NEEDS ASSESSMENT ON THE EXECUTION OF THE JUDGMENTS OF THE EUROPEAN COURT OF HUMAN RIGHTS IN RELATION TO SERBIA

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List of abbreviations

ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
CM	Committee of Ministers
CM (DH)	Committee of Ministers Human Rights Meetings
CoE	Council of Europe
PACE	Parliamentary Assembly of the Council of Europe
CPC	Criminal Procedure Code
CvPC	Civil Procedure Code
SCC	Supreme Court of Cassation

Executive summary

The execution of final judgments is a key element of any rule of law system. It is well known that as it is important to ensure that in a national system that any binding judicial decision must not remain inoperative, this could be applied in the same manner to the international system including the system of execution of the judgments of the European Court of Human Rights (ECtHR", "Court"). Although the execution of judgments rendered by an international court requires a different type of procedure in comparison to the one applicable at the national level, the efficiency of execution of judgments adopted by the ECtHR remains one of the cornerstones of the system established by the Convention for the Protection of Human Rights and Fundamental Freedoms ("ECHR", "the Convention").[1]

The readiness of Member States to execute judgments of the Strasbourg Court, without undue delay, reflects the efficiency of the human rights protection system established by the Convention. It is, therefore, very important for each Member State of the Council of Europe (CoE) to ensure an appropriate system for the execution of ECtHR judgments taking into account all specific needs of a particular State.

It is important to note that the judgments of the ECtHR in respect of Serbia and their execution have also been taken into account by the European Commission while assessing the progress that Serbia has made in the accession process.[2]

The aim of this study has been to provide a needs assessment on the execution of judgments of the ECtHR in relation to Serbia, to examine the current state of play and propose recommendations in line with standards set by the CoE, which may serve as an inspiration to improve system of execution of the ECtHR judgments in Serbia.

The needs assessment was made within the Action "Strengthening the effective legal remedies to human rights violations in Serbia" implemented under the joint programme of the European Union and the Council of Europe "Horizontal Facility for the Western Balkans and Turkey 2019–2022".

This study aims to take stock of the current situation regarding the execution of ECtHR judgments in Serbia with an emphasis placed on the status of the Government Agent of the Republic of Serbia before the ECtHR, as it is defined in law and developed in practice, and how such status impacts on the effectiveness of the execution in general. It also examines at the role of other institutions in the execution process.

The assessment includes an analysis of the current legal framework governing the operation of the Government Agent in the Republic of Serbia within the State Attorney's Office. It also discusses whether

1 This issue *inter alia* was discussed during the seminar "I*mplementation of the judgments of the European Court of Human Rights: a shared judicial responsibility?" which was held* on the occassion of the opening of the judicial year 2014, https://www.echr.coe.int/Pages/home.aspx?p=events/ev_sem&c=

2 See https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-serbia-report.pdf

the existing legal basis provides an appropriate framework for the efficient execution of the ECtHR judgments.

In addition, it indicates certain challenges faced in practice and refers to the need to improve the system of execution of ECtHR judgments in respect of Serbia, which may require a regulatory intervention. It, therefore, provides recommendations for enhancing the process of the execution of judgments in Serbia and strengthening the role of relevant national institutions in the process.

Moreover, this paper looks at different aspects of the execution process including the role of the judiciary and other institutions as well as that of national parliaments in the monitoring of the execution process. The issues mentioned above are considered in the light of the standards set by the soft law instruments of the CoE, in particular, regarding the role of government agents as coordinators of the execution process and as regards the role of national parliaments in the execution of judgments.

It also provides an overview of practices of other CoE Member States, which might be taken into consideration as useful examples for defining the status of the Government Agent and establishing clear rules and procedures which should streamline the execution process.

The assessment brings together the findings of two consultants, Velimir Delovski and Vanja Rodić, who were invited to undertake the study by the CoE, based on:

- their own understanding of the issues related to the execution of ECtHR judgments and the particularities of this process in Serbia; and
- the information gathered by the representatives of all relevant stakeholders during the meetings and consultations in the period between April and June 2020.

During the preparation of this report, there were meetings with representatives of the following institutions (in alphabetic order):

- the State Attorney`s Office of the Republic of Serbia (the Government Agent of the Republic of Serbia before the European Court of Human Rights);
- the Constitutional Court of the Republic of Serbia;
- the Supreme Court of Cassation of the Republic of Serbia;
- the Ministry of Justice of the Republic of Serbia;
- the Republic Public Prosecutor's Office;
- the Judicial Academy of the Republic of Serbia;
- the National Assembly of the Republic of Serbia (in particular, the Committee on Human Rights and Minority Rights and Gender Equality); and
- the Council of Europe's Department for the Execution of Judgments of the European Court of Human Rights.

Representatives of the above-mentioned institutions who were interviewed gave their valuable insight into the subject matter and their views have been reflected in the assessment and taken into account when drawing up the conclusions and recommendations of the assessment.

Additionally, the comparative part of this analysis has also incorporated the information received through e-mail correspondence with representatives of the offices of the government agents of Austria and the Czech Republic.

The report is divided into five chapters.

Chapter I briefly explains the execution of judgments and the system of supervision of the execution of judgments by the Council of Europe's Committee of Ministers. It further describes the key Council of Europe documents regarding the execution process and provides recommendations on the role of the government agents and parliaments in this regard.

Chapter II focuses on presenting the practices of various states relating to making appropriate legal and institutional arrangements for the government agents and their offices, as well as on the establishment of inter-institutional coordination mechanisms responsible for coordination among the domestic stakeholders involved in the execution and monitoring the course of the execution of judgments of the ECtHR. Moreover, this chapter also examines the different forms of involvement of the legislative bodies in the process of executing ECtHR judgments.

Chapter III provides a detailed analysis of the legislative framework for the Government Agent in Serbia, as well as regarding the re-examination of cases as individual measure for the execution of the ECtHR judgments, also referring to challenges identified by the judiciary in the practical application of the relevant legal provisions for reopening the proceedings. Bearing in mind the willingness of Member States expressed through a number of CoE documents (*see Chapter II*) to enhance the role of legislative bodies in monitoring the execution process, the involvement of the Serbian Parliament in the process of execution of ECtHR judgments is also discussed.

Chapter IV provides an overview of the main cases and groups of cases in the process of execution in respect of Serbia describing briefly the main issues identified in the ECtHR judgments against Serbia *(Jevremović group, EVT group, Ališić and Others, Zorica Jovanović and Stanimirović group)*. The focus is primarily on the execution process itself, the challenges faced in that process, lessons learned and the results achieved.

Chapter V summarises the main findings of the assessment about the current state of affairs in Serbia regarding the execution of ECtHR judgments and offers recommendations on further steps to be taken in the future in order to overcome the shortcomings identified within this assessment, and set up an effective system of execution, which will be designed, taking into consideration the best practices of the CoE Member States.

I. Council of Europe standards in relation to the execution of judgments of the European Court of Human Rights

I.1. THE EXECUTION OF ECTHR JUDGMENTS AND THE SUPERVISORY MECHANISM OF THE COUNCIL OF EUROPE

Under Article 46(1) of the European Convention on Human Rights, the judgments of the Court have binding force, meaning that States undertake to abide by the final judgment of the Court in any case to which they are parties. According to Article 46(2) of the Convention, the Committee of Ministers (CM) is responsible for supervising the execution by the States of the Court's judgments.[3] Indeed, the machinery for the supervision of enforcement is a unique feature of the Convention system. Subject to such supervision, the respondent States remain free to choose the means by which they will discharge their legal obligation under Article 46 of the Convention. Generally, for each case (or group of similar cases) the CM examines the remedial measures suggested by the State during special human rights (DH) meetings of delegates from all Member States, and adopts a final resolution once it is satisfied that the judgment in question is complied with.

Moreover, according to Article 46(4) if the CM considers that a State refuses to abide by a final judgment in a case to which it is a party, it may, after serving formal notice on that State and by a decision adopted by a majority vote of two-thirds of the representatives entitled to sit on the committee, refer to the Court the question whether the relevant State has failed to fulfil its obligation under paragraph 1. Consequently, if the Court finds a violation, it shall refer the case to the CM for consideration of the measures to be taken (Article 46(5)).

The CoE's Member States have, in principle, three obligations following an adverse ruling of the Court: (1) to pay any compensation awarded; (2) if necessary, to take further individual measures in favour of the applicant, that is to put an end to the violation found by the Court and make reparation for its consequences in such a way as to place the applicant, as far as possible, into the situation existing before the breach (*restitutio in integrum*)[4]; and (3) to take measures of a general character in order to ensure

3 The supervision is carried out in accordance with the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements (Adopted by the Committee of Ministers on 10 May 2006 at the 964th meeting of the Ministers' Deputies and amended on 18 January 2017 at the 1275th meeting of the Ministers' Deputies), https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016806dd2a5

4 *Akdivar and Others v. Turkey (Article 50), 1 April 1998, §47, Reports of Judgments and Decisions 1998-II*

non-repetition of similar violations in the future.[5] Depending on the nature of the violation, some judgments might require legislative amendments or changes of policy and administrative or judicial practice, which are intended to prevent further violations of the same type.

The principle of subsidiarity, which was incorporated into the preamble of the Convention with Protocol No.15 to the Convention,[6] states that domestic authorities are primarily responsible for respecting and ensuring the rights and freedoms guaranteed by the Convention. It entails that all branches of government power and all relevant authorities are obliged to cooperate with each other in order to ensure compliance with the final judgments rendered by the Court.

Since 2009, the CM has reinforced subsidiarity by inviting States to submit action plans and/or action reports for the execution of the Court's judgments within the set deadlines– at the latest within six months from the date on which the judgment became final.[7] Action plans and action reports were introduced in 2004 and have become embedded in the supervision process since 2009 as key tools to enhance the dialogue between the CM and the States, but also with other relevant stakeholders, including the parliaments.[8] Their submission became mandatory with the reform of the working methods of the CM following the Interlaken Conference on 1 January 2011.[9]

While action plans set out the measures which the respondent State intends to take to implement a judgment of the Court, together with an indicative timetable, action reports describe the measures which have been taken to implement a judgment and/or explain the reasons for which the state considers that no further measures are necessary.[10]

Under the **twin-track supervision process** introduced with the reform of 2011, most of the 'simple' cases would fall under **standard supervision** with minimum intervention by the CM. In contrast, the **enhanced procedure** is mainly reserved for cases in which the CM or the Court has identified major structural or complex problems, pilot judgments, cases in which urgent individual measures are required, as well as inter-State cases. Moreover, cases that firstly fall within the category of 'simple' and are, thus, under standard supervision may be transferred into enhanced supervision as the execution becomes complex.[11] The enhanced supervision implies a more proactive approach on the part of the CM, which engages in more intensive supervision to assist States to identify the content of the remedial measures and, where necessary, put pressure on the State concerned to swiftly comply with an adverse judgment.

5 *Broniowski v. Poland* [GC], no. 31443/96, § 193, ECHR 2004-V

6 Protocol No. 15 amending the Convention for the Protection of Human Rights and Fundamental Freedoms (CETS No.213), Strasbourg, June 24, 2013.

7 2019 Annual Report of the Committee of Ministers on the supervision of the execution of judgments and decisions of the European Court of Human Rights, available at: https://rm.coe.int/annual-report-2019-1/16809e1c59, p.11.

8 Brussels Declaration of 27 March 2015 of the High-level Conference on the "Implementation of the European Convention on Human Rights, our shared responsibility", Action Plan, Point B., paragraph 2. a.

9 Decision of the Committee of Ministers of 2 December 2010 (1100 DH meeting) https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168059acda. Also see Information document CM/Inf/DH(2010)37, 6 September 2010 – Supervision of the execution of judgments and decisions of the European Court of Human Rights: Implementation of the Interlaken Action Plan – Modalities for a twin-track supervision system and Information document CM/Inf/DH(2010)45 final, 7 December 2010 - Supervision of the execution of judgments and decisions of the European Court of Human Rights: Implementation of the Interlaken Action Plan – Outstanding issues concerning the practical modalities of implementation of the new twin-track supervision system, available at: https://www.coe.int/en/web/execution/rules-and-working-methods.

10 Useful practical guidelines on the preparation of action plans and action reports are provided in the *Guide for the drafting of action plans and reports for the execution of judgments of the European Court of Human Rights*, https://rm.coe.int/guide-drafting-action-plans-reports-en/1680592206

11 See Information document CM/Inf/DH(2010)45 final, 7 December 2010, cited above (https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016804a3e07).

I.2. SOFT LAW INSTRUMENTS OF THE COUNCIL OF EUROPE

The normative framework for execution of the ECtHR judgments consists of the standards laid down in several non-binding, soft law instruments of the CoE. Of paramount importance is **Recommendation CM/Rec(2008)2 of the Committee of Ministers to Member States on efficient domestic capacity for rapid execution of judgments of the European Court of Human Rights.**[12] It notes the need to reinforce domestic capacity to execute the Court's judgments[13] and underlines "the importance of early information and effective co-ordination of all State actors involved in the execution process, while also noting the importance of ensuring within national systems, where necessary at high level, the effectiveness of the domestic execution process".[14]

Given the wide variety of national practices, Recommendation CM/Rec(2008)2 did not go as far as to specify the Agent as a coordinator, even though greatly emphasizes the Agent's role as a central coordination authority in supervising the execution of the Court's judgments, since his or her duties are most similar to those conferred by the recommendation. It recommends Member States to ensure the following:

- Designation of a coordinator for the execution of judgments at the national level, either individual or a body, as a focal contact point for the CoE's Department for Execution of Judgments with reference contacts in the relevant national authorities involved in the execution process (at para. 1);
- The coordinator should have the necessary powers and authority to acquire relevant information and to 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 process (at para. 1), while Member States should ensure the existence of appropriate mechanisms for effective dialogue and transmission of relevant information between the coordinator and the CM (at para. 2);
- The coordinator should play a crucial rule in identifying execution measures (at para. 4) and preparing action plans (at para. 6); The coordinator should facilitate the adoption of any useful measures to develop effective synergies between relevant actors in the execution process at the national level and to identify their respective competences (at para. 5);
- The coordinator should take necessary steps to ensure that all judgments are executed, and that all judgments, relevant decisions and resolutions of the CM are duly and rapidly disseminated, and where necessary translated, to relevant actors in the execution process, so that they are sufficiently acquainted with the Court's case law, as well as with the CM' recommendations and practice (at paras. 3 and 7); Parliaments are kept informed of the situation concerning execution of judgments and the measures being taken in this regard (at para. 9);
- All necessary remedial action is taken at a high level, political if need be, where it is so required by a significant persistent problem in the execution process (at para. 10).

12 Adopted by the Committee of Ministers on 6 February 2008 at its 1017th Session.

13 Recommendation CM/Rec(2008)2, cited above, at para. g.

14 Recommendation CM/Rec(2008)2, cited above, at para. h. At para.i. it also referred to **Parliamentary Assembly Recommendation 1764 (2006) "Implementation of the judgments of the European Court of Human Rights"** adopted on 2 October 2006 (24th Sitting), which "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".

Apart from Recommendation CM/Rec(2008)2, since 2000 the CM has adopted several other recommendations on various measures to improve the national implementation of the Convention, which also concern the execution of the ECtHR judgments, including:

- *Recommendation No. R (2000) 2 of the Committee of Ministers to Member States on the re-examination or reopening of certain cases at domestic level following judgments of the European Court of Human Rights*[15];
- *Recommendation CM/Rec(2002)13 of the Committee of Ministers to Member States on the publication and dissemination in the Member States of the text of the European Convention of Human Rights*[16];
- *Recommendation CM/Rec(2004)5 of the Committee of Ministers to Member States on the verification of the compatibility of draft laws, existing laws and administrative practice with standards laid down in the European Convention on Human Rights*[17];
- *Recommendation CM/Rec(2004)6 of the Committee of Ministers to Member States on the improvement of domestic remedies*[18];
- *Recommendation CM/Rec(2010)3 of the Committee of Ministers to Member States on effective remedies for excessive length of proceedings*[19];
- *Recommendation CM/Rec(2019)5 of the Committee of Ministers to Member States on the system of the European Convention on Human Rights in university education and professional training*[20], *replacing Recommendation Rec(2004)4 of the Committee of Ministers to Member States on the European Convention on Human Rights in university education and professional training.*

I.3. THE REFORM OF THE SYSTEM OF SUPERVISING THE EXECUTION OF ECTHR JUDGMENTS

Certain standards regarding the execution of the Court's judgments have also resulted from the significant reform of the Convention system which began against the background of a continuing rise in the caseload of the Court and was launched with the Interlaken Conference held in 2010. As mentioned above in *Chapter I.1.*, it also focused on the CM's supervision of the execution of the Court's judgments. The prioritisation twin-track system enabled the CM to concentrate on more complex cases, thereby achieving a speedier and more efficient execution of the Court's judgments.

Since 2010, in the course of the Interlaken reform process, five declarations have been adopted at further high-level conferences which were convened in Interlaken (2010), Izmir (2011)[21], Brighton (2012)[22], Brussels (2015)[23] and Copenhagen (2018)[24] to discuss the measures proposed to guarantee the long-

15 Adopted by the Committee of Ministers on 19 January 2000 at its 694th Session.

16 Adopted by the Committee of Ministers on 18 December 2002 at its 822nd Session.

17 Adopted by the Committee of Ministers on 12 May 2004 at its 114th Session.

18 Adopted by the Committee of Ministers on 12 May 2004, at its 114th Session.

19 Adopted by the Committee of Ministers on 24 February 2010 at its 1077th Session.

20 Adopted by the Committee of Ministers on 16 October 2019 at the 1357th meeting of the Ministers' Deputies.

21 See Izmir Declaration of 26/27 April 2011 of the High Level Conference on the Future of the European Court of Human Rights.

22 See Brighton Declaration of 19/20 April 2012 of the High Level Conference on the Future of the European Court of Human Rights.

23 See Brussels Declaration of 27 March 2015 of the High-level Conference on the "Implementation of the European Convention on Human Rights, our shared responsibility".

24 See Copenhagen Declaration of 12/13 April 2018 of the High-Level Conference on "Continued Reform of the European Court of Human Rights Convention System – Better balance, improved Protection".

term effectiveness of the Convention system and the future of the European Court of Human Rights. In all these documents, an emphasis was placed on the national implementation of the Convention and the shared responsibility of the domestic authorities and the CoE in that regard.

The **Interlaken Declaration** sought to establish a roadmap for the reform process.[25] It called for the strengthening of the principle of subsidiarity (at para.2) which implies a shared responsibility between the States Parties and the Court (at para.3). It also stressed the importance of full, effective and rapid execution of the final Court's judgments (at para.7).[26]

The support which was given to the execution of the ECtHR judgments in the course of the Interlaken process reached its culmination in the **Brighton Declaration**, which encouraged States "to develop domestic capacities and mechanisms to ensure the rapid execution of the Court's judgments, including through implementation of Recommendation 2008(2), and to share good practices in this respect"[27] as well as "to facilitate the important role of national parliaments in scrutinising the effectiveness of implementation measures taken."[28] Moreover, it called upon the States Parties "to develop and deploy sufficient resources at a national level with a view to the full and effective execution of all judgments, and afford appropriate means and authority to the government agents or other officials responsible for co-ordinating the execution of judgments."[29]

The **Brussels Declaration** noted the freedom of State Parties to choose the means by which they could achieve the full and effective execution of the Court's judgments (at para. 11). Furthermore, it recognised the role of parliaments stating that "the execution of the Court's judgments may require the involvement of the judiciary and parliaments", calling upon the States Parties to "increase efforts at national level to raise awareness among members of parliament and improve the training of judges, prosecutors, lawyers and national officials on the Convention and its implementation, including as regards the execution of judgments".[30]

Moreover, it urged States to "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",[31] In this context, it recommended "holding of regular debates at national level... involving executive and judicial authorities as well as members of parliament and associating, where appropriate, representatives of National Human Rights Institutions and civil society."[32]

Additionally, the Brussels Declaration recommended the establishment of "contact points", wherever appropriate, for human rights matters within the relevant executive, judicial and legislative authorities, and the establishment of networks between them through meetings, information exchanges, hearings or the transmission of annual or thematic reports or newsletters."[33]

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25 See Interlaken Declaration of 19 February 2010 of the High-level conference: "The future of the European Court of Human Rights", PP 10.

26 Also see Brussels Declaration, cited above, para.10.

27 Brighton Declaration, cited above, para. 29 a) i).

28 Brighton Declaration, cited above, para. 29 a) iii).

29 See Brussels Declaration, cited above, Action Plan, Point B., paragraph 2. c.

30 Action Plan, part B., paragraph 1. c.

31 Action Plan, part B., paragraph 1. h.

32 Action Plan, part B., paragraph 2. j.

33 Action Plan, part B., paragraph 2. i. In its report on the measures taken to implement relevant parts of the Interlaken and Izmir Declarations of 17 December 2012, the Standing Committee on Human Rights of the Council of Europe (CDDH) also indicated that "the formal appointment of contact persons in other ministries and public authorities with whom the coordinator will liaise may also facilitate the process".

The **Copenhagen Declaration** reaffirmed the Brussels Declaration and endorsed the recommendations contained therein (at para.22). It also called on the States Parties to take further measures when necessary to strengthen the capacity for effective and rapid execution of judgments at the national level, also by the use of inter-State cooperation (at para.23).

Following a thorough evaluation, it was concluded that the Interlaken process had brought significant advances which was due to the establishment of improved coordination structures among State authorities, capable of rapidly gathering relevant domestic decision-makers, most commonly, with the Government Agent as a coordinator, responsible for obtaining necessary information and engaging necessary concertation / negotiations.[34]

I.4. PARLIAMENTARY ASSEMBLY AND THE ROLE OF NATIONAL PARLIAMENTS IN THE EXECUTION PROCESS

The Parliamentary Assembly of the Council of Europe ("the PACE") remained quite active when reporting on the implementation of the judgments of the Court, and in particular, it highlighted the need for greater and more proactive involvement of parliaments in the execution process.[35]

In **Resolution 2178 (2017)**, the PACE recommended that States, *inter alia*, provide sufficient resources to national stakeholders responsible for implementing Court judgments and encourage them to co-ordinate their work in the area (at para 9.3.).

The development of special parliamentary mechanisms to follow and support execution was also strongly recommended notably in **Recommendation 1764 (2006)** mentioned above, as well as in several resolutions adopted by the PACE. For example, **Resolution 2178 (2017)** called on the national parliaments to establish parliamentary structures guaranteeing follow-up to and monitoring of international human rights obligations, and, in particular, of the obligations stemming from the Convention; to devote parliamentary debates to the implementation of the Court's judgments; to question governments on progress made in implementing Court judgments and demand that they present annual reports on the subject and encourage all political groups to concert their efforts to ensure that the Court's judgments are implemented.[36]

Resolution 1823 (2011) stated that national parliaments are uniquely placed to hold governments to account for swift and effective implementation of the Court's judgments, as well as to swiftly adopt the necessary legislative amendments. It pointed out the positive examples in several Member States, which have set up parliamentary structures to monitor the implementation of the Court's judgments.[37]

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34 See Contribution of the CDDH to the evaluation provided for by the Interlaken Declaration, adopted by the Steering Committee for Human Rights (CDDH) at its 92nd meeting (26–29 November 2019), document CDDH(2019) R92Addendum2, para. 163.

35 PACE Resolution 1516 (2006) on the implementation of judgments of the European Court of Human Rights; Resolution 1726 (2010) on the effective implementation of the European Convention on Human Rights: the Interlaken process; PACE Resolution 1787(2011) "The implementation of judgments of the European Court of Human Rights", adopted on 26 January 2011 (6th Sitting), para.2; PACE Resolution 2055 (2015) "The effectiveness of the European Convention on Human Rights: the Brighton Declaration and beyond"; PACE Resolution 2178 (2017) "The implementation of judgments of the European Court of Human Rights", adopted on 29 June 2017 (26th Sitting), paras.1 and 2. Also, see Resolutions 2075 (2015), 1787 (2011) and 1516 (2006), its Recommendations 2079 (2015) and 1955 (2011) on the implementation of judgments of the European Court of Human Rights.

36 PACE Resolution 2178 (2017), cited above, para.10.

37 PACE Resolution 1823 (2011), "National parliaments: guarantors of human rights in Europe", adopted on 23 June 2011 (25th Sitting), para.5.

