COUNCIL OF EUROPE CONSEIL DE L'EUROPE

Strasbourg, 7 November 2008

DH-PR(2008)006

STEERING COMMITTEE FOR HUMAN RIGHTS
(CDDH)

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COMMITTEE OF EXPERTS FOR THE IMPROVEMENT OF PROCEDURES FOR THE PROTECTION OF HUMAN RIGHTS (DH-PR)

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REPORT

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64th meeting

Strasbourg, 22 – 24 October 2008

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Summary

The Committee, in particular:

- prepared a draft set of practical proposals for the supervision of execution of judgments of the Court in situations of slow execution, for presentation to the CDDH;
- considered in depth the question of a possible Committee of Ministers' recommendation on advice and information to potential applicants to the Court and expressed the view that it would not be opportune to pursue further work;
- exchanged preliminary views on the added value, nature and possible contents of a Statute for the Court and expressed its willingness to undertake further work;
- proposed Ms Björg THORARENSEN (Iceland) to the CDDH as candidate to be its next Chairperson and elected Ms Isabelle NIEDLISPACHER (Belgium) as its next Vice-chairperson.

Item 1: Opening of the meeting and adoption of the annotated agenda

1. The Committee of Experts for the Improvement of Procedures for the Protection of Human Rights (DH-PR) held its 64th meeting in Strasbourg on 22-24 October 2008 with Mr Vit SCHORM (Czech Republic) in the Chair. The list of participants appears in Appendix I and the agenda, as adopted, in Appendix II.

2. The Chairperson recalled that the Committee would have to select a candidate to propose to the CDDH as its next Chairperson and to proceed to elect a Vice-Chairperson. The terms of office for both posts were of one year, once renewable. Potential candidates for either post were asked to make themselves known to the Secretariat.

Item 2 Preparation of a draft set of practical proposals for the supervision of execution of judgments in situations of slow execution

3. The Committee examined the draft set of proposals prepared during the 4th meeting of Working Group A (24-26 September 2008), along with the associated draft background documents, with a view to their adoption and transmission to the CDDH.

4. The Chairperson recalled the discussions during the 4th meeting of Working Group A (24-26 September 2008), at which it had proposed to use only the word "slowness" in the title of its work, this being an objective term describing a situation, whereas "negligence" was only one amongst many possible causes of that situation and one, in fact, that was not involved in the last majority of such situations.[1] The Committee agreed with this analysis and decided to repeat the proposal in connection with its own submissions to the CDDH.

Objective indicators of slowness in execution

5. The Committee held a general discussion on the draft background document on objective indicators to alert the Committee of Ministers to possible problems concerning the slow execution of a judgment. It thanked the Secretariat of the Execution Department for its work and contribution to the present meeting.

6. Discussion focussed in particular on the issue of Action Plans and Action Reports.[2] It was pointed out that information provided by respondent States' in such documents would not duplicate that included by the Secretariat in the Notes on the Agenda, since these Notes would in fact be based on information provided in Action Plans or Reports, which form the basis of agreement between the State and the Committee of Ministers. The most important thing was that the respondent State submit its proposals for executing a judgment as soon as possible once it became final. It was far preferable that this first step be made by the respondent State, being the

[1] See doc GT-DH-PR A(2008)003,§ 2
[2] See the definitions in Appendix III

best-placed to identify the steps and/ or measures to be taken or to explain why no further measures were necessary. An Action Plan would also have the advantage of defining the scope of execution of a particular judgment from the outset, thus minimising the risk of unexpected issues arising once the process of supervision had been long underway.

7. Several changes were made to the document during these discussions, resulting in a revised version approved by the Committee at the conclusion of its meeting.[3]

Inventory of existing tools for reacting to situations of slowness

8. The Committee continued by discussing the second draft background document containing an inventory of tools allowing the Committee of Ministers to react, if necessary, to situations of slowness in execution. Again, several changes were made to the document and a revised version approved at the conclusion of the meeting.[4]

Draft set of practical proposals

9. The Committee then considered the draft practical proposals, as put forward by Working Group A,[5] in the light of the foregoing discussions. This resulted in the preparation of a revised document, including an introductory part addressing, amongst other things, the Committee's decision to revise the title of its work (see paragraph 4 above). The Committee decided to present this document,[6] along with the summary of the current situation [7] and, as explanation of its discussions and conclusions, the two revised background documents to the CDDH, for eventual adoption and subsequent submission to the Committee of Ministers by 31 December 2008 in accordance with the relevant terms of reference.

10. The Committee also took note that the Secretariat was continuing to work on finalising the draft flow-charts discussed during the meeting of Working Group A, with a view to their presentation at a future meeting.

Item 3 Possible Committee of Ministers' recommendation on information and advice to potential applicants to the European Court of Human Rights

11. On the basis of the positions taken by the Group of Wise Persons in its report to the Committee of Ministers and the Reflection Group in its Interim Report, presented to the Committee of Ministers by the CDDH, the Committee considered whether to proceed with elaboration of a draft recommendation of the Committee of Ministers to member States on information and advice to potential applicants to the European Court of Human Rights.

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[3] see Appendix V
[4] see Appendix VI
[5] see doc. GT-DH-PR A(2008)003, Report of the 4th Meeting (24-26 September 2008), Appendix V
[6] see Appendix III
[7] see Appendix IV

12. Whilst expressing its appreciation for the background paper prepared by the Secretariat,[8] the Committee reiterated and added to the reservations expressed in the Reflection Group. Although the proposal assumed that greater advice and information would lead to a decrease in unmeritorious applications and an increase in the quality of meritorious ones, this would be very difficult to assess in practice. For example, it was suggested that the Warsaw Pilot Project, whereby a Registry-trained lawyer was employed part-time at the Council of Europe Information Office in Warsaw to provide information on the Court to interested persons, may have led to an increase in the number of applications from Poland without adding to their quality. Equally, it was pointed out that many of the cases currently ruled inadmissible by Committees of the Court had been presented by lawyers. In this connection, one expert mentioned a national project to translate and disseminate important decisions on (in)admissibility. In fact, there was no shortage of information on the Court available to potential applicants in various forms throughout the member States, and no shortage of lawyers prepared to advise and represent them. It could be more useful to ensure that both applicants and their lawyers had more realistic expectations of the likely outcomes of potential applications, including in terms of just satisfaction. Certain experts considered that the Court's practice concerning admissibility and just satisfaction could give rise to such unrealistic expectations.

13. There was also a question of subsidiarity – was it correct to encourage recourse to the Strasbourg Court when it was more urgent and important to improve the situation at national level? In particular, improvement of domestic remedies, better information and advice on national judicial systems and ways, such as training of lawyers, of enhancing the quality of applications seemed more appropriate. In this connection, Committee of Ministers' Recommendations Rec(2002)13 on the publication and dissemination in the member states of the text of the European Convention on Human Rights and of the case-law of the European Court of Human Rights and Rec(2004)4 on the European Convention on Human Rights in university education and professional training were seen as particularly relevant.

14. The issue of legal aid for potential applicants was seen as particularly sensitive and difficult. In the first place, such a system could prove expensive for member States without – as the foregoing discussion on advice and information generally had shown – necessarily improving the situation of the Court. The Court's caselaw on the requirement to provide legal aid as an element of the right of access to a court in civil proceedings had not developed since its origins but had tended rather to become more restricted. Many experts considered that if States were to assess the merits of a potential application before granting legal aid, this could amount to a form of checking by national authorities. In this connection, some experts felt that, in their countries, provision of legal aid by the State for individuals to pursue cases against that very State as such suggested a potentially ambiguous role for the State.

