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Project

Supporting Parliamentary Oversight over Execution of the European Court of Human Rights Judgments in Georgia

NEEDS ASSESSMENT FOR PARLIAMENTARY OVERSIGHT OVER THE EXECUTION OF JUDGMENTS OF THE EUROPEAN COURT OF HUMAN RIGHTS IN GEORGIA

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A. INTRODUCTION

1. This Report embodies the conclusions of a needs assessment undertaken for the enhancement of parliamentary oversight over the execution of judgments of the European Court of Human Rights ("the European Court"), as well as of friendly settlements reached in proceedings before it.

2. The needs assessment is primarily concerned with the execution of judgments and friendly settlements resulting from applications to the European Court in respect of Georgia.[1]

3. However, as the obligation for Georgia under Article 1 of the European Convention on Human Rights ("the European Convention") is to secure the rights and freedoms to everyone within its jurisdiction, brief consideration is also given as whether the arrangements needed to monitor the execution of judgments and friendly settlements could also contribute to ensuring that legislative proposals submitted to the Parliament are not adopted without first taking account of the requirements elaborated more generally in the case law of the European Court.

4. The preparation of the needs assessment has been based on desk research - relating to the case law of the European Court, the process followed by the Council of Europe's Department for the Execution of Judgments of the European Court of Human Rights, information provided by the Parliament, analytical studies of the process of execution and other relevant documentation[2] - and a workshop with stakeholders in Georgia on 12 February 2020.[3]

5. The Report, by way of background, first reviews the issues that have been found to constitute violations of the European Convention in applications to the European Court in respect of Georgia, the friendly settlements reached and the execution so far of both judgments and friendly settlements. It then considers the nature of the measures that may need to be taken when executing judgments and friendly settlements, how these are to be established and the process for ensuring their execution within the Council of Europe. Thereafter it provides an overview of the way in which national parliaments have come to play a role in the implementation of the European Convention in general and the execution of judgments and friendly settlements in particular.

6. The Report then reviews the present arrangements followed in this regard by Georgia before suggesting ways in which this could be strengthened, addressing in particular the allocation of responsibility for oversight within Parliament, the support required for the exercise of such oversight, the process to be followed – including inputs from the Government, civil society and other interested persons – and the importance of follow-

[1] It is not concerned with the execution of the inter-State case, *Georgia v. Russia (I)* [GC], no. 13255/07, 3 July 2014.

[2] Apart from the material specifically referred to in the Report, see P. Leach and A. Donald, *Parliaments and the European Court of Human Rights* (Oxford, 2016).

[3] The workshop was with members of the Human Rights and Civic Integration Committee of the Parliament, parliamentary staff and representatives from the Department of State Representation to International Courts, the Analytical Department of the Supreme Court of Georgia, the Office of the Public Defender (Ombudsperson) and non-governmental organisations.

up as an element of parliamentary oversight. It concludes with a summary of the recommendations made.

7. This Report has been prepared by Jeremy McBride[4] and Konstantin Korkelia[5] under the auspices the Project "Supporting Parliament's role on oversight over the execution of ECtHR judgments by the government".

B. JUDGMENTS AND FRIENDLY SETTLEMENTS INVOLVING GEORGIA

8. There have been a significant number of judgments and friendly settlements resulting from applications to the European Court since it ratified the European Convention on 20 May 1999. Thus, there are now 81 closed cases, of which 44 relate to judgments and 37 to friendly settlements.

1. Judgments

9. There have been 107 judgments by the European Court in respect of applications brought against it. Of these, violations of one or more rights and freedoms guaranteed by the European Convention were found in 86 of them.[6]

10. The violations found have concerned various issues relating to the following provisions:

Article 2

- Deprivation[7];
- Effective investigation[8];

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[6] Two others dealt with the award of just satisfaction for violations that had previously been found (*Tchitchinadze v. Georgia*, no. 18156/05, 29 May 2012 and *Saghinadze and Others v. Georgia*, no. 18768/05, 13 January 2015). In seventeen judgments no violations of any provisions of the European Convention were found (*Mgueladze v. Georgia*, no. 74909/01, 24 July 2007; *Oganova v. Georgia*, no. 25717/03, 13 November 2007; *Gogoladze v. Georgia*, no. 4683/03, 11 December 2007; *Galuashvili v. Georgia*, no. 40008/04, 17 July 2008; *Goginashvili v. Georgia*, no. 47729/08, 4 October 2011; *Mumladze v. Georgia*, no. 30097/03, 8 January 2008; *Khonakina v. v. Georgia*, no. 17767/08, 19 June 2012; *Goloshvili v. Georgia*, no. 45566/08, 20 November 2012; *Natsvlishvili and Togonidze v. Georgia*, no. 9043/05, 29 April 2014; *Ashlarba v. Georgia*, no. 45554/08, 15 July 2014; *Gogitidze and Others v. Georgia*, no. 36862/05, 12 May 2015; *Poghosov v. Georgia*, no. 33323/08, 29 June 2017; *Kuparadze v. Georgia*, no. 30743/09, 21 September 2017; *Kitiashvili v. Georgia*, no. 37747/08, 23 November 2017; *Tuskia and Others v. Georgia*, no. 14237/07, 11 October 2018; *Rustavi 2 Broadcasting Co. Ltd. and Others v. Georgia*, no. 16812/17, 18 July 2019; and *Studio Monitori and Others v. Georgia*, no. 44920/09, 30 January 2020). In addition, one judgment struck out an application on account of the applicant no longer wishing to maintain it (*Absandze v. Georgia*, no. 57861/00, 20 July 2004) and another held that the application was inadmissible as an abuse of the right of application (*Bekauri v. Georgia*, no. 14102/02, 10 April 2012).
[7] *Vazagashvili and Shanava v. Georgia*, no. 50375/07, 18 July 2019 (murder by police officers)
[8] *Khaindrava and Dzamashvili v. Georgia*, no. 18183/05, 8 June 2010; *Tsintsabadze v. Georgia*, no. 35403/06, 15 February 2011; *Enukidze and Girgvliani v. Georgia*, no. 25091/07, 26 April 2011; *Vazagashvili and Shanava v. Georgia*, no. 50375/07, 18 July 2019; *Sakvarelidze v. Georgia*, no. 40394/10, 6 February 2020; and *Maisuradze v. Georgia*, no. 44973/09, 20 December 2018 (absence in all cases).

- Protection[9];
- Effective redress[10];

Article 3

- Detention conditions[11];
- Effective investigation[12];
- Extradition[13];
- Medical care[14];
- Protection from attacks[15];
- Use of force[16];

Article 5

- Deprivation of liberty[17];

[9] *Makharadze and Sikharulidze v. Georgia*, no. 35254/07, 22 November 2011 (failure to act to prevent prisoner's death) and *Sarishvili-Bolkvadze v. Georgia*, no. 58240/08, 19 July 2018 and (failure to provide effectively functioning regulatory framework for health care).

[10] *Sarishvili-Bolkvadze v. Georgia*, no. 58240/08, 19 July 2018 (no opportunity to claim an enforceable award of compensation for non-pecuniary damage).

[11] *Aliev v. Georgia*, no. 522/04, 13 January 2009 (inadequate bedding, unhealthy and lacking air); *Ramishvili and Kokhreidze v. Georgia*, no. 1704/06, 27 January 2009 (size of cell, insanitary conditions and overcrowding, as well as use of caged dock and presence of special forces in court); and *Gorgiladze v. Georgia*, no. 4313/04, 20 October 2009 (overcrowding and insanitary).

[12] *Davtian v. Georgia*, no. 73241/01, 27 July 2006; *Danelia v. Georgia*, no. 68622/01, 17 October 2006; *Gharibashvili v. Georgia*, no. 11830/03, 29 July 2008; *Aliev v. Georgia*, no. 522/04, 13 January 2009; *Mikiashvili v. Georgia*, no. 18996/06, 9 October 2012; *Dvalishvili v. Georgia*, no. 19634/07, 18 December 2012; *Identoba and Others v. Georgia*, no. 73235/12, 12 May 2015; *Mindadze and Nemsitveridze v. Georgia*, no. 21571/05, 1 June 2017; *Kekelidze v. Georgia*, no. 2316/09, 17 January 2019; *Gablishvili and Others v. Georgia*, no. 7088/11, 21 February 2019 and *Goguadze v. Georgia*, no. 40009/12, 27 June 2019 (absence in all cases).

[13] *Shamayev and Others v. Georgia and Russia*, no. 36378/02, 12 April 2005 (if decision executed).

[14] *Poghosyan v. Georgia*, no. 9870/07, 24 February 2009; *Ghavtadze v. Georgia*, no. 23204/07, 3 March 2009; *Irakli Mindadze v. Georgia*, no. 17012/09, 11 November 2012; *Jeladze v. Georgia*, no. 1871/06, 18 December 2012; *Jashi v. Georgia*, no. 10799/06, 8 January 2013; *Ildani v. Georgia*, no. 65391/08, 23 April 2013; *Mirzashvili v. Georgia*, no. 26657/07, 7 September 2017; *Meskhidze v. Georgia*, no. 55506/08, 21 December 2017; and *Kikalishvil iv. Georgia*, no. 51772/08, 20 December 2018 (failure of provision to prisoners).

[15] *97 members of the Gldani Congregation of Jehovah's Witnesses and 4 Others v. Georgia*, no. 71156/01, 3 May 2007; *Begheluri and Others v. Georgia*, no. 28490/02, 7 October 2014; and *Identoba and Others v. Georgia*, no. 73235/12, 12 May 2015 (failure by authorities).

[16] *Shamayev and Others v. Georgia and Russia*, no. 36378/02, 12 April 2005 (beatings by special forces); *Mikiashvili v. Georgia*, no. 18996/06, 9 October 2012, *Kekelidze v. Georgia*, no. 2316/09, 17 January 2019 and *Goguadze v. Georgia*, no. 40009/12, 27 June 2019 (manner of arrest); *Dvalishvili v. Georgia*, no. 19634/07, 18 December 2012 (beating by police); *Begheluri and Others v. Georgia*, no. 28490/02, 7 October 2014 (dispersal of assembly); *Mindadze and Nemsitveridze v. Georgia*, no. 21571/05, 1 June 2017 (beating by police); *Gablishvili and Others v. Georgia*, no. 7088/11, 21 February 2019; and (manner of restraint by prison officers); *Gogoladze v. Georgia*, no. 8971/10, 18 July 2019 (beating by police).

[17] *Assanidze v. Georgia* [GC],, no. 71503/01, 8 April 2004 (arbitrary); *Gigolashvili v. Georgia*, no. 18145/05, 8 July 2008 (unlawful); *Giorgi Nikolaishvili v. Georgia*, no. 37048/04, 13 January 2009 (arbitrary and also unlawful); *Ramishvili and Kokhreidze v. Georgia*, no. 1704/06, 27 January 2009 (unlawful); *Kakabadze and Others v. Georgia*, no. 1484/07, 2 October 2012 (unlawful and also arbitrary); and *Baisuev and Anzorov v. Georgia*, no. 39804/04, 18 December 2012 (unlawful and also arbitrary).

