

Supervision of the execution of the judgments and decisions of the European Court of Human Rights: implementation of the Interlaken Action Plan – Outstanding issues concerning the practical modalities of implementation of the new twin track supervision system

Document prepared by the Department for the Execution of Judgments of the European Court of Human Rights (DG-HL) and finalised after the 1100th meeting (December 2010) (DH) of the Ministers' Deputies

At their 1092nd meeting (14-15 September 2010), the Deputies “endorsed the principle of the twin-track approach concerning a new system for the supervision of execution as set out in document CM/Inf/DH(2010)37 with the aim of implementing it as from 1 January 2011”. The Deputies also “instructed the Secretariat to examine further the outstanding issues concerning the practical modalities of implementation of this new system, so as to report at the meeting of the Ad Hoc Group on the follow-up process to the Interlaken Declaration (GT-SUIVI.Interlaken) of 18 November 2010 and prepare the necessary decisions for the implementation of the new system”.

This document presents the decisions taken at the 1100th Meeting (December 2010) (DH) of the Ministers' Deputies concerning these issues.

Introductory remarks

1. At their 1092nd meeting, the Deputies raised a number of questions regarding the proposed practical modalities for a twin track system for the supervision of execution. The questions raised by the Deputies concern the following issues:

- Indicators for the classification of cases under the enhanced supervision procedure
- Clarification regarding the role of the Committee of Ministers under the standard supervision procedure
- Handling of the absence of action plans or action reports
- Simplified procedure for the supervision of the payment of just satisfaction
- Committee of Ministers' Rules for supervision
- Implementation of the new system and arrangements for the transitional period

At their 1100th meeting, the Deputies also clarified the practical modalities of the enhanced supervision procedure.

Some issues are also summarised under the heading “Other questions”.

¹ This document has been classified restricted at the date of issue. It was declassified at the 1100th meeting of the Ministers' Deputies (December 2010) (see CM/Del/Dec(2010)1100 Decisions adopted at the meeting).

I. Indicators for the classification of cases under the enhanced supervision procedure

2. It is recalled that the Deputies agreed that, under the twin-track system, all cases will be examined under the standard procedure unless, because of its specific nature, a case warrants consideration under the enhanced procedure.

3. The question of indicators for the classification of cases is accordingly only relevant as regards cases to be considered under the enhanced procedure.

4. At their 1092nd meeting, the Deputies accepted the principle of such indicators as well as the indicators proposed by the Secretariat.²

5. The Deputies have however expressed the wish that one of the proposed indicators, namely that concerning judgments raising structural and/or complex problems identified by the Court or the Committee of Ministers should be more precise. The discussions showed that there were two main reasons for this:

i) to ensure that the Committee of Ministers' supervisory action effectively corresponds to the objectives of Rule 4.1 of its Rules for the supervision of the execution of judgments and of the terms of the friendly settlements³ as well as to the challenges of the Interlaken Action Plan⁴, approved by the Committee of Ministers at its 120th session of 11 May 2010.

ii) to avoid, in the medium term, that this supervision track is congested by too many cases, which could undermine its effectiveness.

6. Several drafting proposals were made at the 1092nd meeting in order to make this indicator more specific. In the light of the debates and of the Interlaken Action Plan, the Secretariat proposed that this indicator be expressed as follows:

“judgments disclosing major structural or complex problems as identified by the Court and/or the Committee of Ministers”.

7. During discussions it was also proposed to add a new indicator, namely “cases raising serious violations of the ECHR”. It was pointed out that such an indicator should aim at ensuring that all deserving cases receive appropriate attention by the Committee of Ministers.

8. It should be stressed in this respect that, in its long experience (cf. in particular the reform of its working methods in 2004), the Committee of Ministers has never considered it appropriate to introduce such an indicator explicitly, instead preferring a pragmatic approach, taking fully into account the conclusions of the Court in its judgments.

9. As several delegations have rightly pointed out, serious violations are *a priori* covered by the indicators already suggested, particularly those concerning cases “requiring urgent individual measures” or “raising complex problems”. It has also been emphasised that the fact that any case may be examined under the enhanced procedure by decision of the Committee of Ministers at the initiative of a member state or the Secretariat⁵ represents in itself a sufficient guarantee to cover cases of “serious violations” in the light of the circumstances of the case and the Court's considerations in the judgment at issue. It thus seems unnecessary to introduce such an additional indicator.