15. The Committee decided to inform the CDDH of its view that it would not be opportune to pursue further work on the issue at present.

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[8] doc. DH-PR(2008)005

Item 4 Results of the Colloquy "towards stronger implementation of the European Convention on Human Rights at national level" (Stockholm, 9-10 June 2008)

16. The Committee exchanged views on the results of the Colloquy held earlier this year under the Swedish presidency of the Committee of Ministers, taking into account also the results of the discussions held in the Reflection Group. In particular, it took note of the decision reached by the Ministers' Deputies on 22 October 2008 [9] and expressed its willingness to take up issues such as work on a possible recommendation on domestic remedies that it might in future be seen fit to confer upon it.

Item 5 Elections

17. With a view to the election of its next Chairperson, the Committee decided unanimously to propose Ms Björg THORARENSEN (Iceland) to the CDDH for election to this post. Recalling that the term of office of the current Vice-Chairperson would come to an end on 31 December 2008, the Committee unanimously elected Ms Isabelle NIEDLISPACHER (Belgium) as its Vice Chairperson for a one year term of office beginning 1 January 2009, renewable once.[10]

Item 6 Other business

Possible Statute for the European Court of Human Rights

18. The Chairperson informed the Committee of the recent meeting of the Reflection Group, at which it had (i) decided to recommend to the CDDH that the issue of a possible Statute be considered further in another forum, such as the DH-PR or, if a group of restricted composition were preferred, a working group of the DH-PR and (ii) suggested that the CDDH prepare draft ad hoc terms of reference to this end, for submission to the Ministers' Deputies.[11] With a view to discussions in the CDDH, the Committee held a preliminary exchange of views to ascertain its own position on the Reflection Group's recommendation and the possible scope and contents of eventual new terms of reference.

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[9] See doc. CM/Del/Dec(2008)1039/4.6, 22 October 2008

[10] In accordance with Committee of Ministers' Resolution Res(2005)47 on committees and subordinate bodies, their terms of reference and working methods, the decision to propose was reached and the election held by show of hands, no member having requested that either be held by secret ballot (see Article 12.d. of Appendix I to the Resolution).

[11] See doc. DH-S-GDR(2008)012, Report of the 3rd Meeting of the Reflection Group (8-10 October 2008), in particular Appendix III

19. The Committee responded positively to this recommendation. One of the main advantages of the idea lay in the flexibility it would afford to future amendment of a Statute's provisions. Furthermore, it would enhance legal certainty within the system by involving the States parties in the development of relevant provisions. Amongst possible contents of a Statute, the inclusion of certain procedures and Rules of Court that had been developed and elaborated by the Court alone, without the benefit of input or explicit political support from the member States, would represent a valuable opportunity for enhancing their status and visibility.

20. The Committee also took note of the arguments potentially weighing against further work on a possible Statute. It considered, however, that the fact of its being time-consuming and highly technical, whilst relevant, did not negate its potential positive impact, even if that impact would not imply any short-term improvement in the situation of the Court. One expert repeated the warning raised in the Reflection Group that a future refusal by national parliaments to give up their powers over amendment of provisions currently contained in the Convention could lead to years of work being ultimately wasted, if the intention were to include in the Statute provisions currently contained in the Convention itself. Some experts had doubts that the Statute could occupy a position in between a treaty and the Rules of Court, as this could raise questions as to the legal nature of the Statute.

21. The most important step was to obtain an idea of the potential contents of a Statute. Many other important questions would become clear, and could only be addressed, once this issue had been resolved: these included, for example, whether the relevant instrument would require ratification by member States and the role that the Court should play in its elaboration and the procedure for its future amendment.

22. With these considerations in mind, the Committee decided to inform the CDDH of its view that further work on a Statute was fully justified and that the DH-PR would be the appropriate body. It considered that eventual terms of reference for further work on a Statute should include a list of questions that the relevant body should address in the course of its work. It therefore asked the Secretariat to prepare a draft list of such questions, to be considered initially by the Bureau of the CDDH at its next meeting (30-31 October 2008). Some experts noted this should not be at the cost of more urgent measures necessary to reduce the Court's workload.

23. Before concluding its discussions on this issue, several experts expressed the view that it could not be disassociated from the question of Protocol No. 14, in particular whether and how this latter might come into force. In this respect, the Committee considered that work on a Statute did not prejudice the entry into force of Protocol No. 14, which it hoped would be achieved in the near future. In this context, it took note of the Chairperson's report on discussions during the recent meeting of the Reflection Group (8-10 October 2008), including the work by an advisory committee in the Netherlands on possible ways of bringing elements of Protocol No. 14 into effect prior to its ratification by the remaining State Party to the Convention.[12]

[12] See doc. DH-S-GDR(2008)012, in particular paragraph 20

Appendix I

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Etats ayant le statut d'observateur auprès du Conseil de l'Europe

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Appendix II

Agenda (as adopted)

Item 1: Opening of the meeting and adoption of the annotated agenda

Working documents

- Draft annotated agenda — DH-PR(2008)OJ001
- Report of the 66th meeting of the CDDH (25-28 March 2008) — CDDH(2008)008
- Report of the 63rd meeting of DH-PR (5-7 March 2008) — DH-PR(2008)001

Item 2 Preparation of a draft set of practical proposals for the supervision of execution of judgments in situations of slow execution

Working documents

- Report of the 4th meeting of the GT-DH-PR A (24-26 September 2008) — GT-DH-PR A(2008)003
- Draft background document on objective indicators to alert the Committee of Ministers to possible problems concerning the slow execution of a judgment — DH-PR(2008)002
- Draft background document on inventory of tools already at the disposal of the Committee of Ministers to react to situations of slow execution of judgments — DH-PR(2008)003
- Draft flowcharts illustrating the process of supervision of execution from the stage of the Court's final judgment to closure of the case by the Committee of Ministers — DH-PR(2008)004
- Rules of the CM for the supervision of the execution of judgments and of the terms of friendly settlements — CM/Del/Dec(2006)964/4.4E
- Working methods for supervision of the execution of the European Court of Human Rights' judgments — CM/Inf/DH(2006)9 rev 3

Item 3 Possible Committee of Ministers' recommendation on information and advice to potential applicants to the European Court of Human Rights

Working documents

- Background document prepared by the Secretariat — DH-PR(2008)005

Item 4 Results of the Colloquy "towards stronger implementation of the European Convention on Human Rights at national level" (Stockholm, 9-10 June 2008)

Working documents

- Proceedings of the Colloquy "towards stronger implementation of the ECHR at national level" (Stockholm, 9-10 June 2008)	H/Inf(2008)11

Item 5 Elections

Item 6 Other business

Item 7 Adoption of the conclusions of the meeting

Appendix III

Draft practical proposals for the supervision of the execution of judgments in situations of slow execution

At the outset, the DH-PR noted that the concept of "slowness" in the expression "slow or negligent execution," as used in its terms of reference, is an objective term describing a situation, whereas "negligence" is only one amongst many possible causes of that situation. The DH-PR therefore proposed to use the expression "slow execution" in the title of its work, whilst nevertheless retaining the concept of negligence to be taken into consideration as a possible cause of slowness, in accordance with its terms of reference.

As regards the search for practical solutions for supervising slow execution, the DH-PR noted that the Committee of Ministers, when fulfilling its role, must first overcome the obstacle of identifying such situations in the mass of almost 7000 cases under its supervision. Furthermore, it considered that, when a situation of slowness is identified, the Committee must when necessary be able to draw on a "stock" of tools allowing it to react as effectively as possible in order to relaunch the execution process or overcome obstacles.