Furthermore, it encouraged parliamentarians to monitor the determination and enforcement of human rights standards by the domestic judicial and administrative authorities. It identified a range of human rights functions that parliamentarians need to fulfil, such as:

providing for adequate parliamentary procedures to systematically verify the compatibility of draft legislation with Convention standards;

overseeing steps taken by the competent authorities to execute adverse judgments, including scrutiny of the actual measures taken; and

setting up and/or reinforcing structures for mainstreaming and rigorous supervision of their international human rights obligations.[38]

38 PACE Resolution 1823 (2011), cited above, para.6.

II. Comparative overview of the systems for execution of the ECtHR judgments

II.1. STATUS OF THE GOVERNMENT AGENT

The European Convention on Human Rights does not expressly mention government agents in Article 38 of the Convention, which states that "[t]he Court shall examine the case together with the representatives of the parties..." Rule 35 of the Rules of the Court is much more precise when it refers to the agents, stipulating that "[t]he Contracting Parties shall be represented by Agents, who may have the assistance of advocates or advisers."[39]

In practice, the implementation of ECtHR judgments involves many ministries and agencies of the executive branch of government, but also various judicial institutions and the legislative branch of power. In order to ensure that the execution process is effective and it leads to the closure of cases before the CM within reasonable time-frames, it is necessary to have clarity and awareness of the relevant national actors regarding their respective roles and responsibilities in the execution process.

In this context, a special role is played by the Government Agent, who normally has a dual responsibility: both acting as an advocate to represent the State in the judicial proceedings before the Court and later, as a focal point or to coordinate the process of the execution of adverse judgments, once they are issued and become final. This allows the capacities for both representation and execution to be concentrated in one office which is, thus, engaged in all stages of a particular case, starting from the preparation of the Government's observations on the admissibility and merits upon communication of a particular case by the Court's Registry until the final closure of its execution by the CM.

In accordance with the Recommendation 2008(2) in the vast majority of the Member States to the CoE the Government Agents have all been designated as coordinators of the execution of the Court's judgments, which was also noted in the **Guide to good practice on the implementation of Recommendation (2008)2.**[40]

As official or *de facto* implementation coordinators, Government Agents are, in principle, expected to play the role of the interface between the national authorities and the CM. In order to perform their

39 ECtHR Rules of the Court, 1 January 2020.

40 Steering Committee for Human Rights (CDDH), "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", adopted by the Ministers' Deputies at their 1293rd meeting, 13 September 2017, document CM(2017)92-add3final, at para.14.

tasks regarding the execution of judgments tasks properly and effectively, they must be able to exercise certain "political" authority, which is not derived solely from their personal and professional standing, but is also based on their official status and institutional position.[41]

There are two major models regarding the status of the Government Agents, each of them having its own advantages and drawbacks.

The first model places the institution of the Agent under the auspices of a particular ministry (most commonly the **Ministry of Justice or the Ministry of Foreign Affairs**). For instance, the Agent operates within the Ministry of Justice in Germany, Belgium, Luxembourg, the Russian Federation, Lithuania, the Czech Republic, the Slovak Republic, Hungary, Moldova, Bulgaria, North Macedonia and Georgia.[42] The Agent is placed within the Ministry of Foreign Affairs in France, the Netherlands, Denmark, Finland, Estonia, Latvia, the United Kingdom, Ireland, Poland and Romania.[43]

According to the second model, the Agent has a **separate office** which allows him or her to benefit from more respect and be at a higher political level. Such an example can be found in Croatia, where in 2012 the Office of the Government Agent was transferred from the Ministry of Justice to a separate entity under the auspices of the Prime Minister.[44] Similarly, the Agent of Montenegro functions as a separate office within the Government. The Bureau of the Representative of Armenia to the ECtHR also operates within the Prime Minister's Office.[45]

In addition, there is also a third model, in which the Government Agent operates as **part of the Office of the State Attorney General** (in Norway, Spain, Malta, Portugal,[46] Slovenia,[47] Albania, Greece, Cyprus[48] and Serbia).

Unlike most States where the Government Agent is responsible for the execution of judgments, only a few governments have opted to have separate offices for representation and for coordination of the execution combined with the reporting to the CM. In the United Kingdom, for example, the leading coordinating role in the execution of judgments is performed by the Human Rights Division within the Ministry of Justice, while the Agent is placed within the Foreign and Commonwealth Office. In Norway, the Department of Legislation of the Ministry of Justice and Public Security coordinates the execution,

41 The Role of Government Agents in Ensuring Effective Human Rights Protection, Seminar Organized under the Slovak Chairmanship of the Committee of Ministers of the Council of Europe (Bratislava, April 3–4, 2008), p.83.

42 For instance, **in Georgia, among others, the Ministry of Justice's Department of State Representation in International Courts** ensures state representation before the ECtHR and the United Nations Human Rights Treaty Bodies with respect to ongoing disputes based on complaints filed against Georgia, as well as execution of decisions made by international courts. See: https://justice.gov.ge/Ministry/Index/390

43 For instance, in the Netherlands, the Government Agent is formally part of the Ministry of Foreign Affairs, but works very closely with the Legislation Directorate of the Ministry of Security and Justice, which is often responsible for implementation at the policy level. In Romania, this Government Agent has operated within the Ministry of Foreign Affairs since July 2003, when it was transferred from the Ministry of Justice under Government Emergency Ordinance no. 64/2003. More information is available at: https://www.mae.ro/en/node/2157

44 E. Lambert Abdelgawad, "Domestic structures and the implementation of general measures: a synthesis of 38 national systems", contribution in International Conference on "Enhancing national mechanisms for effective implementation of the European Convention on Human Rights" organised by the Constitutional Court of the Russian Federation and the Council of Europe, Saint-Petersburg, 22 – 23 October 2015, pp.77-81.

45 For more information, see: https://www.echr.am/en/functions/main-functions-outline.html.

46 In Portugal, the agent is placed within the General Prosecutor's Office.

47 The State Attorney's Office represents the Republic of Slovenia before foreign courts and in foreign arbitration, and before international courts and in international arbitration, including the ECtHR.

48 The representation of Cyprus before the ECtHR is conferred to the Attorney General who is the Head of the Law Office of the Republic, which is an independent office and is not under any Ministry. See: http://www.law.gov.cy/law/lawoffice.nsf/dmlpowers_en/dmlpowers_en?OpenDocument

whereas the role of the Agent lies with the General Attorney of Civil Affairs. In Luxembourg, there is a contact person permanently designated within the Ministry of Justice in order to ensure the coordination and follow-up of the execution. In Italy, the responsibility is held primarily by the Prime Minister's Office and the Ministry of Justice, depending on the type of violation, and to a lesser extent by the Ministry of the Interior and other ministries. In some countries, such as Slovenia, an important role in the execution is played by the Co-Agent, who is often the legal adviser within the Permanent Representation to the CoE in Strasbourg.[49]

II.2. LEGAL BASIS FOR OPERATION OF THE GOVERNMENT AGENT

Neither the PACE nor the CM have recommended that States should enact legislation setting out how judgments are to be implemented, suggesting that this is not considered to be either necessary or a sufficient condition for strengthening implementation in the absence of genuine political commitment. PACE Resolution 1787 (2011) recommended that Member States create "effective domestic mechanisms" for the implementation of Court judgments "either by legislation or otherwise".[50] Furthermore, at the Tirana Round Table,[51] it was concluded that it should be ensured that "the role of the coordinator is clearly defined, if appropriate, in legislative or regulatory acts, or through established working methods".[52]

In some States there is no specific law or government regulation determining the status of the Government Agent or his or her role as a coordinator of the implementation process is based on the arrangements which have developed in practice (the United Kingdom, Belgium, Denmark, Norway, Estonia). In contrast, the functions of the Agent are regulated either by a law enacted by the parliament (the Czech Republic, Greece,[53] Spain,[54] Slovenia, North Macedonia) or by an act of the executive (Bosnia and Herzegovina,[55] Croatia, France,[56] Poland, Bulgaria,[57] the Slovak Republic,

49 Pursuant to Article 21 of the Law on the State Attorney's Office, in accordance with the guidelines of a State Attorney or another person representing the State in a case before the ECtHR, Republic of Slovenia may also be co-represented by a legal adviser at a Permanent Representation accredited with the CoE who is appointed by the Government at the proposal of the Minister of Justice following the preliminary consent of the minister responsible for foreign affairs. The Co-Agent cooperates with the Secretariat of the CoE, the ECtHR and the CM with respect to the execution of the Court's judgments upon guidance by the ministry competent for execution of the Court's judgments. Regarding the progress made in his or her work, he or she regularly reports to the Head of the Office of the Permanent Representation before the CoE.

50 Resolution 1787(2011) of the Parliamentary Assembly, cited above, para.10.2.

51 The Tirana Round Table, which took place in Tirana, Albania on 15-16 December 2011 aimed to discuss future challenges in the implementation of Recommendation (2008)2 and it was organised with financial support from the Human Rights Trust Fund under the project "Removing obstacles to the enforcement of domestic court judgments/ Ensuring an effective implementation of domestic court judgments".

52 CDDH 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, para.17.

53 In Greece, the organisation and competences of the agent's office, which forms part of the State Legal Counsel, a quasi-judicial organ, that is directly subordinate to the Minister of Finance are specified in Law no. 3086/2002 and presidential decree no. 282/2003.

54 In Spain, the Government Agent, working within the Office of the State General Attorney, coordinates the execution according to Law no. 52/1997 of 27 November 1997 on Judicial Assistance to the State and the Public Institutions, which was further developed in detail by a royal decree.

55 In Bosnia and Herzegovina, the Decision of the Council of Ministers on the Agent of the Council of Ministers before the ECtHR and the Office of the Agent governs the status of the agent within the Ministry of Human Rights and Refugees of the Federation, and also provides for a responsibility of the agent in respect of the execution (Article 7).

56 In France, the coordinator's role of the Government Agent in the process of execution is specified by a circular of the Prime Minister of 23 April 2010, which provides for instruments at the coordinator's disposal.

57 In Bulgaria, the tasks of the Agent, who is the Head of the Directorate for Representation before the ECtHR, which operates under the auspices of the Ministry of Justice, including its obligation to take necessary actions aimed at execution, are outlined in Article 31 of the Regulation on the Organisation of the Ministry.

Finland,[58] Latvia). Additionally, some States consider that a legislative basis is important for the authority of the coordinator and they have enacted special legislation regarding the implementation of judgments. For example, in Italy,[59] Ukraine and North Macedonia.

Even though the mere existence of a legal framework does not necessarily guarantee the smooth implementation of the Court's judgments, according to the CDDH conclusion in its report on measures taken to implement relevant parts of the Interlaken and Izmir Declarations "an explicit legal basis for the existence and role of the coordinator may usefully reinforce clarity, visibility and legal certainty".[60] There are several other **advantages of the regulation of the implementation process**, such as:

1) establishing time-limits within which the competent authorities are expected to undertake certain action with a view to implementing judgments;

2) the Government Agent has the necessary power and authority to acquire relevant information; liaise with those responsible at the national level for deciding on the measures required to execute a judgment; and take necessary measures to accelerate the execution process, as required by Committee of Ministers' Recommendation CM/Rec(2008)2; and

3) ensuring that domestic processes for ensuring Convention compliance are not liable to being weakened from one administration to the next.[61]

II.3. GOVERNMENT AGENT AS A COORDINATOR OF THE EXECUTION PROCESS

The role of the Government Agent as a coordinator of the execution process is not only managerial, but also **substantive**: he or she provides information about the content of the measures to be taken in relation to the judgment, gathers replies of the authorities, preparation of action plans and reports or participating/assisting in their preparation by other bodies, as well as reports to the Department for Execution of Judgments and to the CM, and gives feedback from the CM to the relevant national institutions. The Agent also represents the State at the **human rights (DH) meetings** of the CM in Strasbourg, which are devoted to the execution of judgments.[62]

The Agent's involvement is crucial for creating **synergies with the executive, legislative, judiciary, national human rights institutions and civil society organisations**, also through liaising and searching for support for the implementation process from the highest judicial, administrative, and if needed, political authorities.

58 In Finland, Article 13 of the Government's Rules of Procedure (262/2003) envisages the competence of the Unit for Human Rights Courts and Conventions within the Ministry of Foreign Affairs to cover matters concerning judicial and investigative bodies. According to Section 93 of the Ministry's Rules of Procedure (550/2008), the Director of the Unit acts as Government Agent before the Court.

59 Law No. 12/2016: Provisions on the implementation of the decisions of the European Court of Human Rights, Official Gazette no. 15 of 19 January 2006, known as the "Azzolini law", has created a framework for establishing coordination between the different administrative branches in implementing the ECtHR judgments. It has designated the Prime Minister as the main actor responsible for implementation, while the department for legal and legislative affairs within the Presidency of the Council of Ministers is responsible for the practical execution of judgments.

60 CDDH 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, Strasbourg, 30 November 2012 at para. 18.

61 See "National Parliaments as Guarantors of Human Rights in Europe", Handbook for parliamentarians, p. 44, available at: https://www.coe.int/en/web/belgrade/-/handbook-on-national-parliaments-as-guarantors-of-human-rights-in-europe-

62 The participation of government agents at the DH meetings has been increasing in recent years, although, as a rule, States are represented at these meetings by ambassadors or other representatives of their Permanent Representations (Missions) with the CoE. In particular, agents participate at the DH meetings when an item relating to a particular State is on the agenda. If necessary, other high-level representatives of the State (ministers, State secretaries, etc.) could participate at DH meetings.

The Agent leads the process of **identifying execution measures and drawing up action plans and reports**, and he or she normally advises the national authorities on how the judgments of the Court should be interpreted, but also consults with them, whenever needed. In most States, he or she normally provides the initial proposals on what should be done in order for a judgment to be executed, once it has become final, following a communication and cooperation with the authorities concerned who are also involved. Often **the Government Agent is responsible for drawing up of action plans and reports e Government Agent**, on the basis of information provided by the relevant national bodies *(*Belgium, Bulgaria, Czech Republic, Croatia, Estonia, Finland, France, Greece, Latvia, Lithuania, Romania, the Russian Federation, the Slovak Republic, Spain, Sweden, Switzerland). This model will be further examined in *Chapter II.5*. regarding the development of practices of the Czech Republic and Croatia.

However, there are a few States where **the process of preparation of action plans and action reports is rather decentralised and this task is carried out by the ministry which is responsible for the subject-matter dealt with by the judgment** (the United Kingdom, Ireland, the Netherlands, Norway,[63] Poland, etc.). In this connection, in the United Kingdom, a core component of the cross-Government mechanism for preparing action plans and reports is a specifically designed "implementation form", which is issued to assist Government departments in responding to adverse Court judgments. The form includes advice on the completion of an action plan and there are strict deadlines set to ensure that the CM receives the required information on time. Once a decision has been made on the action to be taken and the form has been completed, it is reviewed by the Ministry of Justice, which is responsible for the execution, and the UK Delegation to the CoE, that works closely with the Department for the Execution of Judgments to ensure it meets the CM's requirements ahead of onward communication to the Secretariat. The good practice of the United Kingdom has been followed by other States, such as Poland and the Netherlands, which have also designed similar forms.[64]

Last but not least, in most countries, the Agent also carries out **awareness raising activities**, which aim at promotion and national implementation of the European human rights standards (translation and dissemination of Court's judgments to all relevant authorities; ensuring conformity and harmonisation of the domestic legislation with the Convention and the Court's case-law; providing trainings for legal professionals on topics related to the Convention and the Court's jurisprudence, including on the application of the ECtHR case-law, etc.).

II.4. PERMANENT AND AD-HOC INTER-INSTITUTIONAL STRUCTURES FOR EXECUTION OF ECTHR JUDGMENTS

States' practices regarding the role of Government Agents in the execution of the ECtHR judgments vary significantly. Normally, the Government Agent leads the process through formal and informal correspondence with all relevant institutions whose action is required, or his or her work is facilitated through a formal inter-institutional mechanism, which is particularly useful when the institutional position of the Agent, as laid down in legislation or developed in practice, is itself insufficient to

63 In Norway, the Government Agent prepares written comments on the judgment within a few days of the date of the judgment, which contain, among others, 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 judgment in question, including consideration 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.

64 The Netherlands, for example, employs what is known as a "blue letter," which a minister can opt to send to a ministerial colleague as a signal to accelerate the execution of a particular judgment. Although this instrument has rarely been used, it is envisaged that the Minister of Foreign Affairs, where the Government Agent is placed, would send it to those colleagues responsible for the relevant policy area, in cases of their inaction.

guarantee effectiveness of the execution process, taking into account that successful State compliance with international and human rights law needs to rely both on political will and on management capacity and infrastructure."[65]

There are several **advantages of creating a permanent institutional structure**, since it brings together representatives of various institutions which are able to discuss, design and monitor the process with a view to ensuring the effective and full implementation of the Court's judgments. If the implementation of the Convention is conceived as a shared responsibility between the CoE and the States Parties to the Convention, the execution of judgments could, moreover, be considered as a **shared responsibility** on all branches of the State to implement the Court's judgments.

Such understanding encourages **dialogue and inclusiveness** of all relevant national stakeholders and the clear division of tasks and obligations between the relevant institutions. It allows dedicated approach by the members of such inter-institutional body to the process and their active involvement in the identification of the execution measures. That way the inter-institutional body could provide a forum for **constructive debate** which aims to find the most appropriate solutions which will ensure that a particular judgment is implemented in the most efficient way.

The inter-institutional structure could assist in designing the measures and guiding the process based on a **thorough analysis and assessment** which will not only take into consideration the views of the permanent members of the body, high-ranking and experienced officials of the institutions which they represent, but also seek evidence and advice from representatives of NGOs, academics and legal professionals. It is, therefore, crucial that it is made up of members from different areas of work and expertise and in addition to all relevant administrative and judicial institutions, it allows for membership, or at least, for involvement in its substantive work, when needed, by individual experts and experienced practitioners, who might provide a valuable input to the development of an implementation strategy in respect of a particular Court's judgment.

Moreover, it should help to raise awareness among all responsible stakeholders about their obligations as regards the execution of judgments and thus, provide a guarantee that each institution which is represented will develop a sense of **"ownership"** of the process and would, consequently, not hesitate to implement the measures required from their side.

It should also have a positive impact on the **efficiency of the execution process** by ensuring that the adopted solutions are feasible and applicable in practice, as the representatives of the relevant institutions are best placed to assess the capacity of their institutions to implement certain measures and to detect in a timely manner the challenges which might occur. Thus, all obstacles could be overcome, particularly when some agencies are either unwilling or unable to take the required action. This would be extremely important when implementing more complex judgments, which might require a combination of legislative, administrative and/or judicial action, or when the implementation of certain judgments has been delayed and it, therefore, requires urgent, simultaneous and synchronised action by several institutions.

The establishment of a permanent inter-institutional coordination structure has the potential to **ensure that the position of the Government Agent** is a key leader of the implementation process, as his or her positions will be backed by a group of experts and professionals in their fields. As a result, the continuous work of such a body might improve the status of the implementation of judgments of the State concerned before the CM. It might also provide greater **visibility** for the efforts made by the

65 D. Anagnostou & A. Mungiu-Pippidi, "Domestic implementation of human rights judgments in Europe: legal infrastructure and government effectiveness matter", EJIL 2014, 25(1), 205-227, p.226.

Government Agent, so that they are recognised, thereby gaining considerable **political support** from the key domestic decision-makers.

Furthermore, such a structure ensures the **sustainability** of the implementation process in the long run, regardless of possible changes of the holders of political power or the leading officials who manage the institutions involved. By facilitating the design of sustainable legal and policy reforms, through identifying and overcoming systemic and structural deficiencies both at an administrative and judicial level by adopting general measures, future similar violations of the Convention will also be prevented. Consequently, it is very likely that the outcomes of the entire, coherent action coordinated by the inter-institutional body will be widely accepted and a better promotion of the Convention standards and **more effective national implementation of the Convention** will be achieved.

A few examples of such inter-institutional mechanisms established in some States will be briefly mentioned below, while more detailed examples shall be presented in *Chapter II.5*.

Greece has set up a National Mechanism for the Supervision of the Application of Judgments of the Court that operates within the framework of the General Secretariat for Transparency and Human Rights and includes the Government Agent and the Ministry of Foreign Affairs. It supervises the implementation of the Court's judgments, draws up proposals for implementing judgments and contributes to the promotion and the dissemination of the Convention and the Court's case-law. NGOs, experts or other actors can also be invited to participate in its meetings to contribute to the work undertaken by this mechanism.

In Finland, there is a Network of Contact Persons consisting of representatives from all ministries, which is responsible for systematically monitoring the fundamental human rights, based on information produced by international monitoring bodies. It expedites information flows within the ministries and provides a forum for discussions concerning the execution of the judgments of the Court.

In Spain, the coordination of the execution of judgments is enhanced through the horizontal high level legal counselling network that the State Attorney's Office maintains at all ministries, in close contact with the Agent and with the Permanent Representation in Strasbourg.

Apart from the creation of a permanent inter-institutional structure or committee, **working groups may also be set up on an** ad hoc **basis** in order to coordinate the implementation of a specific judgment revealing systemic or structural problems which need to be properly addressed and, therefore, require action from different authorities and unique knowledge and expertise. This is also the case with pilot judgments. Such *ad hoc* bodies are composed of representatives of the competent authorities in the field, which have established contact persons responsible for to attending the meetings and taking part in the decision-making. The establishment of these bodies should be taken into consideration only when it is required by the complexity of the case, in order to avoid a situation where parallel institutional structures are created automatically to replace the existing State institutions, without having a rational reason for it.

In some States, it is not necessary to establish *ad hoc* working groups, as the issues with regard to the adoption of new legislation are dealt with by permanent committees which already exist. For instance, in Latvia, very often the task of drafting a new law or amending the current legislation can be given 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 Criminal Law). They are forums where legal practitioners can discuss the findings of the Court. They can also decide that clearer legal provisions should be drafted and agree upon the wording of

the amendments, which will then be submitted by the Ministry of Justice to the Cabinet of Ministers for formal approval and further transmission to the Parliament for adoption. Furthermore, they had a preventive function in many cases where the underlying issue was due to administrative or judicial malpractice or misapplication/misinterpretation of relevant legal provisions, rather than a systemic problem or lack of legal regulations.

In any event, a prerequisite for the effectiveness of the permanent or *ad hoc* structures tis that they hold regular meetings that result in clear action points which are followed up at regular intervals, their members take their engagement seriously and substantively contribute to the process, they all benefit from liaising with each other and with the Government Agent and they gain support for the implementation process from the institutions they represent. Moreover, the composition of the inter-institutional bodies should remain the same over a longer period of time, as their members will be familiar with the needs of the process from the outset, whereas frequent personal changes risk jeopardising their operation.

II.5. OTHER STATES' PRACTICES

This overview will describe numerous examples of practices of other States Parties to the CoE which have put in place systems which operate well in practice, regardless of whether they have regulated the matter in detail (Croatia, North Macedonia, Poland, the Czech Republic), or have instead developed functional systems in practice (Austria, Latvia, Montenegro). Most models described below include permanent and/or *ad hoc* formations which should facilitate the entire process and the efforts made by the Agent. The analysis examines several successful models from the region as they may be considered relevant for Serbia given the similarities in the legal and judicial systems and the level of legal culture, but it also extends to other States, whose experience might be applicable to the Serbian context.

In Austria, the head of the Legal Service (*Völkerrechtsbüro*) of the Ministry of Foreign Affairs, who has the rank of Ambassador is the Government Agent of Austria. A member of the Constitutional Service (*Verfassungsdienst*) of the Federal Chancellery is the Deputy Agent. Both are appointed by a resolution of the Council of Ministers.[66]

According to the established State practice, the Government Agent is in charge of coordinating all matters regarding the supervision of the execution of ECtHR judgments in Austria *vis-a-vis* the CM. The Agent is supported by the Deputy Agent. The federal or decentralised nature of Austria is reflected in the division of competences between the federation (*Bund*) and the federal states (*Länder*). Therefore, the execution of judgments *strictu sensu* falls within the remit of the relevant Federal Minister or the highest court which was responsible for the violation found by the ECtHR, or, regarding matters relating to one of the *Länder*, of the Government of the relevant *Land* .

However, there is no specific body in Austria which has the competence to give a formal instruction in order to legally force the *Länder* to implement a judgment. Instead, since 1998 human rights coordinators have been established in each of the federal ministries and each office of the provincial governments. As one of the human rights coordinators, the Deputy Government Agent in the Federal Chancellery coordinates their meetings which take place at least twice a year and are intended to assess the implementation measures adopted following a judgment of the Court.

66 This section includes information which was received by Ms. Brigitte Ohms, Head of the Unit for International Human Rights Protection, Applications to the ECtHR and Other Issues of the Constitutional Service (*Verfassungsdienst*) in the Federal Chancellery of the Republic of Austria, who currently acts as a Deputy Agent of Austria.

