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| **MINISTERS’ DEPUTIES** | Information documents | **CM/Inf/DH(2022)9** | 4 March 2022[[1]](#footnote-1) |

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| **Supervisory role of the Committee of Ministers under Article 46 of the European Convention on Human Rights in respect of developments subsequent to a judgment of the European Court of Human Rights****Document prepared by the Department for the Execution of Judgments of the European Court of Human Rights** |

**I. Introduction**

The case law of the European Court (“Court”) and the well-established practice of the Committee of Ministers (“Committee”), clearly indicate that, within the institutional balance between these bodies under the European Convention on Human Rights (“Convention”), it is the Committee’s role to assess whether the measures taken by Member States in response to the Court’s judgments are sufficient to put an end to the breach of the Convention and prevent similar violations from occurring in the future.[[2]](#footnote-2)

The Committee has the competence and the duty to supervise the adoption of the necessary measures, based on the information provided by the respondent State and with due regard to the applicant’s evolving situation.[[3]](#footnote-3) It may review all elements relevant to execution, for example, where objective factors which came to light after the Court’s judgment was delivered must be taken into account in the supervision process.[[4]](#footnote-4)

These may include developments in domestic judicial proceedings. The Committee has highlighted that re-examination of a case by the national judicial authorities, including the reopening of proceedings, is an important aspect of the execution process, and in some cases the only means to achieve *restitutio in integrum*.[[5]](#footnote-5) Similarly, the Court has underlined the importance of ensuring that domestic procedures are in place to allow a case to be re-examined in the light of a finding of a violation of the Convention and underlined that such proceedings can be considered an important aspect of the execution of its judgments.[[6]](#footnote-6)

Administrative, civil or criminal proceedings - continuing, initiated or reopened in response to violations of the Convention established by Court’s judgments - can thus constitute key individual measures to provide adequate redress to the applicants. They form part of the evolving factual situation to be assessed by the Committee to ensure that they put an end to the violation and remedy, as far as possible, its negative consequences.

At the same time, such proceedings can raise new issues under the Convention and form the basis of new applications to the Court. According to the Court’s case-law, the Committee’s role in this sphere does not mean that measures taken by a respondent State to remedy a violation cannot raise a new issue undecided by the judgment and, as such, form the subject of a new application that may be dealt with by the Court.[[7]](#footnote-7)

In some circumstances, the Court may decide that protection for human rights does not require it to carry out an examination, in light of the Committee’s supervision work.[[8]](#footnote-8) In others it may go ahead with its assessment.[[9]](#footnote-9) Such situations are not uncommon[[10]](#footnote-10) and neither approach by the Court affects the continuing competence of the Committee to examine those same developments under Article 46 of the Convention.[[11]](#footnote-11)

It follows that the Court and the Committee, within the remit of their different mandates, can be called upon to examine, even simultaneously, the same domestic proceedings. In these circumstances, the Committee’s role is to assess whether such proceedings provide adequate redress to the applicant in compliance with the conclusions and spirit of the Court’s judgment, whereas the Court’s perspective is to evaluate whether they raise a new issue which discloses a violation of the Convention.

**II. Practice of the Committee of Ministers**

* *Examination by the Committee of developments taking place following a judgment of the Court*

The Committee’s practice in supervising the execution of Court’s judgments is based on the monitoring and assessment of any post-judgment development relevant to the State’s obligation under Article 46 of the Convention. This is an evident and essential condition to guarantee the effectiveness of the execution process.

Post-judgment developments may take the form of new judicial proceedings at domestic level to provide redress to the applicants in response to the Court’s judgment. While this is not a special occurrence under Article 46, it is more likely that, due to the nature of litigation and the Convention safeguards attached to it, it may also ultimately result in a further application to the Court. This circumstance however does not encroach on the Committee’s evaluation of this development in the framework of the execution process.

The examples outlined below are representative of the well-established practice of the Committee reflecting its competence to assess evolving factual situations, including domestic proceedings initiated, continued, or reopened in response to Court’s judgments establishing violations of different provisions of the Convention.