In the first place, it thus appeared necessary, on the one hand, to identify objective indicators allowing the Committee of Ministers to identify possible slowness in execution and, on the other, to have available an inventory of the tools already at the disposal of the Committee of Ministers for reacting to such situations.

Having examined these two aspects of the question in the light of two documents prepared by the Department for the Execution of Judgments of the European Court,[13] the DH-PR formulated the following proposals, with a view to improving supervision by the Committee of Ministers in cases of slow execution. In this respect and taking account of the richness and diversity of the existing tools, the DH-PR underlined that most of these proposals aimed at improving these tools' effectiveness (I). Furthermore, during discussions, certain necessary improvements were identified that went beyond the context of situations of slowness and affected the supervision of execution in its entirety. The DH-PR therefore proposed that these be the object of a wider reflection than that envisaged by its current terms of reference (II).

I - Propositions aimed at improving existing tools

[13] These two documents, discussed and amended during meetings of DH-PR Working Group A and of the DH-PR, appear in appendix

1. Consolidating the practice of action plans

The DH-PR considered that, in order to avoid situations of slowness, it was essential that **the respondent State stated its position**, as soon as possible after a judgment had become final, on what it considered to be necessary to execute the judgment in question, **not only when measures were required, but also when it considered that all the necessary measures had already been taken or that no measures were necessary.**

In this connection, the concept of "action plan" introduced in the Committee of Ministers' new working methods in 2004 appeared to be a key concept worth clarifying and reinforcing.

The DH-PR therefore proposed to add the concept of "action report" to that of "action plan," in order to clarify precisely what was expected of respondent States, notably when no measures was required or when all measures had already been adopted.

> **Action plan**: a plan setting out the measures the respondent State intends to take to implement a judgment, including an indicative timetable. The Plan shall, if possible, set out all measures necessary to implement the judgment. Alternatively, where it is not possible to determine all measures immediately, the Plan shall set out the steps to be taken to determine the measures required, including an indicative timetable for such steps. Plans shall be updated when necessary.
>
> **Action report**: information provided by the respondent State setting out the measures taken to implement the judgment, and/ or its explanation of why no further measures are necessary.

Such an approach would allow:

- more rapid agreement, based on the action plans/ reports submitted by States, to be reached on what is required for the execution of a judgment (with situations of uncertainty or differences of opinion being presented rapidly to the CM);

- facilitation of the Committee's supervision, not only by helping it to identify possible situations of slowness, but also by allowing it to simplify the supervision of cases that do not present particular problems and to concentrate its attention on the most complex cases;

- and, at the end of the process, cases to be closed more easily, after examination of the action reports presented by respondent States.

2. Improvement of existing practices

a. In order to overcome or avoid situations of slowness in the execution of judgments, the DH-PR considered it essential first of all to pursue efforts aimed at increasing the visibility and

comprehensibility of the requirements for executing judgments of the European Court, as well as the role and practice of the Committee of Ministers in the matter, notably by:

i. development of the internet site and the on-line database,
ii. translation of important Committee of Ministers' documents (recommendations, resolutions, important decisions…).

b. In order to respond to slowness concerning just satisfaction, the DH-PR proposed to encourage the development of existing practices, such as bilateral contacts on problems arising in relation to just satisfaction, dissemination and, if necessary, translation of the memorandum on these issues, and even use of Section 3c of the annotated order of business, in order to debate and resolve particularly complex situations;

c. As regards other measures that may be required, enhanced assistance to States also allows many difficulties causing delay in execution of judgments to be alleviated. The DH-PR therefore considered it essential to support the development of technical cooperation programmes, conferences, etc…, as well as the capacity of the Execution Department to assist States through enhanced bilateral contacts.

d. The development of the role of the Chair of Committee of Ministers' DH meetings also seemed an important element, so as to allow the Committee, through its Chair, to react rapidly when a situation required it, without having to wait for the next DH meeting.

3. New practical proposals

During discussions on delays concerning just satisfaction, the DH-PR also identified several practical, concrete elements, whose immediate implementation it recommended:

a. clarification and simplification of the information necessary to show that just satisfaction had been paid ;

b. improvement of Section 3 of the annotated order of business, notably by including the date on which the judgment had become final and by early identification of payment difficulties, whether resulting from payment or proof of payment.

II - Invitation to a more in-depth reflection

The need to improve the legibility of Committee documents, in particular the annotated order of business, was a recurrent theme of discussions. It appeared crucial as much for avoiding slowness due to problems of understanding as for allowing the identified indicators of slowness to fulfil their role.

Underlining the need to establish a hierarchy of cases and to differentiate their treatment according to the degree of difficulty, the DH-PR identified certain avenues for reflection, notably concerning the relevance and clarity of the current sections, the usefulness of perhaps introducing thematic grouping, etc…

That said, the possible practical proposals concerning these issues can only be studied in a larger context than that of the issue of slow execution, taking into account also other aspects such as, for example, the choice and diversity of cases for debate or developments in information technology.

The DH-PR therefore proposes that an in-depth reflection be pursued, which it declares itself ready to undertake should terms of reference be given to it.

Appendix IV

Summary of the situation as suggested by the background documents

A. Possible objective indicators of slowness

1. Just satisfaction award not paid by deadline (3 months after final judgment)
2. Specific deadlines indicated by Court for adoption of measures not met
3. Judgment not published 6 months after final judgment
4. Judgment not disseminated 6 months after final judgment
5. No Action Report[14] and/ or Action Plan[15] submitted by Respondent State 6 months after final judgment
6. Deadline for submission of information/ Action Plan set by Committee of Ministers not met
7. Deadlines in Action Plan persistently exceeded

B. Committee of Ministers (CoM) tools to prevent or respond to slow execution

1. Guidance to member States[16]
2. Requirement to pay default interest
3. Action Plans
4. Highlighting case in Annotated Agenda[17]
5. CM(DH) debate[18]
6. CM(DH) decision[19]
7. CM(DH) interim resolution
8. Publicity[20]
9. CoM debate at ordinary meeting of Ministers' Deputies
10. CM(DH) Chair action[21]
11. High-level pressure[22]

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[14] Proposed definition: information provided by the respondent State setting out the measures taken to implement the judgment, and/ or its explanation of why no further measures are necessary.

[15] Proposed definition: a plan setting out the measures the respondent State intends to take to implement a judgment, including an indicative timetable. The Plan shall, if possible, set out all measures necessary to implement the judgment. Alternatively, where it is not possible to determine all measures immediately, the Plan shall set out the steps to be taken to determine the measures required, including an indicative timetable for such steps. Plans shall be updated when necessary.

[16] Documentary guidance on CoM execution process generally (e.g. requirement for action reports/ action plans), payment of just satisfaction Memorandum, draft vademecum, CoM Annual Report, CoM database; bilateral assistance from Execution Secretariat to individual member States through bilateral contacts; CoE round tables/ seminars involving a number of States to discuss similar technical problems

[17] By inclusion in sections or explanation in notes

[18] Of execution problems in general (not considering a specific case(s)), a group of cases raising the same/ similar issues, or a specific case – to agree CoM approach and/ or request information by deadline

[19] Specifying information to be provided and deadline

[20] Information on CoM database including Annotated Agenda notes and CM(DH) decisions and interim resolutions; CM(DH) press releases; public declaration by Chair in name of Committee; and publicising the formal expression of concerns during high level contacts (letter or meeting)

[21] E.g. Chair's initiatives taken in the matter of urgent individual measures where a rapid reaction/ intervention is necessary

Appendix V

Objective indicators of slowness in execution

Document prepared by the Department for the Execution of Judgments of the Court

Preliminary remarks

1. Before one can engage in a definition of indicators, it is necessary to clarify what may properly be described as "slowness" when it comes to execution of the judgments of the European Court of Human Rights (hereafter "the Court"). An action is only "slow" by comparison with a "given length of time for execution" (hereafter "reference length of time"). It will be necessary, therefore, to determine this "reference length of time" for the different actions required from the authorities in executing a judgment of the Court. Indeed, it is when these "reference lengths of time" are exceeded that indicators of slowness appear, allowing the Committee of Ministers (hereafter "the Committee") to single out these situations in the mass of pending cases before it.

