of that amount. Although the sums at stake were different in kind [the debt owed to the state was a customs fine, the correctness of which was not questioned], the Court considers that the purpose of compensation for non-pecuniary damage would inevitably be frustrated and the Article 41 system perverted if such a situation were to be deemed satisfactory. However, the Court does not have jurisdiction to accede to such a request (see, among other authorities, the Philis v. Greece judgment of 27 August 1991, Series A no. 209, p. 27, §79, and the Allenet de Ribemont v. France judgment of 7 August 1996, Reports 1996-III, p. 910, §§18-19). It must therefore leave this point to the discretion of the French authorities."

105. The Court confirmed this approach in the Velikova v. Bulgaria judgment, 18 May 2000, §99.

"The Court considers that the compensation fixed pursuant to Article 41 and due by virtue of a judgment of the Court should be exempt from attachment. It would be incongruous to award the applicant an amount in compensation for, inter alia, deprivation of life constituting a violation of Article 2 of the Convention if the State itself were then allowed to attach this amount. The purpose of compensation for non-pecuniary damage would inevitably be frustrated and the Article 41 system perverted, if such a situation were to be deemed satisfactory. However, the Court has no jurisdiction to make an order exempting compensation from attachment (see, among other authorities, the Philis v. Greece (no. 1) judgment of 27 August 1991, Series A no. 209, p. 27, § 79; the Allenet de Ribemont v. France judgment of 7 August 1996, Reports 1996-III, p. 910, §§ 18-19; and Selmouni cited above, § 133). It must therefore leave this point to the discretion of the Bulgarian authorities."

106. On the basis of these judgments, at the execution stage, the respondent states refrained from implementing the envisaged attachments.

107. Two remarks can be made:

- The Selmouni and Velikova cases were prior to the change in the Court's practice whereby it has started to give indications regarding execution measures in certain judgments, when it has felt such indications to be useful.

- In general, attachment issues occur only in the course of the execution of the judgment, months or years after the requests for just satisfaction have been submitted to the Court123; accordingly, the Court may frequently not be in a position to rule itself on the question of attachment, even if it were to consider itself competent to do so.

c) Attachment of sums awarded for costs and expenses

107bis. Questions relating to the attachment of sums awarded for costs and expenses have only arisen in cases where these costs and expenses have not been paid so that there may be a conflict between the applicant's lawyers right to get paid and the claims of other creditors.

· Debts to private individuals.

108. As indicated above, the practice followed by the Committee of Ministers and by states has in principle laid down no restrictions on attachment, for the benefit of private individuals, of the sums awarded as just satisfaction.

109. Certain respondent states have, however, agreed to protect the just satisfaction awarded in respect of costs and expenses against attachment, to ensure that counsel receives his or her remuneration, as this has been perceived as a means of maintaining the effectiveness of the right of individual petition124 (see also below). Nonetheless, this is a sensitive issue in view of the difficulty of establishing a hierarchy among the beneficiary's private creditors.

· Debts to the state

110. Questions of attachment of just satisfaction awarded in respect of costs and expenses also emerge in the light of the Court's above-mentioned conclusions in the Selmouni case and the consequences which

such attachment could have for the ability of certain applicants – indebted to the state – to obtain legal assistance in lodging and pursuing complaints to the Court;.

111. It is difficult at this stage to speak of any established practice in the Committee of Ministers, but it may be noted that in a number of cases, care has been taken to ensure in one way or another that the applicant's representatives are indeed paid:

o Some states have refrained from seizing the just satisfaction awarded for costs and expenses in order to ensure that the applicant's counsel is paid125;

o Where attachment has been allowed, the applicant's counsel has in fact already been paid through a special arrangement126.

Some cases have posed no problem as attachment was accepted by the applicant127.

112. The Court has also in some cases accepted requests made by applicants to award just satisfaction for costs and expenses directly to the lawyer128. It should, however, be noted that this solution is realistic only if the debts claimed by the state were foreseeable at the time when matters relating to just satisfaction were being discussed before the Court.

113. In the light of the above, and in particular of the practice of the Court, it would appear, in the interests of the efficiency of the just satisfaction system as one of the means to ensure the effectiveness of the right of individual petition, to be good practice on the part of states to refrain from seizing just satisfaction awarded in respect of costs and expenses to cover debts to the state in those special cases where the applicant's representatives have not been paid.

5.2 Taxation

114. In those cases in which the Court has been seised of questions concerning taxation of just satisfaction, it has frequently dealt with the matter itself in the judgment129. However, in many cases decided before the years 2000 the taxation aspects were never discussed.

115. One solution used by the Court in the beginning was to deduct the tax due in the calculation of the just satisfaction to be awarded. The sums awarded should thus be paid net without subsequent tax consequences130. Another solution, used more frequently and in particular for the VAT which could be due for the costs and expenses131, was to let national taxation rules apply. In this case, either the Court

ordered that the just satisfaction should be paid together with the taxes due, or it included the amount of taxes directly in the sums granted.

116. In general, it can be noted that both the case-law of the Court and the practice followed by states and the Committee of Ministers appear to have acknowledged that relevant taxes are to be taken into account, regardless of whether they result from taxation in the respondent state or in another state132.

117. Various incidents concerning the levying of taxes and stamp duty as a mere result of the payment by the state of just satisfaction led a number of countries, from the year 2000 onwards, to ask the Court to specify in all cases that the sums awarded were net of any tax.

118. In response, with effect from 2001133, the Court, started, more and more frequently, to indicate in its judgments by means of a "global formula" that, where necessary, "any tax which may be chargeable" should be added to the just satisfaction134.

119. Today this general indication is used in the vast majority of judgments (in principle, in the operative part). There would appear to be a two-fold aim to this new practice: first, to avoid interfering in the application of national tax regulations; and second, to ensure that the applicant obtains the real value of the just satisfaction awarded. It can be noted that this new practice does not affect the fact that it can be necessary for the Court, when defining the amount of just satisfaction, to examine questions of taxation135.

119bis. Notwithstanding the use of the "global formula", the Court still addresses separately in many judgments questions concerning the VAT due for the costs and expenses, either in the reasoning or in the operative provisions136.

