HUMAN RIGHTS AND
WOMEN IN THE ARMED FORCES OF ARMENIA

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COUNCIL OF EUROPE

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INTER-INSTITUTIONAL COMMITTEES ACCREDITED TO THE GOVERNMENTAL AGENTS' OFFICES IN SOME MEMBER STATES OF THE COUNCIL OF EUROPE:
Comparative research and recommendations

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wthin the framework of the Project "Human rights and women in the armed forces in Armenia''

CONTENTS

INTRODUCTION

The Council of Europe's Project on "*Human rights and women in the armed forces in Armenia*" ("the Project") implements, *inter alia*, measures aimed at fostering execution of the European Court of Human Rights ("the ECtHR") judgments and decisions in Armenia. In this framework, the Project held Expert Discussions on 10 March 2020[1] where the participants consented about the need to set up a multi-institutional committee acting under the auspices of the Armenian Governmental Agent's Office. Consequently, the Project commissioned a comparative study ("the Study") of similar inter-institutional committees acting under the auspices of the Governmental Agents' Offices in some Member States of the Council of Europe ("the Member States").

The Study, according to the Terms of Reference formulated by the Project, should draw up recommendations helping the Armenian Agent's Office to conceive the mandate, functions and composition of such a committee. During the said Expert Discussions, it was suggested that the intended committee has to include representatives of public sector and third interested parties, all dealing with the systemic human rights violations in Armed Forces of Armenia, as well as acting in other areas of human rights protection. It was agreed that the comparative research might be get inspired by good practices among the Council of Europe member states that have already created similar committees. Poland's and the Czech Republic's experience was mentioned by the participants as the most relevant examples of such practices, but the experience of other Member States could be also of interest to the Armenian Agent's Office.

Accordingly, the present Study follows these Terms of Reference and the views expressed during the Expert Discussions. It should primarily research the Polish and Czech experience in setting up such committees. In doing so, the Study could also overview other similar practices in other countries, if any. All these examples will be subjected to a comparative assessment following which specific recommendations are in order. The recommendations should mainly concern the mandate, structure, composition and other aspects relevant for the establishment and effective functioning of the committee intended to be created in Armenia. Furthermore, the research should cover the military context of the committees and separate recommendations are expected in this sense. It is the specific purpose of the present Study, apart from the overall considerations drawn in relation to the activity of these committees in the Member States selected for comparison. In other words, the Study should elaborate on the general questions concerning the committees attributed to the Governmental Agents' Offices and, in addition to that, it has to evaluate the prospects of setting up a specialised committee to address human rights in the Armed Forces of Armenia.

The Study needs to employ a coherent terminology in referring to the "committees", "councils", "commissions", "panels", "working groups", "boards" and a variety of inter-institutional bodies functioning in different States with the same purposes and, thus, being relevant for the present research. In different legal systems these committees bear different names. In some instances, the name is linked with their principal function and in other examples, these bodies could be called in specific terminology following legal traditions of the country concerned. For example, some States could call these bodies by generic names such as "committee", "council", "commission", etc., while other States might use rather

[1] See for details press-release *Armenian Authorities Discuss the Draft Methodology on Identifying Systemic Patterns of Human Rights Violations and Main Challenges during the Re-Opening of the Cases on the Violations in the Army Following the Strasbourg Court's Judgments*, 10 March 2020, Human Rights National Implementation, available at https://go.coe.int/9pwsK.

traditional titles such as “panel” or “collegium”. Occasionally, in the common parlance, the body could be even called by the name of its chair or by the legal act creating it. Quite often, this variety of titles could be confusing. Therefore, the present Study will use a generic terminology and only for the purposes of the present comparative research.

The term of “inter-institutional committee” (hereafter “the Committee”) will better reflect the semantic meaning of a multidimensional, inter-institutional authority established in view of analysing systemic human rights violations and designed to coordinate the actions between the Governmental Agents’ offices and other domestic institutions. **The principal element of such a body is to be “inter-institutional”, i.e. to include representatives from a variety of domestic authorities and belonging to different branches of power.** For example, the term of “commission” appears to narrow this concept since it might be attributed to a particular institution or be regarded as an *ad-hoc* group (e.g. “a parliamentarian commission for investigation”). The term of “committee” better reflects its all-inclusive meaning.

In what remains the Study will use generic abbreviations of the formal institutional terminology for easy reading; the Governmental Agent(s) and their Offices will be shortened to the term of “the Agent(s)”; the “ECtHR” acronym will be used for the European Court of Human Rights, the European Convention on Human Rights and the High Contracting Parties or the Member States of the Council of Europe will be written simply as “the Convention” and the “Member States”, respectively.

COMPARATIVE RESEARCH

The present research can neither describe nor compare all relevant Committees from all 47 countries, members to the Council of Europe. Such a research requires in-depth analysis and time-consuming inquiry to collect sufficient amount of relevant empirical data needed for an extensive comparative study. Besides, not all legal systems in the Member States embrace the concept of a special body dedicated to assist either their Governmental Agents or the Governments as a whole in the implementation of the ECtHR judgments. Legal systems profoundly vary in this sense and not all of them allow for a comparation to be made. It is a common logical mistake to make comparisons of inadvertently dissimilar things and to avoid it the Study should compare only those States that are reasonably comparable, i.e. those that had set up such Committees and established practices that make sense to compare.

Moreover, the Terms of Reference of the present Study have already limited the research aria to some specific States that have already acquired sufficient experience in creation and governing of similar Committees. In addition, some limited and specific elements of the Committees’ activity should be researched and compared, which are the functioning, composition and their jurisdiction. Accordingly, the description and comparative analysis will be focused on these States and the specific aspects of their Committees. Apart from the Polish and Czech experience, the Study was given discretion to select relevant practices implemented in other Member States. These States were selected from the remained 45 Member States for one reason; all chosen States faced and dealt with systemic human rights violations and thus have been required to implement similar mechanisms as in Poland and the Czech Republic. Indeed, as it transpires from the research, the whole idea behind the creation of such inter-institutional Committees, both in Poland and the Czech Republic, was to solve systemic problems identified by the ECtHR pilot judgments.

Last but not least, it should be mentioned that the present research employs a non-ordinary comparative method of assessment. Comparative methodology usually presupposes delineating similarities and differences between two or more objects of comparison. The comparative technique, used in the present

Study, assesses the Committees' similarities and differences as long as they demonstrate a generic relationship. In this sense, the similarities are emphasised and the differences are omitted. In other words, the comparative research aims at finding only common features of all Committees subjected to the Study, as the follow-up recommendations could be formulated only after identification of such similarities; while the differences present interest only in theory. Actually, the present Study assumes that these similarities between the Committees arise out of an overall unspoken consensus between the Member States sharing the same traditions or getting inspired from the practices of others. This consensus is reached in respect of some practices that produce better results. Consequently, these similarities producing these good results should be underlined for the purposes of the present Study.

In what follows the Study will describe the Polish and Czech experience in setting up inter-institutional Committees, which has already become permanent and functional advisory bodies mostly coordinating the execution process of the ECtHR judgments. Romania, Moldova, Ukraine and a number of Balkan Countries were selected as other good examples of setting up similar Committees, either on *ad-hoc* or permanent basis, to deal with their systemic problems. All these examples and in so far as they have been identified as the most relevant for the comparative purposes, the Study will be focusing mostly on the following aspects of the Committees:

- the status of the Agent in the Governmental system;
- the context of the Committee's creation;
- legal framework regulating the Committee's activity
- its composition and structure, inclusion of civil society and/or third interested parties, human rights defenders and other institutions;
- the role, purpose and scopes of the Committee;
- its jurisdiction, powers and mandate;
- modalities of cooperation with other institutions, ministries, governments, legislative-making committees, judiciary and the Agent;
- functioning, reporting, feedback and working methods;
- its relation with the Military and the Committee's involvement into the protection of human rights in armed forces.

Poland

The Agent in the Polish system is located in the Ministry of External Affairs and holds the position of the Plenipotentiary appointed and dismissed by the Minister of Foreign Affairs. This means that almost all of the Polish Agent's powers are being defined by the Minister thought an internal regulation[2].

The Polish Agent retains universal mandate to represent the State before the ECtHR and other Council of Europe institutions in connection with all proceedings provided by the Convention. He/she is being assisted by one deputy whose tasks are limited to coordination and supervision of the execution of the ECtHR judgments. In other words, the Deputy, sometimes in common legal parlance called as "co-Agent", is mostly responsible for the implementation of the ECtHR judgments, while the Agent administrates the litigious stage of the ECtHR proceedings. Both the Agent and the Deputy in the Polish system are senior public and high-ranking officials, holding diplomatic tenures and immunity.

