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**STEERING COMMITTEE FOR HUMAN RIGHTS  
(CDDH)**

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**Guide to good practice on the implementation of Recommendation (2008)2 of the  
Committee of Ministers on efficient domestic capacity for rapid execution of judgments  
of the European Court of Human Rights**

*(as adopted by the CDDH at its 87<sup>th</sup> meeting, 6-9 June 2017)*

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## I. INTRODUCTION

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1. The Brighton Conference encouraged “the State parties: i. to develop domestic capacities and mechanisms to ensure the rapid execution of the Court’s judgments, including through implementation of Recommendation 2008(2) of the Committee of Ministers, and to share good practices in this respect” (para. 29 a. ii.). The Brussels Conference called States Parties “to 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 coordinating the execution of judgments.” (Action Plan, part B., paragraph 2. c)).

2. According to the decision taken by the Committee of Ministers, at the Ministerial Session on 19 May 2015, following the Brussels Declaration, and in accordance with its terms of reference for the biennium 2016-2017, the Committee of experts on the system of the European Convention on Human Rights (DH-SYSC) was instructed, concerning Recommendation CM/Rec (2008)2 on efficient domestic capacity for rapid execution of judgments of the European Court of Human Rights, to take stock of its implementation and make an inventory of good practices relating to it and, if appropriate, provide for updating the recommendation in the light of practices developed by the States Parties (deadline: 30 June 2017).

3. Preparatory work has been entrusted to a Drafting Group, the DH-SYSC-REC, on the basis of the guidance decided by the DH-SYSC<sup>1</sup> and endorsed by the CDDH<sup>2</sup>. Following a first inventory of good practice, a first stocktaking of the implementation of Recommendation was elaborated, leading to two key findings.

4. The first key finding is that the momentum that has been developing since 2008 at national and European level has extensively modified the context in which the recommendation operates. This is largely due to the new working methods for the supervision of the execution of judgments and to the enshrining, in 2011, of action plans and reports as a main tool in the execution of judgments and supervision processes. Other factors, both upstream and downstream, have played a part: upstream, the growing use by the Court of the practice of pilot judgments and judgments with indications of relevance for the execution (under Article 46 of the Convention) together with a wide range of procedural tools in order to resolve a large number of cases resulting from systemic problems; downstream, the increasingly stronger support given to the question of the execution of judgments under the Interlaken process culminating in the action advocated by the Brussels Declaration of 27 March 2015. The CDDH also contributed to this with its report on the longer-term future of the system of the European Convention on Human Rights. Follow-up to these two texts will further add to this momentum.

5. The second finding, as it results from all the sources analysed, is that a very large number of measures and action taken by member States in this area since 2008 must considerably enrich the message conveyed, in the form of good practices to be

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<sup>1</sup> Document DH-SYSC(2016)R1.

<sup>2</sup> Document CDDH(2016)R85.

encouraged. A genuine implementation methodology developed at national level for the implementation of the recommendation, arising, in particular, from the obligation to draw up action plans and reports.

- The *methodological tools* cover all aspects of the execution process, from the identification of the measures required to execute the judgment, the drawing up of action plans/reports and their up-date, in co-operation with the Department for the Execution of Judgments and the Committee of Ministers. In addition to these, preventive mechanisms to anticipate the adoption of required measures before the finding of a violation by the Court have been put in place.
- The methodology encompasses action taken for the adoption of individual and general measures or to address structural problems and/or complex problems, not explicitly referred to in the recommendation.
- Furthermore, the *methodology encompasses the development of dynamic synergies*. This is done through the establishment of inter-institutional bodies with a very varied composition that have at their disposal a wide range of tools and measures to accelerate the execution of a specific judgment or to raise awareness amongst multiple actors on the process of execution of judgments. Synergies within the executive vary in terms of the complexity of the judgment to be executed, through innovative ways such as the convening of formal and informal meetings, the creation of working groups to address specific judgments, in addition to the establishment of contact persons envisaged in the recommendation and encouraged by the Brussels Declaration. The methods put in place went far beyond the initial wording of the recommendation, enlarging its scope with the development of synergies with the judiciary and civil society. Synergies with parliaments, addressed in general terms in the recommendation, are taking place regularly and in various ways. The presence of parliamentarians in inter-institutional working groups is one of the many elaborated synergies to this effect.

This methodology was to a large extent the result of the work, creative action and initiatives of the national co-ordinators, the majority of whom are Government Agents.

6. Data presented in the 10<sup>th</sup> annual Report of the Committee of Ministers on the supervision of the execution of judgments and decisions of the Court (2016) show the important progress made, both in terms of statistics and concrete results achieved. The reforms that have been implemented in member States concern all the rights and liberties protected by the Convention. There is a considerable focus on questions linked to the rule of law: the efficiency of the police and other security forces and the control of their actions; and the fairness and efficiency of judicial proceedings. In recent years, other areas subject to significant reforms have notably included preventing ill-treatment of persons deprived of their liberty; the fight against prison overcrowding, detainees' access to health care and protection against different forms of discrimination. Numerous other reforms also demonstrate the relevance of the Convention for many questions related to "good governance" in the member States. At a more general level, the years since 2010 have seen a considerable improvement of the effectiveness of domestic remedies. They have also seen a reinforcement of the structures set up to coordinate national action, as

well as an increased interest on the part of national parliaments, a considerable number of which have also developed specific structures to follow the execution process, notably through annual reports from the governments. The interest on the part of civil society for execution has also developed, including helpful contributions in many cases, and increasing activity at national level.<sup>3</sup>

7. Challenges relating to certain aspects that the implementation of good practices presented in this Guide would contribute to overcome however remain:

- To reinforce the support and authority of the co-ordinator and of his/her actions and ensure their follow up;
- To develop new coordinated strategies of action at high level and to enhance more generally the synergies between all those involved;
- To overcome the difficulties in interpreting certain judgments for the purposes of identifying the measures required, or possible practical obstacles regarding the payment of just satisfaction;
- To alleviate the reticence on the part of the judiciary;
- To further increase interest of parliamentarians;
- To increase the visibility of the work of the Committee of Ministers, notably through the translation and the dissemination of relevant decisions. The work on the possible “upgrading” of the memorandum on “monitoring of the payment of sums awarded by way of just satisfaction: an overview of the Committee of Ministers’ present practice” (document CM/Inf/DH(2008)7 final, 15 January 2009) called for by the CDDH and approved by the decision of the Committee of Ministers of 30 March 2016 as well as the possible finalisation of the vademecum on the execution process, referred to in paragraph 8 of the recommendation, could help address some of the challenges and/or difficulties encountered. At the Strasbourg Round Table, focus was given to the importance of providing regular training to all those involved in the drafting of these action plans and reports, on the Court’s case law and the requirements of execution.

8. Lastly, the need for an appropriate political lever underpinning technical solutions has been emphasised at various conferences and was one of the central points in the concluding observations of the Director General Human Rights and Rule of Law of the Council of Europe at the Saint Petersburg international conference (22-23 October 2015), and also underlined by the CDDH in its report on the longer-term future of the Convention system. The CDDH highlighted that “in instances where the current system has proved insufficient it appears more sensible to look for solutions/tools appropriate to these exceptional situations. What is required is to consider ways and means of supplementing the technical support with a suitable political lever for meeting the challenges of the process”.<sup>4</sup> The overviews of some reforms that have been implemented since the beginning of the Interlaken process in 2010, presented in the 10<sup>th</sup> annual report of the Committee of Ministers on the execution of the judgments and decisions of the

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<sup>3</sup> See the 10th Annual Report of the Committee of Ministers on the supervision of the execution of judgments and decisions of the Court (2016), pages 11-12.

<sup>4</sup> Document CDDH(2015)R84, Addendum I, para. 155.

Court, illustrate the extent to which political will is essential to ensure the execution of “difficult” cases.<sup>5</sup>

9. In light of the stocktaking elaborated on the basis of the good practice identified, the DH-SYSC decided, at its 2<sup>nd</sup> meeting (8-10 November 2016), that the finalising of the compilation of good practice, in the form of a guide, which will be presented to the Committee of Ministers for adoption, must be given priority. This will constitute an important source of inspiration and a particularly useful methodological tool for the implementation of the recommendation by the co-ordinator at the national level and would be consistent with the call issued in the Brussels Declaration. The Committee decided that the recommendation’s update is henceforth unnecessary. Similarly to the guide to good practice in respect of domestic remedies, a guide on efficient domestic capacity for the rapid execution of the judgments of the Court could gather in one place good practices and also include an analytical part, not prescriptive, introducing these examples and explaining the developments since the elaboration of the recommendation Rec(2008)2 as well as an enriched stocktaking on its implementation. At its 86<sup>th</sup> meeting (6-8 December 2016), the CDDH endorsed the guidance given by the DH-SYSC.

10. The present Guide was elaborated in light of this guidance, following the decisions of the CDDH<sup>6</sup> and the DH-SYSC<sup>7</sup>, as well as on the basis of the sources presented in Appendix. The good practices are presented with reference to Recommendation (2008)2, although they do not follow the structure of that recommendation paragraph by paragraph. It was decided to present the good practices in a detailed manner in order to provide useful guidance to the work of national co-ordinators. In the interests of consistency, these good practices are examined in accordance with a *thematic plan*, based on the six guiding themes of the recommendation, which are:

- the status and resources of co-ordinator;
- the role of the co-ordinator in identifying execution measures and drawing up action plans and reports;
- national synergies for the purposes of drawing up and implementing action plans and reports (with the executive, legislative, judiciary, national human rights structures and NGOs; the last three stakeholders are not explicitly referred to in the recommendation but are mentioned in various contributions and activities);
- ensuring the visibility of and promoting sufficient acquaintance with the execution process;
- co-operation with the Committee of Ministers and the Department for the Execution of Judgments of the Court;
- means to prevent or resolve instances of a significant persistent problem in the execution process.

The relevant paragraph or paragraphs of the Recommendation are presented for each theme.

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<sup>5</sup> See the 10th Annual Report of the Committee of Ministers, page 11.

<sup>6</sup> Document CDDH(2016)R86, para. 10-11.

<sup>7</sup> Document DH-SYSC-REC(2016)R2, para. 19-21.

11. Good practices have been identified on the basis of objective and/or measurable criteria, defined by the DH-SYSC and the CDDH, to enable the determination of what constitutes a “good practice” with a view to achieving the full, effective and prompt execution of judgments of the Court. This was determined as a measure or an action, which addresses one or more of the following non-exhaustive criteria:

- endorsed by the European Court of Human Rights and/or the Committee of Ministers;
- responds to the objectives regarding the execution of judgments as defined by the High-Level Declarations of Brighton (item F.§29a) and Brussels (item B.2); in particular:
  - strengthens the authority of the actors in charge of the execution;
  - enables the enhanced involvement of all relevant actors in the execution process at national level;
  - ensures the visibility of and promoting sufficient acquaintance with the execution process;
  - promotes the co-operation with the Committee of Ministers and the Department for the Execution of Judgments of the European Court of Human Rights;
  - helps to overcome a difficulty in the execution process at national level.<sup>8</sup>

12. Due to the diversity of legal, constitutional and political systems, what is considered as a good practice in a specific State may not be applicable to another State. The examples presented therefore do not intend to be prescriptive. Good practices differ depending on the nature of a judgment and it was essential to demonstrate the different existing tools enhancing the domestic capacity for the execution of judgments and consequently the execution process as a whole.

13. As the Guide is intended to inspire, enrich and reinforce the national coordinator’s action, it is crucial that his/her authority and action be recognized and supported. The present Guide should be accompanied by this message from the Committee of Ministers to States Parties.

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<sup>8</sup> See the meeting report of the DH-SYSC-REC (doc. DH-SYSC-REC (2016)R1, § 3).

## II. THE CO-ORDINATOR: STATUS AND RESOURCES

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### Recommendation Rec(2008)2

1. *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.*

14. In its conclusions, the Round Table on efficient domestic capacity for rapid execution of the European Court’s judgments (Tirana, Albania, 15-16 December 2011) noted that “the necessity of a co-ordinator had been accepted in all contracting states and that the work of the co-ordinators, most frequently the Government Agents or their offices, had considerably developed since the adoption of Recommendation (2008)2”. In its report on the measures taken to implement relevant parts of the Interlaken and Izmir Declarations, the CDDH indicated that “it is clear that CM/Rec(2008)2 has proved a source of valuable guidance to many States in enhancing their capacity to execute Court judgments rapidly and effectively, in particular the designation of co-ordinators of execution of Court judgments” by referring to the Tirana Round Table.<sup>9</sup>

### A. Status of the co-ordinator

15. **All member States have a mechanism for the execution of judgments of the Court. The Government Agent is designated as co-ordinator of the execution of the Court’s judgments in the vast majority of member states**<sup>10</sup>. The key role of the Government Agent was underlined on the occasion of the Saint Petersburg International Conference on effective implementation of the European Convention on Human Rights (22-23 October 2015).<sup>11</sup>

16. In most member States, the Government Agent works under the auspices of a particular ministry (Ministry of Justice<sup>12</sup> or Ministry of Foreign Affairs<sup>13</sup>). In some Member States, the Government Agent has a separate office<sup>14</sup> that can be situated under the auspices of the Prime Minister or the Presidential Administration. There exist some other models. Each has drawbacks and advantages depending on the legal and political

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<sup>9</sup> The Brighton Conference then encouraged “the State parties: i. to develop domestic capacities and mechanisms to ensure the rapid execution of the Court’s judgments, including through implementation of Recommendation 2008(2) of the Committee of Ministers, and to share good practices in this respect” (para. 29 a. ii.).

<sup>10</sup> For instance in Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Greece, Latvia, Luxembourg, Malta, Montenegro, the Netherlands, Portugal, Poland, Romania, Russian Federation, Serbia, Slovak Republic, Spain, Sweden, Turkey, Ukraine.

<sup>11</sup> See the final observations of the Director General, Directorate General Human Rights and Rule of Law of the Council of Europe and the contribution of E. Lambert Abdelgawad, “Domestic structures and the implementation of general measures: a synthesis of 38 national systems”.

<sup>12</sup> For instance in Armenia, Belgium, Bulgaria, the Czech Republic, Georgia, Luxembourg, Portugal, Russian Federation, Slovak Republic, Spain.

<sup>13</sup> For instance in Denmark, Estonia, France, Finland, Latvia, the Netherlands, Poland and United Kingdom.

<sup>14</sup> For instance, in Croatia, Cyprus, Greece, Malta, Serbia or Spain.



structure of each State.<sup>15</sup> In the *Republic of Moldova*, for example, there is a sort of mixed status, the Government Agent working at the Ministry of Justice, would be subordinated both to the Prime Minister and the Ministry of Justice. In *Luxembourg*, the follow-up is provided by the Government Agent within the Permanent Representation at the Council of Europe, with the latter's assistance. A contact person is permanently designated within the Ministry of Justice in order to ensure the coordination and follow-up of the execution. In *Liechtenstein*, the execution of judgments is determined by the distribution of Government business, called the "portfolio schedule". Alongside the collegial Government, the Ministers act autonomously within their respective ministries to the extent business has been assigned to them for independent execution. Execution may be carried out directly by the competent ministry, if no further measures are necessary that require consultation of a different ministry. In *Norway*, the Department of Legislation of the Ministry of Justice and Public Security has the role of co-ordinator of the execution of the judgment of the Court, whereas the role of Government Agent lies with the General Attorney of Civil Affairs.

*A clearly defined role for the co-ordinator*

17. At the Tirana Round Table, it was concluded that it should be ensured that "the role of the co-ordinator is clearly defined, if appropriate, in legislative or regulatory acts, or through established working methods".

18. Some States Parties consider that a legislative basis is important for the authority of the co-ordinator, according to the CDDH conclusion in its report on measures taken to implement relevant parts of the Interlaken and Izmir Declarations, that "an explicit legal basis for the existence and role of the co-ordinator may usefully reinforce clarity, visibility and legal certainty". Others consider, however, that too much formalism could be counter beneficial and that specific regulations do not necessarily improve the implementation of judgments.

19. The function of the co-ordinator may be regulated either by a legislative basis or by an act of the executive. In the *Czech Republic*, the authority and competences of the Government Agent are set out in Law no. 186/2011, of 8 June 2011, on Providing Cooperation for the Purposes of Proceedings before Certain International Courts and Other International Supervisory Bodies, read together with the Government Agent's Statute annexed to Government Resolution No. 1024/2009 of 17 August 2009. In *Greece*, the role of co-ordinator is given to the State's Legal Council, a quasi-judicial authority which has its independence guaranteed by the Constitution (article 100 A), and its organization and competences are provided in detail in law 3086/2002 and presidential decree 282/2003. In *Spain*, the Government agent, working within the Office of the State General Attorney, coordinates the execution according to law 52/1997, of 27<sup>th</sup> November 1997, further developed in detail by Royal Decree. In the *Russian Federation*, the activities of the Representative of the Russian Federation at the European Court of Human Rights and his Office are also explicitly regulated by the legislation.

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<sup>15</sup> See the contribution of E. Lambert Abdelgawad, "Domestic structures and the implementation of general measures: a synthesis of 38 national systems".

20. The function of the co-ordinator is regulated by an act of the executive in several States Parties. In *Bosnia and Herzegovina*, the decision of the Council of Ministers on the Agent of the Council of Ministers before the European Court of Human Rights and the Office of the Agent (“Official Gazette of BoiH” no. 41/03, 65/05) provides for a responsibility of the Agent to take care of the execution of judgments of the Court. In *Finland* according to Section 13 of the Government Rule of Procedure (262/2003), the competence of the Ministry for Foreign Affairs, and therein the Unit for Human Rights Courts and Conventions, covers matters concerning judicial and investigative bodies. According to Section 93 of the Rules of Procedure of the Ministry for Foreign Affairs (550/2008), the Director of the Unit for Human Rights Courts and Conventions at the Legal Service of the Ministry for Foreign Affairs acts as Government Agent before the Court. In *France*, the co-ordinator’s role is detailed by a 23 April 2010 circular of the Prime Minister and provides for instruments at the co-ordinator’s disposal.

21. In *Latvia*, the Government Agent is the co-ordinator according to the Cabinet Regulations on representation of Latvia before international human rights organisations. Being the second ranking legal instrument, after the law, the Cabinet Regulations provides sufficient authority in the interaction with various national institutions. In *Poland*, the respective tasks and obligations in the execution process, incumbent on the Government Agent, the ministers competent with respect to the substance of the violation found by the Court and members of the interministerial Committee appointed by them were specified in 2015 by an amendment to the Order of the Prime Minister of 19 July 2007 establishing the Committee for Matters of the European Court of Human Rights (hereinafter: the Order of the Prime Minister). In accordance with the Order of the Prime Minister, as amended, the Government Agent, Chairman of the interministerial Committee, has the task of supporting and coordinating the implementation of the Committee’s task of monitoring the execution of judgments and decisions by the competent ministers. In the *Slovak Republic*, the Agent of the Government of the Slovak Republic is responsible for the proper execution of the judgments and decisions under the Statute of the Agent of the Government of the Slovak Republic before the ECHR, approved by the Decree of Government of the Slovak Republic No. 543 of 13 July 2005.

22. On the other hand, the function of the co-ordinator may not be regulated. In *Denmark* and *Norway*, the mechanism is not based on a written procedure, but the result of working arrangements between the authorities that developed over time. In *Estonia*, there is no special legislation fixing the status of the Government Agent; nevertheless, the rights and obligations have taken shape in practice. The same applies in *Belgium*. In the same vein, in the *United Kingdom*, there is no law or specific ministerial instruction setting out the implementation process within government. This system of light-touch coordination, alongside Ministerial decision making on legislative change has proved an efficient way of making the implementation of judgments progress in a timely manner.

