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Co-ordinator's role to steer the execution process in cases raising long-standing structural human rights issues (early identification of the actions required, possible difficulties and ways to overcome them; fostering co-operation and consensus amongst relevant actors and adherence to the solutions identified)

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Greeting

Good afternoon,

Your excellences ambassadors, honourable colleagues,

Solidarity with Ukraine

At the outset, I would like to express our solidarity with Ukraine - Lithuania stands with the people of Ukraine in the face of this heart-breaking act of aggression hoping for the peace and security in Europe.

Importance of the execution

Realities of today show the importance of the observance of the international undertakings. Within the context of the human rights protection, the execution of the judgments of the European Court of Human Rights is a very important obligation of the States ensuring the effectiveness of the whole Convention system.

Matiošaitis and Others

I was asked to share our experiences in executing Court's judgment in the case *Matiošaitis and Others v. Lithuania* (final on 23 August 2017) where the violation of Article 3 was found due to statutory inability of life prisoners to obtain a review of their sentences and the lack of any prospect of release. The case was supervised under enhanced procedure due to its complexity.

Execution – Coordination

Within the Lithuanian legal system only the payment of the awarded compensation is regulated by a statutory law, the execution process as concerns individual and general measures is carried on the case-by-case basis having regard to the nature of the violation found.

The main functionary in the execution process is the Government Agent who has a mandate to coordinate the execution process.

The Government Agent ensures the dissemination of the Court's judgments. In this regard the relevant authorities are provided with the explanatory note whereby the circumstances leading to the finding of violation are in detail presented also drawing

attention to the relevant Convention standards according to the Court's case-law. Usually the Government Agent requests competent authorities to provide information about the present situation and adequacy of the existing legal framework in the relevant field and whether there have been any measures already taken in order to prevent similar violations. There could also be meetings among the relevant authorities held in order to identify and agree on the necessary execution measures aiming to facilitate and accelerate the process. The execution of the judgments of the European Court of Human Rights is always included into the reports of the annual activity of the Government Agent, thereby drawing particular attention to the cases under enhanced supervision. The Government Agent also periodically informs the Committee of Legal Affairs of the Parliament about the judgments against Lithuania and their implementation. If necessary, the Government Agent may initiate the execution measures in order to advance the implementation of the Court's judgment.

Legislative measures – the most difficult

However, the Government Agent does not have a right to initiate legislative measures. Of course, the Government Agent, as a coordinator, may draw attention to the necessity of legislative amendments, however the Government Agent cannot individually submit draft laws for the consideration before the Government let alone before the Parliament. Therefore, it could be observed, and I think that this is no surprise to most of the States, that the execution process may be time-consuming and most often is rather difficult when it requires statutory amendments and it would be even more complex, if it requires Constitutional amendments.

Implementation

In order to introduce the mechanism for the effective review of the life imprisonment sentence with a view of the reduction of the sentence, the Ministry of Justice prepared amendments of the criminal and penal law. Thorough analysis, which also involved consultations with various State institutions and other social partners, including the NGOs and academia, was carried out. Its aim was to find an optimal, properly balanced review mechanism. The drafts have been improved for several times before presenting them for the Parliament's consideration which eventually ensured smooth legislative process and the adoption of the laws with the support of a large majority of parliamentarians.

So, eventually there was a mechanism of the judicial review established through which those serving life sentences may request commutation of their sentences into fixed-term sentences if they have fulfilled a number of requirements and demonstrated that they

are no longer a danger to society with the possibility of a parole and enhanced social rehabilitation¹.

This mechanism was considered as an adequate response to the Court's judgment and led to the closure of the supervision of the execution.

What was done – coordinator's role

This was a case where active cooperation with relevant institutions was initiated by the Government Agent already since the communication of the case and preparation of the Government's Observations drawing attention to the developed case-law of the Court in this sphere, in particular to the finding of the Court in *Vinter and Others v. the UK* that **“a whole life prisoner is entitled to know, at the outset of his sentence, what he must do to be considered for release and under what conditions, including when a review of his sentence will take place or may be sought”**. The Government Agent took into account and was trying to draw attention to the fact that all the life prisoners could have been potential victims (approximately 120 persons).

As at the relevant time only the possibility to apply for the Presidential pardon was foreseen for the purposes of commutation of life imprisonment sentence, the Government Agent even before the adoption of the Court's judgment in the case at issue took actions in order to initiate the consultations about the necessary amendments in order to bring the Lithuanian legislation in line with Convention principles and the Court's case-law in the matter. This initiative materialized into the respective proposal of the Seimas Board addressed to the Government following the regular meeting of the Government Agent at the Committee of Legal Affairs of the Parliament where particular attention is drawn to the cases requiring legislative measures for the proper execution.