[2] Ordinance No. 7 of the Minister of Foreign Affairs of October 27, 2003 regarding the establishment and tasks of the Plenipotentiary of the Minister of Foreign Affairs for proceedings before the European Court of Human Rights.

According to the official web page of the Polish Ministry of Foreign Affairs, the Agent and the Deputy '*in order to carry out his/her tasks, also interact with the appropriate organizational units of the ministries and other organizational units of the domestic authorities responsible for public services*'. In this sense, the Agent uses the Ministry's resources and authority to seek information and to implement measures needed in performance of his/her tasks. It appears that these are ordinary administrative resources employed by the Agent in daily activity.

As Poland was the pioneer in pilot judgment proceedings delineating its systemic problems of human rights protection[3], it became the first State officialising the inter-ministerial committees and working groups to deal with the execution of these type of the ECtHR judgments. This does not mean that such working groups or committees had not existed in the past. Undeniably, it remains to be the ordinary working method among many Agent's offices in all 47 Member States, not only in Poland, to set up a commission or a group composed from relevant authorities in view of resolving an issue raised under the Convention. Still, the Polish authorities were the first to formalise this practice and to make it permanent. The idea appeared, in particular, after the *Hutten-Czapska* judgment, where the Polish authorities were less cooperative pending the ECtHR proceedings[4].

In 2007 the Polish Government issued its Action Plan for execution of the ECtHR judgments[5] that was focussed mostly on solving systemic problems, such as the widespread problem of overuse of pre-trial detention, excessive length of proceedings, the so-called *Bug River cases*[6] and landlords' rights[7], certain issues concerning privacy and parental rights, etc. All these problems were regarded as systemic, i.e. attributable not only to the Government, as executive branch of power, but also to a variety of other domestic authorities, including the judiciary and the legislature. Accordingly, following the Agent's proposal at that time, the Action Plan should have been implemented by a special working group that would include representatives from different state authorities responsible for the execution. The purpose of this group has been defined to secure '*cooperation between the Minister of Foreign Affairs and other*

[3] The very first cases setting up the ECtHR case-law in this regard were the Polish cases: ECtHR, *Broniowski v. Poland [GC]*, 31443/96, 22 June 2004, available at http://hudoc.echr.coe.int/eng?i=001-61828 and*Hutten-Czapska v. Poland [GC]*, 35014/97, 19 June 2006, available at http://hudoc.echr.coe.int/eng?i=001-75882

[4] See for details '...[Polish] Judge Zagrebelsky, in a partly dissenting opinion in Hutten-Czapska, argued against the use of ordering general measures in the operative part of the Court's judgments. He took the position that the Court went "outside its own sphere of competence" and entered "the realm of politics". He pointed to the fact that the pilot procedure was not included in Protocol 14. As a counter-argument one may argue that the state parties themselves, through the Committee of Ministers, have asked the Court for clearer directions. Thus the consent of states with the Court's functioning seems to be there. This does not rule out that practical problems may arise if a state, more specifically the executive, in a particular case – such as Hutten-Czapska – is not keen to cooperate....' A. Buyse, Social Science Research Network, *The Pilot Judgment Procedure at the European Court of Human Rights: Possibilities and Challenges*, SSRN Scholarly Paper (2009), available at https://papers.ssrn.com/abstract=1514441 (last visited 1 April 2019], at 12.

[5] Government Action Program on the Implementation of Judgments of the European Court of Human Rights (Program Działań Rządu w Sprawie Wykonywania Wyroków Europejskiego Trybunału Praw Człowieka Wobec Rzeczypospolitej Polskiej, 17 May 2007.

[6] The cases concern no available compensation scheme of people forced to abandon their properties between 1944 and 1953 in the eastern provinces of pre-war Poland (see *Broniowski*).

[7] The cases followed the *Hutten-Czapska* precedent disclosing breach of propriety rights of apartments-owners and lack of domestic mechanism to maintain a fair balance between their interests and the general community interests.

Ministers in relation to the problems of complaints communicated by the European Court of Human Rights and the execution of judgments issued by it"[8].

In 2007, such a group was instituted by a Decision of the Polish Prime-Minister[9] and called as "the Panel". In comparison with the legal framework of the Polish Agent, issued at the ministerial level, the Panel's activity is being regulated by the regulation of a higher rank enacted by the central government. The Prime-Minister signed the respective Decision on creation of the Panel in order to secure its binding force over the subordinated ministries and institutions, as well as to extend the mandate of the Panel outside of the executive branch of power, i.e. to involve the judiciary and the legislature. However, the main function of the Panel was to act rather in advisory functions to the Prime-Minister[10] in cooperation with various institutions. It retained no decision-making powers, whatsoever; accordingly, its interference into other branches of power was regarded as limited.

Currently, the Polish Panel continues to function under the same legal framework, providing that source for the present Study has been updated[11]. The Prime-Minister's Decision has been amended since 2007 on a number of occasions, mostly in view of extending the mandate and powers of the Panel, re-ordering its composition and relations between the Panel and relevant authorities[12]. Its tasks, as written in the Decision, includes the analysis and evaluation of the measures needed for implementation of the ECtHR judgments, prevention of future violations, monitoring and supervision of the execution, preparation and publication of annual reports, drafting advisory opinions to assist Ministry or Foreign Affairs in its tasks before the Committee of Ministers of the Council of Europe, etc. Some specific tasks, apparently, exceed the Panel's original purpose resembling rather an academic activity. This is the function to evaluate the so-called ECtHR judgments' *erga omnes* effects, i.e. to analyse the violations found against other Member States and to check compatibility of similar practices in Poland, thus preventing new violations, if any. The Panel has been entitled with another, more general task to evaluate overall policies of human rights in Poland. In this sense, as the said Decision reads, the inter-institutional mechanism is applicable (quote) '*mutatis mutandis to other international human rights committees operating under an international agreement ratified by Poland*'.

The Panel is composed by Chair, who is the Polish Agent, and the representatives of the resort ministries and administrative entities. According to the Decision, the representatives into the panel should be seconded by the President of the State Treasury, the General Prosecutor's Office, the Head of the

[8] *Government Action Program on the Implementation of Judgments of the European Court of Human Rights*, available at https://www.msz.gov.pl/pl/polityka_zagraniczna/europejski_trybunal_praw_czlowieka/wykonywanie_orzeczen_europejskiego_trybunalu_praw_czlowieka/program_dzialan_rzadu_ws_wykonywania_wyrokow_etpcz/.

[9] Prime-Minister of Poland, Prime-Minister Decision No. 73 of 19 July 2007 on institution of the Panel for the European Court of Human Rights (Zarządzenie nr 73 Prezesa Rady Ministrów z dnia 19 lipca 2007 r. w sprawie utworzenia zespołu do spraw europejskiego trybunału praw człowieka).

[10] 'The Panel is a consultative and advisory body to the Prime Minister' *Ibid.*

[11] The sources of the present study were extracted from an archived version of the official webpage of the Polish Ministry of Foreign Affairs that gradually migrates to its new webpage at www.gov.pl/dyplomacja, where this information is not yet included.

[12] A detailed list of amendments of the Decision could be consulted at : *Zespół Do Spraw Europejskiego Trybunału Praw Człowieka - Organy Pomocnicze Prezesa Rady Ministrów - BIP Rady Ministrów i Kancelarii Prezesa Rady Ministrów*, available at https://bip.kprm.gov.pl/kpr/bip-rady-ministrow/organy-pomocnicze/organy-pomocnicze-preze/159,Zespol-do-spraw-Europejskiego-Trybunalu-Praw-Czlowieka.html (last visited 23 March 2020] (in Polish only].

Chancellery of the Prime-Minister and the Government Plenipotentiary for Equal Treatment. They hold the status of permanent members in the Panel and appear in their capacity of experts rather than as delegates of their respective institutions. Still, the Chair can invite other representatives from state institutions to appear in the same capacity as experts on *ad-hoc* basis, if the question examined the Panel requires so. The text of the Decision states that the Chair may invite on his own motion or at the request of other members a representative from the Legislature, the State President's Office, the Ombudsman Office, the Judiciary, the Military, the Police and other law-enforcement institutions, the Penitentiary Administration, Local Authorities, etc. Any other authority that the Panel deem necessary to summon should delegate its representative. This category also includes the representatives of NGOs, human rights defenders and civil society.