## **B. Authority and resources of the co-ordinator**

23. The importance for the co-ordinator to have appropriate human and financial means and sufficient authority at his/her disposal in order to achieve his/her missions in view of a rapid execution of the Court's judgments has been noted during the Roundtable of Tirana (2011), underlining that "clear and express support from the highest state organs, including at the political level, was frequently of great importance for successful cooperation with other authorities involved in the execution process" and suggesting to provide "adequate support to the co-ordinator to establish contacts, in particular at high level, with all relevant domestic authorities, including with the judiciary". The need to allocate sufficient resources (in the broad sense) at the national level, deployed at an appropriate level of authority was reiterated at the Strasbourg Round Table (2014). The Brussels Conference since called upon States Parties "to 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 coordinating the execution of judgments." The CDDH report on the longer-term future of the system of the European Convention on Human Rights also underlined the importance of an enhanced authority of all stakeholders in charge of the execution process at national level.

24. In the framework of the work on the preparation of this Guide, it has been emphasized on several occasions that effort must be made to reinforce the co-ordinator's authority and visibility and to support their action. Two factors, amongst others, have been more particularly put forward. As mentioned above, for some States, the existence of a legal basis for the setting up of the co-ordinator can give the latter extensive powers enabling him/her to benefit from all the tools necessary for the execution of judgments. In the *Russian Federation*, the Representative of the Russian Federation at the European Court of Human Rights, the Deputy Minister of Justice, ensures cooperation between the state and municipal authorities in the course of execution of the judgments of the Court and decisions of the Committee of Ministers. In order to be able to implement these functions, the Representative has been vested with a range of competences, including the following: to reclaim from the heads of the state and municipal authorities the necessary information that the relevant authorities are obliged to provide within the terms prescribed; to create, if necessary, working groups consisting of the representatives of the relevant authorities, as well as to initiate and ensure the process of drawing up draft laws and other regulations etc. Some States indicated that the existence of specific services dedicated to the execution of judgments also reinforces the co-ordinator's authority.

25. Action undertaken by the co-ordinator with the relevant national authorities and the positive results obtained can reinforce his/her authority. In *Latvia*, the close interaction between the Government Agent and the Cabinet of Ministers due to the reporting procedure adopted has enhanced the visibility of the Government Agent vis-à-vis the highest levels of the legislative, executive and the judiciary and contributed to constructive cooperation between the Office of the Government Agent and relevant national institutions. As a result of the high visibility and authority of the Government

Agent, the opinion and expertise on the subject matter is almost always requested during the course of debates in Parliament.

26. Finally, the Committee of Ministers' practice to insert messages in its decisions and interim resolutions supporting the co-ordinator's actions contributes to reinforce his/her authority.

**C. Contact persons identified within national authorities involved in the execution of judgments**

27. The importance of the establishment of contact persons, wherever appropriate, was put forward these last years. In its report on the measures taken to implement relevant parts of the Interlaken and Izmir Declarations, the CDDH indicated that "the formal appointment of contact persons in other ministries and public authorities with whom the co-ordinator will liaise may also facilitate the process". The Brussels Declaration called upon the States Parties to establish "contact points", wherever appropriate, for human rights matters within the relevant executive, judicial and legislative authorities, and create networks between them through meetings, information exchange, hearings or the transmission of annual or thematic reports or newsletters (B.2.i)). Similarly, in its report on the longer-term future of the system of the European Convention on Human Rights, the CDDH concluded that the establishment, wherever appropriate, of contact points specialised on human rights matters within the relevant executive, judicial and legislative authorities should be encouraged, especially when no mainstreaming model exists within the relevant governmental bodies. These contact points could be called upon to advise on Convention matters.

- i. In *Austria*, the human rights co-ordinators in each of the federal ministries and each office of the provincial governments were being established in 1998 on the basis of a decision of the Federal Government, the governments in the *Länder* did likewise. The human rights co-ordinators meet at least twice a year to exchange relevant information on human right issues. The Deputy Government Agent in the Federal Chancellery being one of the human rights co-ordinators coordinates these meetings, intended to assess, where necessary, implementation measures adopted following a judgment of the Court.
- ii. In *Finland*, the Network of Contact Persons for Fundamental and Human Rights with representatives from all ministries provides also a forum for discussions concerning the execution of the judgments of the Court. The first Network was appointed in 2012 to monitor the implementation of the first National Action Plan on Human Rights Plan. A new Network was appointed in 2015 to draft a new Action Plan and to, *inter alia*, strengthen coordination and dialogue as regards human rights, monitor the situation in Finland based on information produced by international monitoring bodies and monitor the implementation of human rights obligations and commitments. The Network provides for more systematic monitoring of the fundamental and human rights situation and expedites information flows within the ministries.

- iii. In *France*, two agents of the Human Rights Sub-committee are specifically, but not exclusively, tasked with the follow-up of the Court's judgments and rely within each ministry or structure relevant to the execution of judgments on a department that is the unique interlocutor on all these questions. According to the French authorities, the existence of identified unique interlocutors allows to ensure a diligent execution of judgments.
  - iv. In the *Netherlands* the Office of the Government Agent is part of the International Law Division of the Ministry of Foreign Affairs and has close contacts with all relevant ministers, in particular with the Legislation and Legal Affairs Department of the Ministry of Security and Justice.
  - v. In *Poland*, the Deputy Government Agent specifically responsible for the coordination of the execution of judgments has been appointed and is in charge of *inter alia* direct and working contacts with persons responsible for the execution in all other ministries and relevant institutions (such as Prison Service, Police or the National Prosecution Office). All ministers and many other institutions involved in the execution process have appointed such persons. Usually these persons are at the same time members of, or contact persons to, the interministerial Committee for Matters of the European Court of Human Rights. The Order of the Prime Minister explicitly states that members of the interministerial Committee are responsible for the submission of all information and documents required from their ministers in the execution process, such as: translation of a judgment into Polish, information on dissemination of a judgment or decision, draft and final action plans, updated information on the state of implementation of an action plan, information required in view of the comments and decisions of the Committee of Ministers, and finally action reports.
  - vi. In the *Russian Federation*, the Office of the Government Agent is Division of the Ministry of Justice and has close contacts with all relevant ministers.
  - vii. In *Spain* the co-ordination is enhanced through the horizontal high level legal counseling network that the Office of the State Attorney holds at all Ministries, together with the close contact of the Agent with the Permanent Representation in Strasbourg.
28. With regard to the need to establish inter-institutional bodies on a permanent or ad hoc basis, see Part IV of this Guide.

### III. THE ROLE OF THE CO-ORDINATOR IN IDENTIFYING EXECUTION MEASURES AND DRAWING UP ACTION PLANS AND REPORTS

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#### Recommendation Rec(2008)2

4. *identify as early as possible the measures which may be required in order to ensure rapid execution;*
6. *rapidly prepare, where appropriate, action plans on the measures envisaged to execute judgments, if possible including an indicative timetable;*
1. *[...] This co-ordinator should have the necessary powers and authority to:*
  - *acquire relevant information*
  - *[...]*
  - *if need be, take or initiate relevant measures to accelerate the execution process*

29. The Coordinator or the Government Agent undertakes procedures for the rapid and full execution of the judgments. Further to the role of advisor in relation to the interpretation of the judgments and the related obligations for the State, his/her actions may include the consultation of State or external actors, the convening of working groups or the involvement of high authorities. The different mechanisms developed are explained in chapters IV, V and VII.

30. For the mechanism whereby the execution of the Court's judgments is monitored to be effective, it is important that the respondent State indicates, as soon as possible after a judgment becomes final, as to what it believes must be done for the judgment to be executed. The reform of the working methods of the Committee of Ministers following the Interlaken Conference, which led to the twin-track supervision process, gives action plans and reports a crucial role in this process. In 2011, the submission of action plans and reports became mandatory (see the decisions of the Ministers' Deputies of 2 December 2010). With the view to the elaboration of action plans and reports, the identification of the measures required to respond to the Court's judgments and the drafting of action plans are intrinsically linked. In the context of the work for the elaboration of this Guide, some States Parties noted that both actions are not dissociable. Other States Parties, noted that they constitute two distinct steps of the process. It was decided to examine separately specific actions taken vis-à-vis individual measures, from actions taken as general measures including in the context of structural problems.

#### **A. Identification of execution measures**

31. Subject to supervision by the Committee of Ministers, the respondent State remains free to choose the means by which it will discharge its legal obligation under Article 46 of the Convention in order to abide by the final judgments of the Court.

32. In many States, an extensive initial analysis of the judgment and its implications accompanies the transmission of the judgment. In *Croatia*, for instance, the analysis of the judgment highlights the main issues identified by the Court and all the national bodies, via their representatives in the Croatian Council of Experts (see below under Part IV) are required to consider the judgment from the standpoint of the competences of the body they represent and assess their responsibilities in the process of execution. This system facilitates the identification of national body responsible for the execution and allows the competent authority to make an assessment of the existing legislation and practice and to envisage the required execution measures. The dissemination of the judgment may also be accompanied by questions addressed to the authorities concerned. In *Latvia*, the Office of the Government Agent communicates a report, containing notably a legal analysis of the judgment, to all the relevant actors.

33. Concerning the identification of the execution measures, there exist two methods: either the Government Agent is the initiator of the identification or the initiative comes from the ministry or ministries concerned by the violation.

34. **In most cases, it is for the Government Agent to deal with the initial identification of the execution measures, in co-operation with the authorities concerned.** The Government Agent sends the proposals regarding the measures to be taken to the ministries concerned by the finding of a violation, which are responsible for implementing national measures to execute the judgment. These are usually the authorities which were involved in preparing the Government's observations in the proceedings before the Court. The persons who were responsible for the case before the Court from the outset are, in principle, best placed to identify the problems that led to the violations established and the most appropriate execution measures. Specific **deadlines** are fixed to receive timely replies from the executive bodies for the submission by the Government Agent of the action plans and/or action reports to the Department for the Execution of Judgments.

35. The identification of measures **by the ministers concerned by the violation allows for the involvement, at an early stage, of the actors concerned.** In *Poland*, the ministers competent in view of the substance of a judgment bear the primary and main responsibility for identifying the source of the violation found by the Court and the manner of solving the problem at stake. The process of identification of both individual and general measures is defined by the aforementioned Order of the Prime Minister which requires in particular that the competent ministers carry out a detailed analysis of the judgment once it becomes final, identify the necessary measures and submit to the Government Agent a draft action plan – no later than 2 months after the date when the judgment becomes final. The respective ministers are also responsible for carrying out any necessary consultations with the subordinate or supervised institutions to identify the measures required from those institutions (*e.g.* the Minister of Justice cooperates to this end with the Prison Service, the Minister of Interior and the Administration – with the Police, etc.). The Government Agent is entitled to submit proposals or comments concerning the manner of execution. In *Belgium*, the procedure is to send rapidly a letter to the authorities concerned asking them to read the judgment and what represents, according to them, the dysfunction that has caused the violation and the measure that they

propose or, if it is a question of an isolated case, elements that prove this isolated aspect. Based on the contributions received by the authorities concerned, the Government Agent may draw these authorities' attention on the need to adopt other individual and/or general measures and make proposals.

36. Communication between the various authorities can be a **formal and framed process or can be done in an informal manner**. In many States, formal and informal contacts can precede each other or take place simultaneously based on the progress of the case and its necessities.

- i. In *Belgium*, the execution process usually starts by the sending of an official mail to the hierarchical and/or political authorities allowing to reach out to the highest level.
- ii. In the *Czech Republic*, the Government Agent's Statute specifies that the latter submits a report to the Minister of Justice and recommends to, and consults with, public authorities concerned what steps should be taken following the finding of a violation by the Court.
- iii. In *Latvia*, the Cabinet of Ministers is informed about all rulings of the Court establishing a violation of the provisions of the Convention. The Office of the Government Agent drafts a report which contains legal analysis of the Court's judgment, including the reasons for which the violation was found by the Court and identifies the possible individual and general measures to execute the judgment, as well as the scope of national authorities which should be responsible for execution. The report is then sent to all relevant actors (the procedure requires mandatory approval by the Ministry of Justice and Ministry of Finance) - in practice, such reports are often sent to the Ministry of the Interior, as well as the Supreme Court and the Prosecutor General Office – in several cases, such reports were also sent to Ministry of Health, Ministry of Welfare and national intelligence agencies. Upon receiving the comments and approval by the relevant actors, the report is transferred to the State Chancery, which includes it in the agenda of one of the upcoming Cabinet sessions. During the Cabinet session, the Government Agent presents the outline of the report, briefly introduces the findings of the Court and the measures identified for rapid execution. The presentation is followed by the debates upon which the formal Cabinet decision is adopted. The said decision usually contains provision on the budgetary allocation for the payment of the awarded just satisfaction, the request for translation and publication of the judgment, and if necessary, it also outlines the additional general measures.
- iv. In the *Slovak Republic*, depending on the nature of the violation of the Convention, the judgments are disseminated to domestic courts with the circular letter of the Minister of Justice of the Slovak Republic, as well as to Constitutional Court, different Ministries or Public Prosecution Service with a request to respect the case-law of the ECHR and eventually to submit the examples of the case-law showing that the violations highlighted by the Court do not occur again.



- v. In *Estonia*, after a first exchange of views/receiving the replies, further communication takes place via e-mails and other non-formal means. The draft action plan and action report are sent and approved via e-mails and if needed, additional information is acquired in the same manner. It was underlined that ability to find solutions and implement the judgments without extensive formalities and without too much bureaucracy may have advantages.
  - vi. In *Belgium*, in *Greece* and in *Spain*, in addition to formal contacts, the coordinator can always contact the relevant departments on an informal basis (e-mail, phone or meetings). The organisation of high level meetings or formal contacts may nonetheless still be undertaken if the executions process seems stalled.
  - vii. In *Norway*, the Attorney General of Civil Affairs, which is the Government's Agent before the Court, prepares written comments on the judgment within few days of the date of the judgment. The comments contain inter alia considerations concerning whether individual and general measures are necessary. These comments serve as advice for the ministry responsible for the subject-matter of the judgment, which has the main responsibility for executing the judgments, including considering the question of individual and general measures. Where necessary, the responsible ministry seeks advice from the Ministry of Justice and Public Security, the Ministry of Foreign Affairs and the Attorney General of Civil Affairs.
37. With regard to meetings of permanent inter-institutional bodies or *ad hoc* working groups, see Part IV of this Guide on synergies.
38. Some Member States (*the Czech Republic, Estonia*) have envisaged **measures to settle disputes over the identification of execution measures**. This practice is explored in detail under Part VII below as it constitutes also a means to prevent persistent execution problems.
39. As a pro-active approach taken by the authorities, it is worth mentioning a **mechanism of anticipation for the identification of measures** to address a situation at national level and to avoid findings of violations by the Court. In the *Czech Republic*, the Office of the Government Agent has been developing a new practice in cases with a high probability of a violation of the Convention. Before reaching a friendly settlement in such cases, the Office of the Government Agent identifies (in cooperation with the applicant's legal representative, if possible) general and individual measures that need to be taken in order to remedy the situation at the national level and prevent similar applications to the Court. The Office of the Government Agent then initiates consultations with relevant actors within various branches of the Government and the judiciary to decide upon such measures and to put them in place. When this process ends, the Office of the Government Agent then reaches a friendly settlement in the given case since there is no more need for the Court's judgment finding a violation as the situation has already been remedied at the national level. In other words, it is executed before the Court delivers the respective judgment. Such practice has proven useful even in cases in which the applicant does not

wish to reach a friendly settlement. Although the Court ultimately finds a violation in the given case, the judgment has, in fact, already been to a large extent executed or, at least, the execution process has already been initiated. Also in *Finland*, the analysis of the effect of a possible violation already begins once a case is communicated to the Government. Already at that point different considerations, concerning a friendly settlement (or if that fails, a unilateral declaration) or the necessity for the applicant to obtain a proper ruling in substance from the Court for reopening purposes, or perhaps for issues relating to general measures are already considered for the first time. And of course, should a friendly settlement (or a unilateral declaration) not be applicable, once the Court's judgment is rendered a more thorough analysis on the required individual and general measures such as possible legislative amendments is (again) undertaken by the ministry or ministries in question as guided by the Government Agent and in coordination with the Agent.

**B. Drawing up of action plans and reports (including their follow-up with a view to an update)**

40. In October 2014, a Round Table on “action plans and reports in the twin-track supervision procedure” was organised by the Council of Europe (the Department for the Execution of Judgments) in Strasbourg to take stock of the practices and developments as well as of the difficulties encountered in the drafting of action plans and reports. The following progress was noted since the entry into force of the new working methods:

- the Committee of Ministers was able to close many more cases than in the past;
- execution process is speedier for many of the new cases;
- the action plans and reports are a major contribution to the transparency and dynamism of the process of the execution of judgments
- the improvement of the proactivity, in a number of States, of the authorities in defining and putting into action the measures required by the Court's judgments and responding to the decisions taken by the Committee of Ministers.

41. The results of the 10<sup>th</sup> annual report of the Committee of Ministers on the supervision of the execution of the judgments and decisions of the Court (2016) confirm these trends, both in terms of statistics and concrete results achieved. Today, the execution of judgments is ensured in an efficient manner in the large majority of cases.

42. In 2015, the Brussels Conference called upon States Parties to “continue to increase their efforts to submit, within the stipulated deadlines, comprehensive action plans and reports, key tools in the dialogue between the Committee of Ministers and the States Parties, which can contribute also to enhanced dialogue with other stakeholders, such as the Court, national parliaments or National Human Rights Institutions”.

43. A Guide for the drafting of action plans and reports for the execution of judgments was elaborated by the Department for the Execution of Judgments. It clarifies the structure of action plans and reports and the type of information required, and

reiterates the time-limits for submitting these documents to the Committee of Ministers and updating them.

44. In the context of the afore-mentioned Strasbourg Round Table, attention was drawn to measures to ensure careful and efficient drafting of action plans/reports including the preparation of templates for the drafting of documents by the authority concerned, or the establishment of a specific body to draft such documents. Certain participants in the Round Table drew attention to the difficulties in providing a provisional timetable, particularly if legislative measures had to be taken. It was nevertheless pointed out that such timetables, even if they are purely indicative and susceptible to change, facilitate the execution process both at national and European level and ensure the necessary transparency in the activities undertaken by authorities and avoid a situation where the absence of information raises unnecessary questions. States may also be invited to send, within the time-limit laid down, an initial action plan giving details of the preliminary stages in the process (e.g. payment of just satisfaction, publication and communication of the judgment to the competent authorities and status of the process), as well as, where appropriate, by the reflections made on the other possible individual or general measures to be adopted, even before any real results or decisions. Emphasis was also placed on the importance of providing regular training to all those involved in the drafting of these action plans and reports.

45. It may also happen that the incumbent State has already solved or has started to solve the underlying systemic problem before the delivery of the judgment. In those cases, an action plan may not be necessary, but a straightforward action report. This is a more efficient and flexible way to tackle execution, depending on the type of execution the State is confronted to. In the context of the case *Agnelet v. France*,<sup>16</sup> for example, even before the Court's judgment was delivered, the authorities had adopted a new Law No. 2011-939 of 10 August 2011 introducing a new Article 365-1 in the Code of Criminal Procedure. The new Article ensures, inter alia, that reasons for the Assize Court's judgment are given.

46. In many States (*Belgium, Bulgaria, Croatia, Estonia, Finland, France, Greece, Latvia, Lithuania, Romania, Russian Federation, Slovak Republic, Spain, Sweden, Switzerland*), **the drawing up of action plans and reports lies with the Government Agent, on the basis of information provided by the relevant national bodies.** In some States, **this task lies with the ministry which is responsible for the subject-matter concerned by the judgment** (*Ireland, the Netherlands, Norway, Poland*). A draft action plan or report is submitted to the coordinating ministry (respectively the Department of Legislation of the Ministry of Justice and the Agent within the ministry of Foreign Affairs, before the action plan or report is finalized. The process is more and more detailed and may vary according to the type of organisation of the State.