When monitoring the execution of judgments finding potential violations of Article 2 and/or 3 of the Convention due to shortcomings in the process leading to the proposed expulsion of the applicants, the Committee has supervised the reassessment of the applicants’ situation by the domestic authorities to ensure that it complied with the strict requirements of the Convention.

In *F.G. v. Sweden*, the Committee followed the re-examination of the applicant’s proposed expulsion to Iran carried out *ex officio* by the Swedish authorities. The Court had found that the implementation of this decision without adequate investigation of the reality and implications of the applicant’s conversion to Christianity after arrival in Europe, would be in breach of the Convention.[[12]](#footnote-12)

In the execution of judgments finding a violation of Article 6 of the Convention due to procedural shortcomings casting serious doubt as to the outcome of criminal proceedings against the applicants, the Committee monitored the criminal proceedings reopened at the request of the applicants to ensure that such deficiencies were adequately remedied. One such example can be observed in *Cafagna v Italy*, in which the Court found a violation of the Convention due to the applicant’s conviction based on the statement of a witness not heard during trial. The Committee followed and assessed the domestic proceedings reopened in response to the Court’s judgment, in which domestic courts made efforts to ensure the hearing of the witness in question which proved impossible and led to the acquittal of the applicant.[[13]](#footnote-13)

Similarly, in cases in which the Court found violations of the applicants’ right to family life due to shortcomings in the decision-making process leading to the adoption of the applicants’ children, the Committee closely follows the re-examination of these situations to guarantee their full compliance with all the relevant requirements under Article 8 of the Convention.

In *Strand Lobben and Others v. Norway*, the Committee is monitoring adoption proceedings reopened at the request of the applicants following the Court’s judgment to ensure that they are dealt with swiftly, considering the paramount importance of the best interests of the children and the Convention rights of all the parties involved.[[14]](#footnote-14)

This approach can also be observed in cases in which the Court found a violation of the applicants’ right to freedom of expression under Article 10 of the Convention due to their criminal conviction. In these cases, the Committee ensured that when domestic proceedings were reopened at the request of the applicants their conviction and its consequences were erased.

In *Morice v. France*, for example, in which the applicant - a lawyer – was convicted for defamation of investigating judges, the Committee monitored the criminal proceedings reopened at domestic level in which the applicant’s criminal conviction was annulled and erased from his criminal records.[[15]](#footnote-15)

In cases where the Court has found violations of the right to freedom of association on account of dissolutions, or refusals of registration of organisations, political parties and churches (Articles 9 and 11 of the Convention), the Committee of Ministers supervised that the applicants were offered the possibility to have their entities registered anew in proceedings respecting the Convention.

In the *Bekir Ousta v. Greece* group of cases,*[[16]](#footnote-16)* the Committee assessed in detail the examination on the merits by the Court of Cassation of reopened proceedings in the case of *Tourkiki Enosi Xanthis and Others,* and deplored that it had not led to the applicant association’s *restitutio in integrum*.

In *Partidul Comunistilor (Nepeceristi) and Ungureanu v. Romania,* the Committee supervised the outcome of domestic proceedings seeking the registration of the applicant group as a political party.[[17]](#footnote-17) These proceedings were initiated following the Court’s judgment finding a breach of the Convention due to the unjustified refusal of the authorities to allow such registration. The applicant group’s request for revision was granted.

In *United Communist Party of Turkey v. Turkey,* concerning theunjustified dissolutions of the applicant political parties, the Committee ensured that the bans on political activities imposed on the officials of the parties concerned following their dissolution were lifted and that these persons had the possibility to re-register political parties if they so wished.[[18]](#footnote-18)

Similarly, in *Metropolitan Church of Bessarabia and Others v. the Republic of Moldova,* the Committee evaluated domestic proceedings initiated by applicants’ church to secure its official recognition previously refused by the authorities in breach of the Convention.[[19]](#footnote-19)

It may finally be noted that the outcome of domestic proceedings can be pertinent also for the Committee’s assessment of the effectiveness of general measures adopted by the State to avoid repetition of the violation.