119ter. The question has thus been raised whether, in cases where the judgment does not provide any indication as to whether VAT is included or not in the award for costs and expenses, the use of the "global formula" entails automatically an obligation to pay the applicant, in addition, the VAT which could be due on the sums awarded for costs and expenses. Experience in the execution of these judgments has shown that in most cases no additional VAT is paid, nor claimed. The usual interpretation of these judgments is therefore that VAT is included in the amount awarded for costs and expenses137.

120. The Court's practice of resorting, in principle, to the "global formula" appears to shift the whole taxation issue to the execution stage.

121. The recent experience shows that this practice can raise many taxation issues, especially where the tax imposed is not based on a flat rate on gross sums (such as VAT), but a tax depending on global income, the calculation of which can imply complex questions related to possible deductions and to the

period concerned. One important practical question relates to the duty to pay within 3 months. Many taxation issues will not be resolved within that deadline. It is possible that such issues will only be resolved several years after the Court's judgment (after the expiry of the time limit for requesting an interpretation or review of the judgment). In such situations it may be difficult, even impossible, for the state to comply with the 3 month deadline. A practical solution in cases where the state levying the tax is the respondent state could be for the state to waive from the outset its right to levy the taxes in question138.

Where the state levying the tax is not the respondent state, the situation may be more complex139. The new practice also does not solve the problems which arise when the Court awards global amounts, which make it difficult to define the sums which could be subjected to tax.

5.3 Commission and other payment fees

122. The unconditional obligation to pay the sums awarded by the Court has consistently been interpreted as meaning that the applicant must receive the whole amount of the said sums. Accordingly, it is for the respondent state to bear the cost of all associated fees, including transfer fees, in principle to the applicant's place of residence or up to the point where the money is credited to his or her bank account (cf. also paragraph 2 above).

123. In the light of the general principles outlined above, an exception could be made in cases where the applicant himself or herself requests an exception to the payment terms contained in the judgment (cf. 3.1.3, above).

1 This document was classified restricted at the date of issue. It was declassified in two parts: the first at the 1020th DH meeting of the Ministers' Deputies (4-6 March 2008) and the second at the 1043rd DH meeting (2-4 December 2008).

Note 2 The same provision was included, prior to the entry into force of Protocol No. 11 to the Convention, in Article 50 of the Convention.

Note 3 In the case of Raffineries Grecques Stran and Stratis Andreatis v. Greece, when the Committee of Ministers was informed of an agreement on other modalities of payment than those mentioned in the judgment, in particular as regards currency, it checked that the applicants had expressly accepted the new modalities of payment and that the agreed rules were in conformity with the standards of the Convention (see in particular the summary of the Chair at the 585th meeting (March 1997).

Note 4 The strict nature of the obligation to pay default interest is very clear in certain judgments, such as that in the case of Buffalo Srl in liquidation v. Italy (Article 41 judgment), of 22/07/2004, operative words.

Note 5 It may be noted that, if the Court itself has ordered an expert report, the experts are ordinarily direct beneficiaries pursuant to the judgment: see for example the case of Carbonara and Ventura v. Italy

(just satisfaction judgment of 11/12/2003, application No. 24638/94), or the case of Papamichalopoulos v. Greece (judgments of 24/06/1993 and 31/10/1995, application No. 14556/89).

Note 6 Indication given by the United Kingdom Delegation.

Note 7 In order to protect lawyers' costs from the applicant's creditors, or for other convincing reasons. See, for instance, the cases of Bilgin v. Turkey (judgment of 16/11/2000, application No. 23819/94), Ipek v. Turkey (judgment of 17/02/2004, application No. 25760/94), Aksakal v. Turkey (judgment of 15/02/2007, operative part) ; see also Scozzari and Giunta v. Italy (judgment of 13/07/2000).

Note 8 See for example the Scozzari and Giunta judgment of 13/07/2000.

Note 9 See for example the Ipek case (cf. above), in which the Court awarded, in respect of pecuniary damage, a certain sum for each of the applicant's sons (who had disappeared), making the applicant responsible for holding the sums concerned for his sons' heirs. See also Çelikbilek v. Turkey (judgment of 31/05/2005).

Note 10 For public hearing with the applicant, he or she is known by the authorities and the problem at stake here only concerns the sole written proceedings.

Note 11 The United-Kingdom delegation indicated that according to its authorities, the power given to lawyers for the proceedings before the Court implies that the payment may be made to them.

Note 12 The delegation of Turkey wished to point out the following:

In the situation examined here, even though the Court orders (in principle on applicant’s request) that the sums granted to the applicant should be paid to him/her via his/her lawyer, at the stage of execution he/she remains free to agree with the respondent state, subject to supervision by the Committee of Ministers, that the payment be made otherwise, for example through another lawyer. See, for example, the case of Çelikbilek v. Turkey (judgment of 31/05/2005), where the applicant requested, during the proceedings before the Court, that the sums which might possibly be granted to him for costs and expenses be paid on the account of his lawyer in the United Kingdom, which the Court took into account. However, at the stage of execution, he requested the amount to be paid to his new lawyer in Turkey; this was finally accepted. The British lawyer did not oppose.

Note 13 For example, in the cases of Chichkov v. Bulgaria (judgment of 09/01/203, application No. 38822/97) and Nikolov v. Bulgaria (judgment of 30/01/2003, application No. 38884/97).

Note 14 See for example the cases of Jorge Nina Jorge and others v. Portugal (judgment of 19/02/2004, application No. 52662/99), of Nouhaud v. France (judgment of 09/07/2002, application No. 33424/96), and of Yagtzilar and others v. Greece (just satisfaction judgment of 15/01/2004, application No. 41727/98).

Note 15 However, the United-Kingdom delegation indicated that, according to its authorities, no problem arises if the just satisfaction is paid to the applicant’s lawyer. This delegation adds that if there are problems in sharing the sums awarded jointly to several applicants, the Committee of Ministers could invite the Court to indicate in its judgments the sum to be paid to each applicant, rather than awarding sums jointly.

Note 16 In the Yagtzilar case (mentioned in the footnote No. 14), the applicants reached an agreement on division based on their respective interests. This case also raised the question of the effect, especially on

default interest, of a prohibition of payment for a certain period, issued by a local court in order to protect any sums due to a lawyer of the applicants'.

