

# **Better enforcement of national judicial decisions: a human rights and rule of law requirement**

## **The indispensable role of Parliaments**

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# Implementation – the role of multiple actors

“...the Convention system may be understood as a complex web of interaction and interdependence between institutional actors, each of which has different functions, expertise, competence, and claims to legitimacy – and none of which can secure the objective of the Convention alone, but only through their inter-relationships, whether of collaboration, coordination, competition or oversight.”

Donald and Leach, *Parliaments and the European Court of Human Rights* (OUP, 2016) 303



# Benefits of robust parliamentary mechanisms

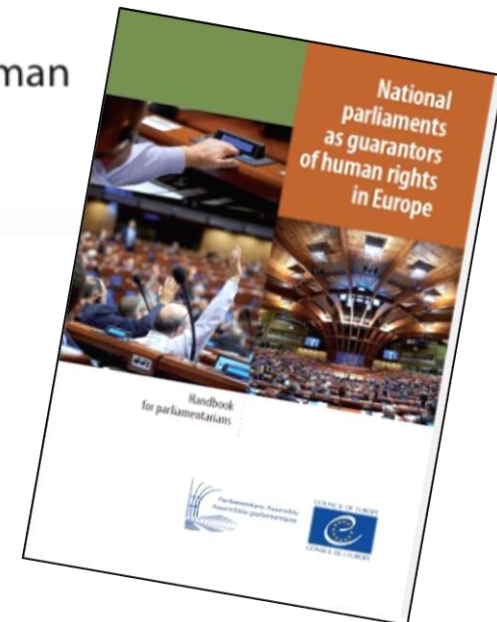
- **Preventative and remedial dimension**
  - acting when a **legislative remedy** is indispensable
  - **oversight**: holding governments to account for (in)action
  - creating space for **civil society engagement and evidence**
  - creating a **legislative** framework for implementation of ECtHR judgments – with clear **powers and duties**
- **Legitimacy dimension**
  - **democratic deliberation** of ECHR-compliant remedies - requiring parliamentarians to engage with the practical meaning of human rights for law and policy in their national context
  - countering the perception that changes in response to human rights judgments lack **democratic legitimacy**

# Functions of parliamentary human rights bodies

■ Does your parliament carry out the following human rights functions, whether through a specialised committee or a different arrangement? Does it:

- ▶ scrutinise draft legislation for compatibility with international human rights law, including the provisions of the European Convention on Human Rights (the Convention) and its protocols?
- ▶ legislate to give effect to judgments of the European Court of Human Rights (the Court)?
- ▶ monitor the executive's implementation of Court judgments, and its response to judgments against other states which have implications for the domestic legal order?
- ▶ get involved in the drafting and ratification of international human rights treaties?
- ▶ conduct thematic inquiries into human rights problems?

[https://pace.coe.int/en/pages/jur-handbook?\\_cf\\_chl\\_rt\\_tk=XBmLt33dBF8u99nm\\_VLIYPzHo6upds853m23Ne5dkWY-1700415835-0-gaNycGzNDdA](https://pace.coe.int/en/pages/jur-handbook?_cf_chl_rt_tk=XBmLt33dBF8u99nm_VLIYPzHo6upds853m23Ne5dkWY-1700415835-0-gaNycGzNDdA)