For example, in *Umo Ilinden and Others v. Bulgaria,* which concerns the persistent unjustified refusals of domestic courts to register the applicant association, the unsatisfactory outcome of multiple registration proceedings initiated by the applicant after the Court’s judgment was taken into account by the Committee in the context of its indications concerning also the general measures still required so that Bulgaria could comply with its obligation to prevent new, similar violations.[[20]](#footnote-20)

* *Examination by the Committee and the Court of the same domestic proceedings taking place in response to a Court’s judgment*

The Committee has reaffirmed in several decisions its competence to evaluate domestic proceedings taking place in response to an established violation of the Convention even when such proceedings are, simultaneously albeit from a different perspective, under the scrutiny of the European Court.

In *Jehovah’s Witnesses of Moscow and Others v. Russia,* the Committee deeply regretted the continuing objection by the authorities to the Committee’s examination of a new restriction of the applicant’s freedom of association and its consequences since such development was being examined by the Court following a new application. The Committee also reiterated its competence under Article 46 of the Convention to examine whether the measures taken have put an end to the violations at issue and will prevent future violations. In this case the Deputies stressed the different missions of the Committee and the Court, and that the Committee’s supervision of execution of the Court’s judgments by the respondent States in no way prejudges the Court’s examination of possible complaints arising out of subsequent developments.[[21]](#footnote-21)

In *Socialist Party and Others v Turkey*, shortly after the adoption of the judgment of the European Court finding the dissolution of the Socialist Party to be unjustified, the leader of this party was convicted based on the same facts which served as a basis for this unjustified dissolution (certain statements made during a political campaign). The Committee called on Turkey to erase the consequences of this last conviction, even though the case on this account was pending before the Court.[[22]](#footnote-22)

In *Navalnyy and Ofitserov v Russia*, the Committee noted that a new application was pending before the Court concerning the fresh criminal proceedings which took place after the case had been reopened in response to the Court’s judgment and affirmed its competence under Article 46 of the Convention to examine whether the violations established by the Court have been redressed in those fresh criminal proceedings.[[23]](#footnote-23) The authorities in this case had reiterated their argument that the Committee is not competent to examine final domestic judicial decisions which are the subject of an application pending before the Court.[[24]](#footnote-24)

In the *Bochan v. Ukraine* cases,[[25]](#footnote-25) the Committee continued its supervision of the execution of the first judgment while the Court had been seised with a new application from the same applicant.[[26]](#footnote-26) The Committee assessed the domestic proceedings taking place in response to the two judgments and ultimately noted with satisfaction that in the proceedings reopened following the second Court’s judgment, the domestic courts considered, fully and adequately, the requirements of *restitutio in integrum* stemming from the European Court’s judgments.[[27]](#footnote-27)

