DH-SYSC-V(2021)02REV3

15/10/2021

STEERING COMMITTEE FOR HUMAN RIGHTS

(CDDH)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_

COMMITTEE OF EXPERTS ON THE SYSTEM OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS

(DH-SYSC)

\_\_\_\_\_\_\_\_

**DRAFTING GROUP ON ENHANCING THE NATIONAL IMPLEMENTATION OF THE SYSTEM OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS**

**(DH-SYSC-V)**

\_\_\_\_\_\_\_\_\_

**Draft Guidelines of the Committee of Ministers to member States on the prevention and remedying of violations of the European Convention on Human Rights**

Note: This document reproduces the content of the 3rd meeting report of DH-SYSC-V (document DH-SYSC-V(2021)R3, Appendix IV)

**DRAFT GUIDELINES OF THE COMMITTEE OF MINISTERS TO MEMBER STATES ON THE PREVENTION AND REMEDYING OF VIOLATIONS OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS**

*(Adopted by the Committee of Ministers on …202…*

*at the 1…st meeting of the Ministers’ Deputies)*

The Committee of Ministers,

1. Considering that the *Interlaken process* 2010-2019 has confirmed the central role played by the European Convention on Human Rights (“the Convention”) in maintaining and fostering democratic security and improving interstate cooperation and good governance across the European continent;

2. Recalling that acceptance of the Convention, including the compulsory jurisdiction of the European Court of Human Rights (“the Court”) and the binding nature of its judgments against the State which is a party to the dispute**,** is a requirement for membership of the Organisation and that in accordance with the principle of subsidiarity, the member States have the primary responsibility to secure the rights and freedoms defined and that in doing so they enjoy a margin of appreciation, subject to the supervisory jurisdiction of the Court;

3. Considering the member States’ firm and enduring commitment to secure its long-term effectiveness and highlighting in this respect the decision taken at the Ministerial Session in Athens on 4 November 2020;

4. Recalling that the Committee of Ministers could note already in 2004 that the Convention had become part of the domestic legal orders in all member States;

5. Recalling the important results achieved as regards the national implementation of the Convention during the *Interlaken process*, including improved incorporation, domestic remedies and parliamentary procedures as well as regards the domestic capacity for rapid implementation by domestic authorities, subject to the Committee of Ministers’ supervision, of the judgments and decisions of the Court;

6. Bearing in mind that, despite the progress achieved at national level, the Convention system continues to face significant and enduring challenges, including delays at different stages of its functioning, notably linked to situations of blockages, the persistence of serious or widespread violations, to systemic and structural problems in the member States, to the situation in Europe’s unresolved conflict zones or post conflict zones; and bearing in mind the increasing number of inter-state applications brought before the Court in recent years;

7. Bearing in mind also that there is a continuing influx of large numbers of repetitive applications to the Court and of applications related to matters covered by well-established case law, not infrequently highlighting structural problems;

8. Recalling in this respect that in its decision “*Securing the long-term effectiveness of the system of the European Convention on Human Rights”* adopted in Athens, 4 November 2020, the Committee of Ministers stressed the need for further efforts and called notably upon all member States to (i) give full effect to the principle of subsidiarity by complying with their obligations to secure to everyone within their jurisdiction the rights and freedoms defined in the Convention; (ii) abide by the Court’s judgments rendered against them and honour their undertakings in friendly settlements and (iii) agreed to continue to enhance the efficiency of the process of supervision of the execution of the judgments;

9. Recalling the range of Recommendations it has adopted with a view to assisting member States in ensuring efficient domestic implementation of the Convention and the judgments of the Court, and to facilitating the adoption, by member States, of responses to the numerous challenges facing their societies respectful of the values of the Council of Europe and the rights and freedoms protected by the Convention;

10. Recalling also the Recommendations and Resolutions of the Parliamentary Assembly of the Council of Europe (”the Parliamentary Assembly”) to improve parliamentary procedures and the numerous relevant indications and recommendations given by other Council of Europe institutions and bodies;

11. Strongly encouraging national decision makers to more proactively take the Convention requirements into account to better prevent all violations foreseeable on the basis of the Court’s case law and provide redress to victims without there being a need for a specific Court judgment against the State in each case;

12. Stressing that such a proactive attitude from member States involves in particular the development of parliamentary, executive and judicial capacity to respond to relevant well established case-law by the Court even where developed against other member States, and thus of structures for identifying such case-law and ensuring translation and dissemination of relevant judgments and decisions or other materials in line with **Recommendation CM/Rec(2021)4 of the Committee of Ministers to member States on the publication and dissemination of the European Convention on Human Rights, the case-law of the European Court of Human Rights and other relevant texts;**

13. Convinced of the importance for member States of:

1. Encouraging a wide national dialogue to discuss matters related to the national implementation of the Convention in face of both continuing and new challenges, in particular as regards efficient prevention of violations and redress in case violations are established;
2. Encouraging experience sharing with other member States and full usewhere appropriateof the many possibilities offered by the Council of Europe to assist national efforts to secure the effective implementation of the Convention and the rapid execution of the Court’s judgments and decisions, through dialogue with its different institutions, the expertise developed by monitoring and advisory bodies and the possibilities of cooperation and assistance programs and activities;
3. Maintain a continued dialogue with Council of Europe institutions and expert bodies, including in the framework of the execution of Court judgments and decisions and of the Council of Europe’s cooperation activities;

14. Recalling the Committee of Ministers’ commitment to continue to engage in a more intensive and effective dialogue with respondent States at its supervision of the execution of the Court’s judgments and decisions, , aimed at improving the assessments, advice, recommendations or other guidance given in its decisions and resolutions, and stressing the collective dimension of the supervision process which implies an active approach by all member States, primarily through their representatives in the Committee of Ministers;