2. In this respect, it is important to underline from the outset that not all situations where slowness has been identified would necessarily require a specific action by the Committee. The excessive length identified could, for example, be objectively justified by particular, specific circumstances. It is a question, therefore, in the first place of simply identifying objective situations where the "reference length of time" has been exceeded, without prejudice to the consequences that should be drawn from it.

I. "Reference lengths of time" and indicators for the payment of just satisfaction

3. The deadline for payment of just satisfaction is set out by the Court in its judgments. The amounts awarded must be paid within three months from the date on which the judgment becomes final. The "reference length of time" beyond which slowness can be established is thus clearly defined by the Court itself. In principle, exceeding the deadline for payment generates default interest.[23] If default interest is to be paid, it should be done as rapidly as possible.

4. In order to supervise payment of just satisfaction, the Committee provides **for a special section in its annotated agenda** (hereafter "AA") of its "human rights" meetings (hereafter CM-

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[22] E.g. letters from Ministers' Deputies'/ CoM Chair to respondent State representatives (officials/ ministers); meetings between Ministers' Deputies'/ CoM Chair and respondent State representatives (officials/ ministers); cases raised at high level meetings

[23] See the memorandum "Monitoring of the payment of sums awarded by way of just satisfaction: an overview of the Committee of Ministers' current practice," CM/Inf/DH(2008)7 revised of 11 March 2008.

DH meetings)[24]. This section is subdivided in such a way as to make it clear in which cases the reference deadline has been exceeded, namely:

- Section 3.A: supervision of payment of the principal sum of just satisfaction – and, where appropriate, of default interest – in cases where the deadline for payment expired less than 6 months ago;
- Section 3.Aint: supervision of payment of default interest (the principal sum having been paid after the deadline has expired);
- Section 3.B: supervision of payment of the principal sum of just satisfaction and of default interest in cases where the deadline for payment expired more than six months ago.

5. Section 3A may include both cases for which the three-month time-limit has expired and others for which it is still running. On the other hand, it is indisputable that for the Committee, the fact that a case appears under sections 3.Aint and 3.B amounts to an **objective indicator of slowness in the payment of just satisfaction**.

II. "Reference lengths of time" and indicators for individual and general measures

A. General principles

6. For measures other than payment of just satisfaction, it results from the general principles adopted by the States and the Committee in the context of supervision of execution that the obligation to execute arises as soon as the judgment becomes final. However, immediate execution often being practically impossible, practice has it that, in general, the required measures should be adopted without unjustified delay. In this respect, it should be emphasised that certain circumstances may give rise to particular urgency, in particular when the violation places the party concerned in a difficult situation (for example in matters of expulsion, parental rights, or detention conditions) or in the case of serious and/or repetitive violations (general measures required to confront a serious systematic problem concerning, for example, poor detention conditions or the failure to execute final domestic decisions).

7. If it turns out that rapid execution is impossible, particularly if it is necessary to adopt measures of a legislative or otherwise time-consuming nature, the respondent States should, without delay and insofar as it is possible under existing legislation, take interim measures to prevent new violations of a similar nature from arising. In the same way, interim measures should be taken to improve the applicant's situation or at least to avoid the worsening of his situation, when the adoption of the individual measure takes time or is conditional on a time-consuming general measure.

8. The Court may also itself specify the measure to be adopted or suggest a choice of measures. In this context, it sometimes fixes a deadline for the adoption of a measure (see, for example, certain judgments giving the authorities a choice between the restitution of property and

[24] See the description of all the sections in Explanatory note A, at the end of this appendix

the payment of compensation within a time-limit of three months[25]; or judgments imposing the adoption of a specific general measure[26]).

9. For its part, the Committee, having examined a case, may adopt a more detailed decision, so as to make as clear as possible its expectations in view of its next examination, its requests being accompanied by a deadline for submission of the required information (specific deadline or general deadline adopted for the submission of information for a given meeting). This practice has developed over the years. In certain cases, such requests are also included in interim resolutions. The absence of any response within the set deadlines may be an indicator of slowness in execution.

10. Generally, contrary to the deadline for payment of just satisfaction, fixed by the Court and common to all cases, each of the "reference length of time" will have to be determined in accordance with the nature of the measures envisaged by the State for executing the judgment and of the specific circumstances of each case. It is certainly up to the State – in the exercise of its freedom of choice of means – to identify the measures that it considers appropriate and to propose indicative timetables for the execution of judgments that concern it. In concrete terms, it will be up to the State to present to the Committee of Ministers the measures already adopted or the reasons for which no measure is required (an Action Report) and/ or the measures whose adoption is underway or envisaged (Action Plan).[27] If the means chosen and the timetables proposed seem adequate, the Committee will take them on board and will follow their implementation.

B. Individual measures

11. In certain judgments, the Court clearly indicates the individual measure required together with a deadline (immediate release of a detainee, restitution of property within three months). Exceeding this deadline will objectively constitute a delay, without prejudice to the circumstances that could justify it.

12. When no such indication is given in the judgment, **it is of the utmost importance that the respondent State assesses, as soon as possible, the applicant's situation, in order to determine whether consequences of the violation remain and to what extent it is still possible to remedy them.**

13. When such an assessment comes to the conclusion that individual measures other than the payment of just satisfaction are required, it is generally accepted that **the question of the adoption of individual measures carries particular urgency**. This emerges in particular from the rules of the Committee for the supervision of the execution of judgments, which provide, on

[25] See, for example, the case of Strain v. Romania (judgment of 21 July 2005), along with most of the cases examined in the same group of cases.
[26] See, for example, the case of Broniowski v. Poland (judgment of 22 June 2004)
[27] See the detailed definitions of the notions "Action Report" and "Action Plan" in Explanatory note B below, at the end of this appendix

the one hand, that priority must be given "notably [to] cases where the violation established has caused grave consequences for the injured party" (rule no. 4.2) and, on the other, that in principle a judgment is placed on the agenda of each CM-DH meeting until the adoption of the required individual measures, unless the Committee decides otherwise (rule no. 7.1).

14. It is also recognised, however, that the **degree of urgency of individual measures depends on the particular circumstances of each case**, as shown by the practice of the Committee concerning decisions to postpone. In accordance with the aforementioned rule no. 7.1, which allows the Committee to depart from the principle of placing the issue at each CM-DH meeting, the Committee regularly postpones for longer periods a large number of cases where it considers that the individual measures do not or no longer present any particular urgency, either because of developments that have occurred since the judgment or currently underway, or because the consequences suffered by the applicant are not very serious. The cases raising serious or urgent issues, by contrast, are most often examined with debate during Committee meetings. In this context, the importance of bilateral contacts with the Secretariat may be emphasised: these contacts allow, in effect, a concrete assessment of the degree of urgency, and from there, the proposal of an appropriate treatment of the case in question (usefulness of a debate, appropriate postponement).