² The types of cases that should be supervised under the enhanced procedure were identified as follows (see, § 8 of CM/Inf/DH(2010)37):

- judgments requiring urgent individual measures;
- pilot judgments;
- judgments raising structural and/or complex problems as identified by the Court or the Committee of Ministers;
- interstate cases.

³ “The Committee of Ministers 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 on judgments revealing an underlying systemic problem” (Rule 4.1).

⁴ The Interlaken Action Plan stresses the urgent need for the Committee of Ministers to strengthen the supervision of execution “by giving increased priority and visibility not only to cases requiring urgent individual measures, but also to cases disclosing major structural problems”. See also, the Memorandum of the President of the European Court of Human Rights (3 July 2009); the Opinion of the Steering Committee for Human Rights (CDDH) of 2nd December 2009 and the Contribution of the Secretary General of the Council of Europe of 18 December 2009.

⁵ See paragraph 9 of document CM/Inf/DH(2010)37.

10. At their 1100th meeting, the Deputies decided that the indicators for cases to be examined under the enhanced supervision procedure would be as follows:

- judgments requiring urgent individual measures;
- pilot judgments;
- judgments disclosing **major** structural and/or complex problems as identified by the Court and/or the Committee of Ministers;
- interstate cases.

In addition, the Committee of Ministers may decide to examine any case under the enhanced procedure following an initiative of a member state or the Secretariat. The request may be made at any stage of the supervision procedure. Both member states and the Secretariat should be mindful of the selected indicators when requesting a case be examined under the enhanced procedure.⁶

II. Clarifications regarding the role of the Committee of Ministers under the standard supervision procedure

11. Some delegations wondered about the extent of the Committee of Ministers' role in the standard supervision procedure in the light of the wording of paragraphs 7 of document CM/Inf/DH(2010)28rev⁷ and 7 and 12 of document CM/Inf/DH(2010)37.⁸

12. It is recalled from the outset that the whole new system, including the standard supervision procedure, is based on the fundamental principle that it is for respondent states to ensure the effective execution of the Court's judgments and decisions⁹, i.e., the principle of subsidiarity of their execution.

13. It should first of all be underlined that all the proposals submitted to the Deputies are based on the principle that all cases under the Committee's supervision appear on the agenda of each "Human rights" meeting, and that the Committee will have permanent access to all relevant documentation concerning the development of the cases.

14. Moreover, the standard procedure is based on the fundamental principle that it is for States Parties to the Convention to ensure the effective execution of the Court's judgments and decisions¹⁰, i.e., the principle of subsidiarity of their execution. Moreover, the standard supervision procedure is based on the principle that member states provide an action plan or action report as soon as possible and in any case at the latest within six months from the date upon which the judgment became final. It is also based on the assumption that the execution process functions efficiently. Therefore, it seems logical that the Committee of Ministers rests mainly on states' action and limits its intervention to ensuring that adequate action plans or reports have been presented and verifies the adequacy of the measures announced and/or taken at the appropriate time. This modus operandi is entirely consistent with the objectives of hierarchisation and prioritisation of the handling of cases which the Committee wishes to set itself.

⁶ The addition of this last sentence is based on a proposal by the United Kingdom which received wide support at the 1092nd meeting of the Committee of Ministers.

⁷ "7. **Simplified supervision** would entail only formal involvement of the Committee of Ministers at the end of the execution phase in order to endorse the measures adopted by the state [...]"

⁸ « 7. As requested by the Deputies, the practical modalities of such a twin-track supervisory system are set out below. The proposed arrangements are based on the principle that all cases are technically considered to be on the agenda of every « Human Rights » meeting until their closure. The arrangements also reflect the need for prioritised and ranked supervision by the Committee of Ministers. »

« 12. In order for the standard procedure to operate effectively, member states are expected to present an action plan or an action report as soon as possible and in any event not later than six months after a judgment becomes final. The Committee's involvement in the standard procedure will be limited to verifying whether or not action plans or action reports have been presented by member states. »

This question was also submitted by the Secretariat of the Committee of Ministers to the Jurisconsult of the Directorate of Legal Advice and International Public Law, who replied in a memorandum dated 7 October 2010 that "Thus, the large margin of discretion given to the CM [...] leads, necessarily, to the conclusion that the proposal on how to deal with standard supervision cases would not be incompatible with the current CM Execution Rules."