15. Noting the necessity of reinforcing the domestic execution process and the resources devoted thereto in view of continuing problems revealed in the context of the Committee of Ministers’ supervision thereof, including slowness in developing effective remedies to prevent repetitive cases, and frequent problems related to the effective handling not only of more important complex or structural problems, but also of many, in principle non-complicated cases remaining for lengthy periods under the Committee’s standard supervision;

16. Noting that a number of situations have also revealed that the judiciary or executive authorities may not be capable of providing redress for violations established within the existing legal and/or constitutional framework, and that it is therefore necessary to ensure in all States that procedures are in place ensuring that legislative or other pertinent action is engaged so that these obstacles can be overcome;

17. Recalling the close links which exist between good national implementation of the Convention and the good functioning of the supervisory system set up and the shared responsibility between the States Parties, the Court and the Committee of Ministers in this respect;

18. Expressing the conviction that it is necessary to adopt general guidelines for the further improvement of the national implementation of the Convention, both in general and as regards the domestic capacity to rapidly abide by judgments by the Court in cases to which States are parties;

19. Adopts the following guidelines which provide practical advice and recommendations aimed at assisting the member States in their efforts to:

- give full effect to the principle of subsidiarity by complying with their obligations to secure to everyone within their jurisdiction the rights and freedoms defined in the Convention;

- abide by the Court’s judgments rendered against them and honour their undertakings in friendly settlements and in unilateral declarations.

**I. PREVENTING AND REMEDYING VIOLATIONS OF THE CONVENTION THROUGH EFFECTIVE NATIONAL IMPLEMENTATION**

**Guideline 1 – Ensure a positive global framework**

1. Member States should, in the light of progress made in the course of the Interlaken process, continue, and where necessary enhance, their efforts to ensure that the policies and actions of all domestic authorities, be they legislative, executive or judiciary, comply with their obligations as regards human rights, respect for the rule of law and the principles of democracy inherent in the Convention.
2. Member States should notably better ascertain the existence of effective domestic remedies, capable of integrating all relevant case-law of the Court, also that developed against other States, for all persons, physical or legal, with arguable claims that their Convention rights have been violated.
3. Member States are also encouraged to maintain the efforts in the same vein to enhance the verification of the Convention conformity of draft laws, existing laws and administrative practice, the involvement of their parliaments and their capacity to react swiftly and whenever necessary to systemic or other problems revealed through domestic procedures.
4. Member States should, in order to provide adequate protection of the rights and freedoms guaranteed, take or reinforce all measures they consider necessary to ensure that all persons have effective access to legal services provided by independent lawyers by means of, *inter alia*, implementingtheGuidelines of the Committee of Ministers of the Council of Europe on the efficiency and the effectiveness of legal aid schemes in the areas of civil and administrative law.

4.bis. Member States should take all necessary measures to promote and strengthen independent, pluralistic and effective National Human Rights Institutions (NHRIs)as well as secure and expand a safe and enabling space for all stakeholders involved in the implementation of the Convention as reflected in relevant Council of Europe recommendations.[[1]](#footnote-1)

1. Member States should, when implementing the Convention, take into account the different general recommendations adopted by the Committee of Ministers over the years with a view to enhance implementation, notably:
	* + Recommendation Rec(2004)5 of the Committee of Ministers to member states on the verification of the compatibility of draft laws, existing laws and administrative practice with the standards laid down in the European Convention on Human Rights;
		+ Recommendation Rec(2004)6 of the Committee of Ministers to member states on the improvement of domestic remedies;
		+ Recommendation CM/Rec(2019)5 of the Committee of Ministers to member States on the system of the European Convention on Human Rights in university education and professional training;
		+ **Recommendation CM/Rec(2021)4 of the Committee of Ministers to member States on the publication and dissemination of the European Convention on Human Rights, the case-law of the European Court of Human Rights and other relevant texts.**
2. Member States should also take into account the Committee of Ministers’ numerous other relevant recommendations and guidelines, such as the recommendation on human rights and business or the guidelines on human rights in culturally diverse societies as well as other recommendations and/or advice emerging from other Council of Europe institutions or bodies. They should also take into account that a full implementation of these instruments is also an important contribution to the national capacity to ensure execution of the Court’s judgmentsas speedily as possible.
3. Member States should further enhance co-operation and experience exchanges between them as regards the implementation of the Convention and its different provisions, integrating the Court’s relevant case-law and other Council of Europe standards. They should avail themselves, wherever useful, of the cooperation and assistance facilities offered by the Council of Europe and use its expertise.
4. Member States should pay particular attention to address, taking into account the situation in each state, the main general problems before the Committee of Ministers in the context of its supervision of the execution of the Court’s judgments.[[2]](#footnote-2)

8.bis. Member States should also pay attention to address delays in the execution of judgments and decisions of the Court including as regards payments due.

1. Member States’ special attention is also required vis-à-vis all situations in which they exercise jurisdiction in the sense of the Convention outside of the national territory, especially in Europe’s conflict zones or post conflict zones, to ensure that all individuals under their jurisdiction in such areas are guaranteed Convention protection.[[3]](#footnote-3)

**Guideline 2 – Extend awareness raising and training on the Convention system**

1. Member States should continue to ensure the publication and dissemination of the Convention, the case-law of the Court, including case-law relating to other States deemed pertinent, and other relevant texts in the language(s) of the State concerned in line with Recommendation CM/Rec(2021)4 of the Committee of Ministers to member States on the publication and dissemination of the European Convention on Human Rights, the case law of the European Court of Human Rights and other relevant texts.

