



**ROUND-TABLE:
RECOMMENDATION (2008)2
OF THE COMMITTEE OF MINISTERS
TO MEMBER STATES ON EFFICIENT DOMESTIC
CAPACITY FOR RAPID EXECUTION OF JUDGMENTS
OF THE EUROPEAN COURT OF HUMAN RIGHTS**

**organised with financial support from the Human Rights Trust Fund
under the project “Removing obstacles to the enforcement of domestic
court judgments/Ensuring an effective implementation of domestic
court judgments”**

Tirana Hotel International
Tirana, Albania
15-16 December 2011

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The views expressed are those of the author only.

MECHANISMS TO ENSURE EFFICIENT PREPARATION OF ACTION PLANS

In the ECHR area we have shared responsibilities between the Federal Chancellery and the Foreign Ministry. Government Agent is usually the legal adviser of the Foreign Ministry - Deputy Government Agent is usually from the Federal Chancellery. This shared responsibility can be explained, inter alia, on the basis of the respective competences of the Foreign Ministry and the Federal Chancellery: While the Foreign Ministry is competent for the representation of the Republic of Austria before international organisations and for the communication with these organisations, the Federal Chancellery is competent for constitutional law – to which the European Convention on Human Rights belongs in Austria.

The current working arrangement is thereby the following: the Federal Chancellery is responsible for preparing written observations and oral hearings; the pleadings during oral hearings are delivered alternately by the Federal Chancellery and the Foreign Ministry. The Foreign Ministry is responsible for the coordination of the execution of judgments and for the communication with the Court and the Committee of Ministers. In short, it may therefore be said that the Federal Chancellery is responsible for ECHR-proceedings until a judgment/decision is delivered or a friendly settlement is reached while the Foreign Ministry is taking over the main responsibility after the delivery of a judgment, decision or friendly settlement.

Drafting action plans and/or action reports in Austria is therefore the responsibility of the Foreign Ministry but is nevertheless done in close cooperation with the Federal Chancellery.

Our efficiency in drawing up action plans lies in the way of how we approach the implementation of judgments as a whole. Let me therefore explain chronologically how we approach the implementation of judgments.

The Foreign Ministry immediately informs all national authorities involved in a case when a judgment in that case has been delivered. Such an involved national institution may, for example, be another Ministry, one of the highest courts or a provincial government. The Foreign Ministry also provides the involved institutions with a very brief case analysis indicating the provisions of the Convention which have been violated and why.

Moreover, as soon as a judgment is delivered, the Agents contact in an informal way the Austrian authority that bears the responsibility for the violation of the Convention found by the Court in order to give it a “first warning” that it will have to pay the just satisfaction after the judgment becomes final. If several authorities are responsible for the violation, the costs might be shared. In such cases it is important to start early on to clarify the question of responsibility to have enough time to come to a consensus which authority is to pay what amount of the just satisfaction afforded by the Court.

In this respect it might be interesting for you to hear that we do not have special funds for the payment of just satisfaction assigned by the Court, but that Austria applies the cost by cause principle which means that the (central) authority which is responsible for the violation has to pay. This has also a preventive effect.

In some cases, it becomes clear for the Agents already during the proceedings which kind of further individual measures or general measures might be necessary in case the Court finds a violation of the Convention. In cases where things are not so clear, the Agents will assess – right after the delivery of the judgment – the question of whether further individual measures or general measures will be needed and who would be the relevant authorities/persons to be contacted. If further

measures are required (such as the amendment of a law) the Agents will start informal talks with the relevant authorities/persons already at this point in time.

When the judgment then becomes final, the Foreign Ministry (responsible civil servant) informs all involved authorities and – at the same time – requests the authority responsible for the violation to effect the payment in due time. Moreover, the Foreign Ministry starts to draft an Action Plan (if further action is required) or an Action Report (if this is not the case).

In doing so, the Foreign Ministry again contacts all involved authorities with a view to come up with the necessary individual or general measures among experts and to determine a time table for the implementation of these measures. The actual elaboration of the necessary measures, however, falls within the competence of the respective responsible authority. If, for example, as a general measure an amendment of the civil code is necessary, it falls within the competence of the Ministry of Justice to come up with such an amendment. At this stage the Agents are – only – ready to serve as advisors. It seems to be worth mentioning in this regard that the Federal Chancellery generally provides constitutional advice to other Federal Ministries and also represent the Austrian Government before the Austrian Constitutional Court and the European Court of Justice. So, it is thus in permanent contact with the Austrian ministries and offices of the regional governments.

On the basis of the input received by the responsible authorities, the Foreign Ministry drafts the Action Plan and sends it to these authorities for their consent. Once the Action Plan/Report has received the consent of all involved, the Foreign Ministry will instruct the Austrian Permanent Representation in Strasbourg to forward the Action Plan/Report to the Department for the Execution of Judgments.

Having in mind that Action Plans/Reports are accessible on the website of the CoE we try to describe the necessary measures in a precise and comprehensive way, not going too much into the details of the Austrian legal system. We also consider that the assessment of the case with regard to the Austrian legal situation can be found in the judgment itself.

I brought with me the action plan in the case of Sporer. In this case, the Court found a violation of Art. 14 in conjunction with Art. 8 in relation to a father's custody over a child born out of wedlock.

So, now let me stress certain features that characterize the Austrian system of drafting Action Plans and make it work well:

- Throughout the proceedings, there is a permanent dialogue between the Agents on the one hand and between the Agents and other authorities on the other hand. [As mentioned yesterday,] there are regular meetings of so called “human rights coordinators” which may also be used to discuss the implementation of judgments.
- The search for solutions for necessary individual and general measures starts as early as possible and in a pragmatic and informal manner.
- Only a few civil servants who know each other already are involved in this process. So, in setting up an Action Plan, there is dialogue within the administration but there is no dialogue of the Agents with political parties or Parliament. It's the competence of the authorities concerned to decide on the actions to be taken in detail.
- As the Court and its jurisprudence is of high importance to Austria we all have one common goal which is to implement each judgment fully and in due time. In conclusion, I would like to stress that the basic system of implementing judgments, I just described, has been in place

for decades. The relatively new requirement to draft an Action Plan and/or an Action Report has not changed anything in the approach taken in Austria regarding the implementation of judgments. It, however, brought a certain formalisation.