47. In the *Czech Republic*, Act no. 186/2011 explicitly provides that upon request of the Ministry of Justice (i.e. the Office of the Government Agent) and within the set deadlines, the competent authorities shall inform the Ministry/the Office about measures taken or proposed with the aim to execute the judgment of the Court or about measures

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<sup>16</sup> Application No. 61198/08, Judgment final on 01/02/2013, CM/ResDH(2014)9.

they are about to take or propose, including the expected time frame for the adoption of such measures. The Office of the Government Agent is then responsible for the drafting of action plans and reports on the basis of the information received.

48. In *Poland*, the Order of the Prime Minister specifies the stages and deadlines for drafting of action plans and reports. The primary responsibility for drafting is on the competent ministers but in practice they are supported by the Government Agent. Within two months after a judgment has become final a competent minister should submit a draft action plan (alternatively a draft action report). The Government Agent (or other institutions as the case may be) may submit comments within one month to which a competent minister should submit a reply also within one month following the comment's reception. An agreed action plan should be submitted by a competent minister no later than 4 months after the date when the judgment at stake has become final. The Government Agent then submits it to the Committee of Ministers. In practice, the Government Agent provides assistance in drafting agreed action plans and reports. For instance, it may happen that the competent ministers provide the necessary analysis and information on actions planned, which the Government Agent reformulates into an action plan in line with the requirements of the Council of Europe. He/she may also propose other execution measures for consideration by the competent ministers. The Government Agent's exchanges with the Department for the Execution of Judgments and further discussions within the interministerial Committee provide for a basis for elaborating a revised version of an action plan if necessary. The Order of the Prime Minister provides that a competent minister should inform the Government Agent within one month about his/her position on the comments, decisions or resolutions of the Committee of Ministers.

49. In *France*, as the circular of 23 April 2010 states, the co-ordinator is responsible for drawing up the action plans and reports of the French government. The execution process is as follows. Once the judgment or the decision of the Court has been issued, the Government sends to the ministry/ministries or entities concerned a dispatch note informing it/them of the timetable according to which the Court's judgment must be executed. The co-ordinator should be informed five months maximum after the judgment has become final about the measures taken or planned by the contributing ministers to execute the judgment of the Court. These elements serve as a basis for the drafting of the action plan or report of the Government by the co-ordinator. Finally, the co-ordinator also updates the action plans by asking the ministries concerned for their input to responses to requests for additional information from the Department for the Execution of Judgments or by obtaining updated information on his/her own initiative.

50. In the *United Kingdom*, action plans and reports can go through several iterations to ensure that all the right information is included and all necessary steps have been taken e.g. on publication and dissemination. A core component of the cross-Government mechanism is a specifically-designed "implementation form", which is issued to lead Government departments to assist them in responding to adverse Court judgments. The form includes advice on the completion of the Action Plan for implementation which is required by the Committee of Ministers, and helps ensure that all the information needed is provided. Once a decision has been made on the action to be taken and the form completed, it is reviewed by the UK Delegation to the Council of Europe and the

Ministry of Justice to ensure it meets the Committee of Ministers' requirements ahead of onward communication to the Secretariat. The UK Delegation to the Council of Europe works with the Department for the Execution of Judgments and ensures an open and effective dialogue and route for transmission of information.

51. In *Bosnia and Herzegovina*, since there are two Entities with their own respective jurisdictions and a state level authority with its own jurisdiction, it is usual for both Entities to adopt their own action plans for the execution of the same judgment. Namely, since every Entity has its own legislation and jurisdiction, it is often necessary that both Entities adopt an action plan in order to remedy the violation found in the judgment under its jurisdiction. This is the situation where the violation found in the judgment exists in both Entities and it is necessary to amend the legislation or to change practices in both Entities, so that the violation found in the judgment is remedied on the whole territory of Bosnia and Herzegovina. When the violation found in the judgment exists only in one of the Entities, an action plan is produced by the relevant Entity. Also, if the violation found in the judgment is a result of the state level legislation or practice, the Council of Ministers of Bosnia and Herzegovina adopts an action plan.

#### *Concerning individual measures*

52. In the context of the work of the preparation of this Guide, it seemed important to underline certain actions of the co-ordinator in terms of the individual measures.

53. Individual measures concern the applicants. Their purpose is to ensure that the violation has ended and that the injured party is restored, as far as possible, to his or her situation prior to the violation of the Convention. The obligation to take individual measures and provide redress to the applicant has two aspects. The first is, for the State, to provide any just satisfaction - normally a sum of money - which the Court may have awarded the applicant under Article 41 of the Convention. The second aspect relates to the fact that the consequences of a violation for the applicants are not always adequately remedied by the mere award of a just satisfaction by the Court or the finding of a violation. Depending on the circumstances, the basic obligation of achieving, as far as possible, *restitutio in integrum* may thus require further actions, involving for example the reopening of unfair criminal proceedings, the destruction of information gathered in breach of the right to privacy, the withdrawal of a decision of a deportation order issued against an alien despite a real risk of torture or other forms of ill treatment in the country of destination.<sup>17</sup>

54. *Restitutio in integrum* may sometimes be particularly complex, notably when it depends also on independent circumstances like the collaboration of the authorities of another State or a third party. The obligation of the authorities of the State against which judgment has been given becomes henceforth an obligation of means in that it is required to take all possible and reasonable measures.

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<sup>17</sup> With regard to this definition, see the Guide for the drafting of action plans and reports for the execution of judgments of the Court, Series "Vade-mecum", n°1, page 6, as well as the 10<sup>th</sup> Annual Report of the Committee of Ministers 2016, p. 47.

55. The coordinator's action is essential for the adoption of individual measures. Cooperation with the representatives of the applicants can facilitate the resolution of such situations. In Greece, in several cases, the individual measures were adopted at the initiative of the Government Agent. It is the case of the cases of the Holy Monasteries (judgment of 9 December 1994) and the application of the Catholic Church of Chania (No. 25528/94, judgment of 9 December 1997). The draft laws for the restitution of the disputed lands to the applicant monasteries and the granting of legal personality to the Catholic Church, which were adopted as individual measures, were developed in collaboration with the Government Agent. By way of example, it may also be referred to the action undertaken by the coordinators in Belgium and Greece following the judgment of the Court in the *M.S.S.* case<sup>18</sup>. According to the judgment of the Court, it was incumbent on Greece to proceed without delay with an examination of the merits of the applicant's asylum request that meets the requirements of the Convention and, pending the outcome of that examination, to refrain from deporting the applicant. On 07/02/2011, the Greek authorities indicated that the Government Agent had contacted the relevant departments (departments in charge of immigration and of asylum) to inform them of the judgment and request implementation of the urgent individual measures. These departments have been asked to locate the applicant, to verify his current situation and in particular his conditions of stay. Accommodation was at his disposal. However, the Greek authorities indicated that according to information yet to be officially confirmed, the applicant has introduced an asylum request before the Belgian authorities, which was said to be under examination. The Belgian authorities confirmed that the applicant has lodged an asylum request in Belgium which was transmitted to the General Commissioner for Refugees and Stateless Persons on 21 March 2011. The applicant was granted refugee status on 9 May 2012<sup>19</sup>.

56. In the context of intergovernmental work for the elaboration of this Guide, focus was furthermore given to actions undertaken for the payment of just satisfaction and reopening of judicial proceedings following the finding of a violation by the Court.

#### *Just satisfaction*

57. The new procedure for supervision of the execution of judgments of the Court includes simplified registration of the payment of just satisfaction. It is sufficient to complete the special form for recording payment and return it to the Execution Department, which will register it and send an acknowledgement of receipt to the state concerned. If the applicant raises any objection, the problem will be discussed by the Execution Department with the delegation concerned on the basis of the supporting documents kept by the national authorities and in the light of any other relevant information, in order to find an appropriate solution.<sup>20</sup>

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<sup>18</sup> App. N° 30696/09, Grand Chamber, 21 January 2011.

<sup>19</sup> See [decision adopted](#) by the Committee of Ministers at its 1115 "Human Rights" meeting (7-9 June 2011); see Final Resolution CM/ResDH(2014)272: <http://hudoc.echr.coe.int/eng?i=001-149039>.

<sup>20</sup> See the Guide for the drafting of action plans and reports for the execution of the judgments of the Court, page 6.

58. The co-ordinator plays a key role for the payment of the just satisfaction. **Procedures can be put in place to ensure that just satisfaction is paid swiftly.** In the *Netherlands*, the Government Agent assures timely payment of just satisfaction by paying the ordered amount from the budget of the ministry of Foreign Affairs. After that the expenses are recovered from the relevant authority. In the *Slovak Republic, Spain and Switzerland*, the system is the same, but the payment lies within the budget of the Ministry of Justice. This construction serves to minimize the risk of delay in the payment of just satisfaction. In *Sweden*, the payment of just satisfaction following a judgment of the Court requires a government decision to that effect. The Government Agent makes the necessary arrangements for this and ensures that payment is made to the applicant or his or her counsel. In *Bulgaria*, the payment is authorised by the Council of Ministries in a well-established procedure so the Agent's Office ensures the rapid payment of the awarded just satisfaction.

59. **Difficulties** may however arise in the payment of just satisfaction. Firstly, the Government can encounter difficulties in obtaining supporting documents, required for the payment, from the applicants. These difficulties can be due to the impossibility of contacting the applicant or the applicant's specific administrative situation (for instance where the applicant has no identification documents and refuses to obtain them).

60. For cases where it is impossible to contact an applicant, some States (*Belgium, France, Greece, Latvia, Poland, Romania, Spain, Turkey, United Kingdom*) use a mechanism whereby the sums payable as just satisfaction can be deposited with the *Caisse des dépôts et consignations* or the State Treasury, specifying that the applicant is the beneficiary. In one case concerning *Latvia*, the applicant contacted the Office of the Government Agent and informed that he was living abroad and had no banking account. Being a structural unit within the Ministry of the Foreign Affairs, the Office of the Government Agent obtained the assistance of the Latvian embassy, which made the payment of just satisfaction award to the applicant in cash.

61. To deal with the specific administrative situations of some applicants, in France, ministries concerned have relaxed their requirements in terms of identity documents, allowing applicants without identity documents to submit a certificate of presence drawn up by the prison in which they were being detained.

62. The Government can also run into difficulties when ministries are unable to agree on the consequences to be inferred from the Court's judgment, including with regard to the authority responsible for the violation and hence liable to pay the just satisfaction. In *France*, the circular of 23 April 2010 makes provision for a dispute resolution mechanism if the Ministry of Foreign Affairs and International Development cannot agree upon a solution with regard to the designation of the responsible ministry and/or institution or the allocation of responsibility for paying just satisfaction between these entities. If the parties do not come to an agreement, the Ministry of Foreign Affairs and International Development:

- where the total amount of just satisfaction does not exceed EUR 10,000, submits a proposal regarding allocation which becomes final if no objections are sent to the General Secretariat of the Government within twenty days after it was communicated,

- for payments above this amount, refers the matter directly to the General Secretariat of the Government, which deals with requests for arbitration by the Prime Minister.

63. So far, referrals to the General Secretariat of the Government for arbitration have occurred only on an exceptional basis, and the co-ordinator has been able to find a compromise solution in most cases. Only in the event of a real deadlock is the matter referred to the General Secretariat of the Government. Nonetheless, this mechanism is a very effective tool for the co-ordinator in the most complex cases, whereby it can be ensured that disputes over the allocation of responsibility for paying just satisfaction between the various ministries concerned are settled in the light of the Court's judgment.

64. Other problems may also arise concerning the payment of just satisfaction, due to the applicant's pre-existing debts towards the State. Modifications have thus been made in Greece so that sums allocated by the Court are not susceptible to compensation with the debts of the applicant towards the State. Thanks to the Government Agent's action, it is henceforth provided (Law No. 4370/2016, art. 60 para 9A) that sums allocated by the Court for non-pecuniary damage and costs and expenses are not be susceptible to either seizure by the Court or compensation with the sums payable by the beneficiaries to the State despite the nature of the debt.

65. In its report on the longer term future of the system of the Convention, the CDDH noted that problems relating to the payment of just satisfaction ordered in the Court's judgment are rare, even if practical difficulties sometimes could occur. It therefore reiterated that it could be useful to consider updating or even upgrading the memorandum on "monitoring of the payment of sums awarded by way of just satisfaction: an overview of the Committee of Ministers' present practice" (document CM/Inf/DH(2008)7 final, 15 January 2009). At their 1252<sup>nd</sup> meeting (30 March 2016), the Ministers Deputies agreed to follow up the measures recommended by the CDDH.

#### *Reopening of proceedings*

66. States are free to choose the means by which to achieve such a result. One of those means is the reopening of proceedings or the re-examination of the situation of the applicant. It is however not the one and only means, there is indeed a plethora of examples in the Committee of Ministers' practice within the framework of its supervisory role of execution of the Court's judgments, whereby other solutions were found and enabled the placement of the applicant back, insofar as possible, in the situation he/she would have been in had the violation not happened. It is noteworthy to mention ad hoc solutions through the re-examination of administrative proceedings or through compensation for the loss of an opportunity – which the Court itself has often applied in its case-law by affording the applicant pecuniary compensation for the loss of an opportunity to avoid dealing with sensitive matters such as legal security or third parties' interests. Reopening is thus a significant means, but one among many others. However, it is true that the possibility to obtain a re-examination or a reopening at domestic level often facilitates the execution process and speeds up its conclusion. Since there is no uniform practice in the member States in relation to the possibility of reopening of proceedings in civil cases, the treatment of the measure of reopening of proceedings must



be differentiated in light of the subject matter of the case (civil, criminal or administrative).

67. The CDDH recalled, in its report on the longer-term future of the system of the European Convention on Human Rights, that in view of problems encountered in remedying the situations of applicants, the Committee of Ministers invited in Recommendation (2000)2 “the Contracting Parties to ensure that there exist at national level adequate possibilities to achieve, as far as possible, *restitutio in integrum*”.<sup>21</sup> The question of the reopening of proceedings was the subject of an exchange of views at the 8<sup>th</sup> meeting of the Committee of experts on the reform of the Court (DH-GDR)<sup>22</sup> where it was extensively discussed and of a Round Table organised by the Department for the Execution of Judgments.<sup>23</sup> During the exchange of views in the DH-GDR, it was noted that most High Contracting Parties already allowed for the reopening of criminal cases. While the relevance of the criteria adopted in Recommendation (2002)2 for assessing the necessity of reopening was noted, it was also stressed that reopening is only one of the means to secure to the applicant *restitutio in integrum*. Other solutions in criminal cases (e.g. amnesty) have also been introduced by States Parties. The CDDH welcomed the creation of a specialised webpage dedicated to the question of the reopening of proceedings following the exchange of views in the DH-GDR<sup>24</sup> as well as the further follow up work carried out<sup>25</sup> regarding the domestic practices and through which States Parties may draw inspiration, where possible, from the experience and solutions found in many States Parties.

### ***Concerning general measures***

68. General measures relate to the obligation to prevent violations similar to that or those found or putting an end to continuing violations. In certain circumstances they may also concern the setting up of remedies to deal with violations already committed. The methodology for the identification of general measures comprises three successive phases: identifying the origin and sources of the problem; identifying the measures to be taken in order to remedy it; and monitoring the implementation of these measures in order to ensure that they have the desired impact. The co-ordinator has a key role to play throughout this process.

69. Firstly, the precise sources of the problematic situations highlighted in the Court’s judgment must be identified. The authorities must identify, within the national system, the causes of the circumstances which have been criticised by the Court. To this

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<sup>21</sup> See explanatory memorandum to the Recommendation; para. 4.

<sup>22</sup> See doc. [DH-GDR \(2015\)R8](#), paras. 10-11.

<sup>23</sup> “[Reopening of proceedings following a judgment of the European Court of Human Rights](#)”, 5-6 October 2015 (Strasbourg); See in particular the [Conclusions](#) of the Round Table.

<sup>24</sup> Information concerning the implementation of the Convention and execution of the Court’s judgments: re-examination or reopening of cases following judgments of the Court <http://www.coe.int/t/dghl/standardsetting/cddh/reformechr/Reopening-en.asp>

<sup>25</sup> An overview, on the basis of the issues and challenges identified during the exchange of views as well as of the written contributions and the synthesis prepared by the Secretariat was published in January 2016. A Vademecum on the execution will be drafted as a follow-up to the Round Table organised by the Department for the Execution of Judgments.

end, the co-ordinator must consult relevant sources of information in order to determine the origins of the problem. This will make it possible to identify the scale of the problem and hence to determine whether it is of a substantive nature.

70. Once the sources of the problem have been identified, remedies must be decided upon. Depending on the States, the identification of general measures to be adopted may be done by the co-ordinator or the competent department. Reference is made here to point III A.

71. The procedures with a view to the preparation and adoption of general measures differ and also depend on the domestic systems and organisation of the State.

- i. In *Denmark*, if general measures are required in order to comply with a judgment, for example in cases where the underlying problem is the Danish legislation, the legislation in question will be reassessed by the responsible authority and – usually – in collaboration with the Ministry of Justice. If measures at legislative level turn out to be required, the responsible minister would prepare the necessary amendments and present the proposal to the Parliament whereafter it will be up to the Parliament to adopt the proposed amendment. Similarly in *Finland and in Greece*, should a judgment or a group of judgments require legislative amendments, the Government would prepare the necessary amendments and submit the related proposal to the Parliament. The substantive national work, such as possible legislative amendments, is pursued by relevant ministries responsible for the issue in question. In *Belgium*, the identification of general measures to be adopted is firstly made by the department responsible for the violation in consultation with the Office of the Government Agent. In the event that the proposed measures are insufficient, the Office of the Government Agent proposes measures that it would consider as satisfying the judgment's execution.
- ii. In the *United Kingdom*, if general measures are required, they will usually require the approval of Ministers in charge of the policy area (for example, to change either law or guidance). Possible concerns about the approach chosen can also be raised and resolved via correspondence and meetings between Ministers from the lead Department, the Minister of Justice and other Ministers concerned. Once a decision on how to implement a judgment has been reached, the constitutional principle of 'collective responsibility' that binds all UK Government Ministers and departments means that everyone involved is required to work towards implementation of that decision.

72. **The federal or decentralised nature of a State may have implications, on the one hand, on the identification of underlying problems and, on the other hand, on the scope of the general measures adopted.**

- iii. In *Austria*, the division of competences between *Bund* and *Länder* according to the Austrian Constitution has to be observed when

implementing judgment of the Court. In this case, the general measures required have to be taken by the competent authorities of all *Länder* or of the *Länder* concerned. There is no specific body having the competence to give a formal instruction in order to legally force the *Länder* to implement a judgment.

- iv. In *Germany*, no written procedure for the adoption of general measures exists. Once a judgment becomes final, the Agent's Office within the Federal Ministry of Justice will analyse the judgment and determine whether general measures are deemed to be necessary. If so, the Ministry of Justice will initiate the necessary steps – depending on the nature of the measures, which may necessitate federal legislation, *Länder* (state) legislation, practice directions or the mere dissemination of information to the judiciary, including the translation of Court judgments. Most general measures require a piece of federal legislation. In these instances the executive will be obliged to come up with a draft for the necessary legislative measures which will then be examined by the legislative bodies. The legislature will usually leave the first draft to the executive, but it also has the right of initiative. The Ministry of Justice will be the first to identify any need for legislation, but the official co-ordination of such measures will fall to whichever ministry is responsible for the respective field of legislation. Thus, the procedure does not differ from the general law-making procedure. It must be stressed that sometimes measures must also be taken by the legislature of the 16 *Länder* (States) as well as by the executive branch of both federal and *Länder* level. The latter is important as most federal laws are executed or applied by the administrative and judicial bodies of the *Länder*, who are responsible for the highest courts. This means that on the federal level a new statute on preventive detention may be passed while on the *Länder* level the more detailed regulation and the application of the law in practice take place. For instance, federal law provides now for compensation in cases of unreasonable length of proceedings but it is mostly for the *Länder* to pay compensation in these cases and to provide the means for swift proceedings by appointing a sufficient number of judges. Moreover, each of the *Länder* legislature have to provide for the *Länder* constitutional courts separate remedies for unreasonable length of proceedings as the federal law does not apply to them. Given these complications deriving from the federal system, there is no single approach for the adoption of general measures. The necessary steps are decided on a case-by-case basis. While the Agent's Office represents Germany before the Council of Europe organs, it has no formal supervising status when working with the institutions in immediate charge of the implementation measures. However, the Agent's Office is well placed at the Ministry of Justice, the administrative body which is involved in almost all new laws and can make use of its advisory role to reach out even to the decision-making bodies of the *Länder*.