- Giving reasons for deprivation of liberty[18];
- Pre-trial detention[19];
- Challenge to lawfulness of detention[20];

Article 6

- Court established by law[21];
- Access to court[22];
- Presumption of innocence[23];
- Adversarial proceedings/equality of arms[24];
- Immediacy[25];
- Legal certainty[26];
- Impartiality[27];
- Defence rights[28];
- Witnesses[29];
- Reasoned judgment[30]
- Conviction in absentia[31]

[18] *Shamayev and Others v. Georgia and Russia*, no. 36378/02, 12 April 2005 and *Baisuev and Anzorov v. Georgia*, no. 39804/04, 18 December 2012 (none given in either case).
[19] *Patsuria v. Georgia*, no. 30779/04, 6 November 2007 (grounds not sufficient or relevant); *Giorgi Nikolaishvili v. Georgia*, no. 37048/04, 13 January 2009 (grounds not sufficient or relevant); *Saghinadze and Others v. Georgia*, no. 18768/05, 27 May 2010 (length not reasonable); *Janiashvili v. Georgia*, no. 35887/05, 27 November 2012 (grounds not sufficient and length not reasonable); *Lasha Tchitchinadze v. Georgia*, no. 35195/05, 7 June 2016 (grounds not sufficient or relevant); *Tchankotadze v. Georgia*, no. 15256/05, 21 June 2016 (unlawful); *Mindadze and Nemsitveridze v. Georgia*, no. 21571/05, 1 June 2017 (unlawful and reasons not sufficient); and *Merabishvili v. Georgia* [GC], no. 72508/13, 28 November 2017 (grounds not sufficient).
[20] *Shamayev and Others v. Georgia and Russia*, no. 36378/02, 12 April 2005 (appeal deprived of all substance); *Giorgi Nikolaishvili v. Georgia*, no. 37048/04, 13 January 2009 (multiple failings); *Ramishvili and Kokhreidze v. Georgia*, no. 1704/06, 27 January 2009 (lack of fundamental requisites for a fair hearing); and *Saghinadze and Others v. Georgia*, no. 18768/05, 27 May 2010 (procedure not adversarial).
[21] *Gorgiladze v. Georgia*, no. 4313/04, 20 October 2009 and *Pandjikidze and Others v. Georgia*, no. 30323/02, 27 October 2009 (lay members of panel lacked mandate).
[22] *FC Mretebi v. Georgia*, no. 38736/04, 31 July 2007 (inability to pay court fees); *Kidzinidze v. Georgia*, no. 69852/01, 29 January 2008 (refusal to examine case); and *Kereselidze v. Georgia*, no. 39718/09, 28 March 2019 (inability to present arguments in rectification of sentence proceedings).
[23] *Batiashvili v. Georgia*, no. 8284/07, 10 October 2019 (dissemination of secret audio recording).
[24] *Kakabadze and Others v. Georgia*, no. 1484/07, 2 October 2012 (disregard); *Bartaia v. Georgia*, no. 10978/06, 26 July 2018 (unjustified default judgment); and *Gelenidze v. Georgia*, no. 72916/10, 7 November 2019 (requalification of offence by appeal court).
[25] *Svanidze v. Georgia*, no. 37809/08, 25 July 2019 (substitute judge had not heard witnesses).
[26] *Tchitchinadze v. Georgia*, no. 18156/05, 27 May 2010 (quashing of a final decision).
[27] *Sturua v. Georgia*, no. 45729/05, 28 March 2017 and *Gabaidze v. Georgia*, no. 13723/06, 12 October 2017 (hearing of appeal by judges at first instance).
[28] *Mindadze and Nemsitveridze v. Georgia*, no. 21571/05, 1 June 2017 (multiple violations); *Kobiashvili v. Georgia*, no. 36416/06, 14 March 2019 (insufficient opportunity to oppose use of evidence obtained by search); and *Lobzhanidze and Peradze v. Georgia*, no. 21447/11, 27 February 2020.
[29] *Kartvelishvili v. Georgia*, no. 17716/08, 7 June 2018 and *Bregvadze v. Georgia*, no. 49284/09, 17 January 2019 (refusal to examine those of defence) and *Kartsivadze v. Georgia*, no. 30680/09, 12 December 2019 (inability to cross-examine).
[30] *Donadze v. Georgia*, no. 74644/01, 7 March 2006 (no serious examination of arguments of accused and no valid reasons); *Jgarkava v. Georgia*, no. 7932/03, 24 February 2009 (neither clear nor sufficient); *Tchankotadze v. Georgia*, no. 15256/05, 21 June 2016 (no serious examination of arguments of accused); *Tchokhonelidze v. Georgia*, no. 31536/07, 28 June 2018 (failure to address plea of entrapment); and *Rostomashvili v. Georgia*, no. 13185/07, 8 November 2018 (failure to address accused's arguments).
[31] *Gakharia v. Georgia*, no. 30459/13, 17 January 2017 (no fresh examination provided).

- Length of civil proceedings[32]
- Length of criminal proceedings[33]
- Execution of a judgment[34];

Article 8

- Children[35];
- Home[36];
- Private life[37];
- Reputation[38];

Article 9

- Manifestation[39];

Article 10

- Liability for defamation[40];

Article 11

- Assembly[41];

Article 13

- Delay in judicial proceedings[42];
- Independent medical examination[43];

[32] *Kidzinidze v. Georgia*, no. 69852/01, 29 January 2008 and *Kharitonashvili v. Georgia*, no. 41957/04, 10 February 2009 (unreasonable).
[33] *Kobelyan v. Georgia*, no. 40022/05, 16 July 2009 (unreasonable).
[34] *Assanidze v. Georgia* [GC], no. 71503/01, 8 April 2004; *"Iza" Ltd. and Makrakhidze v. Georgia*, no. 28537/02, 27 September 2005; *Amat-G Ltd. and Mebagishvil v. Georgia*, no. 2507/03, 27 September 2005; *Apostol v. Georgia*, no. 40765/02, 28 November 2006; *Kvitsiani v. Georgia*, no. 16277/07, 21 July 2009; and *Dadiani and Machabeli v. Georgia*, no. 8252/08, 12 June 2012 (failure in all cases).
[35] *G.S. v. Georgia*, no. 2361/13, 21 July 2015 (lack of relevant and sufficient reasoning and of due diligence in return proceedings) and *N.T.S. and Others v. Georgia*, no. 71776/12, 2 February 2016 (inadequate consideration of interests in custody proceedings).
[36] *Saghinadze and Others v. Georgia*, no. 18768/05, 27 May 2010 (eviction and dispossession lacked legal basis) and *Jugheli and Others v. Georgia*, no. 38342/05, 13 July 2017 (failure to protect against pollution).
[37] *Gurgenidze v. Georgia*, no. 71678/01, 17 October 2006 (publication of information and photographby newspaper - not in public interest and no balancing of interests by courts) and *Giorgi Nikolaishvili v. Georgia*, no. 37048/04, 13 January 2009 (publication of photograph by police – designation as a "wanted person" when not an accused or a suspect).
[38] *Jishkariani v. Georgia*, no. 18925/09, 20 September 2018 (failure to strike fair balance).
[39] *97 members of the Gldani Congregation of Jehovah's Witnesses and 4 Others v. Georgia*, no. 71156/01, 3 May 2007; *Begheluri and Others v. Georgia*, no. 28490/02, 7 October 2014; and *Tsartsidze and Others v. Georgia*, no. 18766/04, 17 January 2017 (failure to protect from attack).
[40] *Gorelishvili v. Georgia*, no. 12979/04, 5 June 2007 (requirement to prove truth of an official document).
[41] *Kakabadze v. Georgia*, no. 1484/07, 2 October 2012 (arrest and detention) and *Identoba and Others v. Georgia*, no. 73235/12, 12 May 2015 (failure to protect from attack).
[42] *"Iza" Ltd. and Makrakhidze v. Georgia*, no. 28537/02, 27 September 2005 and *Amat-G Ltd. and Mebagishvil v. Georgia*, no. 2507/03, 27 September 2005 (absence of any remedy in both cases).
[43] *Danelia v. Georgia*, no. 68622/01, 17 October 2006 (not provided).

- Extradition[44];

Article 14

- Religion[45];

Article 18

- Purpose of restriction[46];

Article 34

- Interim measures[47];

Article 38

- All necessary facilities[48];

Protocol No. 1, Article 1

- Execution of judgment[49];
- Peaceful enjoyment of possessions[50];
- Expropriation[51];

Protocol No. 1, Article 3

- Ability to stand for election[52];
- Ability to vote[53];

Protocol No. 7, Article 2

- Appeal right[54].

[44] *Shamayev and Others v. Georgia and Russia*, no. 36378/02, 12 April 2005 (exercise of appeal hindered).
[45] *97 members of the Gldani Congregation of Jehovah's Witnesses and 4 Others v. Georgia*, no. 71156/01, 3 May 2007; *Begheluri and Others v. Georgia*, no. 28490/02, 7 October 2014; and *Tsartsidze and Others v. Georgia*, no. 18766/04, 17 January 2017 (failure to protect from attack).
[46] *Merabishvili v. Georgia* [GC], no. 72508/13, 28 November 2017 (improper objective).
[47] *Shamayev and Others v. Georgia and Russia*, no. 36378/02, 12 April 2005 and *Makharadze and Sikharulidze v. Georgia*, no. 35254/07, 22 November 2011 (failure to comply).
[48] *Enukidze and Girgvliani v. Georgia*, no. 25091/07, 26 April 2011 (failure to submit evidence).
[49] *"Iza" Ltd. and Makrakhidze v. Georgia*, no. 28537/02, 27 September 2005; *Amat-G Ltd. and Mebagishvil v. Georgia*, no. 2507/03, 27 September 2005; and *Kvitsiani v. Georgia*, no. 16277/07, 21 July 2009 (failure in all cases).
[50] *Klaus and Iouri Kiladze v. Georgia*, no. 7975/06, 2 February 2010(failure to adopt legislation for implementation of right to compensation); *Saghinadze and Others v. Georgia*, no. 18768/05, 27 May 2010 (eviction and dispossession lacked legal basis); and *Tchitchinadze v. Georgia*, no. 18156/05, 27 May 2010 (quashing of a final decision).
[51] *Khizanishvili and Kandelaki v. Georgia*, no. 25601/12, 17 December 2019 (demolition of building without full compensation).
[52] *Georgian Labour Party v. Georgia*, no. 9103/04, 8 July 2008 (*de facto* disenfranchisement of voters).
[53] Ramishvili v. Georgia, no. 48099/08, 31 May 2018.
[54] *Kakabadze and Others v. Georgia*, no. 1484/07, 2 October 2012 (absence).

11. In the judgments, the European Court ordered specific individual measures in just one case.[55] However, it suggested them in three others[56] and invited the taking of some general ones in two case[57] Only in four of the judgments was no award of compensation and/or costs made.[58]

12. So far[59], the Committee of Ministers of the Council of Europe ("the Committee of Ministers") has adopted 31 final resolutions dealing with 44 cases[60]. These resolutions have closed the consideration of the execution of the judgments concerned, finding

[55] In *Assanidze v. Georgia* [GC], no. 71503/01, 8 April 2004; to secure the release of the applicant at the earliest possible date.

[56] In *FC Mretebi v. Georgia*, no. 38736/04, 31 July 2007 (to examine the applicant's cassation appeal), *Saghinadze and Others v. Georgia*, no. 18768/05, 27 May 2010 (to return of property or provide other proper accommodation) and *Tchitchinadze v. Georgia*, no. 18156/05, 27 May 2010 (to return property or pay reasonable compensation).

[57] *Poghosyan v. Georgia*, no. 9870/07, 24 February 2009 and *Ghavtadze v. Georgia*, no. 23204/07, 3 March 2009 (namely, to take legislative and administrative steps, without delay, to prevent the transmission of viral hepatitis C and other contagious diseases in prisons, to introduce screening arrangements for this disease and to ensure its timely and effective treatment).

[58] *FC Mretebi v. Georgia*, no. 38736/04, 31 July 2007; *Gharibashvili v. Georgia*, no. 11830/03, 29 July 2008; *Jgarkava v. Georgia*, no. 7932/03, 24 February 2009; and *Poghosyan v. Georgia*, no. 9870/07, 24 February 2009.

[59] As of 7 March 2020.