⁹ See paragraph 2 of the decision adopted by the Committee of Ministers on 15 September 2010 :

« The Deputies [...] 2. recalling the responsibility which lies on states parties to the European Convention on Human Rights regarding the effective execution of these judgments. »

¹⁰ See paragraph 2 of the decision adopted by the Committee of Ministers on 15 September 2010 :

« The Deputies [...] 2. recalling the responsibility which lies on states parties to the European Convention on Human Rights regarding the effective execution of these judgments. »

15. Finally, it should be recalled that should difficulties arise in the process of execution, the Committee would be kept duly informed on a case-by-case basis so that it can intervene rapidly if it deems it necessary.

III. Clarification regarding practical modalities of the enhanced supervision procedure

16. The supervision under this procedure does not mean that each and every case needs to be systematically debated in order for the CM to be able to follow the execution process. Under the enhanced procedure without debate, the Committee of Ministers could thus also exercise its supervision through decisions adopted without debate at the "Human Rights" meetings. These decisions would aim at demonstrating, whenever necessary, the developments in the execution process (for example, stocktaking of the measures already adopted and identification of the outstanding issues). An example of such a decision which could be adopted without debate is as follows:

Sample decision (a case examined under the enhanced procedure without debate):

The Deputies,

1. noted with satisfaction that the Criminal Code of [member State] has been amended and that this amendment is capable of preventing similar violations in the future;
2. called upon the respondent State to intensify its efforts with a view to finding a rapid solution to the remaining outstanding issues [specify issues];
3. noted that bilateral consultations will be held between the authorities of the respondent State and the Secretariat in October 2011 on the outstanding issues;
4. instructed the Secretariat to inform the Committee on the results of these bilateral consultations;
5. decided to examine the outstanding issues at their [...] meeting.

17. In parallel, in the context of the enhanced supervision procedure, the Secretariat will make all efforts to respond positively to requests from respondent States for a targeted cooperation, notably in the form of:

- assistance in the preparation and/or implementation of action plans;
- expertise assistance as regards the type of measures envisaged;
- bilateral/multilateral cooperation programmes (e.g. seminars, round-tables) in case of complex and substantive issues.

It is underlined that such cooperation activities which aim at facilitating the execution process are the sole competence of the respondent State with the support of the Secretariat. They are not part of the Committee of Ministers' responsibilities in the context of its supervision of the execution of the Court's judgments under Article 46, paragraph 2 of the Convention.

IV. Handling of the absence of action plans or action reports

18. The question was raised as to the appropriate response of the Committee of Ministers in case of failure to present action plans or reports. A number of delegations indicated that they did not feel that such a situation in itself warranted (as proposed by the Secretariat), enhanced supervision. They felt that cases in which no action plan or action report has been presented, despite the reminder by the Secretariat should be placed on specific lists with a decision of the Committee of Ministers to invite the authorities of the state concerned to present an action plan or an action report. Only in case of persistent failure from the authorities to submit an action plan or an action report, would the case be proposed for enhanced supervision.

19. It should be clarified that the Secretariat's proposal to transfer cases where no action plan or action report has been received, only concerns cases in which, despite a reminder by the Secretariat, no action plan or action report at all is presented and no explanations for such a situation are given to the Committee of Ministers by the State concerned within a certain period. It is recalled that the proposal to transfer the case under the enhanced procedure would intervene nine months after the judgment is final (which is already a long period) and only in case of total absence of information about the national responses to the execution process. Obviously, such a situation should be exceptional. The aim of the Secretariat's proposal was to ensure a timely reaction from the Committee of Ministers with a view to accelerating the appropriate action at national level, thus preventing the risk of slow execution.

20. At their 1100th meeting, the Deputies chose the initial proposal made in paragraphs 27 and 28 of CM/Inf/DH(2010)37 while adding some specifications:

27. If a member state still does not present an action plan or report within three months after the Secretariat's reminder, and does not provide any explanation for this state of affairs to the Committee of Ministers, the Secretariat will propose that the case be examined under the enhanced procedure.