1. This document is issued for information. It will not be the subject of an item on the agenda unless a delegation so requests it. [↑](#footnote-ref-1)
2. *Ilgar Mammadov v. Azerbaijan (Article 46 § 4), No.*[*15172/13*](https://hudoc.exec.coe.int/eng#{%22EXECDocumentTypeCollection%22:[%22CEC%22],%22EXECAppno%22:[%2215172/13%22]})*, judgment of 29 May 2019 (GC)* §§ 147-155, 161-164. See also *Moreira Ferreira v. Portugal (No. 2), No.*[*19867/12*](https://hudoc.exec.coe.int/eng#{%22EXECDocumentTypeCollection%22:[%22CEC%22],%22EXECAppno%22:[%2219867/12%22]})*, judgment of 11 July 2017, (GC), § 47*, and *Barabanov v. Russian Federation*, No. [4966/13](https://hudoc.exec.coe.int/eng#{%22EXECDocumentTypeCollection%22:[%22CEC%22],%22EXECAppno%22:[%224966/13%22]}), final judgment of 2 July 2018, § 88, with further reference. [↑](#footnote-ref-2)
3. *Ilgar Mammadov v. Azerbaijan (Article 46 § 4),* § 184. [↑](#footnote-ref-3)
4. *Ilgar Mammadov v. Azerbaijan (Article 46 § 4),*§ 183. [↑](#footnote-ref-4)
5. See the Committee of Ministers’ Recommendations to member states on the re-examination or reopening of certain cases at domestic level following judgments of the European Court of Human Rights ([Rec(2000)2](https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016805e2f06)) and the improvement of domestic remedies ([Rec(2004)6](https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016805dd18e)). [↑](#footnote-ref-5)
6. *Bekir-Ousta and Others v. Greece,* No. 7050/14, (dec.) 13 December 2016, § 25 and *Xanti Turkish Union and Others v. Greece*, Nos. [55557/12](https://hudoc.exec.coe.int/eng#%7B%2522EXECDocumentTypeCollection%2522:%5B%2522CEC%2522%5D,%2522EXECAppno%2522:%5B%252255557/12%2522%5D%7D) and [73646/13](https://hudoc.exec.coe.int/eng#%7B%2522EXECDocumentTypeCollection%2522:%5B%2522CEC%2522%5D,%2522EXECAppno%2522:%5B%252273646/13%2522%5D%7D), (dec.) 17 November 2015, § 32; *Verein Gegen Tierfabriken Schweiz (VgT) v. Switzerland (No. 2),* No. [32772/02](https://hudoc.echr.coe.int/eng#{%22appno%22:[%2232772/02%22]}), judgment of 30 June 2009 (GC), § 90. [↑](#footnote-ref-6)
7. *Moreira Ferreira v. Portugal (No. 2),*No. [19867/12](https://hudoc.exec.coe.int/eng#{%22EXECDocumentTypeCollection%22:[%22CEC%22],%22EXECAppno%22:[%2219867/12%22]}), judgment of 11 July 2017, (GC),§ 47. [↑](#footnote-ref-7)
8. *Rooney v Ireland,*§ 34, [6870/18](https://hudoc.exec.coe.int/eng#{%22EXECDocumentTypeCollection%22:[%22CEC%22],%22EXECAppno%22:[%226870/18%22]}) (dec.) 17 March 2020 or *Egmez v. Cyprus*, No. 12214/07, (dec.) 18 September 2012. [↑](#footnote-ref-8)
9. *Emre v. Switzerland* *(No. 2),* No*.* [5056/10](https://hudoc.echr.coe.int/eng#{%22appno%22:[%225056/10%22]}), final judgment of 11 January 2012. [↑](#footnote-ref-9)
10. See for example *Liu v. Russia (No. 2),* No. 29157/09, final judgment of 8 March 2012 in which the Committee continued its supervision over the case in March 2010, even though the same issue was already in parallel subject to the consideration of the Court. In this case, the Russian authorities contested the jurisdiction of the Court, asserting that the question had to be decided by the Committee. [↑](#footnote-ref-10)