[60] The Committee of Ministers adopts final resolutions where it considers that the necessary measures required by a case have been adopted. In the case of Georgia, these have been in respect of the following cases: *Assanidze v. Georgia*, no. 71503/01 (Resolution ResDH(2006)53, 2 November 2006); *FC Mretebi v. Georgia*, no. 38736/04 (Resolution CM/ResDH(2010)163, 2 December 2010); *Gorelishvili v. Georgia*, no. 12979/04 (Resolution CM/ResDH(2010)164,2 December 2010); *Donadze v. Georgia*, no. 74664/01 (Resolution CM/ResDH(2011)63, 8 June 2011); *Gurgenidze v. Georgia*, no. 71678/01 (Resolution CM/ResDH(2011)64, 8 June 2011); *Patsuria v. Georgia*, no. 30779/04, *Gigolashvili v. Georgia*, no. 18145/05 and *Ramishvili and Kokhreidze v. Georgia*, no. 1704/06 (Resolution CM/ResDH(2011)105, 14 September 2011); *Kharitonashvili v. Georgia*, no. 41957/04 (Resolution CM/ResDH(2011)106, 14 September 2011); *Kobelyan v. Georgia*, no. 40022/05 (Resolution CM/ResDH(2011)107, 14 September 2011); "*Iza" Ltd and Makrakhidze v. Georgia*, no. 28537/02, *"Amat-G" Ltd and Mebaghishvili v. Georgia*, no. 2507/03 and *Kvitsiani v. Georgia*, no. 16277/07 (Resolution CM/ResDH(2011)108, 14 September 2011); *Kidzinidze v. Georgia*, no. 69852/01 (Resolution CM/ResDH(2011)109, 14 September 2011); *Pandjikidze v. Georgia*, no. 30323/02 and *Gorgiladze v. Georgia*, no. 4313/04 (Resolution CM/ResDH(2012)125, 26 September 2012); *Dadiani and Machabel v. Georgia*, no. 8252/08 (Resolution CM/ResDH(2013)142, 10 July 2013); *Tchitchinadze v. Georgia*, no. 18156/05 (Resolution CM/ResDH(2014)48, 16 April 2014); *Davtyan v. Georgia*, no. 73241/01 and *Danelia v. Georgia*, no. 68622/01 (Resolution CM/ResDH(2014)208, 12 November 2014); *Ghavtadze v. Georgia*, no. 23204/07, *Poghossian v. Georgia*, no. 9870/07, *Irakli Mindadze v. Georgia*, no. 17012/09, *Jeladze v. Georgia*, no. 1871/08 and *Ildani v. Georgia*, no. 65391/09 (Resolution CM/ResDH(2014)209, 12 November 2014); *Klaus and Iouri Kiladze v. Georgia*, no. 7975/06 (Resolution CM/ResDH(2015)41, 12 March 2015); *Jashi v. Georgia*, no. 10799/06 (Resolution CM/ResDH(2014)162, 25 September 2014); *Baisuev and Anzorov v. Georgia*, no. 39804/04 (Resolution CM/ResDH(2015)121, 10 September 2015); *Jgarkava v. Georgia*, no. 7932/03 (Resolution CM/ResDH(2016)25, 8 March 2016); *Georgian Labour Party v. Georgia*, no. 9103/04 (Resolution CM/ResDH(2016)42, 30 March 2016); *Janiashvili v. Georgia*, no. 35887/05 (Resolution CM/ResDH(2016)82, 27 April 2016); *Saghinadze and Others v. Georgia*, no. 18768/05 (Resolution CM/ResDH(2016)93, 4 May 2016); *Kakabadze and Others v. Georgia*, no. 1484/07 (Resolution CM/ResDH(2017)77, 10 March 2017); *Lasha Tchitchinadze v. Georgia*, no. 35195/05 (Resolution CM/ResDH(2017)136, 10 May 2017); *Aliev v. Georgia*, no. 522/04 (Resolution CM/ResDH(2017)181, 7 June 2017); *Apostol v. Georgia*, no. 40765/02 (Resolution CM/ResDH(2017)233, 6 September 2017); *Gharibashvili v. Georgia*, no. 11830/03 and *Khaindrava and Dzamashvili v. Georgia*, no. 18183/05 (Resolution CM/ResDH(2017)287, 21 September 2017); *Giorgi Nikolaishvili v. Georgia*, no. 37048/04 (Resolution CM/ResDH(2017)390, 22 November 2017); *Tchankotadze v. Georgia*, no. (Resolution CM/ResDH(2018)412, 14 November 2018; *Ramishvili v. Georgia*, no. 48099/09 (Resolution CM/ResDH(2019)49, 14 March 2019); and *Kikalishvili v. Georgia*, no. 51772/08, *Meskhidze v. Georgia*, no. 55506/08 and *Mirzashvili v. Georgia*, no. 26657/07 (Resolution CM/ResDH(2019)298, 13 November 2019).

satisfactory for this purpose individual and general measures taken in respect of the violations found by the European Court.[61]

13. Apart from the payment of compensation, costs and expenses, the individual measures taken have involved: the change in the prison where the applicant was being detained; the conclusion of legal proceedings, granting full property title to two two-room apartments, the release of the applicant, the registration of the applicant's property rights, the re-opening of investigations and the undertaking of medical examinations and treatment.

14. The general measures taken in these cases[62] have involved:

- the adoption of legislative amendments[63];
- the adoption of a new health reform strategy and action plan for prisons;
- the adoption of new rules regarding the interrogation of witnesses;
- the adoption of an order by the Minister of Justice setting the rules on territorial and material jurisdiction for criminal investigations;
- the construction of a new prison and of new courts;
- the creation of internal monitoring mechanisms in the Ministry of Internal affairs and the Ministry of Corrections;
- the ending of the practice of using cages in courts for accused persons;
- the holding of legitimate elections;
- increasing budgetary provision for the enforcement of judgments, the medical department of prisons and victims of political repression;
- the publication of the European Court's judgment and, more generally, of the case law of the European Court;
- the reduction in the use of detention on remand;
- the reduction of prison overcrowding through the granting of amnesties;
- the referral by courts to the European Convention and the case law of the European Court, as well as the adoption of case law by the European Court;
- the reform of the Prosecutor's Office;
- the remedying of structural deficiencies in respect of medical care in prisons;
- the ruling of legal provisions unconstitutional by the Constitutional Court; an
- the provision of trainings for judges, candidate judges and penitentiary system staff.

2. Friendly settlements

[61] The HUDOC-EXEC database gives access to the documents relating to the execution of judgments of the European Court (status of execution of cases, government action plans/reports, other communications, Committee of Ministers' decisions (from 1 January 2011 onwards) and final resolutions. The HUDOC-EXEC search screen is available in English and French at; https://goo.gl/4WoSQM.

[62] However, it should be noted that general measures have also been taken in respect of a number of cases for which a final resolution has still to be adopted; see, e.g., the creation of the State Inspector's Service in connection with *Tsintsabadze v. Georgia*, no. 35403/06, 15 February 2011 and the other cases in that group.

[63] Namely, to provisions in the Administrative Procedure Code, the Civil Code, the Civil Procedure Code (including a provision that a judgment/a decision of the European Court finding a violation of the Convention is a new circumstance that constitutes a ground for reopening of the proceedings), the Criminal Procedure Code, the Enforcement Procedures Act of 16 April 1999, the Organic Law of Georgia on Common Courts and the Law on "Victim Status and Social Protection for Persons Subjected to Political Repression", as well as the adoption of entirely new Civil and Criminal Procedure and Election Codes. Apart from these changes, others were sometimes also required to address the specific actions referred to in the list above.

15. In addition to resolutions concerned with judgments by the European Court, the Committee of Ministers has also adopted 26 final resolutions in respect of 37 cases for which there have been friendly settlements.[64]

16. The individual measures in these settlements generally concerned the payment of compensation, costs and expenses. However, in some cases the following measures were also agreed: the provision of medical care; the provision of a psychiatric examination; the recognition of paternity with consequent financial obligations; the release of the applicants from prison; and the re-opening of criminal cases and investigations.

17. Often the general measures adopted in respect of cases in which there had been judgments were the backdrop to the adoption of a friendly settlement. However, the following general measures were also taken pursuant to a few settlements: the establishment of the status of the disabled; making improvements to accessibility and quality of psychiatric care in prisons; and the provision of training seminars for judges.

3. Conclusion

18. Thus, there remain 42 judgments, as well as friendly settlements in 12 cases[65], pending before the Committee of Ministers. Of the judgments, 10 of these were adopted by the

[64] These have concerned: *Kobakhidze and Ninua v. Georgia*, no. 14929/09 and *Tchanturia v. Georgia*, no. 2225/08 (Resolution CM/ResDH(2012)29, 8 March 2012); *Kakulia and Buliskeria v. Georgia*, no. 3486/06 and *Tskhoidze v. Georgia*, no. 51767/09 (Resolution CM/ResDH(2013)107, 6 June 2013); *Melikishvili v. Georgia*, no. 35424/09, *Z. v. Georgia*, no. 44706/10, *Shubladze v. Georgia*, no. 63875/10, *Zedelashvili v. Georgia*, no. 34782/09, *Maisuradze v. Georgia*, no. 39830/11, *Guldedava v. Georgia*, no. 61370/09 and *Abashidze v. Georgia*, no. 51437/10 (Resolution CM/ResDH(2013)242, 5 December 2013); *Lena Natchkebia v. Georgia*, no. 55486/10 (Resolution CM/ResDH(2013)143, 10 July 2013); *Okroshidze and Okroshidze v. Georgia*, no. 60596/09 (Resolution CM/ResDH(2013)243, 5 December 2013); *Oniani v. Georgia*, no. 29180/10 (Resolution CM/ResDH(2014)35, 12 March 2014); *Sanadiradze v. Georgia*, no. 64566/09 (Resolution CM/ResDH(2014)192, 22 October 2014); *Bakradze v. Georgia*, no. 3658/10 and *Tibilashvili v. Georgia*, no. 16516/10 (Resolution CM/ResDH(2014)210, 12 November 2014); *Abzianidze v. Georgia*, no. 23715/09 (Resolution CM/ResDH(2014)231, 19 November 2014); *Mazmishvili v. Georgia*, no. 35220/09 (Resolution CM/ResDH(2014)263, 4 December 2014); *Khokhiashvili v. Georgia*, no. 65594/09 (Resolution CM/ResDH(2015)6, 4 February 2015); *Koiava v. Georgia*, no. 44654/08 (Resolution CM/ResDH(2015)23, 4 March 2015); *Modebadze v. Georgia*, no. 43111/10 (Resolution CM/ResDH(2015)85, 11 June 2015); *Jakeli v. Georgia*, no. 51247/10 (Resolution CM/ResDH(2015)197, 17 November 2015); *Batiashvili and Batiashvili-Gelashvili v. Georgia*, no. 75737/11 and *Mirtskhulava v. Georgia*, no. 18372/04 (Resolution CM/ResDH(2016)1, 20 January 2016); *Zhorzholiani and Others v. Georgia*, no. 1838/08 (Resolution CM/ResDH(2017)3, 18 January 2017); *Vaziani v. Georgia*, no. 19377/09 (Resolution CM/ResDH(2017)59, 22 February 2017); *Sharashenidze v. Georgia*, no. 5842/11 (Resolution CM/ResDH(2017)118, 19 April 2017); *Dvali v. Georgia*, no. 64260/09 (Resolution CM/ResDH(2017)154, 7 June 2017); *Gamsakhurdia v. Georgia*, no. 59835/12 (Resolution CM/ResDH(2017)202, 5 July 2017); *De Pita v. Georgia*, no. 22958/11 (Resolution CM/ResDH(2017)389, 22 November 2017); *Urushadze and Urushadze v. Georgia*, no. 37395/09 (Resolution CM/ResDH(2018)282, 5 September 2018); *Surmanidze and Others v. Georgia*, no. 11323/08 (Resolution CM/ResDH(2018)351, 20 September 2018); *Vashakidze v. Georgia*, no. 41359/08 (Resolution CM/ResDH(2018)432, 6 December 2018); *Vakhtang Gabunia and Others v. Georgia*, no. 37276/05 (Resolution CM/ResDH(2019)89, 24 April 2019); and *Gegenava and Others v. Georgia*, no. 65128/10 (Resolution CM/ResDH(2019)362, 5 December 2019).

