Unilateral declarations: policy and practice

In a case before the European Court of Human Rights, where a friendly settlement procedure has been unsuccessful[1], the respondent Government may make a declaration acknowledging the violation of the European Convention on Human Rights and undertaking to provide the applicant with redress. This is known as a unilateral declaration and is now governed by the new Rule 62A of the Rules of Court[2].

The use of such unilateral declarations has become more common since 2007. 692 applications were dealt with on the basis of a unilateral declaration in 2011 compared with 30 in 2007. In February 2010 the Interlaken Conference on the future of the European Court of Human Rights emphasised the potential role of unilateral declarations, especially for the handling of repetitive cases.

The Court has now reviewed its practice in this area to ensure clarity and consistency and has identified the following main principles.

Whilst all types of case may be concluded by a unilateral declaration, declarations submitted in sensitive or complex cases, and those concerning the most serious human rights abuses, will be examined with particular care and attention in the light of the criteria adopted by the Court in the Tashin Acar judgment[3].

A unilateral declaration will usually be filed after an attempt to reach a friendly settlement has failed[4] and may be appropriate at the just satisfaction stage of the proceedings in a case.

The filing of a declaration must be made in public and adversarial proceedings (unlike the confidential negotiations for a friendly settlement).

The applicant is invited to submit comments, in particular explaining why the Court should refuse to accept the declaration by way of settlement of the dispute.

If the applicant is satisfied with the terms of the unilateral declaration, the case will be struck out of the Court's list as with any friendly settlement[5], and its execution will be supervised by the Committee of Ministers.

Even if the applicant wishes the examination of the application to be continued, the Court will decide[6] whether or not it is justified. If the Court is to conclude that it is no longer justified for it to continue examining the case, the following non-exhaustive criteria must be satisfied by the unilateral declaration:

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[1] At any stage of the proceedings, the Court may suggest that the parties reach a friendly settlement. This is an agreement between the parties under which the case will be concluded. When the applicant and the State concerned come to an agreement in order to settle their dispute, this usually involves an award of compensation to the applicant. After examining the terms of the friendly settlement, and unless it finds that respect for human rights requires it to continue examining the application, the Court will strike the case out of its list. If no agreement is reached, the Court will proceed with its examination of the case on the merits.

[2] The provision enters into force on 1 September 2012.

[3] *Tashin Acar v. Turkey* (preliminary objection) [GC], no. 26307/95, 6 May 2003

[4] Also, exceptionally, outside the friendly settlement procedure (in repetitive cases)

[5] Article 39 of the Convention

[6] Article 37 of the Convention

- Existence of sufficiently well-established case-law in the matter raised by the application.

- Clear acknowledgment of a violation of the Convention in respect of the applicant – with an explicit indication of the nature of the violation.

- Adequate redress, in line with the Court's case-law on just satisfaction[7].

- Where appropriate undertakings of a general nature (amendment of legislation or administrative practice, introduction of new policy, etc.).

- Respect for human rights: the unilateral declaration must provide a sufficient basis for the Court to find that respect for human rights does not require the continued examination of the application.

If the Court accepts the unilateral declaration, it is endorsed by a striking out decision or a judgment. If costs and expenses are not provided for[8], the Court may exceptionally make such an award under Rule 43 § 4 of the Rules of Court.

Execution

The Committee of Ministers is not empowered to supervise the fulfilment of undertakings in a unilateral declaration[9] as endorsed by the Court in a decision.

In the event of failure by a government to take the individual measures granted, the applicant may request that his or her application be restored to the Court's list.

The decision will not, in itself and in principle, have the effect of preventing the applicant from pursuing any remedy that may be available at domestic level.

Examples of recent unilateral declarations

Bekerman v. Liechtenstein (no. 15994/10), 29 November 2011. Unilateral declaration acknowledging the excessive length of the proceedings and providing adequate redress: struck out in respect of the complaint addressed in the unilateral declaration, under Article 37 of the Convention.

Liptay v. Hungary (no. 12144/09), 22 May 2012. Unilateral declaration acknowledging the excessive length of the proceedings and providing adequate redress, the terms of which were accepted by the applicant: struck out under Article 39 of the Convention.

Rozhin v. Russia (no. 50098/07), 6 December 2011. Unilateral declaration acknowledging a violation of the right to a fair trial but without any undertaking to re-open the domestic proceedings: rejection of request to strike out.

Megadat.com SRL v. Moldova (no. 21151/04), 17 May 2011. The first case in which the Court accepted a government's unilateral declaration to settle the question of just

[7] The use of the term "*ex gratia*" in relation to compensation is regarded as being at odds with a clear acknowledgment of a violation. In the event of an unjustified refusal by the applicant of a friendly settlement, the Court may accept a 10% reduction in the basic sum as derived from the scales as developed from its case-law.

[8] Or if the amount proposed is insufficient in relation to the work undertaken by the applicant's representative(s).

[9] If there is no indication in the declaration of a time-limit for execution, the Court will allow three months for the fulfilment of undertakings as regards any individual measures, such as the payment of an award, failing which the Government will have to pay default interest on any payment due.

satisfaction, after that question had been reserved. The Court found that there was nothing to prevent a respondent State from filing a declaration at that stage.

For further examples please consult the Hudoc database.