



Brief guide to Rule 9 submissions

The Committee of Ministers execution of Judgments process is, in essence, a formalised dialogue between the Committee of Ministers and the respondent state. As a Rule 9 submitter, you are joining in this dialogue. If your contribution is to be fully relevant you need to understand

- the process for the dialogue,
- where the dialogue has got to,
- how you can add value to the dialogue.

It also helps to structure your submission in a way that responds to the dialogue.

The Appendix to this guide provides a template for Rule 9 submissions.¹

a. Understanding the process

Check out the [EIN Handbook](#) on implementation of ECHR judgments. In particular, make sure you understand:

- The role of the [Committee of Ministers](#) (CM) and the [Department for the Execution of Judgments](#) (DEJ) (1.1 & 1.3.4)
- Individual measures versus general measures (1.2)
- Action Plan versus Action Report (1.3.1)
- Leading versus repetitive cases (1.3.2)
- Enhanced versus standard supervision (1.3.3)
- The timing of your involvement, and particularly when to submit your Rule 9 (2.1.2.3)

b. Understanding where the dialogue has got to

As with any dialogue, there is no point in joining from the beginning when the other parties are already half-way through the conversation. To find out what has already been said, go to the [HUDOC-EXEC](#) webpage and find your case by using the search window in the upper right-hand corner.

Start with the View tab. This will have up to four sections:

1. A case description. This concentrates on those elements of the judgment which in the view of DEJ are relevant to the measures required for implementation. This may be helpful in narrowing down the focus of your submission, particularly where a case is complex.
2. Status of execution. This tells you the story so far. There is no need to repeat this information in your submission, except possibly by way of a very brief summary, if that helps make it clearer.

¹ The formal term for a written submission to the CM is a "communication". In this guide a more informal term, "submission", is used.

Cases under enhanced supervision will have two more sections:

3. Notes/Issues. This is the briefing provided by DEJ to the CM immediately before the case was last considered at a meeting of the CM. It highlights recent developments and concerns which the DEJ thinks the state representatives should be aware of. In the majority of cases this is all they will read before the meeting (bearing in mind they will be examining 30 – 40 cases). They will only go into more detail on a case (e.g. by reading a Rule 9 submission) if they have a particular interest in it.
4. Decisions. These represent the recommendations and comments by the CM to the respondent state. You should study these carefully, with a view to (a) providing evidence if you believe your government has not acted on a recommendation; and (b) making your own proposals to the CM for how these “Decisions” can be strengthened at the next meeting. Additionally, the last Decision may set the date for the next CM review, or limit discussions at that review to a particular aspect of the case.

Then go to the “Related” tab. This provides links to all the documents relating to the supervision process, including Action Plans, Action Reports, Rule 9s, and for cases under enhanced supervision, CM Decisions.

If your government has already submitted an Action Plan, or an update, you should examine these carefully, to assess whether you consider the measures proposed are adequate. It is also worth looking through the past few CM Decisions. They are generally very brief and they tell you what the CM is thinking.

c. How to add value

A Rule 9 may have one of (or a combination of) three broad objectives: to convey recommendations for strengthening the supervision process; to convey new factual information; or, more rarely, to make procedural proposals.

(i) Recommendations for strengthening the supervision process

You should start by assessing whether the measures proposed in your government’s Action Plan (or updated Action Plan) are sufficient and, if not, by developing your proposals for any additional measures that are needed. This is very important as some states may try to get away with doing as little as possible.

At the same time, the scope of general measures is limited to what is necessary to prevent a repeat of the violation found in the ECtHR’s judgment. **It cannot be stressed too strongly that identifying these measures MUST start with a careful examination of the judgment, particularly in the section headed “Application of the general principles to the present case”.** Avoid making proposals which clearly go beyond what is justified by the circumstances of the case.

Your government may try to limit general measures by presenting the case as an isolated incident. If so, it will be important to support any recommendations you make for wider general measures with contextual information demonstrating that it is part of a wider pattern of negative behaviour.

Ideally you should make your recommendations for general measures as soon as possible after the first government Action Plan has been published. If you wish to make recommendations at a later

stage – perhaps in the light of new facts, or because of evidence that the measures adopted are not working, or because you first engaged with the process at a later stage – that would still be worthwhile.

In the course of supervising a case the CM will often seek evidence from the respondent state to prove that the general measures taken are indeed effective. You can assist the CM by suggesting the type of evidence to request.