Since there is no such formal coordination mechanism, the action plans and reports are usually drafted by the Austrian Government Agent, assisted by the Deputy Agent, in close co-operation with the relevant Federal Ministry, federal *Land* or court which is primarily responsible for the violation of the Convention. If necessary, there are co-ordination meetings between the relevant authorities involved in the process.

The Constitutional Service in the Federal Chancellery regularly circulates reports on the current judgments and decisions against Austria, among others, to all ministries, to the Parliament and to the highest courts.

In the Czech Republic, according to the Government Resolution No. 155 of 27 February 2017 the representation before the ECtHR, the UN human rights treaty-bodies and the European Committee of Social Rights of the CoE was entrusted to the Ministry of Justice. The Agent operates under the Ministry of Justice, while the Agent's authority and competences, as well as his or her cooperation with state authorities, especially courts, are set out in Law no. 186/2011, of 8 June 2011 on 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.[67]

In all stages of representation of the State before the ECtHR the Government Agent acts independently, within the limits set by the Government, and in more serious cases with the prior consent of the Government or the Minister of Justice, which is considered necessary bearing in mind the Government's political responsibility for the administration and for the implementation of the state budget. The Government Agent also regularly informs the Government about the status of applications against the Czech Republic.[68]

In addition to representation, the Government Agent is involved in commenting on draft laws, especially in order to avoid potential conflict with certain Convention provisions. He or she also initiates the adoption of measures aimed at ensuring the compliance of the domestic legal order with the Convention, both *ex post* following judgments of the Court finding violations of the Convention and *ex ante* based on the ongoing monitoring and analysis of the Court's case-law in relation to other countries.[69]

Pursuant to Article 4 of Law no. 186/2011, all branches of the Government as well as the judiciary are required, without undue delay, to take both individual and general measures to put an end to violations of the Convention established by the Court and to inform the Agent, upon his or her request, of measures taken or proposed to ensure the execution of the judgment, including an expected time frame for their adoption. Article 4 (1) (e) of the Government Agent's Statute explicitly states that the Agent drafts action plans and action reports and submits them to the CM. Pursuant to Article 7(1) of the Statute, after the translation of the judgment, the Agent submits a report to the Minister of Justice recommending what steps should be taken in response to the violation and informs the relevant authorities about the content of the judgment.

In addition, a mechanism has been established which seeks to overcome internal disagreements with regard to the identification of execution measures and could potentially prevent substantial and persistent problems. According to Article 9 (3) of the Statute, if the Agent and the relevant authorities concerned do not reach a consensus regarding measures that need to be taken to execute the Court's

67 The part of this assessment which concerns the system of execution of judgments in the Czech Republic is also based on the information provided by Mr. Vít Alexander Schorm, the current Agent of the Czech Government before the European Court of Human Rights.,

68 See https://www.justice.cz/web/msp/zpravodaj-kancelare-vladniho-zmocnence

69 See https://www.justice.cz/web/msp/zastupovani-ceske-republiky

judgment, on the proposal of the Minister of Justice, the matter can be brought to the attention of the Government for a decision about the further course of action. However, this procedure has never been activated so far.

In response to the commitment made by the CoE Member States at the Brussels conference to strengthen the national implementation of the Convention, in 2015 the Government Agent established a College of Experts on the Enforcement of Judgments of the European Court of Human Rights and the Implementation of the Convention for Protection of Human Rights and Fundamental Freedoms.[70]

The College of Experts is composed of representatives of all relevant institutions (ministries, both chambers of the 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). Its members usually hold senior positions and are human rights focal points within their institutions.

The primary role of the College of Experts is to analyse the adverse judgments handed down against the Czech Republic and to formulate recommendations to the competent authorities on how to proceed with the execution and what steps (legislative, executive, etc.) are necessary or should be taken in the near future. These recommendations are normally adopted by consensus and they 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 role of the College of Experts is also to address broader issues of compliance of national legislation and practice with the case-law of the Court, by discussing selected judgments against other States which might impact on the Czech Republic, where the same fundamental problem exists in the national legal order.

The College of Experts meets whenever required by the Court's judgments. There are no legally binding rules of procedure governing its work since it follows unwritten rules developed by the Agent's office, which serves as its secretariat. As the Committee is quite a large body, occasionally, its members agree to establish smaller working groups, in order to achieve tangible results.

In Poland, which has often been identified as a good example of successful execution of the Court's judgments, the Office of the Agent functions as an organizational unit within the framework of the Ministry of Foreign Affairs. As regards the execution, the Department of Human Rights within the Ministry of Justice has prepared a special instruction ("algorithm") that describes the different steps required to execute Strasbourg judgments, which includes identifying the domestic courts or prosecution units that a given judgment implicates. The identification of execution measures, as well as the stages and deadlines for drafting action plans and action reports are further specified by the Order of the Prime Minister of 19 July 2007 establishing the Committee for Matters of the European Court of Human Rights.[71]

The inter-ministerial Committee was created upon the initiative of the Government Agent and under the auspices of the Prime Minister, as advisory and consultative organ,[72] which is composed of experts

70 Article 5 (5) of the Statute allows the Agent to establish a consultative body for any question relating to the fulfilment of his or her mission.

For more information, see https://www.justice.cz/web/msp/kolegium-expertu-k-vykonu-rozsudku-eslp

71 Order no. 73 of the Prime Minister dated 19 July 2007 establishing the Committee for Matters of the ECtHR, Order No. 3 of the Prime Minister of 8 January 2008 amending the Order establishing the Committee for Matters of the ECtHR, Order no. 20 of the Prime Minister of 8 March 2013, amending the Order establishing the Committee for Matters of the ECtHR and Order no. 6 of the Prime Minister of 23 January 2015, amending the Order establishing the Committee for Matters of the ECtHR.

72 For accounts of the background of the Committee, see: Presentation by Mr Jakub Woáąsiewicz, Government Agent before the European Court of Human Rights, Ministry of Foreign Affairs, Poland, Round-table: Recommendation (2008)2

designated by all ministers, the Chief of the Chancellery of the Prime Minister, the President of the General Solicitor's Office of the State Treasury, the Government Plenipotentiary for Equal Treatment and the Government Agent. Persons who are not members may also be invited on the chairman's initiative or at the request of a Committee's member, to participate in its work, as advisors (Article 3 (1) of the Order).[73]

The tasks of the Committee include, among others:

- monitoring the execution of the Court's judgments by the ministers;
- drafting annual reports on the state of the execution, which are submitted to the Council of Ministers;
- elaborating proposals on the most important problems stemming from the communicated applications and the Court's judgments rendered against Poland, as well as proposals on actions intended to prevent violations of the Convention; and
- issuing opinions concerning the compatibility with the Convention and the Court's case-law of the most important draft laws.

These activities are carried out at request of the Minister of Foreign Affairs or the Agent (Article 2 of the Order).

The amendments to the Order introduced in 2015 provided for the institutional framework and proceedings before the Committee. They specified the relevant 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 the members of the Inter-ministerial Committee appointed by them. Moreover, they introduced a detailed schedule for the submission of action plans and action reports by the relevant ministers.

In accordance with Article 4a (6) of the Order, as amended, in their capacity as chairman of the Inter-Ministerial Committee, the Government Agent has the task of supporting and coordinating the Committee in its role to monitor the execution of judgments by the competent ministers. Article 4a (1) and Article 4b of the Order explicitly state that the Committee monitors the execution of judgments of the Court against Poland on the basis of all information and documents required from their ministers in the execution process, which has to be provided within clearly defined deadlines.[74]

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of the Committee of Ministers on Efficient Domestic Capacity for Rapid Execution of Judgments of the European Court of Human Rights organised with financial support from the Human Rights Trust Fund under the project "Removing obstacles to the enforcement of domestic court judgments/Ensuring an effective implementation of domestic court judgments", Tirana, Albania 15-16 December 2011, available at https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680592434

73 This concerns, in particular: representatives of the Sejm and the Senate of the Polish Parliament, the Chancellery of the President, the Supreme Audit Chamber, the highest instances of the judiciary (the Constitutional Court, the Supreme Court, the Supreme Administrative Court), the National Judiciary Council, representatives of common and administrative courts, the Prosecutor General, the Commander in Chief of the Police, the General Director of the Prison Service, the Legislative Council, the Government Legislative Centre, the Ombudspersons (the Human Rights Defender, the Ombudsman for the Rights of the Child, the Ombudsman for the rights of patients), representatives of other administrative organs of the central and local government and other institutions and State authorities, representatives of legal professions and human rights organisations.

74 These documents include: final translations of a judgment into Polish; information on dissemination of a judgment; draft action plans (envisaged to be submitted no later than two months after the date on which the judgment becomes final); updated information on the state of implementation of an action plan (every six months as of the date of submission of an agreed action plan and each time the CM so requests), information required as a result of the comments, decisions and resolutions of the CM (no later than within one month after the date of their receipt) and draft action reports (without delay after the implementation of all the actions outlined in the action plan or if all the required individual or general measures have been implemented on other grounds).

The ministers concerned by the violation found by the ECtHR judgment are primarily responsible for identifying the source of the violation and the manner of implementation of judgments and they are significantly assisted by the Agent in drafting agreed action plans and reports. Thus, Article 4b (3) of the Order requires that within two months after a judgment has become final the competent ministers should carry out a detailed analysis of the judgment, identify the necessary measures and submit to the Government Agent a draft action plan or, alternatively, a draft action report. The relevant ministers are also responsible for carrying out any necessary consultations with the subordinate or supervised institutions to identify the measures required from them.

The Government Agent may submit comments within one month to which a competent minister should submit a reply also within one month (Article 4b (7)). An agreed action plan should be submitted by a competent minister no later than four months after the date when the judgment at stake has become final (Article 4b (8)). It is then drawn up in line with the requirements of the CoE on the basis of the information provided by the competent ministers, together with other execution measures the Government Agent may deem necessary and submitted to the CM. The Agent's exchanges with the Department for the Execution of Judgments and further discussions within the Committee provide a basis for preparing a revised version of an action plan, if necessary.

Another mechanism to ensure the performance of tasks by the members of the Committee is their obligation to submit to the chairman a consolidated annual report on the action taken by the entity they represent in order to execute the Court's judgments within the field of their competence, a report on the current state of the execution of judgments and possible obstacles in the process (Article 4c of the Order). According to Article 4d of the Order, as the chairman of the Committee, the Government Agent is obliged on a quarterly basis to report to the Prime Minister on the work of the Committee and on the failure on the part of administration authorities to fulfil their obligations pursuant to Article 4(3) and Article 4a-4c.

Working and advisory groups may be established within the Committee to examine particular issues and as its chairman, the Government Agent may commission expert opinions and opinions necessary for the performance of the Committee's tasks. Its members are obliged to provide assistance to the Agent and to the Committee in connection with the proceedings before the Court and the CM also on *ad hoc basis*, outside the meetings of the Committee, by providing the necessary information or documents (Article 4 of the Order).

The Committee meets every three months (Article 5) and may adopt resolutions (Article 5a). The December plenary session, which takes stock of the results of its work, is open to civil society and members of the legal profession. They may be invited to attend other meetings or working groups as well.

In Croatia, the Office of the Representative before the ECtHR which functions as a separate office under the auspices of the Prime Minister was established by a government regulation.[75] Pursuant to Article 4 of the Regulation, the Representative is appointed and discharged from his or her office by the Government, upon proposal of the Prime Minister and manages the Office of the Representative. The Representative regularly submits report for his or her work to the Government, as well as to the Parliament, at least once a year. He or she has a position of a deputy minister and also has a deputy who substitutes him or her in case of his or her absence or inability to perform his or her duties.

75 Regulation on the Office of the Representative of the Republic of Croatia before the European Court of Human Rights of 9 February 2012, Narodne novine 18/2012 (15.2.2012.), as amended by the Regulation amending and supplementing the Regulation on the Office of the Representative of the Republic of Croatia before the European Court of Human Rights of 20 September 2018, Narodne Novine 84/2018 (21.9.2018.).

The Representative is responsible for among others:

- representing State interests in all proceedings before the Court and other bodies of the CoE (Article 2);
- coordinating the execution of judgments and decisions of the ECtHR;
- representing the State in the proceedings for supervision of the execution before the CM and in the expert bodies of the CoE;
- providing opinions on the compatibility of the acts with the Convention and with the case-law of the ECtHR;
- negotiating with the parties to the proceedings with a view to reaching a friendly settlement;
- acquainting all branches of government with the development of the Court's case-law; and
- participating in drawing up draft legislation in order to make it compliant with the Convention and with the case-law of the ECtHR, etc. (Article 3).[76]

Article 10 of the Regulation imposes a duty on the State bodies to cooperate with the Representative and the Office by making available to them all relevant facts and documents, including case files, necessary for litigation before the ECtHR, regardless of the degree of their secrecy, and submitting those documents and information to the Representative without any delay and within the set deadline. It also requires the State bodies to cooperate in the final determination of appropriate execution measures and their implementation.

Under the same provision, the Representative is empowered to launch an initiative for amending laws, bylaws and other acts in order to ensure that the national legal order complies with the Convention and with the case-law of the ECtHR. If the Representative determines that an act or its application are incompatible, during the proceedings before the ECtHR or during the proceedings for execution of judgments, he or she call bodies to bring their acts or actions in line with the Convention and they are obliged to act upon such request.

The execution process in Croatia has achieved great progress following the establishment of the Council of Experts for Execution of Judgments and Decisions of the European Court of Human Rights, in accordance within Article 12 of the Regulation. It is composed of experts appointed by all ministries and other state administrative bodies, state agencies and offices, as well as representatives of the Constitutional Court, the Supreme Court and the State Prosecutor's Office, while representatives of other state bodies and local and regional authorities might also participate in its work, upon invitation by the Representative who chairs with the Council of Experts. Its working methodology is set out in its Rules of Procedure.[77]

In Article 1 of the Rules of Procedure, the Council of Experts is defined as an interdepartmental and inter-institutional expert body responsible for identifying the measures for execution of judgments and decisions of the ECtHR and monitoring their implementation. Under Article 2, the Council of Experts can work in full composition (at least once a year to consider the general state of execution proceedings

76 Accordingly, Article 5 provides a list of duties which are assigned to the Office of the Representative, including: preparation of observations in the proceedings before the ECtHR, preparation and participation at the oral hearings before the ECtHR and in the meetings of the CM concerning execution of judgments, preparation and participation in the coordination of the execution process, preparation of opinions on the compatibility of the acts with the Convention and with the case-law of the ECtHR, and awareness raising activities.

77 Rules of Procedure of the Council of Experts for Execution of Judgments and Decisions of the European Court of Human Rights of 2 April 2014, as amended with the Rules of Procedure of the Council of Experts for Execution of Judgments and Decisions of the European Court of Human Rights of 29 September 2017.

and to adopt a working plan for the upcoming period), narrowed (when it considers the execution of judgments which concern the same issues) or extended composition, which includes representatives of other state, local and regional bodies and legal entities that are not members of the Council of Experts, when it is required for the execution of a particular judgment or a group of judgments of the ECtHR.

Each member shall on behalf of the body which has appointed him or her propose possible measures for executing a particular judgment and within the prescribed deadlines inform the Council of Experts about the progress made in their implementation. A deputy member may also be appointed. Each member shall cooperate with the Office of the Representative and with the other members of the Council of Experts and he or she may also be invited to take part in the sessions before the CM when the latter monitors the execution of a judgment that falls within the competence of the body he or she represents (Article 3 of the Regulation).

Article 4 of the Rules of Procedure clearly defines the procedure for identifying competent bodies and execution measures. Along with the dissemination of the judgment, all members of the Council of Experts are provided with a preliminary questionnaire that requires submission of information on the possible means, including individual and general measures of execution of that particular judgment which the competent bodies they represent may take within their competence, and about the deadlines within which such measures shall be taken. The Council of Experts' members are obliged, within 15 days, to send back the completed questionnaire to the Office of the Representative and the Office shall submit its initial action plan or action report to the CM on the basis of the information provided.

The Council of Experts has at its disposal measures aimed at accelerating the execution and urging the competent authorities to take certain steps within reasonable deadlines. Article 4.a of the Rules of Procedure seeks to resolve the situation where, on the basis of the preliminary questionnaires, it appears that none of the bodies has accepted its own competence for the execution of a particular judgment nor has defined specific measures which it plans to undertake. In such a case, the Office of the Representative shall inform the Council of Experts' members thereof within 30 days after the deadline for submission of the preliminary questionnaires has expired. An additional eight-day deadline is set for them to reconsider whether their body is competent to execute the judgment and if so, within the same deadline to inform the Office of the Representative about:

- the proposed execution measures and the deadlines for their implementation;
- the reasons why it is not possible to take measures or set deadlines.

If no body has accepted competence within the additional deadline, or has not submitted the required information, the Office of the Representative shall inform the Presidents of the Government, the Parliament, the Constitutional Court and if required, the State prosecutor, that it is impossible to identify the competent body/bodies and the execution measures. The same procedure is followed when there is a considerable delay in implementing the proposed measures.

Article 5 of the Rules of Procedure impose a clear obligation on the Office of the Representative to inform the CM of the proposed execution measures and the deadlines for implementation within the time-limits set by the CM, i.e. six months after the date on which the judgment becomes final and three months after the date on which the friendly settlement reached becomes final. The draft action plans and the draft action reports are drawn up on basis of the preliminary questionnaire and further information obtained in direct communication between the Office of the Representative and the competent bodies and during the meetings of the Council of Experts. They are sent no later than 15 days before the deadline for their submission to the CM to the members of the Council of Experts who could send their remarks to the Office of the Representative no later than eight days before the deadline for their submission to the CM.

Article 6 of the Rules of Procedure provides that the Council of Experts could follow the implementation of general measures, since at least once within 4 months the Council of Experts' members send information to the Office of the Representative on the progress made in the implementation of such measures.

Furthermore, the Office of the Representative may request such information at any time whenever requested by the CM or if it schedules a session concerning a particular case, if it is required by the circumstances of a given case or with a view to reporting to the CM. There is also a duty imposed on the Council of Experts' members to inform the Office of the Representative about the reasons for the delay in the implementation of certain general measures or exceeding the deadline set by the competent body.

The Council of Experts may facilitate the process since when the Office of the Representative fails to obtain the necessary information from the competent judicial or administrative bodies, if the ECtHR has ordered implementation of urgent individual measures within a certain timeframe, it shall ask for assistance from those of its members who are directly associated to the body concerned (Article 7 of the Rules of Procedure).

The Office of the Representative serves as a Secretariat of the Council of Experts which is organizes its meetings (Article 9 of the Rules of Procedure). The Council of Experts adopts its decisions by consensus and only in case when no consensus can be reached does it decides by a simple majority (Article 10 of the Rules of Procedure).

Montenegro has set out the competencies of the Government Agent by a Regulation issued by the Government,[78] in a rather similar manner to Croatia, but it lacks a legislative framework governing the process of execution, which is entirely left to the practice. In this respect, it is only prescribed in a rather general manner that the Representative is responsible for the execution of judgments and reports to the CM (Article 12(2)) and that the ECtHR judgments in cases where Montenegro was a party are translated and published in the Official Journal, of which the Agent is responsible for (Article 12(1)).

Under Article 4 of the Regulation, the Representative of the Republic of Montenegro before the European Court of Human Rights and his or her deputy are appointed for a four-year term, which may be renewed**.** They are appointed and dismissed from office by the Government following a proposal by the Minister of Justice. The representative submits a report of his or her work to the Government each six months (Article 14). He or she is granted diplomatic status and is entitled to remuneration commensurate to that of a minister-counsellor in a diplomatic consular representation, in accordance with special regulations/act (Article 15a). The Office of the Representative is responsible for performing professional and administrative tasks and operates under the General Secretariat of the Government (Article 15).

The Government Agent is empowered to inspect the case files of the administrative and judicial bodies, regardless of their confidentiality (Article 9) and there is a duty imposed on all bodies to provide him or her with the requested information and documents and any necessary legal and administrative assistance (Article 10).

The Representative is also responsible for ensuring that the legal acts comply with the Convention and if while performing his or her function related to proceedings before the ECtHR the Representative finds

78 Regulation on the Representative of Montenegro before the European Court of Human Rights ("Official Gazette of Montenegro", no. 56/06 of 7 September 2006, no. 79/06 of 26 December 2006, "Official Gazette of Montenegro", no.04/08 of 17 January 2008, no.81/08 of 26 December 2008, no. 28/14 of 4 July 2014, no. 36/14 of 22 August 2014).

that a certain act is not in conformity with the Convention, he or she will bring this to the attention of the Government or other competent bodies, referring to the need to make it the comply with the Convention (Article 13).

In North Macedonia, the legal framework concerning the status of the Government Agent is governed by the Law on Representation of "the former Yugoslav Republic of Macedonia" before the European Court of Human Rights[79], which established the Bureau for Representation of "the former Yugoslav Republic of Macedonia" before the European Court of Human Rights, as a separate legal entity within the Ministry of Justice. The Bureau enjoys full independence, both operational and in terms of substance, including financial independence, as the Bureau has its own account as a direct budget user (Article 3 (2) of the Law). Nonetheless, Article 10 of the Law states that the Government Agent is responsible for his or her work before the Government and the Minister of Justice. Moreover, under Article 20 of the Law, the Government Agent reports annually both to the Government and the Assembly.

According to Article 5 of the Law, the Bureau is managed by the Director – the Government Agent before the ECtHR. The Government Agent is appointed by the Government for a period of five years, which is renewable and the candidature for the post of the Government Agent is proposed by the Minister of Justice (Article 7).

The functions of the Government Agent and the Bureau which are summarised in Article 4 of the Law include:

- representation of the State before the ECtHR (reporting to the Government on pending cases of special importance;
- concluding friendly settlement agreements and submitting unilateral declarations on behalf of the Government);
- responsibility for the execution of the ECtHR rulings, which includes drawing up recommendations to the competent state authorities in this regard and follow-up to the execution, as well as reporting to the CM, in coordination with the Ministry of Foreign Affairs, on the measures taken to execute a ECtHR ruling; and
- participating in the meetings of the CM when the relevant ECtHR judgments are examined.

Furthermore, when representing the state before the ECtHR, the Government Agent and the employees of the Bureau shall have right to unlimited access to all judicial and administrative case files and other documents in the possession of the competent state authorities regardless of their degree of secrecy. The domestic courts and bodies are obliged to cooperate with the Government Agent and to provide him or her with all necessary information and opinions within the deadlines set by him or her, with a view to timely and well-founded defense in the proceedings before the Court and the CM (Article 14).

Following a review which had revealed that the State lacked regulation of the process of execution, a Law on Enforcement of Decisions of the European Court of Human Rights was adopted by the Assembly in 2009 (and amended in 2014).[80] It provides for the establishment of an Interdepartmental Commission

79 Law on Representation of "the former Yugoslav Republic of Macedonia" before the European Court of Human Rights ("Official Gazette of "the former Yugoslav Republic of Macedonia"" no.67/2009 of 29 May 2009), as amended with the Law amending and supplementing the Law on Representation of "the former Yugoslav Republic of Macedonia" before the European Court of Human Rights ("Official Gazette of "the former Yugoslav Republic of Macedonia"" no.88/2014 of 4 March 2014) and with the Law amending and supplementing the Law on Representation of "the former Yugoslav Republic of Macedonia" before the European Court of Human Rights ("Official Gazette of "the former Yugoslav Republic of Macedonia"" no.83/2018 of 11 April 2018).

80 Law on Enforcement of Decisions of the European Court of Human Rights, No. 07–2328/1 of 21 May 2009 ("Official Gazette of "the former Yugoslav Republic of Macedonia"", no.67/2009), as amended with the Law amending and

for Enforcement of Decisions of the European Court of Human Rights, whose operation is set out in its Rules of Procedure.[81]

The Law envisages that the Commission meets at least every three months (Article 12). Its members include the ministers of the relevant ministries (Justice, Interior, Foreign Affairs and Finance), the presidents of the Judicial Council and the highest courts (the Supreme Court, the Constitutional Court, the Higher Administrative Court and the four appellate courts); the President of the Public Prosecutors' Council and the State Public Prosecutor; and the Government Agent. The law allows for the participation of other representatives of the relevant institutions, when required,[82]. The Rules of Procedure specify that interested persons and representatives of interested organs, organisations, citizens' associations, trade unions, chambers, academicians and experts, could be invited to attend the Commission's sessions and provide their opinions in respect of the issues put on the agenda (Article 17(1)).

The Government Agent is only a member of the Commission, which is chaired by the Minister of Justice (Article 10 of the Law) who convenes its sessions (Article 4(1) of the Rules of Procedure) on his or her own initiative or upon request by one of the members (Article 13(2) of the Rules of Procedure). The Bureau for Representation serves as a secretariat of the Commission, which is charged with all expert and administrative tasks (Article 7 of Law), while one of its employees acts as its secretary (Article 5 of the Rules of Procedure).