[65] The friendly settlements concern: *Baghashvili v. Georgia* (dec.), no. 5168/06, 18 March 2014; *Bekauri and Others v. Georgia* (dec.), no. 312/10, 15 September 2015; *Chantladze v. Georgia* (dec.), no. 60864/10, 30 June 2015; *Chkotua and Arkania v. Georgia* (dec.), no. 60909/08, 20 May 2014; *Dzebniauri v. Georgia* (dec.), no. 67813/11, 9 September 2014; *Kiziria v. Georgia* (dec.), no. 4728/08, 11 March 2014; *Kopadze v. Georgia* (dec.), no. 58228/09, 10 March 2015; *Lanchava v. Georgia* (dec.), no. 28103/11, 23 June 2016; *Manukian v. Georgia*

European Court 4 or more years ago.[66] Moreover, action plans/reports were awaited in respect of 7 of the judgments[67] and information on payment was awaited in respect of one other.[68]

19. In addition, as of January 2020, there were 607 pending applications before the European Court. [69]

C. MEASURES AND PROCESS FOR EXECUTION

20. This section considers first what measures may need to be adopted once there is a judgment of the European Court finding a violation of the European Convention or the conclusion of a friendly settlement in respect of an application submitted to it. It then reviews the process by which those steps are to be established and the process followed within the Council of Europe as regards ensuring the satisfactory execution of judgments and friendly settlements.

1. Measures

21. Each case in which a violation is found by the European Court or a friendly settlement is concluded will have its own particular features and thus require the adoption of measures tailored to them.

22. Nonetheless, the essential objectives in either situation are to ensure that the measures taken deal both with the specific situation of the individual applicant and with any shortcomings in law or practice that gave rise to the application concerned, i.e., the general position regarding compliance with the requirements of the European Convention..

23. In the case of the former objective, the effect of the measures should be, as the European Court has made clear on many occasions, "to put the applicant, as far as possible, in the position he would have been in had the requirements of the Convention not been disregarded"[70], i.e., to achieve the applicant's *restitutio in integrum*.

(dec.), no. 2146/10, 31 January 2019; *Molashvili v. Georgia* (dec.), no. 39726/04, 30 September 2014; *Mzelalishvili v. Georgia* (dec.), no. 8177/12, 10 February 2015; and *Studio Maestro Ltd. and Others v. Georgia* (dec.), no. 22318/10, 30 June 2015. See also the analysis in respect of Georgia by the European Implementation Network (EIN) at: http://www.einnetwork.org/georgia-echr.

[66] *Shamayev and Others v. Georgia and Russia*, no. 36378/02, 12 April 2005; *97 members of the Gldani Congregation of Jehovah's Witnesses and 4 Others v. Georgia*, no. 71156/01, 3 May 2007; *Tsintsabadze v. Georgia*, no. 35403/06, 15 February 2011; *Enukidze and Girgvliani v. Georgia*, no. 25091/07, 26 April 2011; *Makharadze and Sikharulidze v. Georgia*, no. 35254/07, 22 November 2011; *Mikiashvili v. Georgia*, no. 18996/06, 9 October 2012; *Dvalishvili v. Georgia*, no. 19634/07, 18 December 2012; *Begheluri and Others v. Georgia*, no. 28490/02, 7 October 2014; *Identoba and Others v. Georgia*, no. 73235/12, 12 May 2015; and *G.S. v. Georgia*, no. 2361/13, 21 July 2015.

[67] *Bartaia v. Georgia*, no. 10978/06, 26 July 2018; *Batiashvili v. Georgia*, no. 8284/07, 10 October 2019; *Gelenidze v. Georgia*, no. 72916/10, 7 November 2019; *Jishkariani v. Georgia*, no. 18925/09, 20 September 2018; *Kereselidze v. Georgia*, no. 39718/09, 28 March 2019; *Kobiashvili v. Georgia*, no. 36416/06, 14 March 2019; and *Svanidze v. Georgia*, no. 37809/08, 25 July 2019.

[68] *Shamayev and Others v. Georgia and Russia*, no. 36378/02, 12 April 2005.

[69] See its factsheet concerning Georgia: https://www.echr.coe.int/Documents/CP_Georgia_ENG.pdf.

[70] See, e.g., *Del Río Prada v. Spain* [GC], no. 42750/09, 21 October 2013, at para. 137.

24. As regards the latter one, the obligation under Article 46 of the European Convention to abide by the final judgment of the European Convention also requires that the High Contracting Party concerned should "put an end to the situation that gave rise to the finding of a violation".[71]

25. A similar obligation stems in the case of friendly settlements from the requirement that these be "on the basis of respect for human rights as defined in the Convention and the Protocols thereto".[72]

26. The nature of some violations – notably in the case of violations leading to a person's death or imprisonment - may mean that the making of a payment in respect of compensation, costs and expenses will be the most that can be done by way of *restitutio in integrum*.

27. However, as has been seen in the previous section[73], there will be many violations or friendly settlements where the individual measures that ought to be adopted will not be limited to making such payments. Instead, they could extend to a wide range of actions, including the re-opening of judicial proceedings, the adoption or reversal of decisions by public authorities and the making of various practical arrangements either to undo the consequences of a violation or to mitigate its future effects (such as the provision of a substitute for an item taken or destroyed and the provision of treatment for injuries or illness occasioned by the violation).

28. The more general measures required can be equally wide-ranging. In some instances, there may be a need to change the substance of the law, whether through an amendment to one or more provisions in a particular law or through the replacement of an entire law by a new one or the adoption of a law dealing with a matter not previously addressed. In other instances, the problem that may need to be addressed is not the content of the law but the way in which it has been interpreted and applied, for which the issuing of guidance and/or training for those concerned may be sufficient to preclude a repetition of the problem that led to the judgment of the European Court or the conclusion of a friendly settlement.

29. Often, however, the problems requiring attention will have been occasioned by the inadequacy of administrative, institutional and organisational arrangements, whether in terms of the existence of appropriate supervisory or monitoring systems, the allocation of responsibilities, the availability of a sufficient level of staffing and financing for particular activities to be undertaken or the provision of suitable equipment and premises for this purpose.

30. The adoption of the particular measures required following the delivery of a judgment by the European Court or the conclusion of a friendly settlement will in many instances be only a matter for the executive and judiciary. However, apart from the possibility of it overseeing whether these have acted appropriately, the legislature will also have particular responsibility to act where the measures required to be taken would entail the

[71] Ibid, at para. 138.
[72] Article 39(1) of the European Convention.
[73] See paras. 14 and 15 above.

adoption and amendment of legislation and/or the provision of finance for the executive and the judiciary.

2. Process

31. This sub-section considers the extent to which the measures required will be determined by the European Court and the process of otherwise determining them in the course of the supervision of execution by the Committee of Ministers.

a. Determination by the European Court

32. The determination of what measures are actually required in a given case is one that can involve both the European Court and the Committee of Ministers.

33. Thus, both individual and general measures may be specified as required by the European Court in the operative part of its judgment and they can also be in the terms of the friendly settlement which it approves under Article 39(3) of the European Convention.

34. In the case of judgments, the individual measures prescribed by the European Court are generally restricted to the award of compensation, costs and expenses. However, as has been seen, it may in some cases order particular action to be undertaken with respect to the applicant. Although still an unusual feature of judgments, the possibility of such an order being made can no longer be excluded.

35. The payment of compensation, costs and expenses will also be a feature of friendly settlements. However, the commitments made in them can also often include specific undertakings to act in a way that will be beneficial for the applicant.

36. Most judgments do not indicate the general measures that will be required. However, they will be specified by the European Court in pilot judgments dealing with a systemic or structural problem relating to a requirement under the European Convention. In some instances, general measures will also be specified in judgments that are not pilot ones. However, this is rather exceptional.

37. In addition, to the specification of individual and general measures in the operative part of a judgment – which are thereby binding on the High Contracting Party concerned pursuant to Article 46 of the European Convention – the European Court may also suggest such measures in the course of its judgment. Such suggestions may indeed be adopted but there is no automatic requirement for this to be done.

38. Thus, the determination of what measures are required following a finding of a violation of the European Convention will not necessarily be resolved by the judgment itself. This becomes, therefore a matter normally to be resolved in the course of the process of supervising the execution of the judgment by the Committee of Ministers.

39. On the other hand, the terms of the friendly settlement will make it clear what measures – both individual and general – should be taken and the process before the Committee of Ministers is concerned only with ensuring that this happens.

b. Supervision by the Committee of Ministers

40. The responsibility for supervising the execution of friendly settlements and judgments of the European Court has been entrusted to the Committee of Ministers by respectively Articles 39(4) and 46(2) of the European Convention following their transmission to it.[74]

41. While the measures required are usually clear in the case of friendly settlements, those to be taken in the case of judgments – other than the ones actually specified in their operative parts – are often established in the course of the supervision process.

42. States are expected by the Committee of Ministers to indicate the measures that they have taken and/or plan to take in an action plan.

43. Moreover, it is well-established in the case law of the European Court that a High Contracting Party generally has a discretion as to the choice of general and/or individual measures required for the execution of a judgment.

44. This is especially the case where the Court has not, in its judgment, given any indication as to how it should be executed.[75]

45. However, the discretion that a High Contracting Party enjoys under Article 46 is subject to three interlinked limitations.

46. Firstly, the means chosen must be compatible with the conclusions contained in the Court's judgment.[76]

47. Secondly, in exercising their choice of individual measures, the High Contracting Party must bear in mind their primary aim of achieving *restitutio in integrum* for the applicant.[77]

48. Thirdly, the nature of the violation found may be such as to leave the High Contracting Party no real choice as to the individual measures which it is required to take.

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[74] There is no provision for the supervision of the execution of a unilateral declaration that has led to the striking out of an application under Article 39(1)(c) of the European Convention, which permits the European Court to do this "where the circumstances lead to the conclusion that … it is no longer justified to continue the examination of the application". However, pursuant to Article 37(2), the Court will reserve the right to restore such an application (or part of it, as appropriate) to its list; see *Aleksentseva and Others v. Russia* no. 75025/01, 17 January 2008 and *Jeronovičs v. Latvia* [GC], no. 44898/10, 5 July 2016. See also *Jashi v. Georgia* (dec.), no. 10799/06, 9 December 2008, which was restored to the list after an undertaking in a plea bargain that had led to the withdrawal of the application was not fulfilled.

[75] See, e.g., *Emre v. Switzerland (No. 2)*, no. 5056/10, § 69, 11 October 2011.

[76] See, e.g., *Assanidze v. Georgia* [GC], no. 71503/01, paras. 198 and 202; *Ilaşcu and Others v. Moldova and Russia* [GC], no. 48787/99, para. 490; *Al Saadoon and Mufdhi v. the United Kingdom*, no. 61498/08, para. 170; and *Hirsi Jamaa and Others v. Italy* [GC], no. 27765/09, para. 209.

[77] *Proceedings under Article 46 § 4 of the Convention in the case of Ilgar Mammadov v. Azerbaijan* [GC], no. 15172/13, 29 May 2019, para. 150.

49. Whether the means chosen by a High Contracting Party are compatible with the conclusions contained in the European Court's judgment will be something that can only be determined by the result actually achieved by them.

50. In particular, those chosen should be such as ensures both that the violation found by the European Court to have occurred has ceased and that the injured party has, to the extent possible, been restored to the situation that existed before this occurred.

51. In this regard, it is especially important that the High Contracting Party can be seen to have undertaken examination of the reasoning in the European Court's judgment even though no specific measure for its execution had been indicated.[78]

52. Moreover, as the European Court has indicated, the execution of its judgments should involve good faith on the part of the High Contracting Party and take place in a manner compatible with the "conclusions and spirit" of the judgment.[79]

53. The situations in which the nature of a violation will be such as to leave no real choice as to the individual measures that should be taken have been found by the European Court to include, for example, ones to secure the release of a person who was being "held arbitrarily in breach of the founding principles of the rule of law"[80] and to seek assurances from another State that someone extra-judicially transferred to it would not be subjected to the death penalty.