- v. In *Switzerland*, no particular authority is tasked to initiate or coordinate the adoption process of general measures following a judgment of the Court. At the international level, the Federal Council is the interlocutor of the court in the measure that it, through the means of its agent, defends Switzerland's position in front of the Court and is the body that is notified of its judgments, even though the violation stems from the cantonal legislation rather than the federal one. In conformity with Switzerland's federal structure, it is the cantons that are responsible for the application of federal and internal law in the first place as much as it applies cantonal law. The possibilities for the Federal Council to bear influence on a change of legislation and on cantonal practice are therefore restricted. The Federal Council is limited to transmitting the judgment to the relevant cantonal government without adding any directives or recommendations to it. It generally belongs to the relevant government (federal or cantonal) to launch an amendment process concerning the law incriminated. The initiative may also come from the parliament (federal or cantonal) on the basis of a parliamentary intervention expressly referring to the Court's judgment. The Unit of the Swiss Government Agent to the Court is at the disposal of the governmental or parliamentary administration that prepares the draft legislative amendment. This verifies itself particularly at the federal level.
- vi. In *Belgium*, the Office of the Government Agent, within the Federal Public Service of Justice, is the interlocutor of the Court and is tasked with the supervision of the execution of judgments at national level. The procedure and the dialogue between the Office of the Government Agent and the competent authority essentially for identifying and adopting general measures, is not different whether it is a question of competences of the Federal State of the federated entities. The federal nature of the State may however limit the scope of general measures to the territory of the federated entity specifically concerned by the judgment. The differentiated management of competences by the federated entities may not allow for the transposition of a finding of a violation of the Court from one federated entity to the other.

73. The preparation and adoption of general measures very often results from national synergies. Relevant practices in this regard are presented below under part C.

#### ***Concerning structural problems***

74. The Court may make specific application of Article 46 of the Convention by identifying a structural or systemic problem and indicating the type of general measures that it considers necessary to adopt. It is particularly the case for pilot judgments. By referring to Rule 61 of the Rules of the Court relating to the pilot-judgment procedure, a

problem may be qualified as structural or systemic when it has given rise or may give rise to similar applications.<sup>26</sup>

75. Structural problems highlighting a situation that does not comply with the Convention but may concern a large number of people may also be identified in an isolated judgment (see for example the *Vasilescu v. Belgium* judgment, relating to prison overcrowding and to detention conditions, paras 124-128). Lastly, without the Court making particular reference to Article 46, problems may arise in repetitive cases (see in particular, *Lankester v. Belgium*, paras 83, 93 and 94). Structural problems therefore result from the inability of the defendant State to prevent judgments finding the same situation from increasing.

76. General measures can be difficult to identify because the problem is complex, making it necessary to obtain a whole range of expert opinions through a network of contact persons. Efforts to find solutions and decide on the measures to be taken, which can be of any kind, are usually reliant upon synergies at the national level. Holding meetings, seminars or round-table discussions attended by experts or other States which have experienced the same problem can be especially helpful in this respect. Once the measures have been adopted, it is essential to put monitoring and supervision systems in place to ensure that the measures, as designed, will have the desired effect. It is during this latter stage that additional requirements or a need to strengthen or adapt a particular measure which has already been implemented very often arise.

It is often necessary to put in place an effective remedy, particularly in response to a pilot judgment of the Court (see in particular judgments *Torregiani v. Italy*; *Rumpf v. Germany* or *Djangozov, Finger, Kitov, Dimitrov and Hamanov v. Bulgaria*), which requires urgent action by the co-ordinator in order to comply with the deadline set by the Court.

77. The following examples should be noted as they show action conducted by the co-ordinator for the adoption of relevant general measures. Synergies within the executive are particularly relevant in this area.

- i. Following the pilot judgment in the *Maria Atanasiu and others v. Romania* case concerning the inefficiency of the mechanism set up to allow the restitution/refunding of nationalised properties during the communist regime, the prime minister has instituted in December 2010 an inter-ministerial Committee composed of representatives of the competent authorities in the field, which have established contact persons tasked to attend the meetings. The Government Agent has attended all of these meetings in order to present the Court's relevant jurisprudence and ensure

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<sup>26</sup> This issue was initially the subject of Resolution CM/Rec(2004)3 of the Committee of Ministers on judgments revealing an underlying systemic problem. It was then addressed by the CDDH on several occasions, notably in its report containing conclusions and possible proposals for action on ways to resolve the large numbers of applications arising from systemic issues identified by the Court (CDDH(2013)R78, Addendum III). The modalities of implementation of the twin track supervision system provide that judgments disclosing structural and/or complex problems as identified by the Court and/or the Committee of Ministers shall be examined under the enhanced supervision procedure (CM/Inf/DH(2010)37). It should be noted in this regard that a complex problem is not necessarily structural.

that legislative proposals are in conformity with this jurisprudence. In light of the difficulties encountered, the committee has only finalised the draft law in February 2013 before subjecting it to public debate in March 2013, in the framework of which several meetings with the representatives of owners associations as well as representatives from prefectural and local authorities targeted by the draft law. The observations and proposals formulated by participants in the public debate were analysed during the Committee's regular meetings for the law's elaboration. High representatives of the Government have also proceeded to in-depth consultations on the draft law together with the Department for the execution and the Registry of the Court. The importance of such consultations has been underlined during a meeting between the Prime Minister and the Secretary General of the Council of Europe in March 2013 in Bucharest. Following this meeting, the Government has integrated some amendments discussed with the Department of the Execution and the Registry of the Court within the draft law's content. The law was adopted by Parliament on 22 April 2013. Members of Parliament were familiarized with the issue of this pilot judgment, including through sessions organized by the Sub-commission for the supervision of the execution of judgment delivered by the Court (within the Chamber of Deputies), with the participation of representatives of the competent executive authorities. In June 2013, the Committee of Ministers has welcomed the adoption of the new law and has underlined the importance of a close and constant follow-up of its application at the national level, so that the competent authorities can intervene rapidly if necessary, including through legislative measures, in order to ensure the new mechanism's efficient functioning. In light of these recommendations, an inter-ministerial Committee for the follow-up and support of the new law's application has been set up by decision of the Prime Minister in November 2013. This Committee is composed of representatives of ministries, as well as central agencies and authorities that have responsibilities in the field of property restitution, the latter of which have formally designated contact persons tasked to attend this Committee's meetings. The follow-up Committee, in which the Government Agent participates, has worked on the evolutions as well as the problems encountered within the restitution process. It has identified solutions and presented them to the Government or the relevant authority. In December 2014, the Committee of Ministers has decided the closure of 85 cases of this group in which all individual measures were already taken. This decision has been made in light of the decision of the Court (*Preda and others judgment v. Romania*, dated 29 April 2014) and of the progress achieved in the implementation of the first steps intended by the new law.

- ii. Following the *Sacaleanu v. Romania* group of cases,<sup>27</sup> the Government had tasked an interdepartmental working group with identifying the legislative and/or administrative measures required to ensure prompt compliance by

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<sup>27</sup> Application No. 73970/01, judgment final on 06/12/2005.

the administration with final court decisions. In order to provide a comprehensive solution to this problem, the working group requested from all public bodies countrywide reports on the status of implementation of final court decisions rendered against them, together with indications on obstacles encountered in this process.

- iii. In the *Russian Federation*, in the furtherance of powers provided to the Representative of the Russian Federation at the Court and based on his proposals, working groups were created for the execution of the Court's judgments in cases which reveal complicated and/or structural problems. This approach of the competent state authorities towards the execution of the Court's judgments made it possible to close the examination in the *Timofeyev* group (235 cases), concerns the problem of non-enforcement of final domestic judgments (see Final Resolution CM/ResDH(2016)268), of the *Ryabykh* group of cases (113) concerning the violation of the principle of legal certainty on account of the quashing of final judicial decisions in the applicants' favour by way of the supervisory-review procedure in civil procedure ("nadzor") (see CM/ResDH(2017)83. In connection to the pilot judgments in the cases *Ananyev v. Russia*, *Burdov v. Russia (no. 2)*, *Gerasimov v. Russia*, the Russian Government has planned and taken specific legislative measures for creation and improvement of effective domestic remedies. Thus, on 8 March 2015 Federal Law no. 21-FZ Code of Administrative Procedure of the Russian Federation was adopted (hereinafter "the CAP RF") together with number of laws on introduction of amendments into certain legal acts in connection with its adoption (Federal Laws no. 22-FZ and 23-FZ of 8 March 2015, Federal Constitutional Law no. 1-FKZ of 8 March 2015). These laws envisage the creation of a highly improved preventive domestic remedy. The provisions of the CAP RF allow to appeal against the actions (omission) of state authorities, other state bodies, and bodies vested with the state powers as well as against their officials to the Court within the new procedures. With respect to the *Burdov* case (*no. 2*), the Federal Law no. 68-FZ "On compensation for the violation of right to the trial within a reasonable time or the right to judgment enforcement within a reasonable time" has been adopted. This legal remedy has been recognized as effective by the European Court and was positively evaluated by the Committee of Ministers (see CM/Res(2011)293 of 3 December 2011).
- iv. The largest cause for the violation of the Convention in *Luxembourg* was related to, until 2010, the excessive duration of legal procedures. The Court has then recognized the existence and the validity of an internal remedy (*Leandro da Silva v. Luxembourg* case of 11 February 2010). Measures have nonetheless been taken in order to provide an answer to the structural problem. Besides the increasing of staff, procedures have been reconsidered to bolster the efficiency in the treatment of cases. In order to evaluate the impact of measures taken, legal authorities have established a statistical data

system measuring judicial time elapsed at each level of the legal authorities. This system allows to improve the identification of the structural or punctual reasons causing procedural delays. Furthermore, the efforts in terms of individual follow-up by the General Prosecutor in order to ensure the rapid evacuation of cases by the jurisdictions should be underlined. These efforts include follow-up through the means of regular mail communication to the prosecution as well as monthly and yearly requests of jurisprudence to all jurisdictions.

- v. In *Serbia*, on the occasion of the preparation of action plans in complex cases, in particular in respect of pilot judgments, the key role is played by the ministry or state body responsible for acts having caused a violation of the Convention. For example, in respect of judgment *Alisic and Other Applicants* (“old” foreign currency savings), a multi-sector working group has been co-ordinated by the Ministry of Finance.
- vi. In *Turkey*, the Human Rights Compensation Commission was established within the Ministry of Justice is responsible for settling disputes by the payment of compensation upon finding of a violation following the examination of some of the applications made to the European Court before 23 September 2012.
- vii. In *Bulgaria*, the work on the so-called “prison reform” started even before the pilot judgment in the case of *Neshkov and Others v. Bulgaria*<sup>28</sup> concerning the conditions of detention was delivered. The origin of the problem was identified: refurbishments were initiated in a number of detention institutions and different options for introduction of effective remedies were discussed, including at a Round Table in December 2014. A working group was set up within the Ministry of Justice. It included representatives of the judiciary, the Prosecutor Office, NGOs, the Ministry of Justice, the Chief Directorate “Execution of Sentences”, the Ombudsman, etc. The purpose of the working group was to put together a draft law introducing new rules for initial allocation and transfer of prisoners, early conditional release, introduction of new remedies. The draft law was submitted to Parliament which adopted it in January 2017. Representatives of the Agent’s Office attended all meetings of the working group and were involved in the whole process of the execution of the pilot judgment.
- viii. In *Poland*, a large group of cases concerning inhuman and degrading treatment of applicants due to imprisonment in inadequate conditions, and particularly overcrowding, dating back to 2009, was found as successfully executed by the Committee of Ministers in 2016. Whilst the judgment in *Orchowski v. Poland* and *Sikorski v. Poland*<sup>29</sup> were issued in 2009, the

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<sup>28</sup> *Neshkov and Others v. Bulgaria*, applications nos. [36925/10](#), [21487/12](#), [72893/12](#), [73196/12](#), [77718/12](#) and [9717/13](#), judgment of 27 January 2015.

<sup>29</sup> *Orchowski v. Poland*, application no. 17885/04, judgment of 22 October 2009; *Norbert Sikorski v. Poland*, application no. 17599/05, judgment of 22 October 2009.



Polish authorities had started the actions aiming at overcome the problem of overcrowding in detention facilities and prisons already when the problem had been made visible by the applicants' complaints and also by the Court's communications of cases. Thanks to the personal involvement of the Government Agent, a vast range of measures was undertaken at a very early stage of the Court's proceedings. This is directly referred to in the *Orchowski v. Poland* judgment (§§ 89-91). During the almost last ten years Polish authorities undertook a wide range of general measures which succeeded in delivering by the Committee of Ministers a final resolution CM/ResDH(2016)254 closing the examination of the execution of the above group of cases.

#### IV. NATIONAL SYNERGIES

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78. The practices developed regarding actions plans and reports (see above under III B) demonstrate that national synergies are key in the course of their elaboration. At the Strasbourg Round Table on "action plans and reports in the twin-track supervision procedure", "the importance of including all concerned actors in the drafting of an action plan, including national parliaments and civil society" was highlighted. "The important potential of action plans in the development of efficient synergies, in particular to find answers to complex and/or structural problems that States are called upon to resolve" was also underlined on this occasion. As highlighted in previous work and reiterated during the discussions for the elaboration of this Guide, national synergies are however not solely confined to actions plans. They are essential for all parts of the execution process and the most important means to address structural problems (see above under "structural problems") and to unblock situations of persistent problems (see below under Part VII.).

79. This part presents the methodology of synergies elaborated with regard to the various domestic actors. Before presenting them in detail, it appears that one practice needs to be mentioned from the outset, namely **the setting-up**, in some member States, of **inter-institutional bodies** devoted to the execution of judgments. The creation of such instances embracing all (or the majority of) domestic actors concerned has significant potential to achieve their involvement and coordination with a view not only to the swift execution of judgments but to the implementation of the Convention in general. The importance of an enhanced interaction between national stakeholders was in particularly highlighted by the CDDH report on the longer-term future of the system of the European Convention on Human Rights (e.g. § 60; § 74).

80. The structures thus set up may have a very varied composition and have a wide range of tools and measures to accelerate the execution of a specific judgment or raising awareness amongst multiple actors about the process of execution of judgments of the Court.

- i. In *Croatia*, under the Regulation on the Office of the Agent, the Council of Experts for Execution of Judgments and Decisions of the European Court of Human Rights was established as an interdepartmental and inter-

institutional expert body with the task of defining the appropriate measures for execution and monitoring their implementation. The Council of Experts consists of experts from all ministries and other governmental bodies, state agencies and offices, representatives of the Constitutional Court, the Supreme Court, the State Attorney and the Ombudsman's Office. The Agent is the president of the Council of Experts and can invite representatives of other state bodies and local authorities to participate in the work. The Council of Experts can work in full, extended or narrowed composition. It meets in full composition at least once a year to consider the general state of execution proceedings and general issues concerning that process. It meets in other compositions depending on the nature of measures that need to be undertaken for execution of particular judgments or groups of judgments. The Council has at its disposal measures aimed at accelerating the execution process, in particular it can adopt decisions urging the competent authority to take steps to this effect. The Council may also inform the executive of possible problems encountered in the process, and may hold meetings with the competent authorities for the execution of a particular judgment or groups of judgments in order to ensure that any possible obstacles are removed.

- ii. In the *Czech Republic*, in 2015, the Office of the Government Agent established the Committee of Experts on the Execution of Judgments of the European Court of Human Rights. Its legal basis stems from Article 5 § 5 of the Statute of the Government Agent, which allows the Government Agent to establish a consultative body for any question relating to the fulfilment of his/her mission. The Committee of Experts is composed of all key relevant actors, including representatives of all ministries, Parliament, the Constitutional Court, the Supreme Court, the Supreme Administrative Court, the Supreme Public Prosecutor's Office, the Public Defender of Rights, the Czech Bar Association, academia and NGOs. The Office of the Government Agent serves as its secretariat. Committee members, in particular those who represent ministries, usually hold senior positions and are human rights focal points within their institutions. They should thus be well equipped to ensure swift execution of the Court's judgments. The Committee's primary role is to hold a constructive debate about the Court's judgments against the Czech Republic and to recommend appropriate (general) measures with a view to ensuring their successful implementation. These recommendations are then used by the Office of the Government Agent as a solid basis for the initiation and coordination of the execution process at the national level. Furthermore, the Committee can also address broader issues of compliance of national legislation and practice with the case law of the Court against other State Parties to the Convention. Before the meetings of the Committee of Experts, a background material drafted by the Office of the Government Agent is distributed among its members. The background material identifies key elements of the Court's recent judgments against the Czech Republic relevant for its execution and may contain information about proposed steps and tasks for the competent authorities.

The background material serves as a basis for the discussion of the Committee of Experts. After the respective meeting of the Committee, the background material is made available on the Ministry of Justice's website.

- iii. A « National Mechanism for the Supervision of the Application of judgments of the Court » that operates in the framework of the Secretariat General for Transparency and Human Rights (Law 4443/2016, entry into force in 9/12/2016 - articles 62-66) was recently set up in *Greece*. The Government Agent is part of this body, and so is the Ministry of Foreign Affairs and the Secretariat General for Transparency and Human Rights. The Secretariat General for Transparency and Human Rights was elected as Chair. This body has the following competences: the supervision of the application of the judgments of the Court and the co-ordination of national legislation and administrative practice and jointly with these; the elaboration of proposals for their application; contribution to the promotion and the dissemination of the Convention and the Court's case-law within the Public Administration, Justice as well as civil society. This body holds meetings every two years or additional meeting when necessary, at the invitation of the Chairperson. ONGs, experts or other actors can be invited to participate in these meetings in order to contribute to work undertaken by the national mechanism.
- iv. An Inter Departmental Commission was established in 2012 in the "*former Yugoslav Republic of Macedonia*". It comprises senior officials of all relevant ministries, the Presidents of the Judicial Council and the Public Prosecutors' Council, the Ombudsman and the Government Agent. Other actors may also be invited (NGOs, legal experts and professionals). The commission's role is notably to recommend individual and general measures, to propose legislative reforms and is obliged to report annually to the Assembly.
- v. In *Poland*, the tasks of the aforementioned inter-ministerial Committee for Matters of the European Court of Human Rights include among others the monitoring of the execution of the Court's judgments and decisions by the ministers, drafting annual reports on the state of the execution of judgments, discussing the most important problems related to the case-law of the Court and elaborating proposals of actions intended to prevent violations of the Convention. At present its main focus is on the execution of judgments but it also provides for a platform for the follow-up of the Brighton and Brussels Declarations and for sharing good practices and initiatives of various institutions to improve the implementation of the Convention and dissemination of the Court's case-law. The Committee is composed of experts designated by all ministers, the General Solicitor of the State Treasury and the Government Plenipotentiary for Equal Treatment. It is chaired by the Government Agent. Many other institutions have appointed contact persons to participate in the works of the Committee, in particular, the Parliament, the highest instances of the judiciary, the National

Prosecution Office, the Police, the Prison Service and the Government Legislative Centre. The chair of the Committee may invite any other relevant institution. All the Committee meetings are open to the participation of *inter alia* the Ombudsman. The December plenary session is also opened to the civil society and legal professions. The latter may be invited to attend other meetings or working groups. The December meeting has a special character – as its purpose is to take stock of the results of the Committee’s work and listen to the proposals for improvement. The Committee meets every 3 months and detailed reports of all its discussions are available on-line. With a view to streamlining the execution process, the Prime Minister signed a comprehensive amendment to this Order in 2015, which introduced a detailed schedule for the submission of action plans and action reports by the relevant ministers.