According to Article 11 of the Law, the Commission:

- drafts analysis of the Court's judgments handed down against the State;
- recommends individual and/or general measures to remedy violations and their consequences;
- proposes legislative improvements;
- monitors the enforcement of the Court's judgments;
- and proposes measures for improving the system of execution of judgments.

Within two months after the date on which the judgment becomes final, the Bureau for Representation is obliged to notify the highest courts, as well as the courts and other institutions involved in the domestic proceedings of the judgment rendered by the ECtHR and to disseminate among them its translation of the relevant judgment (Article 22 of the Law).

Within three months from the date on which the judgment becomes final, it notifies the Interdepartmental Commission of the judgment and proposes to it possible general and individual measures for remedying the violations (Article 23). The Commission's key role is to draw up recommendations to the competent state and local self-government bodies, the judiciary and the public prosecution for taking adequate general and individual measures (Article 24).

Article 4(2) of the Rules of Procedure provides an extensive list of duties for its members, including:

- initiating proposals, opinions and guidelines on issues within the Commission's competence;
- providing information as regards particular questions which have been put on the agenda;
- actively participating in the identification of the execution measures and in setting deadlines for their implementation, as well as in identifying measures to be taken in response to the interim and final resolutions issued by the CM; etc.

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supplementing the Law on Enforcement of Decisions of the European Court of Human Rights, No. 07– 1215/1 of 25 February 2014 ("Official Gazette of "the former Yugoslav Republic of Macedonia"", no.43/2014).

81 Rules of Procedure of the Interdepartmental Commission for Enforcement of Decisions of the European Court of Human Rights of "the former Yugoslav Republic of Macedonia".

82 Law on Enforcement of Decisions of the European Court of Human Rights, cited above, Article 8.

The Commission can set up temporary working bodies which are responsible for examining specific issues and formulating opinions and proposals (Article 6) that could include representatives of the relevant institutions (Article 6(4)). Any working body established decides unanimously and reports and submits its draft-conclusions to the Commission. If for any reason whatsoever the working body is unable to formulate its own position and to give a certain proposal, the Commission will decide that issue itself (Article 11). The Government Agent shall inform the Commission if the working body has failed to comply with the tasks assigned with the decision for setting up the working body (Article 12).

As regards the decision-making, it is envisaged that the members of the working bodies, as well as the interested persons and representatives of interested entities have no right to vote (Article 20 (5) and (6) of the Rules of Procedure). Following discussion of each issue put on the agenda, the Commission adopts, by simple majority, conclusions which, among others identify the competent authority and set a deadline for implementing a recommendation/conclusion (Article 21). Pursuant to Article 23 within a ten-day time-limit after the deadline for implementation of the conclusion in question has expired, the competent state bodies are obliged to inform the Bureau for Representation of the course and extent of its implementation and within 90 days, the Bureau is responsible for preparing a report on the implementation of the conclusions, which report is also submitted to the Commission.

The successful interaction established between the Government Agent and the relevant institutions, which is facilitated by the Interdepartmental Commission, has had a positive impact on the overall execution process. Accordingly, the EU Commission has noted the "significant efforts to ensure the speedy execution of ECtHR judgments" and the "achieved good results", since "[t]he country has reduced the number of ECtHR judgments still to be executed by more than half to 56".[83]

In Latvia, the State Representative before International Human Rights Organisations acts as the Government Agent before the ECtHR. The Government Agent is appointed by the Cabinet of Ministers upon a joint proposal from the Minister of Foreign Affairs and the Minister of Justice, for a four-year mandate, which can be extended for an unlimited number of subsequent periods. The work of the Agent is supervised by the Minister of Foreign Affairs.

The Office of the Government Agent is a structural unit of the Ministry of the Foreign Affairs and the Agent is conferred a diplomatic rank. Due to the unique reporting procedure adopted, a close interaction has in practice been established between the Agent and the Cabinet of Ministers, to which he or she has direct access. It has also enhanced the visibility of the Agent vis-à-vis the highest levels of the legislative, executive and the judiciary and contributed to a constructive cooperation between his or her office and the relevant institutions.

The Government Agent is designated as a coordinator of the execution process in accordance with the Cabinet Regulations on the representation of Latvia before international human rights organisations, which provide sufficient authority in the interaction with various national institutions. Thus, the Agent is authorised to request from them all information relevant and necessary to compile the action plans and action reports. In practice, the necessary information is requested from the executive (ministries, state agencies) and judicial (the Supreme Court, the Prosecutor General Office, the Judicial Council) branches.

The Cabinet of Ministers is informed about all rulings of the Court finding a violation of the Convention.

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83 European Union: European Commission, *The former Yugoslav Republic of Macedonia 2016 Report* Accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 2016 Communication on EU Enlargement Policy {COM(2016) 715 final}, SWD(2016) 362 final, 9 November 2016, available at: https://ec.europa.eu/neighbourhood_enlargement/sites/near/files/pdf/key_documents/2016/20161109_report_the_former_yugoslav_republic_of_macedonia.pdf

In practice, the Agent's office drafts a confidential report which contains a legal analysis of the Court's judgment, including the reasons for the finding of a violation by the Court, and identifies possible individual and general measures to execute the judgment, as well as the national authorities which should be responsible for the execution. The report is then sent to the Ministry of the Interior, as well as the Supreme Court and the Office of the Prosecutor General, and in several cases, it has also been sent to other institutions (the procedure requires the mandatory approval by the Ministry of Justice and Ministry of Finance).

Following comments and approval by all relevant actors, the report is transferred to the State Chancellery, which includes it in the agenda of one of the upcoming Cabinet sessions. During the Cabinet session, the Government Agent presents an outline of the report, briefly introduces the findings of the Court and the measures identified for the rapid execution of the judgment. The presentation is followed by debates upon which a formal protocol decision is adopted, which usually contains provisions on the budgetary allocation for the payment of the awarded just satisfaction, the request for translation, publication and dissemination of the judgment, and if necessary, it also outlines the additional general measures. For example, in several cases, the Cabinet decision established *ad hoc* expert working groups, which were tasked within strictly specified deadline to draft measures to address the findings of the Court.

II.6. THE ROLE OF PARLIAMENTS IN THE EXECUTION PROCESS

II.6.1. Forms of involvement

One of the means to improve States' compliance with the Court's judgments is enhancing the role of parliaments in the execution, which has not been sufficiently taken into account in the post-Interlaken debate on the future of the Convention system. Their engagement becomes even more important bearing in mind that the implementation of judgments should be regarded not only as a **legal process**, but unavoidably as a **political process**, constrained by the legal obligations (to stop the breach, provide a remedy for the individual concerned and to prevent new or similar breaches).[84] As elected representatives, members of parliament enjoy a special **democratic legitimacy** to conduct a legitimate debate with regard to the States' fulfilment of their obligations under the ECHR. In addition, in response to the finding of a violation of the Convention, which is due to a defective law which may give rise to multiple applications to the Court, members of parliament act as **lawmakers** in order to give effect to adverse judgments of the Court and to remedy the violation.[85]

The Brighton Declaration and the Brussels Declaration urged States to facilitate the role of national parliaments in the execution of judgments of the Court and in its Resolution 1823 (2011), the PACE underlined that they are uniquely placed to hold governments to account for the swift and effective implementation of the Court's judgments, as well as to swiftly adopt the necessary legislative amendments. (see *Chapter I.4).*[86]

The involvement of the parliament may take several forms through which its supervisory and legislative functions are performed.

84 Donald A., Gordon J. and Leach P., Research report 83: The UK and the European Court of Human Rights, Equality and Human Rights Commission, p.151, available at: https://www.equalityhumanrights.com/sites/default/files/83._european_court_of_human_rights.pdf

85 "National Parliaments as Guarantors of Human Rights in Europe", Handbook for parliamentarians, p.18, available at: https://www.coe.int/en/web/belgrade/-/handbook-on-national-parliaments-as-guarantors-of-human-rights-in-europe-. This handbook also included a checklist for parliaments in their work related to the execution of judgments of the Court.

86 See Resolution 1823 (2011), cited above, in particular para.6 of the Recommendation.

Oversight and reporting mechanisms, such as the **submission of regular annual reports** by the Agent or the relevant ministry on the implementation of judgments should enable the parliaments to intervene in the execution of the Court's judgments and to hold governments accountable for the fulfilment of their obligations. The **parliamentary debate** of the report on the current state of execution of judgments may reinforce the position of the Agent in his or her relation to the relevant national stakeholders. This will, in turn, result in accelerating the action of governments, which is required to ensure a timely preparation of the action plans and reports and their more effective implementation, especially in cases where there is a delay.

Additionally, the parliaments may scrutinize **the content of the execution measures** proposed in the action plans drawn up by governments and could conduct oversight as to whether the competent authorities actually implement the proposed measures. The fulfilment of these two tasks could be achieved by holding public debates with the involvement of the relevant government representatives and using the possibility to put questions to their governments. This will enable the public to exert pressure on the governments to ensure that the appropriate measures are adopted and fully implemented.

The reporting activity is in accordance with the requirement of the Brighton Declaration that States should "facilitate the important role of national parliaments in scrutinising the effectiveness of implementation measures taken".[87] It is also in line with Recommendation CM/Rec(2008)2, which recommended States to keep their parliaments informed of the situation concerning the execution of judgments and that the measures are taken in this regard.[88] Likewise, the Brussels Declaration encouraged the involvement of national parliaments in the execution process, by transmitting to them annual or thematic reports or by holding debates with the executive authorities on the implementation of certain judgments.[89]

The **legislative scrutiny** carried out by the parliament through systematic a verification of the compatibility of draft legislation with international human rights obligations, including the ECHR and vetting legislation in cases of non-compliance, is another important form of parliamentary involvement, as in many cases the violation of the Convention stems from legislation which is inconsistent with the Convention or the violation is caused by the lack of relevant legislation. Valuable guidance in this respect is given by the **Recommendation CM/Rec(2004)5 on the verification of the compatibility of draft laws, existing laws and administrative practice with standards laid down in the European Convention on Human Rights.**

It provides that states should, when necessary, promptly take the steps required to modify their laws and administrative practice in order to make them compatible with the Convention, including to improve or set up appropriate revision mechanisms which should systematically and promptly be used when a national provision is found to be incompatible with the Convention.[90] The systematic supervision of draft laws could be carried out both at the executive and at the parliamentary level.[91] When a draft text is forwarded to the parliament, it should be accompanied by an extensive explanatory memorandum, which must also indicate and set out possible questions under the Convention, or by a formal statement of compatibility with the Convention.[92] In practice, parliamentarians may choose to prioritise for detailed scrutiny those legislative proposals that they consider to have the most significant implications for human rights and the rule of law rather than scrutinising the entire draft legislation.[93]

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87 Brighton Declaration, cited above) para. 29 a) iii).

88 Recommendation CM/Rec(2008)2, cited above, para.9.

89 Brussels Declaration, cited above, B. Implementation of the Convention at national level, para. 2 h).

90 Recommendation CM/Rec(2004)5, cited above, at para.11.

91 Recommendation CM/Rec(2004)5, cited above, at para.18.

92 Recommendation CM/Rec(2004)5, cited above, at para.20.

93 See "National Parliaments as Guarantors of Human Rights in Europe", Handbook for parliamentarians, p.29, available at: https://www.coe.int/en/web/belgrade/-/handbook-on-national-parliaments-as-guarantors-of-human-rights-in-europe-

II.6.2. Models of parliamentary control

The synergy between the parliaments and the government agents may be established through the operation of the existing organisational structures (committees or sub-committees) provided for in national constitutions and with the regulations governing parliaments, or the establishment of new parliamentary structures. In addition, parliaments could also be represented in the national inter-institutional bodies for the coordination and monitoring of the execution of judgments.

With its Resolution 1823 (2011), the PACE recommended that: "national parliaments shall establish appropriate parliamentary structures to ensure rigorous and regular monitoring of compliance with and supervision of international human rights obligations, such as dedicated human rights committees or appropriate analogous structures, whose remits shall be clearly defined and enshrined in law."[94]

The CoE has noted the "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".[95] However, the PACE has not indicated any single model and has instead accorded a certain margin of flexibility for the states to set up whatever structures that are appropriate for the particular national context, which may range from a single centralized working formation which might serve as a focal committee to a completely decentralised model of sharing the monitoring powers among various structures within the parliament. In principle, the institutional arrangements for parliamentary oversight of the execution process vary between three different models

- the specialised committee model;
- the specialised sub-committee model; and
- the cross-cutting and the hybrid model.

With the **specialised human rights committee**, there is a single standing parliamentary committee whose remit is mainly or exclusively concerned with human rights, including its competence in the field of the ECHR, which encompasses vetting legislation for compliance with the ECHR and oversight of the execution of Court's judgments. A good example in this respect is the **Joint Committee on Human Rights (JCHR)** in the United Kingdom.[96] Its mandate is extremely broad and it also covers scrutiny of bills for their compatibility with international human rights obligations, including with the ECHR.[97] Moreover, since 2011 there has been an annual parliamentary debate on the report known as the Government's response to human rights judgments, which also includes the recent ECtHR judgments involving the UK and the progress on their implementation. This model is also followed in Latvia,[98] Montenegro[99] and

94 Resolution 1823 (2011), cited above, Appendix - Basic principles for parliamentary supervision of international human rights standards, para. 1.

95 See CDDH 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 at para. 6.

96 For more information about the mandate of the JCHR, see https://committees.parliament.uk/committee/93/human-rights-joint-committee/role/

97 PACE Secretariat: The role of parliaments in implementing ECHR standards: overview of existing structures and mechanisms. Background memorandum, 8 September 2015, p.3.

98 In Latvia, once a year the Government Agent reports on the state of execution to the Human Rights and Public Affairs Committee, which is formally responsible for monitoring the implementation of international human rights norms.

99 The Committee on Human Rights and Freedoms within the Parliament of Montenegro has drafted an information report to the President of the Parliament on proceedings against Montenegro before the Court with proposals for follow-up. The Committee holds a hearing to discuss the annual report on the work of the Government Agent, which includes the state of execution of Court's judgments in the previous year. Some details about the 44th session of the Committee, held in September 2019, at which the Government Agent's report for 2018 was discussed are available at

North Macedonia,[100] where the parliamentary human rights committees monitor the execution of the ECtHR judgments, even though there are no special institutional arrangements in this respect.

Under the second model, the discussions of the annual report prepared by the Government Agent and their state of execution, and often vetting the conformity of bills with the ECHR takes place within **a specialised sub-committee** with a human rights remit set up under a standing committee with a wider mandate. Examples of this model include the Czech Republic, Poland and Romania.

Within a cross-cutting or hybrid model, human rights are treated as a cross-cutting issue, meaning that no single committee or sub-committee has a remit covering human rights issues, including monitoring the implementation of ECtHR judgments or vetting laws that are incompatible with the ECHR. They are, instead, dealt with by one or more parliamentary committees or sub-committees within their respective mandates covering justice, legal affairs, constitutional matters, etc. It demonstrates the trend of 'mainstreaming' the human rights oversight through embedding it within the mandate of various parliamentary committees, so that all of them have a certain human rights dimension. This model is followed in, for example, Germany, the Netherlands and Italy.

In conclusion, each of these models of parliamentary control over the execution have their advantages and disadvantages. Mainstreaming human rights issues might have little effect, as they will rarely be put on the agenda, given that incorporating human rights in the mandates of standing committees carries a risk of a thin commitment, and insufficient time and resources for implementation.[101] By contrast, there may be advantages to having a specialised human rights committee or sub-committee which can develop both systematic oversight mechanisms and human rights expertise among its members and staff, even though may also tend to separate human rights issues from mainstream policy debates.[102] In addition, the specialised model is likely to be preferable in states where the execution of judgments and the verification of legislation for human rights compatibility is poorly coordinated between the parliament and the executive,[103] as it is, for example, the case in Serbia.

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the following link: http://www.skupstina.me/index.php/me/radna-tijela/odbor-za-ljudska-prava-i-slobode/item/3641-odrzana-44-sjednica-odbora-za-ljudska-prava-i-slobode

100 According to Article 13(2) of the Law on Enforcement of Decisions of the ECtHR, the Inter-departmental Commission for the Enforcement of Decisions of the ECtHR is obliged to report annually not only to the Government, but also to the Standing Inquiry Committee on Civil Freedoms and Rights of the Assembly. A practice has been developed that in addition to the Commission's report, the annual report on the work of the Office of the Government Agent is also presented before the Committee. For example, the annual reports for 2018 were discussed in June 2019. See: https://sobranie.mk/2016-2020-srm-ns_article-devetta-sednica-na-postojanata-anketna-komisija-za-zashtita-na-slobodite-i-pravata-na-gragjaninot.nspx

101 Open Society Justice Initiative, From Rights to Remedies: Structures and Strategies for Implementing International Human Rights Decisions (New York, Open Society Foundations, 2013), p. 68; available at: http://www.opensocietyfoundations.org/sites/default/files/from-rights-to-remedies-20130708.pdf

102 Open Society Justice Initiative, From Rights to Remedies: Structures and Strategies for Implementing International Human Rights Decisions (New York, Open Society Foundations, 2013), p. 65; available at: http://www.opensocietyfoundations.org/sites/default/files/from-rights-to-remedies-20130708.pdf

103 See "National Parliaments as Guarantors of Human Rights in Europe", Handbook for parliamentarians, p.50, available at: https://www.coe.int/en/web/belgrade/-/handbook-on-national-parliaments-as-guarantors-of-human-rights-in-europe-

III. Legal framework for the execution of ECtHR judgments in Serbia

This chapter refers to the legal framework that regulates the functioning of the Government Agent in the Republic of Serbia starting with a chronological overview of the institutional position of the Government Agent. Furthermore, within this chapter the current position of the Agent within the State Attorney's Office is presented indicating the competences of the Agent as defined *de iure* and also activities carried out by the Agent in practice. In this part one will attempt to shed light on certain gaps in the regulatory framework concerning the status of the Agent and his/her competences concerning the execution of ECtHR judgments. Moreover, there will be a short overview of the role and competence of the National Assembly as regards its oversight of the execution of ECtHR judgments rendered in respect of Serbia.

III.1. LEGAL FRAMEWORK WHICH REGULATES THE FUNCTIONING OF THE SERBIAN GOVERNMENT AGENT BEFORE THE EUROPEAN COURT OF HUMAN RIGHTS

III.1.1. Chronological overview

The State Union of Serbia and Montenegro signed the Convention for the Protection of Human Rights and Fundamental Freedoms on 3 March 2003. In the same year, the Convention was ratified[104] and the instruments of ratification were submitted on 3 March 2004. From that date, the Convention has effectively applied in the Republic of Serbia.

Consequently, the Agent of the Republic of Serbia before the ECtHR was for the first time introduced into the legal system of the State Union of Serbia and Montenegro by the Regulation on the Agent of the Republic of Serbia before the ECtHR.[105] The Agent represented Serbia and Montenegro in proceedings before the ECtHR. It was envisaged that the Agent should have a deputy, who would be a national of the other state to that of the Agent. Several articles of this Regulation referred to the election of the Agent, eligibility criteria and the role of the Council of Ministers.[106] It was provided that the Council of Ministers of Serbia and Montenegro should appoint the Agent and Deputy Agent.

104 Law on Ratification of the European Convention for the Protection of Human Rights and Fundamental Freedoms, "Official Gazette of Serbia and Montenegro"" - International Agreements, no. 9/2003, 5/2005, 7/2005.

105 The Regulation was adopted by the Council of Ministers of Serbia and Montenegro and published in the "Official Gazette of the Serbia and Montenegro" no. 7/2005.

106 Articles 3 and 4.

The Regulation provides that the Agent and the Deputy Agent are authorized to have access to the court files and all other files relating to the proceedings before the Strasbourg Court regardless of their confidentiality (Article 5). All the authorities are obliged to cooperate with the Agent and Deputy Agent (Article 6). The possibility of the conclusion of a friendly settlement conclusion, with the prior consent of the authority whose acts caused a violation of the Convention right, is set out in Article 7.

Issues concerning the execution of ECtHR judgments are set out in several provisions (Article 8) determining, among others, that the Agent/Deputy Agent should "take care" of execution.

The Agent may inform the Council of Ministers about legislation that does not comply with the Convention and the need to adopt certain amendments (Article 9). It further states that the Agent should submit six-monthly reports to the Council of Ministers of Serbia and Montenegro, and also to the Governments of each state (Article 10).

Concerning organizational matters, it provides that the Office of the Agent should be established within the Ministry of Human and Minority Rights (Articles 11 and 12).

After the dissolution of the State Union of Serbia and Montenegro, this Regulation was amended accordingly, but in substance retained the provisions of the initial Regulation.[107]

The Agent has continued to perform his or her duties within the Ministry of Human and Minority Rights of the Republic of Serbia. This Ministry subsequently transformed into the Government Service for Human Rights and National Minorities[108] and the Agent before the ECtHR was at the same time the Deputy Director of the Service. In the next phase, the Agent and the employees of the Office continued to work within the Ministry of Justice, as a Sector for Representation of the Republic of Serbia before the ECtHR until 2015 when this Sector became a Department of the State Attorney's Office (see further).

III.1.2. The current legal framework which regulates the functioning of the Government Agent

The current legal status of the Government Agent is governed by the provisions of the Law on the State Attorney's Office.[109]

This Law provides that the State Attorney's Office shall represent the Republic of Serbia in proceedings before the ECtHR. According to Article 13(1), this representation shall comply with the Convention and its protocols. It is further specified that the Deputy State Attorney shall perform the activities of representation. The Deputy State Attorney is both the Agent of the Republic of Serbia before the ECtHR and the communication point between the ECtHR and the Republic of Serbia (Article 13 (2) and (3)).

Article 13 further provides that the Agent is authorized to conclude settlement with parties – applicants before the ECtHR with the prior consent of the state authority whose acts have caused the proceedings before the ECtHR (para. 4).

With regard to the payment of the amount agreed by the friendly settlement or the amount determined by the ECtHR, the Law states that this payment should be made from the funds of the authority which caused the violation of human rights (Article 13(5)). The obligation of other state bodies and public institutions to cooperate and submit the necessary information to the State Attorney's Office is prescribed by Article 8 of the Law.

107 "Official Gazette of the RS", no. 61/06 – consolidated text.

108 "Official Gazette of the RS", no. 49/06.

109 "Official Gazette of the RS", no. 55/2014.

Moreover, Article 24 of the Law on the State Attorney's Office states that only the State Attorney is authorized to initiate proceedings to challenge the constitutionality of the law, or constitutionality and legality of other general legal acts, if it is considered that the property rights or interests of the Republic of Serbia, or the status of the State Attorney's Office, have been jeopardized, by that legal act.

Furthermore, Article 16 of the same Law states that the State Attorney's Office shall inform the competent state authorities of the need to amend any legal acts which the Office considers not to comply with the ECtHR.

With regard to the supervision of the work of the State Attorney's Office, the Ministry of Justice shall monitor its performance (Article 33). The State Attorney is accountable to the Government and Minister of Justice (Article 23 (2)). The State Attorney's Office submits to the Government an annual report on its performance for the previous year (Article 14).

The Rules on the organization of the State Attorney's Office[110] provide more detailed information on the duties of the Department for representing the Republic of Serbia before the ECtHR. According to Article 8 of these Rules, this Department shall perform different activities regarding representation before the ECtHR. Moreover, the Department shall perform certain activities with regard to the execution of ECtHR judgments: shall ensure the timely payment of the amount awarded by ECtHR judgments/decisions and of general and individual measures to be implemented, shall prepare reports for the CM, shall communicate with competent national authorities and the CM regarding the execution of judgments and shall participate in meetings of the CM devoted to the execution of ECtHR judgments. Article 8 also provides that the Department shall take some preventive measures by raising awareness of the need to respect human rights guaranteed by the Convention and initiate the process of amending legislation so that it complies with the Convention.

It is important to give a make some remarks regarding the status of the Agent and the employees within the Department for representing the Republic of Serbia before the ECtHR. The Agent is a high level civil servant (*državni službenik na položaju)* while the employees are mid-level civil servants – advisors.[111] While the Deputies of the State Attorney including the Government Agent are appointed by the Government on the proposal of the Minister of Justice (Article 38 of the Law on State Attorney's Office), they are accountable for their work to the State Attorney (Article 23 (3)) of the Law). Also, Article 16 of the above mentioned Rules provides that the Agent – the State Attorney's Deputy, is accountable for his/her work to the State Attorney.

Finally, the Law on Ministries[112], states that the Ministry of Justice, among others, performs the duties regarding representing the Republic of Serbia before the ECtHR, publishing judgments of that Court in respect of Serbia and monitoring their execution (Article 9).