54. There may also be situations in which a particular measure may be the most natural means of executing a judgment and best correspond to the principle of *restitutio in integrum* even though it is possible that another result might be acceptable.[81]

55. The fact that, in cases such as those discussed above the European Court has found it useful to indicate to the High Contracting Party the type of measures that might be taken to put an end to the situation which has given rise to the finding of a violation does not, however, mean that it is only in those cases where such an indication is given that a High Contracting Party will either have no choice as to individual or general measures to be taken in execution of a judgment or that such measures will not be the most natural means of doing so.

56. The indication of certain measures by the European Court undoubtedly helps the High Contracting Party in the execution of a judgment. However, the ultimate responsibility for determining how a judgment should be executed is that of the Committee of Ministers.

57. This has been confirmed by the European Court in its first judgment concerned with infringement proceedings brought under Article 46(4) of the European Convention by the Committee of Ministers with respect to an alleged failure to abide by a final judgment. Thus, it emphasised that:

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[78] *Emre v. Switzerland (No. 2)*, no. 5056/10, 11 October 2011, para. 69.
[79] *Ibid.*, at para. 75 and *Proceedings under Article 46 § 4 of the Convention in the case of Ilgar Mammadov v. Azerbaijan* [GC], no. 15172/13, 29 May 2019, para. 214..
[80] *Assanidze v. Georgia* [GC], no. 71503/01, paras. 199 and 202.
[81] *Emre v. Switzerland (No. 2)*, no. 5056/10, 11 October 2011, para. 75.

> An approach which limited the supervision process to the Court's explicit indications would remove the flexibility needed by the Committee of Ministers to supervise, on the basis of the information provided by the respondent State and with due regard to the applicant's evolving situation, the adoption of measures that are feasible, timely, adequate and sufficient.[82]

58. Thus, the obligation to execute a judgment requires that the measures taken by the High Contracting Party actually ensure that the violation concerned has ceased and that the injured party has, as far as possible, been restored to his, her or its pre-existing situation. Moreover, in certain cases, the nature of certain violation will mean that this obligation can only be fulfilled through the taking of one or more specific measures. In such cases, the High Contracting Party cannot claim that it has the right to determine how to execute the judgment of the European Court.

59. It is likely to be very unusual for there to be no choice of means as regards the general measures that are required for the execution of a judgment. Such a situation would probably only arise where there was a legislative provision that unambiguously conflicted with a requirement of the European Convention or where it would be impossible to prevent the recurrence of the violation found without the provision of additional resources or facilities.

60. Nonetheless, the approach followed by the Committee of Ministers in assisting the determination of general measures in its interaction with a High Contracting Party – including through the provision of legal expertise, round tables and training activities – has been endorsed by the European Court

61. Thus, it has stated that:

> 162. According to the Court's established case-law the execution process concerns compliance by a Contracting Party with its obligations in international law under Article 46 § 1 of the Convention. Those obligations are based on the principles of international law relating to cessation, non-repetition and reparation as reflected in the ARSIWA[83] …They have been applied over the years by the Committee of Ministers and currently find expression in Rule 6.2 of the Rules of the Committee of Ministers[84] …
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> 163. Accordingly, the supervision mechanism now established under Article 46 of the Convention provides a comprehensive framework for the execution of the Court's judgments, reinforced by the Committee of Ministers' practice. Within that framework the Committee's continuous supervision work has generated a corpus of public documents encompassing information submitted by respondent States and others concerned by the execution process, and recording decisions taken by the Committee in cases pending execution. That practice has also influenced general standard-setting in the Committee's Recommendations to the Member States on topics relevant to execution issues (for example Recommendation R (2000) 2 on the re-examination or reopening of certain cases at domestic level following judgments of the European Court of Human Rights or

[82] *Proceedings under Article 46 § 4 of the Convention in the case of Ilgar Mammadov v. Azerbaijan*, no. 15172/13, 29 May 2019, para. 184.

[83] Articles on Responsibility of States for Internationally Wrongful Acts; Report of the International Law Commission on the Work of its Fifty-third Session, Official Records of the General Assembly, Fifty-sixth Session (Supplement no. 10 (A/56/10), chap. IV.E.1 and chap. IV.E.2, pp. 46 and 133-145).

[84] "When supervising the execution of a judgment by the High Contracting Party concerned, pursuant to Article 46, paragraph 2, of the Convention, the Committee of Ministers shall examine: a. whether any just satisfaction awarded by the Court has been paid, including as the case may be, default interest; and b. if required, and taking into account the discretion of the High Contracting Party concerned to choose the means necessary to comply with the judgment, whether: i.individual measures have been taken to ensure that the violation has ceased and that the Injured Party is put, as far as possible, in the same situation as that party enjoyed prior to the violation of the Convention; ii. general measures have been adopted, preventing new violations similar to that or those found or putting an end to continuing violations" (footnotes omitted).

> Recommendation CM/Rec(2010)3 on effective remedies for excessive length of proceedings). The result is that the Committee of Ministers has developed an extensive *acquis.*
> 164. With this in mind, the Court notes that it has previously held that Article 41 is a *lex specialis* in relation to the general rules and principles of international law, whilst also concluding that this provision should be interpreted in harmony with international law (see *Cyprus v. Turkey* (just satisfaction), cited above, §§ 40-42). Having regard to its conclusions above concerning the legal framework for the execution process and the Committee of Ministers' *acquis,* it will adopt a similar approach in the present context and consider Rule 6 of the Committee's rules to reflect the principles of international law set out in the ARSIWA.[85]

D. THE ROLE TO BE PLAYED BY NATIONAL PARLIAMENTS

62. The only reference to a parliamentary role in the operation of the human rights mechanism established by the European Convention relates to that of the Parliamentary Assembly of the Council of Europe ("the Parliamentary Assembly") in the election of the judges of the European Court.[86] Thus, neither the Parliamentary Assembly nor national parliaments have any explicit role under the European Convention in the execution of friendly settlements and judgments of the European Court.

63. The absence of any formal role in respect of execution has not deterred the Parliamentary Assembly from becoming concerned about the extent to which High Contracting Parties are implementing judgments.

64. Its involvement has taken the form of monitoring the extent to which High Contracting Parties have either failed to implement judgments concerning them or have done so with significant delay. The results of this monitoring are seen in reports produced by the Parliamentary Assembly's Committee on Legal Affairs and Human Rights. Ten such reports have been prepared since 2001, together with information notes that focus on an individual High Contracting Party.[87]

65. Following these reports, the Parliamentary Assembly has adopted a series of resolutions and recommendations focusing on the execution process before the Committee of Ministers and drawing attention to shortcomings as regards the implementation of judgments both by specific High Contacting Parties and generally.

66. In its most recent resolution, the Parliamentary Assembly drew attention to serious structural problems in some High Contracting Parties that had not been resolved for over ten years and

> 7. The Assembly further notes that some cases involving other States Parties to the Convention also reveal "pockets of resistance", in particular concerning deeply ingrained political issues. The difficulties in implementing these judgments relate to the adoption not only of general measures (aimed at preventing fresh violations) but also of individual measures (aimed at *restitutio in integrum* for applicants) or payment of just satisfaction. Moreover, the Assembly observes that in some States parties the execution of the Court's judgments is surrounded by bitter political debate as certain political leaders seek to discredit the Court and undermine its authority.

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[85] *Proceedings under Article 46 § 4 of the Convention in the case of Ilgar Mammadov v. Azerbaijan*, no. 15172/13, 29 May 2019.
[86] Article 22.
[87] For the latest general report (AS/Jur (2019) 45, 22 November 2019), see http://www.assembly.coe.int/LifeRay/JUR/Pdf/DocsAndDecs/2019/AS-JUR-2019-45-EN.pdf.

> 8. The Assembly once again deplores the delays in implementing the Court's judgments, the lack of political will to implement judgments on the part of certain States parties and all the attempts made to undermine the Court's authority and the Convention-based human rights protection system. It reiterates that Article 46.1 of the Convention sets out the legal obligation for the States parties to implement the judgments of the Court and that this obligation is binding on all branches of State authority.
> 9. Thus, the Assembly once again calls on the States parties to fully and swiftly implement the judgments and the terms of friendly settlements handed down by the Court and to co-operate, to that end, with the Committee of Ministers, the Court and the Department for the Execution of Judgments of the European Court of Human Rights, as well as with other Council of Europe organs and bodies where applicable. For this co-operation to be fruitful, the Assembly recommends that the States parties, *inter alia*:
> 9.1. submit action plans, action reports and information on the payment of just satisfaction to the Committee of Ministers in a timely manner;
> 9.2. pay particular attention to cases concerning structural problems, especially those lasting over ten years, as well as all related cases;
> 9.3. provide sufficient resources to national stakeholders responsible for implementing Court judgments and encourage them to co-ordinate their work in this area;
> 9.4. provide more funding to Council of Europe projects that could contribute to improved implementation of Court judgments;
> 9.5. raise public awareness of issues relating to the Convention;
> 9.6. condemn any kind of political statement aimed at discrediting the Court's authority;
> 9.7. strengthen the role of civil society and national human rights institutions in the process of implementing the Court's judgments.
> 10. Referring to its Resolution 1823 (2011), the Assembly calls on the national parliaments of Council of Europe member States to:
> 10.1. establish parliamentary structures guaranteeing follow-up to and monitoring of international obligations in the human rights field, and in particular of the obligations stemming from the Convention
> 10.2. devote parliamentary debates to the implementation of the Court's judgments;
> 10.3. question governments on progress in implementing Court judgments and demand that they present annual reports on the subject;
> 10.4. encourage all political groups to concert their efforts to ensure that the Court's judgments are implemented.[88]

67. Resolution 1823 (2011)[89], to which this one referred, had emphasised that national parliaments were often overlooked in connection with the implementation of international human rights norms, particularly those in the European Convention.

68. In the view of the Parliamentary Assembly, national parliaments were:

> key to the effective implementation of international human rights norms at national level and fulfil their duty to protect human rights through legislating (including the vetting of draft legislation), involvement in the ratification of international human rights treaties, holding the executive to account, liaising with national human rights institutions and fostering the creation of a pervasive human rights culture.[90]

69. This Resolution went on to state that:

> 5. With respect to the implementation of judgments of the European Court of Human Rights (hereafter "the Court"), the Assembly:
> 5.1. believes 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;

[88] Resolution 2178 (2017), 29 June 2017.
[89] 23 June 2011.
[90] *Ibid*., para. 2.

5.2. regrets that the post-Interlaken debate on the future of the Convention system does not sufficiently take into account the potentially important role of parliaments and deplores the silence of the Izmir Declaration in this respect;
5.3. points to the positive examples in several member states, notably the United Kingdom, the Netherlands, Germany, Finland and Romania, which have set up parliamentary structures to monitor the implementation of the Court's judgments.
6. Furthermore, the Assembly:
6.1. encourages parliamentarians to monitor the determination and enforcement of human rights standards by the domestic judicial and administrative authorities;
6.2. urges parliamentarians to exercise their responsibility to carefully scrutinise the executive in their countries when it comes to the implementation of, in particular, international human rights norms;
6.3. calls on governments to involve national parliaments in the negotiation process of international human rights agreements and in the process of implementation of judgments of the European Court of Human Rights;
6.4. calls on all member states to provide for adequate parliamentary procedures to systematically verify the compatibility of draft legislation with Convention standards and avoid future violations of the Convention, including regular monitoring of all judgments which could potentially affect the respective legal orders;
6.5. urges parliaments to step up their efforts in contributing to the supervision of the Court's judgments by overseeing steps taken by the competent authorities to execute adverse judgments, including scrutiny of the actual measures taken;
6.6. calls on parliaments to set up and/or to reinforce structures that would permit the mainstreaming and rigorous supervision of their international human rights obligations, on the basis of the principles below.