28. Consequently, it will be proposed to the Committee that a decision is adopted at the first "Human Rights" meeting following the expiry of the three months period inviting the member state concerned to provide an action plan/report without any further delay:

Sample decision (no action plan or report has been presented)

In the case of A v. [member state]:

The Deputies,

1. noted with regret that no action plan or report has been presented in this case nor any valid explanation for such a situation despite the reminder sent to the authorities on [specify the date]

2. invited the authorities of the respondent State to present an action plan or report without any further delay and decided to transfer this case for its examination under the enhanced procedure

V. Simplified procedure for the supervision of the payment of just satisfaction

21. It should be made clear from the outset that the simplified procedure for verifying the payment of just satisfaction proposed to the Deputies at their 1092nd meeting¹¹ was not intended to suggest that the Committee of Ministers abandons its responsibility in this respect as set out in Rules 6 paragraph 2a and 12. This procedure only aims at optimising its role, given in particular the new competence assigned to the Committee of Ministers under Article 39, paragraph 4 of the Convention to supervise the execution of the terms of all friendly settlements endorsed by the Court.

22. Following the discussions at the 1092nd meeting, it is recalled that the form to be filled in by states as proposed by the Secretariat as a means of recording the payment of the sums granted by the Court in respect of just satisfaction covers all the necessary information. Clearly, if a state were to transmit the information requested, in one of the official languages, but in a different format, the information would nonetheless be taken into account and duly recorded.

23. As regards information to applicants, the Secretariat confirms that the letters transmitting final judgments or decisions endorsing friendly settlements will include contact information on the Department for the Execution of Judgments (fax number, web address and the specific e-mail address for questions concerning just satisfaction, postal address of the Department). These details will also appear on the Department's website.

24. Deputies will find appended to this document a model of the page which will be created on the execution Department's website to increase the visibility of questions relating to just satisfaction and above all to ensure proper provision of information to applicants so that they can indicate in due time any difficulty encountered in securing payment of sums awarded by the Court.

25. As has already been pointed out, it is important that the information presented on this page can be quickly translated into as many languages as possible so that they are accessible to the 47 member states. Means are currently explored to this effect.

VI. Committee of Ministers' Rules for supervision

26. Several delegations wondered whether the proposals presented for the implementation of the twin-track supervision system called for changes to the Rules of supervision.

¹¹ cf. Appendix II of document CM/Inf/DH(2010)37

27. As pointed out at the 1092nd meeting, the proposals do not at the present stage require a change to the Rules, which are sufficiently flexible to permit the implementation of the approved proposals by decision of the Committee of Ministers. The legal opinion mentioned above confirms this as follows: “[...] the proposed new working methods, as described in document CM/Inf/DH(2010)37, will not be in contradiction neither with the CM execution rules currently in force nor with Rules of Procedure of the Committee of Ministers or the Ministers’ Deputies, applicable by default”.

28. Thus the new supervisory system can be put in place at this stage by a decision of the Committee of Ministers.

29. Once the functioning of the system has been tested and assessed, the Committee may if it so wishes, consider the possibility of revising its present Rules.

VII. Implementation of the new system and arrangements for the transitional period

30. The entry into force of the new supervision system means that all new cases that will become final after 01/01/2011 will be subject to examination under the new working methods. Regarding the cases that are currently pending before the Committee of Ministers (approximately 9000 active cases), transitional arrangements should be set up in order to allow their easy absorption into the new system.

31. As regards these cases, bilateral discussions have already started with a view to identifying the most appropriate form of supervision. It is expected that this work can be finalised for a great number of cases by the 2011 March DH meeting. The Secretariat will therefore be able to report to the Committee of Ministers the results of the first round of consultations at that meeting. This report will also include the first set of cases to be proposed for examination under the standard and enhanced procedures. Given the number of cases concerned, the Secretariat foresees that the whole process could be brought to an end by the September 2011 Human Rights meeting at the latest. Meanwhile, for practical reasons, it is proposed that cases that have not been classified will be placed on a specific list entitled “cases awaiting classification” and until their classification, be dealt with under the standard procedure.

32. At their 1100th meeting, the Deputies adopted the following decisions.

The Deputies,

1. recalling the decision adopted by the Committee of Ministers at its 120th Session approving the Interlaken Declaration and Action Plan, and instructing the Deputies to intensify their efforts to increase the efficiency and the transparency of the supervision of execution and to complete this work by December 2010,
2. approved the proposals contained in document CM/Inf/DH(2010)45 as amended in the paragraphs appended¹², and recalled document CM/Inf/DH(2010)37;
3. decided to implement the new, twin-track supervision system with effect from 1 January 2011 taking into account the transitional provisions set out below;
4. decided that, as from that date, all cases will be placed on the agenda of each DH meeting of the Deputies until the supervision of their execution is closed, unless the Committee were to decide otherwise in the light of the development of the execution process;
5. decided that action plans and action reports, together with relevant information provided by applicants, non-governmental organisations and national human rights institutions under rules 9 and 15 of the Rules for the supervision of execution judgments and of the terms of friendly settlements will be promptly made public (taking into account Rule 9§ 3 of the Rules of supervision) and put on line except where a motivated request for confidentiality is made at the time of submitting the information;
6. decided that all new cases transmitted for supervision after 1 January 2011 will be examined under the new system;

¹² The amendments made by the Deputies are incorporated in the public version of the present document.