15. In the current situation, it must be noted that it is difficult to identify cases with a delay in the adoption of individual measures amongst all the cases pending before the Committee. Some can be found under section 4.1, either because they do not require general measures, or because the general measures are not examined during that particular meeting or have already been adopted. Others are to be found under section 4.2 for examination of individual and general measures, or even under section 4.3. Under each of these sections, only a careful reading of the notes presenting the cases allows the identification of the cases in which there is an issue of delay in execution.

C. General measures

16. Just as for individual measures, the Court, at times, clearly indicates the required general measure in its judgment, accompanied with a deadline for adoption. The expiry of this deadline may then be seen as an indicator of slowness, without prejudice, here again, to objective reasons that could perhaps explain the deadline being exceeded.

17. Most often, however, the Court's judgment indicates neither the measure to be taken nor the deadline for execution. The question of possible slowness in execution must then be seen in the light of the particular circumstances of each case and the practice emerging in particular from the rules and working methods of the Committee.

18. The Committee's new working methods[28] recommends that an action plan for the execution of a judgment shall be submitted to the Committee by the respondent State **as soon as possible and in any case within 6 months following the date on which the judgment became**

[28] see doc. CM/Inf(2004)8 final

final (see paragraph 10 above). Exceeding this time limit may be considered a primary indicator of slowness.

19. Certain cases, however, may be of a **particularly urgent** nature requiring swift action. Rule no. 4 for the supervision by the Committee of execution of judgments, for example, states that the Committee "*shall give priority to supervision of the execution of judgments in which the Court has identified what it considers a* ***systemic problem*** *in accordance with Resolution Res(2004)3 of the Committee of Ministers"*. Emphasising the urgency of taking action to remedy these situations, the Committee and the CDDH have, in fact, repeatedly insisted in this context on the adoption of general measures with retroactive effect, in order to avoid a situation where the Court has to deal with numerous clone cases. An action plan should therefore be provided as early as possible, and the Committee should seek information on these cases as of their first examination (under section 2 of the AA).

20. That being said, it is often difficult, in practice, to provide a comprehensive action plan within the requisite deadline, and the complexity of certain situations may require several phases, in particular:

- identification of the measures required;
- adoption of the measures to be taken (sometimes itself requiring several stages); and
- assessment of the measures adopted, where appropriate.

Different "reference lengths of time" may then be envisaged for each of them.

i) <u>At the stage of identification of measures to be taken</u>

21. The first question which is raised at this stage is whether measures, apart from the payment of just satisfaction granted by the Court, are required for the execution of the judgment. If the respondent State considers that such is not the case, it must submit to the Committee, as soon as possible and in any case within the six months deadline referred to in paragraph 18 above, an "Action Report" indicating the reasons that have lead to this conclusion (isolated violation, measures already adopted…).

22. When execution measures seem necessary, the time necessary to identify them can vary. The complexity of certain issues may indeed require long consultation and/or reflection in order to determine the most appropriate measures required to solve the problem identified in the Court's judgment. In these situations, it is important that within the initial six-month deadline, the authorities of the respondent State provide the Committee with an *action plan on the steps to be taken to determine the measures required*, i.e. which indicates the actions taken or envisaged in order to overcome the technical difficulty involved: *ad hoc* working group, inter-ministerial reflection group, assistance of the Secretariat, high-level meetings, round tables etc. This work of reflection, consultation and/or research should include clear deadlines (deadline for a working group to submit its report, for example). It is necessary at this point to underline the fact that the deadlines thus proposed remain purely indicative: if they were to be exceeded but that the situation could be objectively justified the respondent State would be free to propose new deadlines to replace the initial ones. **Only a persistent exceeding of the "reference length of time for execution", without explanation by the respondent State, could be an indicator of slowness in the choice of measures to be taken.**

ii) At the stage of adoption of the measures

23. When the adoption of the chosen measures is spread in time and/or is not immediate, the "reference length of time for execution" could be the deadlines indicated in the action plan (including for possible interim measures):

- if the date foreseen for a certain stage of the action plan is exceeded without it having been possible to achieve the expected outcome, information should be provided to the Committee to explain the causes of the delay (which can be completely justified) and to fix a revised execution time-table;
- it may also happen that there is simply a delay in the submission of information on the follow-up given to an action plan, whilst in reality its implementation is going ahead within the expected deadlines.

24. Certain general measures may be adopted more speedily. This is the case in particular for publication and dissemination of the judgment. This measure aims at avoiding new, similar violations by the direct effect given to Court judgments by the national authorities ; its rapid adoption is therefore particularly important, as well as the rapid submission to the Committee of complete information on the subject. Except in the case of particular difficulties, it should be possible to take such a measure within the six-month deadline foreseen for the initial phase of execution of a judgment. In certain States, procedures for systematic publication/ dissemination have been put in place. If the Committee is aware of them[29], these procedures allow for rapid closing of cases for which this measure is sufficient, without awaiting information in each and every case. Only situations where special dissemination is required, that is, dissemination not foreseen by the said procedure, would call for specific information to be provided by the respondent State.

25. Cases of this type are placed under the section 5.3a of the AA of CM-DH meetings (cases awaiting adoption of this measure for less than 6 months). Their **move to section 5.3.b** (cases awaiting adoption of this measure for more than 6 months) **could be an indicator of slowness.**

26. **Whatever the reason, the failure to comply with the deadlines indicated by the action plan may again serve as an indicator of slowness, in the absence of an explanation and/or of the updating of the provisional time-table.**

iii) At the stage of evaluation of the measures adopted

27. When the measures foreseen in the action plan have been adopted, the Committee should be able to close the case in question rapidly. It can happen, however, that the initial action plan has been implemented, but that questions remain on whether the effects of the measures adopted are sufficient for the purposes of execution:

[29] Certain States have, in effect, provided a description of the procedure put in place, to which reference can be made in all cases raising the question of publication/ dissemination as soon as they appear on the Committee's agenda.

- uncertainty can arise from diverging viewpoints and the issue will then have to be rapidly presented to the Committee, which will pay special and constant attention to the case until the divergence is resolved;
- uncertainty can also arise from objective doubt about the impact of the adopted measures, and it may then be necessary to proceed to their assessment; here again, it is important to determine rapidly and clearly what must be assessed and within what deadlines; a **deadline could be fixed at the outset of the exercise, to be revised subsequently if necessary, so as to serve as an indicator** until the end of the assessment.

III. Conclusion and additional practical proposals

28. The wide range of "reference lengths of time" for execution that have been identified above (the list of which, furthermore, is not exhaustive) raises the question of the visibility of the indicators of exceeding these "reference lengths" for execution that the Committee could use as a basis for detecting situations of slowness in execution. The current practice brings to light two tools capable of contributing to this:

1. The **sections of the AA** of CM-DH meetings;
2. The **action plans** that the authorities of the respondent State are invited to present to the Committee, as well as their regular updating.

Each of these tools, however, also presents weaknesses.

i) As regards **the sections** of the AA

29. The placing of a case into a given section may indeed be an indicator: this is currently the case with section 3 (see §§ 4-5 above) and section 5.3 (see § 25 above).

30. In this respect, as far as individual measures are concerned, section 4.1 also merits particular attention. At present, however, there is no indicator in this section for the easy identification of cases where a delay in the adoption of the required individual measures has appeared. Such cases can only be identified when reading the notes and perhaps by the fact that certain cases have been proposed for debate during the meeting in question (see §§ 13-15 above).