70. The principles referred to in the last clause above were what the resolution termed "basic principles for parliamentary supervision of international human rights standards", which provide as follows:

1. Appropriate framework and responsibilities
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.
These remits should include, *inter alia*:

- *the systematic verification of the compatibility of draft legislation with international human rights obligations;*
- *the requirement for governments to regularly submit reports on relevant judgments of the European Court of Human Rights and their implementation;*
- *the initiation of legislative proposals and amendments to laws;*
- *subpoena powers over witnesses and documents concerning their remit.*

Such committees shall have the responsibility to ensure that parliaments are properly advised and informed on human rights issues. Human rights training should also be provided for parliamentarians and their staff.
2.Independent advice
Human rights committees or appropriate analogous structures shall have access to independent expertise in human rights law.
Adequate resources shall also be made available to provide specialised secretariat support.
3.Co-operation with other institutions and civil society
Co-operation and regular dialogue shall be maintained, as appropriate, with relevant national (for example, national human rights institutions, parliamentary commissioners) and international bodies (for example, the Parliamentary Assembly, the Council of Europe Commissioner for Human Rights, European and other international human rights monitoring bodies), as well as with representatives of well-established non-governmental organisations which have significant and relevant experience.

71. The Parliamentary Assembly has taken some steps to encourage the adoption of structures for parliamentary supervision in the form of seminars for parliamentarians and staff of parliaments[91], the preparation of a background memorandum[92] and the publication of a handbook[93]

72. These have all drawn on the evolving practice in the parliaments of Council of Europe member States. However, the most up to date picture of this practice is to be found in the Appendix to the latest report on the implementation of judgments by the Parliamentary Assembly's Committee on Legal Affairs and Human Rights, previously mentioned.[94]

73. This shows that, in terms of parliamentary structures, there continue to be the four different models in use that were identified in the background memorandum and the handbook, namely:

- A specialised human rights committee, i.e., one with a remit that is mainly or exclusively concerned with human rights and with specific functions dealing with matters such as the vetting of legislation for compliance with domestic, regional or international commitments and monitoring of the execution of judgments;
- A specialised sub-committee with such a human rights remit as the specialised committee that is formed under another committee with a wider mandate;
- A cross-cutting or fully 'mainstreamed model, i.e., one where there is no specialist committee or sub-committee but instead one which relies on all the parliamentary committees to deal with human rights matters as they arise within their respective mandates; and
- A hybrid model, i.e., one combining both specialisation and mainstreaming with more than one committee having human rights committee within its mandate, which may or may not include specific functions such as monitoring the execution of judgments.

74. The Parliamentary Assembly has not sought to prescribe the adoption of any particular model. Indeed, as its background memorandum observed, the effectiveness of a particular model may be dependent on the context in which it operates.

75. Thus, it noted that the Open Society Justice Initiative in a report[95] had:

> ventured to suggest that in a weak parliamentary system, characterised by strong party discipline and dominance by a single party, 'mainstreaming human rights might have little effect'.1Similarly, it adds, 'tacking human rights on to the mandates of other standing committees runs the risk of thin

[91] For further details regarding these, see http://website-pace.net/documents/10643/2107078/PPSD-2016-11-EN.pdf/e6677eff-0aef-4b2a-a6d6-9839a0a08231.

[92] The role of parliaments in implementing ECHR standards: overview of existing structures and mechanisms; available at: http://www.assembly.coe.int/CommitteeDocs/2014/E-PPSD14-22%20BackgroundECHRstandards.pdf.

[93] *National parliaments as guarantors of human rights in Europe*, downloadable at: https://edoc.coe.int/en/parliamentary-assembly/7770-national-parliaments-as-guarantors-of-human-rights-in-europe.html.

[94] See fn. 86 above.

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

> commitment to, and insufficient time and resources for, implementation'. In states where the execution of judgments and the verification of legislation for human rights compatibility is poorly coordinated within the executive, there may be advantages to having a specialised human rights committee or sub-committee, which is independent of the executive and can, over time, develop both systematic oversight mechanisms and human rights expertise among its members and staff.[96]

76. Furthermore, the background memorandum observed that:

> 13. In bicameral parliaments, if the decision is taken to have a specialised human rights committee, there appear to be merits in making it a joint committee of both houses in order to maximise the potential for both detailed scrutiny and political influence.
> 14. Despite the potential advantages of having a specialised human rights committee or sub-committee, there is a risk that leaving human rights scrutiny to a single specialised body may create a 'silo' within parliament and discourage the integration of human rights and related rule of law issues into the work of other committees. Moreover, the mere existence of a specialised committee does not guarantee effective implementation; rather, the effectiveness of such structures is dependent upon factors such as political will and the availability of expert legal advice.

77. Regardless of the model chosen, it is clear from the engagement of the Parliamentary Assembly's Committee on Legal Affairs and Human Rights and its secretariat with parliaments in Council of Europe member States, as well as from academic research, that there are a number of considerations which are critical for the effectiveness of parliamentary supervision over the execution of judgments of the European Court and of friendly settlements.

78. These considerations concern: the nature of monitoring body; the powers conferred on it; its manner of working; the resources available to it; and its engagement with others interested in the process of engagement

79. As regards the monitoring body itself, it is important that this:

a) has a permanent status, reflecting the fact that monitoring is necessarily an ongoing process, not only because the possibility of applications to the European Court and judgments or friendly settlements resulting from them is a continuing one but also because the achievement of execution requires the effectiveness of general measures taken to be kept under review;
b) has a composition and thus a method of appointment ensuring that it is both independent of the executive and is broadly-based so that its work can be as objective and non-partisan as possible; and
c) does not – if it is a specialist committee or sub-committee – lead to it having exclusive concern for the execution of judgments and friendly settlements in particular and the fulfilment of human rights commitments in general as these can have implications across the range of work undertaken by parliaments.

80. In terms of the monitoring body's powers, it is essential that its remit with respect to the execution of judgments and friendly settlements be explicitly and clearly defined in the relevant rules of the Parliament concerned so that there is no ambiguity as to its capacity to deal with this matter.

81. Furthermore, there is a need for it to have the powers to ensure that its monitoring is effective. This would entail the power: (a) to require or subpoena the production of

[96] Paragraph 12 of the background memorandum.

documents (including action plans for execution) and the attendance of witnesses (including officials and ministers); and (b) to set in train the process of amending or adopting legislation where this is seen to be necessary.

82. The exercise of such powers may not be necessary where there is a good working relationship between the parliamentarians and everyone else concerned with execution. Nonetheless, their existence is a necessary safeguard against any risk of attempts being made to impede or frustrate monitoring by a parliament.

83. As regards working methods, the process of monitoring should be systematic and continuing so that it is: (a) synchronised with the proceedings before the Committee of Ministers; (b) takes account of the need for urgency in particular cases; (c) precludes unnecessary delays; and (d) ensures a follow-up to action that has been recommended.

84. This will undoubtedly entail the monitoring body meeting more than once a year. However, the specific frequency of its meetings should be a consequence of the number and significance of the judgments and friendly settlements to be executed, as well as of the process before the Committee of Ministers.

85. Moreover, working on more than an annual basis does not mean that some form of annual report by the Government with respect to execution should not be expected and reviewed – as happens in many member States of the Council of Europe – as this can provide a broader picture of the state of execution. However, if the focus is only on such an annual report, there is a risk that momentum in ensuring the timeliness of execution will not be attained.

86. The issue of resources is crucial for the effectiveness of parliamentary monitoring of the execution of judgments and friendly settlements. In particular, the parliamentarians concerned would need to have available to them both an adequate level of specialised support staff and sufficient time to fulfil their responsibility in this matter.

87. Undoubtedly there will be parliamentarians with expertise in human rights in general and the case law of the European Court in particular but others will certainly not have such expertise.

88. As a result, given both the diversity of the issues that can be raised and the desirability of drawing upon the experience of other member States who have had to deal with similar or related issues thrown by a particular case, the assistance of specialised support staff will in most instances be indispensable for determining what might be required where a violation of the European Convention has been found by the European Court and whether or not the measures being proposed might be sufficient to remedy it.

89. It will be important that the specialised staff are able to provide independent advice to all parliamentarians, whatever their political affiliation.

90. Moreover, such staff ought to have adequate time to prepare their advice. This will, of course, have implications for the extent of their other obligations and/or the number of them available to fulfil this task.

91. Although those providing the advice ought generally to be regular parliamentary staff, there should also be the possibility of the body being able to call upon outside experts where required for a specific case being examined.

92. In addition to having such support staff, it is also vital that the allocation of time for the monitoring process is actually sufficient for this both to be done properly and in a timely fashion. This necessarily has implications not only for the scheduling arrangements within the parliament concerned but also for the commitments of the parliamentarians involved.

93. The government will invariably be seen as the principal entity with which the work of the monitoring body should be concerned since it has to take part in the process before the Committee of Ministers and has the ultimate responsibility for execution, even if this may sometimes require the adoption of legislation by the parliament.

94. However, the execution of a judgment or a friendly settlement will be of concern to others who may be able to assist the monitoring process. These will include the applicant and his or her representative in the case with which monitoring is concerned. It will also include those who have specific responsibilities for the protection of human rights, such as national human rights institutions and ombudsperson.

95. Moreover, it will include non-governmental organisations and academic experts working in the field of human rights as their activities will mean that they are likely to have especial insights into both the problems that led to relevant the application to the European Court and the measures that may be needed to address them.

96. Furthermore, the body responsible monitoring may, in particular cases, be able to derive some assistance from the input of regional and international bodies or institutions working on human rights institutions.

97. The ability to engage with all of the forgoing actors is something to be covered in the powers conferred on the monitoring body. The availability of such a power is not, however, sufficient, as is clear from the experience of parliaments that already monitor the execution of judgments and friendly settlements. There must also be an unqualified willingness to undertake such engagement with these actors. Indeed, this should be seen as an integral part of the monitoring process.

98. Although the needs assessment is concerned with the execution of judgments and friendly settlements, the case law of the European Court resulting from applications brought in respect of a member State other than one's own ought also to be of concern for parliamentarians.

99. This is because the taking of such case law into account can: (a) lead to the revision of legislative proposals so that they do not result in the same or similar violations found by the European Court; (b) indicate the possibility that proposed budgetary allocations would be insufficient to prevent such violations from occurring; and (c) give notice of problems with existing law and practice that require attention so that there is then a possibility of addressing them before an application to the European Court is made or determined.

100. In the event of a specialist committee or sub-committee being tasked with monitoring the execution of judgments and friendly settlements, this could also be entrusted with the related responsibility of identifying problems of compliance with the European Convention that arise from existing law and practice.

101. However, in the case of preventing from problems of such compliance being introduced through new legislation or proposed budgetary allocations, it would be inappropriate for this to be the sole responsibility of such a body as parliamentarians as a whole should take responsibility for fulfilment of treaty commitments made by the State. Nonetheless, much of the methodology set out above for monitoring execution – especially as regards the provision of advice by specialised support staff and recourse to outside expertise – will be relevant for the purpose of scrutinising legislative and budgetary proposals with a view to their adoption having an adverse impact on the observance of human rights obligations.[97]

E. THE PRACTICE OF THE PARLIAMENT OF GEORGIA

102. This section reviews the existing arrangements for monitoring by the Parliament of Georgia of the execution of judgments and friendly settlements, as well as for scrutinising the compatibility of draft legislation with the requirements of the European Convention and taking into account judgments of the European Court in respect of other member States of the Council of Europe.

103. It first looks at the legal basis for monitoring execution and the procedure to be followed. Thereafter, it considers the information on which the monitoring is based, the support provided by parliamentary staff and the outcome of the monitoring procedure. It concludes by noting the approach to scrutinising draft legislation and taking account of judgments involving other States.

1. The legal basis for monitoring

104. A mechanism for the monitoring of the execution of judgments of the European Court, as well as of friendly settlements that have been concluded, was established in 2016 through an amendment by the Parliament of Georgia to its Rules of Procedure.[98]

105. According to this amendment, the Government of Georgia is required prior to 1 April each year to present a report ("the annual report") on:

> a) executed friendly settlements and judgments in respect of which the Committee of Ministers adopted a final resolution during the previous year ("closed cases"; and
> b) action plans on the execution of friendly settlements and judgments with regard to cases pending before the Committee of Ministers, as well as any decisions and

[97] Such scrutiny could also be assisted by requiring some form of human rights impact assessment by those responsible for introducing legislative proposals. However, this ought not to be the only basis for considering the potential effect of these proposals.
[98] Article 238 of the 2012 Rules and Article 175 of the current (2018) Rules.

interim resolutions of the Committee of Ministers concerning these cases ("pending cases").