1. They should, however, in line with recent efforts to enhance knowledge of the Convention system as such reflected in the just adopted Recommendation (2021)4 also assess the desirability and feasibility of publishing further relevant recommendations, guides and other texts, notably from the Committee of Ministers, the Registry, the Department for the execution of judgments, the Parliamentary Assembly, the Commissioner for Human Rights and the Council of Europe’s monitoring and advisory bodies. In making this assessment, member States should, where appropriate consult and cooperate with relevant stakeholders, including NHRIs, civil society organisations, academia and associations of legal professionals, notably bar associations.

11bis. The regular production of textbooks and other publications facilitating the knowledge of the Convention system and the Court’s case-law should continue to be facilitated, the designation of contact persons in different state authorities and in the legal professions should henceforth also be encouraged to facilitate access to the Court’s case-law and other texts as defined above and in the recent Recommendation CM/Rec(2021)4.

1. Member States should, to the extent deemed appropriate and possible, reinforce university education and professional training on the Convention system, especially as regards the well-established case law of the Court and the requirements related to the execution of the judgments of the Court.
2. Member States should, when organising relevant university and training events, as deemed appropriate, support participation of Council of Europe experts and possibilities of experience exchanges with other States.

13bis. Member States, noting the success of a number of moot court competitions to promote knowledge of the Convention and the Court’s case law[[4]](#footnote-4), engaging not only universities and their students but also many other stakeholders such as NGO’s, NHRI’s, practitioners of all strands and also judges, including those from the Court, are invited to encourage all interested to continue to support and where possible develop competitions of this kind.

1. Member States should take action to further raise domestic awareness also with respect to the possibilities of cooperation and assistance activities offered by the Council of Europe.
2. Member States should consider raising awareness with authorities and other stakeholders as well as interested parts of civil society with a view to encouraging them to make full use of the facilities offered by the European Programme for Human Rights Education for Legal Professionals (the HELP programme) and its different online courses on a wide variety of Convention issues – many already available in several languages beyond the official languages of the Council of Europe.
3. Member States should as regards the HELP programme consider contributing to the translation of courses related to the Convention into their national language(s) if such translation has not already taken place.
4. Member States should encourageand further develop existing practices of study and other visits, notably of parliamentarians, legal counsels to parliament, judges, prosecutors, chiefs of police, prison administrations, government agent offices, NHRIs and others to Strasbourg to meet and discuss with the departments engaged in the implementation of the Convention and the execution of the Court’s judgments.
5. Member States should, where applicable, provide relevant judicial and other authorities as well as NHRIs with adequate sufficient and sustainable resources and means to enable them/ authorities and institutions carry out such visits.

**Guideline 3 - Improve domestic remedies**

1. Member States should ensure that domestic remedies exist and are organised in such a way as to avoid to the extent possible any lacuna, whether as regards the possibility to submit any arguable claims of a violation of the Convention to an independent authority providing adequate procedural safeguards, to obtain a decision on the merits taking full account of all relevant case-law from the Court, or to obtain adequate redress for any violation established, whether monetary or, where still possible and useful, in the form of specific individual measures.[[5]](#footnote-5)
2. Member States should also ensure, as appropriate, that decisions by courts or other independent bodies acting as effective remedies contain sufficient reasons as this helpsto inspire the confidence of those concerned and the public, promote the development of coherent domestic practices and positions and provide a good basis for a possible subsequent review by the Court, or, by the Committee of Ministers in the context of its supervision of a possible execution process under Article 46 of the Convention.
3. Member States are encouraged to consider, in the context of their reflections, the generally positive experiences from countries having put in place a general remedy competent to deal with all kinds of Convention complaints.
4. Member States should enhance their efforts to ensure as soon as possible after a systemic problem has been revealed, whether in domestic proceedings or as a result of a judgment of the Court, that effective remedies are in place to address to the extent possible repetitive applications, or that other efficient solutions are put in place to this effect.[[6]](#footnote-6)
5. Member States should, taking into account the continuing high numbers of new systemic violations in areas covered by well-established case-law from the Court, enhance, wherever necessary, the capacity of courts and other domestic authorities to pro-actively address such clearly foreseeable violations in a Convention-compliant manner.
6. Member States should devote attention to the existence of effective remedies in respect of the most frequent problems revealed in the cases brought before the Committee of Ministers for supervision of their execution.[[7]](#footnote-7)
7. Member States should constantly bear in mind that in addition to the obligation of ascertaining the existence of effective remedies in the light of the case-law of the Court, they also have the obligation to solve any general problem underlying violations found.

**Guideline 4 - Further action to facilitate the direct application of the Convention and relevant case-law of the Court**

1. Member States should, over and above the matters dealt with above, examine their legal systems in the light of the results of the Interlaken process with a view to ensuring that the legal framework surrounding the incorporation of the Convention as a constituent part of the domestic legal order is such that it effectively promotes the direct application of the Convention integrating the case law of the Court by national courts and authorities.
2. Member States should, in line herewith, also take all other measures necessary to ensure the active implementation of the Convention and relevant case-law of the Court throughout the domestic judicial system so as to improve its capacity to proactively prevent foreseeable violations of the Convention.
3. Member States should in this vein also be encouraged to enhance their efforts to follow possible developments of the Court’s case law as a result of cases brought against other member States, with a view to intervene in compliance with Article 36 of the Convention, where deemed appropriate, as amicus curiae to ensure that also their national concerns receive consideration by the Court.
4. Member States should ensure, if notwithstanding the direct application of the Convention integrating the case law of the Court , a conflict would arise with national legislative or constitutional provisions, or in case a legislative void is discovered, that appropriate procedures exist to engage necessary action to ensure a Convention compliant solution.
5. Member States should, in the light hereof, and with due respect to judicial independence, consider the need for measures encouraging judicial and other authorities involved to use the avenues at their disposal to draw attention to the problem, e.g. by indications in their judgments and/or decisions, and, where this is possible and appropriate, also by exercising their right of legislative initiative.
6. Member States should take measures they consider necessary to ensure an environment surrounding judicial activity (e.g. as regards the existence of adequate research and support structures or the understanding of the imperatives of judicial discipline),which encourages the taking into account of the Convention requirements as developed in relevant case-law of the Court, even if developed in cases against other Member States.
7. Member States should in the same vein envisage that all major central, regional and local authorities have easy access to quality advice (*e.g.* through dedicated internal expertise or more generally through the Government Agent’s Office) as to the Convention requirements because issues linked with the implementation of the Convention emerge from the case law of the Court and that internal policies promote the integration of the well-established case law requirements in day-to-day work.
8. Member States should also encourage the good training of lawyers, in the Court’s case-law and in the functioning of the Convention system, enabling them to efficiently assist individuals and authorities in the efforts to secure respect for the rights and freedoms guaranteed by the Convention.