Note 17 Addition suggested by the Turkish delegation.

Note 18 See for example, the cases of Nouhaud v. France (judgment of 09/07/2002, application N. 33424/96), Loyen v. France (judgment – friendly settlement – of 29/07/2003, application No. 43543/98) or Lemort v. France (judgment - friendly settlement – of 26/04/2001, application No. 47631/99).

Note 19 This concept is used in the UN Convention on the Rights of the Child (20/11/1989, United Nations) and in the Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in respect of Parental Responsibility and Measures for the Protection of Children (19/10/1996). Within the meaning of this latter Convention, the term "parental responsibility" has very broad scope and encompasses parental authority or any analogous relationship of authority determining the rights, powers and responsibilities of parents, guardians or other legal representatives in relation to the person or the property of the child.

Note 20 See for example the case of Eriksson v. Sweden (judgment of 22/06/1989, application No. 11373/85, Final Resolution ResDH(91)14)

Note 21 See for example the case of Scozzari and Giunta v. Italy (judgment of 13/07/2000, applications Nos. 39221/98 and 41963/98).

Note 22 See for example the case of Scozzari and Giunta v. Italy (see footnote No. 22); a similar solution also seems to have been adopted in the case of A v. United Kingdom (judgment of 23/09/1998, application No. 25599/94).

Note 23 See for example Final Resolution ResDH(94)48 on the case of Herczegfalvy v. Austria (judgment of judgment of 24/09/1992, application No. 10533/83).

Note 24 See for example the case of Magalhaes Pereira v. Portugal, judgment of 26/02/2002, application No. 44872/98).

Note 25 See for example the case of Hutchison Reid v. United Kingdom, judgment of 20/02/2003, application No. 50272/99).

Note 26 See for example the case of Herczegfalvy v. Austria (see footnote No. 24).

Note 27 On this subject, see inter alia document CM/Inf(98)14rev. (drawn up before the entry into force of Protocol No. 11): "The beneficiary of just satisfaction in Article 32 cases where the death of the original applicant occurs during the proceedings before the organs of the European Convention on Human Rights".

Note 28 Document CM/Inf(98)14rev.

Note 29 Rule 80 of the Rules of Court: "… within a period of six months after [the party] acquired knowledge of the fact …".

Note 30 See for example the case of Amassa and Frezza v. Italy (judgments of 25/10/2001 and 09/01/2003 (revision), application No. 44513/98).

Note 31 Addition suggested by the Turkish delegation.

Note 32 See e.g. the case of Credit and Industrial Bank v. Czech Republic (judgment of 21/10/2003, application No. 29010/95).

Note 33 In the case of Buffalo Srl in liquidation v. Italy (just satisfaction judgments of 03/07/2003 and 22/07/2004, application No. 38746/97), a company headed by a single person having the capacities of administrator and liquidator, the Court said that payment to the applicant would have to take the form of a deposit for the benefit of the administrator/liquidator with the respondent State's central bank.

Note 34 See for example the case of Västberga Taxi Aktiebolag and Vulic v. Sweden (judgment of 23/07/2002, application No. 36985/97). It should be noted that in the case of Presidential Party of Mordovia v. Russian Federation (judgment of 05/10/2004, application No. 65659/01), the Russian authorities raised the question of to whom they were to pay the just satisfaction, in view of the fact that the applicant had no legal personality. The Court itself solved the problem by amending the judgment, stating that the sums were to be paid to the lawyer.

Note 35 See CM/Inf/DH(2008)7 revised Addendum (restricted).

Note 36 Also see the case of Sovtransavto Holding v. Ukraine (just satisfaction judgments of 25/07/2002 and 02/10/2003, application No. 48553/99).

Note 37 See the case of Qufaj Co. Sh.p.k v. Albania, judgment of 18/11/2004 (application No. 54268/00).

Note 38 See, for example, the case of Dorigo v. Italy (judgment of 16/11/2000), application No. 46520/99), for which the payment had been made to the applicant’s brother, the applicant having been sentenced to a lengthy imprisonment.

Note 39 See, for example, the case of Demirel v. Turkey (judgment of 28/01/2003, application No. 39324/98). Payment was made within the time limit to an escrow account in the applicant's name, with assurances being given to the latter by the authorities that she could legally authorise her representative in the proceedings before the Court, notwithstanding the loss of her civic rights and the appointment of a guardian. Given these guarantees, of which the applicant has been informed, it was taken for granted that the date of the payment was when the money had been placed on an escrow account. Also see the case of Barut v. Turkey (judgment of 24/06/2003, friendly settlement, application No. 29863/96). This case also threw up a special problem in that the money was not in the escrow account when the representative of the applicants tried to withdraw it, roughly one year after expiry of the time limit for payment. As the Turkish authorities speedily made the payment after being informed of the problem encountered by the applicant, the Committee considered the sum to have been placed at the beneficiary’s disposal on the initial date.

Note 40 See for example the case of Mamatkulov v. Turkey (judgment of 04/02/05): the applicant is serving a life sentence in Uzbekistan.

Note 41 See for example the case of N.M.T., J.B.B. and L.B.A. v. Spain (application No. 17437/90, ResDH(95)106), for a case of a fugitive applicant.

Note 42 This solution was based on the one accepted by the Committee in the case of Müller v. Switzerland (judgment of 05/11/2002, Final Resolution ResDH(2004)17 of 22/04/2004).

Note 43 This contrasts with the more informal practices developed in respect of more minor renunciations of default interest.

Note 44 See inter alia the case of Müller v. Switzerland (judgment of 05/11/2002, Final Resolution ResDH(2004)17 of 22/04/2004).

Note 45 See for example the Bilgin v. Turkey or Ipek v. Turkey cases (footnote 7), in which the lawyer himself was the beneficiary designated by the Court for part of the sum awarded, but in which all these sums were in fact paid to the applicant.

Note 46 This problem still may happen when just satisfaction is put at the applicant's disposal, for instance with an agency of the national central bank. The practice made it that it should be an agency near the applicant's place of residence in order to avoid a long journey to receive the sums (see for example, the Italian practice in the 90's in this respect).