106. No specific provision is made for reporting on the execution of cases in which unilateral declarations have been adopted by the Government and the European Court has then struck out the applications from its list. There is also no provision as to the form of the report.

107. In accordance with Article 176 of the Rules of Procedure, when the Parliament receives the annual report[99], the Bureau is to take a decision on: (a) commencing the procedures for examining the reports; (b) defining the leading and mandatory Committees[100]; and (c) setting the deadline for parliamentary examination of the reports.

108. Pursuant to standing practice, the Human Rights and Civil Integration Committee ("the Human Rights Committee")[101] is the leading committee and the Legal Issues Committee is the mandatory one. Thus, it is the former that has the primary role of reviewing the annual reports.

109. Under the Rules of Procedure, the annual report should be sent to the leading and mandatory Committees, other committees, parliamentary factions (groups) and the parliamentary majority and minority.[102]

110. Apart from its role in overseeing the execution of judgments and friendly settlements, the Human Rights Committee's competence relates to:

- developing, discussing and preparing drafts of laws, ordinances and other decisions for the plenary session of the Parliament;
- participating in the consideration and elaboration of draft laws submitted to the Parliament, prepare conclusions and submit the paper reflecting the status of considering in the draft remarks on draft laws to the relevant body of the Parliament and the author of each remark;
- overseeing the implementation of laws, resolutions of the Parliament and other decisions and submit relevant conclusions to the Parliament, if necessary;
- exercising parliamentary oversight over the implementation of the recommendations adopted by the resolution of the Parliament on the basis of the Annual Parliamentary Report of the Public Defender of Georgia; and
- overseeing the activities of the bodies accountable to the Parliament and the Government activities and submit the report to the Parliament, if necessary.[103]

111. The Committees, parliamentary factions (groups) and the parliamentary majority and minority are required to convey their comments and remarks on the annual report to the Leading committee within the deadline set by the Bureau of the Parliament.[104].

112. Unlike parliamentary factions (groups) and the parliamentary majority and minority, the Legal Issues Committee is obliged to submit to the Human Rights Committee its opinion on the annual report.

[99] In practice, there are two separate reports, one on closed cases and the other on pending cases.
[100] The Parliament has 15 Committees.
[101] This is comprised of 15 Members of Parliament from the ruling party and the opposition.
[102] Article 176(3).
[103] Information provided by the Parliament.
[104] Article 176(4).

113. The annual reports submitted by the Ministry of Justice, as well as all related documents (including opinion by Human Rights Committee) are accessible to the public.

114. The Human Rights Committee will, following the submission of the annual report, convene a meeting to which representatives of the Ministry of Justice are invited.

115. Furthermore, an innovation made in 2018 has been to allow civil society representatives or any interested person to attend the meeting of the Human Rights Committee. The approach taken by the Parliament is non-governmental organisations should be able to represent the interests of persons whose rights might be affected by legislation and policy.

116. Non-governmental organisations and any interested person can not only take part in the hearing of the Human Rights Committee but can also submit in advance their comments on the execution of judgments and friendly settlements.

117. The hearings of the Human Rights Committee are open to the general public and they are also livestreamed.

118. Afterwards, the Human Rights Committee will discuss the annual report in its session and prepare an opinion which is approved by majority of those present at its meeting. The opinion is then presented to the Bureau.[105] The arguments in favour of discussing the report at the Plenary session is conveyed to the Bureau by the Legal Issues Committee.

119. According to the Rules of Procedure, the Plenary Session may take a decree following the discussion on the annual report.

120. The Rules of Procedure do not prescribe any requirement for their compulsory examination at the Plenary Session and do not define any criteria for taking a decision for examination of this item at the Plenary Session. In fact, since the establishment of this mechanism, the reports have not so far been discussed at the Plenary Session. [106]

2. The Information Considered

121. The Government has commissioned the Ministry of Justice to prepare and present the annual report as the Office of the Government Agent to the European Court is located within it.

122. Although *stricto sensu* the Parliament only requires the Government to submit a report on the cases that have been or are being supervised by the Committee of Ministers, the Ministry of Justice in 2019 acceded to a request by the Human Rights Committee to widen the scope of its report to provide information about certain other cases which are closed but which are not subject to supervision by the Committee of Ministers, i.e., applications struck out under Article 37 of the European Convention.[107]

[105] Article 176(5).
[106] Fourth report will be examined following its submission on 1 April 2020.
[107] As to which, see fn. 73 above. There has been one such case involving Georgia; *Union of Jehovah's Witnesses and Others v. Georgia* (dec.), no. 72874/01, 21 April 2015.

123. Both reports prepared by the Ministry of Justice are quite detailed, describing the cases concerned and focusing on the general and individual measures taken or to be taken.[108] Preparation takes time as the Ministry the material on which they based is that submitted to the Committee of Ministers, which is English and that then has to be translated into Georgian for the Parliament.

124. There was some concern as to whether the reports were too elaborate, making it difficult for members of the Human Rights Committee to digest or identify the problematic issues. However, effective scrutiny of execution depends upon attention to detail and those members of the Committee who are not specialists can, if necessary, draw upon the expertise of their colleagues and also of the specialised support staff.

125. At the same time, it could be useful for the material submitted to the Committee of Ministers to be either annexed to the reports or made accessible through a web link. Although this material would be in English, it would allow fuller examination to be undertaken by members of the Committee, if considered appropriate, and also be a basis for others appearing before it to refer to any matters thought to have been overlooked or over-simplified in the reports.

126. Many of the pending cases concern events in the past and this can hamper the Ministry of Justice in the steps that can be taken to resolve them, particularly where there was found by the European Court to be a failure to conduct an investigation and now witnesses cannot be traced or are not available. The Ministry of Justice does not provide details regarding the conduct of investigations in specific cases, where these are needed by a judgment, as it does not want to undermine the independence of the prosecution. Such information can be crucial for assessing the effectiveness of the action being taken and, even if not in the report, can be seen in the action plans submitted to the Committee of Ministers, which are public documents.

127. At its meeting with representatives of the Ministry of Justice, the members of the Human Rights Committee will engage in discussion with them, ask them questions and seek clarifications and explanations regarding why specific measures have or have not to be taken with regard to the cases concerned.

128. Since the innovation allowing civil society representatives and interested persons to attend the meeting of the Human Rights Committee, some non-governmental organisations have been actively involved in the discussion not only with the parliamentarians but also with the representatives of the Ministry of Justice. However, it appears that the hearings do not always involve representatives of the Ministry of Justice and of non-governmental organisations at the same time so then there is no interaction. Moreover, the Human Rights Committee expressed some uncertainty as to which non-governmental organisations it should invite.

129. As well as taking part in the hearings, non-governmental organisations can submit in advance their comments or alternative reports on the annual report. These are supposed to be published on the Parliament's website. However, non-governmental organisations did not consider that this happened.

[108] Their length varies. Thus, they comprised 19 pages in 2017, 142 in 2018 and 95 in 2019.

130. However, there was some concern on the part of non-governmental organisations as to whether there was sufficient time to prepare before the hearing and to contribute effectively to it. At the same time, the Ministry of Justice was concerned not to be aware of the issues to be raised by non-governmental organisations before the hearing so that it could address them in its contribution.

131. Not all cases are the result of applications submitted by non-governmental organisations (whether as representatives or as applicants themselves). However, so far, the Human Rights Committee has not heard from either the parties or their legal representatives in which non-governmental organisations were not involved.

132. So far, representatives of the Office of the Public Defender of Georgia (Ombudsperson) have not been involved in this process despite being invited to hearings of the Human Rights Committee and despite the clear interest of this institution in the issues under examination. Its reports do not deal specifically with the execution of the European Court's judgments and friendly settlements, looking instead at the overall situation regarding the implementation of rights and freedoms.[109]

133. The Human Rights Committee does not have the authority to require the Prosecutor's Office to provide information about ongoing activities, which could be important when seeking to establish whether an effective investigation was now occurring in a case where the European Court had found a procedural violation of Articles 2 or 3 of the European Convention.[110]

134. The Analytical Department of the Supreme Court has prepared a report on enforcement of judgments of the European Court, including with respect to the reopening of cases where this seems to be required by the violation found. So far this has not been shared with the Human Rights Committee.

135. The Analytical Department has also been gathering some potentially relevant material concerning the rulings of the courts below the Supreme Court. This could be useful for the work of the Human Rights Committee. However, there are limitations on its resources to be able to undertake this in an extensive manner.

3. Parliamentary Staff

136. The Human Rights Committee has 15 permanent members of the staff. Three of these deal with issues related to the European Convention. However, they also have other, important responsibilities that call upon the time they can give for those issues.

137. In addition, there is the Legal Entity of Public Law (LEPL) – Parliamentary Research Centre which can, if requested, conduct research or seek information on a specific issue.

[109] Its annual human rights reports do, however, include some references to the execution of the judgments and it should be noted that the Office has participated in the execution process through making Rule 9 submissions to the Committee of Ministers.

[110] Or indeed in the execution of judgments involving other provisions of the European Convention for which an effective investigation could be important.

4. Assessment and Follow-up

138. The Human Rights Committee has established a practice of trying to verify information in the reports submitted by the Ministry of Justice.

139. This is done on the basis of the information from various public sources such as media reports, websites of various states institutions (for example Prosecutor's office), the reports of the Public Defender (Ombudsperson) and information provided by non-governmental organisations. Such information can give the Human Rights Committee an opportunity to see the full picture regarding specific cases and the measures taken with respect to them by the Government.

140. The practice of the Human Rights Committee is to give recommendations to the Government both of general character and on specific pending cases. In practice, these recommendations are forwarded to the Bureau which has no obligation to send them to the Government.

141. In respect of the cases for which the Committee of Ministers has adopted a final resolution, no additional recommendations for steps to be taken by the Government are made.

142. As regards pending cases, the Human Rights Committee's opinion will evaluate the Government's activities and make recommendations with respect to pending cases and these can concern the need for legislative reform and training.

143. However, non-governmental organisations are concerned that this does not occur in respect of all cases and that the recommendations are insufficiently specific, with the reports as a whole not being particularly analytical.

144. Moreover, although the Human Rights Committee cannot obtain specific information about ongoing cases from the Prosecutor's Office, there was also concern that there are not recommendations as to the general nature of the steps needed to be taken. In addition, they consider that information requested by the Committee of Ministers should also be provided to Parliament.

145. The conclusions to the opinion adopted by the Human Rights Committee will include information regarding the fulfilment of recommendations made by it in the previous year. The Human Rights Committee will also maintain contact with the Ministry of Justice as regards the implementation of its recommendations and they will organise meetings to discuss additional steps to be taken.

146. There is also no follow-up to see whether the general measures considered sufficient by the Committee of Ministers to allow it to adopt a final resolution are actually effective in practice.

5. Scrutiny of draft legislation

147. Article 17 of the Law of Georgia on Normative Acts (2009) requires that all draft normative acts be accompanied by a memorandum which reflects the compliance of the

draft with international legal standards, European Union law and Georgia's bilateral and multilateral treaties. Implicitly, compatibility with the European Convention and the case law of the European Court should thus be addressed in the memorandum. However, this does not seem to occur on a systematic basis.

148. This requirement is applicable not only to the drafts prepared by the executive but also those made at the initiative of the parliament. However, there is no specific provision requiring that compliance with the case law of the European Court be addressed in the memorandum.

149. Where a provision in a draft law is based on a judgment of the European Court, this should normally be indicated in the memorandum as the reason for the proposal.