**Guideline 5 - Improve verification of the Convention conformity of draft laws, existing laws and administrative practices**

1. Member States should enhance their efforts to give full effect to the Convention through a continuous adaptation of national norms and practices to the Convention, in the light of the case law of the Court.
2. ***Draft laws***
3. Member States should ensure that draft legislation prepared by the Government related to matters covered by the Convention is sent to Parliament only after a thorough scrutiny of its Convention conformity, taking into account all relevant case-law of the Court.
4. Member States should to this effect ensure that adequate mechanisms are developed to ensure rigorous scrutiny of such draft legislation, involving or associating NHRI’s and, as appropriate, also different competent and independent bodies relevant NGO’s and national organisations of lawyers.
5. Member States should also ensure the existence of parliamentary structures with special responsibility for the respect of human rights and the Convention in particular, including the Convention conformity of draft legislation, and that such structures have access to independent expertise.
6. Member States are encouraged to consider requiring the engagement of a special parliamentary procedure, or other safeguards, if the bodies entrusted with assessing the Convention conformity of draft legislation would find evident that a certain proposal would violate the Convention.
7. ***Existing laws***
8. Member States should ensure that there exist procedures allowing for a regular assessment of the Convention conformity of laws in force, be it in the context of judicial proceedings (e.g. by the possibility for judges to refrain from applying a certain law found to lead to results contrary to the Convention, or by otherwise addressing the Convention conformity in the reasoning of judgments or, where this may be accepted, e.g. in constitutional proceedings, by the possibility to declare the legislation at issue null and void or inapplicable), or through other procedures, most notably in the context of ordinary governmental or parliamentary scrutiny of the adequacy of legislation, but possibly also through the putting in place of specialised procedures, e.g. within the coordination structures adopted to facilitate the execution of the judgments of the Court or special parliamentary committees and procedures.
9. Member States should ensure that procedures exist that allow conclusions with respect to the Convention conformity of existing legislation or other norms are given due consideration with a view to the adoption, as rapidly as possible, of the changes necessary to achieve a Convention compliant situation.
10. ***Practice***
11. Member States should ensure that authorities, whether central, regional or local, that are regularly confronted with Convention issues, such as courts, prosecutors, police, customs, NHRIs, authorities competent for the registration of churches or more generally of associations, or the handling of announced peaceful assemblies, broadcasting authorities, immigration authorities, authorities responsible for protecting privacy or public access to official documents, or social authorities responsible for child and family questions, have the necessary resources to regularly assess the Convention conformity of regulations, practice directions or unwritten procedures, whether in the form of internal expertise or easy access to outside expertise.
12. ***Encourage use of Council of Europe assistance and expertise***
13. Member States are encouraged to ensure that the examination of the Convention conformity of draft laws, existing laws and domestic practices is carried out wherever deemed appropriate in cooperation with, or taking into account, Council of Europe expertise.

**Guideline 6 - Better Parliamentary involvement**

1. Member States should, in line with the resolutions of the Parliamentary Assembly, continue to promote the important role parliaments play in safeguarding human rights and regular parliamentary monitoring of the State’s compliance with international human rights obligations.
2. Member States are encouraged to support the initiatives of the Parliamentary Assembly to enhance the knowledge of the Convention system and the case-law of the Court of parliamentarians and the legal staff of all relevant parliamentary committees and departments.

**Guideline 7 - Strengthen the role of NHRIs, NGOs and other key bodies**

1. Member States which have not already done so are encouraged to take all necessary measures to establish, and, when established, maintain and strengthen an effective, pluralist and independent NHRI in accordance with the Paris Principles.
2. Member States should, when taking action relevant for the national implementation of the Convention, promote the engagement and the interaction with NHRIs, relevant NGOs, and representative organisations of lawyers.
3. Member States should, in line with recent Committee of Ministers Recommendations and other relevant texts and initiatives, notably from the Parliamentary Assembly and the Commissioner for Human Rights, ensure a safe and enabling environment for those engaged in the defence of human rights and effective protection against threats, unlawful actions and arbitrary reprisals, including from State authorities. Member States should ensure rapid and efficient investigations into any such unlawful action. Member States should take particular care to guarantee the independence and impartiality of **Ombudsman institutions** and NHRIs.
4. Member States should continue to the extent deemed possible to further encourage meaningful participation of, NHRIs, relevant NGOs, and representative organisations of lawyers in the activities of the Council of Europe related to the implementation of the Convention, e.g. in specialised fora and events.[[8]](#footnote-8)

**Guideline 8 - Develop domestic capacity to deal rapidly with systemic problems revealed in domestic procedures**

1. Member States are encouraged, in view of the promising results obtained by the coordinating structures and procedures put in place to address notably general problems revealed in the context of the supervision of the execution of the Court’s judgments, to consider whether these structures and procedures could be extended also to situations where violations pointing at general problems are established in national procedures or whether the setting up of other similar procedures could prove of value.