The Panel's composition is annually growing. For example, the list of the Panel representatives in 2018[13] included 30 members called from the Agent Office, Ministry of Culture and National Heritage, Ministry of Finance, Ministry of Sport and Tourism, Ministry of Justice, Ministry of Internal Affairs and Administration, Ministry of the Environment, Ministry of Health, Ministry of National Defence, Ministry of Science and Higher Education, Ombudsman, the Government Legislation Center, the Supreme Administrative Court, the Regional Prosecutors' Office and the General Prosecutor's Office, Chancellery of the Prime Minister, Chancellery of the Senate, Chancellery of the Sejm, Office for Foreigners, Central Board of the Prison Service, Office of the Patient Ombudsman, Chancellery of the President of Poland, Supreme Bar Council, National Council of Legal Advisers, *Ordo Iuris* Institute, Institute for the Rule of Law, Helsinki Foundation for Human Rights, Federation for Women and Family Planning, National Council of the Judiciary, Legislative Council.

In what remains, the Decision regulates working methods of the Panel, which mainly resembles the activity of any collective-advisory body. It describes the rules of procedure, distribution of tasks, working methods and groups to be established within the Panel, compensation of expenses etc. The works of the Panel are organized and recorded by the Panel Secretary appointed from the Agent's Office.

As the principal function of the Panel is advisory, the most of its activity is focused on preparation of opinions and drafts of Action Plans and/or Reports to be submitted on behalf of Poland to the Committee of Ministers of the Council of Europe. It prepares also opinions and annual reports concerning execution of judgments and decisions of the ECtHR. Again, the Panel retains no decision-making powers but acts as rather a drafting body for the decisions of the Polish Minister of Foreign Affairs and the Prime-Minister. However, the Panel seemingly can formulate instructions to the resort ministries in view of implementation of the ECtHR judgments and the Committee of Ministers' Decisions. In this sense, the Panel actually acts as an outbound and inbound body, i.e. it prepares reports on the measures implemented by the Polish authorities to the Committee of Ministers and sends the message back to the domestic level. In due time its role has evolved from being a limited body dealing with the execution of the ECtHR judgments into a genuine law drafting and human rights advisory committee with preventive functions, as the Polish Ministry of Foreign Affairs web page reads (quote):

> *At the meetings of the Panel, problems arising from communicated complaints and judgments issued by the ECtHR are analysed. The team may make proposals for appropriate actions. It is also a forum where particularly significant problems are*

[13] *Meeting on 17 December 2018, List of Participants (Uczestnicy Posiedzenia Zespołu Ds. Europejskiego Trybunału Praw Człowieka w Dniu 17 Grudnia 2018 r., Budynek MSZ, Ul. A. Krywulta 2, Sala Nr 16 (Parter) Godz. 09.30)*, available at https://www.msz.gov.pl/resource/8a2c394d-c2ed-4876-881c-292492741af9:JCR.

discussed regarding the compliance of draft legislative changes with the Convention, which may have significant effects on law or practice in Poland.

The Panel meets four times per year. The Ministry's archived web page publishes all quarter meeting reports and Annual Reports from 2007 to 2018[14], as well as booklets concerning the Poland achievements in implementation of the Convention, in the language and format accessible to large public[15].

Concerning the specific Military dimension of the present Study, it should be noted that the Panel has not offered special status or dedicated a particular treatment to the Polish military authorities. This is mostly for the reason that Poland literally has not encountered serious, systemic human rights issues in its Armed Forces[16]; nor the problems somehow connected to the military context[17]. It could be argued that, should Poland face some of these problems at greater scale, the Agent could dedicate special status to the Military personnel invited to the Panel's work. However, the Ministry of Defence is included into the Panel on ad-hoc basis as the quoted list of participants in the 2018 meetings prove that[18]. It appears that the Ministry of defence is already regularly represented during the works of the Panel for almost a decade[19].

The Czech Republic

The Czech Agent is a high-ranking official appointed by the Prime-Minister and who acts within the Ministry of Justice under the direct supervision of the Czech justice minister. He/she has more extensive and universal mandate than the Polish Agent. The Czech Agent acts solo on behalf of the Czech authorities in all proceedings directly or remotely related to the Convention. In other words, while the Polish Agent and the Co-Agent split their tasks, the Czech Agent holds both tenures of being the Representative before the ECtHR and the sole co-ordinator of execution at the domestic level. Moreover, in time the representative functions of both Polish and Czech Agents have been extended to include State defence before the UN human rights treaty committees, as well as other correlated procedures, for example before the UN Human Rights Committee or during the UPRs, etc.[20]

The Czech example shows two ways of cooperation between the Agent and domestic authorities in performing these generic State defence tasks. The first and quite common mechanism of cooperation is

[14] *Wykonywanie Orzeczeń Europejskiego Trybunału Praw Człowieka*, available at https://www.msz.gov.pl/pl/polityka_zagraniczna/europejski_trybunal_praw_czlowieka/wykonywanie_orzeczen_europejskiego_trybunalu_praw_czlowieka/ (last visited 23 March 2020].

[15] See *MFA Publications on the European Court of Human Rights (Publikacje MSZ Dotyczące Europejskiego Trybunału Praw Człowieka)*, available at https://www.msz.gov.pl/pl/polityka_zagraniczna/europejski_trybunal_praw_czlowieka/publikacje-msz/.

[16] Save the cases of the type such as ECtHR, *Al Nashiri v. Poland*, 28761/11, 24 July 2014, available at http://hudoc.echr.coe.int/eng?i=001-146044 concerning cooperation of the Polish authorities in the context of CIA secret renditions; the cases less relevant for the purposes of the present research.

[17] Save some isolated cases, such as ECtHR, *Solska and Rybicka v. Poland*, 30491/17 and 31083/17, 20 September 2018, available at http://hudoc.echr.coe.int/eng?i=001-186135 concerning effcicincy of military investigations of 2010 Air Crach of the Polish High-level delegation in Russia.

[18] See , *supra* note 13.

[19] In particular following the strategic litigation of Poland in the case of ECtHR, *Janowiec and Others v. Russia [GC]*, 55508/07, 29520/09, 21 October 2013, available at http://hudoc.echr.coe.int/eng?i=001-127684 concerning criminal investigation into the Katyń massacre.

[20] *Representation of the Czech Republic - Justice Portal (Zastupování České Republiky Před Mezinárodními Kontrolními Orgány v Oblasti Lidských Práv)*, available at https://justice.cz/web/msp/zastupovani-ceske-republiky (last visited 23 March 2020].

regulated by the Governmental decree concerning the Status of the Czech Agent[21]. It reads that public authorities are compelled to provide information requested by the Agent in exercise of his/her functions. Unless the situation requires to address high-ranking officials directly, the Czech Agent habitually cooperates with the resort ministers via focal-points, i.e. persons siting in these ministries who were designated by the seniors for that purpose[22]. Cooperation with the domestic judiciary needed special law, basing on which the Agent requests information from judges[23].

The second cooperation mechanism has been created relatively recently by institution of an expert panel acting along the Czech Agent. Introducing the Panel of Experts, the Czech Ministry of justice's web page thoroughly describes its main purpose and functions as follows (quote):

> *"...The Agent's Office also initiates measures to ensure compliance with the Convention, both ex post of the ECtHR judgments finding a violation of the Convention against the Czech Republic and ex ante based on continuous monitoring and analysis of the ECtHR's case law in relation to other countries. In this sense, the reference can be made to the works of the College of Experts for the execution of judgments of the ECtHR and for the implementation of the Convention."*[24]

The Czech Panel (literally translated as "the Collegium of Experts on the Enforcement of the ECtHR Judgments") was set up in the Office of the Agent of the Czech Republic following the Brussel Declaration of 2015[25]. The Collegium acts *de jure* and *de facto* as an advisory body to the Czech Agent. The Polish Panel, for instance, *de jure* works under the authority of the Prime-Minister but *de facto* it remains under the leadership of the Polish Co-Agent responsible for the questions of execution. The Czech Panel is fully attributed to the authority of the Agent.

There is scarce information about the legal framework regulating the works of the Czech Panel, but it is assumed that it acts under the ordinary internal regulations of the Ministry of Justice. It might be a general departmental or inner-institutional document regulating the activity of all ministerial departments and

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[21] The Government of the Czech Republic, Statute of the Government Representative for the Representation of the Czech Republic before the European Court of Human Rights approved by the Government Decision No. 1024 of 17 August 2009 (Příloha k Usnesení Vlády ze dne 17. srpna 2009 č. 1024 Statut vládního zmocněnce pro Zastupování České Republiky před Evropským Soudem pro Lidská Práva).

[22] '... (2) If the Government Agent requests co-operation from a Ministry, he / she usually addresses the persons in the departments designated by ministers, which act as intermediaries between these ministries and the Government Agent. In other cases, the Government Agent may address directly the head of a public authority requesting cooperation.' *Ibid.*, at 5(2).