Having analyzed the provisions of the Law on State Attorney's Office it could be concluded that this Law does not refer in any way to the execution of judgments of the ECtHR. By a very broad interpretation, it might also be concluded that the execution of judgments has been taken into account by the wording of Article 13 (1) – *representation shall be in compliance with the European Convention on Human Rights and its protocols*. This could imply that such a provision includes that the "representation" also complies with Article 46 and that Serbia shall execute judgments of the ECtHR.

110 Rulebook on internal organization and systematization of jobs, 14 March 2019, http://www.dpb.gov.rs/public/documents/upload/dokumenti/PRAVILNIK%20Konacno.pdf

111 Supra, see Section 9 - 13 of the Rules, currently within the Department for Representation before the EctHR there are 7 „attorney's assistants" – legal advisers

112 "Official Gazette of the RS", no.44/2014, 14/2015, 54/2015, 96/2015 – other Law 62/2017.

The connection with execution could also be found within the above mentioned para. 5 of Article 13, relating to the payment of just satisfaction. In particular, it refers to one element of the execution – the payment of the amount awarded by the Court or agreed by the friendly settlement. More details on the scope of work of the Department for Representation before the ECtHR, namely the Agent, are set out in the Rules on the Organization of the State Attorney's Office (Article 8).

According to long standing practice in Serbia, all the activities regarding the execution of judgments have been coordinated by the Agent of the Republic of Serbia before the ECtHR. Such practice is based on the above mentioned provisions regulating the status of the Agent, namely on the Regulation on the Agent of the Republic of Serbia before the ECtHR. Article 6 (2) of that Regulation provides that *if the judgment of the European Court of Human Rights establishes a violation of the Convention by the Republic of Serbia, the Agent will be responsible for ensuring the execution of that judgment.* Although this method of regulating the enforcement of ECtHR judgments was relatively superficial and left largely to the discretion of the Agent how to act in the enforcement of Strasbourg judgments, it nevertheless provided a certain framework for the execution of ECtHR judgments.

The close connection between the work of the Agent and the Government was also established with the obligation of the Agent to submit reports to the Government every six months (Article 8 of the Decree), as opposed to the current legal framework whereby the State Attorney's Office reports to the Government once a year (Article 14). The cases before the Court and the execution of judgments are only one part of that report.

The Rules on the organization of the State Attorney's Office[113] (cited above) provide a more detailed explanation of all the activities undertaken by the Agent in the context of execution. It seems that such a normative solution that provides details of the execution procedure within a by-law while it has not previously been set out in the basic act – the Law on State Attorney's Office, may not comply with the principle of legality. Further, it is questionable if these Rules comply with the Law on Ministries, according to which, the competence of the Ministry of Justice is, among others, responsible for ensuring that ECtHR judgments are executed. In any case, the obligations of state authorities are not envisaged in the context of execution, in particular with regard to the drafting of action plans and reports.

III.2. THE ROLE OF THE GOVERNMENT AGENT IN THE EXECUTION OF JUDGMENTS OF THE EUROPEAN COURT OF HUMAN RIGHTS – CURRENT PRACTICES IN SERBIA

In accordance with Article 46 of the Convention (see above *Chapter I.1.*), after a judgment or a friendly settlement decision has been rendered by the Court the State's obligation regarding its execution arises.

In order to meet the obligations set within the ECtHR judgment, a number of activities need to be carried out. The starting point for all these activities is the Government Agent.

First of all, the Agent of the Republic of Serbia needs to notify the competent national authorities of each judgment or friendly settlement decision, including the courts, the prosecutor's office, the Constitutional Court, the competent ministry or other bodies that might be concerned, taking into account the concrete violation of the Convention found by the ECtHR.

All judgments against the Republic of Serbia are translated and published in the "Official Gazette of the Republic of Serbia." The Department for representation before the ECtHR co-ordinates the translation of the judgment and checks the accuracy of the translation before it is published in the Serbian language.

113 Cited above, footnote 110.

If it is necessary to pay a certain amount by way of just satisfaction, the Agent must identify the authority which gave rise to the violation of the Convention right in accordance with Article 13 (5) of the Law on the State Attorney's Office.

Sometimes, the ECtHR itself indicates the omissions of certain authorities, or it is clear from the facts of the case, but there are cases in which several bodies have contributed to a violation of the Convention, so it is not clear how to determine the authority which should make the payment of just satisfaction. In some cases, it was necessary for the Agent to request from all authorities that had contributed to the violations at issue, to pay an equal portion of the compensation awarded.[114]

With regard to payments based on the judgments of the Strasbourg Court, it is important to mention the problem faced by the Agent of the Republic of Serbia regarding the payment obligations determined in a specific type of judgments against Serbia, by which Serbia has been obliged to pay the amounts determined by final domestic judgments issued against "socially owned" companies (with predominantly social or state capital).[115] In such cases the payment of non-pecuniary damages due to a violation of a Convention right is not the only obligation, but it is also necessary to pay the pecuniary damages determined by judgments of domestic courts that had been rendered years, or even decades ago.

In this regard, different question have arisen: the calculation of interest, the payment of pension and social security contributions, which entity is obliged to pay these debts, the applicant's objections about the amount paid, etc. Resolving all these issues has greatly increased the work of the Agent and the whole Department, over the last few years, especially with the increasing number of friendly settlement decisions (in line with the Court's view that such cases are "well established case law").

As regards the individual and/or general measures, the Agent must inform the competent Ministry, courts, or other state authorities of the need to adopt certain measures, or to amend its practices regarding a particular issue. In practice, some judgments were easily implemented, while sometimes there were problems with the speed of implementation of the necessary measures because of the inadequate response of the competent authorities or a misunderstanding about the need for measures to be taken. With regard to general measures, a good example is certainly the execution of the judgment in the case of *Grudić v. Serbia*. In that case, the competent Ministry responded speedily to the information provided by the Agent and adopted the necessary administrative measures.[116]

In any case, different coordination activities are needed, especially if different authorities should be engaged in the execution. This was the case with regard to the execution of the judgment in the case of *Ališić and Others*.[117] When it comes to new legal solutions required by the ECtHR judgment or needed in order to prevent similar violations in future, the involvement of the Agent is also generally required (this was the case when drafting the Law on the Protection of the Right to a Trial within a Reasonable Time)[118].

Finally, the Agent must inform the CM about the activities taken in order to implement the judgment, in the form of the action plan or action report. When drafting action plans and reports, the Agent co-ordinates with the competent state authorities and communicates with the Department for Execution of

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114 See for instance *Petrović v. Serbia*, no. 40485/08, Judgment of 15 October 2014.

115 With regard to the payment of just satisfaction (pecuniary damage in this type of cases) it is worth noting that the Law on Budget of the RS for 2020 („"Official Gazette of RS no. 84/19) provides funds for the State Attorney's Office "protection of human and minority rights before international courts".

116 The Information of the Department for Execution - CM/Notes/1302/H46-27
https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016807645f6

117 See further under *Chapter IV.3*.

118 "Official Gazette of the RS" no. 40/2015.

Judgments, which on the basis of reports submitted by the State, prepares information for the CM. The development of action plans is an activity that has become increasingly important since the adoption of new working methods of the CM for the Supervision of Execution of Judgments and Decisions of the ECtHR at the end of 2010.[119]

The practice of the participation of Agents at the CM (DH) meetings has been followed by Serbia as well. On the one hand, it has so far been very useful, since the Agent has already become familiar with all the details of the particular case and he or she could provide a comprehensive answer to the questions regarding the execution of a particular judgment. On the other hand, such participation has essentially no basis in either the Law on the State's Attorney's Office or the Law on Ministries, which does not contain any provision governing the execution of ECtHR judgments. This important activity has only been mentioned within the Rules on Organization of the State Attorney's Office.

The Law on Ministries provides that the Ministry of Justice also performs the activities of representing and monitoring the execution of ECtHR judgments, so it could be understood that this provision refers to the participation of representatives of the Ministry of Justice in the meetings of the CM.[120] However, this engagement of the Ministry of Justice is more an exception rather than a rule. On the other hand, taking into account the competences of the Ministry of Foreign Affairs, it seems that there is a need to clarify the role of this Ministry and the Government Agent (namely the State Attorney's Office), concerning the state representation at the CM (DH) meetings.[121]

Reporting to the state authorities on the decisions of the CM relating to a particular case or a group of cases and further coordination of activities to implement the required measures is also within the scope of work of the Government Agent (although this is provided by the Rules on Organization of the State Attorney's Office mentioned above, and not by any Law).

It could be concluded from the provisions mentioned above that there is horizontal non-compliance of the abovementioned laws. This is further confirmed when one considers that according to the Law on the Budget, the funds are provided for the State Attorney's Office in relation to the execution of ECtHR judgments[122] and on the other hand the Law on the State Attorney's Office does not contain any provision on the issue of execution.[123]

III.3. THE ROLE OF THE NATIONAL ASSEMBLY OF SERBIA

The role and competence of the National Assembly is determined by the Constitution of the Republic of Serbia[124] and further regulated by the Law on the National Assembly.[125] With regard to the supervision of the executive branch and other state institutions, Article 15 of the Law on National Assembly states in a rather broad manner that the National Assembly shall perform, among others, the duty of supervising the work of the Government, the Security Service, the Governor of the National Bank, the Protector of Citizens (the Ombudsman) and other bodies in accordance with the law.

119 See above, *Chapter. I.1.*

120 As it was the case, for example, in relation to the execution of judgment *Zorica Jovanović v. Serbia* which entailed the enactment of a special law.

121 Law on Ministries, Article 13, ("Official Gazette of the RS", nos. 44/2014, 14/2015, 54/2015, 96/2015 – other law and 62/2017), also Law on Foreign Affairs ("Official Gazette of the RS", no. 116/2007, 126/2007 – correction and 41/2009).

122 See above, footnote 115.

123 Also see Analyis of Nataša Plavšić, Judge of the Constitutional Court, http://www.fcjp.ba/analize/Natasa_Plavsic1-Pravni_polozaj_zastupnika_Republike_Srbije_pred_Evropskim_sudom_za_ljudska_prava.pdf

124 Articles 98 -110.

125 Official Gazette of RS no. 9 /2010.

With regard to human rights issues, it is important to mention the provisions of the Rules of the Procedure of the National Assembly.[126] In particular, Article 52 provides that "the *Committee on Human and Minority Rights and Gender Equality shall consider bills and proposals of other general acts, as well as other issues in the following areas: realization and protection of human rights and freedoms and the rights of the child;* implementation of ratified international treaties which regulate the protection of human rights;[127] *exercising the freedom of religion; the status of churches and religious communities; realisation of ethnic minority rights and inter-ethnic relations in the Republic of Serbia.*"

From this Article it is clear that the ECtHR judgments and their execution are not expressly included within the envisaged competence of this Committee. However, it seems that the Committee on Human and Minority Rights could include in its activity the supervision of the implementation of ECtHR judgments, since obviously it is within the scope of the *implementation of ratified international treaties which regulate the protection of human rights.*

It would be advisable to consider amending the Rules of the Procedure of the National Assembly in order to reflect the new functions of the legislative body as regards the execution of the ECtHR judgments. However, even without any amendments there is a sufficient legal basis for a periodic examination of reports concerning the execution of ECtHR judgments, and also other relevant issues stemming from the proceedings before the ECtHR.

Such parliamentary involvement would enhance not only transparency, but also the accountability of all state authorities included in the execution process. However, a possible challenge might be the insufficient familiarity of the deputies with the case law of the Strasbourg court, its functioning and the obligations of Member States in the execution process. Therefore, there could be an additional burden on the Agent to provide relevant explanatory reports and information as according to the present practice, the National Assembly is not well acquainted with judgments concerning Serbia in the form of regular reports of the Agent, or through an oral presentation, although all judgments are published in the Official Gazette and on different websites.

The issue of execution has not been presented to deputies either. The National Assembly was involved only in those issues of execution that required the adoption of new legislation such as in the *Zorica Jovanović* case[128] or the law adopted after the Grand Chamber Judgment in the case *Ališić and Others*.[129]

In order to "*facilitate the important role of national parliaments in scrutinizing the effectiveness of implementation measures taken"*[130] it would be useful to enable periodic presentations of ECtHR judgments and the measures taken in their execution, in the form of hearings before the competent committees with the possible participation of representatives of civil society and the Protector of Citizens (the Ombudsperson).

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126 http://www.parlament.gov.rs/national-assembly/important-documents/rules-of-procedure-(consolidated-text)/entire-document---rules-of-procedure.1424.html

127 Underlined by Vanja Rodić.

128 Missing Babies Act (Zakon o utvrđivanju činjenica o statusu novorođene dece za koju se sumnja da su nestala iz porodilišta u Republici Srbiji,"Official Gazette of the RS", no. 18/2020), adopted in February 2020.

129 *Ališić* Implementation Act (Zakon o regulisanju javnog duga Republike Srbije po osnovu neisplaćene devizne štednje građana položene kod banaka čije je sedište na teritoriji Republike Srbije i njihovim filijalama na teritoriji bivših republika SFRJ, "Official Gazette of the RS" nos. 108/2016, 113/2017 i 52/2019).

130 As recommended with the Brighton Declaration adopted in 2012 – High level Conference on the future of the ECtHR,, in particular Article 3, 4 and concerning the execution of judgments, section F.29. see above on the Interlaken reform process (*Chapter I.3*). https://www.echr.coe.int/Documents/2012_Brighton_FinalDeclaration_ENG.pdf

III.4. NATIONAL LEGAL FRAMEWORK AND PRACTICE FOR RE-EXAMINATION OF CASES ON THE BASIS OF THE ECTHR JUDGMENTS

In some cases, having found a violation of the Convention, the ECtHR has held that the re-examination of a case is a condition *sine qua non* in order to execute the judgment efficiently. Therefore, t in its Recommendation No. R(2000) 2[131] the CM invites the Contracting parties to *ensure that there exist at national level adequate possibilities to achieve, as far as possible, restitutio in integrum, to ensure that there exist adequate possibilities of re-examination of the case, including reopening of proceedings, in instances where the Court has found a violation of the Convention, especially where:*

i the injured party continues to suffer very serious negative consequences because of the outcome of the domestic decision at issue, which are not adequately remedied by the just satisfaction and cannot be rectified except by re-examination or reopening, and

ii the judgment of the Court leads to the conclusion that

a. the impugned domestic decision is on the merits contrary to the Convention, or

b. the violation found is based on procedural errors or shortcomings of such gravity that a serious doubt is cast on the outcome of the domestic proceedings complained of.

The Constitution of the Republic of Serbia states that the provisions on human and minority rights shall be interpreted to benefit the promotion of the values of a democratic society, pursuant to valid international standards in human and minority rights, as well as the practice of international institutions which supervise their implementation (Article 18 (3) of the Constitution).

Having accepted this Recommendation and in line with its constitutional provisions, in its procedural laws, the Republic of Serbia has included the judgments of the ECtHR as a reason for reopening the proceedings or filing of other extraordinary legal remedies. This enables the execution of individual measures in a particular case and restitutio in integrum as far as possible.

The relevant provisions of procedural laws in criminal, civil and administrative matters including provisions for reopening the proceedings regarding misdemeanours, are discussed below. Certain ambiguities of the provisions related to the possibility of reopening the proceedings after the ECtHR judgment are pointed out. Also, some concrete examples of reopening proceedings after ECtHR judgments and issues faced by courts in Serbia are considered.

III.4.1. Criminal proceedings – Request for the Protection of Legality in Criminal Proceedings

The Criminal Procedure Code ("CPC")[132] states that the request for the protection of legality may be filed by the Republic Public Prosecutor, the defendant and his defence counsel (Article 483 (1)). The Republic Public Prosecutor may file a request for the protection of legality both to the detriment and to the benefit of the defendant.

One of the reasons for submitting a request for the protection of legality is that *the human rights and freedoms of the defendant or other participant in the proceedings, guaranteed by the Constitution or the European Convention for the Protection of Human Rights and Fundamental Freedoms and additional protocols, have been violated or denied, as found by the Constitutional Court decision or by the Judgment of the European Court of Human Rights*. (Article 485 (1) (3)).

131 https://www.coe.int/en/web/execution/recommendations

132 "Official Gazette of RS", Nos. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013, 55/2014 and 35/2019.

Therefore, an established violation of a Convention right with respect to the defendant or other party to the proceedings constitutes a ground for submitting a request for the protection of legality. In the case of the defendant, namely the person who was the applicant in the proceedings before the ECtHR, the request for the protection of legality may also be filed by the defendant, namely his/her counsel.

With regard to the **deadline for filing this extraordinary legal remedy** for violations determined by a ruling of the ECtHR or the Constitutional Court, the CPC provides that the request for the protection of legality for the reasons prescribed in paragraph 1, item. 2) and 3) of Article 485 may be lodged within three months from the date on which the decision of the Constitutional Court or the European Court of Human Rights "was served on the person" (Article 483(1)). It seems that this deadline refers also to the Republic Public Prosecutor.

The question is how one should understand the prescribed time limit. Concerning the applicant, should it be understood as the day on which a judgment was published on the ECtHR Database (HUDOC)? Under the ECtHR Rules of Procedure,[133] the Court will notify the applicants and the Government's Agent of the publication of the judgment on a specific date. In this regard, the date of publication of the judgment of the Strasbourg Court could be taken as the beginning of the time limit. Moreover, all the time limits concerning the finality of the ECtHR judgment have been calculated in relation to the day on which a judgment was published on HUDOC (and consequently this further has a impact on the time frames in the execution process).

Bearing in mind that the Chamber judgment of the ECtHR in the most of cases becomes final in three months (unless either party has filed a request to refer the case to the Grand Chamber), and that for more complex cases it may take longer to translate the judgment into Serbian, its publication in the "Official Gazette" may coincide with the time limit for the finality of ECtHR judgment. Therefore, it may be considered to extend the time limit to six months for the Republic Public Prosecutor from the date of the judgment's publication in the "Official Gazette" as that he/she has not been "served" with the ECtHR judgment. This would also be useful given the deadlines for the execution of ECtHR judgments and the obligation of a State to submit the action plan or action report.

If a violation of a right of **another participant in the proceedings** has been established by the Strasbourg Court (for example, the injured party), it seems that only the Republic Public Prosecutor would have the right to file a request for the protection of legality. The question arises regarding the discretion of the Republic Public Prosecutor to decide whether to file a request for the protection of legality. In the case of the defendant, if the Republic Public Prosecutor does not consider it necessary to file such a request, the defence counsel of the defendant will nevertheless be able to do so.

However, in case of a violation of the rights of other participants in the proceedings, from the wording of the relevant provisions it could be concluded that such an obligation does not exist. The Republic Public Prosecutor *may* submit the request for the protection of legality at his/her own discretion. This does not seem to be in line with the proclaimed constitutional obligation to guarantee and directly apply human rights guaranteed by generally accepted rules of international law and ratified international treaties (Article 18 of the Constitution).

133 Rules of the Court, Rule 77, paras 2 and 3: 2.) The judgment adopted by a Chamber may be read out at a public hearing by the President of the Chamber or by another judge delegated by him or her. The Agents and representatives of the parties shall be informed in due time of the date of the hearing. Otherwise, and in respect of judgments adopted by Committees, the notification provided for in paragraph 3 of this Rule shall constitute delivery of the judgment. 3.) The judgment shall be transmitted to the Committee of Ministers. The Registrar shall send copies to the parties, to the Secretary General of the Council of Europe, to any third party, including the CoE Commissioner for Human Rights, and to any other person directly concerned. The original copy, duly signed, shall be placed in the archives of the Court.

Although the independence of the Republic Public Prosecutor stems from both the Constitution and the Law on the Public Prosecutor's Office[134], which define the Public Prosecutor's Office as an independent state body that prosecutes criminal offenders and takes measures to protect constitutionality and legality, the question arises as to whether, contrary to the decision of the European Court of Human Rights that a human right of a "participant" (e.g. the injured party) had been violated, it could be left to the Public Prosecutor to evaluate the question of whether "legality" was violated in the particular case?

In this respect, there are also opinions that the competence of the public prosecutor's office should be expanded by explicitly introducing an obligation of the Public Prosecutor's Office to protect human rights and freedoms .[135] However, even the present formulation according to which the public prosecutor "undertakes measures to protect constitutionality and legality" also seems to be a sufficient basis for the obligatory filing of a request for the protection of legality if a violation of human rights has been established by the ECtHR judgment,[136] given that the Serbian legal system enables the direct implementation of the Convention. The Supreme Court of Cassation ("SCC") should always be allowed to render a decision about the legality, in all cases that follow a judgment of the ECtHR establishing a violation of human rights.[137]

With respect to the position of the **co-accused**, Article 489 (2) of the CPC, provides that *"if the Supreme Court of Cassation finds that the reasons for its decision in favour of the defendant existed also for any of the co-defendants in respect of whom the request for the protection of legality"* has not been filed, it will act *ex officio* as if such a request existed for those persons too. Theoretically a question could arise whether the co-accused could file independently a request for the protection of legality by his/her lawyer In principle, this person may always submit an initiative to the Republic Public Prosecutor to file a request for protection of legality.

With regard to ECtHR judgments finding a violation of the Convention relating to criminal proceedings, and as a result, the proceedings should have been reopened, one needs to mention the judgment in *Stanimirovic v. Serbia* .[138] The Court indicated that the domestic courts refused to bar the admissibility of the applicant's confessions (due to his ill-treatment by the police) used as evidence during criminal proceedings conducted against him. The Court concluded that regardless of the impact those statements had on the outcome of the criminal trial, their use rendered the trial as a whole unfair (paras. 41 and 52). Following the Court's judgment in this case the applicant requested the reopening of the impugned criminal proceedings in which he had been found guilty of murder and sentenced to forty years' imprisonment.

Bearing in mind the nature of the criminal act and severity of the sentence the domestic court had hesitated before the final decision on the reopening of the proceedings which at the end had resulted

134 "Official Gazette of the RS" nos. 116/08, 104/09, 101/2010, 78/11 –other law, 101/11, 38/12 – Decision of the Constitutional Court УС, 121/12, 101/13, 111/14 – Decision of the Constitutional Court, 117/14, 106/15 и 63/16 - Decision of the Constitutional Court.

135 *State Prosecutorial Council in the light of the announced changes to the Constitution,* Milan Škulić and others., Belgrade 2016, p. 27, quoted in the Analysis of the Constitutional Position of the Public Prosecutor's Office in the Republic of Serbia with recommendations for its improvement (authors Bosa Nenadić, Miodrag Majić and Goran Ilić), http://www.bgcentar.org.rs/bgcentar/wp-content/uploads/2016/12/Analiza-ustavnog-polozaja-book.pdf

136 Law on Public Prosecutors' Office, cited above, Article 2.

137 Within the recommendations of the Consultative Council of European Prosecutors it is, among others, provided that it is not only the task of courts to strengthen their human rights potential, but also this includes the prosecution services. The same could be concluded from the PACE Recommendation 1604 (2003) on the Role of the Public Prosecutor's Office .

138 *Stanimirović v. Serbia*, no. 26088/06, Judgment of 18 October 2011.

in the applicant's acquittal of all the charges in the reopened proceedings. [139] It should be borne in mind that the provisions of the CPC applicable in that case[140] did not contain a provision concerning the reopening of the proceedings following an ECtHR judgment finding a violation of the right guaranteed by the ECHR.

Also, following the Court's judgment in the case of *Hajnal v. Serbia*, the applicant requested the reopening of the impugned criminal proceedings in which he was found guilty of having committed 11 burglaries and sentenced to one and a half years' imprisonment. The request was granted by the competent court on 12 December 2012 and in the reopened proceedings, the applicant was acquitted.[141]

These cases confirm that reopening of the criminal proceedings after an ECtHR judgment upon request for a retrial, successfully enabled the execution of the individual measures in concrete cases. In criminal proceedings, given the nature of the offenses, the criminal sanction determined by the domestic courts, on one hand, and the established violation of human rights, on the other, it could be considered that the current legal solution is appropriate. In this situation a decision upon a request for protection of legality shall be made by the SCC, which, if it adopts the request, may order the lower court to reopen the proceedings (Article 492 of the CPC).

This allows the highest court to decide how the ECtHR judgment should be executed, thereby also contributing to the harmonization of case law.

III.4.2. Civil proceedings – reopening of proceedings in accordance with the Civil Procedure Code

According to the provisions of the Civil Procedure Code ("CvPC")[142] one of the reasons for reopening proceedings is a violation of the human rights found by the ECtHR. It is provided that "*.... if the party is afforded the opportunity to use a decision of the European Court of Human Rights finding a violation of human rights, which may have had the effect of a more favourable decision"*(Article 426(1) (11)).