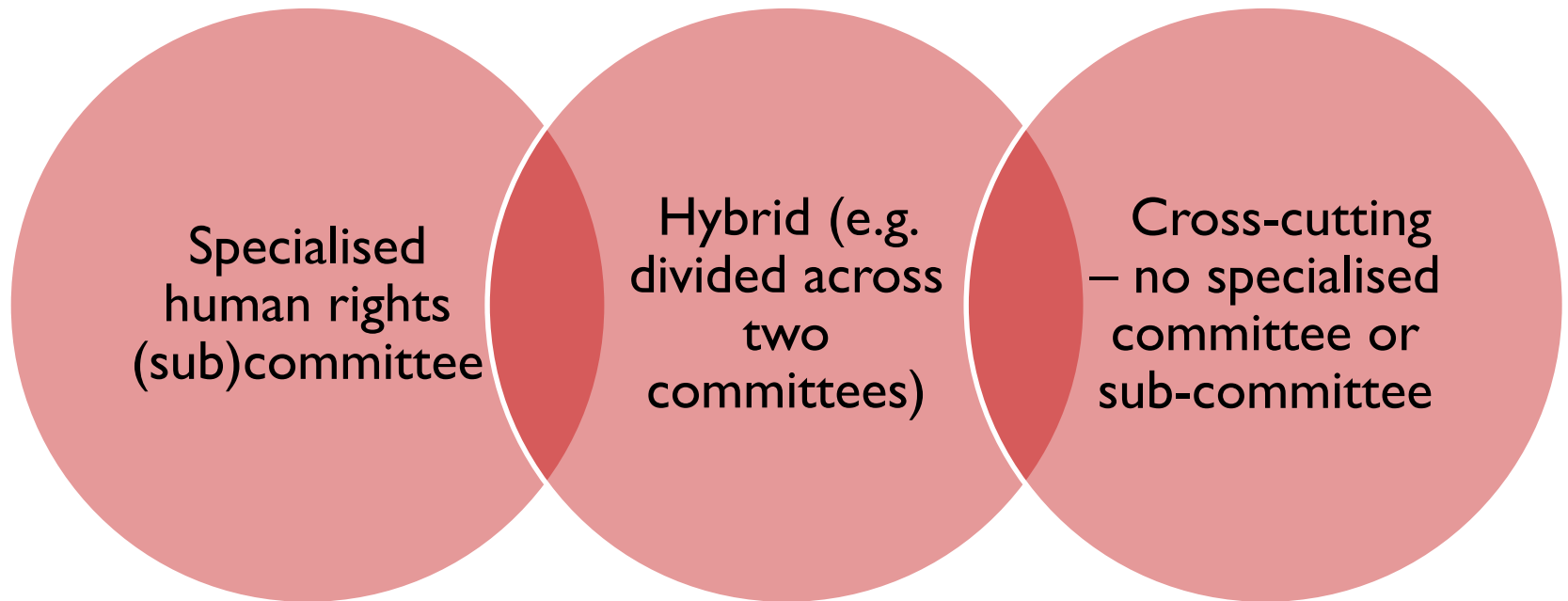


# Parliamentary oversight of the executive

■ Has your parliament given detailed guidance to the executive as to what you need in order to perform your oversight role, including requiring it to:

- ▶ attach human rights memoranda to all legislative proposals?
- ▶ report at least annually to parliament on, *inter alia*, the implementation of Court judgments?
- ▶ share action plans and action reports at the same time as they are submitted to the Committee of Ministers of the Council of Europe?
- ▶ share summaries and translations of pertinent Court judgments?
- ▶ involve parliamentarians, as far as possible, in any working group created to co-ordinate implementation of Court judgments?

# Different models for parliamentary human rights structures



# Pros and cons of different models

## Specialised model

- 👍 Development of systematic oversight & institutional memory
- 👍 Stable interlocutor with executive, Council of Europe, NHRI
- 👍 Build human rights expertise among members and staff
- 👍 Preferable model if executive coordination is weak
- 👎 Risk of creating a silo of expertise

## Cross-cutting model

- 👍 Oversight and expertise can become integrated across parliament
- 👎 “Everyone’s responsibility is no-one’s responsibility”

## Co-ordination of execution of ECtHR judgments – standing committees

- A few states (Armenia, Croatia, Czechia, Moldova, Poland) have a **standing committee** convened by the co-ordination authority or ‘parent’ ministry, including representatives of e.g.

