



Strasbourg, 2 April 2007

DH-PR(2007)003

STEERING COMMITTEE FOR HUMAN RIGHTS
(CDDH)

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

REPORT

61st meeting

Strasbourg, 28 -30 March 2007

1. The Committee of Experts for the Improvement of Procedures for the Protection of Human Rights (DH-PR) held its 61st meeting in Strasbourg on 28-30 March 2007. The meeting was chaired by Mr Vit SCHORM (Czech Republic). The list of participants appears in Appendix I and the agenda, as adopted, in Appendix II.

2. The meeting was dedicated to the examination and adoption of the draft interim report describing current work aimed at ensuring the continued effectiveness of the implementation of the ECHR at national and European levels. Discussions on the interim report also served as a framework to exchange views on the progress of the work carried out by its Working Groups A (execution of judgments) and B (review of the recommendations).

3. As to the ***draft interim report*** (see the Addendum to this report), it was agreed that it should be short and clear and aim at informing the Ministers' Deputies about progress accomplished in executing the terms of reference as well as indicating the envisaged next steps ahead. The DH-PR was also of the view that any apparent difficulties that might hamper the fulfillment of the terms of reference should be pointed out.

4. As to the ***work of Group A***, the DH-PR welcomed the substantial progress accomplished and congratulated the Group for having already produced a **draft recommendation** on effective means at the domestic level for the rapid execution of the Court's judgments. It particularly appreciated the flexibility resulting from the wording chosen in the operative part of the recommendation. This purposefully does not go into details, leaving a wide margin of interpretation to member states as to the choice of the means to attain the recommended objective of enhanced coordination, dialogue, anticipation and action to ensure rapid execution at the national level.

5. In particular, as requested by Group A and in accordance with its terms of reference,¹ the DH-PR evaluated the appropriateness of including a paragraph on national parliaments in the recommendation. Arguments for and against were voiced in this regard. Generally the DH-PR warned against the risk of politicizing the execution process. However, raising the awareness of parliaments on the execution process seemed to gather some support.² It was therefore decided to provide the CDDH with some wording in this regard even if no compromise emerged on it.³

6. The DH-PR agreed to include a paragraph in the preamble to acknowledge that the provisions of the recommendation should also apply, *mutatis mutandis*, to the execution of all decisions and judgments of the Court recording the terms of friendly settlements or closing a case on the basis of a unilateral engagement by the State. It was of the view that such a wide interpretation of its terms of reference was in line with the work already carried out by the CDDH

¹ See Appendix I to the interim report (Addendum to this report).

² Moreover, the Head of the Secretariat of the Legal Affairs and Human Rights Committee of the Parliamentary Assembly informed the DH-PR that in November 2006, the President of the Parliamentary Assembly sent a letter to the Presidents of Parliaments of member states asking them to consider the proposal made in Parliamentary Assembly Resolution 1516(2006) that national parliaments set up an internal system to monitor the implementation by national authorities of judgments of the European Court of Human Rights. The DH-PR took note that the Assembly would take stock of developments in this regard by the end of 2007 and would keep it informed.

³ See para 8 of the draft recommendation which appears in Appendix III to this report.

when it prepared the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.⁴

7. The draft recommendation, as adopted by the DH-PR, for examination by the CDDH, appears in Appendix III.

8. As regards the second aspect of the work carried out by Group A, *i.e.* the development of further **practical proposals** for the supervision of execution of judgments in situations of slow or negligent execution, the DH-PR took note of the areas for further work⁵ identified by the Group and encouraged it to explore them all.

9. In this context, the representative of the Department for the Execution of Judgments of the Court presented a first outline⁶ of the future *vademecum* on the execution process. The DH-PR members were invited to send the Secretariat (corinne.amat@coe.int) any comments on it before the Autumn 2007. This important tool was deemed a living instrument, to be adapted to include developments in the Committee of Ministers' practice. As to the *execution database*, the DH-PR noted that some of the necessary IT tools have been developed and that the Department for the Execution of Judgments is currently testing them. Moreover, search criteria (by violation, by area, etc.) are being finalised to allow an optimal use of the information stored.

10. As to the work of **Group B**, the DH-PR was informed that the replies to the questionnaire of July 2006 had been analysed on a preliminary basis by the Group⁷ and that these revealed that further clarification was requested with regard to some replies provided. The DH-PR welcomed the *rapporteurs'* intention to contact member states on a bilateral basis to elucidate such replies to enable the Group to compare the information submitted. Moreover it noted that it would also receive the texts of the analyses and that its members would be invited to collaborate with the Group by checking the way in which information was categorised.