The deadline for submitting a motion for reopening is 60 days *from the date on which the party was able to use the final decision which is the reason for the reopening of the proceedings* (Article 426(1) (4)). The same Article further provides that, *after the expiry of a period of five years from the date on which the decision became final, a motion for retrial may not be filed unless the retrial is requested for the reasons stated in Article 426 (11) and (12)) of this Law.*

The meaning of this specific wording in Article 426 – *that a party is afforded the opportunity to use the decision of the ECtHR* is unclear. It is not certain whether the intention of the legislator was to extend the possibility that all persons who were in a factually and legally similar situation, could file a motion for reopening of the proceedings, provided that this could have an impact on a more favourable decision in their particular case. The question is whether such a broad approach would be in line with the principle

139 Revised Action plan of the Government of the Republic of Serbia, 18 November 2018 and Action Plan of 10 November 2014
https://hudoc.exec.coe.int/eng#{%22EXECIdentifier%22:[%22DH-DD(2018)1166E%22]}

140 "Official Gazette of the FRY", No. 70/2001, 68/2002, "Official Gazette of the RS", No. 58/2004, 85/2005, when deciding to retry) , 115/2005, 49/2007 and 72/2009.

141 Revised Action plan of the Government of the Republic of Serbia, 18 November 2018 and Action Plan of 10 November 2014, paras 50-51
https://hudoc.exec.coe.int/eng#{%22EXECIdentifier%22:[%22DH-DD(2018)1166E%22]}

142 "Official Gazette of the RS", No. 72/2011, 49/2013 - US decision, 74/2013 – Constitutional Court decision, 55/2014, 87/2018 and 18/2020.

of legal certainty. On the other hand, undoubtedly, in some specific situations, a broader approach could contribute to the protection of human rights.

The issue of *locus standi* is also important in relation to the issue of an objective deadline of five years for filing a motion for retrial *from the day on which the decision became final, this deadline being excluded in cases where the motion is submitted on the basis of a judgment of the ECtHR or a decision of the Constitutional Court*. The question is whether there could be an applicable objective deadline for submitting a motion for a retrial following a decision of the Court.

The legislator was probably guided by the fact that the ECtHR often takes more than five years to render a decision, so if the stated objective deadline were also to be applied in this case, the persons whose rights had been violated would be denied the opportunity to file a motion for retrial. *Argumentum a contrario*, would this mean that there is an unlimited opportunity to submit a motion for reopening the proceedings if the ECtHR find a violation of human rights?

If a person was a party before the ECtHR, the question of being aware of the ECtHR judgment is certainly not raised, nor the possibility of using such a judgment. In this respect, after the subjective time limit has expired, a person who was a party to the proceedings before the ECtHR would lose the opportunity to file a motion for a retrial. However, the question arises how to proceed in the cases of third persons who did not participate in the proceedings before the ECtHR, who, based on the Strasbourg judgment, seek the retrial of the court proceedings in their particular case, considering that they were in the same factual and legal situation and that a specific ECtHR judgment could have led to a more favourable outcome in their particular case.

An example of a judgment in which the ECtHR itself considered the motion for retrial to constitute sufficient just satisfaction for the applicants (paragraph 61) is that of *Vinčić and Others v. Serbia*, which referred to different court decisions in similar factual and legal circumstances. The ECtHR, therefore, found a violation of the right to legal certainty in the context of the right to a fair trial.[143] Then other two similar judgments were rendered in the cases of *Rakić and others*[144] and *Živić*[145]. The applicants failed to request a retrial after the judgment, based on the abovementioned provisions of the CvPC within the subjective time limit of 30 days prescribed by the applicable CvPC, as can be seen from the action plan submitted by the State to the CM.[146]These judgments could encourage other persons who considered themselves to be in the same factual and legal situation to request a retrial as well.

Also, in the case of *Mirković and Others v. Serbia*[147] a violation of Article 6 (1) of the Convention was found by the ECtHR because of the uncertain practice of domestic courts (in the period between 2012 to 2016). The domestic courts rejected the applicants' civil claims relating to certain employment benefits for prison staff, while at the same time ruled in favour of other claimants with identical complaints. They appealed to the Constitutional Court complaining, among other things, that by adopting discordant decisions in similar cases, the domestic courts violated the right to legal certainty.

Following the ECtHR judgment with regard to individual measures, the applicants were able to request the reopening of the proceedings and the majority of the applicants exercised this right. As regards the

143 *Vinčić and Others v. Serbia*, nos. 44698/06 and others, Judgment of 1 December 2009.

144 *Rakić and Others v. Serbia*, nos. 47460/07 and others, Judgment of 5 October 2010.

145 *Živić v. Sebia*, no. 37204/08, Judgment of 13 September 2011.

146 See the Action plan of the Republic of Serbia submitted to the Committee of Ministers https://hudoc.exec.coe.int/eng#{%22fulltext%22:[%22vin%C4%8Di%C4%87%20v.%20serbia%22],%22EXECIdentifier%22:[%22004-7338%22]}

147 *Mirković and Others v. Serbia*, no.27471/15, Judgment of 26 June 2018.

general measures, the Constitutional Court changed its practice in line with the position adopted by the ECtHR.[148] This case is still pending before the CM in the standard procedure.

In relation to the retrial, it is worth noting the case of *Vučkovic v. Serbia*, both the Chamber judgment[149] finding discrimination together with a violation of the right to peaceful enjoyment of property, and then the Grand Chamber judgment dismissing the applications for non-exhaustion of domestic legal remedies.[150] This judgment was followed by a number of cases in which the SCC rejected the motion for retrial.

In one case before the SCC, in which the question of retrial was raised, the highest court concluded that the ECtHR judgment (*Vučković and Others*) in that particular case would not have led to a more favourable outcome for the plaintiffs, and upheld the lower court's decision rejecting the motion for retrial, having accepted at the same time assessment previously given by the Constitutional Court.[151]

Also, in one of its decisions the Supreme Court took the following approach "... because of the nature of the motion for retrial as an extraordinary legal remedy, a first instance court may decide on retrial only for reasons provided by the law (cannot extend the legal effect of the reasons enumerated within the law) and based on the legal standing of the Constitutional Court regarding the violation of human or minority rights. Different practice of courts in the same factual situation is possible in the European continental system to which our country belongs, in which there is a network of appellate courts of and in which t case law under the Constitution is not a source of law.[152] Ultimately, bearing in mind the standing of the Grand Chamber on the non-exhaustion of domestic legal remedies, which implied the initiation of new domestic proceedings claiming discrimination, the SCC sought to resolve the different contentious issues before the domestic courts. Consequently, n 2017 it adopted the conclusion regarding the claims of former reservists who, on the basis of discrimination, requested compensation from the State.[153]

Unlike the aforementioned judgments of the Strasbourg Court, which concerned issues of a general nature and a potentially larger number of persons, a typical example of a reopening of the proceedings in a civil matter is the case *Maširević v. Serbia*.[154] In this judgment, the ECtHR found a violation of the right of access to court guaranteed by Article 6 of the Convention. The SCC held that according to the applicable law, the applicant could not have filed an review (appeal) on points of law on his own, without a lawyer, even though the applicant was a lawyer himself. In this judgment, the ECtHR also pointed out the individual measures to be implemented, that is, the most natural way of executing a

148 See the Action plan submitted by Serbia on 16 September 2019, https://hudoc.exec.coe.int/eng#{%22EXECIdentifier%22:[%22DH-DD(2019)1010E%22]}

149 *Vučković and Others*, nos. 17153/11 and other, Judgment of 28 August 2012.

150 *Vučković and Others*, nos. 17153/11 and other, GC Judgment of 25 March 2014.

151 Decision of the Supreme Court of Cassation Rev. 1285/2013, 19 November 2014, https://www.vk.sud.rs/sr-lat/rev-12852013-ratne-dnevnice-ponavljanje-postupka, Supreme Court of Cassation in substance accepted the assessment of the Constitutional Court in relation to the constitutional complaint filed by plaintiffs, and within the Decision of the Supreme Court of Cassation it is stated *inter alia* that "….the mere fact of the established violation of the right guaranteed by the RS Constitution does not mean that the basis for repeating the proceedings on this ground has arisen, given that the same decision (of the Constitutional Court) further finds that the disputed judgment properly applied the applicable law…"

152 Decision of the Supreme Court of Cassation Rev. 10/2014 of 7 May 2014, https://www.vk.sud.rs/sr-lat/rev-102014-ratne-dnevnice-ponavljanje-postupka-0

153 Conclusion of the Civil Department of the Supreme Court of Cassation of 14.November 2017 https://www.vk.sud.rs/sites/default/files/attachments/Zaklju%C4%8Dci%20sa%20XII%20sednice%20GO%20od%2014.11.2017%20%28ratne%20dnevnice%29.pdf

154 *Maširević v. Serbia*, no. 30671/08, Judgment of 11 February 2014.

judgment in accordance with the principle of *restitutio in integrum* would be to review its merits in the appropriate procedure

When the ECtHR explicitly indicates what would be the appropriate mode of execution, it contributes to a clear direction in execution. Thus in this case, the SCC reconsidered the concrete appeal on points of law, and rendered a decision on the merits in accordance with the ECtHR order.[155]

It can be concluded that the question of the *locus standi* and time limit for submitting a motion for a retrial on the basis of a violation found by the ECtHR, should be more precisely defined . With regard to persons who could have *locus standi* to request a retrial, the legal provision that gives this possibility in the event that "*it may have had the effect of a more favourable decision*" leaves it to courts to give their assessment in each case without strict limitations of this possibility only to parties before the Strasbourg Court**.** This is certainly in line with the idea of a broader application of the ECtHR's views, without limitation to the specific case. However, legal certainty and the interests of third parties must be taken into account. In principle, the Serbian judiciary took a stand that the effect of the judgment of the ECtHR could be extended so as to allow the reopening of the proceedings also when reopening is requested by a person who is in the same or similar factual and legal situation[156]although in some cases it turned to be a wrong avenue (see above the explanation on the case *Vučković and others*). Although this is the way to prevent similar cases before the ECtHR, using this extraordinary legal remedy in such a broad manner in civil cases, could jeopardize the rights of third parties and, therefore, it seems that certain limitations would have to be introduced.[157] Probably, in the future, the Serbian courts might reconsider this issue (primarily the SCC in accordance with its competence).

III.4.3. Administrative proceedings – reopening of the proceedings in the administrative dispute and administrative proceedings

The Law on Administrative Disputes[158] states, as one of the reasons for reopening the proceedings, the proceedings concluded by a final judgment or decision will be repeated upon the party's action "*if the finding from a subsequently rendered decision of the European Court of Human Rights in the same matter may have an impact on the lawfulness of the finally concluded judicial proceedings*" (Article 56(1)(7)).

The action for retrial on the basis of this reason can be filed within six months *from the date of publication of the decision of the European Court of Human Rights in the "Official Gazette of the RS"* (Article 57(1)). Therefore, the determined time-limit for reopening the proceedings based on the decision of the ECtHR in the same matter, is essentially an objective time limit – which is not calculated from the date of learning about the ECtHR judgment (as it is provided for the civil proceedings), but from the date of the publication of the ECtHR decision in the "Official Gazette of the RS."

155 See information submitted by the Government of Serbia to the Committee of Ministers https://hudoc.exec.coe.int/eng#{%22fulltext%22:[%22ma%C5%A1irevi%C4%87%20v.%20serbia%22],%22EXECDocumentTypeCollection%22:[%22CEC%22,%22acr%22,%22CMDEC%22],%22EXECIdentifier%22:[%22DH-DD(2015)813revE%22]}

156 Bulltetin of the SCC no 3/2011, Vesna Popović, Judge of the Supreme Court of Cassation, , https://www.vk.sud.rs/sites/default/files/files/Bilteni/VrhovniKasacioniSud/bilten_2011-3.pdf

157 Similar questions arose concerning the possibility of reopening proceedings after the decision of the Constitutional Court rendered following a constitutional complaint. The Constitutional Court took the view that in principle, its decisions on constitutional complaints have limited impact - inter partes, unless the Constitutional Court itself decided to extend the effects of its decision.. See the Decision of the Constitutional Court of 18 June 2015, Už. 8736/2013, www.ustavni.sud.rs/page/predmet/sr,, see also the "Relationship of the Supreme Court of Cassation and the Constitutional Court – Conflict that remains" – Katarina Manojlović Andrić, Judge of the Supreme Court of Cassation, http://www.fcjp.ba/analize/

158 "Official Gazette of the RS", No. 111/2009.

The above provision – six months from the date of publication of the judgment in the Official Gazette, provides more clarity with regard to calculation of the time limit than the way in which the time limit is calculated by the CvPC. It is clear who could have a *locus standi* to file an action for a retrial the person who was a party *in the same administrative matter*, namely in an individual legal situation, that is linked to the later decision of the ECtHR.[159] It is irrelevant when the person learned of the ECtHR judgment. The law leaves a sufficiently long time period and allows a party to an administrative dispute to file a lawsuit for a retrial in the event of a decision of the ECtHR.

The Law on General Administrative Procedure[160] also allows for the reopening of administrative proceedings if the ECtHR has subsequently found that the rights or freedom of the applicant had been violated or denied (Article 176 (1) (12)), with regard to a particular administrative matter. Similar to the Law on Administrative Disputes, the possibility of reopening is limited to the same administrative matter. Also, with regard to the time limit for filing a motion for the reopening of the administrative proceedings in the case of a violation found by the judgment of the ECtHR, *a party may request a retrial within six months of the publication of the decision of the Constitutional Court or the European Court of Human Rights in the Official Gazette of the Republic of Serbia* (Article 177 (1)).

Concerning the administrative proceedings and administrative disputes, the most relevant judgment is in the case of *Grudić v. Serbia*[161] supervised by the CM until December 2017.[162] The case concerns a violation of the applicants' right to peaceful enjoyment of their possessions because the payment of their pensions earned in Kosovo*, was suspended by the Serbian Pensions and Disability Insurance Fund (SPDIF) for more than a decade in breach of the relevant domestic law. The SPDIF had based its decisions to suspend the proceedings in which the applicants claimed the resumption of their pension payment on the Opinion of the Ministry of Social Affairs and the Ministry of Labour, Employment and Social Policy (2003 and 2004).

It followed from that Opinion that since the Serbian authorities have been unable to collect any pension and social contributions in Kosovo as of 1999, persons who had already been granted SPDIF pensions in the Kosovo could not expect, for the time being, to continue receiving them as well as a separate pension system has been set up for persons living in the Kosovo. At the same time, the Constitutional Court had held that such opinions did not amount to legislation but were merely meant to facilitate its implementation.

Furthermore, the SCC had noted in its Opinion of 15 November 2005 that the recognized right to a pension could only be restricted on the basis of Article 110 of the Pensions and Disability Insurance Act. Consequently, the Court found that the interference with the applicants' possessions had not been in accordance with the relevant domestic law.

In view of the large number of potential applicants, the Court indicated under Article 46 that the Serbian authorities had to take all appropriate measures to ensure that the relevant laws were implemented in order to secure payment of the pensions and arrears in question within six months from the date on which the judgment became final (i.e. by 24 March 2013).[163] The Court also noted that certain reasonable and speedy factual and/or administrative verification procedures might be necessary in this regard.

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159 An administrative matter, in the sense of this law, is an individual indisputable situation of public interest in which the need to determine the future behaviourr of a party directly arises from legal regulations (Article 5 of the Law on Administrative Disputes).

160 "Official Gazette of RS", Nos. 18/2016 and 95/2018 - authentic interpretation.

161 *Grudić v. Serbia*, no.1925/08, judgment of 17 April 2012.

162 Final Resolution CM/ResDH(2017)427, CM (DH) 5-7 December 2017, https://hudoc.exec.coe.int/

* This designation is without prejudice to positions on status and is in line with UNSCR 1244 and the ICJ opinion on the Kosovo Declaration of Independence.

163 *Grudić v. Serbia*, cited above, para. 99.

In the execution of this judgment, the Serbian authorities took a number of general measures in accordance with the ECtHR judgment, as stated in the State's Action Report:[164] They issued a public announcement so that all individuals eligible for resumption of the payment of their pensions may apply, specified what documents should be submitted together with an application, established a procedure for the resumption of payment of pensions including the process of verification. If and when a positive decision is taken, the payment of pensions will be resumed immediately.[165] As regards the effective legal remedies, namely the judicial

review, it is open to applicants whose applications for the resumption of payment of pension were rejected to lodge an appeal to the second instance administrative authority. Should this appeal be rejected, it is possible to bring an administrative claim before the Administrative Court.

The effective judicial protection is further proved by the fact that the European Court rejected the applicants' complaints in the Decision of *Skenderi and Others*[166] for non-exhaustion of domestic remedies having considered that " ....the applicants were under an obligation to avail themselves of the constitutional appeal procedure" (§109). In that regard, having also taken note of the Serbian Constitutional Court's case-law, the Court considered that "it cannot be said that the appellants in those cases, which involved the payment and suspension of SPDIF pensions or other benefits, had no prospects of success".

It can be seen that from the facts of this case there is a link between the administrative proceedings and civil proceedings. On the one hand, the decisions rendered by the SPDIF if unlawful are subject to judicial review by the Administrative Court and the SCC, and on the other hand, the SPDIF could be sued by debt claims in civil proceedings. Some claimants opted to file a lawsuit against the Republic of Serbia, that is the SPDIF for payment of the pension, without previously filing a request with the SPDIF to continue payment of the pension. This judgment of the Strasbourg Court, therefore, had an impact on further case law development both before Administrative Court and courts of general jurisdiction.

III.4.4. Misdemeanour proceedings– reopening of the proceedings following the ECtHR judgment

The Law on Misdemeanours[167] also allows for a retrial after the ECtHR judgment. A request for a retrial may be filed, among others, when the defendant *(kažnjeni)* was given the opportunity to use a decision of the Court finding a violation of human rights, which may have had the effect of a more favourable decision on the defendant (Article 280 (1) (5)). The request for a retrial maybe filed by both the defendant and other persons specified by law (Article 259) in favour of the defendant.

The subjective time limit for filing a request is defined in an unique way, regardless of the reasons for which a retrial is requested – within 60 days from the date on which the party *(stranka)* became aware of the facts and circumstances referred to in Article 280 (1), (1) to (6)) of the Law on Misdemeanours (Article 281 (2)). An objective deadline of two years is also envisaged – from the date on which the relevant decision in relation to the request for retrial became final. (Article 281(3)). In practice, this would mean

164 Action Report of 26 September 2017, https://hudoc.exec.coe.int/eng#{%22EXECIdentifier%22:[%22DH-DD(2017)1088E%22]}

165 The Serbian authorities have received 9,790 applications since the public annnouncement was published. In 3,920 of these applications, the relevant documents have been submitted in accordance with this public announcement.

166 *Skenderi and Others v. Serbia*, no. 15090/08, Decision of 4 July 2017.

167 "Official Gazette of RS", Nos. 65/2013, 13/2016 and 98/2016 – Constitutional Court's decision.

that a *party (a defendant)* could file a request for reopening within 60 days from the date of becoming aware of the ECtHR judgment.

However, if a judgment of the ECtHR has been rendered after the expiry of two years since the relevant decision has become final, the party (applicant before the ECtHR), could not submit such a request. It might, therefore, be appropriate to consider that the objective deadline should be determined taking into account the date on which the ECtHR judgment has been published in the "Official Gazette of the RS" similar to the Law on Administrative Disputes, mentioned above.

Concerning the situation when the request for reopening is filed by a co-defendant within the same proceedings, who was not an applicant before the ECtHR, the misdemeanour court should allow reopening given the *beneficium cohaesionis* provided by Article 277 of the Law on Misdemeanours. According to this provision *when the second instance misdemeanour court on the basis of any appeal lodged against the decision, finds that the reasons for which the judgment or decision has been rendered in favour of the defendant are also favourable for any of the co-defendants who did not file an appeal, it shall act ex officio as if such an appeal existed.*

The Law on Misdemeanours also provides that the Republic Public Prosecutor could submit a request for the protection of legality against the final judgment in case of a breach of the law or other regulations on misdemeanours or in case of the application of the law which the Constitutional Court ruled that did not comply with the Constitution and the generally accepted rules of international law (Art. 285).

It may be useful that this opportunity was given to the Republic Public Prosecutor also in case of an ECtHR judgment since, as discussed above, an applicant before the ECtHR could probably not file a request for reopening the proceedings because of the expiry of the time limit .With regard to misdemeanours, the most relevant judgment in respect of Serbia is *Milenković v. Serbia*.[168]It concerns the issue of *ne bis in idem* and the relationship between criminal and misdemeanour proceedings.

* * *

One might conclude from this overview that the legal provisions are not harmonized in terms of the possibility for reopening the proceedings in different types of disputes, both in terms of the deadlines for filing extraordinary legal remedies and the persons who may be authorized to file a specific legal remedy. While there are certainly differences given the nature of the dispute, it appears that some additional clarification would be necessary, in order to avoid different approaches in the practice of courts. It is important to emphasize the need for a uniform approach of the courts in relation to these issues, and the role of the SCC in accordance with its jurisdiction.[169]

168 *Milenković v. Serbia,* no. 50124/13, Judgment of 1 March 2016.

169 Law on Organization of Courts, ("Official Gazette of RS", nos. 116/2008, 104/2009, 101/2010, 31/2011 - dr. zakon, 78/2011 - dr. zakon, 101/2011, 101/2013, 106/2015, 40/2015 - dr. zakon, 13/2016, 108/2016, 113/2017, 65/2018 – CC Decision 87/2018 i 88/2018 – CC Decision), Article 31.

IV. Lessons learned in the execution of the ECtHR judgments against Serbia

In this chapter, the main cases and groups of cases in the process of execution will be discussed *(Jevremović group, EVT group, Ališić and Others, Zorica Jovanović and Stanimirović group),* taking into account primarily the execution process itself, its challenges and positive results. From the existing practice in the execution of judgments it could be seen that Serbia has been relatively successful in implementing certain judgments, while in some cases there were delays and the efficiency of execution was jeopardized by various factors.

IV.1. JEVREMOVIĆ GROUP OF CASES[170]

This group of cases concerns the **excessive length of various types of proceedings** – civil, family-related, commercial, employment – and the lack of an effective domestic remedy. The ECtHR found violation of Articles 6 and/or 13 and in the leading judgment in the case *Jevremović* also a violation of Article 8. These cases were supervised under the standard procedure until March 2020 when the CM decided to continue supervision of these cases under the enhanced procedure.[171]

The Serbian authorities took a number of measures in order to increase the efficiency of judicial proceedings.[172] The amendments introduced in 2014 to the CvPC to streamline the proceedings before civil courts as well as the steps taken to upgrade the courts' IT resources, were assessed as positive since they demonstrate the authorities' commitment to further improving the functioning of the Serbian judicial system.[173] The CM also noted that the legislative amendments address one of the major underlying causes of the excessive length of judicial proceedings, which is the lengthy time needed for serving court documents.

Moreover, the results in implementing the Single Backlog Reduction Programme and the efforts of the judiciary, particularly the SCC, have been commended. The other improvements in the functioning of Serbian courts are also noted. [174]

170 *Jevremović v. Serbia*, no. 3150/05, judgment of 17 July 2007 and 21 other cases.

171 Decision of the Committee of Ministers adopted on 5 March 2020, CM/Del/Dec(2020)1369/H46-31.

172 See information CM/Notes/1369/H46-31, http://hudoc.exec.coe.int/eng?i=CM/Notes/1369/H46-31E, see also Action plan submitted by Serbia on 21 January 2020, http://hudoc.exec.coe.int/eng?i=DH-DD(2020)55E .

173 Supra.

174 Supra.

All these measures taken by the Serbian authorities have been reflected in the last Decision of the CM.[175] However, the Serbian authorities have been invited to provide their assessment on the impact of the Single Backlog Reduction Programme on the actual length of proceedings, as well as to provide separate statistics for the different types of proceedings at issue in this group and a general assessment of the measures introduced to date on the length of proceedings.

As regards the remedies for the excessive length of proceedings in accordance with Article 13, the effectiveness of legal remedies introduced in Serbia has been assessed in the light of the standards set by the ECtHR, including the amount of compensation awarded. *Thus, States which, like Serbia, have opted for a remedy that is designed both to expedite proceedings and grant compensation are free to award amounts which – while being lower than those awarded by the Court – are still not unreasonable*.[176]

Moreover, the issue of compensation awarded for unreasonably long proceedings by the Constitutional Court, has been raised in submissions by an NGO.[177] As noted by the CM, although the case law of the Constitutional Court as of 2018 was approaching the Strasbourg standards[178], it appears from the information available that in ten judgments adopted in 2019, the Constitutional Court approved awards that were significantly lower than that awarded by the European Court in similar cases.