11. *Moreira Ferreira v. Portugal (No. 2),*cited above, § 47 (d). [↑](#footnote-ref-11)
12. *F.G. v. Sweden*, No. 43611/11, judgment of 23 March 2016, (GC), Final resolution [CM/ResDH(2016)355](https://hudoc.exec.coe.int/ENG#{%22display%22:[2],%22EXECIdentifier%22:[%22001-170007%22],%22EXECDocumentTypeCollection%22:[%22CEC%22],%22EXECTitle%22:[%22F.G.%22]}). [↑](#footnote-ref-12)
13. *Cafagna v. Italy*, No.  26073/13, final judgment of 12 January 2018, Final resolution [CM/ResDH(2021)118](https://hudoc.exec.coe.int/ENG#{%22display%22:[2],%22EXECIdentifier%22:[%22001-211336%22],%22EXECDocumentTypeCollection%22:[%22CEC%22],%22EXECTitle%22:[%22cafagna%22]}). See also *Lorefice v. Italy*, No. 63446/13, final judgment of 29 September 2017, Final resolution [CM/ResDH(2021)119](https://hudoc.exec.coe.int/ENG#{%22display%22:[2],%22EXECIdentifier%22:[%22001-211337%22],%22EXECDocumentTypeCollection%22:[%22CEC%22],%22EXECTitle%22:[%22lorefice%22]}). [↑](#footnote-ref-13)
14. *Strand Lobben and Others* *v. Norway*, No. 37283/13, judgment of 10 September 2019 (GC), [CM/Del/Dec(2021)1398/H46-17](https://hudoc.exec.coe.int/ENG#{%22display%22:[2],%22EXECIdentifier%22:[%22CM/Del/Dec(2021)1398/H46-17E%22],%22EXECDocumentTypeCollection%22:[%22CEC%22],%22EXECTitle%22:[%22strand%22]}). [↑](#footnote-ref-14)
15. *Morice v. France*, No. 29369/10, judgment of 23 April 2015 (GC), Final Resolution [CM/ResDH(2019)88](https://hudoc.exec.coe.int/ENG#{%22EXECDocumentTypeCollection%22:[%22EXECUTION%22],%22EXECLanguage%22:[%22ENG%22],%22EXECIsClosed%22:[%22True%22],%22EXECType%22:[%22L%22],%22EXECThemeDomain%22:[%2256%22],%22EXECIdentifier%22:[%22001-192966%22]}) in the *Jean-Jaques Morel* group of cases. [↑](#footnote-ref-15)
16. *Bekir-Ousta and Others v. Greece,* No. 35151/05, final judgment of 11 January 2008, [*CM/Del/Dec(2021)1411/H46-14*](https://hudoc.exec.coe.int/ENG#{%22display%22:[2],%22EXECIdentifier%22:[%22CM/Del/Dec(2021)1411/H46-14E%22],%22EXECDocumentTypeCollection%22:[%22CEC%22],%22EXECTitle%22:[%22bekir%22]})*.* [↑](#footnote-ref-16)
17. *Partidul Comunistilor (Nepeceristi) and Ungureanu v. Romania*, No. 46626/99, final judgment of 6 July 2005, Final Resolution [CM/ResDH(2008)16](https://hudoc.exec.coe.int/ENG#{%22display%22:[2],%22EXECIdentifier%22:[%22001-85921%22],%22EXECDocumentTypeCollection%22:[%22CEC%22],%22EXECAppno%22:[%2246626/99%22]}). See also *Presidential Party of Mordovia v. Russia*, No. 65659/01, final judgment of 5 January 2005, Final Resolution [CM/ResDH(2008)20](https://hudoc.exec.coe.int/ENG#{%22display%22:[2],%22EXECIdentifier%22:[%22001-85941%22],%22EXECDocumentTypeCollection%22:[%22CEC%22],%22EXECAppno%22:[%2265659/01%22]}). [↑](#footnote-ref-17)
18. *United Communist Party of Turkey and Others v. Turkey*, No. 19392/92, judgment of 30 January 1998 (GC), Final Resolution [CM/ResDH(2007)100](https://hudoc.exec.coe.int/ENG#{%22display%22:[2],%22EXECIdentifier%22:[%22001-81572%22],%22EXECDocumentTypeCollection%22:[%22CEC%22],%22EXECTitle%22:[%22United%20Communist%20Party%20of%20Turkey%22]}). [↑](#footnote-ref-18)
19. *Metropolitan Church of Bessarabia and Others v. the Republic of Moldova,* No. 45701/99, final judgment of 27 March 2002, Final Resolution [CM/ResDH(2010)8](https://hudoc.exec.coe.int/ENG#{%22display%22:[2],%22EXECIdentifier%22:[%22001-98240%22],%22EXECDocumentTypeCollection%22:[%22CEC%22],%22EXECAppno%22:[%2245701/99%22]}). [↑](#footnote-ref-19)