[23] Law of 8 June 2011 on the provision of cooperation for the purposes of proceedings before certain international courts and other international courts control bodies and amending Act No. 99/1963 Coll., the Code of Civil Procedure, as amended (ZÁKON ze dne 8. června 2011 o poskytování součinnosti pro účely řízení před některými mezinárodními soudy a jinými mezinárodními kontrolními orgány a o změně zákona č. 99/1963 Sb., občanský soudní řád, ve znění pozdějších předpisů).

[24] , *supra* note 20.

[25] See for details 'High-Level Conference on the "Implementation of the European Convention on Human Rights, Our Shared Responsibility" Brussels Declaration 27 March 2015', (2015) 9 that reads as follows in Article 2 c] and d): '... c] develop and deploy sufficient resources at national level with a view to the full and effective execution of all judgments, and afford appropriate means and authority to the government agents or other officials responsible for co-ordinating the execution of judgments; d) attach particular importance to ensuring full, effective and prompt follow-up to those judgments raising structural problems, which may furthermore prove relevant for other States Parties;'

offices. It might be a special regulation, still adopted by the Ministry of justice; the web page is silent on this question. The works of the Panel are organised and kept under the auspices of the Agent's Office and no special dedicated regulation has been quoted in its annual reports since 2015.

According to the official Czech Justice portal, the Panel has a mixed composition consisting of '*representatives of all ministries, both chambers of the Parliament of the Czech Republic, the Supreme Courts, the Public Prosecutor's Office, the Office of the Ombudsman, the academic community and civil society*'. Currently the Collegium includes 31 members from the following authorities and institutions[26]: Constitutional Court, Counselling Center for Citizenship, Civil and Human Rights Association, Czech Bar Association, Czech Helsinki Committee, Faculty of Law of the Charles University, Faculty of Law of the Masaryk University, Government Office, Independent expert, League of Human Rights, Ministry for Regional Development, Ministry of Agriculture, Ministry of Culture, Ministry of Defence, Ministry of Education, Youth and Sports, Ministry of Finance, Ministry of Foreign Affairs, Ministry of Health, Ministry of Industry and Trade, Ministry of Justice, Ministry of Labour and Social Affairs, Ministry of the Environment, Ministry of the Interior, Ministry of Transport, Office of the Public Defender of Human Rights, Parliamentary Institute of the Chamber of Deputies, Senate, Supreme Administrative Court, Supreme Court, Supreme Public Prosecutor's Office. As it could be observed the composition of the Panel is quite colourful and includes representatives of the authorities, judiciary, defenders, NGOs and academia.

It is unclear whether someone in the panel exercises functions of the Chair, but it could be reasonably inferred that the works of the Panel are conducted by the Agent acting as *primus inter pares*; at least this could be concluded from the published reports and transcripts of its meetings[27]. In comparison with the Polish Panel, the Czech Agent holds no official chairing function in the Collegium. This reflects the fact that the Panel holds mainly an advisory function. Its composition also proves this conclusion.

The declared objective of the Czech Collegium is solely oriented to implementation of the Convention into the domestic legal order and analysis of the ECtHR judgments in view of their execution. The Czech Republic has already faced systemic problems in the case of *D.H. and Others*[28] and this particular judgment, as well as the follow-up cases, represent the biggest part of the Panel's reflections. However, many other cases have been also discussed during the Panel's meetings. The Panel mostly brainstorms on general measures needed for execution of the judgments. Basing on these reflections, the Agent's Office prepares Action Plans and/or Reports to the Committee of Ministers. Among other things, the Panel discusses other judgments selected by the Agent as having potential *erga omnes* effects in the Czech legal system[29].

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[26] See *List of College Members (Seznam Členů Kolegia)*, Kolegium Expertů k Výkonu Rozsudků ESLP, available at https://justice.cz/documents/12681/768738/Seznam+%C4%8Dlen%C5%AF+Kolegia_20200202_web_e.doc/b038faf9-6bbb-4c1e-b63c-121f7f136230.

[27] See for instance the press-release of the last session of the Panel and the documents, as well as the transcripts included therein: *Meeting of the College on 14 January 2020 (Jednání Kolegia Dne 14. Ledna 2020, Kolegium Expertů k Výkonu Rozsudků ESLP - Portál Justice)*, available at https://justice.cz/web/msp/kolegium-expertu-k-vykonu-rozsudku-eslp?clanek=jednani-kolegia-dne-14-ledna-2020 (last visited 23 March 2020].

[28] ECtHR, *D.H. and Others v. the Czech Republic [GC]*, 57325/00, 13 November 2007, available at http://hudoc.echr.coe.int/eng?i=001-83256.

[29] e.g. the case of AP Garçon and Nicot v. France at the *Meeting of the College on 22 November 2018*, available at https://justice.cz/web/msp/kolegium-expertu-k-vykonu-rozsudku-eslp?clanek=jednani-kolegia-dne-22-listopadu-2018 (last visited 23 March 2020] or the case of YY v. Turkey the *Meeting of the College on 10 November 2015*,

The dynamics of the Czech Panel's works reveal that its scope has been enlarged in time from merely an advisory body into a genuine policy-making agency of human rights. Currently, it covers other international systems of human rights protection such as the UN treaty committees and the UN Universal Human Rights mechanisms. In addition, the EU Human Rights Charter protection mechanism is also included in its jurisdiction. In summary, the official Czech Justice portal properly summarises the Panel's functions and objectives as follows (quote):

> *…to analyse the ECtHR judgments rendered against the Czech Republic and to formulate recommendations to the competent authorities for the adoption of general measures of execution in order to prevent recurrence of similar violations of the Convention…. The College's mission is also to deal with selected ECtHR rulings issued in proceedings against other member states of the Council of Europe in terms of their impact on the Czech Republic. The aim of [its] work is to contribute to the effective implementation of the ECtHR's judgments and to raise awareness about the Convention obligations among the authorities of the Czech Republic's. Another aim is to apply the Convention and the ECtHR case-law in the day-to-day practice of national authorities and to guarantee eventually the fundamental rights and freedoms enshrined in the Convention and its additional protocols.[30]".*

The research, as in the Polish example, has not disclosed specific aspects of the Collegium that could be regarded as a dedicated and focussed interest to the Military. Nor the systemic problems and widespread issues of human rights in the Czech Armed forces have been observed, at least from the perspective of the ECtHR jurisprudence and the Committee of Minister's practice on supervision of execution. Similarly with the Polish Panel's composition, the Czech Collegium includes a representative from the Ministry of Defence with permanent membership.

The Republic of Moldova

The case of the Republic of Moldova was picked up for the present Study because it established a meticulously regulated status and working methods of its inter-institutional committee belonging to the Agent. Moreover, it could be argued that both Moldovan and Armenian legal systems share some similarities concerning the mechanism of implementation of the Convention into the domestic legal system. Moldova has already passed the same initiatives, as in Armenia, to establish consultative committees near the Agent's Office. Both countries face growing number of complaints before the ECtHR and the Republic of Moldova continues to confront a couple of systemic problems. Thus, its practice in setting up a body for inter-institutional cooperation could be relevant for the Armenian authorities.

The Agent in the Republic of Moldova acts within the Ministry of Justice and shares the same status as in the Czech Republic. However, the Agent's activity in Moldova is regulated by primary legislation, a special law on the Governmental Agent, contrary to internal regulation of the Czech and Polish Agents. To the consequential extent, the creation of an advisory body attached to the Agent is provided by that law[31].

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available at https://justice.cz/web/msp/kolegium-expertu-k-vykonu-rozsudku-eslp?clanek=jednani-kolegia-dne-10-listopadu-2015 (last visited 23 March 2020).

[30] *The College of Experts on the Enforcement of the ECtHR Judgments (Kolegium Expertů k Výkonu Rozsudků ESLP - Portál Justice)*, available at https://justice.cz/web/msp/kolegium-expertu-k-vykonu-rozsudku-eslp (last visited 23 March 2020].

[31] Law no. 151 on the Governmental Agent (Lege Nr. 151 din 30/07/2015 cu privire la Agentul guvernamental).

In its relevant part, the law compels to institute an advisory body, called as "the Consultative Council of the Government Agent" to assist him/her in performing his/her mandate. It shall be composed of the representatives from (quote) '*relevant public authorities, academia and civil society*'. The Scope of the Council is to secure (quote) '*efficient representation of the Republic of Moldova pending the ECtHR proceedings and execution of its judgments and decisions*'[32]. The law provides that it is for the Government of the Republic of Moldova to adopt a regulation for the Council's activity, its working methods and proceedings.