(ii) Conveying new information

Information useful to the CM is likely to take one of three forms:

- Correcting inaccuracies, misrepresentations or omissions in your government’s submissions. This is very important as many states present an overly positive picture of progress in implementing the judgment which the CM, in the absence of resources on the ground, is often unable to challenge.
- Providing statistics or other data which enable the CM to assess implementation progress. This could include evidence of further similar violations.
- More general information about relevant developments, perhaps of a political or other nature.

The information should be **new**. There is little point in a Rule 9 which simply tells the CM/DEJ what they already know or provides them with information from readily accessible sources such as reports by international bodies (CoE, UN, OSCE), English/French language versions of reports by national human rights institutions or reports in the international/English language media. While it may be useful to refer to these reports in supporting a particular argument, there will be no need to repeat their content at length.

Ideally, the information you provide will come either from the advocacy and documenting work of your own or other domestic NGOs or from other sources in your own national language which may not be easily accessible to the DEJ. Information obtained through your original resource, but also through sources such as freedom of information requests, correspondence with government officials, or parliamentary enquiries, will be particularly valuable.

Any information you provide should be referenced with footnotes documenting the source.

Finally, restrict any information to that which is relevant to the implementation of the judgment. If you want to convey broader messages about problems in your country, this can be done through submissions to other Council of Europe bodies.

(iii) Procedural proposals

You may wish to try to influence the supervision procedure, for example by proposing that a case be moved from the standard to the enhanced procedure or opposing your government’s call for a case to be closed. A list of topics for procedural proposal can be found in 2.1.2.1 of the [EIN Handbook](#).

d. Structure and other presentational issues

Structure: Your Rule 9 will have more impact if it is easy to relate what you are saying to the dialogue between the CM/DEJ and the respondent state. To achieve this its layout should usually incorporate the standard structure for action plans and reports (case description, individual measures, general measures, conclusions). Certain other elements are also needed, so a typical Rule 9 structure would be as follows:

- A short description of the case or group of cases (the case description at the DEJ website may be a good starting point);
- A paragraph briefly describing your NGO and its qualifications for the submission;
- A paragraph summarising the key recommendations of your submission;
- Individual measures;
- General measures;
- Conclusions;
- Recommendations on what you request the CM to urge the respondent state to do.

Where you are replying to issues raised in a government action plan or report, use their relevant subheadings within these main headings, and make it clear which of their points you are challenging or otherwise commenting on. Also, use language (such as acronyms for ministries, titles of legislation etc) consistent with those used in the action plan/report, so that it is clear you are addressing the same ones.

Length: Rule 9s should be kept short. The DEJ recommends about five pages.

Language: If your Rule 9 is not easily comprehensible, it will not be read. If you are not sure that your English/French meets this standard, have your text reviewed by someone with a good command of the language. Also, use plain language – remember that the state representatives meeting in the CM are not necessarily legal experts, let alone experts on your case.

e. Assessing the impact

Check the “status of execution” page and (for enhanced procedure cases) the CM Decision to see how far your recommendations or concerns are reflected. Let EIN know to what extent you think your submission has influenced the DEJ’s assessment (reflected in the summary on HUDOC-EXEC) or the CM Decision.

Additionally, the government is given 10 working days to reply to your Rule 9 before it is published at the CM website, although it may sometimes respond later than that (see 2.1.2.1 & 2.1.2.3). If you have challenged the accuracy of their information or the efficacy of their measures, and they do not respond or respond ineffectively, the credibility of your evidence will be significantly enhanced.

f. Domestic and other Council of Europe advocacy

Use the Council of Europe recommendations/comments in your follow-up discussions with government authorities, MPs, and other NGOs, and publicise them in the media.

NGO communications may also be usefully copied to the other institutional stakeholders such as:

- the PACE Committee on Legal Affairs and Human Rights: Mr Günter Schirmer, Head of the Secretariat, guenter.schirmer@coe.int
- the CoE Commissioner for Human Rights: Mr Özgür Derman, Deputy to the Director, Ozgur.DERMAN@coe.int
- relevant UN Rapporteurs (see page 13, [EIN Handbook about Implementation of Judgments of the European Court of Human Rights](#))

You may also wish to send them to the embassies in your capital of states you think likely to be supportive.

g. Finally, finally

Keep making submissions! All too often NGOs just intervene once. But in many cases, effective implementation requires civil society input over a number of years. Depending on the case, you should think in terms of intervening perhaps once every 12 months and collect evidence to support your interventions on an ongoing basis.

Strasbourg, December 2019

NB: This is a “living document” and will be updated as needed.
Please share your experience by giving feedback on anything in it that could be improved.