31. The problem presents itself in similar terms for the other sections, in particular sections 4.2 and 5.1.

ii) Concerning **action plans**

32. The deadlines appearing in action plans can all constitute indicators on which the Delegates can rely in order to identify possible slowness in execution, at all stages of the process. Persistently exceeding of the "reference length" for execution, without explanation or updating of the action plan, could indicate that an intervention by the Committee is perhaps necessary to revive the process of execution. However, in the absence of clearly established definition and status, the action plan – although promoted by the new working methods – does not yet benefit from a well-established practice.

33. Furthermore, when an action plan is presented, current practice most often consists in summarising its contents in notes for the AA; thus, as an indicator of possible slowness, the

action plan is difficult to detect in the mass of cases presented (see the remarks above concerning sections).

34. **In the absence of an action plan** in cases that require the adoption of significant measures, the Deputies can only refer to an **initial deadline of 6 months** fixed according to the Committee's working methods and consider that – in the absence of an explanation on the part of the respondent State's authorities on what they intend to do to execute the Court's judgment – exceeding the deadline constitutes "slowness" to which the Committee must react.

35. Additional practical proposals

i) The concept of "action plan" introduced by the new working methods suggested by the Norwegian Chair in 2004 constitutes a key element to identify slowness in execution (it is also crucial as a tool to react to slowness – see document 2). Its clarification and the strengthening of its use are essential (see appendix 2 "definitions").

ii) A more in-depth reflection **on the presentation of cases in the AA and in particular on the sections** of which it is comprised is necessary to develop the visibility of existing or yet-to-be-defined indicators of slowness. It is however to be placed in a broader framework than that of the answers to situations slowness, as it concerns also many other issues relating to the monitoring of the execution of the judgments and the working methods of the Committee in this field. The following elements in particular, would have to be taken into account in such a reflection:

- need to distinguish cases raising complex execution questions from those for which the execution process is proceeding in a harmonious way;
- need to simplify the control of execution of cases not raising any particular difficulty, in order to avoid a useless overloading of the Committee's agendas.

Explanatory note A

Sections used for the examination of cases at the CM'S Human Rights meetings[30]

Sections used for the examination of cases at the CM'S Human Rights meetings At each HR meeting, cases are registered into different sections of the annotated agenda and order of business. These sections correspond to the different stages of examination of the execution of each case, in the following way:

Section 1 – Final Resolutions, i.e. cases where a Final resolution, putting an end to the examination of the case, is proposed for adoption.
Sub-section 1.1 – Leading cases or pilot cases, i.e. cases evidencing a more systemic problem requiring general measures;
Sub-section 1.2 – Cases concerning general problems already solved;
Sub-section 1.3 – Cases not involving general or individual measures;
Sub-section 1.4 – Friendly settlement.

Section 2 – New cases examined for the first time.

Section 3 – Just satisfaction, i.e. cases where the CM has not received or verified yet the written confirmation of the full compliance with the payment obligations stemming from the judgment.
3.A and 3.Aint – Supervision of the payment of the capital sum of the just satisfaction in cases where the deadline for payment expired less than 6 months ago, (3.A) as well as, where due, of default interest (3.Aint);
3.B – Supervision of the payment of the capital sum of the just satisfaction in cases where the deadline for payment expired more than 6 months ago.

Section 4 – cases raising special questions, i.e.
cases where the CM is examining questions of individual measures or questions relating to the scope, extent or efficiency of general measures
Sub-section 4.1 – Supervision of individual measures only;
Sub-section 4.2 – Individual measures and/or general problems;
Sub-section 4.3 – Special problems.

Section 5 – Supervision of general measures already announced i.e. cases not raising any outstanding issue as regards individual measures and where the adoption of well identified general measures is under way, the achievement of which is expected.
Sub-section 5.1 – Legislative and/or regulatory changes;
Sub-section 5.2 – Changes of courts' case-law or of administrative practice;
Sub-section 5.3 – Publication/dissemination;
Sub-section 5.4 – Other measures.

Section 6 – Cases presented with a view to the preparation of a draft final resolution, i.e. cases where information provided indicates that all required execution measures have been adopted and whose examination is therefore in principle ended, pending the preparation and adoption of a Final Resolution.

[30] See First annual report (2007) on the Supervision of the execution of judgments of the European Court of Human Rights pp 27-28

Sub-section 6.1 – Cases in which the new information available since the last examination appears to allow the preparation of a draft final resolution;
Sub-section 6.2 – Cases waiting for the presentation of a draft final resolution.

Explanatory note B

Definitions

Action plan
Plan setting out the measures the respondent State intends to take to implement a judgment of the European Court of Human Rights, including an indicative timetable. The Plan shall, if possible, set out all measures necessary to implement the judgment. Alternatively, where it is not possible to determine all measures immediately, the Plan shall set out the steps to be taken to determine the measures required, including an indicative timetable for such steps.
Plans shall be updated when necessary.

Action report
Information provided by the respondent State setting out the measures taken to implement a judgment of the European Court of Human Rights, and/ or its explanation of why no further measures are necessary.

Appendix VI

Inventory of tools allowing the Committee to react, if necessary, to situations of slowness in execution[31]

Document prepared by the Department for the Execution of Judgments of the Court

I. Tools to compensate for slowness due to technical difficulties in the payment of just satisfaction

A. Existing tools

a) Preserving the value of the sums awarded – default interest

1. If the time limit for payment of just satisfaction has been exceeded, default interest must be paid to the applicant according to the rate fixed by the judgment of the European Court, except under exceptional circumstances.[32]

b) Special section permanently accessible by internet and updated every month

2. In 1995, the Committee of Ministers decided to identify explicitly the States that had not been able to confirm payment more than six months after expiry of the set deadline, and to ask the delegation concerned for an explanation of such a delay. Today, these cases are the object of a separate section[33] in the annotated agenda, which is public. This section, which is regularly updated, is also permanently accessible on the internet site of the Execution Department.

c) Memorandum on the payment of just satisfaction

3. The Committee of Ministers has recently adopted and declassified a memorandum concerning questions relating to the payment of just satisfaction,[34] whose aim is to present the practice currently followed by the Committee concerning supervision of payment of just satisfaction. This document is binding neither on the Committee nor on the member States. It is, however, able to bring answers to a number of technical questions to which the authorities are confronted to and which often cause delay in payment. Translated, if necessary, into the national language and disseminated to the bodies responsible for payment of just satisfaction, it is an important tool at the Committee's disposal in this area.

d) Assistance of the Execution Secretariat

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[31] It may be recalled in this context that the Committee adopted, on 6 February 2008, Recommendation CM/Rec(2008)2 on efficient domestic capacity for rapid execution of judgments of the European Court of Human Rights

[32] For further details, see §§ 64 et seq. of public memorandum CM/Inf/DH(2008)7

[33] See the appendix to the document on objective indicators of slowness: "Sections used for the examination of cases during human rights meetings of the CM"

[34] See the aforementioned CM/Inf/DH(2008)7

4. Bilateral contacts between the Department for the execution of judgments and delegations on specific payment questions often allow questions relating to the payment of just satisfaction to be resolved.

e) Particular section intended to present special problems concerning payment of just satisfaction

5. Section 3c. of the annotated agenda of CM-DH meetings was designed to allow the presentation (and, if necessary, the debate during CM-DH meeting) of particular problems relating to the payment of just satisfaction.

6. The problems thus highlighted can be one-off problems. They can also be linked to the procedures foreseen by national payment mechanisms. The adoption of general measures may then be necessary to remedy them, such as setting up a special fund allowing payment of just satisfaction as quickly as possible, with, if necessary, the subsequent possibility of seeking compensation from the body responsible for the violation to recover the sums concerned along with default interest (an idea already put into practice by certain States).[35]

B. Possible improvements

a) More bilateral contacts on questions of payment (between the Department for the Execution and the State concerned)

7. The underlying reasons for a delay in payment of just satisfaction can be numerous and most often little information is available on the subject. A constructive and technical dialogue between the Secretariat and the delegation of the respondent State is often the most effective means of breaking the deadlock.