**Guideline 9 - Promote experience sharing in the implementation of the Convention**

1. Member States should, when confronted with issues related to the implementation of the Convention, promote, to the greatest extent possible, exchanges of experiences and the development of synergies between the authorities within their jurisdictionconcerned wherever a solution could be facilitated by common or concerted action.
2. Member States should in parallel explore all opportunities to share experiences between States as regards the efficient implementation of the Convention.
3. Member States should alsoconsider available Council of Europe expertise, recommendations and possibilities of assistance through cooperation activities.
4. Member States should, in order to facilitate experience sharing, make full use of the capacities of the national coordinators appointed/co-ordinating structures set up to guide and/or assist the implementation of the Court’s judgments and decisions and their networks, and, as appropriate, consider also those of relevant NGOs and NHRIs and representative organs of the legal profession.
5. Member States should also, when encountering new Convention issues of more pan European interest, raise these in appropriate Council of Europe inter-governmental fora with a view to possible action, e.g. in the form of recommendations, guidelines or collections of best practices.
6. Member States should in this vein also be encouraged to enhance the use of specialised fora provided by the Council of Europe, such as the councils/conferences for judges, prosecutors, heads of detention and probation centres. They should also strengthen their efforts to provide similar arrangements for other important institutions or stakeholders under Council of Europe auspices, notably for high representatives of the police forces in the Member States.
7. Member States should in parallel promote and enhance dialogue between their national courts and the Court, e.g. through the Superior Courts Network, visits and conferences.

**Guideline 10 - Enhance cooperation programmes with the Council of Europe**

1. Member States should, especially when engaging more important reforms raising issues under the Convention, consider and exploit the cooperation possibilities offered by the Council of Europe, e.g. in order to obtain general expertise on Convention standards, more specific expertise on different pieces of legislation, assistance in the search for the root causes of important systemic problems to ensure the adequacy of reforms proposed, an appropriate setting for experience exchange with other States, assistance in the organisation of training activities or in the organisation of fora to promote experience exchanges and synergies between domestic authorities.
2. Member States should in this context support and promote, where appropriate, any specific initiatives by competent State institutions to seek advice from relevant Council of Europe institutions, such as the Commissioner for Human Rights, or expert bodies, such as the Venice Commission.
3. Member States should also consider possibilities of contributing to the Council of Europe’s capacity to offer such cooperation programmes, whether through voluntary contributions, contributions to the Human Rights Trust Fund (HRTF) or through the EU.

**Guideline 11 - Improve cooperation between Member States**

1. Member States should, to the extent deemed appropriate and possible, develop mutual assistance and cooperation activities when this can promote the effective domestic implementation of the Convention, e.g. through cooperation arrangements between authorities and, especially where common languages are shared, also common databases, cooperation as regards university education and training, moot court competitions, etc.
2. **[**Member States should not provide such assistance when the result could lead to a violation of the Convention in the other State without credible and tangible guarantees eliminating the risk of a violation or if other legitimate ground for refusing such cooperation under the relevant cooperation instruments applies.**]**
3. **[**Member States should ensure that, in special circumstances, where assistance requested from another State Party should be given under the Convention, notably in order to ensure the effectiveness of investigations into violations of Article 2 and 3 of the Convention~~,~~ such assistance may and will be given wherever possible.**]**

**Guideline 12 - Other measures to secure the effective functioning of the Convention system**

1. Member States should, beyond providing all necessary assistance to, and ensuring efficient interaction with, the Court and the Committee of Ministers in the context of ongoing proceedings also consider providing additional human and financial resources.
2. Member States should, in particular, as regards the Judges of the Court,pursue their efforts to (a) attract persons of the highest calibre to serve as judge on its bench, so as to continue to safeguard the authority of the Court; (b) continue to guarantee by all possible means the independence and impartiality of the Court’s judges, and (c) consider providing necessary additional safeguards also after the end of the Judges’ terms of office, notably by due recognition for their status as judges and for their service on the Court.
3. Member States should offer their cooperation to the Secretary General in case of requests under Article 52 of the Convention.

**Guideline 13 - Promote ratification of Protocol No. 16 to the European Convention**

1. All Member States which have not signed or ratified Protocol N° 16 are invited to consider doing so with a view to further enhancing the interaction between the Court and national courts, thereby reinforcing implementation of the Convention, in accordance with the principle of subsidiarity, while taking into account the developing practice of the Court and the specificities of their systems of judicial organisation, notably the possibilities of coordination or constructive interaction between the different High Courts which may be concerned by a request.
2. Member States should also ensure that the parties to the proceedings underlying a request, as well as civil society and others likely to have an interest to intervene in the advisory proceedings before the Court, have easy access to all information relevant for the issue submitted to the Court.
3. Member States are also encouraged to exchange, in cooperation with the Court and other Council of Europe bodies concerned, experiences with regard to the use of the new procedure.

**II. PREVENTION AND REDRESS IN CASE OF VIOLATIONS FOUND BY THE EUROPEAN COURT OF HUMAN RIGHTS**

**Guideline 14 – General considerations regarding the need for rapid and effective remedial action**

1. Member States should, in the light of the progress achieved during the Interlaken process, further improve their domestic capacities for effective execution of the Court’s judgments and decisions in all cases to which they are parties.
2. Member States should thus enhance, wherever necessary, their efforts to secure in all circumstances the existence of efficient procedures guaranteeing the payment of any just satisfaction awarded by the Court and to rapidly erase, to the extent possible, the consequences for applicants of violations established and ensure *restitutio in integrum*.
3. Member States should, similarly, enhance their efforts to ensure that necessary parliamentary, executive or judicial action is taken to efficiently and effectively address all more general, structural or systemic problems revealed by judgments of the Court, in particular to prevent to the extent possible new repetitive applications, speed up the solution of non-complicated cases and overcome in an effective manner more important obstacles.
4. Member States should ensure that violations established by the Court are duly recognised by authorities involved by rapidly engaging remedial action both to provide individual redress and to prevent similar violations, and that, if reforms require time for their adoption and implementation, all possible measures including, where appropriate, temporary or interim ones are taken to limit as far as possible the effects of the violation(s).
5. Member States should, in this connection, take into account
* 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, the examples of good state practices presented by the CDDH in 2017 and subsequent developments;
* Recommendation CM/Rec(2000)2 on the re-examination or reopening of certain cases at domestic level following judgments of the Court and subsequent developments.
1. Member States should in this context, in view of the close links between the measures required for rapid execution and those necessary for effective general implementation of the Convention, also take into account all the different sources of inspiration available in the latter context, notably the Committee of Ministers’ own recommendations cited above under part I.