- ministries
- Parliament
- judiciary
- NHRIs, NGOs, academics

- Build **continuity and expertise**
- Shared **sense of responsibility**
- **Facilitate contact** between state & non-state bodies
- Develop **preventive** as well as remedial function
- **Overcome obstacles** and facilitate design of feasible and sustainable reforms (especially in complex or contentious cases)

→ Ad hoc working groups can also galvanise attention on intractable cases.



# The indispensable role of Parliaments...

## Recommendation [Rec\(2003\)17](#) of the Committee of Ministers to member states on enforcement

... enforcement should be defined and underpinned by a **clear legal framework**, setting out the powers, rights and responsibilities of the parties and third parties;

... enforcement should be carried out in compliance with the relevant law and judicial decisions. Any legislation should be sufficiently detailed to provide **legal certainty and transparency** to the process, as well as to provide for this process to be as foreseeable and efficient as possible.

- *CEPEJ Guidelines for a Better Implementation of the Council of Europe's Recommendation on Enforcement, e.g:*
  - National legislative framework should contain a **clear definition** of what is considered an enforceable title and the conditions of its enforceability.
  - Legislation should be rendered as **clear and comprehensible** as possible
  - National legislation on personal data protection should be **scrutinised** in case it needs to be adapted to allow for efficient enforcement procedures.

# Expediting enforcement of domestic decisions

“... any domestic means to **prevent** a violation by ensuring timely enforcement is, in principle, of greatest value”

(*Burdov v Russia No. 2*, para 98)

- ensuring an adequate regulatory / legislative framework;
- ensuring sufficient budgetary resources to cover potential State liabilities;
- developing the State's obligation to pay in case of delays, including through more coercive measures;
- establishing effective liability of civil servants and other actors for non-enforcement;
- reinforcing the bailiff system;
- ensuring the effectiveness of the constitutional complaint or other form of judicial remedy, where applicable;
- Plus Parliamentary role in facilitating creation of **compensatory schemes**

CM Guide to Good Practice in respect of domestic remedies (2013)

# Pilot judgments on non-enforcement of domestic decisions

| Case  | Time limit(s) set  | Time limit(s) met?                            | Legislative reform   |
|---|--|---|--|
| <b>Burdov v Russia (No. 2) (January 2009)</b>             | 6 months (effective domestic remedy)<br>12 months (redress)  | Effective domestic remedy: no<br>Redress: yes | Compensation Act entered into force May 2010 - provided remedy for non/delayed enforcement of judgments and for excessive length of judicial proceedings, but not for non-enforcement/delay in granting obligations in kind.   |
| <b>Olaru and Others v Moldova (July 2009)</b>             | 6 months (effective domestic remedy)<br>12 months (redress)  | No  | Parliament adopted Law No. 87 - provides a compensatory remedy in cases of excessive length of judicial and enforcement proceedings (entered into force on 1 July 2011) (assessment of functioning of the remedy still under way).   |
| <b>Yuriy Nikolayevich Ivanov v Ukraine (October 2009)</b> | 12 months (effective domestic remedy and redress)            | No  | CM decision (September 2023): “encouraged the government and the Verkhovna Rada to complete the review of the respective social legislation and ensure that all legislative proposals to create new budgetary allocations have adequate funding provision”<br><br>and<br><br>“ ... underlined also the importance of lifting legislative prohibitions, in particular moratoriums, which block the enforcement of judgments.” |
| <b>Gerasimov and Others v Russia (July 2014)</b>          | 12 months (effective domestic remedy)<br>24 months (redress) | No  | Parliament extended scope of Compensation Act to cases of non-enforcement of judgments imposing obligations in kind (entered into force 1 January 2017).   |

## Pilot judgments on non-enforcement of domestic decisions

- Legislative action invariably required → indispensable role for Parliament
- ECtHR deadlines rarely met (unrealistic?) – but pilot judgments appear to have a galvanising effect
- With exception of Moldova, states disputed that the problem was systemic and resisted application of the pilot judgment procedure