

Co-ordinator's contribution to developing effective synergies with actors in the execution process and other national stakeholders, including NHRIs and civil society organisations

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INTRODUCTION

Let me start by pointing to an initiative taken by our Croatian colleague in December 2021 to inquire about cooperation with NGOs and other actors which belong to civil society in the execution process in the member States.

QUESTIONS

The questions were sent out with the aim to consider the possibility of cooperation with NGOs. They included aspects such as:

- Institutionalisation of the cooperation? Selection of NGOs? Limits to their participation in the execution process?
- Extent to which NGOs play an active role? (Pointing to particular issues in the judgments? Proposing measures of execution? Opinion on the envisaged measures? Role in drafting AP/AR?)¹
- Modalities of informal cooperation? (Systematic or selective? If selective, on what grounds?)
- Existence of a permanent cooperation between the GAO and national NGOs unrelated to the execution process (education, publications, etc.)?

ANSWERS

1. Negative answers: no cooperation, no place of NGOs in the execution process: NO, DE, CH, EE, HU, AT, SE, FR, BH, IT, PT, UK
2. Mixed answers: SI (no mechanism, but openness of the authorities; dialogue through submissions to CM/DH), ES, RO (there is already some experience), FI (a discussion on the execution was held upon initiative of NHRI), BE (informing about judgments a national human rights platform)
3. One positive answer: CZ – an institutionalised and rather extensive cooperation

ASSESSMENT OF THE ANSWERS

- It seems that cooperation with NGOs is far from being the rule.
- Only some colleagues answered the questions. It thus provides only a limited picture of the situation, while it is not impossible that at least the categories of answers correspond broadly to reality.
- Some answers are very brief. Hence, it can hardly be said that they describe the reality.
- Even negative answers can hide openness in case there is genuine interest in cooperating with an NGO.

¹ AP/AR = action plans / action reports.

- NHRIs or ombudsman institutions – as institutional partners – were not really covered, so it does not mean that civil society is totally ignored.
- It did not give rise to any analysis of models of coordination of the execution process at national level.

COORDINATION MECHANISM IN THE CZECH REPUBLIC

- The basis of the mechanism of coordination of the execution of Court’s judgments is bilateral:
 - The GA² is the coordinator.
 - We have a 2011 Act on cooperation of the authorities during the proceedings before the Court and in the execution process, which replaced a similar former 2001 Act.
 - It is built on bilateralism:
 - The GA invites a public authority concerned by the execution of a judgment, and the authority responds in terms of measures of execution taken or envisaged.
 - It does not exclude a steering role of the GA.
- The coordination mechanism applies also to the implementation of the decisions on the merits of collective complaints of the ECSR as well as of the views taken by U.N. Treaty Bodies. Although their nature and their binding character on the State is different from the Court’s judgments, it has less repercussions on the working methods than on the results achieved.
- We introduced a collective element into the coordination mechanism of the execution of judgments after the Brussels conference in 2015 by creating a special advisory body: the Committee of Experts on the Execution of Judgments of the Court.
- Mission and composition of the Committee of Experts:

Established as a follow-up to the obligation to reinforce the implementation of the Convention at the national level agreed by and between the Contracting Parties to the Convention at the High-level Conference on the ‘Implementation of the European Convention on Human Rights, our shared responsibility’ of 27 March 2015, it is the Government Agent’s advisory body which serves as a forum for analysing and formulating recommendations to the authorities in terms of suitable measures to be adopted for the purpose of implementing the Court’s judgments. It is composed of representatives of all ministries, both Chambers of Parliament, highest courts, Office of the Supreme Public Prosecutor, Office of the Public Defender of Rights, academic staff, and members of various NGOs operating in the field of fundamental human rights.

- The Committee of Experts also creates working groups or expert fora to discuss more in depth particular topics. The members of the Committee usually propose appointing members of these subordinate structures whose composition is thus tailored to measure of their particular task.

NGOS INVOLVED IN THE CZECH REPUBLIC

- Hence, when it comes to the involvement of civil society in the work of the Committee of Experts, the following are present:
 - Office of the Public defender of Rights
 - People from academia (two public faculties of law)
 - A member for the Czech Bar Association

² GA = Government Agent. GAO = Government Agent’s Office.

- Representatives of four NGOs
- Independent experts
- Guests are also possible – *ad hoc* experts
- As to the choice of NGOs represented:
 - We look for people from NGOs with a more general remit, active in general human rights issues, representing applicants before the Court; should it be a specialised NGO, a representative would rather appear at the meeting as a guest or be part of a subordinate working group.
 - It is the GA's advisory body:

Four representatives of NGOs sit on the Committee of Experts, plus a representative of the Office of the Public Defender of Rights. On one hand, it is up to me to appoint a member since the body is my advisory body and there are no firm rules on the appointment. On the other hand, I cannot impose a representative on an NGO. Hence, I usually turn to the NGO which I consider to be competent in the area of the Convention with an invitation to propose a member to the Committee of Experts, with the expectation that the person in question will behave constructively.