81. **Inter-institutional committees may also be created on an ad hoc basis** in order to respond to a specific judgment of the Court (see also the same practice under “structural problems” above). Following the *Matelly and Adefdromil v. France* judgments delivered by the Court on 2<sup>nd</sup> October 2014 related to the right of association of militaries. The executive has established a mechanism allowing the involvement of all relevant actors (Parliament, judiciary, and executive authorities), in a particularly sensitive area. The President of the French Republic requested through a mission statement on 16<sup>th</sup> October 2014 Mr Bernard Pêcheur, the president of the administration section of the State Council, to initiate a reflexion process on the scope and consequences of these judgments. In this framework, the president of the administration section of the State Council created a support group gathering several representatives from relevant ministries (ministry of defence, ministry of the interior, ministry of labour, ministry of foreign affairs and international development) tasked to bring him the technical expertise in the study of the modifications stemming from the Court’s judgment. This support group has met on four occasions. Concurrently to this support group, the president of the administration section of the State Council has consulted the highest-ranking public and military officials, notably the Chief of Staff of the army and the Director General of the national gendarmerie on the reform under consideration. This working method has allowed writing a draft law in a concerted manner guaranteeing the execution of the Court’s judgments while respecting defence and national security imperatives as well as fundamental national interests. Furthermore, this mission was led by a judge from one of the two highest French jurisdictions, namely the State Council, which according to its function, paid particular attention to the unconditional obligation for the French government to execute the Court’s judgments. Following the report’s delivery, the defence commission of the Parliament has seized the issue and initiated a wide-ranging effort on the consequences of the Court’s judgments, notably by proceeding to several hearings. In the end, the law of 28<sup>th</sup> July 2015 modified article L. 4121-4 of the defence code legislation by granting militaries the right to create national professional military associations in conditions respectful of the State’s interest.

### A. Within the executive

#### *Recommendation Rec(2008)2*

1. [...] *This co-ordinator should have the necessary powers and authority to:*
  - [...]
  - *liaise with persons or bodies responsible at the national level for deciding on the measures necessary to execute the judgment [...]*
  
5. *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;*

82. The mechanisms implemented within the executive vary based on the complexity of the judgment to be executed. These could be; informal or formal consultation of the actors concerned, recourse to permanent committees specific or non-specific to the execution of judgments of the Court or set up on an ad hoc basis, or the involvement of high-level representatives.

#### *Formal or informal consultations*

83. **The consultations with responsible people or entities within the executive itself may bear a formal or informal character.** The setting up of contact points (examined above under Part II C) facilitates synergies. For example in *France*, these meetings may take the form of informal meetings gathering relevant ministries, in which various questions are raised, such as the question of referral of the case to the Grand Chamber, but also individual and general measures that the Court's judgment involves. This kind of meetings is organised for all cases involving specific execution measures. In *Latvia*, the approach adopted by the Office of the Government Agent, whereby all relevant national authorities, including the Cabinet of Ministers, are informed about the Court's findings, has proved to be highly beneficial both, in terms of liaising with officials and authorities to be involved in the execution as well as in the process of identification and drafting of general measures. In *Belgium* for example, the sending of an official mail to the relevant minister goes hand in hand with a consultation with the usual contact point of the concerned administration. The consultation may be held at various levels, not only within a single ministry, but also by soliciting several ministries. In case of a persistent systemic issue involving several departments, the Council of Ministers, comprising of members of the Federal Government, may also be seized as it has been the case in *Belgium* concerning the execution of judgments of the *L.B. group v. Belgium* relating to the treatment of internal detainees. Also in the *Czech Republic*, if no solution is found with the relevant ministry, the question may be raised with the Government as a whole.

#### *Recourse to permanent committees specific or non-specific to the execution of judgments of the Court*

84. Relevant authorities may have recourse to permanent committees to discuss the execution of a judgment of the Court. In some member States (*Latvia, United Kingdom*) existing forums, especially inter-ministerial committees, which deal with broader policy and legal issues beyond execution of the Court's judgments will also consider judgments of the Court in the course of their work. This will particularly be the case where the judgment affects the work of more than one ministry or agency, where it is particularly controversial or sensitive, and/or where a change to the law is required by a judgment. In *Latvia*, if there is no necessity to establish an ad hoc working group then the task can be entrusted to one of the permanent expert working groups established under the auspices of the Ministry of Justice (for example, the Permanent Working group on the Criminal Procedure Law or the Permanent Working group on the Criminal Law). These permanent groups are forums where the findings of the Court can be discussed among legal practitioners. In the past, the expert discussions have also contributed to remedying violations found by the Court where the underlying issue was due to administrative or judicial mal-practice or misapplication/misinterpretation of relevant legal provisions, rather than a systemic problem or lack of legal regulations. As a result, there was no necessity to amend the existing legal framework and the practice guidance was circulated instead. In other cases, where it was discussed and decided that a more clear legal provisions should be drafted, the relevant amendments were introduced. The wording of the amendment, agreed upon in the expert working group, is then submitted by the Ministry of Justice to the Cabinet of Ministers for formal approval and further transmission to the Parliament for adoption.

*Recourse to ad hoc committees*

85. Certain examples relating to the setting up of ad hoc committees can be mentioned.

- i. In *Bulgaria*, fruitful meetings and discussions were held (and continue to be held) with representatives of the local municipalities regarding forced evictions of Roma (in the light of the execution of the judgment in *Yordanova and Others v. Bulgaria case*<sup>30</sup>). A summary of the judgment and guidelines on how to proceed with enforcement of such eviction orders were elaborated and sent to some municipalities.
- ii. In *Latvia*, in several cases ad hoc expert working groups were established by decision of the Cabinet of Ministers, which were tasked within strictly specified deadline to elaborate and to draft measures to address the findings of the Court. As an example, the ad hoc working group on the domestic law related to the organ transplantation was established, triggered by the conclusions of the Court's judgments in the cases of *Petrova v. Latvia*<sup>31</sup> and *Elberte v. Latvia*<sup>32</sup>. In both cases the Court looked into the question regarding the nature and scope of the right for relatives to consent to or to oppose the removal of a deceased person's tissues. As another example,

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<sup>30</sup> *Yordanova and Others v. Bulgaria*, application no. [25446/06](#), judgment of 24 April 2012.

<sup>31</sup> *Petrova v. Latvia*, application no.4605/05, judgment of 24 June 2014.

<sup>32</sup> *Elberte v. Latvia*, application 61243/08, judgment of 13 January 2015.

which describes a more pro-active approach taken by the state, was the establishing of the ad hoc working group under the auspices of the Ministry of Justice, which was entrusted with the task to examine the current shortcomings concerning lack of effective investigation of ill-treatment by the police authorities. It must be noted that this initiative was taken even before the Court has had an opportunity to express its opinion as to the existing legal and systemic framework for investigations of allegations of police ill-treatment. The ad hoc working group proposed several amendments, including the establishing of a new independent investigative authority. As a result, the Internal Security Office was created as an independent investigating authority.

- iii. Since May 2011 in *Romania*, an inter-ministerial working-group responsible for the follow-up of the execution of the *Moldovan* cases has been created under the decision of the Prime Minister. It is a group of cases concerning the consequences of racist offences facing Roma in a village where three ethnic communities were cohabitating. From 2014 onwards and under the decision of the Prime Minister, the working-group has been placed under the coordination of the Ministry of Foreign Affairs (of which the Government Agent belongs to); it has adopted a new strategy for the execution of judgments (adopt a normative act establishing the framework for the construction of a medical centre and an industrial site; conduct an in-depth evaluation of the measures already taken in order to assess their impact and to identify which measures could still be necessary for the full execution of these judgments). To facilitate the communication within the Working-group, but also the Working-group's communication with the local authorities, individual contact points have been established (in an informal manner). In 2014 and 2015, the Working-group has held consultations with the local authorities (through written requests and work meetings) to evaluate the impact of measures adopted for the execution; it has also organised two meetings with local and national NGOs. These consultations have led the Working-group to make a field visit so as to refine their evaluation of the adopted measures. During this visit, the Working-group has met representatives from the local authorities and three ethnic communities. It has also conducted interviews with villagers belonging to all three ethnic communities. Following these actions, the Working-group considered that the relationship between the three ethnic communities was pacific thanks to the adopted measures. The three communities have very good relationships with the local authorities, which demonstrate a non-discriminatory attitude towards villagers with a Roma background and are actively involved in the prevention of potential conflicts. Taking these aspects into account, but also in view of the results obtained in the field of education, access to health care, economic situation, housing situation, and environmental situation, the Working-group has concluded that the measures adopted allowed to obtain encouraging results. However, in view of the fact that the construction of the medical centre and

the industrial site was not yet finalized and that the measures aiming to ensure the cohesion of communities, the elimination of discrimination, and the interest for education are based on the long term, the Working-group has suggested to continue to monitor the community's situation closely. To achieve this, local authorities will have to provide it with a report on the progress made at least once per year. NGOs will also be able to submit reports and the Working-group will ensure that every issue shall be overcome. Furthermore, the Working-group suggested making annual field visits during the three following years. In March 2016, the Committee of Ministers has decided that these judgments be closed on the basis of the progress of the execution, but also of the engagement of the Working-group in the follow-up concerning the judgment's execution.

- iv. In the *United Kingdom*, where judgments involve issues relevant to a wide range of departments, it is common practice for inter-departmental working groups to be established, often involving operational agencies that are affected by the judgment. This ensures that all relevant issues are considered and effective solutions found. Such working groups have been formed for example in relation to *S & Marper v UK* and *Gillan & Quinton v UK*. Such working groups can also be established at Ministerial level if required, but this would be very unusual and would reflect a particularly complex case.

#### *Involvement of high-level representatives*

**86. In some cases, when a judgment has a potential national impact or concerns particular interests, the direct involvement of the Head of Government or Head of State allows for the working group to be given the necessary authority.**

87. For example, a first meeting was held in presence of the ministry of foreign affairs and international development as well as the ministry of justice when the *Mennesson and Labassee v. France* judgments were delivered in order to discuss the interpretation that should be given to both judgments. However, in view of the importance of these judgments, the Prime Minister and the President of the French Republic have swiftly decided that these cases would be examined at an inter-ministerial level under the coordination of the Government's general secretariat. The first inter-ministerial meetings had the purpose of analysing the Court's judgments and their consequences, allowing for an exchange on the execution measures. Subsequent meetings have allowed all participants to exchange ideas on this eminently complex issue, the role of the coordinator being to recall the motivation retained by the Court in these judgments and the consequences that could be drawn from it.



## **B. With the legislature**

### Recommendation Rec(2008)2

9. *as appropriate, keep their parliaments informed of the situation concerning execution of judgments and the measures being taken in this regard;*

88. While Recommendation (2008)2 contained a general invitation to keep parliaments informed regarding execution of judgments and the measures taken to this effect, subsequent intergovernmental work went beyond this invitation, encouraging States Parties to take further action with a view to strengthening the parliamentary involvement. The Brighton Conference encouraged States Parties “iii. to facilitate the important role of national parliaments in scrutinising the effectiveness of implementation of measures taken” (see F. 29. a. iii.). This encouragement was reiterated at the Brussels Conference which called upon States Parties to “in particular, encourage the involvement of national parliaments in the judgment execution process, where appropriate, for instance, by transmitting to them annual or thematic reports or by holding debates with the executive authorities on the implementation of certain judgments” (Action Plan B. 2. h)).

89. In the same vein, in its report on the longer-term future of the system of the European Convention on Human Rights, the CDDH noted that: “Through their adoption of legislation, national parliaments have a key responsibility for protecting human rights in the national context. The only role given formally by the Convention to national parliaments is indirect, through the competence of the Parliamentary Assembly, composed of delegations of national parliamentarians, to elect Court judges. However, national parliaments do have other important roles to play in the system, such as scrutinising the compatibility of all governmental actions with Convention standards and their increased involvement in the execution of Court judgments”.<sup>33</sup>

90. The measures taken by States Parties are numerous and diverse and respond to the calls of the Brighton and Brussels Declarations, going beyond the initial recommendation in para. 9 of Recommendation (2008)2. Before putting forward the various measures, it must be stressed that all measures taken are in keeping with the principle of separation of powers and the independence of parliaments. It should also be noted that the compatibility check of draft legislation with the Convention requirements in line with Recommendation (2004)5 is an essential means to assist the execution process. This question and the good practices developed are not addressed in this Guide. Reference should be made in this regard to the follow up to the relevant exchange of views held in

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<sup>33</sup> Issues recently discussed at the Conference on [“Parliaments and the European Court of Human Rights”](#), co-organised by the Middlesex University and the Helsinki Foundation for Human Rights, in Warsaw on 12 May 2015, and at the Conference on “the role of parliaments in the protection and realisation of the Rule of Law and Human Rights”, Westminster, 7 September 2015. See also, Alice Donald and Philip Leach, *Parliaments and the European Court of Human Rights*, Oxford University Press, 2016.

the Committee of experts on the system of the European Convention on Human Rights (DH-SYSC) in April 2016.<sup>34</sup>

91. It was acknowledged by many States that the creation of **a specialized body within the Parliament** can reinforce the role of the latter in the follow-up of the execution process of the Court's judgments.

- i. In the *Czech Republic*, the Subcommittee for Legislative Initiatives of the Public Defender of Rights and for the European Court of Human Rights was established in 2014 within the Constitutional and Legal Committee of the Chamber of Deputies, one of the specialised working organs of the Chamber of Deputies which support the latter's legislative and supervisory functions. The subcommittee can discuss any matters related to the Convention and the Court, which it deems important to inform the deputies about.
- ii. In *Greece*, a permanent Committee destined to supervise the execution process at the national level has been instituted within the Parliament in order to avoid unjustified delays. As a co-ordinator, the State's Legal Council cooperates with the aforementioned Committee by providing all necessary information related to judgments delivered against Greece, as well as participating (represented by a member of the Agent's office) to this Committee's meetings, if necessary. The State's Legal Council submits a report to it on the execution process, indicating the number of judgments to be executed as well as the matters and challenges it deals with.
- iii. A special Commission has also been instituted in *Romania* since 2009: the Sub-commission for the supervision of the execution of judgments by the European Court of Human Rights against Romania within the Chamber of Deputies' legal, disciplinary, and immunities Commission. In accordance with the decision of its establishment, the Sub-commission pays particular, yet not exclusive, attention to legislative modifications made necessary following a judgment of the Court by monitoring the Government's respect of its obligation to present to the Parliament draft legislation bringing the modification or abrogation of a normative act contrary to the Convention. Since 2015, a Commission with the same objective was created within the Senate (the other Chamber of the Parliament). The Government Agent informed this new body of the execution process of the main groups of cases that led to decisions against Romania.

92. **Various practices and measures** allow the involvement of national parliaments in the process of execution of the Court's judgments.

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<sup>34</sup> See the report of the 1<sup>st</sup> DH-SYSC meeting (doc. DH-SYSC (2016)R1 §§13-14).

***The communication of information concerning the execution process and its supervision***

*The presentation of an annual report*

93. Information may be disseminated in the form of an annual report to Parliament, as is the case in *Belgium, Bulgaria, Croatia, Denmark, Estonia, Germany, France, Montenegro, the Netherlands, Poland, Romania, the United Kingdom or Sweden*. These annual reports, or notes may contain:

- summaries of the judgments and decisions issued by the Court against the State (a practice in most States, where an annual report is presented to the Parliament), or against other States;
- mention of decisions of the Court taking note of friendly settlements and radiation or inadmissibility (*France*);
- a list and analysis of the relevant information concerning cases pending before the Court (*Bulgaria, Estonia*) or statistical data concerning applications lodged with the Court against the State concerned (*Estonia, Poland, Slovak Republic*);
- emphasis on the judgments of the Court in the process of execution (*Bulgaria, Estonia*);
- general information concerning the execution process and relevant policy developments (*Belgium, France, Poland*);
- the state of execution of cases pending before the Committee of Ministers (*Belgium, France, Poland, Romania and the Slovak Republic*);
- information concerning the need to amend legislation (*Bulgaria, Estonia and Poland*);
- a summary of individual and general measures taken during the same year in specific cases brought before the Court (*the Netherlands, Poland*), and statistics relating to the just satisfaction awarded to the applicants (*Bulgaria*);
- action plans and reports transmitted to the Committee of Ministers (*Belgium, Lithuania and Poland*);
- decisions and resolutions adopted by the Committee of Ministers (*Belgium, Poland*);
- on the basis of an analysis of judgments finding against other States, the fields of legislation worth studying closely in the light of the evolution of the Court's case-law (*Estonia, Poland*).

94. **Specific procedures for the transmission of the annual report have been adopted in some States** and can involve different parliamentary committees.

- i. In *Germany*, the Bundestag has adopted the following procedure: "The Bundestag urges the Federal Government to report annually and in an adequate form to the appropriate committees (Committee on Human Rights and Humanitarian Aid, Committee on Legal Affairs, and the Petitions Committee) on the execution of judgments against Germany" (Federal Parliament Printed Matter 16/5734). The Federal Ministry of Justice and Consumer Protection conforms to this decision with the annual report on the case law of the European Court of Human Rights and on the

execution of its judgments in cases. This report is submitted to the committees mentioned. The Committees will then proceed to discuss the reports during one of their sessions. An oral report by the Federal Government is usually requested.

- ii. In *Poland*, the competent Ministers accompanied by the Government Agent participate in the hearings held by the parliamentary committees of both the Sejm and the Senate in charge of human rights at which the reports are examined.
- iii. In *Belgium*, on a proposal from the Minister of Justice, the latter was invited to present the first annual report on Belgian litigation at the European Court of Human Rights for 2015-2016 before the Institutional Affairs Committee of the Senate.
- iv. In the *United Kingdom*, following publication of the annual report, ministers frequently attend an oral evidence session with the Joint Committee on Human Rights at the latter's request. These sessions generally focus on the content of the report but can consider any matter relating to human rights. Sessions are held in public and transcripts are made available via the Parliament website.
- v. In the *Russian Federation*, the Minister of Justice, within the framework of the Parliamentary hour, speaks annually before Parliament, including in relation to various aspects of the European Court's case-law and its implementation in the legal system of the Russian Federation.

*The communication of information concerning a specific judgment of the Court*

95. Besides this transmission of information on a regular basis, when the co-ordinator or the Government Agent considers that the execution of a judgment requires a legislative amendment, parliaments may also receive information related to requested measures in order to execute a specific judgment, for example through the transmission of a letter or a memorandum explaining the execution measures considered. National law provides, in addition, more and more that when a draft law is presented to Parliament, it should be accompanied by a detailed explanatory statement, which also has to indicate potential issues raised regarding the Convention. The following practices may also be noted:

- i. In *Armenia*, the Government submits detailed justifications to the Parliament explaining the necessity to amend or adopt new laws aimed at implementation of the Convention, execution of the Court's judgments and the Committee of Ministers respective recommendations. A recent example of fruitful and successful cooperation can be considered the dialogue established between the RA Government and the National Assembly, during the process of amending the RA Civil Code. As a result, the new mechanism of compensation for non-pecuniary damages was established in a short time period.

- ii. In *Cyprus*, the Sector's lawyers attend and participate in the discussions of the relevant bills before Parliamentary Committees. Parliamentary Committees concerned are already acquainted with the judgment through the Sector's preceding relevant letter communicating the judgment. Furthermore, an Explanatory Memorandum accompanying all bills, which is also prepared and signed by the Attorney-General explains the particular bill's provisions, stating that its purpose is to ensure compliance with the Court's judgments and to prevent future similar violations.
- iii. In the *Netherlands*, when the measures to be taken in cases where the Court has found a violation of the Convention involve legislative and /or fundamental policy changes, the relevant minister(s) usually send(s) a letter to Parliament explaining the legislative and/or policy consequences.
- iv. In *Latvia*, when the Government Agent participates in the debates on draft amendment laws or ordinary laws at the level of the executive, he/she will also have to attend the sessions of the parliamentary commissions responsible for examining these texts. As a result of the high visibility and authority of the Government Agent, his/her opinion and expertise on the subject matter are always requested during the course of debates in parliamentary commissions.

