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**STEERING COMMITTEE FOR HUMAN RIGHTS
(CDDH)**

**COMMITTEE OF EXPERTS ON THE SYSTEM OF THE
EUROPEAN CONVENTION ON HUMAN RIGHTS
(DH-SYSC)**

**Background paper for a discussion
on the exchange of information regarding the implementation of the
Convention and the execution of the Court's judgments**

Note:

It is recalled that the DH-SYSC, in accordance with its terms of reference for 2018-2019, has been mandated "[c]oncerning the implementation of the Convention and execution of the Court's judgments [to] ensure that information is exchanged regularly - in order to assist member States in developing their domestic capacities and facilitate their access to relevant information (see paragraph 29 (a) i) of the Brighton Declaration and paragraph C. 1. g) of the Brussels Declaration); to this end, consider the different means to promote quicker exchange of information and experiences, to reinforce the status of the government agents, of the co-ordinators (c.f. para. 1 CM/Rec(2008)2), and to provide sufficient means to the state authorities involved in the functioning of the Convention and in the process of the execution of judgments".

The present background paper shall serve to prepare an exchange of views on the above-mentioned topic with members of the Department for the Execution of Judgments of the European Court of Human Rights at the 5th DH-SYSC meeting in October 2019.

A. Background: the CDDH's / DH-SYSC's previous work related to reinforcing domestic capacities to execute rapidly the judgments and decisions of the European Court of Human Rights

1. In the follow-up to the Brussels Declaration, the Committee of Ministers invited the CDDH / DH-SYSC “to take stock of [the] implementation” of Recommendation CM/Rec(2008)2 on efficient domestic capacity for rapid execution of judgments of the European Court of Human Rights¹ “and make an inventory of good practices relating to it”. The practices provided by the member States have been included in the Guide to good practice on the implementation of Recommendation (2008)2, which has been adopted by the Committee of Ministers at its 1293rd meeting, on 13 September 2017.

2. The stocktaking and analysis of good practices presented in the Guide led to two major findings.² The first finding was that the developments since 2008 at national and European level, notably the adoption of new working methods for the supervision of the execution of judgments and the enshrining of action plans and reports as a main tool in the execution of judgments and supervision processes, extensively modified the context in which the recommendation operates.³ The second finding was that a very large number of measures and actions has been taken by the member States in this area since 2008. A genuine implementation methodology developed at national level for the implementation of the recommendation, arising, in particular, from the member States’ obligation to draw up action plans and reports.⁴

3. The stocktaking and analysis of good practices also identified a number of remaining challenges that could be overcome through the implementation of good practices presented in the Guide, namely:

- to reinforce the support and authority of the Government agent / co-ordinator and of his/her actions and ensure their follow up;
- to develop new coordinated strategies of action at high level and to enhance more generally the synergies between all those involved;
- to overcome the difficulties in interpreting certain judgments for the purposes of identifying the measures required, or possible practical obstacles regarding the payment of just satisfaction;
- to alleviate the reticence on the part of the judiciary;
- to further increase interest of parliamentarians;
- to increase the visibility of the work of the Committee of Ministers. Possible measures in this respect comprise the translation and the dissemination of relevant decisions, the possible “upgrading” of the memorandum on “monitoring of the payment of sums awarded by way of just satisfaction: an overview of the Committee of Ministers’ present practice”⁵ as well as the possible finalisation of the vade-mecum on the execution process⁶;

¹ See the [terms of reference of the DH-SYSC for 2016-2017](#).

² See paragraph 3 of the Introduction to the [Guide to good practice on the implementation of Recommendation \(2008\)2](#) of the Committee of Ministers on efficient domestic capacity for rapid execution of judgments of the European Court of Human Rights.

³ Idem, paragraph 4.

⁴ Idem, paragraphs 5 and 6.

⁵ Document CM/Inf/DH(2008)7-final of 15 January 2009.

⁶ See for the Series « Vade-mecum » n° 1 <https://rm.coe.int/guide-drafting-action-plans-reports-en/1680592206>.

- Moreover, the importance of providing regular training on the Court's case-law and the requirements of execution to all those involved in the drafting of action plans and reports was stressed.⁷

4. Reference was also made to the need "to consider ways and means of supplementing the technical support with a suitable political lever for meeting the challenges of the execution process"⁸.

B. The CDDH's / DH-SYSC's current mandate on the exchange of information regarding the implementation of the Convention and the execution of the Court's judgments

5. In the context of the follow-up to the implementation by the member States of the above-mentioned Guide to good practice, the Committee of Ministers has invited the DH-SYSC, in the framework of its terms of reference for 2018-2019, **as regards the implementation of the Convention and execution of the Court's judgments**, to "ensure that information is exchanged regularly - in order to assist member States in developing their domestic capacities and facilitate their access to relevant information (see paragraph 29 (a) i) of the Brighton Declaration⁹ and paragraph C. 1. g) of the Brussels Declaration¹⁰); to this end, consider the different means to promote quicker exchange of information and experiences, to reinforce the status of the government agents, of the coordinators (c.f. para. 1 CM/Rec(2008)2), and to provide sufficient means to the state authorities involved in the functioning of the Convention and in the process of the execution of judgments".¹¹ (*emphasis added*)

6. In a parallel exercise, the CDDH, in June 2019, adopted a Report on measures taken by the member States to implement relevant parts of the Brussels Declaration.¹² This report, based on reports submitted by member States,¹³ provides numerous examples of domestic mechanisms put in place to ensure a swift execution of judgments and decisions of the European Court of Human Rights (the Court). These examples illustrate that, in general terms, the domestic practices in many States are developing on patterns similar to those presented in the above-mentioned Guide to good practice.¹⁴

⁷ See paragraph 7 of the of the Introduction to the [Guide to good practice on the implementation of Recommendation \(2008\)2](#).