Note 47 In its judgment (interpretation) on the application of former Article 50 in the case of Ringeisen v. Austria (judgment of 23/06/1973), the Court said that (§ 14) : "in affording just satisfaction to the applicant in a sum expressed in German marks, the Court intended that the compensation should be paid to him in that currency and in the Federal Republic of Germany and not otherwise. In so deciding, the Court took into account…" among other things "…the uncontested fact that Ringeisen was resident in the Federal Republic of Germany". The Court confirmed this practice in recent judgments, for example Sroub v. Czech Republic (judgment of 17/01/2006, appl. No. 5424/03), § 32, in which, given that the applicant was resident abroad and had calculated in Canadian dollars the total of the costs incurred, the Court considered it expedient to pay him that amount in Canadian dollars and not in the respondent state's national currency.

As regards the Committee of Ministers' practice, see amongst numerous examples the case of Osu v. Italy (judgment of 11/07/2002, application No. 36534/97), in which the payment was made in Germany, where the applicant was living; that of Ciubano v. Romania (judgment of 16/07/2002), in which the payment was made in Canada, where the applicant was living; that of Sylvester v. Austria (judgment of 24 April 2003), in which the payment was made in the United States, where the applicant was living, to his lawyer; that of Labzov v. Russia (judgment of 16/06/2005), in which the payment was made in France, where the applicant was living; and that of Bianchi v. Switzerland (judgment of 22/06/2006), in which the payment was made in Italy, where the applicant is living ; Aoulmi v. France (17/01/2006), in which the payment was made in Algeria, where the applicant is living.

48 See for example the case of Poitrimol v. France, in which the applicant was living in the United States and had requested payment to his lawyer in Switzerland. The payment was made in Switzerland. See also the case of Munari v. Switzerland (judgment of 12/07/2005), in which the applicant, an Italian national living in Germany, requested the payment to be made on a bank account in Italy; payment was done in line with this request.

Note 49 It may be noted that, in certain cases in which the Court emphasised the exceptional diligence required by the issues at stake in proceedings (applicants suffering from fatal diseases, for instance), although the time limit for payment had been set by the Court at three months, emphasis was placed during the Ministers' Deputies' discussions on the importance of making the payment of the just satisfaction - and adopting any other measures - with the same diligence. See for example the case of Richard v. France (judgment of 22/04/1998, application No. 33441/96).

Note 50 For example, death of the applicant before the Court could give a judgment, without it being informed in time (Armando Grasso v. Italy, judgment – revision – of 29/04/2003); mistake in the designation of the applicant in the judgment (wrong spelling of his or her name, making the payment impossible for some national authorities) (Íkíncisoy v. Turkey, judgment of 27/07/2004) ; questioning on the merits of the case (Zwierzyński v. Poland, judgment of 19/06/2001).

Note 51 In the Committee of Ministers' experience, this definition of the date of payment corresponds with the concepts used by the Court, in particular those of "settlement" and "effective payment".

52 See inter alia the summing-up of the Chairman of the Deputies dated 17 December 2002 (819th meeting DH, section 3), in which he noted that:

"- there was agreement that the present system of payment controls was administratively very burdensome and that the Secretariat was invited to examine ways of simplifying it and that

Note - delegations recognised that a simplified control system might in exceptional circumstances lead to cases being closed in error although the necessary execution measures had not been taken, but considered that the possibility for the Secretariat to propose the reopening of such cases upon receipt of information regarding the alleged error provided an efficient guarantee to safeguard the efficiency of the Committee's execution control".

Note 53 See e.g. Magee v. United-Kingdom (judgment of 06/06/2000).

Note 54 See for example the case of Platakou v. Greece (judgment of 11/01/2001, application No. 38460/97).

Note 55 See inter alia the case of Müller v. Switzerland (judgment of 05/11/2002, Final Resolution ResDH(2004)17 of 22/04/2004), in which the Committee of Ministers expressly noted that the warrant had reached the applicant within the time limit set by the Court. Another aspect of this case was the applicant's refusal to take possession of the sums in question.

Note 56 See for example the case of Gennari v. Italy (Resolution DH (99) 162, application No. 36614/98).

Note 57 See for example the cases of Ruianu v. Romania (judgment of 17/06/2003, application No. 34647/97) – just satisfaction in escrow at a private bank; Buffalo Srl in liquidation against Italy (just satisfaction judgments of 03/07/2003 and 22/07/2004, application No. 38746/97) – just satisfaction in escrow at the national bank; Fernandez Fraga v. Spain (application No. 31263/96, Final Resolution DH(2000)151) – just satisfaction in escrow at the bank for official deposits.

Note 58 See for example the case of Platakou v. Greece (judgment of 11/01/2001, application No. 38460/97).

Note 59 Thus, for instance, for the Italian cases, particularly where payments are ordered by the Ministry of Justice (the majority of cases, including those on excessive length of proceedings) the delegation has been able to establish that, on average, the amounts transferred in such cases reached the beneficiary at most five days after final validation of the payment order.

Note 60 See paragraph 3.1.2 for a reminder about the information expected by the Committee of Ministers as evidence of placement at the beneficiary's disposal. Practice in this respect is relatively flexible, for reasons of administrative economy.

Note 61 See for example the case of Ciobanu v. Romania (judgment of 16/07/2002, application No. 29053/95), in which a change in the exchange rate to the applicant's disadvantage occurred between the time at which the sums left the state's account and the time at which they reached the applicant's account. The respondent state was not required to accept responsibility for this incident.

62 Interest of this kind was thus paid in the cases of Sporrong and Lönnroth v. Sweden (Resolution DH(85)17), Delta v. France (Resolution DH(91)31), Pine Valley v. Ireland (Resolution DH(93)43) and Papamichalopoulos v. Greece (Resolution DH(98)309).

63 See for example Interim Resolution DH(96)251 and final resolution DH(184).

Note 64 One of many examples is the case of Xenides-Arestis v. Turkey (judgment of 07/12/2006, application No. 46347/99).

65 See for example the case of Paulescu v. Romania (friendly settlement, judgment of 20/04/2004, application No. 34644/97).

Note 66 It is pointed out that this was not so in the cases which came under former Article 32, where the interest was calculated per complete month of delay.

Note 67 If, for example, the time limit for payment expired on 02/10/XXXX, and payment of the principal was made on 26/10/XXXX, default interest will have to cover 24 days, even if this itself is paid only three months later.