96. **In turn, Parliaments may also solicit complementary information on a case-by-case basis**, for example through the means of **their questions to Government**, as it is commonly practised in *Belgium* or in the *Netherlands*, or in the context of debates on a draft law, as it is the case in *Latvia*. It was highlighted that often these questions require the Government to provide information about how it intends to implement the Court judgment and how similar cases may be prevented in the future. These parliamentary questions necessitate a speedy reaction by the Government. In that manner, Parliament can play an effective role in the implementation process. It can also be question of a presentation by the Government Agent on the state of the execution of this or that judgment of the Court, as it is commonly practised in *Lithuania*.

#### ***Recourse to consultations***

97. **The dialogue with national parliaments may also take the form of consultations organised on a regular basis dealing with the execution of the Court's judgments in general, or on an ad hoc basis dealing with a specific judgment.**

- i. In the *Russian Federation*, representatives of the Ministry of Justice of the Russian Federation and the Office of the Representative take part in meetings of the Committees and Commissions of Chambers of the Federal Assembly of the Russian Federation as well as in preparation of draft laws and other laws and regulations.

- ii. This can also involve meetings between the co-ordinator and the parliamentary delegation before the Parliamentary Assembly of the Council of Europe as is the practice in *Switzerland*. This occasion presents itself four times per year in order to discuss problematic issues. This may concern pending cases, delivered judgments, or cases for which political support is necessary to advance, if need be, a legislative project.
- iii. In *France*, the organization of an annual meeting on the execution of the Court's judgments is considered. A first meeting has already been organized on the initiative of Parliament in order to raise in presence of all relevant actors to the execution two themes, being the inclusion of national execution constraints by the Court and the modalities of the improvement of the execution process at the national level. This exchange has been particularly fruitful in the measure that it has allowed all relevant actors to raise execution issues as a whole and to confront their points of view. This annual meeting complements in a useful manner the hearing exercise singlehandedly performed by the co-ordinator concerning the execution of certain judgments by the Court. To illustrate this, the Ministry of Foreign Affairs and International Development has been heard in front of the Senate's legal commission concerning the interpretation and the consequences of the *Menesson* and *Labassee v. France* judgments. Some judgments can lead to the review of a question related to a specific judgment by an existing parliamentary commission, charged to elaborate a draft law, which facilitates its adoption as has been the case for the judgment delivered by the Court concerning the freedom of association of militaries.
- iv. In *Lithuania*, since 2010, the Law and Law Enforcement Committee of the Seimas (Parliament) holds extended meetings twice a year to discuss the issues of implementation of the judgments of the Court. The monitoring is also carried out by the Committee on Human Rights of the Seimas, to which the Government Agent presents an annual report. Since 2016, the involvement of the Seimas into the process of enforcement of the judgments has been institutionalized. The Chairperson of the Law and Law Enforcement Committee of the Seimas registered a law supplementing the Statute of the Seimas with the provisions providing for that one of the activity areas of the Law and Law Enforcement Committee of the Seimas is the oversight of the execution of the Court judgments.

98. The involvement of parliamentarians can also make itself through their **representation within inter-institutional committees dealing with the execution of the Court's judgments** (see above under the introduction under Part IV). In the *Czech Republic*, both chambers of Parliament have their representatives sitting on the Committee of Experts on the Execution of Judgments of the European Court of Human Rights. Other members of Parliament have a standing invitation to attend the meetings of the Committee of Experts. In *Poland*, members of Parliament have a standing invitation to join the Committee for Matters of the European Court of Human Rights that is monitoring the execution of judgments. The standing invitation stands to both chambers of the parliament. Past experience has shown that such meetings are attended particularly whenever there is a case involving the parliament might be interested in. In *Croatia*,

including the legislator in the process of execution of the Court's judgments will probably soon be done through the association of a representative of the Parliament in the work of the Council of experts.

***The involvement of parliaments in the development of action plans and reports***

99. During the Strasbourg Round Table on “action plans and reports in the twin-track supervision procedure”, the question on a greater involvement of national parliaments in the elaboration and the follow-up of action plans, beyond annual Government reports to national parliaments, which is already a given in a certain amount of States, had been raised. An initiative consists in the transmission to Parliament of all action plans and reports transmitted to the Department for the Execution of Judgments of the Court, like it occurs in France. This transmission allows to take notice of the initial measures taken by the Government and, if need be, to identify the cases in which Parliament will necessarily have to intervene. In the *United Kingdom*, action plans, once agreed within government, are routinely shared with both the Joint Committee on Human Rights (JCHR) (the Parliamentary Committee that scrutinises human rights issues) and the Equality and Human Rights Commission (EHRC) (one of the NHRIs). This involvement is welcomed in order to aid accountability of the actors in the process.

**C. With the judiciary**

*Recommendation Rec(2008)2*

5. *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;*

100. The need to develop synergies with the judiciary was not explicitly mentioned in Recommendation (2008)2. The importance of close contacts with the domestic judicial system as a key factor in the execution process was underlined by the CDDH in its 2012 report on measures taken by the member States to implement relevant parts of the Interlaken and Izmir Declarations<sup>35</sup>. The Preamble of the Brussels Declaration more recently recalled that the execution of judgments may require the involvement of the judiciary. Numerous practices and measures allow to develop effective synergies with the judicial power while respecting the latter's independence.

101. Before presenting the numerous practices developed in States Parties, reference should be made to the measures reported enabling the Convention to be directly invoked before the domestic courts and its applicability by the highest courts. In the context of the work of the elaboration of this Guide, it was noted that this is a key element for the execution process. A presentation of the situation in certain States Parties (e.g. *Austria*, the *Czech Republic*, and the *Netherlands*) can be found in the CDDH report on measures taken to implement measures taken by the member States to implement relevant parts of

<sup>35</sup> Adopted on 30 November 2012, doc. CDDH(2012)R76 Addendum I, § 56. See also the conclusions of the Tirana Round Table (2011); § 1e.

the Brighton Declaration,<sup>36</sup> constitutional courts having changed their interpretation of the constitution (which includes the Convention) after a judgment of the European Court.

102. In the context of the work for the preparation of this Guide, it was noted that the role of highest courts, including the Constitutional Court, as the guarantors of the uniform application and interpretation of the Convention, may constitute a crucial element for the execution process. This question had been at the heart of the Saint-Petersburg Conference.<sup>37</sup>

103. In addition, the possibilities in the internal legal order of many States to reexamine or reopen cases following judgments of the Court should be highlighted. With regard to this question, see above under Part III A.

104. **Information of the judicial authorities is crucial for the execution process** (see also below under Part V). In this way, as soon as a judgment is final, most States proceed, as required, to its translation before transmitting it to the judicial authorities.

105. The judgment can very often be consulted on line, either on the website of the Government Agent (*Greece, Poland, Portugal and Spain*) either on the website of the relevant Ministry (*Estonia, Finland, Italy, Latvia, Poland*), on the website of the Supreme Court (*Croatia, Latvia*) and disseminated simultaneously by means of the judicial intranet network (*Latvia, Portugal*), in a database with a search engine (*Belgium, Czech Republic and Spain*), or on a website for judges (*Romania*).

106. Information may also be communicated directly to the courts, sometimes with additional explanations (*Estonia*) or a circular letter from the Minister of Justice (*Slovak Republic*). This communication may take the form of electronic newsletters (*Poland*), official legal journals (*Slovak Republic*), newsletters or annual overviews (*Estonia and France*), or unofficial summaries prepared by the Government Agent for the attention of all courts. Information may be transmitted directly to the court concerned. In *Poland*, for example, the Ministry of Justice informs the president of the court (and the president of the superior court) of each judgment or decision establishing a violation concerning Poland in connection with the functioning of that particular court. The judgment in question (with its translation) and information about the provisions of the Convention that are applicable are attached thereto. The president of the relevant court forwards this information for the attention of individual judges of a given court. In repetitive cases concerning more courts and stemming from inappropriate judiciary practice, such letters with information and Convention standards are sent by the Ministry of Justice to presidents of all courts of appeal with a request that all judges of a given region be acquainted therewith.

107. Following the *Saadi v. Italy* group of cases,<sup>38</sup> the awareness raised among the competent authorities by the publication and dissemination of the Court's judgment enabled domestic courts to give due consideration to the principles set out by the

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<sup>36</sup> Doc. CDDH(2016)R85 Addendum I, § 22.

<sup>37</sup> See the proceedings of the International Conference on "Enhancing national mechanism for effective implementation of the European Convention on Human Rights", Saint-Petersburg, 22-23 October 2015.

<sup>38</sup> Application No. 37201/06, Judgment final on 28/02/2008, CM/ResDH(2014)215.



European Court. In a decision of 3/05/2010, the Court of Cassation held that justices of the peace should assess the concrete risks that an irregular immigrant would face in his country of origin before an expulsion order can be executed. In addition, on 27/05/2010 the Ministry of Justice sent to all domestic courts of appeal a circular stressing their obligation to comply with interim measures ordered by the Court under Rule 39 and to assess whether there are any “impediments” to expulsion, such as the risk of a violation of rights under Article 3 of the Convention in the country of destination.

108. **The transmission of information can be made through direct contacts**, in particular when judgments of the Court have repercussions on the judiciary.

- i. In the *Netherlands*, the Section Human Rights of the Ministry of Security and Justice actively informs the judiciary of a judgment of the Court and provides advice to the judiciary. There are also intensive contacts of the Ministry of Justice with the Constitutional Court of the *Slovak Republic*.
- ii. In *Belgium*, a meeting has been organised in June 2015 with representatives from the highest jurisdictions and from the Prosecutor in order to better define modes of collaboration with the Agent’s Office for the management of requests and the execution of judgments. They are associated with the execution of judgments that concern them, notably in the framework of the reflections on the identification of general measures.
- iii. In *France*, supreme jurisdictions are associated to all meetings organised by the co-ordinator where a judgment of the Court has consequences on the supreme jurisdiction’s jurisprudence.
- iv. In *Montenegro*, the Office of the State Agent in cooperation with the Supreme Court and Constitutional Court often holds seminars and meetings.
- v. In the *Netherlands*, the judiciary frequently takes part in meetings of the relevant state actors, to discuss a judgment in which it has found a violation of the Convention in cases that directly affect the judiciary.
- vi. In *Poland*, the Government Agent and the Ministry of Justice cooperate with the Constitutional Court and the Supreme Administrative Court as well as the National Prosecution Office in the framework of an agreement on translation of the Court’s judgments concerning other States Parties. Both courts are thus regularly involved in analysing the Court’s jurisprudence, selecting the judgments that are most relevant for the Polish legal system, translating and disseminating them.
- vii. In the *United Kingdom*, the Lord Chief Justice, the Lord President and the Lord Chief Justice of Northern Ireland have specific statutory responsibilities and powers in their capacity as heads of the judiciary. Whilst as a matter of course the judiciary are not engaged in the implementation of judgments, it is the practice of the UK and devolved governments to seek their input in cases where the judgment relates to

either acts of members of the judiciary (for example, case management leading to delay) or an area of the Lord Chief Justice's (or his equivalent in Scotland or Northern Ireland) statutory responsibility. For example, *Bullen & Soneji v UK* required updates to judicial training, which is a responsibility of the Lord Chief Justice in his capacity as head of the judiciary. Whilst the UK judiciary are constitutionally separate from and independent of both the Executive and Parliament, there is a co-operation on areas falling within their responsibility. If a case involves an issue relevant to the judiciary but for which they are not responsible, they are kept informed of progress in implementation as a courtesy.

109. **Exchanges** may also **take place on an informal basis**. In *Latvia*, for example, the Government Agent participates in informal round-table discussions with judges of the courts of various jurisdictions and instances, initiatives mostly come from the judiciary. The aim of these discussions is to have an exchange on the recent developments in the Court's case-law against Latvia vis-à-vis the issues faced by the judiciary in their daily work. The results of the debate have proved to be invaluable when identifying the scope of general measures in other cases and submitting proposals in national expert working groups. In *Romania*, the representatives of the Appeals Court gather on a regular basis in order to solve problems which have led to some contradictory solutions in courts within their territorial conscription so as to avoid a divergence in jurisprudence. Representatives of the Government Agent participate to these meetings in the measure that the jurisprudence of the Court is incidental towards the theme in order to guarantee the consolidation of judicial practice in conformity to the Convention. In *Slovak Republic*, there are intensive contacts of the Ministry of Justice with the Constitutional Court of the Slovak Republic. In *Bulgaria*, there are informal exchanges with the Court of Cassation.

110. **The secondment of judges or officials from the judiciary within the Office of the Government Agent** allows to strengthen synergies with the judicial institution. In the *Netherlands*, since ten years the office of the Government Agent benefits from the support provided by a senior lawyer seconded from the Council of State (*Raad van State*, the highest administrative court) who is actively engaged in the execution process.

111. The involvement of the judicial institution may also be made through its **representation within inter-institutional committees** tasked with the execution of the Court's judgments (see the introduction in Part IV). In the *Czech Republic*, representatives of all three highest courts, i.e. the Constitutional Court, the Supreme Court and the Supreme Administrative Court, are members of the Committee of Experts on the Execution of Judgments of the European Court of Human Rights. In *Latvia*, several distinguished members of the judiciary are members of the permanent expert working groups, which in the past has provided the necessary insight and perspective when drafting amendments to various procedural laws. In *Poland*, the Constitutional Court, the Supreme Court, the Supreme Administrative Court, the National Judiciary Council have appointed persons who participate in the advisory capacity in the work of the Committee for Matters of the European Court of Human Rights.

112. **Training** plays a fundamental role for the involvement of judges in the execution process of the Court's judgments. In this way, *French* supreme jurisdictions have

established networks of trainers in order to pass on the Court's jurisprudence to first instance and appeal jurisdictions. In many States, the European Convention on Human Right is part of the curriculum for judges.

- i. In *France*, the Convention forms an integral part of the initial training and the vocational training of magistrates. The *Ecole nationale de la magistrature* (French National School for the Judiciary) organises each year training sessions on the Convention and the Court's case-law, as well as internships at the Court and the Council of Europe.
  - ii. In *Greece*, for example, the National School of Magistrature (ENM) regularly organizes conferences and seminars on Human Rights related topics to which active judges, academics and jurists are invited to participate.
  - iii. In *Latvia*, the issues raised in the Court's judgment, in particular, the perspective of the judiciary, are also highlighted and analysed by the Government Agent in lectures held by the Latvian Judicial Training Centre. The Office of the Government Agent has also participated in two annual conferences of the Latvian Judiciary (an event supported by the Judicial Council, the Supreme Court and the Ministry of Justice) presenting the current issues identified by the Court in its case law against Latvia.
  - iv. In *Romania*, the Convention and the Court's jurisprudence are studied by legal auditors from a multi-disciplinary standpoint, in order to strengthen the competence of judges to proceed in an evaluation of the conformity of national legislation with the Convention in concrete cases.
  - v. In *Belgium*, intern judges may complete a part of their internship within the Agent's Office. The Agent's Office may also participate in targeted trainings to the legal world.
  - vi. In *Poland* the Ministry of Justice organises targeted training for judges from those appellate regions where the Court found violations of the Convention. The topics of training are selected on the basis of the so-called "map of violations" created and updated by the Ministry of Justice on the basis of the Court's case-law. The training is organised in the form of workshops in the seat of a given court and includes case-studies based on the factual situations that have led to the particular violations found in the Court's judgments against Poland. The National School of Judiciary and Prosecution also contributes to this end, for instance, it carries out a project of in-service training in human rights and the Convention for judges from all branches of law.
  - vii. In the *Slovak Republic*, the Government Agent and Co-Agent in co-operation with the Judicial Academy and Slovak Bar Association regularly hold lectures at seminars for judges, senior court officers, prosecutors and attorneys about the Court's case-law and the Committee of Ministers' practise.
113. **Short study visits for judges**, and especially presidents of domestic courts, to the Council of Europe and the Court, combined with the presence at a hearing before the

Court, constitute one more useful tool for increasing the awareness and interest on the part of the judiciary. If addressed to presidents of the domestic courts, visiting judges or persons in charge of training in courts, such study visits may produce additional multiplying results. One of the examples could be the initiative of the HELP Programme to organise in cooperation with *Poland* three such study visits (in 2013, 2015 and 2016), each of them tailored according to the profile of a particular group of participating judges. Each year, the Constitutional Court of the Slovak Republic holds in its premises, in Košice, an International Scientific Conference called "Constitutional Days" in the presence of the constitutional court judges – the Government Agent, practitioners, scientists as well as academics from the Slovak and the Czech Republic (for example, President of the Constitutional Court of the Czech Republic).<sup>39</sup>

114. The **initiatives coming from the judiciary and aiming at reinforcing synergies** are also worth mentioning and encouraging in this context.

- i. In *France*, each supreme court has introduced newsletters to draw the lower courts' attention to the changes that the Court's case-law requires.
- ii. In *Luxembourg*, several work meetings have been held at a high level, involving the Presidents of the Superior Court of Justice, Courts and Tribunals, the General Prosecutor, and the State Prosecutors. A meeting dedicated to "specific and persistent Luxembourgian problems in the execution of cases against Luxembourg" has thereby gathered the Minister of Justice, the Minister of Foreign Affairs, a parliamentary delegation, the Luxembourgian judge at the Court, the President of the Superior Court of Justice, and the Luxembourgian member at the CDDH. This informal procedure has notably allowed to solve the persistent problem of excessive formalism at the Court of Cassation, as well as to trigger the implementation of a "digitalisation plan" of courts that will allow to bring the appropriate solution to problems of procedural delays.
- iii. In *Poland*, the National Judiciary Council organised three special meetings (in 2011, 2013 and 2015) devoted to the improvement of execution of judgments in Poland and identifying measures for better awareness-raising of judges. The last of those meetings offered an opportunity for an exchange between representatives of Polish courts of various instances and representatives of the Registry, the Department for the Execution of Judgments, the Polish Ombudsman's Office, the Ministry of Justice and the Government Agent. The role of the supreme courts is equally crucial. The Supreme Administrative Court undertakes many initiatives to increase the awareness of the Convention among administrative judges. Among others, it translates the Court's judgments and disseminates information about the Court's case-law by means of internal case-law databases designated for judges.
- iv. In *Russian Federation*, the Supreme Court, which participates in the Superior Courts Network (SCN, see below), systematically provides thematic reviews of

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<sup>39</sup>. In 2017, the theme was "Implementation of the Decision of International Judicial Authorities by National Courts and Other Public Authorities".

- the case-law of the Court and international human rights treaty bodies, as well as reviews of the Supreme Court's practice taking into account their respective legal positions. The reviews are communicated to judges and officials of the Supreme Court and the lower courts. The Supreme Court also provides courts with periodical publications.
- v. In the *Slovak Republic*, the President of the Constitutional Court regularly organises meetings with the participation of the Slovak judge at the ECHR, the Agent of the Government and Constitutional Court's judges aimed to obtain the relevant information about the actual case-law of the ECHR and discuss the problematic issues. The Agent of the Government prepares for this sort of meetings the summary of Slovak cases grouped according to the specific problem identified by the Court. The positive result of such meetings has been obtained by harmonising of the Constitutional Court's practise with the Court's in many problematic domains, which was approved by the Committee of Ministers during the execution process. Further, the meeting between assistant judges of the Constitutional Court and experts of the Department for Execution of Judgments can be highlighted. This meeting was held in September 2015 in the presence of the Agent and one of the main themes was the harmonization of the case-law of the Constitutional Court with the Court's case law and its implication for specific cases."
  - vi. Following the *Atanasovski v. "the Former Yugoslav Republic of Macedonia"*, the Special Department for Case-law was established within the Supreme Court with a view to provide consistency and to follow the case-law in order to ensure uniformity in the application of the laws by the courts. This Department adopted a plan for monitoring the case-law and the working program. In order to prevent diverging case-law, several measures were taken: Regular publication by the Supreme Court of newsletters and collections of court decisions and holding of regular meetings between appellate courts, during which the issues concerning diverging case-law are discussed.