That regulation was adopted in March 2016[33] reiterating the advisory status of the Council and its purpose to provide the Agent with all necessary assistance pending litigation stage of the proceedings before the ECtHR and to guarantee coordination of the execution after the judgments and decisions. The composition of the Council is fixed and includes a Deputy Minister of Justice, Head of the Agent's Office, a prosecutor-member of the Superior Council of Prosecutors, a judge-member of the Superior Council of Magistracy, a Deputy Minister of Finance; a Deputy Minister of Internal Affairs; a Deputy Director of the National Anticorruption Center, a representative of the Congress of local authorities of Moldova, a university professor in law, ex-Agents, a human rights defender representing non-governmental organisations. Each of the public authority included in the Council should delegate a person to the meetings, whose membership should be approved by the Ministry of Justice. In general, the nomination and change of the Council composition is quite formalised, since the Regulation expressly describes certain situations when the membership in the Council could be terminated or changed.

In view of its two principal tasks, i.e. to assist the Agent in litigation and execution stages, the Council has been empowered with certain attributions, mostly informative, co-ordinational and advisory in character. It can ask for information from the authorities and summon their representatives to the meetings, draft opinions and propose recommendations to the Agent in individual cases.

The Agent, as declared by the Regulation, conducts the proceedings of the Council, organises its work and makes the call for the meetings whenever he or she deems it necessary. The Office of the Agent does all secretary work for the Council. It is provided that the members of the Council should vote on every decision they adopt, but which however will remain non-binding.

Nothing is written about the publicity of the Council's works, decisions and transcripts of its meetings. Moreover, it is unclear whether the meetings of the Council were called since 2016; apparently, the Council remains regulated only on paper and, even if it had ever met, the information is no publicly available[34]. None of the Minister of Justice Decrees have been found to confirm whether the members in the Council were formally nominated. It appears that the Council is hardly functional. It could be that the Agent have not yet considered calling the meeting of the Council, since it remains in his/her exclusive discretion to do so. The Moldovan Council could be called only on the *ad-hoc* basis, in the contrary to the Polish and Czech Panels that assemble periodically.

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[32] Article 9 *Ibid.*

[33] Governmental Decision no. 353 of 29/03/2016 on Consultative Council of the Governmental Agent (HOTĂRÎREA GUVERNULUI Nr. 353 din 29/03/2016 cu privire la Consiliul consultativ pe lîngă Agentul guvernamental).

[34] *Advisory Council along the Governmental Agent / Oficial Web Page of the Governmental Agent (Consiliul consultativ al Agentului Guvernamental | Portalul Agentului Guvernamental din RM)*, available at http://agent.gov.md/agentul-guvernamental/consiliul-consultativ-al-agentului-guvernamental/ (last visited 24 March 2020].

Turning to the military aspect of the Moldovan advisory committee, it is noted that the Agent and any member of the Council could call the representatives of the Ministry of Defence on ad-hoc basis, as in the Polish system. However, in comparison to the above examples, the Republic of Moldova confronts complex structural problems, of systemic nature, pertaining to its involvement in the so-called "transnistrian dispute". A number of human rights issues remotely result from both military and security considerations connected in this post-conflict situation. Indeed, Moldova has faced a number of judgments and continues to be regularly involved into the ECtHR proceedings along with Russia concerning this conflict; almost 60% of the applicants complaining about violations of the Convention before the ECtHR originate from the uncontrolled territories of transnistrian region[35].

In this sense, the military elements of the Moldovan Agent's Council are overtaken by a special minister without portfolio, the Deputy Prime Minister for Reintegration[36] who also acts as a coordinator between all authorities in relation to the said post-conflict situation. Description of his/her co-ordinator functions will occupy the full space dedicated to the present Study and it could be irrelevant. It is sufficient to say that the Moldovan Agent in these situations coordinates the activity directly with the Bureau for Reintegration and the Deputy Prime-Minister, including when the military and security aspects are involved in the ECtHR cases.

Other relevant examples

For the comparative purposes of the present Study some other examples should be illustrated. Many of the Member States facing systemic problems and thus executing pilot judgments have instituted inter-ministerial or multi-institutional working groups. Most of them were ***ad-hoc* committees** acting with one purpose to secure execution of a particular pilot judgment.

The most relevant example is the Ukrainian experience to set up a variety of Ministerial Working Groups and the Parliamentarian sub-committees for the execution of the *Ivanov*, *Burmych* or *Volkov* judgments[37]. Once their purpose had been fulfilled the Working Groups ceased to exist (as it happened with the working groups dealing with judicial reform in Ukraine in the case of *Volkov*). Other inter-institutional Committees ended their activity due to their mainly political orientation and as a result of parliamentarian elections[38].

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[35] L. Apostol, *Non-Enforcement of the European Court of Human Rights Judgments in the Cases Originating from the Transnistrian Region of the Republic of Moldova. Study* (2018), available at https://promolex.md/wp-content/uploads/2018/08/Studiu-Neexecutarea-hot-CEDO-engleza-web.pdf?fbclid=IwAR2Ln6sjeN0SMofZpdc9RTXU9e6erVBzRABOaPMBOC0MV22MZeJFjFzVAWY (last visited 14 October 2019], at Introduction. Statistical Data, page 8.

[36] See for details the Moldovan Government website at *Deputy Prime Minister for Reintegration and the Bureau of Reintegration | Government of Republic of Moldova*, available at https://gov.md/en/biroul-pentru-reintegrare (last visited 28 March 2020].

[37] Committee of Ministers, *Group YURIY NIKOLAYEVICH IVANOV v. Ukraine*, 15 October 2009, available at http://hudoc.exec.coe.int/eng?i=004-31604See for further details the evolution and the status of execution *Group OLEKSANDR VOLKOV v. Ukraine*, 27 May 2013, available at http://hudoc.exec.coe.int/eng?i=004-31281*Group BURMYCH AND OTHERS v. Ukraine*, 12 October 2017, available at http://hudoc.exec.coe.int/eng?i=004-47973.

[38] As it happened with the Verkhovna Rada's sub-committee for the execution of the ECtHR judgments instituted in 2017 and changed its composition after elections; See for example PACE, *Measures to Oversee Human Rights Laws and ECHR Judgments by the Verkhovna Rada of Ukraine*, 15 November 2019, PACE: News, available at http://assembly.coe.int/nw/xml/News/News-View-EN.asp?newsid=7694&cat=151Verkhovna Rada of Ukraine, *News - Joint Efforts for Human Rights' Sake - Verkhovna Rada of Ukraine*, 11 October 2017, available at https://rada.gov.ua/en/news/News/150188.html*Guarantee Accountability for Human Rights Violations | News |*

In any case, a brief assessment of these committees and working groups, commissions and panels, reveal one pattern that regardless of the authority under which they have been established they all have been multi- and inter-institutional committees. This means that mostly all of them included directly interested authorities such as the Ukrainian Ministry of Justice and the Governmental Agent Office, Ministry of Finances, Parliamentarians, Judiciary etc. The composition of such committees depends on the nature of the systemic problem they dealt with.

In other situations, the States decided to dedicate their efforts to create inter-institutional Committees rather with the purpose to remediate the difficulties arising from a particular systemic problem. In other words, the scope of these Committees was actually to act as an **institutional remedy** and not in advisory function. A number of examples could be noticed in this sense. For example, the case of *Ališić* concerned systemic problems in Serbia and Slovenia due to inability of thousands of people to recover their "old" foreign-currency savings from Yugoslavian banks[39]. Both Serbia and Slovenia subsequently introduced legislation and undertook to re-pay "old" savings of citizens of other SFRY successor States deposited in their banks, upon the request to verification committees, consisting of representatives seconded from various institutions and private banks. The *Čolić* case concerned massive non-enforcement war-related compensation claims[40]. Two entities of Bosnia and Herzegovina, the Federation Government and the authorities of Republika Srpska, adopted their own measures creating inter-ministerial ad-hoc Committees, all acting under the auspices of the Federation and Srpska's Ministries of Finances. Following the *Xenides-Arestis* judgment[41] an "Immovable Property Commission" was set up in the northern part of Cyprus, an internationally non-recognised entity. Despite the fact that the Commission acts in the disputed territory, the ECtHR still sees it as 'providing an accessible and effective framework of redress in respect of complaints about interference with the property owned by Greek Cypriots"[42]. Another quasi-judicial administrative mechanism, the National Commission for Compensation for Immovable Property, has been instituted by Romanian authorities for implementation of compensation scheme to solve systemic failure to recover nationalised proprieties, the problem ruled in the pilot judgment of *Maria Atanasiu*[43]. Other similar examples could be found.