11. The DH-PR noted the difficulties encountered by the Group with regard to the deepening of the review. It was informed that notwithstanding the various appeals⁸ made, the contributions received from national human rights institutions (NHRIIs) and non-governmental organisations remained few. It confirmed its previous intuition that it might be more constructive to encourage such contributions by organising an event on the review of the recommendations involving NHRIIs, NGOs and other relevant actors. Having been informed by the representative of the Office of the Commissioner for Human Rights that the review of the implementation of the recommendations will, *inter alia*, be discussed at an up-coming Round Table⁹ with Ombudsmen

⁴ See document CM(2006)90, adopted by the Committee of Ministers on 10 May 2006 at the 964th meeting of the Ministers' Deputies.

⁵ See paras 5-12, document GT-DH-PR A(2007)003.

⁶ See Appendix IV to this report.

⁷ See documents GT-DH-PR B(2007)001, 002 and 004 Bil.

⁸ The Secretariat sent a request by email during the summer 2006 (which is reproduced in the introduction of document DH-PR(2006)005Bil.) and the Chairperson of the DH-PR addressed a letter requesting comments by civil society in November 2006 (see Appendix III, DH-PR 60th meeting report, document DH-PR(2006)008). The requests were addressed to approximately 170 relevant actors.

⁹ The Round table, which will take place on 12 and 13 April 2007 in Athens will be on the strengthening of cooperation to support the long-term effectiveness of the European Convention's control mechanism.

and NHRIs, it decided to wait for the results of this round table before taking any specific decision. In this context, the DH-PR also welcomed any assistance that the Commissioner for Human Rights may provide in promoting the recommendations and further encouraging their full implementation.

12. Finally, the DH-PR decided to hold a second exchange of views concerning the on-going developments within the Court and the Committee of Ministers' practices related to **pilot judgments** during its plenary in October 2007.

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COMMISSIONER FOR HUMAN RIGHTS / COMMISSAIRE AUX DROITS DE L'HOMME

Ms Irene KITSOU-MILONAS, Legal Adviser to the Commissioner

All other participants: excused / tous les autres participants: excusés

* * *

OBSERVERS/OBSERVATEURS

All excused / tous excusés

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Interpreters/Interprètes

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Appendix II**Agenda****Item 1: Opening of the meeting and adoption of the annotated agenda****Working documents**

- Draft annotated agenda DH-PR(2007)OJ001
- Report of the 73rd meeting of the CDDH-BU (Paris, 15-16 March 2007) CDDH-BU(2007)00...
- Report of the 60th meeting of DH-PR (22-24 Nov. 2006) DH-PR(2006)008
- Terms of reference of the CDDH and bodies answerable to it (adopted by the Ministers' Deputies at their 984th meeting, 17-18 Jan. 2007) CDDH(2007)002
pp: 13-16 and 37-43

Item 2: Draft interim report to be submitted to the CDDH by 31 March 2007**Working documents**

- Draft interim report DH-PR(2007)001
- 1st and 2nd meeting reports of Group A (14-15 Dec. 2006 and 7-9 March 2007) GT-DH-PR A(2006)004
and (2007)003
- 6th and 7th meeting reports of Group B (9-10 Nov. 2006 and 20-21 Feb. 2007) GT-DH-PR B(2006)008
and (2007)003
- Pilot judgments discussion report DH-PR(2007)002

1) Information documents concerning work carried out by GROUP A

- a) **Concerning the draft recommendation on effective means at domestic level for the rapid execution of the Court's judgments**
 - Elements prepared by the Secretariat for possible inclusion in the draft recommendation GT-DH-PR A(2007)002
 - Proposals for the draft recommendation submitted by some members/participants of Group A GT-DH-PR A(2007)001
Bil
 - Collection of information submitted by member states on the execution of judgments at national level DH-PR(2006)007Bil rev
 - Avenues for reflection on the effective means at domestic level for the rapid execution of the Court's judgments: Note from the Department for the Execution of Judgments of the Court GT-DH-PR A(2006)003
 - Parliamentary Assembly Resolution 1516(2006) and Recommendation 1764(2006) on "Implementation of judgments of the European Court of Human Rights" and the Jurgens' report, of 18 Sept. 2006, doc 11020
 - Report by the Ministers' Deputies to the 116th Session of the CM (12 May 2006) CM(2006)39 final
- b) **Concerning the development of further practical proposals for the supervision of execution of judgments in situations of slow or negligent execution**
 - Working methods for supervision of the execution of the European Court of Human Rights' judgments CM/Inf/DH(2006)9 rev 3
 - Report by the Ministers' Deputies to the 116th Session of the CM CM(2006)39 final
 - Practical suggestions from the CDDH to the Ministers' Deputies to address CDDH(2006)008,