8. Since moving from 6 CM-DH meetings per year to 4, it has been possible to intensify bilateral contacts and, in this context, the Secretariat has been able to undertake in-depth work with certain delegations, consisting of a systematic analysis of the entire list of cases awaiting payment. This analysis has allowed the pragmatic resolution of a great number of technical issues. It could even be envisaged, where appropriate, to "institutionalise" the holding of regular meetings with delegations on issues of payment of just satisfaction (as is already the case with certain States), with a view to identifying the problems and resolving them as quickly as possible. For greater effectiveness, it may sometimes be desirable to involve in these technical meetings, insofar as possible, the "payment services" of States, according to yet-to-be-defined modalities (the delegations could invite the authorities concerned to come to Strasbourg or the Secretariat to go to the capital).

b) Clarification and simplification of the information necessary for showing that just satisfaction has been paid

[35] This idea benefited from widespread support, involving payment of debts resulting from national decisions, in the framework of the Round Table on non-execution of domestic judgments (June 2007).

9. Certain delays can also be noted in the collection of information allowing the Committee to determine whether payment of just satisfaction has taken place in conformity with the requirements resulting from the Court's judgment and the Committee's practice in this area.

10. In order to facilitate the collection of information, it is important that the documents to be submitted by the respondent State be clearly identified, according to the particular financial rules of each State, and that note is taken of the exact list. Any doubt that might still exist in this context in respect of certain States will have to be clarified as quickly as possible.

11. Moreover, to simplify the data processing concerning the payment of just satisfaction, taking into account in particular the number of cases under supervision of the CM, States could be invited to standardise the presentation of such information. It is, indeed, desirable that the Committee be able to have the following elements made available to it:
- the sum paid
- if conversion is necessary, the sum paid in the national currency and/ or the exchange rate used
- the date of payment
- the name of the beneficiary of the payment
- if the payment has been made to an escrow account, evidence showing that the applicant or his/ her representative has been informed of such payment.

c) Improvement of section 3

12. In the presentation of cases under this section, it would be useful to add the date on which judgments have become final (date from which the three months' deadline for payment starts to run), as well as the problems that have been identified concerning the payment of the sums owed.

d) Use of the special section (see e) above), currently fallen into disuse

13. Problems that have not been resolved at bilateral level could/ should be brought before the Committee under section 3c, or even be taken with debate during a meeting.

14. The initiative to put a case or a group of cases in this section could be taken :
- either by the Secretariat or a delegation in the light of the issues that have not been resolved during bilateral contacts,
- or by the Committee, on the basis of indications of slowness emerging from section 3B or 3Aint (for very old cases or particularly long lists of a given State which may indicate a structural problem…)

e) Request for translation and dissemination of the memorandum on just satisfaction

15. The memorandum on just satisfaction includes a large number of practical suggestions that could help the authorities responsible for paying just satisfaction resolve questions which arise in certain cases. The value of this document has been widely recognised, notably during the Seminar on the role of government Agents that took place at Bratislava in April 2008.

16. In order to obtain the maximum benefit from this document, national authorities could be invited to translate it and disseminate it to the relevant national bodies. Indeed, such a request could constitute an excellent tool against slowness (also by way of prevention), both in the presence of a general problem of payment of just satisfaction and as a specific measure (with

dissemination to the authority concerned) where a specific problem is involved. The dissemination of translations provided by the States could also be done via the internet site of the Execution Department.

II. Tools to compensate for slowness in the adoption of required measures[36]

A. Existing tools

a) Bilateral or multilateral contacts between CM-DH meetings

i) Bilateral contacts in order to examine different ways of resolving the problems that have been identified

17. As underlined above (see § 8 above), the reduction in the number of annual CM-DH meetings has allowed intensification of bilateral contacts between the Secretariat and the delegations. During these meetings, the delegations are sometimes accompanied by the Government Agent and/or representatives of the national authorities concerned. These meetings have shown themselves to be extremely productive, and when it comes to reacting to situations of slowness, they unquestionably allow, in many situations, the relaunching of the execution process by clarifying the requirements resulting from the Court's judgments and the practice of the Committee, and by providing, where appropriate, the national authorities with technical assistance in the matter.

18. Such contacts are also made, when it seems appropriate, at a higher level, with the participation of the Director of Monitoring or the Director General for Human Rights and Legal Affairs.

ii) Technical cooperation (meeting of the Execution Department with the authorities in the capital, organisation of round tables, colloquies…)[37]

19. In order to go into certain technical issues in greater depth, it can be useful to extend the aforementioned bilateral contacts by direct meetings with the national authorities in the capital. During 2007-2008, the Execution Department was invited by a certain number of States to such meetings.

20. When similar problems arise for several different States, it can also be extremely useful for those involved to share their questions and experience (see, for example, the Round Tale on non-execution of final domestic decisions, bringing together several States, organised by the Execution Department in Strasbourg in June 2007).

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[36] The tools mentioned below concern, in particular, individual and general measures, but may also apply, in some exceptional situations, to particular issues linked to just satisfaction .

[37] In this context, one should point out the potential now offered by the "Human Rights Trust Fund," created in March 2008.

b) Debates during CM/DH meetings (peer support/ pressure)

i) Involvement of the delegations in the search for solutions to problems of slowness

21. In the context of the exercise of collective responsibility of the Committee in the area of execution of judgments of the European Court, the member States' governments discuss complex issues raised by Court judgments. This exercise offers a unique perspective: the issues raised today in a given case are examined on the basis of the extensive experience of other States who are or have been confronted with similar issues/problems. The solutions found by others can serve as inspiration and suggest possible solutions, whilst of course preserving each State's freedom of choice of means.

22. The Deputies' debates thus offer a valuable forum for making progress with execution in blocked or problematic situations or for overcoming uncertainties as to the measures required. In order to nourish/optimise the discussions, reflection papers or summaries of the practice of the Court and/ or Committee are sometimes prepared by the Execution Department.

23. When a particular matter regularly gives rise to doubt or questions, the subject can also be discussed in a general way – under the general item "measures aimed at accelerating the execution of judgments of the Court" of the agenda of CM-DH meetings. On the occasion of such discussions, the Committee can clarify, specify, define and set out the principles of its practice, thus providing useful guidelines to authorities confronted with difficult problems. For example, in the face of the explosion in litigation concerning parental rights, the Committee initiated a reflection on the question of individual measures in this type of case, the authorities often being confronted in this area with significant difficulties (passing of time, behaviour of the parties, best interest of the child). Even if each case must obviously be dealt with on its own merits, the exchange on a more general level of experience and of good practices in this field may provide benchmarks that could usefully feed the reflection.

24. The guidelines that thus emerge will clearly have no binding effect, given the specificity of each case and the freedom of choice of means available to States, but they will be a valuable source of inspiration for national authorities and for the Committee (see, for example, the memorandum on just satisfaction already mentioned above).

ii) Greater frequency of examination of a case, possibly at each CM-DH meeting

25. The Committee's rules concerning supervision of execution propose set intervals of examination, from which the Committee can depart in its decision, if the particular circumstances of a case suggest it.[38] In the past, decisions tended to correspond to the principle set out in the rules. With the exponential increase in the number of cases, however, the Committee has had to give greater individual attention to its decisions to postpone, so as to adopt the most rational

[38] Set intervals: examination at each CM-DH meeting of questions concerning payment of just satisfaction and individual measures and examination every six months for general measures (rule no. 7)

treatment for each case and as much as avoid possible premature or purposeless additions to the agenda of a given meeting[39].