⁸ *Idem*, paragraph 8.

⁹ The relevant paragraph of the [Brighton Declaration](#) reads as follows:

"F. Execution of judgments of the Court ...

29. The Conference therefore: a) Encourages the States Parties: i) to develop domestic capacities and mechanisms to ensure the rapid execution of the Court's judgments, including through implementation of Recommendation 2008(2) of the Committee of Ministers, and to share good practices in this respect" ..

¹⁰ The relevant part of the Action Plan of the [Brussels Declaration](#) reads as follows:

"C. Supervision of the execution of judgments

The Conference underlines the importance of the efficient supervision of the execution of judgments in order to ensure the long-term sustainability and credibility of the Convention system and, for this purpose:

1. Encourages the Committee of Ministers to: ... g) consider thematic discussions on major issues relating to the execution of a number of judgments, so as to foster an exchange of good practices between States Parties facing similar difficulties".

¹¹ See the website of the Committee of Ministers for the [DH-SYSC's terms of reference for 2018-2019](#), point (iv).

¹² Document [CDDH\(2019\)R91 Addendum 2](#), adopted by the CDDH at its 91st meeting (18-21 June 2019).

¹³ 33 member States of the Council of Europe (Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Ireland, Liechtenstein, Lithuania, Luxembourg, Monaco, Montenegro, Netherlands, Norway, Poland, Portugal, Russian Federation, Slovakia, Spain, Sweden and United Kingdom) have transmitted information in this respect. National reports provided by the member States before the end of 2018 are compiled in document [CDDH\(2018\)23](#) and those received before May 2019 in document [CDDH\(2019\)21](#).

¹⁴ See document [CDDH\(2019\)R91 Addendum 2](#), notably §§ 54-57, §§ 62-69, §§ 70-74, and §§ 77-80.

7. The findings drawn from this exercise indicate, *inter alia*, that:

- the authority of the Government Agents has been reinforced, also, to a certain extent, as regards their role and missions during the process of the execution of judgments. This holds true notably in those States where, in addition to national legislation adopted to regulate the role and missions of the Government Agents, adequate financing has been ensured;¹⁵
- further to enhancing the role and missions of the Office of the Government Agent, new synergies and strategies of high-level co-operation (notably with the Parliament, the relevant ministries, the Ombudsman institution and National Human Rights Institutions) have gradually emerged;¹⁶
- in a few States, the awareness of the role and work of the Committee of Ministers in the execution supervision was raised among the relevant ministries and national parliaments, notably thanks to regular (annual) reporting on national execution of judgments of the European Court of Human Rights made by the Government Agent / relevant ministry before the parliament or a parliamentary commission.¹⁷

8. In its conclusions and recommendations for follow-up in its Report on measures taken by the member States to implement relevant parts of the Brussels Declaration, the CDDH indicated the following as regards fostering the exchange of information and best practices with other member States notably on the execution of judgments of the Court:

- Full, prompt and effective execution notably of judgments raising major structural problems could be fostered not only through the well-established practice of dialogue between the Department for the Execution of Judgments and the various domestic authorities, but also through a dialogue within the Committee of Ministers, which recently started organising thematic debates on major issues relating to the execution of a number of judgments which may offer States useful avenues of reflection;¹⁸
- The informal network set up among Government Agents appears to be a particularly interesting avenue to foster the exchange of information and best practices with other member States notably on the implementation of general measures¹⁹; the States may wish to consider exploring whether this network should be given a more regular or formal structure, thus providing a more stable platform for exchanges, including on issues specifically relating to the execution of judgments.²⁰

9. One should note that the Department for the Execution of judgments has been organising on a regular basis, since 2007, notably in co-operation with the Legal Co-operation Department and with the HELP programme, conferences and round-tables, both in Strasbourg and within the member States. These targeted activities enabled various national authorities

¹⁵ See document [CDDH\(2019\)R91 Addendum 2](#), §§ 62 and 105.

¹⁶ See document [CDDH\(2019\)R91 Addendum 2](#), §§ 22-32, 62 and 77-80.

¹⁷ See document [CDDH\(2019\)R91 Addendum 2](#), § 77.

¹⁸ See document [CDDH\(2019\)R91 Addendum 2](#), §§ 108-110. See for more information on the thematic debates held by the Committee of Ministers since 2017, notably in response to the Brussels Declaration, <https://www.coe.int/en/web/cm/execution-judgments>.

¹⁹ See document [CDDH\(2019\)R91 Addendum 2](#), §§ 68-69 and 111.

²⁰ See document [CDDH\(2019\)R91 Addendum 2](#), § 111. The idea of a specific forum on execution issues has been supported by a number of States in their national reports on the implementation of the Brussels' Declaration, *ibid.*, § 69.

of almost all Council of Europe member States involved in the execution process to exchange experiences and practices and find solutions to similar problems encountered during the execution process.²¹

10. In the light of the foregoing, the DH-SYSC is invited to exchange views, in particular, on the necessity, and if so, possible ways to improve the regular exchange of information in order to assist member States in developing their domestic capacities for an efficient execution of the Court's judgments and decisions.

²¹ For more information see the website of the Department for the Execution of judgments, <https://www.coe.int/en/web/execution/conferences>.