115. It is also worth mentioning the **launch of the Superior Courts Network (SCN) by the Court in 2015**. While the overall aim of the Network is to enrich dialogue and the implementation of the Convention, the operational objective is to create a practical and useful means of exchanging relevant information on Convention case-law and related matters. A tool that could facilitate exchanges within the network was designed as well as a dedicated website with access restricted to the Strasbourg and superior court members.

#### **D. With national human rights structures and NGOs**

##### Recommendation Rec(2008)2

5. *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;*

116. As was the case for the judiciary, Recommendation (2008)2 did not refer explicitly to the role of national human rights structures<sup>40</sup> (NHRS) and NGOs in the execution process. Since the adoption of the Recommendation, their role to this effect and the need for enhanced synergies with the executive was put forward on a number of occasions following from the Tirana Round table in 2011 until the 2015 Brussels Declaration. More recently, the CDDH report on the longer-term future of the system of the European Convention on Human Rights noted: “The CDDH reiterates that it can significantly help meet the challenges relating to national implementation (in particular, by offering expert opinions on the compatibility of draft legislation and administrative practices with Convention standards as well as regarding the execution of Court judgments, by reporting on national compliance with the Convention before parliaments, or by providing human rights education for the public and professional groups”.

117. The role of national human rights structures and the civil society is also recognized in the framework of the supervision of the execution of judgments of the Court by the Committee of Ministers. They can, by means of their communications under Rule 9 of the Rules of the Committee of Ministers<sup>41</sup>, contribute to the identification of the complex and repetitive nature of a problem in a judgment supervised by the Committee

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<sup>40</sup> See for the definition the CDDH report on the longer-term future of the system of the European Convention on Human Rights, doc. CDDH(2015)R84, Addendum I, § 58: National human rights structures include both national human rights institutions (“NHRIs”), which comply with the Paris Principles ([Resolution 48/134 of the UN General Assembly on national institutions for the promotion and protection of human rights](#)) and other bodies and offices engaged with human rights at national level. National human rights structures include ombudspersons, who may also be NHRIs depending on their powers and functions.

<sup>41</sup> According to Rule 9 of the Committee of Ministers, as amended by the Ministers’ Deputies at 1275<sup>th</sup> meeting of the Committee of Ministers on 18 January 2017 : “1. The Committee of Ministers shall consider any communication from the injured party with regard to payment of the just satisfaction or the taking of individual measures.

2. The Committee of Ministers shall be entitled to consider any communication from non-governmental organisations, as well as national institutions for the promotion and protection of human rights, with regard to the execution of judgments under Article 46, paragraph 2, of the Convention.

3. The Committee of Ministers shall also be entitled to consider any communication from an international intergovernmental organisation or its bodies or agencies whose aims and activities include the protection or the promotion of human rights, as defined in the Universal Declaration of Human Rights, with regard to the issues relating to the execution of judgments under Article 46, paragraph 2, of the Convention which fall within their competence.

4. The Committee of Ministers shall likewise be entitled to consider any communication from an institution or body allowed, whether as a matter of right or upon special invitation from the Court, to intervene in the procedure before the Court, with regard to the execution under Article 46, paragraph 2, of the Convention of the judgment either in all cases (in respect of the Council of Europe Commissioner for Human Rights) or in all those concerned by the Court’s authorisation (in respect of any other institution or body).

5. The Secretariat shall bring, in an appropriate way, any communication received in reference to paragraph 1 of this Rule, to the attention of the Committee of Ministers.

6. The Secretariat shall bring any communication received under paragraphs 2, 3 or 4 of this Rule to the attention of the State concerned. When the State responds within five working days, both the communication and the response shall be brought to the attention of the Committee of Ministers and made public. If there has been no response within this time limit, the communication shall be transmitted to the Committee of Ministers but shall not be made public. It shall be published ten working days after notification, together with any response received within this time limit. A State response received after these ten working days shall be circulated and published separately upon receipt.”

of Ministers even if it has not yet been detected by the Court in a judgment. They can also contribute to the identification of the execution measures and to the evaluation, on the spot, of their impact. This contribution constitutes a real added value for the process of execution of judgments of the Court, on condition however, that the actors concerned are trained on the system of the Convention and informed in an appropriate manner on the Court's case-law and the relevant process of execution of judgments of the Court. The possibility for international organisations or institutions to submit communications to the Committee of Ministers has not, to date, been much used, but the codification of this right in the Rules is an important signal of the Committee's openness to dialogue.

118. Concerning information given by the authorities to the national human rights structures and the civil society, the following practices may be noted.

- i. In *France*, the national human rights structures receive the annual letter of the Court's case-law written by the co-ordinator.
- ii. In *Greece*, the State Legal Council collaborates with the National Commission for Human Rights in providing information on the drafting of the latter's annual report. Recently, in the interest of co-operation between these two actors, the National Commission took charge of the translation of the main judgments indicated by the Registry of the Court, in summary.
- iii. In *Belgium*, the Agent's Office transmits the final judgments as well as the action plans and reports, as soon as they are published by the Court or the Council of Europe, to a platform gathering independent institutions working in the field of human rights.

119. **Information relating to the Court's case-law and the process of execution of its judgments can also be transmitted by means of conferences or seminars.** In *Latvia*, from the perspective of the civil society, the Government Agent participates as a speaker in the annual human rights conference held by the Riga Graduate School of Law, reflecting upon current case-law of the Court against Latvia. Recently, the issue related to execution and enforcement of the Court's judgments has become one of the topics for the debates. The Government Agent also participates in the annual conference held by the Ombudsman's Office. This can also be done by means of publications. In Montenegro, the AIRE Centre (Advise on Individual Rights in Europe) prepared with the office of the Government Agent of Montenegro the "publication" with all the case-law of the European Court of Human Rights with respect to Montenegro up until the end of 2015.

120. **Dialogue can also be established by means of formal or informal meetings.**

- i. In *France*, for example, meetings are organised between the national human rights structures and the co-ordinator in order to exchange on certain cases of the Court.
- ii. In the *Slovak Republic*, although there is no formalised process of NHRI involvement in the execution of judgments process, the Slovak National Centre for Human Rights has initiated negotiations with the Ministry of Justice (particularly the Representative of the Slovak Republic before the

European Court of Human Rights) and has been involved in a constructive informal dialogue concerning the process.

- iii. As part of the Irish Human Rights and Equality Commission's statutory functions, it is mandated to examine and report on legislative proposals in relation to the implications for human rights or equality. The Commission regularly engages with the parliamentary committees both with regard to the legislative process in Ireland and as part of focused consultations on human rights and equality matters. In the Commission's published observations on draft legislation and subsequent engagement with bills through stages of parliamentary debate, the Commission advises the Irish state on legislative measures that it deems necessary to ensure compliance with judgments of the European Court of Human Rights as well as highlighting relevant emerging jurisprudence from the Court.
- iv. The new National Human Rights Institution in *Norway*, established in 2015 and organized as an independent body under the Parliament, can play a role in this regard, its mandate including an advising role on implementation of human rights to the Government and the Parliament.
- v. In *Northern Ireland*, the NIHRC engages in a range of informal practices to promote compliance with the Court's judgments. The NIHRC has been particularly active in advocating for the Government to take action to comply with general measures related to the *McKerr Group* of cases, a group of historic cases from Northern Ireland concerning the inadequacy of the investigation of the use of lethal force by State agents. The Commission has made a number of rule 9 submissions to the Committee of Ministers and maintains regular contact with Council of Europe officials to keep them informed of emerging developments. The NIHRC also meets with officials in the NI Executive, UK Government, NI Assembly and UK Parliament to advise on actions to ensure compliance with the general measures.
- vi. In the *Russian Federation*, the High Commissioner for Human Rights, created in accordance with the Constitution (Article 103) and the special Federal Constitutional Law, became one of the most important elements of the constitutional mechanism for the protection of human rights and the implementation of the Convention. The High Commissioner does not report to any public authority and is guided by the Constitution, laws and generally recognized principles and standards of international law and international treaties of the Russian Federation.

121. Certain States go further and associate the national human rights structures (NHRs) with the drafting of the action plans and reports. This is the case in *France*, where national human rights structures can, from now on, inform the co-ordinator – one month before the date of the submission of the action plan or report – of the measures that according to them, the execution of the judgment of the Court implies. **The observations of the NHRs** will be brought to the attention of the contributing ministries and can be integrated, as necessary, into the action plan or into the more general reflexion on the



measures necessary for the execution of the given judgment. In any event, the action plans and reports will be addressed to the national human rights structures in their final version: as they will have been transmitted to the Department for the Execution of Judgments. In the *United Kingdom*, action plans and reports are routinely shared with the Equality and Human Rights Commission.

122. Finally, some examples of measures taken by national human rights structures in the framework of the execution process of a specific judgment may be noted:

- i. Following the *Kummer v. the Czech Republic*,<sup>42</sup> concerning degrading treatment in police custody due to unjustified use of restraints and lack of effective investigations thereof, a seminar for police officers of the Region of the South Moravia, on the relevant standards of the CPT and the case-law of the European Court pertaining to the treatment of detainees in police cells, was organised in October 2014 by the Office of the Public Defender of Rights.
- ii. Following the *Kirakosyan v. Armenia case*,<sup>43</sup> concerning poor conditions of administrative detention without adequate time and facilities to prepare any defence and without any right of appeal, control mechanisms were set up as part of a National Preventive Mechanism (NPM) involving civil society representatives and national human rights institutions. A public monitoring of penitentiary institutions and detention facilities is carried out by the Office of the Human Rights Defender and other groups. They are entitled to unrestricted access to these institutions and facilities to examine the content of documents, the situation of the institution and to meet inmates in privacy. They have the possibility of solving the issues raised through a direct cooperation with the administration of places of deprivation of liberty.

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<sup>42</sup> Application No. 32133/11, judgment final on 25/10/2013, CM/ResDH(2015)227.

<sup>43</sup> Application No. 31237/03, judgment final on 04/05/2009, CM/ResDH(2015)169.

## V. ENSURING THE VISIBILITY OF AND PROMOTING SUFFICIENT ACQUAINTANCE WITH THE EXECUTION PROCESS

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### Recommendation Rec(2008)2

3. *take the necessary steps to ensure that all judgments to be executed, as well as all relevant decisions and resolutions of the Committee of Ministers related to those judgments, are duly and rapidly disseminated, where necessary in translation, to relevant actors in the execution process;*
7. *take the necessary steps to ensure that relevant actors in the execution process are sufficiently acquainted with the Court's case law as well as with the relevant Committee of Ministers' recommendations and practice;*
8. *disseminate the vademecum prepared by the Council of Europe on the execution process to relevant actors and encourage its use, as well as that of the database of the Council of Europe with information on the state of execution in all cases pending before the Committee of Ministers;*

### ***Sufficient acquaintance with the Court's case law***

123. The importance of a sufficient acquaintance with the Court's case law relevant for the execution process has been highlighted in all steps of the Interlaken process.<sup>44</sup> More recently, the Brussels Declaration called upon States Parties to promote accessibility to the Court's judgments [...] by developing their publication and dissemination to the stakeholders concerned [...] and by translating or summarising relevant documents, including significant judgments of the Court, as required" (part B.2f).<sup>45</sup> The significant efforts made, very often at the initiative of the co-ordinators, have recently been brought forward in the CDDH report on measures taken by the member States to implement relevant parts of the Brighton Declaration<sup>46</sup>:

- The translation and dissemination of judgments/extracts or summaries to all relevant bodies and authorities,<sup>47</sup> the civil, administrative and highest courts,<sup>48</sup> of the relevant judgments of the Court, the Court's press releases,<sup>49</sup> circulars or journals on the Court's recent case-law;<sup>50</sup> or publications (analyses,

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<sup>44</sup> See also the Conclusions of the Tirana Round Table (§2 b-e) and in particular e.

<sup>45</sup> See also the Conclusions of the Tirana Round Table (§2 b-e) and in particular e.

<sup>46</sup> Document CDDH(2016)R85 Addendum I, para. 23.

<sup>47</sup> For example, in Bulgaria, Croatia, Estonia, Finland, Germany, Republic of Moldova, Poland, Portugal, Romania, Russian Federation, Slovak Republic, Spain, Sweden, Turkey and Ukraine.

<sup>48</sup> For example, in Austria, Estonia, Germany, Greece, Latvia, Republic of Moldova, Poland, Russian Federation, Slovak Republic, Spain, Sweden, Turkey and Ukraine.

<sup>49</sup> For example, in Cyprus and Republic of Moldova.

<sup>50</sup> For example, Armenia, Austria, Croatia, Czech Republic, Denmark, Poland, Romania, Russian Federation, Slovak Republic, Switzerland and Ukraine.

- commentaries, manuals),<sup>51</sup> and the Court's decisions concerning friendly settlements or unilateral declarations with information on the shortcomings found and the relevant Convention standards.<sup>52</sup>
- Publication of the annual reports on the case-law of the Court and/or the execution of the judgments against the State in question, and/or annual reports on Court judgments against other States; and their wide distribution, including electronically, among all the relevant authorities and higher courts, universities, Bar associations, human rights institutions and non-governmental organisations;<sup>53</sup>
  - In addition to the official websites of the authorities relating to the Convention system and which are available to all, the availability of databases accessible to judges, which contain the case-law of the Court translated, where applicable, into the national language,<sup>54</sup> occasionally with a search facility making it possible to select the case-law of the national courts referring to the Convention, providing specific examples of the direct application of the Convention;<sup>55</sup>
  - Publication and dissemination of the Court's case-law, in particular by civil society,<sup>56</sup> including legal professions, in certain specialist journals or reviews, sometimes with the financial assistance of the authorities;<sup>57</sup>
  - In *Estonia* the Ministry of Justice also publishes periodical overviews of the Court's judgments in respect of other states (in Estonian language) in a gazette of official online publications. Summaries and periodical overviews of the Court's judgments can be searched through relevant queries or found with the help of systematic categorisation. The summaries are systematised on the basis of the provisions of the Convention and relevant keywords. Summaries of judgments in respect of Estonia are included under a separate keyword. In addition, it is possible to subscribe to e-mail notifications of the publication of summaries.
  - Actions of awareness raising intended to law practitioners (*Poland*), with lawyers likely to play a role by drawing the attention of their clients and the national courts to the case law of the Court.

124. A rapid translation of the Court's judgments, as required, is essential for their execution. Consequently, some member States have begun translating the judgments even before they become final (i.e. *Spain*,) and others have envisaged to do so (e.g. *Greece*, *Poland*). Furthermore, in order to ensure proper and adequate use of the terminology used by the Court, the offices of the Government Agents conduct proof-reading and editing of all translations (*Latvia*, *Romania*). It is abovementioned report on the measures taken by Member States to implement the relevant parts of the Brighton Declaration, the CDDH noted that member States could consider the establishment of linguistic partnerships with other member States where relevant. The CDDH also noted that the possibility of

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<sup>51</sup> For example, Poland.

<sup>52</sup> For example, in Estonia and Poland.

<sup>53</sup> In Belgium, Germany, Poland.

<sup>54</sup> For example, in Belgium, Bosnia and Herzegovina, Bulgaria, Czech Republic, Germany, Monaco, Poland, Slovak Republic and Spain. See also in doc. DH-SYSC-REC (2016)002 regarding the practice in Latvia.

<sup>55</sup> For example, in France, Poland.

<sup>56</sup> For example, in Armenia, Austria, France and Poland.

<sup>57</sup> For example, in Belgium, Germany and Portugal.

agreements between the Court and Universities regarding the translation of the Court's judgments could also be explored. It could be very motivating for students to submit translations of the case law as part of their evaluation process. Universities might also consider interesting to be engaged in an agreement aimed at enhancing the protection of human rights. Following a high quality check, translations could be sent to the HUDOC and published, with notification to the Government Agent's Office in order to enhance dissemination. This might prove to be an effective way to spread knowledge of the case law of the Court.

125. Databases are essential tools for the accessibility to the Court's judgments. The Czech database of the Court's case law has an advanced search engine with key words adjusted to the Czech legal system and is freely available on a designated website<sup>58</sup>. It contains all the judgments and decisions against the *Czech Republic*. In *Finland*, the judgments in English along with summaries of the judgments in Finnish are also published in the Finlex-database<sup>59</sup> which is a database of Finnish legislation, secondary legislation, international treaties, case-law and Government Bills. Similarly, in *Norway*, summaries in Norwegian of all category 1 judgments of the Court and all judgments against *Norway* are published in the database Lovdata.<sup>60</sup> The judgments of the Court have also been made available in different languages of the Balkans in the European Human Rights Database<sup>61</sup>. It includes the judgments relevant to the region in the local languages. In *Spain* the Ministry of Justice has devoted a webpage<sup>62</sup>, under the authority of the Agent, to the dissemination of Conventional materials in Spanish language (legal documents, factsheets, manuals, judgments) and has furnished the judicial intranet with an extensive database of the Court's case-law in Spanish language. All the judgments finding violation against *Greece* as well as some of the main judgments against different countries were translated in Greek in their entirety and subsequently published on the free access website of the State's Legal Council. The Government Agent has recently given permission for the publication of these translations on HUDOC as well.

126. Finally, the importance of a targeted dissemination of the judgment to the authorities concerned should be underlined. For example, following the *Kummer v. the Czech Republic*,<sup>63</sup> concerning to degrading treatment in police custody due to unjustified use of restraints and lack of effective investigations thereof, the translated judgment and its summary was incorporated in the police educational schemes and published on the intranet site of the Police.

### ***Sufficient acquaintance with the supervision process***

127. The Secretariat of the Committee of Ministers and the Department for the Execution of judgments of the Court have improved access to information needed to follow the supervision process. The websites have been developed and equipped with

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<sup>58</sup> Available at: <http://eslp.justice.cz>

<sup>59</sup> Available at [www.finlex.fi](http://www.finlex.fi).

<sup>60</sup> Available at [www.lovdato.no](http://www.lovdato.no)

<sup>61</sup> Available at: [www.ehrdatabse.org](http://www.ehrdatabse.org)

<sup>62</sup> Available at: <http://www.mjusticia.gob.es/cs/Satellite/Portal/es/areas-tematicas/area-internacional/tribunal-europeo-derechos>

<sup>63</sup> Application No. 32133/11, judgment final on 25/10/2013, CM/ResDH(2015)227.

powerful search engines. The Committee of Ministers' search engine is mainly oriented towards the outcome of the meetings while that of the Department for Execution of Judgments – HUDOC-EXEC – is more oriented towards the information available in each case. Civil society has provided positive feedback on the functioning of HUDOC-EXEC. In addition, the Department has developed a series of factsheets with basic information about the situation in respect of the execution of the Court's judgments in each member State.

*The dissemination of the decisions and resolutions of the Committee of Ministers*

128. The need to acquire sufficient knowledge of the Committee of Ministers' decisions relevant to the execution process was put forward in the Tirana Round Table and reiterated more recently in the Brussels Declaration (part B.2.f). Certain States Parties took specific measures to this effect:

- i. In *Croatia*, the members of the Croatian Council of Experts are regularly informed of relevant recommendations and practices of the Committee of Ministers. Their translation is available at the website of the Office of the Agent. In addition, the Agent's Office has ensured the translation of a number of conclusions adopted at the round tables organized by the Council of Europe which have been published on the Agent's webpage, and some of them were also published on the Council of Europe website.
- ii. In *Cyprus*, resolutions of the Committee of Ministers are translated into Greek language and published in the *Cyprus Law Journal*.
- iii. In *France*, the final resolutions of the Committee of Ministers are transmitted to various relevant bodies as soon as they are modified by the co-ordinator.
- iv. In *Latvia*, separate statements are issued when the Committee of Ministers adopts a final decision or resolutions.
- v. In *Poland*, the decisions adopted by the Committee of Ministers are included in the annual report on the state of execution of the judgments. The annual reports may be downloaded from the website of the Ministry of Foreign Affairs and are also disseminated as a printed publication among many stakeholders.
- vi. The *United Kingdom* delegation at the Council of Europe and Ministry of Justice ensures that decisions of the Committee of Ministers relating to specific cases are passed on to the leading department on implementation, together with any other agencies or teams involved, seeking regular progress updates in response. The closure of cases will also be communicated to the teams involved, as well as more broadly via the government's reports to the Parliament.