DIFFICULTIES OR RISKS – REASONS FOR NON-INVOLVEMENT?

- There are of course certain risks of involving actors over whom we do not have control.
 - Private entities may pursue other objectives than a good execution of Court's judgments.
 - The discussion can degenerate into mutual attacks between NGOs and the authorities.
- First of all, once again, it is the GA's advisory body (see above).
- The Committee of Experts and its working groups are very informal structures. We do not have any rules of procedure and the people involved need to be convinced that their participation is relevant and useful, consistent with their own mission and purpose. It prevents a lot a body from running into a situation in which formal rules are invoked instead of discussing substantive issues.
- Everyone can expect to be treated fairly.

Some issues are contentious, and I have to reiterate that we do not gather to continue fighting the cause, but the meetings are usually civilized.
- The status of the Government Agent, not independent, but autonomous vis-à-vis other authorities, also helps to create an atmosphere of trust and open debate.
- Should the people refrain from participating, it would be a matter for questioning why they have started to behave this way.

REASONS FOR INVOLVING NGOs IN THE CZECH REPUBLIC

1. Our own policy in the area of execution of Court's judgments:
 - We do not wish to leave problems unresolved and to deny their existence.
 - By involving civil society, we ensure transparency of the execution process.
 - Shaping the measures of execution of the Court's judgments requires drawing information from various sources: official institutions sometimes cannot, or do not want to, reveal all the elements. We should be aware of the risks of what we put in AP/AR.
 - Involving civil society allows for critical assessment and better results of the debate on the measures of execution.

- Civil society often has practical knowledge in certain areas, and they usually adhere to human rights and employ a logic of human rights. We often turn to the Office of the Public Defender of Rights for advice or even for action, e.g. in its role of a national preventive mechanism under the OP CAT.
 - Civil society thereby influences public space.
 - There is less potential for harsh criticism when civil society has been on board for shaping solutions. We believe that their submissions to the CM/DH have become less critical since they have been made aware of the difficulties the authorities encounter.
2. There is however a general policy of the Government to cooperate with NGOs, including a strategic concept of cooperation for 2021–2030 approved by the Government.
- In the same vein, there are consultative bodies within the Office of the Government dealing with human rights issues, in particular a Government Council for Human Rights and its subordinate committees, such as a committee for the rights of children.
 - The same is true regarding the Roma community – there is also a Council with subordinate committees.
 - Hence, NGOs are rather regularly involved, which does not mean that their advice is necessarily followed.
 - Other civil society elements are usually involved as well, namely the Office of the Public Defender of Rights.³

EXAMPLES OF THE INVOLVEMENT

Let me turn to concrete examples of the involvement.

- 2007 Court’s judgment in *D.H. and others*: placement of Roma children outside the mainstream education⁴
- 2020 ECSR’s decision in *European Roma Rights Centre and Mental Disability Advocacy Centre*: placement of very young children into institutional care⁵
- Applications about involuntary placement into psychiatric institutions.⁶

MEASURES IN RESPONSE TO PLACEMENT OF ROMA CHILDREN OUTSIDE THE MAINSTREAM EDUCATION

1. Background – *D.H. and others* judgment

- Judgment of 2007, resulting from a strategic litigation promoted by civil society.
- Pointing to an important topic for the society → it is not just about education.
- Many actors involved on the ground: schools, teachers, social workers, headmasters, parents, children → a political issue at both local and national level.

³ There is no NHRI fulfilling the Paris principles, but the Office of the Public Defender of Rights (the ombuds-person) is the closest institution to an NHRI.

⁴ *D.H. and others v. the Czech Republic*, no. 57325/00, judgment [GC] of 13 November 2007.

⁵ *European Roma Rights Centre and Mental Disability Advocacy Centre*, coll. complaint no. 157/2017, decision of the ECSR of 17 June 2020.

⁶ Amongst others, *Svobodová v. the Czech Republic*, no. 13970/09, decision of 18 October 2011 (friendly settlement).

2. History of the execution process

- Bilateral approach: GAO–Ministry of Education; after 2015 with the involvement of the Committee of Experts
- A sinusoid: periods of support changing with periods of reluctance.
- 2011: need for a revised action plan.
- A political change in the Ministry of Education → cooperation, at least with the Public Defender of Right.
- After a change in the person of the Public Defender of Rights, her people become observers, and rather critical ones → submissions to the CM/DH.
- Little, if any, cooperation with NGOs
 - The Ministry of Education pretended that they were consulted.
 - We did not have the feeling that we should interfere in the relationship between the Ministry of Education and NGOs.
 - Many submissions of NGOs to CM/DH.