7. decided that all cases pending before the Committee of Ministers for supervision of execution on 1st January 2011 will be subject to transitional arrangements and instructed the Execution Department to provide, to the extent possible in time for their DH meeting in March 2011 and in any event, at the latest for their DH meeting of September 2011, proposals for their classification following bilateral consultations with the states concerned;
8. decided that any cases not yet included in one or other of the supervision tracks¹³ will be placed on a specific list and until their classification, will be dealt with under the standard procedure;
9. decided that the practical modalities of supervision of the execution of European Court's judgments and decisions under the twin-track approach would be evaluated specifically at the DH December meeting in 2011;
10. decided to declassify document CM/Inf/DH(2010)45, as amended.

VIII. Other questions


33. It should be pointed out that the twin-track approach concerns both final judgments of the Court and decisions rendered under Article 39, paragraph 4 of the Convention (i.e. friendly settlements endorsed by the Court). The 2006 Rules already contain provisions (Chapter III) on this aspect, applied upon adoption of the rules, though at the time only to friendly settlements endorsed by means of judgments (only such settlements were subjected to the Committee of Ministers' supervision before the entry into force of Protocol No. 14). The Committee became competent to supervise all friendly settlements approved by the Court with the entry into force of Protocol No. 14 on 1 June 2010. The proposed introduction of the twin supervision tracks, particularly the standard procedure, together with the simplification of the control of the payment of just satisfaction, include the modalities of supervision of the execution of the terms of friendly settlements.

34. As regards the question, raised by a delegation, of unilateral declarations, they do not fall *per se* under the competence of the Committee of Ministers. The main unilateral declarations submitted to the Committee of Ministers' supervision are those which the Court explicitly forwards to the Committee for supervision of their execution, particularly following pilot judgments. It should be noted that the question of whether it is appropriate that the Committee of Ministers is entrusted with a general competence to supervise compliance with decisions based on unilateral declarations is currently under consideration, not least by the CDDH.¹⁴

¹³ Including, on this occasion, decisions as well as judgments becoming final if appropriate until 31 December 2010, as set out in document CM/Inf/DH(2010)49.

¹⁴ The relevant report of the CDDH (cf. CDDH(2010)13, Addendum I) has now been transmitted to the Committee of Ministers.

Appendix - Draft web page – just satisfaction



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Just satisfaction

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Just satisfaction

Article 41 of the European Convention on Human Rights

"Just satisfaction: If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

Following the entry into force of Protocol 14, on 1st June 2010, the Committee of Ministers also supervises the execution of the terms of friendly settlements endorsed by the Court (Article 39 of Convention), including any sum that the State has agreed to pay the applicant under the terms of such a settlement. ([read more...](#))

Payment control

- [List of cases under control of payment](#)
- [List of cases paid](#)

Applicant / Legal Representative

You wish to obtain or submit information about the just satisfaction awarded to you by the Court, please send your request:

by mail	OR	OR
Council of Europe	by fax at No	by email at
DGHL Directorate of	+33(0)3.88.41.27.93	Execution_JS_applicant@coe.int
Monitoring		
Just Satisfaction Section		
Department for the Execution		
of Judgments of the ECHR		
F-67075 Strasbourg Cedex		

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- [Who should I contact in case of difficulties in obtaining the sums due and by what deadline?](#)
- [What should I do if the amount of the just satisfaction awarded by the European Court was not paid?](#)
- [What should I do if the amount of the just satisfaction awarded by the European Court was seized?](#)
- [What should I do if the amount paid does not correspond to the amount awarded?](#)
- [Other questions](#)

Information documents

Monitoring of the payment of sums awarded by way of just satisfaction: an overview of the Committee of Ministers' present practice
[Memorandum CM/Inf/DH\(2008\)7 final, 15 January 2009](#)