Note 68 See for example the Xenides-Arestis judgment already mentioned above.

Note 69 See for example the Paulescu judgment already mentioned above.

Note 70 Issue dealt with following a suggestion by the Turkish delegation.

71 Rules of the Court, Rule 80 (Request for revision of a judgment)

Note "1. In the event of the discovery of a fact which might by its nature have a decisive influence and which, when a judgment was delivered, was unknown to the Court and could not reasonably have been known to that party, request the Court, within a period of six months after that party acquired knowledge of the fact, to revise that judgment."

Note 72 See, for example Giuseppe Tripodi v. Italy, judgment (just satisfaction, revision) of 23/10/2001, or Santoni v. France, judgment (revision) of 01/06/2004.

Note 73 See for example the case of Stoicescu v. Romania, judgment (revision) of 21/09/2004.

Note 74 See the requests for revision made in the case of Zwierzyński v. Poland, judgment of 19/06/2001.

Note 75 Rules of the Court, Rule 81 (Rectification of errors in decisions and judgments):

Note "Without prejudice to the provisions on revision of judgments and on restoration to the list of applications, the Court may, of its own motion or at the request of a party made within one month of the delivery of a decision or a judgment, rectify clerical errors, errors in calculation or obvious mistakes."

Note 76 See for example Kuzu and others v. Turkey, judgment of 10/01/2006, Güzel Şahin and others v. Turkey, judgment of 21/12/2006.

Note 77 For example Meh v. Slovenia, judgment of 09/03/2006.

Note 78 See for example Siffre, Ecoffet et Bernardini v France, 12/12/2006, or Colacrai v. Italy, 23/10/2001.

Note 79 Rules of the Court, Rule 79 (Request for interpretation of a judgment)

Note "1. A party may request the interpretation of a judgment within a period of one year following the delivery of that judgment."

Note 80 See for example the judgment of Ringeisen v. Austria of 23/06/1973 (interpretation of the judgment of 22 June 1972), the judgment of Allenet de Ribemont v France of 07/08/1996 (interpretation of the judgment of 10/02/1995).

Note 81 Ringeisen judgment, cited above.

Note 82 Ringeisen judgment, cited above, § 13.

Note 83 See for example the judgment of Armando Grasso v. Italy (judgment - revision – of 29/04/2003), in which the Court held that the respondent State was to pay to each of the heirs of the lat applicant Mr. Grasso, within three months from the date on which the revised judgment became final in the circumstances set out in Article 44 § 2 of the Convention. The same expression is being used amongst others in the judgments of Santoni v. France (revision, 01/06/2004), Guerrera and Fusco v. Italy (revision, 31/07/2003), Ragas v. Italy (revision, 17/12/2002).

Note 84 See for example Siffre, Ecoffet and Bernardini v. France, 12/12/ 2006 in which, by means of a rectification, a just satisfaction was added for two of the applicants (on 27/04/2007, the Section Registrar wrote to the parties that, no request having been made for a referral of the case to the Grand Chamber, the judgment delivered on 12/12/2006, rectified on 27/03/2007, became final on 23/03/2007.

Note 85 See for example Tsfayo v. United-Kingdom (judgment of 14/11/2006), or Siffre, Ecoffet and Bernardini v. France, cited above.

Note 86 See for example the case of Brumarescu v. Romania (just satisfaction judgments of 28/10/1999 and 23/01/2001, application No. 28342/95).

Note 87 See for example the Ruianu v. Romania case (judgment of 17/06/2003, application No. 34647/97).

Note 88 See for example the case of N.M.T., J.B.B. and L.B.A. v. Spain (application No. 17437/90, ResDH(95)106), for a case of a fugitive applicant.

Note 89 The French delegation nevertheless indicated that, according to its authorities, placing the sums at the disposal of the applicants who do not co-operate is extremely difficult.

Note 90 See for example the case of Walder v. Austria (judgment of 31/01/2001, application No. 33915/96).

Note 91 See for example the Ruianu v. Romania case (judgment of 17/06/2003, application No. 34647/97).

Note 92 See for example the case of Buffalo Srl in liquidation v. Italy (just satisfaction judgments of 03/07/2003 and 22/07/2004, application No. 38746/97), or the case of Platakou v. Greece (judgment of 11/01/2001, application No. 38460/97).

93 See inter alia the case of Fernandez Fraga v. Spain (application No. 31263/96, Final Resolution DH(2000)151), in which the authorities of the respondent State, before expiry of the time limit for payment, informed the Committee of Ministers of the applicant's manifest lack of co-operation, and that the sum awarded by way of just satisfaction had consequently been placed at his disposal at the bank for official deposits, a fact of which he had been duly informed without delay.

Note 94 See inter alia the solution finally adopted in the case of Müller v. Switzerland (application No. 41202/98, Final Resolution ResDH(2004)17).

Note 95 See for example the case of Gennari v. Italy (Resolution DH (99) 162, application No. 36614/98).

Note 96 See for example the case of Müller v. Switzerland (judgment of 05/11/2002, Final Resolution ResDH(2004)17 of 22/04/2004), in which the Committee of Ministers expressly noted in its final resolution that the warrant had reached the applicant within the time limit set by the Court.

Note 97 See for example the case of Mouesca v. France (judgment of 03/06/2003, application No. 52189/99), in which payment was made to the lawyer's "CARPA" account.

Note 98 See inter alia the summing-up by the Chairman of the Deputies of 17 December 2002 (819 DH meeting, section 3), quoted in footnote 44, above.

Note 99 See for example the Christine Goodwin v. United Kingdom judgment of 11/07/2002: “the Court finds it appropriate that henceforth all just satisfaction awards made under Article 41 of the Convention should in principle be based on the euro as the reference currency”. See also, in the same terms, the judgments I. v. United Kingdom of the same date, or Janosevic quoted below. It is recalled that on 1 January 2002 began the last phase of introduction of the euro. As from this date, coins and bills in euros started being used in every day life; during several weeks, they were used simultaneously with national cash. Euro hence became a parallel cash, whereas for non-cash transactions it became mandatory. The Treaty provided that the replacement of the national currencies had to be achieved by 30 June 2002 at the latest. In fact, their last day of existence has been brought forward to 28 February 2002 in almost all countries, officially to 31 December 2001 in Germany (but in fact 28 February 2002), to 27 January in the Netherlands, 9 February in Ireland and 17 February in France.