**Guideline 15 - Strengthening of co-ordination structures**

1. Member States must, in the light of available information, further enhance the support provided to coordinators, or other coordinating structures, as required in the form of improved resources, status or authority, in order to allow these to better respect deadlines fixed for action plans, better contribute to the solution of more important structural or complex problems, in particular those placed under enhanced supervision, and, in close cooperation with the Department for the execution of judgments, to the ~~speedy~~ solution of in principle ~~“easy”~~ **non-complicated** cases under standard supervision, with a view to their solution **as speedily as possible** **[**as far as possible within 2 years.**]**
2. **[**Member States should take special measures to solve ~~rapidly~~ **as speedily as possible** the present backlog of such **non-complicated** ~~“easy~~ cases~~”~~ awaiting closure since more than 5 years.**]**
3. Member States should ensure that coordinators, or coordinating structures, **where appropriate,** establish ~~necessary~~ contacts with relevant parliamentary committees or departments and judicial authorities and that the continuity of their work and structures over time is safeguarded, as breaks in this respect may have very negative effects on the handling of important execution issues and lead to unnecessary applications and violations of the Convention.
4. Member States should ensure protection of coordinators from unjustified attacks and from any form of harassment or threat linked to the performance of their duties.

**Guideline 16 - Improved publication and dissemination of execution information**

1. Member States should ensure that action plans and reports adopted in response to judgments of the Court ~~are of high quality and fully~~ explain the changes proposed or the measures taken as compared to the situation ~~incriminated~~ **addressed** by the Court**,** **taking into account the Guide for the drafting of action plans and reports for the execution of judgments of the European Court of Human Rights drafted by the Department for the execution of judgments.** ~~and, a~~**A**s appropriate, **member States should** also draw on relevant recommendations and advice by Council of Europe institutions and expert and monitoring bodies.
2. Opt 1. Member States should alsoensure that such plans and reports are ~~rapidly~~ made public**, if need be,** in the ~~national~~ **relevant** language and appropriately disseminated**, including to NHRIs and other actors involved in execution,** as should decisions of the Committee of Ministers with respect to their adequacy or implementation.

Opt 2**. Member States should also ensure that such plans and reports are made public in line with Recommendation CM/Rec(2021)4 of the Committee of Ministers to member States on the publication and dissemination of the European Convention on Human Rights, the case law of the European Court of Human Rights and other relevant texts.**

Opt 3. Member States should also ***consider the publication of*** ~~ensure that~~ such plans and reports ~~are rapidly made public~~ in the national language and ~~appropriately~~ ***their*** disseminat~~ed~~***ion*** as ~~should~~ ***well as the*** ***relevant*** decisions of the Committee of Ministers ~~with respect to their adequacy or implementation~~.

1. ~~States parties~~ **Member States** should in this context ensure that ~~also~~ other relevant information on the Convention requirements with respect to ongoing execution processes is **also** brought, through appropriate means, to the attention of all authorities concerned, **including NHRIs,** where deemed useful in cooperation with the Department for the execution of judgments.
2. ~~States Parties~~ **Member States** should furthermore ensure more general awareness of the requirements of execution, notably by the dissemination of information, in the ~~national~~ **relevant** language, on relevant execution practices and on the scope and expected results of the Committee of Ministers’ supervision procedure. In so doing they may be inspired by parts of the Vademecum prepared by the Department for execution so far and possible further parts, the general overviews of achievements made in the Committee of Ministers Annual Reports ~~and by the Parliamentary Assembly~~, and by the fact sheets by country and topic published by the Department for the execution of judgments.
3. Member States are also encouraged to give wide publicity to the special web sites developed by the Committee of Ministers and the Department for the execution of judgments to present both the general execution requirements and the state of execution in individual cases, or groups of cases.
4. States Parties **should also** ~~are also encouraged to~~ ensure wide use of the special HELP course on execution designed to assist national authorities, lawyers and their professional organisations, NGOs and NHRIs and others interested in better understanding the execution process and its supervision by the Committee of Ministers

**Guideline 17 - Ensure that remedies are fully effective in the execution context**

1. Opt1. Member States should**, with due respect for judicial independence,** ensure~~, through appropriate means,~~ that national judges and other independent authorities, when acting as effective remedies in the execution context, **have appropriate means to** ~~secure the recognition of~~ **fully implement** the Court’s findings and their enforcement in the national legal system.

Opt.2 Member States should ensure, through appropriate means, that national judges and other independent authorities, when acting as effective remedies in the execution context, secure ~~the recognition of the Court’s findings and~~ the~~ir~~ enforcement **of the judgments** in the national legal system.

* + 1. **For applicants**
1. Opt1. Member States should take special care to ensure that judgments or decisions by the Court of importance for applicants to obtain individual redress are ~~rapidly~~ made available in **line with Recommendation CM/Rec(2021)4 of the Committee of Ministers to member States on the publication and dissemination of the European Convention on Human Rights, the case law of the European Court of Human Rights and other relevant texts** ~~an authoritative translation~~ wherever necessary. Member States may for this purpose be encouraged to explore possibilities of arrangements with the Registry and the Department for the execution of judgments to ensure that translations entered into the HUDOC database be considered authoritative.