Relevant examples of specific **military-oriented inter-institutional committees** have not been found after a brief examination of the Member States' practice. Roughly, the most illustrative example could be considered the United Kingdom experience in dealing with the investigations and inquests of the deaths in Northern Ireland in the 1980s and 1990s, either during security force operations or in circumstances giving rise to suspicion of collusion with those forces[44]. Many general measures were implemented by the

European Parliament, 12 October 2017, available at https://www.europarl.europa.eu/news/en/press-room/20171012IPR85916/guarantee-accountability-for-human-rights-violations.

[39] ECtHR, *Ališić and Others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and the former Yugoslav Republic of Macedonia [GC]*, 60642/08, 8 January 2013, available at http://hudoc.echr.coe.int/eng?i=001-145575.

[40] ECtHR, *Čolić and Others v. Bosnia and Herzegovina*, 1218/07, 1240/07, 1242/07, 1335/07, 1368/07, 1369/07, 3424/07, 3428/07, 3430/07, 3935/07, 3940/07, 7194/07, 7204/07, 7206/07 and 7211/07, 10 November 2009, available at http://hudoc.echr.coe.int/eng?i=001-95680.

[41] ECtHR, *Xenides-Arestis v. Turkey*, 46347/99, 22 December 2005, available at http://hudoc.echr.coe.int/eng?i=001-71800.

[42] ECtHR, *Demopoulos and Others v. Turkey (Dec.)*, 46113/99, 3843/02, 13751/02, 13466/03, 10200/04, 14163/04, 19993/04, 21819/04, 1 March 2010, available at http://hudoc.echr.coe.int/eng?i=001-97649, at 127.

[43] ECtHR, *Maria Atanasiu and Others v. Romania*, Nos. 30767/05 and 33800/06, 12 October 2010, available at http://hudoc.echr.coe.int/eng?i=001-100989.

[44] *McKerr* and *McCaughey and Others v. United Kingdom*

UK to execute these judgments, including institution of inter-ministerial and inter-institutional committees (e.g. the Historical Investigations Unit, to take over the investigation of legacy cases from both the Office of Police Ombudsman of Northern Ireland and the Historical Enquiry Teams, etc.). However, the UK example remains quite isolated and too specific to serve the purposes of the present Study.

All these examples illustrate that some Member States preferred to institute *ad-hoc* inter-institutional mechanisms to remedy the concrete violations found by a particular pilot judgment. This does not mean that they have not created permanent inter-ministerial committees acting within the Agents' Offices or in the close affinity thereto. However, in lack of the space for the present Study and taking into consideration the specific Terms of References, the current research did not examine further these practices. It is enough to say that they might exist in the number of the Member States, other than Poland, the Czech Republic, the Republic of Moldova, Romania, Ukraine, etc. The status of such committees depends on the particularities of each legal system and how the Agents coordinate the activity of the domestic institutions they represent; whether such a coordination requires a separate inter-institutional body or other institutions can overtake these functions.

For instance, in the United Kingdom such a coordination agency appears to be, at the best scenario, the Joint Committee on Human Rights, a Parliamentarian body mostly focused on scrutinising compatibility of legislation with the Convention and other International human rights treaties[45]. This body acts under the authority of the UK Parliament, and it represents the best example of the parliamentarian control over the execution of the ECtHR judgments. For the purposes of the present Study its functioning is less relevant. Still for the comparative purposes this Committee should be mentioned. It, however, illustrates that this legislative committee, even with powers to coordinate and control executive branch, could be hardly considered as an inter-institutional committee subjected to examination in the present Study. The UK Committee represents one branch of power in relation with the Government. Being so, this body could be hardly regarded as a mixture of various institutions assembled with one purpose - to deal with systemic problems or execution process inter-institutionally.

In summary, the examples brought by the present chapter allow to draw up some preliminary conclusions how inter-ministerial or inter-institutional Committees are being established among the majority of the Member States of the Council of Europe. These conclusions reflect nothing but the examples of the Committees illustrated above and should not be extended to cover the practices in other Member States. To establish some detailed patterns in setting up inter-institutional committees across Europe, all 47 states must be researched in more detail.

General comparative conclusions

The research of inter-institutional Committees acting near the Agents in the above-mentioned Member States has found a number of similarities in institution, functioning and scopes of such bodies. It could be argued that all these States implemented the Committee of Ministers Recommendation Rec(2008)12[46] asking to '*designate a co-ordinator – individual or body – of execution of judgments at the national level, with reference contacts in the relevant national authorities involved in the execution process*'. This role

[45] *Role of the Committee - Committees - UK Parliament*, available at https://committees.parliament.uk/committee/93/human-rights-joint-committee/role/.

[46] Committee of Ministers, Recommendation CM/Rec(2008)2 of the Committee of Ministers to Member States on Efficient Domestic Capacity for Rapid Execution of Judgments of the European Court of Human Rights (Adopted by the Committee of Ministers on 6 February 2008 at the 1017th Meeting of the Ministers' Deputies), 6 February 2008.

has been gradually assigned mostly to the Agents acting as an individual expert, whom the States granted '*the necessary powers and authority to: - acquire relevant information; - liaise with persons or committees responsible at the national level for deciding on the measures necessary to execute the judgment; and - if need be, take or initiate relevant measures to accelerate the execution process*"[47]. The Recommendation also asked to '*facilitate the adoption of any useful measures to develop effective synergies between relevant actors in the execution process at the national level either generally or in response to a specific judgment, and to identify their respective competences*'[48].

Nevertheless, with the proliferation of the ECtHR judgments revelling systemic problems and requiring systemic approach, some of the Member States considered that the Agent's activity, as a designated co-ordinator for the execution, needs more institutional support. As the result, the inter-institutional committees, initially with advisory functions like in Poland, started to be created to assist the Agents, mainly pending execution of the ECtHR judgments. Their mandate tends to be extended and to cover the scopes of general implementation of the Convention, including with preventative functions and checking compatibility of the legislation and practices. In any case, these inter-institutional Committees remain the best expression of the **cooperation** requirement between the domestic authorities, the Agent and the Convention organs, the ECtHR and the Committee of Ministers. In general, it could be argued that all 47 States share mainly two models of such cooperation.

The **first model** reflects an ordinary inter-institutional and/or inner-ministerial mechanism of cooperation that depends on the role, status and powers of the Agent in the institutional structure of the state. In this model, the Agent appears as principal unifier of the domestic authorities' position pending the ECtHR proceedings and either as a facilitator or a co-ordinator[49] of the execution process after the ECtHR judgment. The effectiveness of this model depends on the status and location of the Agent in the constitutional system of government. The customary practice is to locate the Agent within the executive branch of power, either in the Ministry of Justice (as in the Czech Republic, Russia, Moldova, Ukraine, Georgia, etc.) or in the Ministry of Foreign Affairs (as in Poland, Romania, France, etc.) or as, for instance, in the office of the Prime-Minister (as in Italy, Armenia) or under the authority of the President of the State (Azerbaijan). In this sense, the communication and cooperation of the Agent with other domestic authorities directly depends on the jurisdiction and powers of the authority under the which auspices he/she acts[50].

[47] *Ibid.*, at 1.
[48] *Ibid.*, at 5.
[49] Committee of Ministers, *supra* note 46.
[50] "... Former Austrian Agent Siess-Scherz states that in executing the judgment and in its communications with the Committee of Ministers the government's response is coordinated 'in the same way' between the ministries that were involved in the preparation of the observations. The Dutch Agent generally requests the Legislation Directorate of the Ministry of Security and Justice to provide information regarding the measures taken to implement a particular judgment. It is subsequently up to the Agent to respond to requests for information from the side of the Execution Department. Czech Agent Vit Schorm has the competence to invite the national actors concerned to take the necessary measures to execute the judgment. These other national actors are subsequently under a duty to inform the Agent of their intentions and the measures taken to execute the judgment. It should be noted here that the implementation of judgments may in some states also require the involvement of autonomous entities such as regions or Länder. In Germany, the Agent's office translates the judgment and generally disseminates the judgment within the country's Ministry of Justice and/or to other federal ministries concerned. The German Agent may moreover have an advisory role with regard to the measures necessary to execute the judgment. The German Agent incidentally sends a letter to the authorities at Länder level asking the latter to take the necessary measures to

For example, for comparative purposes some exceptional situations merit mentioning, such as the Agent's status in Portugal. The location of the Portuguese Agent is in the General Prosecution Office, where he/she holds the tenure of a Deputy Attorney General Prosecutor. In the United Kingdom, the Agents are delegated from the Foreign and Commonwealth Office for each case. The Governments of Norway, Island can invite their Agents from the list lawyers on contractual basis, including from private sector, but often they designate them from the Attorney General's Office. In these situations, the model of cooperation is solely based on the local system and the role the Agent(s) play in the constitutional construction. For example, the Portuguese Agent will cooperate with the domestic authorities via the exercise of his magistrate functions, while the UK Agents will use the powers of the Foreign Office in relation with other authorities.