The issue of (in)adequate compensation has been in fact the main reason why this group of cases was placed under the enhanced procedure and the Serbian authorities have been urged to *ensure that the amounts of compensation awarded by domestic courts for excessive length of proceedings are compatible with the case-law of the Court*. Therefore, the latest Decision of the Constitutional Court referring to the compensation awarded for excessive length of proceedings and alignment with ECtHR standards (which will be further examined in the following section) indicates an important development of the domestic case law in line with Strasbourg standards.[179]

The execution of general measures in this group of cases has required a different kind of measures to be taken, including both legislative measures in order to streamline the civil proceedings and to introduce adequate legal remedies, and change the courts' practices in order to manage cases more efficiently and to harmonize the case law with Strasbourg standards regarding the compensation awarded for excessive length of proceedings. In this process, the Ministry of Justice, the SCC and the Constitutional Court, without doubt, had a leading role. The other authorities also contributed in these efforts and the role of the Judicial Academy is of considerably important for introducing the standards of a reasonable trial for judges.[180]

It could be concluded that Serbia has been relatively successful with regard to measures aimed at more efficient streamlining of the proceedings. However, the CM was not informed of these activities in due

175 Decision of the Committee of Ministers adopted on 5 March 2020, CM/Del/Dec(2020)1369/H46-31.

176 The fact that since 2016 the ECtHR has found in several judgments of this group that the amounts awarded by the Constitutional Court were significantly lower than those awarded by the Court, was sufficiently indicative for the CM to decide that the current practice in Serbia concerning efficient legal remedies in cases of excessive length of proceedings has not been in line with the standards of the Strasbourg Court. See for example *Milovanović v. Serbia*, no. 19222/16, Judgment of 19 December 2017, para. 21, *Prohaska Prodanić and Others and Savić v. Serbia*, nos. 63003/10, 20441/11 and 3931/14, 8 November 2016.

177 Submitted to the Committee of Ministers in accordance with Rule 9.2 by the by the Association for the Protection of Constitutionality and legality (Udruženje za zaštitu ustavnosti i zakonitosti), on 13 January 2020.

178 Decision of the Constitutional Court, Už.-1734/2018 (Už-1312/2013).

179 Decision of the Constitutional Court of 4 June 2020, Už - 277/2017 (Official Gazette of the RS" no.102/2020).

180 See the Judicial Academy Programme of Continuous Training for 2018 - 2020, where the courses on trial within a reasonable time are envisaged including on the ECtHR standards, https://www.pars.rs/images/dokumenta/Stalna-obuka/Program-stalne-obuke-za-2018.pdf

time and it seems that there was certain lack of coordination between the Agent and other competent authorities with regard to drawing up the action plans .[181]Concerning the need to be in line with the ECtHR views regarding the compensation in cases of unreasonable length of proceedings, it seems that the case-law of domestic courts still needs to be harmonized with the Strasbourg standards in this area. While the harmonization of case law is one of the functions of the SCC, the Constitutional Court, as the court of last instance in human rights protection, is ultimately responsible for introducing the ECtHR standards.

Taking into account the competences of the SCC and the Constitutional Court with regard to cases concerning a trial within a reasonable time, it seems that this responsibility must be shared and the practice aligned in order to enable the effectiveness of domestic legal remedies.

IV.2. EVT COMPANY V. SERBIA (KAČAPOR AND OTHERS V. SERBIA) GROUP OF CASES[182]

The group of cases *EVT Company v. Serbia* concerns the non-enforcement of the judgments of domestic courts. The ECtHR found a violation of Article 6 and Article 1 of Protocol no. 1, and in some cases also Article 13.

The supervision of the execution of some of those cases was closed (enforcement in civil matter, enforcement in family matter, "protected tenants" and eviction orders, etc).[183]. However, the Committee continued to monitor under the enhanced procedure the execution of the most significant sub-group of cases within this group, concerning delays in the enforcement of final judgments issued against socially-owned companies, of which the leading case was the the judgment *Kačapor and Others*.[184]

The problem of non-efficient enforcement in this particular group of cases stems from the unstable economic system, reform of the economy and transformation to the market economy, privatization, numerous changes of legislation, non-efficiency of courts and lengthy insolvency proceedings.[185]

Although the ECtHR found that the State was responsible for the debts of socially owned companies, it did not expressly oblige the state to undertake general measure in order to settle all similar claims (by virtue of the law). It should be noted that in its judgment *Radovanović*, the ECtHR considered that "if the respondent State opts for a comprehensive solution and transfer the liability for all non-enforced domestic decisions against socially/State-owned companies to the State by virtue of law, it could accept a lower domestic award."[186]

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181 It should be noted that the very first case in this group – *Jevremović* was rendered by the Court in 2007 and since then the number of cases was increasing in this group and the new rules on action plans have been adopted. Although some partial information was provided by Serbia, the comprehensive approach was missing.

182 *EVT v. Serbia* (no. 3102/05, Judgment of 21 June 2007, these cases concern violations of the applicants' right to access to a court due to the non-enforcement of final court decisions concerning the debts of socially-owned companies or municipal authorities as well as of final administrative decisions concerning pensions and demolition orders in respect of unauthorised construction (violations of Articles 6 § 1and 1 of Protocol No.1 and in some cases Article 13). See CM/Notes/1288/H46-28.

183 Committee of Ministers decided to partially close some issues examined under this group of cases. In March 2018 and September 2018, , the Committee of Ministers decided to close 60 repetitive cases of this group in which questions of individual measures were resolved, see Final Resolutions CM/ResDH(2018)302 and CM/ResDH(2018)92, http://hudoc.exec.coe.int/eng?i=004-7246

184 *Kačapor and Others v. Serbia*, no. 2296/06, Judgment of 7 October 2008.

185 See also "Assessment of systemic or structural violations of human rights and fundamental freedoms under the European Convention on Human Rights in the Republic of Serbia", expertise by Peter Pavlin, within the framework of the Joint Project between the European Union and the Council of Europe "Horizontal Facility for the Western Balkans and Turkey", under the Action "Supporting effective remedies and mutual legal assistance".

186 *Radovanović v. Serbia*, no. 55003/16, Judgment of 27 August 2019, para. 18.

When supervising the execution of this group of cases, in its Decision of 6 December 2012[187], the CM noted with concern that the number of repetitive applications concerning the non-enforcement of domestic court decisions rendered against socially-owned companies lodged with the Court had been increasing rapidly (approximately 2400 applications pending at that time), that despite certain efforts made by the Serbian authorities, no concrete progress had yet been achieved and strongly invited the Serbian authorities to intensify their efforts with a view to preventing the influx of new similar applications before the Court, in particular through establishing the exact number of unenforced decisions concerning socially-owned companies and the amount of aggregate debt.

The Serbian authorities were also invited to set up a payment scheme by the end of March 2013 and to provide information on the efficiency of the constitutional remedy, in particular with respect to the enforcement of decisions rendered against socially-owned companies. In line with this Decision, the Serbian authorities undertook measures in order to decrease the number of applications before the Court by concluding a greater number of friendly settlements.[188]

The execution of individual measures – payment of due debts in accordance with the domestic judgments, was initially successful and made in due time. However, since the number of similar application before the Court was growing, the ECtHR started to implement new working methods[189] considering all similar applications as "well established case law", the number of judgments and decisions based on friendly settlement was also growing[190] and this consequently contributed to some delays in execution because of a lack of funds.

Furthermore, the execution of general measures in this group of cases was carried out in two directions. First, efforts were made to establish the amount of claims, and possibly to set the "payment scheme". In seeking to establish the number of unenforced domestic decisions, a certain progress was achieved – **the amount of debt** was established,[191] but there was never a consensus on the domestic level about the way how this debt should be settled. However, a number of legislative and other measures have been adopted in order to wind up the socially owned companies.[192] Secondly there were efforts to develop the constitutional appeal as an efficient legal remedy to obtain redress for non-pecuniary and pecuniary damages in line with the findings of the ECtHR.[193]

Following the Court's finding that the **constitutional appeal** was not an effective remedy in respect of the non-enforcement of judgments rendered against socially-owned companies[194] the Serbian

187 Decision of the Committee of Ministers, 1157 (DH) meeting, 4-6 December 2012, http://hudoc.exec.coe.int/eng?i=004-6982

188 According to the Action plan submitted by Serbia on 16 March 2017 (DH-DD (2017)337), in the period from 2013 to2015, there were 1,986 cases concluded by friendly settlement in this group of cases.

189 See Protocol 14 to the ECHR, https://www.echr.coe.int/Documents/Library_Collection_P14_ETS194E_ENG.pdf

190 Supra.

191 The Serbian authorities established for the first time the Task Force in January 2011 to identify specific measures required for labour-related debts owed by socially-owned companies and confirmed by final judicial decisions. In March 2012 the Government of Serbia adopted the Regulation on Recording of Debts of Socially-Owned Companies on the Grounds of Final Judgments on Labour-Related Claims. According to the data stated within the Action plan of Serbia, by September 2012, there were 55,000 received applications. According to this Regulation, as of 31 December 2012, in total, 82 486 final judgments against 1 322 socially-owned companies were registered. The total amount of established liabilities, including principal, interest and costs of proceedings was RSD 34.4 billions (roughly EUR 287 million). Pursuant to this analysis of another Working group, as of 30 September 2015, it was established that the amount of the debts with the interest accrued is EUR 372 million.

192 For further information see Revised Action Plan sued by Serbia to the Committee of Ministers on 30 April 2020, paras. 48 – 49.

193 *Marinković v. Serbia*, no. 5353/11, Decision of 29 January 2013, *Milunović and Čekrlić*, no. 3716/09, Decision of 17 May 2011, para. 65.

194 *Milunović and Čekrlić*, cited above, compare with *Vinčić and Others*, cited above

authorities introduced legislative amendments in 2011[195] in order to ensure that claimants in such cases can claim compensation before the Constitutional Court in respect of pecuniary and non-pecuniary damages. Furthermore, on 13 June 2012, in a case concerning the non-enforcement of a final judgment rendered against a socially-owned company (in liquidation), the Constitutional Court, in line with the ECtHR case law, adopted the constitutional appeal[196].

In addition, the Constitutional Court, harmonized its case law concerning socially/State-owned companies undergoing restructuring.[197] Eventually, the ECtHR recognized the effectiveness of a constitutional appeal in this kind of cases, having observed that the Constitutional Court has fully harmonized its case-law on the enforcement of the decisions against socially owned companies.[198]

This group of cases affected not only the case law of the Constitutional Court, but also the that of the ordinary courts. With the Law on the Protection of Trial within a Reasonable Time[199] the ordinary courts became primarily competent to decide on complaints regarding the unreasonable length of the trial including those for the enforcement of judgments against socially owned companies and also the liquidation proceeding. On the other hand, the Constitutional Court remained competent to decide on complaints regarding the peaceful enjoyment of property, namely for the pecuniary damages in this particular type of cases.

Although the ordinary courts have been establishing in these cases a violation of a right to a trial within a reasonable time, in line with Strasbourg standards, they have not awarded sufficient amounts for the non-pecuniary damages and this resulted in new judgments of the ECtHR finding a violation of Article 6.[200]

The case law of the SCC has also been developing with regard to the non-enforcement cases regarding the pecuniary claims based on labour disputes against socially owned companies.[201] Moreover, the recent case law of the SCC has developed in recognizing the responsibility of the state for the debts of socially owned companies with the precondition that a violation of a right to a trial within a reasonable time had been found.[202]

In its Decision adopted in June 2017 on this group of cases, the CM[203] recognized the efforts of the Serbian authorities to find a general solution to the issue of non-enforcement of domestic final decisions, in particular with respect to socially-owned companies, and that these efforts have resulted in a significant reduction in the number of similar applications pending before the Court.

Further, it is noted that the authorities have developed a two-tier remedy, by adopting the Law on Protection of the Right to a Trial within a Reasonable Time in 2015 and introducing a constitutional complaint mechanism, both of which are applicable to enforcement proceedings. However, it is also noted that the "*substantive measures aimed at addressing the roots of the problem of non-enforcement of final decisions delivered against socially-owned companies .... remain to be taken.*"[204]

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195 Law on Constitutional Court (Official Gazette nos.109/2007, 99/2011, 18/2013 – decision of the Constitutional Court, 103/2015 i 40/2015 – other law).

196 The Constitutional Court's decision of 13 June 2012 (Už 1392/2012) cited in *Marinković v. Serbia*, cited above, para. 39.

197 Decisions of the Constitutional Court adopted on7 March 2013 (Už 1645/2010) and 9 May 2012 (Už 1705/2010.

198 *Ferizović v. Serbia*, no. 65713/13, Decision of 26 November 2013.

199 Supra.

200 See for example *Knežević v. Serbia*, no. 54787/16, Judgment of 9 October 2018, para. 47, also see above, *Jevremović Group.*

201 The Legal Opinion of the Civil Department of the Supreme Court of Cassation of 24 February 2011 https://www.vk.sud.rs/sites/default/files/attachments/PRAVNO%20SHVATANJE-18-03-3.pdf

202 Conclusion of the of the Supreme Court of Cassation, adopted by the Civil Department on 2 November 2018

203 1288th meeting, 6-7 June 2017 (DH), http://hudoc.exec.coe.int/eng?i=004-6982

204 H46-28 *EVT Company group v. Serbia*, No. 3102/05, http://hudoc.exec.coe.int/eng?i=004-6982

In its recent Decision in this group of cases (*Kačapor and Others*) adopted in June 2020[205] the CM decided concerning general measures that it will continue to supervise their implementation. While noting the measures taken by Serbia by means of "an alternative strategy with a view to ensuring the enforcement of such decisions through domestic remedies..."[206] regarding the efficiency of remedies available in this type of cases, the *Committee urged the authorities to ensure that the amounts of compensation for non-pecuniary damage awarded by domestic courts for delayed enforcement of domestic judgments rendered against socially-owned companies are substantially compliant with the requirements of the European Court's case-law.*

From this latest Decision, it is clear that the major issue in the execution of general measures is basically the same as within the *Jevremović* group, namely **the amount of compensation for non-pecuniary damages** in cases of violation of trial within a reasonable time. Therefore, the recent Decision of the Constitutional Court mentioned above[207] which concerns the amount of compensation for non-pecuniary damages awarded by domestic courts in cases of violation of the trial within a reasonable time (in this specific type of cases concerning the debts of socially owned companies), indicates that the Constitutional Court has accepted the ECtHR standards regarding the "victim status" of the applicants, relying on previous judgments adopted by the Strasbourg Court.[208]

This group of cases has had major financial implications for the Republic of Serbia but also an impact on the development of case law. It required an enhanced coordination between the relevant state authorities in order to establish the amount of all potential claims and take other necessary measures.

On the other hand, the changes in the case law of the Constitutional Court were required in order to prove the effectiveness of the constitutional complaint in this specific type of cases. Moreover, there was a need for coordination of the Agent with ordinary courts in two respects: first in the process of execution (concluding the domestic proceedings, payment of just satisfaction) and secondly, acting preventively by developing case law regarding the protection of the trial within a reasonable time, in respect of which the Judicial Academy played a significant role.

In this complex group of cases, the State Agent faced a number of challenges in this process such as the insufficient familiarity of state authorities with the ECtHR finding regarding the responsibility of the State for the debts of the socially owned companies,[209] the demanding approach by the CM in the process of supervision and a growing number of similar applications before the Court.[210]

The adequate legal remedies have been developed gradually. The efficient legal remedy concerning pecuniary damages (namely enforcement of final domestic judgments in this type of cases) has been developed and recognized by the ECtHR and by the Committee. It remains to be seen if the latest developments in the case law of the Constitutional Court concerning the amount of compensation for non-pecuniary damages would be sufficient for the CM to close its supervision of this group of cases.

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205 H46-35 *Kačapor and Others group v. Serbia*, no. 2269/06 https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016809e7dc1

206 Supra, para. 5 of the Decision.

207 See above footnote 179

208 The Constitutional Court relied *inter alia* on judgments *Stošić v. Serbia*, no. 64931/10, 1 October 2013; *Knežević and Others v. Serbia*, nos. 54787/16...60159/16, 9 October, 2018; *Stevanović and Others v Serbia*, nos. 43815/17...6256/18, 27 August 2019, and *Zlata Stanković v. Serbia*, no. 41285/19, Decision of 19 December 2019.

209 In Serbian legislation and practice the "socially owned companies" were always differentiated from the "public companies".

210 Until 2012.

IV.3. ALIŠIĆ AND OTHERS JUDGMENT[211]

Another complex issue before the ECtHR was decided in the judgment *Ališić and Others*. The application in this case was filed against almost all former Yugoslav republics and the violation was found by the Court against Serbia and Slovenia. Therefore, the execution of this judgment has been supervised only against these two countries under the enhanced procedure.

This pilot judgment concerns violations of the applicants' right to peaceful enjoyment of their property on account of their inability to recover their "old" foreign-currency savings[212] deposited in Bosnian-Herzegovinian branches of banks whose head offices were situated in Serbia and Slovenia (violations of Article 1 of Protocol No. 1).[213]

Serbia offered to repay the "old" foreign-currency savings deposited with the Serbian banks in Serbia or abroad if the depositor had a qualifying nationality. The nationals of the other States which emerged from the SFRY were unable to obtain repayment under this scheme. Since the applicant in this case, a national of Bosnia and Herzegovina, did not have the qualifying nationality for the Serbian repayment scheme, he could not recover his "old" foreign-currency savings deposited in a Belgrade-based bank at its branch located in Bosnia and Herzegovina.

The Court observed, in this respect, that the banks in question were State-owned and controlled by the Slovenian and Serbian Governments, respectively[214]. The Court, therefore, found that there were sufficient grounds to consider that Slovenia and Serbia were responsible for their respective debts. The Court concluded that the failure of Serbia and Slovenia to repay the respective debts by way of including "the applicants and all others in their position in their respective schemes for the repayment of "old" foreign-currency savings represents a systemic problem".[215]

Further, the Court decided that "Serbia must make all necessary arrangements, including legislative amendments, within one year and under the supervision of the CM in order to allow the applicant and all others in his position to recover their "old" foreign-currency savings under the same conditions as Serbian citizens who had such savings in domestic branches of Serbian banks."[216]

During the process of the execution of this judgment, the Government Agent coordinated closely with the Ministry of Finance as the competent authority to propose measures to be adopted, in order to ensure that the relevant debt is paid to a large number of persons. On 11 December 2014 the Government of Serbia established the Working group in order to propose necessary measures in line with the Court's judgment.[217] The CM was regularly updated about all steps taken in order to implement the judgment. Moreover, the Department for Execution of Judgments offered their support to the authorities of Serbia and Slovenia in order to facilitate cooperation of these countries with Bosnia and Herzegovina and clarification of all relevant issues.[218]

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211 *Ališić and Others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and "the former Yugoslav Republic of Macedonia"*, no. 60642/08, GC Judgment of 14 July 2014.

212 Following the collapse of the SFRY and its banking system, many depositors lost access to their foreign-currency savings. The new successor States of the SFRY subsequently introduced different repayment schemes aimed at reimbursing depositors for these lost savings and made repayment subject to different conditions.

213 http://hudoc.exec.coe.int/eng?i=004-7

214 *Ališić and Others*, cited above, paras. 116-117.

215 Supra, operative part of judgment.

216 Supra, operative part of judgment.

217 See the Action Plan submitted by Serbia on 9 January 2015 (https://hudoc.exec.coe.int/eng#{%22EXECIdentifier%22:[%22DH-DD(2015)69E%22]}

218 For example, in the Serbian submissions of 9 July 2015 the draft law was presented and the measures envisaged. See http://hudoc.exec.coe.int/eng?i=DH-DD(2016)169E

However, due to the complexity and the amount of debt (EUR 310 million) the adoption of the relevant legislation was delayed.[219] The Law was finally adopted on 28 December 2016.[220] It provided repayment terms and conditions, repayment method, applicable procedure for repayment, the competencies of domestic authorities, the *ad hoc* committee, etc.[221]

Soon the ECtHR acknowledged the efficiency of legal remedies provided on the basis of this law[222] and consequently the CM confirmed this in its Decision – *that in the Muratović inadmissibility decision the European Court found that the law introducing the repayment scheme met the criteria set out in the Ališić pilot judgment, while underlining that it was ready to change its approach as to the potential effectiveness of the remedy should the practice of the domestic authorities show, in the long run, that savers were being refused on formalistic grounds, that verification proceedings were excessively long or that the domestic case law was not in compliance with the requirements of the Convention*.[223]

From the beginning of 2015 until April 2020, Serbia submitted eleven action plans/revised action plans with updates for the CM on the implementation of the judgment, while the CM adopted ten decisions concerning this case confirming the intensity of the supervision process.[224]

The CM maintains its supervision of this case under the enhanced procedure, and in particular, the implementation of the relevant Law and the repayment scheme. In its last Decision in this case concerning Serbia, the CM noted, among others, *that the Serbian authorities have taken a series of measures with a view to ensuring that decisions on repayments are made in an administrative procedure that is simple, fast and inexpensive; ... an easily accessible judicial review procedure is available in case of rejection of claims for repayment and that effectiveness of the above mechanism remains to be tested in practice; invited, accordingly, the authorities to keep the Committee of Ministers regularly informed on the progress achieved in the implementation of the repayment scheme;. ..... highlighted that depositors should retain the right to request repayment in court procedure even after the expiry of the deadline set for the administrative verification procedure*... In accordance with the last decision of the CM[225], the Serbian authorities submitted updated information with relevant statistics requested by the Committee *on claims accepted and rejected, the main reasons for rejections and the number of applications for judicial review lodged*.[226]

It could be concluded that the judgment *Ališić and Others*[227] is an example of a successful execution, although initially there were certain delays before the relevant Law was adopted. Although the Court acknowledged that the repayment procedure was in line with Convention standards,[228] the CM closely monitors all the measures taken by Serbian authorities taking into account the number of potential applicants.

The role of the Government Agent in these circumstances was more prominent at the beginning while the Law at issue had not been adopted and procedures had not been in place, while in this second

219 This could be seen from the Government's submissions to the CM, available at: http://hudoc.exec.coe.int/eng?i=DH-DD(2015)759E

220 *Ališić and Others* Implementation Act, cited above.

221 See the communication from Serbia from 11 January 2017 (http://hudoc.exec.coe.int/eng?i=DH-DD(2017)40E).

222 *Muratović v. Serbia*, no. 41698/06 Decision on inadmissibility of 21 March 2017, paras.17-20.

223 CM/Del/Dec(2017)1288/H46-27, https://hudoc.exec.coe.int/eng#{%22EXECIdentifier%22:[%22CM/Del/Dec(2017)1288/H46-27E%22]}

224 https://hudoc.exec.coe.int/eng#{%22fulltext%22:[%22ali%C5%A1i%C4%87%22],%22display%22:[2],%22EXECIdentifier%22:[%22DH-DD(2016)169E%22],%22EXECDocumentTypeCollection%22:[%22CEC%22]}

225 1362nd meeting, 3-5 December 2019 (DH).

226 Updated Action Plan submitted by Serbia on 14 April 2020, http://hudoc.exec.coe.int/eng?i=DH-DD(2020)326E .

227 Cited above.

228 *Muratović v. Serbia*, no. 41698/06 Decision on inadmissibility of 21 March 2017, paras.17-20.

phase, the Agent needed to inform the CM, about the implementation of the Law and relevant statistics provided by the authorities determined by the Law. The Law provides also for the possibility of judicial protection, and it could be expected that in future relevant case law of domestic courts would be assessed. Obviously, this is a very complex case which puts pressure on the Agent in the process of reporting to the CM and therefore he/she needs to closely coordinate with all authorities engaged in the implementation of the Law at issue.

IV.4. ZORICA JOVANOVIĆ JUDGMENT[229]

Another ECtHR judgment that imposed an obligation on Serbia to adopt certain legislation is in the case of *Zorica Jovanović v. Serbia*. This case concerns a violation of the applicant's right to respect for her family life on account of the respondent State's continuing failure to provide her with credible information as to the fate of her son, who allegedly died three days after his birth in a maternity ward in 1983. She has never been given his body nor informed where he is allegedly buried. In addition, his death has never been properly investigated nor officially recorded. The ECtHR found a violation of Article 8 in this case and noted that hundreds of parents whose newborn babies had "gone missing" following their alleged deaths in hospital wards between the 1970s and the 1990s addressed the Serbian Parliament seeking redress.[230]In view of such significant numbers of potential applicants, the Court held that "the respondent State must, within one year from the date on which the present judgment becomes final take all appropriate measures, preferably by means of a *lex specialis*... to secure the establishment of a mechanism aimed at providing individual redress to all parents in a situation such as, or sufficiently similar to, the applicant's".