Template for Rule 9.2 submissions

1. Covering email for sending your Rule 9.2 to the Department for the Execution of Judgments

Email address: DGI-Execution@coe.int

Dear Madam/Sir,

This message is sent to you in the context of consideration by the Committee of Ministers of the execution by [name of the country] of the [name of the case/ group of cases, and application No]. Please find enclosed a Communication prepared by [name of the organisation] pursuant to Rule 9.2 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

Should you need any further clarifications, please do not hesitate to contact us.

[Contact details of the person/ organisation sending the Communication]

2. The submission itself

DGI Directorate General of Human Rights and Rule of Law
Department for the Execution of Judgments of the ECtHR
F-67075 Strasbourg Cedex
FRANCE
Email: DGI-Execution@coe.int

Date of the submission

COMMUNICATION

In accordance with Rule 9.2. of the Rules of the Committee of Ministers regarding the supervision of the execution of judgments and of terms of friendly settlements by [the names of the submitting NGO(s)]

NAME of the CASE/ GROUP of CASES (Application No)²

² Include hyperlink to the Hudoc-Exec page for your case. Make sure to use the permanent document URL from the top of the page rather than the long link in your browser window.

INTRODUCTORY PARAGRAPH – Description of the case and of the organization(s)

Brief description of the case, including:

- *An indication of the subject of the case/cases, a summary of the relevant facts, and a description of the violation(s) found by the ECtHR.*
- *The date the judgment became final; and whether the case is under enhanced or standard supervision.*

The case description should focus on the elements of the judgment relevant to determining the individual and general measures required for implementation. A good starting point is the case description published in the HUDOC-EXEC database.

Brief description of the NGO or NGOs who are the authors of the communication, their focus areas and expertise, and the relevance of their experience to the subject matter of the case. For NGOs well known to the Council of Europe, this section can be kept very brief indeed, or perhaps even covered by way of footnote.

EXECUTIVE SUMMARY

Put here main recommendations to the CM (perhaps up to 4 or 5) in the form of bullet points.

INDIVIDUAL MEASURES

Your information and presentation should directly respond to that of the Action Plan in terms of the information covered, the order in which it is presented, and if possible, the headings.

- *Address the adequateness of the individual measures adopted/ envisaged, pointing where individual measures require prior adoption of general measures and how these should be conceived;*
- *Provide any updated information on actions taken regarding individual measures such as, e.g.: payment of compensation, annulment of conviction/ criminal record.*

GENERAL MEASURES

Again, respond directly to the information presented in the Action Plan, where possible using the same headings and sub sections as the Action Plan.

Describe any progress/ challenges related to the general measures. Challenge any information provided by the state which is considered to misrepresent or exaggerate progress achieved in implementing the measures.

Subjects you may need to address include gaps in legislative developments, executive/ administrative practice and judicial practice.

Recommend additional general measures where those proposed by the state are insufficient or are proving ineffective.

Provide more general contextual information if, for example, the action plan is considered not to reflect fully the seriousness of the factors giving rise to the violation.

You should support your comments with evidence from your own sources. You could also cite reports by national institutions and other domestic NGOs, particularly where these are not available in English.

You may also refer to reports from expert bodies of the Council of Europe and other international institutions particularly where these support your arguments. However, you need not quote these at length, as it's more than likely that the DEJ will already be aware of this information.

It will be particularly valuable to refer to recent cases or statistics which show how systematic failures perpetuate the situation covered by the case. Make sure that you include facts and figures, as well as your sources/ partners in collecting evidence.

CONCLUSIONS AND RECOMMENDATIONS TO THE CM

Set out here your recommendations to the CM. These recommendations should be as realistic as possible, setting out what you request the CM to urge the respondent state to do. NGOs should avoid:

- presenting recommendations or information which goes beyond the scope of what is required for implementation of the judgment.
- Adopting a tone that is too “campaigning” or emotive.

Examples of recommendations:

- NGOs can suggest the type of evidence the CM might request that the state provide to demonstrate progress in implementing measures, or the efficacy of measures already implemented.
- NGOs can make proposals as to any broader steps to be taken, such as law or policy reform, or training; in making such proposals, NGOs should seek to show that such steps are indeed required in order to implement the judgment in question.

So far as procedural questions are concerned, NGOs may also:

- Request that states present action plan/ reports where delayed (States are required to present action plans/reports no later than 6 months after a judgment)
- Call for a debate on a case at the quarterly CM-DH meeting (for cases which are not under enhanced supervision)
- Call for an interim resolution of the CM
- Call for the CM to refer the judgment to the ECtHR for interpretation
- Call for the initiation of infringement proceedings in exceptional circumstances