Opt 2: Member States should take ~~special~~ care to ensure that judgments or decisions by the Court of importance for applicants to obtain individual redress are ~~rapidly~~ made available in a~~n~~ ~~authoritative~~ translation wherever necessary. ~~Member States may for this purpose be encouraged to explore possibilities of arrangements with the Registry and the Department for the execution of judgments to ensure that translations entered into the HUDOC database be considered authoritative.~~

1. Opt 1. Member States should ~~ensure~~ **encourage**, to the extent possible, an open and constructive approach on the part of courts and authorities when these are requested, on reasonable grounds, to provide individual redress, to prevent formalistic and unnecessary delays in ~~ensuring~~ **providing** such redress and ~~secure~~ **to ensure** that all applicants receive redress without discrimination.

Opt 2 Member States should ensure, to the extent possible, an open and constructive approach on the part of courts and authorities when these are requested, on reasonable grounds, to provide individual redress, ~~to prevent formalistic and unnecessary delays in ensuring such redress and secure that all applicants receive redress without discrimination.~~

1. Member States should, in order to be able to ~~rapidly~~ handle more difficult situations, be encouraged to ensure that the ~~coordinators~~ competent **authorities** for the handling of execution matters may enter into friendly settlements with applicants under the Committee of Ministers’ supervision.
2. Member States could also consider whether, beyond the existing integration of a number of specific execution obligations into domestic law, e.g. that of reopening unfair proceedings ~~or, in some states, the duty to heed interim measures ordered by the Court,~~ other such obligations, notably the payment of sums due by virtue of Court judgments or decisions**,** could not also be so integrated, in particular in case of friendly settlements or unilateral declarations.
	* 1. **To prevent repetitive cases**
3. Member States should further following a violation of the Convention take action to ensure, through legislative action, constructive judicial practice or otherwise, the existence of remedies capable of preventing, as far as possible, prima facie well founded repetitive applications to the Court.
4. Member States should also, wherever appropriate, **pay attention to**seek ~~also~~ other solutions to avoid repetitive applications, such as amnesties erasing to the extent possible the consequences for ~~all~~ victims of **violations established by the Court**~~an excessive criminalisation~~, the restitution of rights, ~~for example~~ **e.g.** citizen or residence rights, unjustly taken away or measures otherwise erasing more generally the consequences of violations.

**Guideline 18 - Enhanced efforts to deal with technical obstacles, deep rooted local prejudice and blockages**

1. Opt1. Member States should ~~avail themselves of~~ **consider** ~~all opportunities~~ **the possibility** to prepare themselves already during the proceedings before the Court, as appropriate in cooperation with relevant Council of Europe bodies, for possible findings of violations likely to generate risks of blockages or other major execution problems so as to prepare constructive reactions on the part of those concerned and explore possible avenues forward.

Opt 2: ~~Member States should avail themselves of all opportunities to prepare themselves already during the proceedings before the Court, as appropriate in cooperation with relevant Council of Europe bodies, for possible findings of violations likely to generate risks of blockages or other major execution problems so as to prepare constructive reactions on the part of those concerned and explore possible avenues forward.~~

1. Member States should, in face of difficulties in ensuring ~~rapid~~ execution, such as important technical **and other** obstacles, ~~deep rooted local prejudice or political~~ blockages, ensure wherever possible the setting up of structures **(mechanisms)** and procedures capable of securing, over the full time span of reforms planned, the impetus, coordination of action and allocation of resources necessary for the problems to be overcome.
2. Member States should, when confronted with important structural and/or complex problems, provide all necessary support, ~~including high level political support~~, to the coordinators or coordinating structures set up. They should also ~~rapidly~~ explore all possibilities of assistance from relevant Council of Europe institutions and bodies, whether in the form of fora for dialogue or in the form of expertise and cooperation programs.
3. Member States should also, in face of major structural problems, be encouraged to explore in depth possible synergies with the activities and programmes engaged or planned ~~with the EU~~, other international organisations such as the UN, the IMF, the World Bank or other States.

**Guideline 19 - Promote stakeholders’ participation in the execution process**

1. Member States should encourage the involvement of all authorities concerned by a certain problem revealed by a judgment of the Court and promote, through meetings, liaison officers, joint working groups**,** etc., the development of synergies between them, whether in the reflection on necessary action or in the implementation of action plans decided and the assessment of results obtained. Member States ~~are~~ **should** in this context~~, encouraged to~~ **ensure that they include NHRIs**, ~~involve also~~ relevant NGO’s, ~~NHRIs~~ and representatives of the legal profession~~, as appropriate~~ **in consultations on the development of action plans and reports on the execution of judgments at the earliest possible stage and inform them of the results of their involvement, as well as the final action plans and reports communicated to the Council of Europe, so as to enable follow up and timely communication with regard to the supervision of the execution of judgments under Article 46, paragraph 2, of the Convention** .

1. Member States are also encouraged to associate the Department for the execution of judgments and other relevant Council of Europe structures in the above processes and to ensure also that the experience of other States is taken into account.
2. Opt1. Member States should**, if need be,** ensure the presence of competent authorities in Strasbourg when execution problems relating to their field of competence are being debated in the Committee of Ministers and, and where appropriate also the presence of responsible ministers, especially important in face of major problems to reassure the Committee of the political will to overcome them.