26. Thus, even more than in the past, the decision to include a case on the agenda more frequently, even at each CM-DH meeting, and to propose that it be debated, can apply greater pressure on a State that is delaying adoption of the necessary measures or provision of the information awaited in a given case.

iii) Grouped debate of cases bringing to light a general problem of slowness in execution

27. When the absence of information on the measures taken or envisaged seems to affect a great number of cases relating to the same State, the Committee can request explanations on this inaction in the framework of a debate bringing together all the cases concerned.[40] Full exercise by the Committee of its collective responsibility is, in this context, as in that mentioned in paragraphs 25-26 above, a *sine qua non* condition.

iv) Signals given by the Committee through decisions adopted during meetings

28. The decisions adopted by the Deputies on cases examined with debate allow the Committee to send different signals to respondent States: if it does not decide to close the case, the Committee can deplore the absence of action and/ or information, ask more or less detailed questions or even request specific actions on the part of the national authorities.

v) Interim resolutions

29. A more formal means available to the Committee for expressing its concern or its requests in cases of slowness in execution consists in the adoption of an interim resolution, aimed at, according to the circumstances, encouraging the adoption of reforms or criticizing the situation by insisting on the adoption of the necessary remedying measures,

- by strongly urging the national authorities to adopt reforms underway rapidly and/ or;
- by expressing for the attention of all the national authorities concerned the Committee's concern caused by the established delay, and by strongly urging that measures be taken, and/ or;
- by giving indications on the execution measures expected.

Such resolutions are sometimes even adopted at the request of the delegation concerned.

vi) Translation and dissemination of decisions and IR

30. If it seems necessary or appropriate, the Committee may request the translation of its decision or its interim resolution, and its dissemination to specific recipients.

vii) Inclusion of the case on the agenda of an ordinary meeting/ all the ordinary meetings of the Committee

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[39] This practice was even more developed with the passage to 4 annual CM-DH meetings, which might suggest that an amendment of the rules might be useful

[40] See the grouped debate on the general problem of delay in the presentation of information on the IM and/ or GM in 22 cases against Russia during the 967th CM-DH Meeting (October 2006) – CM/Del/OT/DH(2006)976 and CM/Inf/DH(2006)43

31. This is an approach very rarely used (potentially burdensome from an administrative point of view) and therefore an exceptional measure. Such action can, however, significantly raise the profile of a case in order to stress the importance of its execution.

c) Pressure at high level

32. Pressure at high levels can be exerted in order to relaunch or speed up the process of execution :

- letters sent by the Ministers' Deputies' Chair to the representatives of the respondent State and/ or meetings between the Chairperson of the Ministers' Deputies and the Ambassador of the respondent State;
- letters sent by the Committee of Ministers' Chair to the Foreign Minister of the respondent State and/ or meetings between the Chairperson of the Committee of Ministers and the Foreign Minister of the respondent State;
- problems raised during high-level meetings.

d) Publicity

33. Public expression by the Committee of its concerns constitutes a means of pressure that can take different forms according to the situation:

- formal expression of concerns in the annotated agenda: in this context it should be recalled that concerns raised by the Committee of Ministers concerning delays in execution nowadays have a certain degree of publicity since. Following the adoption of the new Rules in 2001, the annotated agenda, summarising the execution measures adopted in the various cases and the concerns expressed by the Committee, is now public and accessible on the Committee's internet site. Since 2007, these notes are also permanently accessible on the on-line database of the Execution Department;
- formal expression of concerns in the decision adopted by the Deputies and in the interim resolutions (see §§ 26 and 27 above);
- press releases: to strengthen and give greater visibility to its means of expression, the Committee may accompany the adoption of a decision or an interim resolution by a press release;[41]
- public declaration by the Chair in the name of the Committee[42]
- publicising the formal expression of concerns during high level contacts (letter or meeting).

B. <u>Possible improvements</u>

34. The tools available to the Committee for reacting in case of slowness in execution are numerous and varied. Possible improvements in this context relate more to the optimisation of existing tools than the putting in place of additional tools. Several avenues for reflection in this sense are proposed below.

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[41] See, for example, the press release on 09.06.2008 announcing the adoption of an interim resolution in the case of Gongadze v. Ukraine.

[42] See, for example, the declaration of the Chairperson of the Committee in the case of Sadak, Zana, Doğan et Dicle of 22 April 2004.

a) Simplifying and treating on a hierarchical basis the proceedings of supervision of execution

35. To simplify the monitoring of the execution of a judgment, it is important that an "action plan" and/or "action report" be submitted rapidly by the respondent State (for more detail on these two concepts, see appendix 2 of the document "objective indicators of slowness"[43]). Indeed, the action plan, when it is required, will be used not only as indicator of possible slowness, but also as a tool for more straightforward and effective monitoring of the execution of a judgment.

36. "Action plans" and "action reports" will also allow cases pending before the Committee of the Ministers to be treated on a hierarchical basis, so as to allow him to concentrate its efforts on the cases requiring its intervention to ensure progress in execution.

37 An action plan and/or an action report should therefore be submitted as soon as possible by the respondent State, and failing this, firmly requested by the Committee, unless the Committee notes from the outset that no specific measures are required.

b) Making the CM's action and practice in the area of execution of judgments of the European Court more visible and comprehensive

38. Certain delays in the adoption of measures can be due to a lack of clarity in what is required for the execution of a given judgment. The success of the Annual Report for 2007 and the welcome given to the draft Vademecum on execution illustrate the needs in this area. Enhancing the visibility of execution constitutes both a reactive and preventive means in the area of slowness of execution.

39. Preparation of the Annual Report for 2008 and drafting of the future Vademecum should therefore be supported and encouraged as much as possible, along with the development of other tools serving the same purpose:
- development of the internet site and the on-line database,[44]
- translation of important CM documents (recommendations, resolutions, important decisions…),
- improvement of the annotated agenda (on the basis of issues such as the relevance and comprehensibility of the current sections, the need to treat the issues submitted to the Committee's control on a hierarchical basis, the possibility of thematic grouping, improvement of the legibility of CM documents, etc.)

c) Developing the use of technical cooperation programmes, colloquies, etc…

40. Exchanges at technical level are worth encouraging (see §§ 15 to 18 above), since they allow:
- the expertise of staff members of the Execution Department to be made available to the national authorities directly concerned,
- the awareness of national authorities to be raised,

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[43] See Appendix V

[44] It is necessary to acknowledge, in this context, the United Kingdom's initiative in making a contribution to the Execution Department that will shortly allow the recruitment for several months of a specialist in these issues.

- or, States to share experiences and search for solutions, where several States are or have been confronted with similar problems.
Such actions can even constitute as such measures for executing a judgment (training activities, conferences aimed at a particular audience, etc…)

d) Developing the role of the CM-DH meetings' Chair

41. The rhythm of 4 annual CM-DH meetings, although responding to an inevitable need in view of the increase in the number of cases to address and obviously having many advantages, raises, however, the question of the capacity of the Committee to react quickly to urgent situations.

42. In this respect, a reflection could usefully be undertaken on the role of the Chair, for example in the matter of urgent individual measures. It might be possible for the Chair, in cooperation with the Secretariat, to take initiatives in the matter (between two meetings of the CM-DH) in situations where a rapid reaction/ intervention is necessary.