

National parliaments as guarantors of human rights

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**Webinar: Inter-institutional co-operation in the
frame of recommendations proposed in the
Monitoring & Evaluation Report on execution of
the ECtHR judgments in Ukraine**

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Outline

- Why does parliamentary engagement with human rights matter?
- Key functions of parliamentary human rights bodies
- Different ways of organising parliamentary human rights work
- The importance of independent legal advice

Why are parliaments “guarantors” of human rights?

- **Preventative and remedial dimension**
 - robust **legislative** framework
 - **Oversight**: holding government to account for its action or inaction in protecting human rights
 - creating space for **civil society engagement**
 - defending the **rule of law**
- **Legitimacy**
 - raising the **political visibility** of human rights issues
 - countering perception that legislative or policy 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:

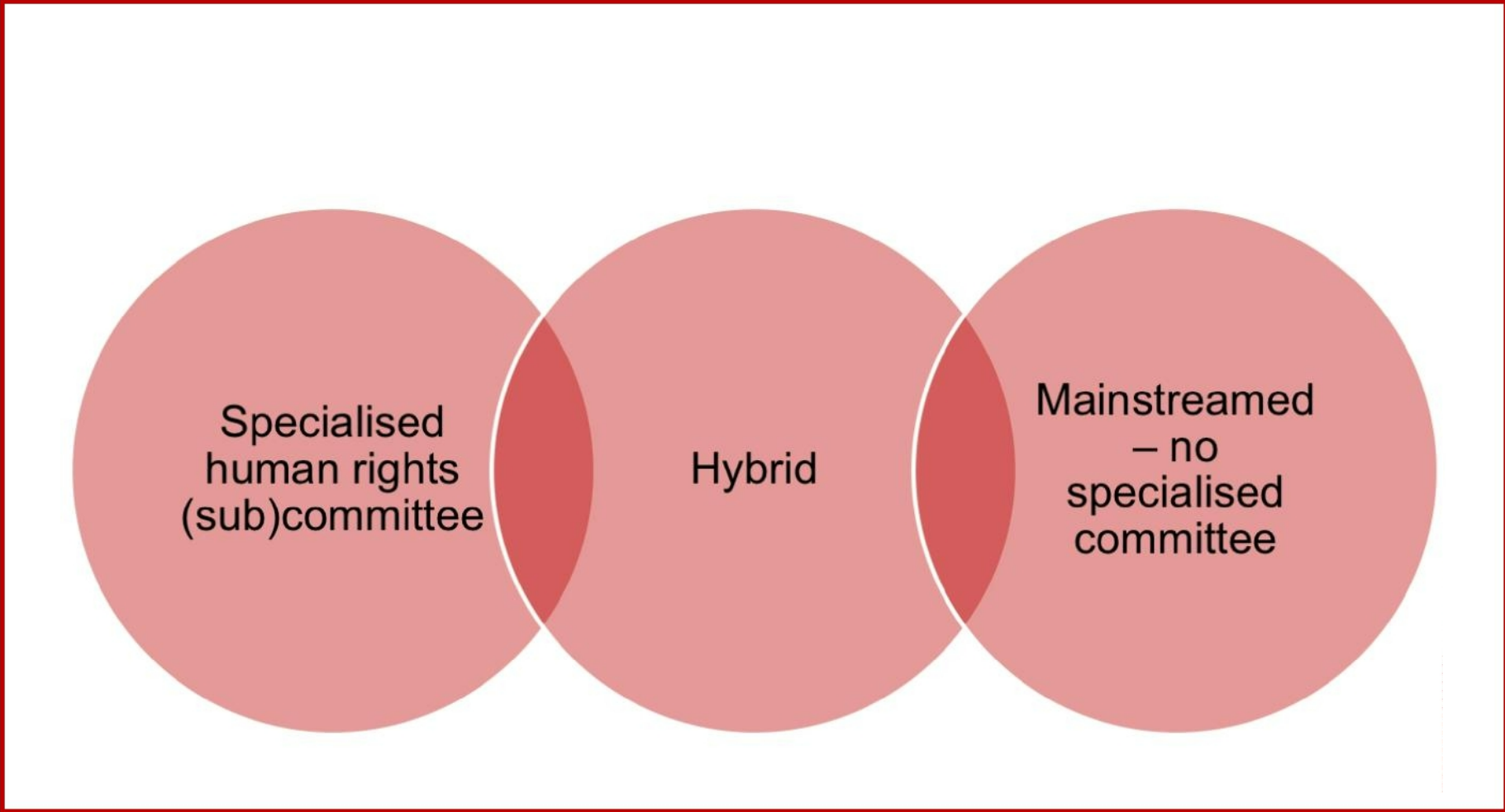
- ▶ scrutinise draft legislation for compatibility with international human rights law, including the provisions of the European Convention on Human Rights (the Convention) and its protocols?
- ▶ legislate to give effect to judgments of the European Court of Human Rights (the Court)?
- ▶ monitor the 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?

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?

Parliamentary human rights structures



The pros and cons of different approaches

- Specialised model

- 👍 Development of systematic oversight mechanisms

- 👍 Interlocutor with the executive

- 👍 Human rights expertise among members and staff

- 👎 Risk of creating a silo of human rights expertise in a specialised committee

- Mainstreamed model

- 👍 Human rights oversight and expertise becomes integrated across parliament

- 👎 “Everyone’s responsibility is no-one’s responsibility”?

The importance of independent legal advice

- Legal advisers as ‘mediators’, their functions include
 - Screening ECtHR judgments and other relevant ‘outputs’ of international human rights bodies
 - Analysing the meaning and significance of these outputs in the domestic context
 - Selectively drawing parliamentarians’ attention to them
 - Briefing parliamentarians as to the range of Convention-compliant options available to them
 - Facilitating democratic deliberation on human rights questions and empowering parliamentarians to fulfil their interpretive role
 - Maintaining contact with and gathering evidence from, civil society



<http://www.assembly.coe.int/LifeRay/JUR/Pdf/Handbook/HumanRightsHandbook-UA.pdf>