situations of slow or negligent execution of judgments of the European Court of Human Rights	Appendix IV
- Responses in the event of slow or negligent execution or non-execution of judgments of the European Court of Human Rights: Information document prepared by Directorate General II – Human Rights	CM(2003)37 rev 6
2) Information document concerning work on the developing practice of the Court and of the Ministers' Deputies on so-called PILOT JUDGMENTS	
- Information note prepared by the Registry of the Court	
3) Information documents concerning work carried out by GROUP B	
a) With regard to all recommendations	
- Replies to the new questionnaire received by the Secretariat	DH-PR(2006)004 rev Bil
- Comments/supplementary information received by the Secretariat	DH-PR(2006)005Bil
- Background paper: Effective Protection of Human Rights in Europe: Enhanced Co-operation between Ombudsmen, National Human Rights Institutions and the Council of Europe Commissioner for Human Rights	CommDH/Omb-NHRI(2007)1 Rev 111
- Information note on contributions expected from other Council of Europe bodies	DH-PR(2006)006
- Questionnaire on the implementation of the five recommendations follow-up (27 July 2006)	DH-PR(2006)002
- Report by the Ministers' Deputies to the 116th Session of the CM (12 May 2006)	CM(2006)39 final
- CDDH Activity report (7 April 2006)	CDDH(2006)008 + Addenda I - III
- Text of the recommendations and their explanatory reports or appendices	DH-PR(2005)012
b) With specific regard to Recommendation Rec(2004)6 on improvement of domestic remedies	
- Preliminary analysis of replies concerning Rec(2004)6	GT-DH-PR(2007)001 Bil
- Study 316/2004 on the effectiveness of national measures in respect of excessive length of proceedings (22 Dec. 2006)	CDL-AD(2006)036
- Replies to the Questionnaire on excessive length of proceedings (15 Feb. 2007)	CDL(2006)026
- Report on length of court proceedings in the member states of the Council of Europe based on the case-law of the European Court of Human Rights (8 Dec. 2006)	CEPEJ(2006)15
c) With specific regard to Recommendation Rec(2004)5 on verification of compatibility	
- Preliminary analysis of replies concerning Rec(2004)5	GT-DH-PR(2007)002 Bil
d) With specific regard to Recommendation Rec(2000)2	
- Preliminary analysis of replies concerning Rec(2000)2	GT-DH-PR(2007)004 Bil
- Suggested revision of the summary table concerning Rec(2000)2 (document prepared by the Department for the Execution of Judgments of the Court)	GT-DH-PR B(2006)007

Item 3: Any other business

Item 4: Adoption of the draft interim report and of the conclusions of the meeting

Appendix III

**Draft recommendation on efficient domestic capacity
for rapid execution of the Court's judgments**
(adopted by DH-PR at its 61st meeting, 28-30 March 2007)

- a. Emphasising High Contracting Parties' legal obligation under Article 46 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereafter referred to as "the Convention") to abide by all final judgments of the European Court of Human Rights (hereinafter referred to as "the Court") in cases to which they are parties;
- b. Reiterating that judgments in which the Court finds a violation impose on the High Contracting Parties an obligation to:
 - pay any sums awarded by the Court by way of just satisfaction;
 - adopt, where appropriate, individual measures to put an end to the violation found by the Court and to redress, as far as possible, its effects;
 - adopt, where appropriate, the general measures needed to prevent similar violations in the future.
- c. Recalling also that, under the Committee of Ministers' supervision, the respondent State remains free to choose the means by which it will discharge its legal obligation under Article 46 of the Convention to abide by the final judgments of the Court;
- d. Convinced that rapid and effective execution of the Court's judgments contributes to the long term effectiveness of the European human rights protection system;
- e. Noting that the full implementation of the comprehensive package of coherent measures referred to in the Declaration "*Ensuring the effectiveness of the implementation of the European Convention on Human Rights at national and European levels*", adopted by the Committee of Ministers at its 114th Session (12 May 2004), is *inter alia* intended to facilitate compliance with the legal obligation to execute the Court's judgments;
- f. Recalling also that the Heads of State and Government of the member states of the Council of Europe in May 2005 in Warsaw underlined the need for an accelerated and full execution of the judgments of the Court;
- g. Noting therefore that there is a need to reinforce domestic capacity to execute the Court's judgments;
- h. Underlining the importance of early information and effective coordination of all state actors involved in the execution process and noting also the importance of ensuring within national systems, where necessary at high level, the effectiveness of the domestic execution process;