20. *Umo Ilinden and Others v. Bulgaria*, No. 59491/00, final judgment of 19 April 2006, Interim Resolution [CM/ResDH(2020)197](https://search.coe.int/cm/Pages/result_details.aspx?Reference=CM/ResDH(2020)197) and [CM/Del/Dec(2021)1406/H46-9](https://hudoc.exec.coe.int/ENG#{%22display%22:[2],%22EXECIdentifier%22:[%22CM/Del/Dec(2021)1406/H46-9E%22],%22EXECDocumentTypeCollection%22:[%22CEC%22],%22EXECTitle%22:[%22umo%22]}). [↑](#footnote-ref-20)
21. *Jehovah’s Witnesses of Moscow and Others v. Russia,* No. 302/02,[CM/Del/Dec(2020)1383/H46-17](https://hudoc.exec.coe.int/eng#{%22EXECIdentifier%22:[%22CM/Del/Dec(2020)1383/H46-17E%22]}) and [CM/Del/Dec(2019)1355/H46-19](https://hudoc.exec.coe.int/eng#{%22EXECIdentifier%22:[%22CM/Del/Dec(2019)1355/H46-19E%22]}). [↑](#footnote-ref-21)
22. *Socialist Party and Others v. Turkey*, No. 21237/93, final judgment of 25 May 1998, Interim Resolution ([DH(99)245](https://hudoc.exec.coe.int/ENG#{%22display%22:[2],%22EXECIdentifier%22:[%22001-55723%22],%22EXECDocumentTypeCollection%22:[%22CEC%22],%22EXECTitle%22:[%22Socialist%20Party%22]})). [↑](#footnote-ref-22)
23. *Navalnyy and Ofitserov v. Russia,* No. 46632/13, final judgment of 4 July 2016, [CM/Del/Dec(2021)1419/H46-34](https://hudoc.exec.coe.int/ENG#{%22display%22:[2],%22EXECIdentifier%22:[%22CM/Del/Dec(2021)1419/H46-34E%22],%22EXECDocumentTypeCollection%22:[%22CEC%22],%22EXECLanguage%22:[%22ENG%22],%22EXECState%22:[%22RUS%22],%22EXECSupervision%22:[%22ENHA%22],%22EXECIsClosed%22:[%22False%22],%22EXECType%22:[%22L%22]}). [↑](#footnote-ref-23)
24. See the action report submitted by the authorities of the Russian Federation on 19 October 2021 ([DH-DD(2021)1076](https://hudoc.exec.coe.int/ENG#{%22fulltext%22:[%22\%22well-established%20practice\%22%22],%22display%22:[2],%22EXECIdentifier%22:[%22DH-DD(2021)1076E%22],%22EXECDocumentTypeCollection%22:[%22CEC%22,%22CMDEC%22,%22CMINF%22,%22CMNOT%22,%22res%22]})). [↑](#footnote-ref-24)
25. *Bochan v. Ukraine (No.1),* No. 7577/02, final judgment of 3 August 2008and *Bochan v. Ukraine (No.2)*, No. 22251/08, judgment of 5 February 2015 (GC). [↑](#footnote-ref-25)
26. The same approach had been previously followed by the Committee in respect of the two *Emre* cases against Switzerland: *Emre v. Switzerland (No.1),* No. 42034/04, final judgment of 22 August 2008 and *Emre v. Switzerland* *(No. 2),* No*.* [5056/10](https://hudoc.echr.coe.int/eng#{%22appno%22:[%225056/10%22]}), final judgment of 11 January 2012. [↑](#footnote-ref-26)
27. This development contributed to the Committee’s decision to transfer the *Bochan* *(No. 2)* group of cases to the standard supervision procedure in March 2020 and to close the case of *Bochan (No.1)* in September 2020. See [CM/Del/Dec(2020)1369/H46-35](https://search.coe.int/cm/Pages/result_details.aspx?Reference=CM/Del/Dec(2020)1369/H46-35) and [CM/ResDH(2020)176](https://hudoc.exec.coe.int/ENG#{%22display%22:[2],%22EXECIdentifier%22:[%22001-204889%22],%22EXECDocumentTypeCollection%22:[%22CEC%22],%22EXECTitle%22:[%22bochan%22]}). [↑](#footnote-ref-27)