

Résolution CM/ResDH(2012)197¹
Henryk et Ryszard Urban contre Pologne
Exécution de l'arrêt de la Cour européenne des droits de l'homme

(Requête n° 23614/08, arrêt du 30 novembre 2010, définitif le 28 février 2011)

Le Comité des Ministres, en vertu de l'article 46, paragraphe 2, de la Convention de sauvegarde des droits de l'homme et des libertés fondamentales, qui prévoit qu'il surveille l'exécution des arrêts définitifs de la Cour européenne des droits de l'homme (ci-après nommées « la Convention » et « la Cour »),

Vu l'arrêt définitif, qui a été transmis par la Cour au Comité dans l'affaire ci-dessus et la violation constatée (voir document [DH-DD\(2011\)683E](#)) ;

Rappelant l'obligation de l'Etat défendeur, en vertu de l'article 46, paragraphe 1, de la Convention, de se conformer aux arrêts définitifs dans les litiges auxquels il est partie et que cette obligation implique, outre le paiement de la satisfaction équitable octroyée par la Cour, l'adoption par les autorités de l'Etat défendeur, si nécessaire :

- de mesures individuelles pour mettre fin aux violations constatées et en effacer les conséquences, dans la mesure du possible par *restitutio in integrum* ; et
- de mesures générales permettant de prévenir des violations semblables ;

Ayant invité le gouvernement de l'Etat défendeur à informer le Comité des mesures prises pour se conformer aux obligations susmentionnées ;

Ayant examiné le bilan d'action fourni par le Gouvernement indiquant les mesures adoptées afin d'exécuter l'arrêt et notant qu'aucune satisfaction équitable n'a été octroyée par la Cour dans la présente affaire (voir document [DH-DD\(2011\)683E](#)) ;

S'étant assuré que toutes les mesures requises par l'article 46, paragraphe 1, ont été adoptées ;

DECLARE qu'il a rempli ses fonctions en vertu de l'article 46, paragraphe 2, de la Convention dans cette affaire et

DECIDE d'en clore l'examen.

¹ Adoptée par le Comité des Ministres le 6 décembre 2012 lors de la 1157e réunion des Délégués des Ministres.

ACTION REPORT²
Information about the measures to comply with the judgment in the case of
Henryk Urban and Ryszard Urban against Poland³

Case description

Henryk Urban and Ryszard Urban, application no. 23614/08, judgment of 30/11/2010, final on 28/02/2011.

The case concerns the violation of the right to an independent tribunal due to the fact that the trial court, which ruled in October 2007 on a criminal charge against the applicants, was composed of an assessor (assistant judge) (violation of Article 6 § 1 of the Convention).

The European Court of Human Rights noted that the Polish Constitutional Court, in its judgment of 24/10/2007, had considered that the possibility of conferring the exercise of judicial powers on assessors, provided for under Article 135 § 1 of the Law of 2001 on the Organisation of Courts (Prawo o ustroju sądów powszechnych, "the 2001 Act"), fell short of constitutional requirements because assessors did not enjoy the necessary guarantees of independence, notably vis-à-vis the Minister of Justice (§ 48 of the Court's judgment).

The Court considered that the assessor in the applicant's case had lacked the independence, as she could have been removed by the Minister of Justice at any time during her term of office and that there had been no adequate guarantees protecting her against the arbitrary exercise of that power by the Minister (§ 53 of the Court's judgment).

The initial defect as regards the lack of independence could not be remedied in the present case by the second-instance court as it did not have the power to quash the judgment on the ground that the court of first-instance had been composed of the assessor since the assessors vested with judicial powers were – in accordance with the 2001 Act – authorized to hear the cases in first-instance courts.

I. Individual measures

The Court considered that in the particular circumstances of the present case the finding of a violation constituted in itself sufficient just satisfaction for any non-pecuniary damage which may have been sustained by the applicants (§ 62 of the Court's judgment). The Court also noted that the domestic law provided for a possibility of reopening of criminal proceedings when such a need results from a judgment of the Court. However, in the present case the Court found no grounds which would require it to direct the reopening of the applicants' case (§§ 56, 66 of the Court's judgment).

In these circumstances, no other individual measure appears necessary.

II. General measures

The Court noted that the judgment of the Constitutional Court of 24/10/2007 had identified a structural dysfunction and had called for a legislative response. Such response was given by the Parliament which removed the structural dysfunction as of 2009 (§§ 25, 64 of the Court's judgment).

Noting that the constitutional and Convention deficiency regarding the status of assessors was remedied by the domestic authorities, which decided to abolish the office of assessor altogether, the Court noted that the authorities of the respondent State took the requisite remedial measures in order to address and remedy the deficiency underlying the present case (§ 67 of the Court's judgment).

The Court's judgment was also translated into Polish and published on the Internet site of the Ministry of Justice (www.ms.gov.pl).

In these circumstances, no further general measure appears necessary.

² Information submitted by the Polish authorities on 2 August 2011.

³ En anglais uniquement.

III. Conclusions of the respondent state

The Government considers that no individual measures are necessary in the present case and that the general measures adopted, notably the legislative changes, will be sufficient to conclude that Poland has complied with its obligations under Article 46, paragraph 1 of the Convention in respect to the breach of Article 6, paragraph 1 of the Convention.