- i. Noting that the provisions of this Recommendation are applicable, mutatis mutandis, to the execution of any decision and judgment of the Court recording the terms of any friendly settlement or closing a case on the basis of a unilateral engagement by the State;

RECOMMENDS that member states:

1. designate a coordinator - individual or body - of execution of judgments at the national level, with reference contacts in the relevant national authorities dealing with the various phases of the execution process. This coordinator should have the necessary powers and authority to:
 - acquire relevant information,
 - liaise with decision makers in the execution process and
 - if need be, take or initiate relevant measures to accelerate the execution process;
2. ensure the existence of appropriate mechanisms to allow effective dialogue and transmission of information between the coordinator and the Committee of Ministers, whether through Permanent Representations or otherwise;
3. facilitate, if appropriate, the adoption of any other useful measures to develop effective synergies between the various actors in the execution process at the national level, and to identify their respective competencies;
4. identify as early as possible the measures which may be required in order to ensure rapid execution;
5. prepare, where appropriate, action plans, if possible including an indicative timetable, aimed at enlightening the Committee of Ministers on the measures envisaged to execute final judgments;
6. take the necessary steps to ensure that all key actors in the execution process are acquainted with the Court's case-law as well as with the relevant Committee of Ministers' recommendations and practice;
7. disseminate the vademecum on the execution process to all actors and encourage its use as well as that of the database with information on the state of execution in all cases pending before the Committee of Ministers;
8. [as appropriate, keep their parliaments informed of the general situation concerning execution of judgments and the measures being taken in this regard;]

or

[keep their parliaments regularly informed of the general situation concerning execution of judgments and the measures being taken in this regard;]

9. where required by a significant persistent problem in the execution process, ensure that all necessary remedial action be taken at high level, political if need be.

Appendix IV

Preliminary draft outline for the vademecum on the execution of judgments of the European Court of Human Rights

INTRODUCTION – GENERAL OBLIGATION TO EXECUTE JUDGMENTS

Legal basis, nature and scope of the obligation: key principles and basic notions

FIRST SECTION –PROCEDURAL ASPECTS

Chapter 1 – CO-ORDINATION AND FOLLOW-UP OF THE EXECUTION

1. The issue of the body/bodies responsible for the follow-up

1.1 - The « co-ordinator of the execution »

(*cf item 1 of the operative part of the draft recommendation*)

1.2 – Complementary synergies

 1.2.1 – Between various actors involved in the execution at national level

 (*cf item 3 of the draft recommendation*)

 1.2.2 – Involvement of other national bodies, if necessary at high level

 (*Parliament, courts... - cf item 8 of the draft recommendation*)

2. Efficient ad rapid networks for the circulation of relevant information

2.1 – Liaison between the Permanent Delegation and national authorities

 (*cf item 2 of the draft recommendation*)

2.2 - Translation/circulation of resolutions and other important decisions of the CM

 (*cf item 6 of the draft recommendation*)

Chapitre 2 – EXECUTION OF JUDGMENTS AND SUPERVISION BY THE CM

1. During the initial stage of the execution of a judgment

1.1 – Definitions (initial stage – initial stage letter – action plan)

1.2 – Initiating the execution procedure of a judgment of the European Court

 1.2.1 – From the date in which the judgment became final

 1.2.2 – Where there is no need for any other generating fact

 1.2.3 – Where anticipation would be possible, and even desirable

1.3 - Definition of measures to be taken

 (*Stakes and means – cf item 4 of the draft recommendation*)

 1.3.1 Principles

 1.3.2 Tools/good practice likely to facilitate the identification of measures to be taken

 (i) Early use of national experts/consultants

 (ii) Knowledge and use of the case-law of the Court and the practice of the Committee of Ministers concerning execution

 (*cf point 6 du projet de recommandation*)

 (iii) Bilateral contacts with the Secretariat of the Department for the Execution

 1.3.3 Assessment of the dimension of a given problem (either systemic or not) and of the measures required

 (i) Basic national procedures

 (ii) Special procedures

 1.3.4 Issues concerning the nature/scope of the case

1.4 – Setting-up an action plan

 (*cf item 5 of the draft recommendation*)