Note 100 See for example the case of Bolat c. Russian Federation of 05/10/2006.

Note 101 If the applicant lives in the respondent state, the Court normally orders a conversion into the national currency of the respondent state. See for example the Janosevic v. Sweden judgment of 23/07/2002 (§ 114): “The award is made in euros, to be converted into the national currency at the date of settlement”. See also the Pramov v. Bulgaria judgment of 30/09/2004, in which the Court directed the respondent state to pay the applicant specified sums, to be converted into Bulgarian levs at the rate applicable on the date of settlement, in respect of non-pecuniary damages and of costs and expenses.

Note 102 It the applicant lives in another country that the respondent state and if his/her state of residence is outside the euro zone, the conversion is normally ordered into the currency of the state of residence. See for example the case of Sroub v. Czech Republic of 17/01/2006 in which, given that the applicant was resident abroad and had calculated in Canadian dollars the total of the costs incurred, the Court considered it expedient to pay him that amount in Canadian dollars and not in the respondent state’s national currency. This corresponds to the general rule described in part 2, “Place of payment”.

Note 103 See for example the Aksakal v. Turkey judgment of 15/02/2007: the amount awarded in respect of costs and expenses is fixed in euros, to be converted into pounds sterling and paid directly to the lawyer in the United Kingdom.

Note 104 See for example the case of Ciobanu v. Romania (judgment 16/07/2002) where the respondent state was directed to pay the applicant, within three months of the date when its judgment became final, a specified amount in euros in respect of pecuniary and non-pecuniary damage, to be converted into US dollars at the rate applicable on the date of settlement.

Note 105 Such execution problems could be avoided if the states already mentioned them before the Court.

Note 106 See in particular the case of Kaya Mehmet v. Turkey (judgment of 19/02/1998, application no. 22729/93), in which the Court ordered the respondent state to pay the applicant and his brother's widow and children part of the amount in Turkish liras and another part in pounds sterling. In spite of that stipulation, the entire sum was paid in Turkish liras. The recipients did not object; the Committee ceased to examine the case from the standpoint of just satisfaction from the 966th meeting (June 2006) onwards. See also the case of Tanrikulu v. Turkey (judgment of 08/07/1999, application no. 23763/94).

Note 107 In the case of Stran Greek Refineries and Stratis Andreadis v. Greece (see final Resolution DH(97)184), when the Committee of Ministers had been informed of an agreement on other terms of payment than specified in the judgment, particularly regarding the currency, it verified that the applicants had indeed accepted the new terms of payment and that the settlement thereby reached was in accordance with the requirements of the Convention; see also the Chairman's summary of the 585th meeting (March 1997).

Note 108 See for example the case of Labzov v. Russia (judgment of 16/06/2005, application No. 62208/00): it emerges from the Court's judgment that at the date on which the judgment was delivered, the applicant lived in the Russian Federation; at the stage of execution, the applicant requested to be paid in France, his new country of residence. The – reasonable – costs of the transfer have been bared by the applicant.

Note 109 As with the amount awarded in non-pecuniary damages in the case of Tanrikulu v. Turkey (judgment of 08/04/1999, application No. 23763/94).

Note 110 As with the amount awarded for costs and expenses in the case of Tanrikulu (see above).

Note 111 The rate applied is thus the average official rate indicated by the national bank of the respondent state. Links to the websites of all central banks may be found on the official site of the Bank of International Settlements at this address: http://www.bis.org/cbanks.htm .

Note 112 Should this rate be significantly disadvantageous for the applicant, it would seem consistent with states' general duty of safeguarding the value of the just satisfaction to look for a better rate, for example by purchasing the money on a more favourable market, normally in the country of payment (this issue may arise with currencies whose international circulation is not large).

Note 113 See in particular the case of Zana against Turkey (judgment of 25/11/1997, application no.18954/91): the exchange rate for the date of the Court's judgment was used, instead of the one for the date of settlement – an additional payment of the balance was made.

114 A previous presentation of this issue can be found in document CM/Inf(2004)3 of 10 February 2004.

Note 115 With the exception of a small number of judgments (see in particular Ringeisen, Piersack, Selmouni and Velikova cited in this part), the Court has generally not considered itself competent to give precise guidelines on the exemption from attachment of sums awarded as just satisfaction, leaving it to

the state to deal with the matter in the course of the execution of judgments, under the supervision of the Committee of Ministers. In the Philis v. Greece judgment of 27/08/1991, for example, the Court stated that it was not in a position to accede to the applicant's request to declare the sum awarded exempt from attachment (§79); see also the interpretation of the judgment in the case of Allenet de Ribemont v. France of 07/08/1996: in response to a request for interpretation submitted by the Commission, the Court stated that it had no jurisdiction to provide an answer, taking the view that the question asked was of a general nature.

Note 116 See, for example, the following cases, showing that attachment is permissible only once it has been ascertained that there was no link with the violation:

Note - Deixler v. Austria, Final Resolution DH (99) 247: "…the amount of just satisfaction [has been set off] against the State's tax claims. The setting off has been carried out in conformity with Austrian Law (…). In the circumstances of the case, there is no link between the State's claims and the violations found."

Note - Hengl v. Austria, Final Resolution DH (98) 200: "…the Vienna Finanzprokuratur notified the applicant, on 12 December 1997, of the fact that it had set off 76 514 Austrian schillings of the just satisfaction against the State's identical claim in accordance with a judgment from the Döbling Court (No. 1C1481/92g of 27 October 1993) and the remaining 13 486 Austrian schillings against part of a tax claim of over 5 000 000 Austrian schillings due for payment as from 1 January 1998. Those claims bear no relation with the violation found in the present case."

Note - Ververgaert v. the Netherlands, Final Resolution DH (2000)7: "…Whereas the Committee of Ministers also took note of the fact that the Government of the respondent State set off the sum of 3 000 Dutch guilders, awarded in respect of non-pecuniary damage, against debts owed by the applicant to the Ministry of Justice, debts which are unrelated to the violation found in the present case…".

