

Pilot Judgments

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The European Court's pilot judgment procedure deals with large groups of repetitive cases that derive from systemic problems.

Introduction

In recent years, the European Court has developed the pilot judgment procedure as a means of dealing with large groups of repetitive cases that derive from the same systemic problem. In a pilot judgment, the Court aims to determine whether there has been a violation of the European Convention in the particular case; to identify the dysfunction under national law that is at the root of the violation; to give clear indications to the respondent state as to how it can eliminate this dysfunction; and to bring about the creation of a domestic remedy capable of dealing with similar pending cases. The pilot judgment procedure is not only intended to facilitate effective implementation by respondent states of individual and general measures necessary to comply with the Court's judgments, but also induces the respondent state to resolve large numbers of individual cases arising from the same structural problem at the domestic level, reinforcing the principle of subsidiarity which underpins the Convention system.

Background

The pilot judgment procedure originated in the discussions on the drafting of Protocol 14. When adopting Protocol 14, the Committee of Ministers urged the Court, to identify "in its judgments finding a violation of the Convention, what it considers to be an underlying systemic problem and the source of this problem, in particular when it is likely to give rise to numerous applications, so as to assist states in finding the appropriate solution and the Committee of Ministers in supervising the execution of judgments". The procedure that has developed was subsequently codified in the Rules of Court in 2011 (Rule 61).

Key elements of the pilot judgment procedure include:

- **Consultation:** the Court shall seek the views of the parties on the suitability of processing the application in accordance with the procedure. This does not constitute a veto.
- **Prioritization:** an application selected as a pilot judgment shall be prioritized.
- **Remedial measures:** the Court identifies the remedial measures which the state is required to take.
- **Adjournment of similar applications:** the Court may adjourn the examination of all similar applications pending the adoption of the remedial measures in the pilot judgment.

The Court has issued approximately 13 pilot judgments since 2004. The procedure has most often been used to address breaches of the right to property (Article 1 of Protocol No 1), the right to a fair hearing (Article 6(1)) and the right to an effective remedy (Article 13). Pilot schemes are not high on the reform agenda and

are perceived as an effective, although not sufficient, way of grappling with repetitive applications. However, the pilot judgment procedure has been subjected to the following criticisms.

Legal basis of the procedure

The Committee of Ministers did not consider that any treaty amendment was needed to start using the procedure; rather, it derived its authority from the existing Article 46. In the first pilot judgment – *Broniowski v Poland* (2004) – the Court interpreted Article 46 to include the obligation “not just to pay those concerned the sums awarded by way of just satisfaction under Article 41 but also to select the general and/or if appropriate individual measures to be adopted in their domestic legal order to put an end to the violation found by the Court”. However, there has been a general acceptance by governments of the utility of the procedure, with only one government (Italy) challenging its legal basis.

The NGO coalition, fronted by Amnesty International, strongly opposed the transfer of provisions of the Rules of Court to any instrument where they could be subjected to a simplified amendment procedure. Any new text should not constrain the Court in the development of the pilot judgment procedure.

Selection of systemic situations for application of procedure

It has not always been evident why the pilot judgment procedure has been applied to some systemic situations and not others. The selection of cases for the application of the procedure appears to depend upon practical and political considerations, as well as legal factors. The question of whether a state is likely to be co-operative has been a significant factor, with the Court gauging the political will to implement change.

Selection of pilot application

One concern is whether the consideration of a particular case enables the Court to address the underlying systemic problem to a sufficient extent. This requires particular care by the Registry in the selection of a suitable application.

Situation of adjourned applicants

The rationale behind adjourning similar cases stems from the notion of subsidiarity, whereby respondent states should find solutions to make their system Convention-compliant. However, adjournment can leave applicants in an uncertain position and vulnerable to long delays while a resolution is agreed upon and implemented. Adjournment appears only to benefit the Court, as the respondent state will not feel the adjournment of parallel applications as pressure. It has been argued that freezing of cases should only be done if the request to take general measures is accompanied by a specific time-limit.

Member State implementation

The pilot judgment procedure presupposes that respondent states are willing and have the capacity to respond adequately to the pilot judgment. Accordingly, the procedure depends on the state’s willingness to cooperate. The future of the procedure is in the hands of the Committee of Ministers since it is the successful enforcement of pilot judgments that will validate the Court’s continued recourse to them.

info@justiceinitiative.org
www.justiceinitiative.org