

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

ROUND TABLE THE SETTING UP OF EFFECTIVE DOMESTIC REMEDIES TO CHALLENGE CONDITIONS OF DETENTION

organised in the framework of the Human Rights Trust Fund (HRTF)

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Preventive Remedies and Possible Challenges

The opinions expressed in this document are those of the author.

WHY?

The Court seems to be becoming
SCUNNERED.

It was never meant to be a primary remedy.
Article 13 stresses need for “*effective
remedy before a national authority*”.

SUBSIDIARITY
PILOT JUDGMENTS

In any event:

**IT IS NOT A GOOD IDEA TO WASH
YOUR DIRTY LINEN IN PUBLIC**

SETTING UP EFFECTIVE REMEDIES

1. GET THE DOMESTIC LAW RIGHT:

it must harmonise with Court judgments.

2. ENFORCE THE LAW

HOW TO ENFORCE THE LAW

(a) Proper recruitment, training and management of professional prison staff.

- with security of employment
- continuous professional development
- proper conditions of employment
- promotion by merit

HOW TO ENFORCE THE LAW

(b) Ensure that all discretionary decisions are taken in a transparent and accountable manner in accordance with published criteria.

All actions restricting human rights need to comply with the traditional **PLANN** acronym: they must be Proportionate, Lawful, Accountable, Necessary and Non-discriminatory

HOW TO ENFORCE THE LAW

(c) Develop an effective system of internal controls

- within each establishment
- within each region
- within the Headquarters/Ministry

HOW TO ENFORCE THE LAW

(d) Develop effective external controls.

To be effective, such controls need to be:

- Independent
- Experienced
- Properly resourced
- Entitled to full access
- Accessible and pro-active
- Speedy
- Effective communicators of decisions
- Respected by the Authorities

WHAT KIND OF BODY?

- **Prosecutors**
- **Specialist Judges**
- **Ombudsman (+)**
- **Prisons Inspectorates**
(National Preventative Mechanisms)

- **THE COURTS**

THE COURTS

- **Ultimate domestic remedy**
- **Also need to be accessible, speedy, able to conduct a comprehensive review of evidence**
- **Must have effective preventive orders available – interdict, declarator, specific performance**
- **Must be able to supervise enforcement**