Note - Hauschildt v. Denmark (judgment of 24/05/1989), where the legal fees incurred by the applicant in respect of the proceedings which violated Article 6 were subject to attachment accepted by the Committee of Ministers, since neither the Court nor the Committee entertained any doubt that the conviction was well-founded, and the applicant himself had not argued before the court that the outcome of the domestic proceedings would have been more favourable to him had there been no violation, nor had he used existing legal possibilities for requesting a reopening of the case. For the Court's findings, see § 57 of the judgment: "…with regard to the judges concerned, the Court has excluded personal bias (see paragraph 47 above). What it has found is that, in the circumstances of the case, the impartiality of the relevant tribunals was capable of appearing to be open to doubt and that the applicant's fears in this respect can be considered to be objectively justified (see paragraph 52 above). This finding does not entail that his conviction was not well founded. The Court cannot speculate as to what the result of the proceedings might have been if the violation of the Convention had not occurred (see the above-mentioned De Cubber judgment, Series A no. 124-B, p. 18, para. 23). Indeed the applicant has not even attempted to argue that the result would have been more favourable to him, and moreover, given the established lack of personal bias, the Court has nothing before it that would justify such a conclusion…".

Note 117 See Hauschildt cited above.

Note 118 Exceptions could exist where reopening is refused on purely formal grounds, e.g. the non-abolition of the law at the origin of the Convention violation.

Note 119 In certain cases questions of attachment have indeed been raised in respect of private debts, but the debts were clearly unrelated to the violations so e.g. the debts at issue in the Allenet de Ribemont judgment of 10/2/1995, see also the interpretative judgment of 7/8/1996. Besides the causality aspect,

attachment of just satisfaction to secure payment of private debts originating in the proceedings having violated the Convention also raise important issues of legal certainty.

Note 120 See, for example, in the Unterpertinger v. Austria case, interim resolution DH(89)2, where a national court authorised the attachment of the sum awarded for non-pecuniary damage in order to pay the money owed by the applicant for the maintenance of his son. See also the cases of Werner v. Poland (judgment of 15/11/2001, Application No. 26760/95), Jedamski and Jedamska v. Poland (judgment of 26/07/2005, Application No. 73547/01), Malisiewicz-Gąsior v. Poland (judgment of 06/04/2006, Application No. 43797/98) and Lopriore v. Italy (judgment of 11/12/2001, Application No. 51668/99), in which cases the sums awarded for non-pecuniary damage were also allowed to be seized in order to settle the applicants' debts to private individuals.

Note 121 See the cases of F.W. Kremzow II (Application No. 13715/88, Interim Resolution of 19/10/1994) and F.W. Kremzow III (Application No. 15883/88, Interim resolution of 19/10/1994). In these cases, the Committee, by virtue of its authority under the former Article 32, ordered that the just satisfaction awarded for non-pecuniary damage be free from attachment. The question of whether the said sums had, at least in part, a link with the violation was not totally made clear before the Committee: the Commission had recommended that in the circumstances of the case, the sums should be awarded personally and should be free from attachment, which the respondent state readily accepted. The Committee concurred with this opinion, but it was nevertheless agreed that these decisions should not create a precedent pending more detailed consideration of the question.

Note 122 See, for example, the cases of Deixler v. Austria, Hengl v. Austria and Ververgaert v. The Netherlands, in which the sums awarded for non-pecuniary damage were seized to cover state debts. However, the amount granted for costs and expenses was not seized – see below.

Note 123 Cf. the time required between the submissions of the parties, the drafting and issuing of the judgment, 3 months before it becomes final and another 3 months for the payment of just satisfaction.

Note 124 See, for example, the Jedamski and Jedamska v. Poland case (judgment of 26/07/2005, Application No. 73547/01), in which attachment was sought of the full just satisfaction awarded to cover debts of bona fide third parties, but in which attachment was eventually allowed by the Government only in respect of non-pecuniary damage; the sum awarded in respect of costs and expenses, in contrast, was exempted from attachment in order to secure the payment of the applicants' legal counsel.

Note 125 So for example the case of Selmouni v. France, judgment 28/7/1999, §133 (cited above at point 104). See also, for example, the Ververgaert v. the Netherlands case, Final Resolution DH (2000)7 (see also footnote 8): by virtue of its authority under the former Article 32, the Committee of Ministers ordered the payment to the applicant of sums for non-pecuniary damage and for costs and expenses. The applicant owed money to the state. The state seized the just satisfaction in respect of non-pecuniary damage (prior to the Selmouni and Velikova judgments) but not that in respect of costs and expenses, which it paid directly to the applicant's counsel.

Note 126 The Janosevic v. Sweden case: (cf. document DD(2004)78; issued 10/02/2004). Part of the sums awarded in respect of costs and expenses was seized by the state, in compensation for the applicant's tax debts, separate from those at issue in the proceedings before the European Court. However, the lawyer claimed that his costs had already been paid by means of an advance from an association (the Taxpayers' Association, "Skattebetalarnas förening"), which the applicant was nevertheless required to reimburse by paying the amount awarded by the Court for costs and expenses. The Government, however, maintained that this allegation was unproven and this was accepted by the CM.

Note 127 See the Papon v. France case where one of the applicant's lawyers complained of the attachment of the sums awarded for costs and expenses. However, this attachment had in fact taken place at the request of the applicant himself – the beneficiary of the just satisfaction award, through the intermediary of another lawyer, in order to offset tax debts which were unconnected with the proceedings before the European Court. See also the Nakach v. the Netherlands case (judgment of 30/06/2005, Application No. 5379/02), where the government agent informed the applicant's counsel that the state wished to seize the sum awarded for costs and expenses to pay for debts owed to the state, established by a court decision unconnected with the violation of the Convention at issue in the case in question; the lawyer raised no objection.

128 See, for example, Ipek v. Turkey (judgment of 17/02/2004, Application No. 25760/94).

Note 129 It can be noted that such problems did normally not appear concerning the just satisfaction for non pecuniary damage, as it is usually not taxable.