3. Recently: creation of an Expert Forum of the Committee of Experts

- Reasons
 - Lack of results of many efforts to introduce the model of inclusive education, which was however not aimed particularly at Roma children, but was of general character (cf. Article 24 of the Convention on the Rights of Persons with Disabilities).
 - Renewal of activity of Ministry of Education.
- Composition
 - Official institutions (Ministry of Education, Ministry of Labour and Social Affairs, Ministry for Regional Development – Agency for Social Inclusion, Czech School Inspectorate)
 - Civil society
 - Office of the Public Defender of Rights
 - NGOs, such as the Czech Society for Inclusive Education or a Roma NGO
 - Other experts from the ground (representatives of schools, counsellors and other workers from counselling institutions who identify in practice students' educational needs)
 - Sociologists
- Support in the CM/DH decision of 2020⁷
 - The Expert Forum is supposed to help find causes of the lack of success of the inclusive measures with respect to Roma children.
 - It is a helping hand to the Ministry of Education and ensures consultation of non-State actors.
 - the Ministry of Education has become more receptive and involved itself; it seems that they have understood that it was not aimed to confront them, but to contribute to the reflection.
 - Moreover, the Ministry of Education has elaborated a progressive concept of education policy into which this reflection fits well.

⁷ CM/Del/Dec(2020)1390/H46-8.

- The Expert Forum has drawn its conclusions and we expect the Ministry of Education's feedback including concrete proposals of new measures to further improve access of Roma pupils to education
- There have been undoubtedly fewer submissions to the CM/DH.

IMPLEMENTATION OF THE DECISION ON INSTITUTIONALISATION OF CHILDREN UNDER THREE

1. The ECSR's decision to be implemented (decision of 17/06/2020, coll. complaint no. 157/2017)

- In 2020, the ECSR held that *inter alia* that there was a violation of Article 17 of the Charter – the right of mothers and children to social and economic protection – by the application of the legal framework of institutional care and operation of children centres for children under the age of three.
- In other words, as usual in the collective complaints' procedure, if there is a statement of a violation, it requires changes in legislation and practice, which strangely resembles to general measures of execution of a Court's judgment.

2. The NGO involved

- A Czech branch of an NGO founded by J.K.Rowling, called LUMOS Foundation, submitted written observations in the proceedings before the ECSR.
- It is a serious NGO specialised in the prevention of institutionalisation of children and has a relatively long existence in the Czech Republic (since 2008); this NGO is also represented in the committee on the rights of children of the Government Council for Human Rights → in other words, it is quite a reliable and experienced partner who has produced a series of research papers from the ground.

3. The mode of cooperation with this NGO

- A representative was invited to the Committee of Experts when the implementation of the ECSR's decision was discussed.
- We strived to move the Ministry of Health and the successive ministers themselves to propose amending the relevant legislation; they agreed but did little.
- We finally entered into discussion, assisted by the representative of the NGO, with some deputies of Parliament who had proposed amendments to the legislation concerned.
- The role of the NGO was to help raise awareness of the members of Parliament and the public at large to support the change.
- It resulted in the adoption of the legislation sought.
- Since the reasoning adopted by the ECSR is even broader than what the legislation adopted in the autumn of 2021 covers, this is not the end of the story, and we will have to follow up its implementation on the ground and possibly look for further measures.

MEASURES IN RESPONSE TO APPLICATIONS ABOUT INVOLUNTARY PLACEMENT

- In 2009, we saw the communication of a series of applications about involuntary placement into healthcare (psychiatric) institutions. We were able to reach friendly settlements of all of them despite them having a pattern of a strategic litigation.
- It turned out that the regulation contained in legislation on health care and civil procedure was defective. We initiated an amendment, having discussed the issue not only with official stakeholders, such as the Ministry of Health, but also with NGOs representing people with psycho-disabilities as well as with the Public Defender of Rights.

- Moreover, it was decided to produce an informative material at the attention of the actors involved, namely hospitals, patients, lawyers and courts.
- To that end, we organised a public tender for the conception and drafting of this material. The tender was attributed to an NGO interested in the matter and standing behind some of these applications.
- The concept and the draft were thoroughly reviewed from our side and from the relevant stakeholders.
- The result – a booklet, a poster, and a form of announcement of involuntary placement – was widely disseminated to the actors involved.
- The process was achieved in 2012.
- This precedes the creation of our Committee of Experts in 2015. But the germs of a collective exercise for shaping the measures of execution, including with the representatives of civil society, was already there.

CONCLUSION

For us, cooperation with civil society within the framework of the execution of judgments or the implementation of other decisions of international human rights bodies is above all about overcoming the logic of combat between the State and civil society.

Main ideas to be highlighted:

- It seems there is little culture of involvement of NGOs in the member States, but the reality can be more colourful than that.
- The coordination mechanism in the Czech Republic is a collective informal structure and counts on representatives of civil society, including some NGOs, either regularly or *ad hoc*.
- Involvement of civil society helps to shape the measures of execution, ensures transparency, and reduces the level of distrust in the action of the authorities.
- The coordination mechanism may become a platform for dialogue between civil society and the authorities.
- Sometimes, assistance of an NGO is crucial for the success of the implementation efforts.

Since the involvement of NGOs does not seem to be a widely shared practice, I should like to know more from other participants to this roundtable about the reasons underlying reluctance in this regard. (This is an invitation to a further debate.)