When preparing the Government's Observations in the case at issue, the Government Agent ensured a wide and thorough dialogue with the competent authorities at the same time ensuring the exchange of the relevant information among them. This close cooperation subsequently continued in the execution stage. It was clear that the proper implementation required the complex measures, thus difficulties in the execution process encountered in other cases were taken into account in advance. It was very clear that close cooperation with various social partners and decision makers was crucial, as well as proper dissemination of the essence of the violation found, emphasizing the fact that the

¹ The procedure is open only if a prisoner has served not less than 20 years. If the criminal court decides to replace the penalty of life imprisonment to the penalty of a fixed-term custodial sentence, the term of the imprisonment (commuted custodial sentence) may not be less than 5 years and may not exceed 10 years. Following replacement of the sentence into fixed-term imprisonment a convict will be eligible for release on parole. In case the convicted persons were not conditionally released, they would be subjected to enhanced social-rehabilitation measures during the last year of the fixed-term imprisonment sentence.

Court's judgment did not require immediate release of all the life prisoners, rather it required to ensure them a hope to be released if concrete requirements were fulfilled.

Following the adoption of the Court's judgment finding the violation of Article 3 of the Convention, the Government Agent took every possible effort to highlight the importance of the case stressing the necessity of the legislative amendments in order to implement the Court's judgment – because there were very clear indications that most effective way to implement the judgment would be the establishment of the judicial review of the life imprisonment sentence.

There were meetings organized at the highest political level, namely with the Prime Minister, the Speaker of the Parliament also with the head of the Committee of Legal Affairs of the Seimas in order to discuss the necessary execution measures. The Government Agent was actively communicating with the relevant authorities drawing attention to the essence of the violation found and applicable Convention standards in this regard aiming to indicate the necessary execution actions. Particular attention was drawn to this case presenting the annual activity report.

One more important aspect related to the effectiveness of the coordination, was that the necessary legislative measures fell into the competence of the Ministry of Justice and as the Government Agent is based in this institution, thus it allowed to pursue constant dialogue, including at the informal working level, and to be more involved in all the relevant procedures. The Government Agent also took active participation in the awareness raising of the necessary execution measures through the media campaign organized together with the Ministry of Justice.

As it was already mentioned, this case was subject to enhanced supervision, therefore the actions of the Government Agent in coordination of the execution process were very active, especially due to the fact that following the adoption of the Court's judgment Lithuania received another similar communication where the Court was considering initiation of the pilot judgment procedure. Therefore, there were actions taken in order to request for the inclusion of the relevant draft laws into the agenda of the Parliament without undue delay.

Facilitation of legislative process

Despite the complexity of the case and sensitivity of the issue, the fact that already before the finding of the violation of the Convention there were ongoing huge developments in criminal and penal law, facilitated the legislative process, because of the changing purposes of the criminal punishment and due to the strengthening of social rehabilitation within the course of the execution of sentences.

The judgment in the case Matiošaitis and Others was widely reported and discussed within the Lithuanian society, including the media and scholarly debate. The reduction of

the life imprisonment sentence was supported by the social partners, such as NGOs, academia and the Church.

The successful outcome of the relevant legislative initiative was predetermined by the broad co-operation among various institutions, wide and transparent dialogue within the legislative process and well-balanced public relations aiming to show efforts made to properly take into account the interests of the victims of the relevant crimes and necessity to ensure safety and security of the society while ensuring the “right to hope” to life prisoners to be released.

The fact that domestic courts were rejecting the requests to review the imposed life imprisonment sentence until the adoption of the legislative amendments introducing such right also contributed to the realisation that this was the only possible way to execute the judgment.

Finally, it could be noted that the visit of the representatives of the Department for the Execution of Court’s Judgments where particular attention was drawn to the execution of the cases under enhanced procedure in meetings with the relevant State authorities and politicians, I believe also contributed to the success of the measures taken in the execution process in Matiošaitis and Others case.

In Conclusion

It could be noted that the indication of the possible problems during the litigation stage and close cooperation with the authorities involved in the particular case already during the preparation of the Government’s Observations, as well as the existence of the regular formats for the sharing of information about the ongoing proceedings before the Court and for the consultations on the necessary execution measures, in particular with the decision makers, in addition to the timely dissemination of the Court’s judgments contribute to the constructive dialogue with the competent authorities and facilitate the implementation of the judgments of the European Court of Human Rights.