150. A draft law submitted by the executive to the Parliament will go not only to the relevant Committees – determined by the Bureau according to their thematic competence - but also to the Legal Service of the Parliament.

151. Despite their wide mandates, the competences of the Legal Issues and Human Rights Committees[111] are not clearly defined as regards the possibility of them examining – whether as the leading or mandatory Committee - draft laws for the legal and human rights issues that might be posed by provisions in them.

152. Nonetheless, it is understood that the Human Rights Committee does review the compliance of some draft laws with the European Convention and the case law of the European Court, as well as their compliance with the Constitution, rulings of the Constitutional Court and rulings of other courts on human rights issues.

153. However, it is not entirely clear on what basis this occurs and whether or not this happens on a regular basis or only on an *ad hoc* one. It is understood that this is supposed to happen where the draft law concerns human rights. However, this is not something always evident on its face and the Bureau may not be best placed to make that judgment.

154. Moreover, the extent to which the Human Rights Committee is able to analyse a draft law's provisions for issues of compliance with the requirements of the European Convention will necessarily be constrained by the limited number of the staff that it has specializing on European Convention standards.[112]

155. It is unclear to what extent, if any, other Committees will have regard to possible problems of a draft law's provisions with the requirements of the European Convention and what would follow should such a problem be found to exist.

156. The Legal Service of the Parliament does, however, try to verify the compliance of the draft with the requirements of the European Convention. Nevertheless, its resources are limited and, given that many draft laws have to be adopted under time-pressure, it is not realistic to expect it to be able to make a thorough analysis of the provisions in the draft law in the light of the European standards.

[111] For that of the Human Rights Committee, see para. 109 above.
[112] See para. 133 above.

157. In addition, the Parliament may seek the advice of a local or foreign expert regarding proposals in draft legislation and this may extend to issues of its compliance with the requirements of the European Convention.

158. It is the responsibility of the leading and mandatory Committees to outline their position regarding a draft law in their conclusions, which will also include recommendations and other remarks. These will be transferred to the Organisational Department of the Office of the Parliament, which is responsible for guaranteeing the accessibility of the conclusions to each Member of Parliament. The conclusions are also posted on the Parliament's website.

159. There is no specific provision for consideration of problematic aspects of provisions as regards compliance with the requirements of the European Convention in the subsequent examination of the draft law concerned by Parliament. However, this may lead to the adoption of amendments in the course of the process of adopting the draft law.

6. Monitoring judgments against other states

160. It is undoubtedly open to the Parliament to request the Government to identify and send to it those judgments of the European Court against other States which may have implications for law or policy in Georgia. However, it does not seem that this is happening at present.

161. Account can also be taken of information concerning these cases that is made available by the Analytical Department of the Supreme Court. This has been cooperating with the Ministry of Justice in uploading cases for the interface with HUDOC in Georgian. However, there are at present only 885 cases on HUDOC in Georgian out of a total of more than nineteen thousand judgments.

162. In any event, there is so far no developed practice as regards establishing those issues of Georgian law and practice that seem to require attention in the light of the developing case law of the European Court.

F. ASSESSMENT AND RECOMMENDATIONS

163. The present arrangements – which seem to be marked by a positive spirit of cooperation between the Government and Parliament - tick in a satisfactory manner a number of the boxes in the resolutions of the Parliamentary Assembly and, as regards transparency, even goes beyond them.

164. Thus, a hybrid model has been adopted to pursue Parliament's concern with human rights, with all Committees potentially having the ability to have some involvement in this, not least because they receive the reports prepared by the Ministry of Justice, and all Members of Parliament able to attend meetings of the Human Rights Committee without being a member of it. However, it is the Human Rights Committee which has specific responsibilities in this regard, including as regards the monitoring of the execution of judgments and friendly settlements.

165. Moreover, this arrangement has a degree of permanence with the monitoring role being and the mandate of the Human Rights Committee more generally being prescribed in the Rules of Procedure.

166. Furthermore, there is an explicit requirement for the Government to report annually to Parliament on the execution of judgments and friendly settlements.

167. In addition, there is provision for the involvement of civil society in the process and other institutions, such as the Public Defender (Ombudsperson) could also become involved if they wished to do so.

168. Also, this process is inclusive not only with regard to the involvement of the various actors in the Parliament, including other Committees, Parliamentary factions (groups), the parliamentary majority and minority and the representatives of the Ministry of Justice but also to that of non-governmental organisations and any interested persons which may want to present their views.

169. Finally, the process seems to be highly transparent, with relevant material from the Government being made available on the website of the Parliament and the livestreaming of hearings by the Human Rights Committee.

170. However, there are a number of ways in which the process could be made more effective.

i. Mandate

171. In the first place, the remit of the Human Rights Committee should extend to the execution of undertakings made in unilateral declarations that lead to the striking out of applications to the European Court.

ii. Reporting requirements

172. Secondly, although an annual report is something recommended by the Parliamentary Assembly, this is not the only way in which the monitoring of execution can take place. Indeed, following this approach exclusively will necessarily mean that the monitoring will be significantly out of step with the process taking place before the Committee of Ministers in respect of cases for which no final resolution has been adopted. It can also result in a lack of urgency in responding to the requirements of these cases.

173. There is thus a need for the Human Rights Committee to be informed directly when a judgment finding a violation of the European Court, a friendly settlement is reached or a unilateral undertaking leads to the striking out of an application.

174. This should not entail an excessive burden of translation for the Ministry of Justice. Rather, it should just be in the form of a brief note in Georgian as to what has occurred with a link to the detailed information on HUDOC.

175. Such a notification should then be followed by regular and contemporaneous updates on communications with the Committee of Ministers following a similar pattern.

176. This would enable the Human Rights Committee to have a better appreciation of the process and to determine whether or not a particular case should be discussed - outside the examination of an annual report - on account of its urgency or the particular significance of the violation involved. All this information should be placed on the website of the Parliament.

177. Thirdly, there should continue to be annual reports by the Ministry of Justice on execution as these provide an opportunity to take stock of progress in execution.

178. However, there is a need for a format for these reports to be prescribed. This should be one that is not unduly burdensome for the Ministry of Justice to compile. Nonetheless, it should be structured in a way that enables the steps taken to implement recommendations previously made by the Human Rights Committee, as well as ones not yet addressed, to be clearly seen.

iii. Submissions and hearings

179. Fourthly, the organisation of hearings by the Human Rights Committee to consider an annual report should ensure that they are held only after a reasonable interval has elapsed after a deadline has been prescribed in an invitation to interested persons and bodies to submit written comments on it.

180. The invitation to submit written comments should make it clear that "interested persons" are regarded as including not only non-governmental organisations but also the parties to the cases covered by the report (and/or their legal representatives), the Office of the Public Defender (Ombudsperson) and anyone else that might have relevant information.

181. Furthermore, this invitation, together with the annual report, should be posted on the web pages of the Human Rights Committee – and not just the website of the Parliament as at present - to raise the visibility of the monitoring process.

182. Fifthly, the Analytical Department of the Supreme Court and the Public Defender (Ombudsperson) should be strongly encouraged to provide the Human Rights Committee with information relevant to the execution process and provided with additional resources required for this purpose. Their respective responsibilities put them in a particularly privileged position to provide such information.

183. In addition, there should be a readiness to cooperate with academic/research institutions and experts specializing on human rights when examining measures to execute judgments, friendly settlements and unilateral undertakings.

184. Sixthly, all written comments received should also be posted on the web pages of the Committee. This would also enable representatives of the Ministry of Justice to be aware of these comments before the relevant and prepare accordingly

185. Seventhly, invitations to take part in the hearings should be determined according to an assessment as to need to pursue points raised in the written comments, particularly those which suggest that there are potential shortcomings in proposals regarding execution.

186. Eighthly, the overall goal of the hearings should be to facilitate a constructive exchange regarding the cases being considered between members of the Human Rights Committee, the representatives of the Ministry of Justice and all other interested persons.

187. In particular, the organisation of the hearings should be made in such way that those invited to participate have a genuine opportunity to speak and to contribute in a meaningful way to the discussions that follow

188. Moreover, the organisation of the discussion in hearings should be such that there is a sequencing of the cases examined to ensure that the consideration of each of them remains focused.

189. Ninthly, whenever considered necessary, the Human Rights Committee should be able to hold hearings in respect of the execution of particular judgments, friendly settlements and unilateral undertakings outside of its consideration of annual reports.

iv. Documents and witnesses

190. Tenthly, there should be a clear power for the Human Rights Committee to able to require the production of documents and the attendance of witnesses that might assist it in the monitoring of execution.

191. These powers should extend to the Ministry of Justice and the Prosecutor's Office, although the latter should only be required to give information as to the general character of its response to the requirements a judgment or friendly settlement and should not be expected to give details on specific investigative steps taken or to be pursued, other than in cases on which these have been reported to the Committee of Ministers.

v. Opinions and recommendations

192. Eleventhly, recommendations included in the opinions adopted by the Human Rights Committee following its examination of an annual report or any other hearing concerned with execution particular judgments, friendly settlements and unilateral undertakings should be as precise as possible regarding the legislative, administrative or other measures that ought to be taken in respect of the cases considered.

193. The Human Rights Committee should always refer in its opinion to any instance where previous recommendations have not been acted upon.

vi. Follow-up

194. Twelfthly, there is a need for more formal arrangements regarding the follow-up to the Human Rights Committee's recommendations. As has been seen, there are currently some informal contacts between it and the Ministry of Justice. However, a more effective and transparent approach would be for the Ministry to be given a deadline to provide information about the steps taken or being taken to implement these recommendations or to justify any decision not to follow them. If considered appropriate, the Human Rights Committee should then hold a hearing to consider the Ministry's response, following the same procedure as that for the annual report.

vii. Support staff

195. Thirteenthly, the success of parliamentary monitoring greatly depends on the specialised parliamentary staff even though the ultimate responsibility rests with the Members of Parliament.

196. There is thus a need to ensure that the specialised staff available to the Human Rights Committee and more generally to the Parliaments is adequate both in terms of numbers – three persons with other important responsibilities does not seem to be enough - and familiarity with the requirements of the European Convention (and especially the case law of the European Court). Moreover, these staff members should have the opportunity to update themselves as to case law developments.

viii. Plenary consideration

197. Finally, there is a need for the authority of Parliament as a whole to be engaged in the monitoring process. There is thus a need for the opinions of the Human Rights Committee – both in respect of the consideration of annual reports and those adopted at other times - to be debated as a matter of course in the Plenary Session. Such a debate should be concluded by a decree endorsing the recommendations with or without any modifications considered appropriate.

ix. Further parliamentary oversight

198. Improving the monitoring process through acting on these recommendations would also provide an opportunity to strengthen the process of scrutinising draft laws for compatibility with the requirements of the European Convention and enhance the capacity of Parliament to take account of the case law of the European Court concerning other member States of the Council of Europe.

199. The Human Rights Committee – with the assistance of the specialised staff in Parliament - is undoubtedly best placed to perform these tasks.

200. It should, therefore, be given a general mandate to do this, without the need for a particular draft law to be referred to it.

201. In this way, it would be able to determine, on a systematic basis, whether particular draft laws need to be scrutinised for compliance with requirements of the European Convention, as well as which judgments in cases involving other member States are likely to be of particular significance for law and practice in Georgia. Certainly, a more general mandate in this regard could help ensure that many potential problems are not overlooked.

202. Of course, the extent of its ability to scrutinise draft laws and highlight significant judgments will be constrained by the other demands on its time.

203. Having regard to the latter constraint, it would be particularly helpful if the Parliamentary Research Centre could be tasked with highlighting for the Human Rights Committee judgments of possible relevance for Georgia which would allow it to then determine what, if any, further action should be taken.

204. The work of the Human Rights Committee would also be facilitated if the memoranda accompanying draft laws systematically indicated why no problem of compliance with the requirements of the European Convention arose from their provisions.

205. In any event, conferring a general mandate on the Human Rights Committee ought not to be seen as precluding other Committees from raising human rights concerns which become evident in the course of their own work.