 1.4.1 Need for an action plan

 1.4.2 Contents of the action plan

1.5 – Transmission of the action plan proposed by the Secretariat

2. During the subsequent stage of the execution of a judgment

- 2.1 – First examination of the case after expiry of the initial 6 months stage
 - 2.1.1 Presentation of an action plan
 - 2.1.2 Assessment of the action plan and of the relevant follow-up procedure
 - 2.1.2 Absence of an action plan
- 2.2 – Further consideration of the case by the CM
 - 2.2.1 Follow-up of the implementation of the action plan
 - 2.2.2 Action to be taken in case of problems concerning the implementation
 - 2.2.3 Continued absence of an action plan
- 2.3 – Required measures adopted
 - 2.3.1 Partially
 - 2.3.2 Totally

SECOND SECTION – SUBSTANTIVE ISSUES

Chapter 1 – PAYEMENT OF THE JUST SATISFACTION

1. The beneficiary of the just satisfaction

- 1.1 – The principle : payment to the person designated by the Court as beneficiary
- 1.2 – The problem of joint payment to several persons
- 1.3 – The payment to a person other than that designated by the Court as beneficiary
- 1.4 – The power conferred

2. The place of payment

- 2.1 – Friendly settlements which do not provide for interests for late payment
- 2.2 – Seizure of the just satisfaction

3. The deadline for just satisfaction

4. The currency used

- 4.1 – The currency of the payment
- 4.2 – The rate of exchange

5. Seizure and taxation of amounts allocated for just satisfaction

- 5.1 – Seizure
- 5.2 – Taxation

Chapter 2 – INDIVIDUAL MEASURES (IM)

1. *Restitutio in integrum* or other measures to erase as far as possible the consequences of violations
Basis and principles - Obligation of result – Free choice of means

2. Choice of means

- 2.1 – Link between IM and the decisions of the Court on just satisfaction
- 2.2 – Re-opening or re-examination or *ad hoc* solutions
- 2.3 – Other measures

3. Initiative for the implementation of the individual measures

- 3.1 – At the initiative of the authorities (in particular concerning substantive violations, effective surveys...)
- 3.2 – Initiative left to the applicant (inequitable procedure but clear possibility of re-examination/re-opening...)

4. Issues relating to deadlines

Chapter 3 – GENERAL MEASURES (GM)

1. Obligation to prevent similar further violations

Basis and principles - Obligation of result – Free choice of means

2. Choice of means

2.1 – Presumption of direct effect: publication and efficient dissemination of judgments

2.2 – Expected changes in the case-law and practice

2.3 – Other situations

 1.3.1 – Review of rules, instructions and/or practical guidelines

 1.3.2 – Investigative powers of the supreme courts

 1.3.3 – Training of decision-makers (see Recommendation (2004)⁴)

2.4 – Legislative or regulatory measures

 1.4.1 – Rapid procedures so as to ensure regulatory changes

 1.4.2 – Adapted legislative process

 (i) Involvement of specialized advisory bodies (Recommendation (2004)⁵)

 (ii) Parliamentary legislative initiative

2.5 – Complex reforms

3. Need to ensure effective remedies

4. Interim measures

APPENDICES – REFERENCE DOCUMENTS

Rules adopted by the CM

Part 1 – PROCEDURE BEFORE THE CM

1. Preparation and progress of meetings of the Ministers' Deputies

1.1 – Working methods – CM/Inf(2004)⁸ & CM/Inf/DH(2006)⁹

1.2 – Working documents for the meetings

 1.2.1 – Documents for the general presentation of the cases

 (i) Preliminary list of items

 (ii) Annotated agenda (AA)

 (iii) Order of business (OB)

 1.2.2 – Secretariat memoranda (CM/Inf)

 1.2.3 – Presentation of information concerning cases (DD)

Information provided by the governments, applicants, NGOs and others

2. Presentation of cases before the Deputies

2.1 – Sections and notes of the AA

2.2 – Standard decisions

2.3 – Criteria for the debate

Part 2 – PRACTICE OF THE CM and of states concerning the execution

1. Adopted measures

1.1 – Individual measures adopted

1.2 – General measures adopted

2. Issues pending before the CM

2.1 – Individual measures

2.2 – General measures

3. Collection of interim Resolutions

4. Resolutions and decisions dealing with general issues

5. Thematic memoranda

5.1 – Supervision of payment of the amounts allocated as just satisfaction
CM-Inf DH(2007)12

5.2 – Judgments of the European Court of Human Rights raising issues linked with international conflicts
of competence regarding child custody CM/Inf/DH(2005)11 revised 3 du 26/10/05

5.3 - ...