The **second model** is an institutionalised inter-agency cooperation either on permanent or *ad-hoc* basis. It begun to be implemented by many Governmental Agents' offices in response to the pilot judgments. Any of such judgment binds the State as a whole and what domestic authority(s) will be better equipped to secure execution depends on a variety of factors. It could be the nature of the violation or the specificity of the domestic context or the complexity of the factual and legal issues in the impugned case, etc. The Agent here appears as "driving force" to identify the domestic authorities responsible for the execution. In the situation of systemic human rights violations, the leading factor is the rule that a systemic violation requires systemic responses. Systemic problems, understandably, cannot be solved by the Agent alone no matter how strong and wide his/her powers might be. Thus, inter-institutional Committees are better positioned to find systemic solutions, as they only are able to secure the required **inter-institutional cooperation**. Indeed, this has been the principal role assigned to such committees[51].

This model however, even if initially determined by the scope to solve systemic problems, has evolved into inter-institutional Committees assuming consultative roles going beyond the initial scope to solve a specific systemic problem and execution of a particular pilot judgment. In other words, some of such Committees evolved into permanent inter-ministerial committees coordinating the whole execution process of the ECtHR judgments at the domestic level. This is the role the Polish and the Czech Committees that they have assumed in due time after their creation. Currently they have become rather permanent committees acting along the Agents and helping him/her to coordinate execution of the most important ECtHR judgments, not just the pilot judgments. Accordingly, the second model of cooperation has been gradually divided into sub-models of

execute the judgment. The German Agent sometimes ends up advising these authorities, in an informal manner, as to the question of how a particular judgment is best executed. (citations omitted)" S. X. Konter, 'Institutionalizing Janus in the European Human Rights System. How Can the Institutional Position of the Government Agent before the European Court of Human Rights Be Strengthened?' (2012) (available at VU University of Amsterdam, Amsterdam), at 65.

[51] '... The Romanian Agent, for instance, asserts that he is a "driving force" behind the dissemination of the Court's case-law within a recently established working group and furthermore, asserts that it is up to him to identify internal remedies. This working group was established to define a solution in terms of restitution or compensation for a series of cases regarding property nationalized during the country's communist period. The Serbian Agent chairs an inter-disciplinary Task-Force established to draft and implement an action plan to tackle the problem of failure or substantial delay by the administration in abiding by final domestic judgments. This commission consists inter alia of representatives from the Ministry of Economics, the Ministry of Justice, the Ministry of Foreign Affairs, the Constitutional Court, the National Bank of Serbia and the Privatization Agency. The Polish Agent chairs an inter-ministerial committee and provides the other national actors within this committee with "directions" regarding the content of action plans and action reports. (citations omitted) ...' *Ibid.*

(i) *ad-hoc* inter-institutional committees, mostly fulfilling the role of dealing with the systemic problems and

(ii) permanent multi-institutional committees acting under the auspices of the Agents or their seniors to coordinate the implementation of the ECtHR judgments as a whole.

The source of law regulating the Agent's powers and the activity of the Committee is important in these matters. In so far as their activity is concerned, the Committees need to be flexible and be out of the rigid and excessive formalities. For example, the Czech experience shows that the activity of both institutions is being regulated by internal ministerial instructions. It is the secondary source of law adopted at the ministerial level, yet easier to amend or to repeal if the circumstances change or new authorities need to be invited. The Polish example is quite similar to that extend where the status and the powers of the Agent and the activity of the Committee, are approved at different governmental levels. In the Republic of Moldova, however, the status of the Agent is defined by special law that also provides general provisions for the establishment of the Committee. The later activity is thoroughly regulated by the Governmental decree, i.e. on the level of the central Government, which however could be repealed once the special law on the Agent is changed. Its activity, mandate and powers are less flexible, since the law is harder to amend in comparison with a ministerial or even a governmental regulation. Nevertheless, the law, in comparison with a regulation, guarantees more authority and legal certainty.

As per **composition** of these inter-institutional Committees, their **working methods**, jurisdiction, **powers**, **procedures**, etc., the practice varies from one state to another and reflects the particularities of the legal traditions and administrative practices in a given State. All examined Committees are indeed collective committees composed by representatives seconded from a variety of relevant governmental institutions and agencies. Usually the Committees are accessible to civil society and representatives of human rights institutions, human rights defenders and/or NGOs acting with the same purpose. The Agent usually appears as *primus inter pares* during the meetings and all members share equal expert status.

The Committees mainly perform **advisory functions** bearing no decision-making powers. As it happens with all soft law sources, the outputs of these Committees might elevate into recommendatory documents, yet weaker than binding instructions. In practice, the activity of such inter-institutional committees is of great assistance to the Agents. Yet, the Committees tend to evolve into efficient mechanisms of dissemination and implementation of the Convention at the domestic level. Still, their preventive functions remain uncertain, mostly because the examination of *erga omnes* effects of the ECtHR judgments is still discretionary among the Member States.

Last but not least, the research looked into the **public accessibility** of such Committees. Almost all of them are transparent and publish their reports. The Czech Collegium goes even further, it publishes also the transcripts of the discussions held during the meetings. Moreover, the required level of transparency is guaranteed in many cases by inclusion of civil society representatives into these Committees.

In addition, the research sought data the specific question whether these Committees include **military elements** or they somehow appear to be connected with the domestic armed forces. It was inferred that the military aspects might fall into the scopes of these Committees only on *ad-hoc* basis. From all examples above, only the Czech Collegium includes an *ex oficio* member of the Military. The rest of them may invite the members of Armed Forces and examine the questions of human rights in the military context on *ad-hoc* basis. Indeed, the Polish experience proves that the domestic Military became a part of the Panel by gradual active implication into its works.

RECOMMENDATIONS

The below recommendations reflect both the findings of the above Study and the views expressed during the Experts Discussions of 10 March 2020. The recommendations were conventionally assembled into the groups reflecting fundamental aspects needed solutions before creation of the Armenian inter-institutional committee. These aspects are as follows:

- legal source
- functions
- status
- mandate
- composition
- functioning
- co-operation
- reporting
- publicity
- military

The LEGAL SOURCE regulating the activity of the Committee

Before setting up the intended Committee it should be clarified what would be the most appropriate source of law to regulate its activity. It can be either a primary or secondary law.

A primary source of law (i.e. Laws, Acts, Statutes) is less flexible but it offers great legal certainty and authority for implementation. A secondary source of law, i.e. subordinate legislation (Regulation, Rules, Directives, Ordinances, Orders, Dispositions, etc.) could be easily adapted to the changing circumstances and bring very detailed instructions. However, the secondary legislation depends on the primary sources of law and its dynamics; should the law be repealed or changed the secondary source would definitely require a fundamental review. The secondary legislation is faster to draft and to adopt but harder to put in practice without well-settled administrative practices. A law is easier to implement due to its universally recognised authority, but its texts are inevitably couched in general terms and might contain less detailed instructions and guidance in comparison with a regulation.

Moreover, some institutions, mostly judiciary and prosecution, might be reluctant to attend the Committee without the provisions written in the law. They could see the attendance to such a Body as an interference into their independent status and institutional impartiality. Accordingly, they would rather require a law (as the special law exists in the Czech Republic for coordination of the Agent with the judiciary). For the Governmental agencies and Ministries, an internal regulation of the Prime-Minister or a Government Decision will be sufficient to include them into the Committee.

The following legislative technique might be useful to compel all relevant actors to appear in the Committee. Firstly, a law should regulate the principal aspects of the Committee's mandate, activity and its composition. Secondly, the law could delegate a detailed regulation of the proceedings to be made by secondary source, such as the Governmental Regulation (see above the example of Moldova).

The FUNCTIONS of the Committee should be delineated with the reference to its scope(s)

The functions of the Committee should be clearly delineated. It could perform either executive, i.e. decision-drafting (as in Poland) functions or be limited to rather a consultative role, i.e. providing necessary expertise and brainstorming (as in the Czech Republic). It could be both.

Still, if the Armenian authorities choose to grant the Committee some decision-making powers, it might be a highly commendable example; it will not run contrary to the purposes of such Committees. In this sense, the principal role of the Committee should be also clearly defined. It could be focused on assisting the Agent in the execution proceedings (as in Poland) or it could be of help in the pending proceedings before the ECtHR (as in Moldova). In general, the principal idea behind the creation of such Committees is to secure general implementation of the Convention in addition to the traditional mandate of the Agent. Moreover, the Committee could act as an evaluator of human rights policies, as its role gradually enhances (like in the Czech Republic). In any case, the trends show that such Committees tend to evolve into governmental analytical committees in the field of human rights and not only in the Convention matters; these Committees have widened their expertise and now cover universal human rights protection mechanisms.