Opt 2: ~~Member States should ensure the presence of competent authorities in Strasbourg when execution problems relating to their field of competence are being debated in the Committee of Ministers and, and where appropriate also the presence of responsible ministers, especially important in face of major problems to reassure the Committee of the political will to overcome them.~~

1. Member States are encouraged, in order to facilitate the participation of relevant authorities, to ensure that action plans developed are published also in the national language **as appropriate** in an easily accessible manner and disseminated to relevant governmental authorities, to competent parliamentary bodies and~~, as appropriate,~~ other interested bodies and organisations, ~~for example~~ **including** NHRIs, notably ombudsman institutions ~~and~~ **as well as** the professional organisations of lawyers.

Opt 2**:** ~~Member States are encouraged, in order to facilitate the participation of relevant authorities, to ensure that action plans developed are published also in the national language in an easily accessible manner and disseminated to relevant governmental authorities, to competent parliamentary bodies and as appropriate, other interested bodies and organisations, for example NHRIs, notably ombudsman institutions and the professional organisations of lawyers.~~

**Guideline 20 - Strengthen Parliamentary support**

1. Opt 1. Member States should encourage the further development of parliamentary mechanisms and procedures for effective oversight of the implementation of the Court’s judgments, ~~notably~~ **for instance** on the basis of the regular circulation of action plans and reports and parliamentary debates on outstanding issues ~~as appropriate with presentations by responsible ministries/ministers, and possibly supplemented with a general obligation on the Government to present at least once a year an overview of the execution situation for parliamentary scrutiny~~.

Opt 2. Member States should encourage the further development of parliamentary mechanisms and procedures for ~~effective oversight of the implementation of the Court’s judgments~~ ***ensuring human rights and freedoms provided for by the Convention and compliance with their international obligations***, notably on the basis of the ~~regular circulation of action plans and reports and~~ parliamentary debates on outstanding issues, as appropriate with presentations by responsible ministries/ministers, and possibly supplemented with a general obligation on the Government to present at least once a year an overview of the execution situation for parliamentary scrutiny

1. Responsible Parliamentary Committees ~~should be~~ ***are recommended to*** ensure~~d~~ assistance of ~~independent advisers~~ ***experts*** well trained in the Convention system.

**Guideline 21 - Better involvement of all Member States**

1. Member States should ***consider the possibility to /*** **where possible** encourage their national authorities and stakeholders to take cognizance of relevant ongoing execution processes against other States and of the experiences of the Committee of Ministers supervision process in order to foster a better understanding of the collective nature of the Convention system as well as a climate of openness, dialogue and mutual support and experience sharing, ~~prone to~~ **which** encourage**s** initiatives facilitating good and speedy execution.

**Guideline 22 - Effective interaction with Protocol No. 16**

1. Opt.1. Member States are encouraged to consider, when execution hinges on the interpretation of a Convention obligation flowing from a Court judgment, whether**, if applicable,** the seeking of an advisory opinion is required or whether the progress of acceptable reforms cannot be more speedily ensured within the framework of the Committee of Ministers’ supervision taking into account the expertise available in that process or, possibly, by a Committee of Ministers’ request to the Court for an interpretation of the judgment being executed under Article 46 § 3.

Opt 2. **~~Guideline 22 - Effective interaction with Protocol No. 16~~**

~~Member States are encouraged to consider, when execution hinges on the interpretation of a Convention obligation flowing from a Court judgment, whether the seeking of an advisory opinion is required or whether the progress of acceptable reforms cannot be more speedily ensured within the framework of the Committee of Ministers’ supervision taking into account the expertise available in that process or, possibly, by a Committee of Ministers’ request to the Court for an interpretation of the judgment being executed under Article 46 § 3.~~

1. Recommendation CM/Rec(2018)11 of the Committee of Ministers to member States on the need to strengthen the protection and promotion of civil society space in Europe; Recommendation CM/Rec(2019)6 of the Committee of Ministers to member States on the development of the Ombudsman institution; Recommendation CM/Rec(2021)1 of the Committee of Ministers to member States on the development and strengthening of effective, pluralist and independent national human rights institutions. [↑](#footnote-ref-1)
2. The most common violations presently burdening the Convention institutions are linked with:

- the right to life and the protection against torture and ill-treatment, notably in connection with prison conditions and relating most importantly by the police and other security forces, including ineffective criminal investigations into events and the absence of effective remedies;

- excessive length of judicial proceedings, lack of judicial independence, unfair proceedings and non-enforcement of judicial decisions;

- lack of respect for private life, notably in the handling of family matters, including the care of children, and in the context of the organization and implementation of secret surveillance measures;

- freedom of expression, religion, assembly and association.

- interferences with property rights;

- expulsion or extradition, including the quality of relevant procedures and the handling treatment of vulnerable persons, notably children. [↑](#footnote-ref-2)
3. The DH-SYSC-V will consider this paragraph at a further stage. [↑](#footnote-ref-3)
4. Examples include notably the French Speaking René Cassin competition, the Nordic Moot Court Competition and its sister involving all countries in the Western Balkans and Albania, the moot court in Russia conducted under the remit of the Moscow institute for international relations as well as moot courts in other countries. [↑](#footnote-ref-4)
5. Examples include release from unlawful detention, the resumption of criminal investigations with a view to rectify shortcomings established, or the annulment of extradition or expulsion orders adopted notwithstanding serious risks of violations of Articles 2 or 3 of the Convention in the receiving country. [↑](#footnote-ref-5)
6. Examples of frequent ad hoc measures include friendly settlements and unilateral declarations, including in face of big numbers of repetitive cases or otherwise clearly foreseeable cases, special structures to facilitate their rapid adoption. Other special measures to care for great numbers of victims may imply legislative changes, e.g. the adoption of amnesty legislation erasing consequences of unjust criminal convictions. [↑](#footnote-ref-6)
7. See footnote 3 mentioning today’s most common violations. [↑](#footnote-ref-7)
8. The wording of this paragraph will be further considered by DH-SYSC-V in a future meeting. [↑](#footnote-ref-8)