Note 130 See, for example, Vermeire v. Belgium, judgment (former Article 50) of 04/10/1993 (see §9 et seq., in particular §12 concerning pecuniary damage: "Inheritance tax […] must be deducted from that sum ") ; Iatridis v. Greece (former Article 50), 19/10/2000 (§42: the Court reduced its assessment of pecuniary damage "by 20% in order to allow for the tax that the applicant would have had to pay on it"). The fact that normally no account is taken of any tax due in the operative provisions does not appear to cause problems in practice.

Note 131 See, for example, among the first cases, the Silver (Article 50) v. the United Kingdom judgment of 24/10/1983, the Luberti v. Italy judgment of 23/02/1984, the Johnston and others v. Ireland judgment of 18/12/1986 and many subsequent judgments where the wording used in the operative provisions was "the resulting figure is to be increased by any value added tax that may be due". In other cases, the Court has indicated that VAT is included. See, for example, X. v. the United Kingdom, judgment of 18 October 1982 (operative part: "the United Kingdom is to pay to the applicant's estate, in respect of the domestic costs, the sum of three hundred and twenty-four pounds sterling (£324), value added tax included"); Campbell and Cosans (former Article 50) v. the United Kingdom, judgment of 22 March 1983 (see, for example, §21 et seq: "Mrs Cosans claimed in respect of legal costs and expenses (…) inclusive of value added tax …"; the Court decided that "The whole of [the claim] therefore falls to be retained for the purposes of Article 50"). It would appear that the difference in treatment reflected the way in which the parties' claims were formulated.

Note 132 See, for example for VAT, the Philis v. Greece judgment of 29/05/1997 (UK VAT, the applicant having been represented by a barrister practising in the United Kingdom); the Aydin v. Turkey judgment of 25/09/97 (UK VAT, the applicant having been represented by a barrister practising in the United Kingdom); the Ignaccolo-Zenide v. Romania judgment of 25/01/2000 (French VAT, the applicant having been represented by a lawyer practicing in France). For other taxes, see Sovtransavto v. Ukraine, 25/07/2002 and 02/10/2003 (Russian corporation tax).

Note 133 See, for example, among a steadily rising number of judgments, the Rabia Calkan v. Turkey judgment of 05/06/2001, the Mikulic v. Croatia judgment of 07/02/2002, the Goc v. Poland judgment of 16/04/2002 and the Prokopovich v. Russia judgment of 18/11/2004.

Note 134 Some governments took part in this development by incorporating a similar commitment in the friendly settlements to which they were a party: see, for example, the friendly settlements concluded in the A.S. v. Turkey case (judgment of 28 March 2002) and the Özdiler v. Turkey case (judgment of

27/06/2002) where the Government stipulated that the agreed sum would be subject to no tax or other duty at the relevant time.

135 In which case, the Court examines taxation issues in the statement of reasons, and generally awards a net sum "plus any tax that may be chargeable." See, for example: Prodan v. Moldova, judgment of 18/05/2004 (cf. §74 and operative part); Hirschhorn v. Romania, judgment of 26/07/2007 (cf. §119 and operative part); Radanovic v. Croatia, 21/12/2006 (cf. §65 and operative part); Kirilova and others v. Bulgaria (Article 41), 14/06/2007 (cf. §31 and operative part).

Note 136 In certain cases the VAT question is clearly the only tax matter which might arise (in particular where the Court has awarded a sum either solely for costs and expenses or for costs and expenses plus non-pecuniary damage, the latter award in principle not being taxable under domestic legislation). Here, the Court does on occasion only refer to the VAT question and does not include in addition the redundant "global formula"; in these cases, the Court sometimes deals with the VAT in the reasoning of the judgment (see, for example Folgerø and others v. Norway, 29/06/2007; Janosevic v. Sweden, 23/07/2002), or sometimes directly in the operative provisions (eg Rachdad v. France, 13/11/2003; Kroliczek v. France, 02/07/2002). Also in other types of cases where there may be other taxes in question, the Court may still deal with the VAT issue separately and use the "global formula" for any other taxes (cf, for example, Vilho Eskelinen and others v. Finland, 19/04/2007; Jalloh v. Germany, 11/07/2006; Scordino v. Italy (no 3), 06/03/2007 – just satisfaction; Zentar v. France, 13/04/2006).

Note 137 See, for example, Klemeco Nord AB v. Sweden, 19/12/2006: no reference is made to VAT in the judgment, only the global formula is used; no VAT was paid in addition to the sums awarded, it being considered that this was included therein. The same approach was followed, amongst others, in Tzekov v. Bulgaria (23/02/2006), Związek Nauczycielstwa Polskiego v. Poland (21/09/2004), Matheron v. France (29/03/2005), Mubilanzila Mayeka and Kaniki Mitunga v. Belgium (12/10/2006), Alliance Capital (Luxembourg) S.A. v. Luxembourg (18/01/2006). See also the Xenides-Arestis (Article 41) v. Turkey case of 22 December 2005 - memorandum CM/Inf/DH(2007)19 and the decision adopted by the Ministers' Deputies at the 1007th meeting, October 2007, document CM/Del/Dec(2007)1007 of 19/10/2007.

Note 138 See, for example, the issues raised in the Société de Gestion du Port de Campoloro et société fermière de Campoloro v. France case, 26/09/2006. The Court ordered the respondent state to pay the applicants the compensation due to them for failure to enforce the domestic judgments at issue in the case, plus any other tax due on the sums in question. The practical solution was not to subject the said sums to tax, for reasons of simplification (insofar as the state would have been obliged to reimburse the taxes levied) and in pursuance of the principle whereby under French law damages awarded by a court are not liable to tax.

Note 139 For cases where the state is not the respondent state, see for example, Sovtransavto v. Ukraine (judgments of 25/07/2002 and 02/10/2003). The applicant company complained that the sums awarded as just satisfaction would be taxed at 24% in Russia, the country in which its headquarters were located. In accordance with the Court's global formula "plus any tax that may be chargeable", in this case the respondent state paid an additional amount corresponding to the tax the company would have to pay in Russia. Other cases raising this kind of questions are Bartik v. Russian Federation (21/12/2006) and Zlinsat, spolt. S.r.o. v. Bulgaria (15/06/2006, judgment on just satisfaction 10/01/2008). Another possible solution, in line with that outlined in the preceding footnote, would be for the authorities of the respondent state to conclude a special agreement with the authorities of the taxing state to ensure that the sums paid will be exempt from taxation.