The STATUS of the Committee should be clarified relative to other branches of power and the domestic authorities

It is a common practice to have the Committee under the auspices of the Governmental Agent who may act as a Chair (Poland) or as *primus inter pares* (the Czech Republic and Moldova). In any case, it is recommended that the Committee be better placed under the authority of executive branch. It could be hardly located either under the legislative (Ukraine) or judicial authority (Portugal, Norway, Island). Institution of an inter-institutional body in one of these branches could be acceptable only as *ad-hoc* solution, on temporary basis and in order to resolve some pressing issues. However, the default status of the Committee should be mainly executive.

The MANDATE of the Committee should be clearly defined according to its principal purpose

The Body could be mandated to deal with complex issues and systemic violations. It could be also dedicated to solve one pressing issue or an emerging problem. The mandate determines the status of the Committee, either it will be a permanent institution or rather an *ad-hoc* committee. Irrespective of the mandate, the principal function of the Committee is to deal only with meritorious cases; the Committee cannot be created to solve trivial situations or routine tasks.

Moreover, it needs to be determined what is the principal purpose behind the creation of the Committee. If it is to improve the Agent's activity in general and to enhance implementation of the Convention, then the Committee should be given a permanent status. If the scope is rather limited to tackle a particular systemic problem, than it is more appropriate to give the Committee a special status with limited powers and on temporary basis. In the later situation it would appear as a remedy and respectively some exceptional functions could be granted to it, such as quasi-judicial functions, powers to award compensations and decide on individual cases, with or without consequent judicial review, etc.

Clearly, the mandate given to the Committee determines also what powers should be granted to it; either advisory or rather decision-drafting, or even decision-making. Most of the Committees were created as

advisory bodies. Still, in due time they tend to exert more influence on the decision-making processes within the Government they are assigned to consult.

The COMPOSITION and the membership of the Committee should be all-inclusive

The composition might depend on the status of the Committee and its mandate. If, again, the Committee is created with permanent status, then the composition should include as far as possible a large number of ministries, public authorities and institutions somehow connected with the execution of the ECtHR judgments and general implementation of the Convention. In this situation, some authorities should appear as members by default, for instance, the Central Government, Ministries of Foreign Affairs, of Justice, of Finances. Other Ministries, with more or less specific functions from the Convention perspective might be included depending on what pressing problems or recurrent issues Armenia faces in practice; these could be the Ministries of Defence and of Interiors, or of Economy and Social Assistance, etc. By default, the representative of Judiciary, be the Supreme and/or Appellate Courts, and the Public Prosecution Service are included along with the Bar Association. The same status of honourable membership should be granted to the representatives of Constitutional Court and Ombudsman. Invitation of the representatives from the domestic legislatures, be that MPs or their assistants, has become already a mandatory practice, because of the emerging standard to institute Parliamentary control over the execution of the ECtHR judgments.

The composition of the Committee should be preferably flexible. Its members could hold a permanent membership and the status of invitees. If the Committee will face some pressing problems requiring expertise from some specific authorities, it should be able to invite the representatives from other institutions. It remains at the discretion of the Armenian authorities to define whether to invite into the Committee the civil society representatives, NGOs and human rights activists and defenders. It also remains open to invite academia and legal scholars. It appears that they however are regularly included in such committees with advisory functions; indeed, some of the questions raised by the Committee might require analytical skills and academic vision.

In general, the overall structure of the Committee is tripartite that includes: Public authorities, Civil society and Experts.

The FUNCTIONING of the Committee should be regulated in detail by setting up its working methods and the procedure

Do not confuse the functioning of the Committee with its functions. The function is the purpose, scope, principal job for which the Committee has to be established. The functioning is all about the procedure it works with.

There is no all-agreed model how the Committee should function. It depends on the its Status, location among the public institutions and many other factors, mostly linked with the specific domestic context and administrative traditions. Only some common features could be roughly identified.

These Committees are usually called at the initiative of the Agent, who either presides or leads its works. Normally, the members of the Committee should not be separated by hierarchic position or allegiance to a particular institution they represent. It is acceptable to conclude the works of the Committee by consensus (as in the Czech Republic), but formalities such as voting procedure could be also considered (as in Moldova). Since the Committee is to deal with only important questions, it could be called annually,

twice a year (the Czech Republic) or once in the quarter (like in Poland). It could be assembled upon the need (as in Moldova).

In any case, it is to be decided exclusively by the Armenian authorities on which model the functioning of the new Committee could be built on. The authorities could get inspiration from the models set up for other local administrative commissions with more or less advisory functions. Or, in the alternative, the Committee could imitate the working methods of the law-drafting committees in the legislatures. It is better to get inspired by already known and well-settled administrative practices, which will make the functioning of the Committee more efficient. The whole idea of the procedures is that they need to be less formal and complex. The Committee should function so as to be focused on the substantive issues and be not restricted by excessive formalities and procedural questions.

The CO-OPERATION mechanism of the Committee with other authorities should be effective and prompt

Apart from the information presented by the Agent, the Committee will require assistance and information from other public institutions. The whole purpose of the Committee is to perform its function as coordinator for the Agent. Indeed, the appearance of public institutions in the Committee is meant to guarantee this cooperation. However, this function will be devoid of purpose if the Committee itself will be isolated from other public authorities and civil society. In this sense, the Committee should establish its methods of cooperation, how to request information, what are the public authorities' obligations to provide such information, etc. In addition, the Committee should define how it will act in relation with superior public authorities, what are the means of communication with the Government, Judiciary and Legislature, should some recommendations be formulated towards these institutions.

All these means of communications make part of the Committee's functioning and can be described in the Rules of the procedure.

The REPORTING mechanism and time-limits are important for the functioning of the Committee

The outputs shape the Committee as a whole. Normally a comprehensive annual report is enough to reflect the works of the Committee. If the Committee was assembled to deal with a specific problem, then the report could be drafted after each meeting to describe evolution. In any case, there are two types of reports; the first is a general periodic report concluding on the works of the Committee after the lapse of a long period of time, usually one year and the second type is a special report dedicated to specific question.

The PUBLICITY and transparency are presumed

All Committees were set up with the presumption that their activity is public and accessible. The publicity secures dissemination of the Convention standards and helps to the process of implementation. Moreover, it secures the credibility of the Committee and increases its authority. Accordingly, it is recommended to increase the publicity of its works and outputs. In this sense, only two exceptions from the publicity rule could be accepted. The first exception reflects the requirement of non-disclosure of confidential information and protection of personal data. The second limitation to publicity is the confidentiality of the ECtHR on-going proceedings, so as to avoid speculations about its future judgments. These limitations do not mean that the members of the Committee cannot discuss these questions among

themselves, but this information could be classified from large public access if they would consider it necessary.

The MILITARY role in the Committee can be defined according to priorities

The specific scope of the present Study was to define the role of the Armenian Military in the functioning of the Committee. It is not for the present Study to indicate the best option for the Armenian authorities, that still can choose either to institute a permanent Committee with the Military having a permanent membership or to create an *ad-hoc* special body dedicated to human rights in Armed Forces. The first solution offers a long-term perspective but it will be less focused on the recurring and pressing problems in the short run. The second option, on the other hand, is more focused on the current needs and specific enforcement of human rights in the Armenian Armed Forces, but it will be too narrow from the Armenian Agent's perspective and the Convention view. It remains for the Armenian authorities to set up priorities and to decide whether to create an *ad-hoc* military-oriented committee or to organise an inter-institutional committee functioning on permanent basis with the default membership of the Military.

To define these priorities, it should be recalled that human rights in Armed Forces might be viewed from two perspectives; inwards and outwards. In other words, the Convention rights are guaranteed in the military context on two accounts; the rights of the Military personnel and the rights that the Military should guarantee to others. The priorities depend on the situation in the field, i.e. where the most pressing problems lie; whether the Armenian authorities face challenges to guarantee human rights within its Armed Forces or the Armenian military personnel hardly respects the rights of others. In the first instance, the priority requires an ad-hoc-type body because the Military will be better equipped to take the leading role in guaranteeing the rights of its personnel. In the second case, however, the priorities are broader and the establishment of an all-inclusive permanent committee belonging to the Agent would be more appropriate solution. In the later situation, the Military will do better as a permanent member of the inter-institutional committee under the leadership of the Agent. In any case, nothing precludes to set up a committee following one or many of the models described above and to merge both priorities. In the end, the functioning and the scopes of such body depends on the character of the problems it has been created to deal with.