*The visibility of action plans and action reports: translation and dissemination*

129. The need to ensure the visibility of action plans and reports did not appear in Recommendation (2008)2 as action plans and reports were not at the time the main tool for the execution of judgments. Since their formal introduction in January 2011 as the foundations of the twin track supervision procedure, the need to ensure their visibility at national level was stressed.<sup>64</sup> The translation and dissemination of action plans and reports facilitates awareness raising related to execution of judgments at domestic level, and is also a means of exchange of information between States Parties. The Brussels Declaration called upon the latter to promote accessibility to action plans and reports (part B.2.f). Various measures have been taken:

- i. In *Armenia*, they are published on the new official Website of the Government Agent.
- ii. In *France*, action plans and action reports are transmitted to Assemblies, supreme jurisdictions, to the NIDH (CNCDH) and other bodies intervening in the field of human rights independently of which relevant ministry contributed to its writing.
- iii. In *Lithuania*, the measures provided for in the action plans for the execution of Court judgments are made available to the public in the annual reports of the Government Agent before the Court. Similarly, in *Poland*, the annual report on the state of execution of the Court judgments referred to above presents all action plans and reports submitted by Poland to the Committee of Ministers in the reporting year together with summary information about the Convention violation at stake as well as an annex with the full texts of these action plans and action reports translated into Polish.

130. Some States have noted that they do not need to translate action plans and reports as all relevant actors are able to read the relevant documents in the official languages of the Court. In other States, it is contemplated to translate them depending on the availability of financial resources (*Greece*) or when they concern cases of general interest or supervised under the enhanced supervision procedure (*Portugal*).

131. The translation of the Guide for the drafting of action plans and reports for the execution of judgments of the European Court referred to above under III B may further assist the acquaintance with the execution process at national level. *Croatia* secured the first translation of the guide.

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<sup>64</sup> See the Round table on « action plans and reports in the twin track supervision procedure », organised by the Department for the Execution of judgments of the Court, 13-14 October 2014.

VI. CO-OPERATION WITH THE COMMITTEE OF MINISTERS AND THE DEPARTMENT FOR THE EXECUTION OF JUDGMENTS OF THE EUROPEAN COURT OF HUMAN RIGHTS

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Recommendation Rec(2008)2

2. *ensure, whether through their Permanent Representation or otherwise, the existence of appropriate mechanisms for effective dialogue and transmission of relevant information between the co-ordinator and the Committee of Ministers;*

132. In the framework of the 2011 Tirana Roundtable, it has been concluded that an effective cooperation between domestic authorities and the Council of Europe could contribute in strengthening domestic capacities, recommending:

- rapid and efficient information flow between the Committee of Ministers and the domestic authorities through Permanent Representations to the Council of Europe and/or co-ordinators;
- participation of co-ordinators in the Committee of Ministers' (DH) meetings;
- consultations between the domestic authorities and the Execution Department as such consultations provide an opportunity to discuss problems faced by the domestic authorities and the expectations regarding possible implementation measures;
- visits to Strasbourg by relevant domestic authorities, in particular higher judicial authorities and chief prosecutors, to exchange views on the Committee of Ministers supervision process and execution procedures.

*Stakeholders of the co-operation*

133. With regards to most States, cooperation with the Committee of Ministers and the Department for the Execution of Judgments is made with the co-ordinator and/or the co-ordinator's team at the national level and/or the Permanent Representation to the Council of Europe, which knows the mechanisms of the supervision process in front of the Committee of Ministers.

134. In certain States, such as *France, Switzerland, or the United Kingdom*, the Permanent Representation to the Council of Europe is the main, if not single, interlocutor of the Department for the Execution. On this basis, it transmits to the Department for the Execution proof of payments, the action plans and reports, the government's responses to communications presented in the application of Rule 9. In reverse, the Permanent Representation communicates to the co-ordinator the communications transmitted to the Department for the Execution based on Rule 9, as well as additional requests for answers of the latter concerning the government's action plans and reports. The permanent representation may also work closely with the Department to organise its technical missions. The French authorities envisage to organise two yearly meetings between the Department for the Execution and the Human Rights Sub-Directorate, in connection with

the Permanent Representation in order to better identify the expectations of the Department for the Execution and to communicate all documents or missing information concerning priority cases.

135. With regard to the holding of the Human Rights meetings of the Committee of Ministers, it mostly belongs to the Permanent Representation to take part to such meetings prior to having been informed regarding the advancement of the process of execution of cases by the Office of the Government Agent. As was highlighted by the aforementioned conclusions of the Tirana Round Table, it can nevertheless be very useful that the co-ordinator equally attends these meetings in order to fully be involved in the monitoring process of the execution of judgments. In the same vein, the Brussels Declaration encouraged the Committee of Ministers to support the presence, in its Human Rights meetings, of representatives of national authorities who have competence, authority and expertise in the subjects under discussion (part C.1.f). It is a practice that tends to develop itself and that represents an added-value in the measure that there is a stronger outreach of authorities that hear the Committee's reactions and potential questions and can thereby directly participate to exchanges. As an example, the *United Kingdom* delegation coordinates the contribution to the supervision of cases against other member States at the quarterly CM-DH meetings. This often involves experts from London and UK embassies overseas attending the meeting alongside the Delegation to provide further insight into the human rights situation in the country concerned.

136. The practice of secondments of members of the Office of the Government Agent to the Permanent Representation or the Department for the Execution allows to increase the experience of national actors regarding the execution of the judgments of the Court and thereby contributes to reinforcing dialogue and cooperation. In *Russian Federation*, the delegation of 4 persons was sent to Strasbourg in 2014 with the view to reinforce the Agent's co-operation (legal and technical issues) with the Permanent Representation. It is also worth mentioning the practice of secondment of a member of the Government Agent Office before the Department for the Execution of Judgments (*Bulgaria*). This contributes amongst others to the closer cooperation with the relevant bodies of the Council of Europe, including the Department for the Execution of Judgments.

*The cooperation activities with the Department for the Execution of Judgments of the European Court*

137. The potential of bilateral co-operation between the Department for the Execution of judgments and the offices of Government Agents has already been attested. This practice has made it possible to identify all the possible problems and to resolve them without delay. It can be done through visits to the departments concerned or other bilateral activities.<sup>65</sup> In the framework of the Strasbourg Round Table on "action plans and reports in the twin-track supervision procedure", in 2014, "the important existing and potential interaction between cooperation programmes and execution" was noted with interest, underlining "the important role that a clear and convincing action plan can play in this context in order to progress the measures identified by the authorities, even – when

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<sup>65</sup> A working group was thus established in Turkey in 2014.



complex problems are present – at the drafting stage of the action plan because the cooperation programmes place expertise and a range of suggestions at the authorities' disposition which will allow them to better exercise the margin of appreciation which they have in the choice of means".

138. The Brussels Declaration encouraged the Secretary General and, through him, the Department for the Execution of Judgments to “enhance, when necessary, bilateral dialogue with States Parties, in particular by means of early assessment of action plans and reports and through working meetings, involving all relevant national stakeholders, to promote, in full respect of the principle of subsidiarity, a common approach concerning judgments with regard to the measures required to ensure compliance” (Part C. 2. d)).

139. Since 2006, the CM provides special support to the Department for the development of the targeted co-operation activities, which comprise legal expertise, round tables<sup>66</sup>, exchanges of experience between interested states and training programmes. Numerous activities take place every year, often in the form of confidential meetings with the national decision-makers or in the form of expertise of different types. Certain activities take a public form. The sharing of good practice is always an important component.

140. These activities are supplemented by regular and ad hoc visits to Strasbourg of government agents, other officials and/or judges, with a view to participate in different events related to the CM's supervision of execution and/or specific execution issues. Concrete action in this respect has been reinforced to take account of structural problems identified in the judgments of the Court, which is why some national action plans refer to such programmes. In 2016, the Action Plans between the Council of Europe and Armenia, Azerbaijan, Bosnia and Herzegovina, Georgia, the Republic of Moldova and Ukraine all contained numerous activities specifically designed to support the execution of judgments revealing important structural problems and the need for long-term continuing efforts.

141. A special effort was also made in recent years, in addition to the efforts made in the framework of the general Action Plans, to identify promptly targeted issues that can benefit for the rapid introduction of assistance activities. The financing is often provided by the Human Rights Trust Fund<sup>67</sup>, the European Union, States and certain organisations.

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<sup>66</sup> See <http://www.coe.int/fr/web/execution/round-tables-conferences-missions>.

<sup>67</sup> A full list of projects supported by the Fund is available on its website ([www.coe.int/t/dghl/humanrightstrustfund](http://www.coe.int/t/dghl/humanrightstrustfund)). Between 2009 and 2015 the Department for the Execution of Judgments implemented a number of special cooperation programmes specifically targeted towards the execution of judgments of the European Court. The conclusions of the seminars and conferences (and other relevant documentation) organised in this context are available on the Department's website.

## VII. MEANS TO PREVENT OR RESOLVE A SIGNIFICANT PERSISTENT PROBLEM IN THE EXECUTION PROCESS

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### *Recommendation Rec(2008)2*

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

142. By referring to the CDDH report on the longer-term future of the system of the European Convention on Human Rights, “the execution of some cases is problematic for reasons of a more political nature, while the execution of some other cases is problematic for reasons of a more technical nature due notably to the complexity of the execution measures or the financial implications of the judgment”.<sup>68</sup>

143. According to the 10<sup>th</sup> Annual Report of the Committee of Ministers on the supervision of the execution of judgments of the Court (2016), the challenges presented by the processes presently under supervision by the Committee of Ministers are notably linked to:

- Slow or blocked execution as a result of disagreement between national institutions, or amongst political parties, as regards the substance of the reforms required and/or the procedure to be followed;
- A refusal to adopt, notwithstanding strong insistence from the Committee of Ministers, the individual measures required or to pay just satisfaction – situations which frequently hide more fundamental disagreements with the Court’s conclusions or the requirements of execution.<sup>69</sup>

### *High level contacts and involvement*

144. High level contacts are frequently an essential component of the search for a solution. The Government Agent has a driving role to solicit the necessary support at a ministerial level or higher, hence the importance that the former benefits from a status and authority allowing him or her to engage into very high-level dialogue.

145. The involvement of a high-ranking official at the national level can be decisive for a case raising a persistent execution problem. During the discussions for the elaboration of this Guide, some examples were noted where ministers personally expressed support for the envisaged measure, putting an end to all controversies; or where a minister took directly initiatives for execution through personal contacts with other ministers.

146. This high-level engagement can equally manifest itself by the presence of personalities during the Human Rights meetings of the Committee of Ministers, which

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<sup>68</sup> Document CDDH(2015)R84, Addendum I, para. 169 i).

<sup>69</sup> See the 10th Annual Report, page 13.

was welcomed in the latter's decisions. This provides scope to the debate and exchanges within the Committee of Ministers and is always perceived as a sign of engagement and political will on behalf of national authorities. As highlighted by the Director General of the Directorate General of Human Rights and Rule of Law in the 9th Annual Report of the Committee of Ministers on the supervision of the execution of judgments and decisions of the Court, "one of the fundamental conditions to further advance the execution of controversial or politically sensitive judgments is undoubtedly establishing dialogue with key interlocutors. This dialogue should in particular aim at creating a common understanding of the execution requirements and the consequences that should flow from them. The Committee of Ministers has devoted a lot of time and energy to this dialogue during the year under review. It has welcomed on several occasions the presence of Ministers and Vice-ministers to its work, to discuss the progress of the execution process in cases concerning their respective countries". It was further noted that outside the Committee of Ministers, high level dialogues may also prove very useful insofar as they can transcend the strict execution framework in order to address other issues linked to the execution process, thus contributing and facilitating the latter. This is the case, for example, in the context of the drawing-up of the Council of Europe's action plans for member States (notably Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, the Republic of Moldova and Ukraine). The same applies, though in a less visible way, when implementing different cooperation programmes of a more specific nature.

147. In *Belgium*, in *Greece* and in *Spain*, in addition to formal contacts, the coordinator can always contact the relevant departments on an informal basis (e-mail, phone or meetings). The organisation of high level meetings or formal contacts may nonetheless still be undertaken if the executions process seems stalled.

148. For example in *Belgium*, measures taken to unlock a file related to internment revealing structural difficulties have consisted in the first place in sending mail correspondence to all competent ministers to solicit the designation of a political representative and an administrative representative for each of them, and to then update the Council of Ministers. A task force on health and detention, constituted by the Public Health Department has furthermore been established with representatives from administrations but also academics, stakeholders on the ground, social workers, doctors, magistrates, and lawyers. This has resulted in a memorandum containing recommendations destined to governments, which approaches the issues pointed out by the Court in the judgments related to internment in Belgium.

#### *Mechanisms destined to overcome internal disagreements*

149. Some member States have established mechanisms destined to overcome internal disagreements with regard to the identification of execution measures. Such mechanisms could potentially prevent the existence of substantial and persistent problems. In the *Czech Republic*, according to the Government Agent's Statute, if the Government Agent and the domestic authorities concerned do not reach a consensus regarding measures that need to be taken to execute the Court's judgment, the issue can be brought, upon the proposal of the Minister of Justice, to the attention of the Government for a decision what further action to take. This procedure has never been activated so far. The same approach applies in *Estonia*, in more complex cases where the bodies involved do not agree in the

measures to be taken, meetings of officials responsible are organised by the Government Agent; and sometimes the solutions have to be decided on the ministerial level. In these situations, it is for the Government Agent to explain the case.

150. As mentioned in the part relating to national synergies, in some member States existing forums, especially inter-ministerial committees, which deal with broader policy and legal issues beyond execution of the Court's judgments will also consider judgments of the Court in the course of their work. This will be the case where it is particularly controversial or sensitive.

#### *Cooperation activities*

151. Cooperation activities, notably with the Department for the Execution of Judgments by means of visits in member States, have also been considered as practices contributing to the resolution of persistent problems. In this regard, see Part VI. Sharing of experiences between peers is another means to facilitate the resolution of persistent problems. Particular mention should be made in this regard to the exchanges of views on execution of judgments organised within the Committee of experts on the system of the European Convention on Human Rights (DH-SYSC) in accordance with its terms of reference or round tables organised by the Department for the Execution of Judgments.

152. The Brussels Declaration encouraged "all the relevant Council of Europe stakeholders to take into account to a larger extent issues relating to the execution of judgments in their programmes and co-operation activities and, to this end, to establish appropriate links with the Department for the Execution of Judgments" (Part C. 3. a)). As highlighted by the Director General of the Directorate General of Human Rights and Rule of Law in the 9<sup>th</sup> Annual Report of the Committee of Ministers<sup>70</sup>, many other bodies of the Council of Europe are participating in these dialogues, each one with its specificity and expertise, for instance, the Venice Commission, the CPT, the CEPEJ, the CCJE and the CCPE, the Commissioner for Human Rights, the Parliamentary Assembly, and different expert committees. The States need to make greater use of this work. It can also be noted that on a number of occasions in 2015, the Committee of Ministers has formally invited the Secretary General to intervene personally, in particular to convey certain messages or raise execution issues during his contacts with the authorities. Indeed, it is of the utmost importance to maintain the dialogue in some sensitive and complex cases.

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<sup>70</sup> See page 11.

Appendix I**Recommendation Rec(2008)2 of the Committee of Ministers 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)*

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

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

- g. Noting therefore that there is a need to reinforce domestic capacity to execute the Court's judgments;
- h. Underlining the importance of early information and effective co-ordination of all state actors involved in the execution process and noting also the importance of ensuring within national systems, where necessary at high level, the effectiveness of the domestic execution process;
- i. Noting that the Parliamentary Assembly recommended that the Committee of Ministers induce member states to improve or, where necessary, to set up domestic mechanisms and procedures – both at the level of governments and of parliaments – to secure timely and effective implementation of the Court's judgments, through co-ordinated action of all national actors concerned and with the necessary support at the highest political level;<sup>71</sup>
- j. Noting that the provisions of this recommendation are applicable, *mutatis mutandis*, to the execution of any decision<sup>72</sup> or judgment of the Court recording the terms of any friendly settlement or closing a case on the basis of a unilateral declaration by the state;

RECOMMENDS that member states:

1. 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 co-ordinator should have the necessary powers and authority to:
  - acquire relevant information;
  - liaise with persons or bodies 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;
2. ensure, whether through their Permanent Representation or otherwise, the existence of appropriate mechanisms for effective dialogue and transmission of relevant information between the co-ordinator and the Committee of Ministers;
3. take the necessary steps to ensure that all judgments to be executed, as well as all relevant decisions and resolutions of the Committee of Ministers related to those judgments, are duly and rapidly disseminated, where necessary in translation, to relevant actors in the execution process;
4. identify as early as possible the measures which may be required in order to ensure rapid execution;

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<sup>71</sup> Parliamentary Assembly Recommendation 1764 (2006) – “Implementation of the judgments of the European Court of Human Rights”.

<sup>72</sup> When Protocol No. 14 to the ECHR has entered into force.

5. 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;
6. rapidly prepare, where appropriate, action plans on the measures envisaged to execute judgments, if possible including an indicative timetable;
7. take the necessary steps to ensure that relevant actors in the execution process are sufficiently acquainted with the Court's case law as well as with the relevant Committee of Ministers' recommendations and practice;
8. disseminate the vademecum prepared by the Council of Europe on the execution process to relevant actors and encourage its use, as well as that of the database of the Council of Europe with information on the state of execution in all cases pending before the Committee of Ministers;
9. as appropriate, keep their parliaments informed of the situation concerning execution of judgments and the measures being taken in this regard;
10. where required by a significant persistent problem in the execution process, ensure that all necessary remedial action be taken at high level, political if need be.

Appendix II**List of sources**

- Proceedings of the High-Level Conference on the implementation of the European Convention on Human Rights, our shared responsibility (Brussels, 26-27 March 2015)
- The impact of the European Convention on Human Rights in States Parties: selected examples (Information document of the Parliamentary Assembly AS/Jur/Inf (2016) 04)
- 10<sup>th</sup> Annual Report of the Committee of Ministers on the supervision of the execution of judgments and decisions of the European Court of Human Rights, 2016
- 9<sup>th</sup> Annual Report of the Committee of Ministers on the supervision of the execution of judgments and decisions of the European Court of Human Rights, 2015
- Proceedings of the International Conference on “Enhancing National Mechanisms for Effective implementation of the European Convention on Human Rights” (Saint Petersburg, 22-23 October 2015)
- Round table on “action plans and reports in the twin-track supervision procedure” (Strasbourg, 13-14 October 2014)
- Round table on “efficient domestic capacity for rapid execution of judgments of the European Cour of Human Rights” (Tirana, 15-16 December 2011)
- Seminar on the role of government agents in ensuring effective human rights protection (Bratislava, 3-4 April 2008)

***Intergovernmental work for the preparation of the Guide***

- Report of the 3<sup>rd</sup> DH-SYSC meeting (10-12 May 2017) DH-SYSC(2017)R3
- Report of the 2<sup>nd</sup> DH-SYSC-REC meeting (6-8 March 2017) DH-SYSC-REC(2017)R2
- Report of the 86<sup>th</sup> CDDH meeting (6-8 December 2016) CDDH(2016)R86
- Report of the 2<sup>nd</sup> DH-SYSC meeting (8-10 November 2016) DH-SYSC(2016)R2
- Report of the 1<sup>st</sup> DH-SYSC-REC meeting (23-25 May 2016) DH-SYSC-REC(2016)R1
- Report of the 1<sup>st</sup> DH-SYSC meeting (25-27 April 2016) DH-SYSC(2016)R1