According to the Court's judgment, "[t]his mechanism should be supervised by an independent body, with adequate powers, which would be capable of providing credible answers regarding the fate of each child and affording adequate compensation as appropriate". At the same time, the Court decided to adjourn for one year the examination of all similar applications pending the adoption of the general measures at issue.[231]

The rather specific facts of the case and its sensitivity made the execution process even more difficult and as a result, its execution has been supervised under the enhanced procedure. Therefore, Serbia faced a number of challenges in executing this judgment such as an insufficient understanding of the Court's judgment and the scope of the obligation imposed on the state by this judgment – "establishment of a mechanism aimed at providing individual redress to all parents in a situation such as, or sufficiently similar to, the applicant's". There were completely different views expressed by the parents, parents' associations and the state authorities regarding the possibility of a criminal investigation.

The execution of this judgment involved the Ministry of Health, the Ministry of Justice, the Ministry of Interior, the Republic Public Prosecutor, the Ombudsperson and at the end the Prime Minister and the Parliament. The working groups for the drafting of the law also included judges, representatives of parents and representatives of civil society. It was extremely demanding to reconcile deeply conflicting opinions and the proposals of all the stakeholders involved.

This difficult process is reflected by the fact that Serbian authorities submitted to the CM their action plans and updated action plans 13 times,[232]while the CM adopted nineteen decisions regarding this

229 *Zorica Jovanović v. Serbia*, no. 21794/08, Judgment of 26 March 2013.

230 *Zorica Jovanović*, para. 26.

231 *Zorica Jovanović*, paras. 92-93.

232 https://hudoc.exec.coe.int/eng#{%22fulltext%22:[%22zorica%20jovanovi%C4%87%22],%22EXECDocumentTypeCollection%22:[%22CEC%22],%22EXECIdentifier%22:[%22004-7011%22]}

case having urged that Serbia should adopt the Law in accordance with the judgment.[233] This is the only case against Serbia in which the CM adopted two interim resolutions strongly demanding Serbia to adopt the law and having decided to keep it on the CM agenda until the law was adopted by the Serbian Parliament.[234]

Even when the draft law was finally adopted by the Government and forwarded to the Parliament, it took four years before the Law was adopted by the Parliament. As recalled by the Serbian authorities, in their Revised Action plan submitted in March 2020,[235] the draft law was prepared and revised in consultation with the Department for the Execution of Judgments taking into account the CM's decisions and concerns expressed by parents.

Due to general elections in 2016, the bill was withdrawn from the parliamentary procedure and again tabled to Parliament in March 2018. Eventually, on 29 February 2020, the Serbian Parliament adopted the law (*lex specialis*) aimed at introducing the mechanism to provide individual redress to all parents of "missing babies". The final text resulted from several revisions taking into account the CM's decisions and intensive consultations between representatives of the CoE and high-level Serbian officials including also consultations[236] carried out with parents and civil society.[237]

In its last Decision in this case, CM, among others, expressed satisfaction because the law setting up an independent investigation mechanism to establish the fate of "missing babies" was adopted and welcomed the "efforts on the part of all authorities concerned to engage intensively with different parents' associations in order to find ways and means to address their different concerns." The Committee also welcomed the fact that the authorities maintained close cooperation with the Secretariat during the process of adopting the law so as to ensure a Convention-compliant solution.

The Serbian authorities were invited to rapidly take the necessary practical measures to ensure the efficient implementation of the new fact-finding mechanism, in particular the setting-up of the DNA database to facilitate the truth-seeking process and the training of investigative judges and police to deal with cases of "missing babies".[238] In addition, the Serbian authorities were invited to provide comprehensive information on the implementation and functioning of the investigation mechanism before 1 October 2020 at the latest.[239] It is important to note that Committee decided to continue supervision of this case under the standard procedure.[240]

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233 https://hudoc.exec.coe.int/eng#{%22fulltext%22:[%22zorica%20jovanovi%C4%87%22],%22EXECDocumentTypeCollection%22:[%22CEC%22],%22EXECIdentifier%22:[%22004-7011%22]}

234 CM/ResDH(2017)292) and CM/ResDH(2018)470, In the Resolution from 2018 the Committee of Ministers expressed *….gravest concern that, despite the repeated calls, including in the interim resolution adopted in September 2017 (CM/ResDH(2017)292), the authorities have still failed to adopt legislation establishing such a mechanism; recalling the unconditional obligation of Serbia, under Article 46 of the Convention, to abide by the judgments of the Court fully, effectively and promptly; reiterated firmly their call upon the authorities to take all necessary steps to ensure that the legislative process is brought to conclusion as a matter of utmost priority; DECIDED to examine this case at each of the Committee's Human Rights meetings until the draft law currently pending before Parliament is adopted.*

235 Revised Action Plan submitted by Serbia on 3 March 2020, http://hudoc.exec.coe.int/eng?i=DH-DD(2020)213E .

236 Supra. The last amendments were introduced in very late phase after the meeting convened by the Prime Minister, Ms Brnabić on 28 February 2020 attended by parents, civil society and a member of the Parliament.

237 Supra. On 18 and 19 February, the CoE Human Rights Director Mr Christophe Poirel and his team met with the Minister of Justice Nela Kuburović and other relevant authorities (President of Parliamentary Committee of Judiciary, Public Administration and Local Self-Government, Prosecutor General, President of the Supreme Court of Cassation, State Secretary of the Ministry of Health, officials from the Ministry of the Interior, the Ombudsman) to discuss the adoption of the draft law. The representatives of the Department for the Execution of Judgments, had a meeting with parents without the presence of the authorities, which was very useful for healing their concerns and make them feel heard.

238 CM/Del/Dec(2020)1369/H46-30, https://hudoc.exec.coe.int/eng#{%22EXECIdentifier%22:[%22CM/Del/Dec(2020)1369/H46-30E%22]}

239 Supra.

240 Supra.

It is clear that the implementation of the Law will be a rather complex task[241] and although it will be further supervised under the standard procedure (which would probably ease the pressure for the authorities, regarding reporting to the Committee), it could be expected that that this case will remain under the supervision of CM, at least until the ECtHR rules on the effectiveness of the Law in a new similar case against Serbia.

IV.5. STANIMIROVIĆ GROUP OF CASES[242]

This group is one of the major group of cases, supervised under the standard procedure and it refers to the effective investigation with regard to violations of Articles 2 and 3 of the Convention, and also in some cases to Article 6 (1) and (2).[243] In one case in this group ECtHR found also violation of Article 5(3).[244]

In these cases concerning the individual measures, the Serbian authorities were obliged to initiate a prosecution against potential perpetrators. However, in the updated action plan,[245] the authorities indicated that in 2018, the competent public prosecutors established that prosecution in the cases of *Stanimirović, Habimi, Hajnal, Krsmanović* and *Petrović* had become time-barred even before the Court rendered its judgments in these cases. On the other hand, in *Lakatoš and Others*, a fresh investigation was conducted into the applicants' complaint concerning police ill-treatment. After having examined medical and other available documentation and having interviewed the applicants, police officers and witnesses, the public prosecutor rejected the criminal charges.[246] In one case (*Mučibabić*, cited above), the criminal proceedings into the death of the applicant's son who died in an accident caused by the covert production of rocket fuel were brought to an end in March 2014.

Obviously, some of the individual measures could have not been taken because of the passage of time. Nevertheless, concerning the reopening of the proceedings the applicants in two cases (*Stanimirović* and *Hajnal*) requested the reopening of the impugned criminal proceedings because of violations of Article 6. In the reopened proceedings the applicants were acquitted of all charges. This indicates that the ECtHR judgments were successfully executed concerning the individual measures.

Moreover, in its latest Action plan, Serbia informed the CM about a number of general measures taken concerning the violations found by the Court, such as legislative changes providing for more strict rules on the use of force by law-enforcement officials and the reporting in writing by police officers about use of coercive measures, instructions by the Ministry of Interior and trainings and awareness raising activities: further training of crime inspectors on appropriate interview and investigation techniques and of law-enforcement agents on zero tolerance towards ill-treatment, creating a dedicated property store for all confiscated items in every police station, establishing interview rooms with audio and/or video equipment for recording police interviews as well as the preparation by the Ministry of the Interior of a "Rulebook on the exercise of police powers".

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241 It is envisaged that special training will be organized by the Judicial Academy on the imlementation of this Law.

242 *Stanimirović*, no. 26088/06, judgment of 18 October 2011, *Habimi and Others*, no. 19072/08, judgment of 3 June 20144, *Hajnal*, no. 36937/06, judgment of 19 June 2012, *Krsmanović*, no. 19796/14, judgment of 19 December 2017, *Lakatoš and Others*, no. 3363/08, judgment of 7 January 2014 *Mučibabić*, no. 34661/07, judgment of 12 July 2016, *Petrović*, .no. 40485/08, judgment of 15 July 2014.

243 *Stanimirović* and *Hajnal*, cited above.

244 *Lakatoš*, cited above.

245 Revised Action Plan submitted by Serbia on 20 November 2018 https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016808f140a.

246 Within the above mentioned Action Plan submitted by Serbia, all the activities taken by the Public Prosecutor's Office are described in detail (see above).

For this group of cases regarding general measures with a view to ensuring effective investigation, it is important to note the Methodology for Investigating the Cases of Ill-Treatment developed by the Republic Public Prosecutor's Office and Ministry of Interior and the General binding instruction adopted by the Chief Public Prosecutor in September 2017 for Investigating the Cases of Ill-Treatment.

All these measures mentioned above indicate that the Action plan was drafted in close cooperation with the Public Prosecutor's Office and the Ministry of Interior, as key stakeholders for this group of cases. On one hand, it could be concluded that Serbia efficiently executed the Court's judgments in this group of cases, but on the other hand, it could be expected that the CM will be mindful of whether there are new cases before the ECtHR finding similar violations . By the beginning of 2019, there was a new judgment against Serbia in which a violation of Article 3 had been found in the procedural and substantive aspect which most likely would be joined to this group of cases.[247] For the CM (as well for the ECtHR) it is significant also how the CPT[248] assesses the conditions of detained persons and detention standards and it that context it will be evaluated whether Serbia has taken all general measures needed.

* * *

Within this brief overview only major cases and groups of cases supervised by the CM have been mentioned and it does not reflect the fact that the supervision of many cases in respect of Serbia was closed. According to the information of the Department for Execution of Judgments by 17 December 2019[249] there were 507 cases transmitted for supervision in respect of Serbia since the entry into force of the Convention, while 450 cases were closed by final resolution. In 2018, there were 128 cases closed and 35 cases were closed in 2019. By the end of 2019 in respect of Serbia there were 57 cases pending, while the majority (44) were the repetitive cases.[250]

It should be noted that within the Annual report of the Department for Execution of Judgments, as the main achievements in the course of 2019, there are noted the measures taken in respect of the case Milanović[251] referring to protection against ill-treatment, lack of effective investigations and discrimination.[252]

Aligning the case law of the Constitutional Court and the SCC with the Strasbourg jurisprudence has been gradual as indicated in some of the examples provided above. With regard to general measures in this context, it should be noted that the SCC has been continually undertaking measures in order to secure the harmonized case law of courts[253] and an effective system "capable for overcoming inconsistencies"

247 *Gjini v. Serbia*, no. 1128/2016, Judgment of 15 January 2019 (final on 15 April 2019).

248 European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (https://www.coe.int/en/web/cpt).

249 https://rm.coe.int/1680709761

250 The Annual Report of the Committee of Ministers, https://rm.coe.int/annual-report-2019-1/16809e1c59

251 *Milanović v. Serbia*, no. 44614/07, Judgment of 14 December 2010.

252 The Annual Report of the Committee of Ministers, p.29. Different legislative measures introduced by the 2011 Criminal Procedure Code were noted, such as a transfer of responsibility for leading criminal investigations from the police to public prosecutors and reinforced victim participation. In 2012, the offence of hate crime was introduced and hatred, including religious hatred, that became an aggravating factor. Special guidelines for prosecuting hate crimes have been introduced. Information offices for victims were set up as recommended by the European Commission against Racism and Intolerance. It is noted that the special law prohibiting discrimination was adopted in 2009, providing in particular for a right of victims to seek protection in civil courts. It is noted that the number of complaints based on religious and political hatred decreased significantly in the period between 2015 and 2018. Moreover, the Constitutional Court banned certain extremist far-right organisations.

253 See The Plan of SCC 's activities regarding case law harmonization, 2014, https://www.vk.sud.rs/sites/default/files/attachments/PlanAktivnostiVrhovnogKasacionogSuda.pdf, also Bulletin of the SCC no. 3/2018, paper of Judge Vesna Popović https://www.vk.sud.rs/sites/default/files/attachments/Bilten%20VKS%203-2018.pdf

of the case law in Serbia was even recognized by the ECtHR.[254] However, this system as noted in the case of *Mirković and Others*, has not always been efficient[255].

Certain challenges obviously still remain and looking from the perspective of the execution of ECtHR judgments, the main issues are in the context of general measures. The latter require the cooperation of different state authorities since they may include the adoption of legislation, change of practices and case law of the courts in line with the rulings of the ECtHR, as well as having budgetary implications. Therefore, it is important to establish an organized coordination between all various state bodies.[256]

On the other hand, in order to avoid the delays regarding the submission of action plans/reports, it may be necessary to take some organizational measures and to establish certain procedures within the Office of the Agent in relation to the drafting of action plans/reports. However, this matter cannot be considered separately from the question of the capacity of the Department for Representation of the Republic of Serbia before the ECtHR.

254 *Cupara v. Serbia*, no. 34683/08, Judgment of 12 July 2016, para. 36.

255 *Mirković and Others*, cited above, para. 140.

256 An attempt to establish cooperation with various state bodies was made in a short period when the Government set up the Council for Relations with the ECtHR on 13 April 2013 (which included primarily representatives of the Ministry of Justice, Ministry of Finance, Ministry of Labour, Employment and Social Affairs, as well as three university professors) and the work of the Council was chaired by the State Agent. Monitoring the execution of ECtHR judgments was only one of the tasks of the Council.

V. Conclusions and recommendations

Based on the assessment of the normative framework and the current practice in Serbia regarding the execution of the Court's judgments, and also bearing in mind the practice developed in several CoE Member States, there are several challenges which have been identified. As a result, the relevant stakeholders in Serbia might wish to consider the following recommendations, which are divided into four distinct groups:

Recommendations concerning the status and role of the Government Agent in the execution of ECtHR judgments

From the present report, it is to be concluded that the current normative framework regarding the status of the Representative (Government Agent) of Serbia and his or her role in the execution is insufficient, as it does not reflect the actual role the Agent plays in the field of execution. The Agent in fact carries out tasks related to the execution of judgments, although there is no statutory basis thereof in the Law on the State Attorney's Office.

The absence of a clear legal basis and inconsistency of relevant legislation creates a lack of clarity and understanding at the national level of the Agent's role for the execution of the Court's judgments handed down against Serbia. It may also create practical difficulties and hinder the operation of the Department for Representation of the Republic of Serbia before the ECtHR (the Office of the Agent). The demanding role of the Government Agent as a Representative of the State in the proceedings before the Court and as a coordinator of the execution process requires the allocation of adequate resources for successfully performing his or her tasks.

In practice, the Office of the Agent is understaffed which can inevitably affect the work of the Agent and the overall performance of the Office of the Agent, also in respect of the execution of Court's judgments. Direct reporting to the Government (and also to the National Parliament) on the work of the Government Agent and the current state of execution of Court's judgments against Serbia should be introduced. Currently, it is now limited to very brief information dedicated to it submitted to the State Attorney in line with the present institutional position of the Government Agent.

1. Recommendation: It is, therefore, recommended to make efforts towards advancing the current legal framework in a manner that will respond to the needs of the operation of the institution in practice. In this respect, either a special law on the Government Agent should be adopted, or, instead, the Agent's status should be regulated by means of an executive act issued by the Government. Alternatively, necessary amendments could be made on this matter to the existing provisions of the Law on the State Attorney's Office.

2. Recommendation: The Government Agent's position should be significantly strengthened, since it is assumed that the stronger the status of the Agent and the Office of the Agent are, the more successful they are likely to be in communicating with the relevant authorities which will result in the latter responding adequately and promptly to a Court's judgment. The new legal framework or the amendments to the existing one should also ensure a better regulation of the status of its employees within the Office of the Agent.

3. Recommendation: The Government Agent should be enabled to prepare more detailed reports on his or her work and in particular about the execution of ECtHR judgments, that should not only be submitted to the Government (within the report of the State Attorney's Office), but also forwarded to the Parliament (in this regard, also see the Recommendation under paragraph 12) below).

RECOMMENDATIONS CONCERNING THE COORDINATION OF THE PROCESS OF EXECUTION

Neither the coordinating role of the Government Agent in the execution process, nor the obligations of the Agent or other state bodies and institutions in the execution process (ministries, courts, etc) are clearly defined in law. Also, the internal procedures within the Office of the Agent regarding the execution process are inadequate (for example, the procedures in case of objection of the applicants to the payment of just satisfaction, etc.).

In addition, the modes of cooperation between different actors involved in the process, on the one hand, and the Agent, on the other hand, are not regulated in any manner whatsoever. There has not been set up any interdepartmental mechanism which will help the Agent to perform his or her tasks as a *de facto* coordinator of the execution process. Concerning the payment of just satisfaction, it is not always possible to detect the body which caused the violation of human rights, as required by Article 13(5) of the Law on the State Attorney's Office. Attendance of the Serbian Agent at the human rights meetings (DH) of the CM devoted to the execution of Court's judgments is not regulated by the Law on the State Attorney's Office nor by any other laws.

4. Recommendation: A comprehensive law or executive act on the execution of ECtHR judgments may be enacted in order to regulate the role of all actors involved in the process, including the Government Agent, who should expressly be designated a coordinating role in the execution of judgments. Alternatively, the role of the Government Agent as a coordinator may be covered by the law/executive act on his or her status and relevant internal procedures regarding execution should be put in place. Regardless of the status which is to be conferred, the Agent should also be granted, to a certain extent, direct access to the Government whenever the implementation process requires.

5. Recommendation: It is recommended that different ministries and agencies become involved in the preparation of action plans and action reports, especially if the relevant judgment concerns issues which require detailed expertise or assessments, which the Government Agent has no capacity to produce . In this respect, preliminary questionnaires (as in some other States) or other similar tools for gathering information necessary for drawing up action plans and action reports should be introduced. With the changed legal framework, the implementation shall be embedded more deeply within the State's institutional and legal structures since it will provide as precisely as possible an obligation for the involvement in the process of all competent bodies and their cooperation with the Office of the Government Agent.

6. Recommendation: In order to facilitate the Agent's role of a coordinator, it might be extremely important to establish appropriate inter-institutional mechanism for coordinating and monitoring the execution process to ensure cooperation and regular dialogue and consultation with all relevant stakeholders (ministries and other state bodies, judiciary, public prosecution, etc.). The good practice of several States should be seriously taken into consideration in this respect. The representatives of the relevant institutions who are appointed as members to the inter-institutional body should act as "contact points" of those institutions in charge of executing the Court's judgments. The work of the inter-institutional mechanism should be governed by the legal acts relating to the status of the Government Agent/the execution process, and/or by its internal rules of procedure. The legal rules should define the procedures for identification of competent bodies and execution measures, as well as fixing deadlines for the competent institutions to take certain action as regards execution. Moreover, those rules should set up a mechanism for solving the potential conflicts of competence among various authorities which may occur if none of them accepts its competence for executing a particular judgment. (** shouldn't the font be black for the entire paragraph?)
7. Recommendation: The relevant body or authority to which the obligation to pay the non-pecuniary damages should be imposed could be properly identified by the inter-institutional body responsible for coordinating and monitoring the execution of judgments. This will enable that the financial burden is borne by the appropriate body or authority.
8. Recommendation: The Government Agent's role of representing the State at the DH meeting of the Committee of Ministers should be formalised and both the activities of the Agent's office and those of the Ministry of Foreign Affairs and the Permanent Representation of the Republic of Serbia to the Council of Europe should be coordinated in order to ensure the efficient representation of the interests of the State. In this respect, a separate provision on the cooperation between the Agent and the Ministry of Foreign Affairs/ the Permanent Representation in Strasbourg should be considered in the act specifying the status and the role of the Government Agent in the execution. This may include the possibility that members of the future inter-institutional body could participate in DH meetings,, when the CM monitors the execution of a judgment that falls within the competence of the body he or she represents (such possibility is also foreseen in Croatia).

RECOMMENDATIONS CONCERNING THE REOPENING OF THE PROCEEDINGS FOLLOWING THE ECTHR JUDGMENT AND CASE LAW HARMONIZATION WITH THE ECTHR VIEWS

Regarding the re-examination of a case following a judgment of the Court finding a violation of the ECHR and re-opening of judicial and administrative proceedings as an individual measure of execution of judgments, it is to be acknowledged that there is a certain legislative framework which provides for such a possibility under specific conditions which have to be fulfilled and within strict deadlines which need to be met. However, from the present analysis it could be concluded that the current framework is not completely clear, as there may be uncertainties as to how particular terms and provisions should be interpreted and applied into practice. This may create inconsistency in the court and administrative practice and place individuals in unequal positions, which may, in the end, result in a legal uncertainty. Moreover, the implementation of the views expressed by the ECtHR has not always been coordinated and sufficiently harmonized in the practice of the Constitutional Court and the SCC, although these courts gradually (and sometimes with delays) have implemented the Strasbourg standards. This may, in addition cause inconsistencies in the practice of lower courts with regard to the implementation of

the Strasbourg case law. The role of the Judicial Academy of Serbia regarding aligning practice with the Strasbourg standards should be taken into account. This is because it carries out various training activities which are incorporated in its annual curriculum for initial and continuous training, and which aim at capacity building and awareness raising, as well as improving the national implementation of the Convention and preventing future violations of the Convention. In principle, the Academy lacks a general module on the execution of judgments, even though some efforts have been made to address these issues by launching the updated HELP course on the Introduction to the ECHR and the Court. This course also includes a new module on the execution of judgments of the ECtHR and it was included as a compulsory element within the annual initial training programme of the Judicial Academy.

9. Recommendation: It is recommended that amendments to the procedural laws should be considered, so as to address the shortcomings of the existing legislation and ensure a coherent approach in relation to reopening of the proceedings following a judgment of the Court finding a violation of the ECHR.

10. Recommendation: It is recommended that the Supreme Court of Cassation, in accordance with its competence, should consider enhancing its approach in response to an ECtHR judgment in respect of Serbia in order to implement necessary general measures and prevent different views regarding the interpretation and application of the Strasbourg case-law. This may also be applied to the Constitutional Court taking into account its special role as the the court of last instance in the protection of human rights at the national level.

11. Recommendation: Bearing in mind the complexity of the topic in question, the Judicial Academy should continue carrying out its trainings activities and also consider the possibility of a separate training on the execution of ECtHR judgments which shall provide fundamental knowledge about the process of execution and the supervision procedures of the CM. Furthermore, round tables could be organised with the participation of a mixed group of representatives of the judiciary and employees of the state administrative bodies. The possibility of using the expertise of the Council of Europe in designing such activities should also be considered.

RECOMMENDATIONS CONCERNING THE ROLE OF PARLIAMENT IN THE EXECUTION PROCESS

As regards the role of the Parliament (National Assembly) of the Republic of Serbia, there is no clear legal basis and there are no streamlined procedures for the Parliament's active involvement with a view to implementing the Court's judgments. In addition, there is no communication between the Government Agent before the ECtHR and the Parliament, either in a form of an annual report or in the participation at the competent parliamentary Committee's meetings.

12. Recommendation:

- The role of the Parliament in the execution of the ECtHR's judgments in respect to Serbia should be affirmed, in order to allow democratic control over the execution of judgments of the ECtHR, in particular measures taken by the executive branch.
- The required functions could be performed by the existing parliamentary structures, in particular, the Committee on Human Rights and Minority Rights and Gender Equality, whose capacity and role should be reinforced in order to ensure more effective scrutiny of the process of execution with the involvement of other Committees such as the Committee on Constitutional Matters and Legislation. It should also be considered if it is necessary to amend the current Rules of Procedure of the Serbian Parliament in that respect.

- It is crucial to put in place a reporting procedure which should keep the Parliament regularly (at least annually) informed of the judgments rendered by the Court in respect of Serbia and taken in the process of execution. Reporting would present an important means of communication between the executive and legislative branches, and it would be essential to allow the Parliament to monitor effectively the execution of Court's judgments. To this end, the law or executive act concerning the Office of the Government Agent should also require the Government Agent to submit regular reports (at least annually) to the Parliament.
- The debate on the report should take place by holding public hearings (at least annually) with the presence of the executive, the Government Agent, civil society organisations and national human rights institutions, including the Protector of Citizens (the Ombudsman).

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