



**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**

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The views expressed are those of the author only.

Mechanisms put into place in Germany to coordinate the execution of the European Court's judgments in the federal state, including the role of the Federal Constitutional Court

First of all I would like to thank you for the great opportunity to exchange experiences and good practices with you. I am sure this will be interesting for all of us, as we all face difficulties and challenges in the implementation of the Court's judgments.

First I would like to explain the special situation of Germany with regard to the fact that Germany is a federal state.

As you can see on the map, Germany consists of 16 different states; e.g. Bavaria, Mecklenburg-Western Pomerania, Berlin. The states are called "*federal Land*" or, in plural, "*federal Länder*".

Because of German federalism, there is a clear constitutional division of competences between the Federation and the *Länder*. The competences of the *Länder* comprise some spheres that concern the rights of the Convention; for example, the state police, the execution of domestic immigration law, execution of sentences and the educational system.

It is common practice in Germany that the authority which has the competence for taking a measure is responsible for the implementation of the judgment. This means that a broad variety of authorities may be involved in implementing a judgment.

But how can we achieve the same level of understanding and awareness of the need for full and rapid implementation with all the different actors involved, for example in all 16 *Länder*?

Within the Federal Government, it is up to the Federal Ministry of Justice to coordinate the implementation of the Court's judgments.

The Ministry is home to the Representative of the Federal Government for Human Rights Matters, who is at the same time the Government Agent before the ECtHR.

A basic mechanism that goes without saying is the cooperation between the Federal Ministry of Justice and the Federal Foreign Office. The Permanent Representation of Germany to the Council of Europe observes the developments in the Council of Europe and informs the Representative for Human Rights Matters at the Federal Ministry of Justice about important developments. The Counsellor for HR of the Permanent Representation participates in DH meetings.

I am very pleased that my colleague from the Permanent Representation in Strasbourg, Mr Achim Holzenberger, is also here today. He is the Counsellor of Human Rights at the Permanent Representation and the liaison-man to the CoE. I am happy to say that our cooperation is very efficient.

Another very important mechanism for us is the appointment of liaison officers. The justice ministries of the *Länder*, the ministries of the Federal Government and the Federal Courts, including the Constitutional Court, all have a liaison officer for the Federal Government Agent, who is in charge of further coordination within his or her remit.

In order to stimulate cooperation between the various actors on the Federal and Land levels, the Federal Ministry of Justice organises an annual meeting, which is attended by all liaison officers

from the Federation, the *Länder* and the federal courts. Moreover, the judge of the ECtHR, elected in respect of Germany, takes part in the conference and answers questions about the Court. This conference has proved to be an excellent mechanism for simplifying procedures and creating synergies.

Due to the liaison officers the cooperation with local authorities works in most of the cases very well.

But in some cases it can be very challenging to facilitate the adoption of useful measures to develop effective synergies between relevant actors, especially among local authorities in response to a specific judgment and to identify their respective competences.

For example in the case of "Görgülü" (judgement of 26 February 2004); the case concerned the refusal to grant a father custody and visiting rights. His child was born outside marriage and had initially been placed with a foster family after being abandoned by the natural mother.

The European Court specified that the execution of the judgment in this case required granting the applicant at least visiting rights.

But due to certain difficulties between the parties and local authorities concerned scheduled visits again and again didn't take place.

In order to facilitate regular visits we implemented an action plan, including a whole range of measures, including mediation and psychological assistance to all parties concerned.

Furthermore a lot of high-level talks with the local government as well as talks with local actors - such as the youth welfare office - and finally the intervention of the constitutional court were necessary to implement the judgment.

The intervention of the Constitutional Court was necessary because after the European Courts judgment the domestic Higher Regional Court declined to take the European Courts judgment into consideration and refused to grant the applicant visiting rights.

This brings me to the role of the German Federal Constitutional Court in the execution of the European Court's judgments. Amongst many other things, the Federal Constitutional Court has a very important task: it guarantees full implementation of ECtHR judgments and prevents national authorities from circumventing the full effects of a judgment.

For example, in 2004 it quashed the mentioned judgment of the Higher Regional Court in the "Görgülü-case" because the case law of the ECtHR had not been taken into consideration in full. Furthermore, it ruled that a constitutional complaint can be filed with the Constitutional Court if a domestic state authority has not taken the judgments of the ECtHR into consideration.

I have brought the decision of the Federal Constitutional Court and a press release in English, which I would be happy to hand out.

This brings me to the end of my presentation. Thank you very much for your kind attention. If you have any questions I would be very happy to try and answer them.