european implementation network

Implementation of Judgments of the European Court of Human Rights

A Handbook for NGOs, injured parties and their legal advisers

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Table of contents

Introduction 2

1. Implementation of ECtHR judgments: CoE supervision procedure 3

1.1. Key CoE bodies and their roles 3

1.2. Scope of CM supervision 3

1.3. Procedure 4

1.3.1. General procedure 4

1.3.2. Classification of cases as 'leading', 'repetitive', and 'isolated' 5

1.3.3. Twin-track supervision system 6

1.3.4. CM Human Rights Meetings 7

2. Involvement by NGOs and injured parties 8

2.1. Written communications to the CM 8

2.1.1. Injured parties' communications under Rule 9.1 9

2.1.2. NGO communications under Rule 9.2 9

2.1.2.1. The content of communications 9

2.1.2.2. The structure of communications 12

2.1.2.3. The timing of NGO involvement 13

2.2. Other advocacy avenues in Strasbourg 16

3. How EIN can help 17

4. Implementation toolkit for NGOs 18

5. Appendices 20

5.1. Appendix 1 – Glossary 20

5.2. Appendix 2 – Note on HUDOC-EXEC 24

Introduction

This handbook is intended as a practical resource for NGOs, injured parties and their legal advisers who wish to advocate for the implementation of judgments of the European Court of Human Rights (ECtHR) through direct engagement with the supervisory process of the Council of Europe's (CoE) Committee of Ministers (CM), known as the 'judgment execution process'.

Since 2006 the Rules of Procedure of the CM (the CM Rules) have provided the possibility for NGOs to submit written communications in support of the implementation of human rights judgments. The potential of this participation for supporting the effective implementation of judgments is significant. Without input by NGOs, assessment by the CM of the adequacy of governments' responses and the effectiveness of the implementation of the planned measures is dependent almost entirely on information provided by the member states themselves.

Yet NGOs have been slow to take advantage of this access. Only between 70 to 90 submissions are made by NGOs each year compared to approximately 7,500 cases pending as of early 2018. Around 1,300 of these cases are designated as 'leading cases', being those which give rise to new structural and/or systemic problems and therefore require new general measures such as legal reform or major policy changes for effective implementation. It is mainly these cases which should be considered for NGO submissions. The figure for NGO submissions stands in stark contrast to the number of action plans and action reports submitted each year by member states – 750 to 800 in recent years.

The European Implementation Network (EIN) believes that NGOs across Europe have a crucial role to play in advancing full and effective implementation of ECtHR judgments and that extensive engagement with the judgment execution process is an essential element of this. This handbook is one of the means through which EIN aims to increase the level of NGO engagement in this process, both in terms of the quality and quantity of submissions. In so doing, we hope to help NGOs increase their contribution to the overall promotion and protection of human rights in Europe.

The Handbook has been produced by the **EIN team**: Ramute Remezaite, Professor Başak Çalı, Professor Philip Leach, Nigel Warner, Dominika Bychawska-Siniarska and Kevin Steeves. They would like to thank all of the participants who attended two **EIN training workshops** in the first half of 2018 on the CM judgment execution process. Their active participation in the training contributed to many of the ideas and other content in this Handbook. EIN would also like to thank Nikolaos Sitaropoulos, Head of Division 2, Department for the Execution of Judgments of the ECtHR (**DEJ**), for his suggestions and additions. The creation of this Handbook would not have been possible without the support of the Oak Foundation and Open Society Foundations.

1. Implementation of ECtHR judgments: CoE supervision procedure

1.1. Key CoE bodies and their roles

Member states of the CoE have a legal obligation to fully implement ECtHR judgments. By adhering to the European Convention on Human Rights (ECHR), member states have undertaken to comply with ECtHR judgments and decisions finding violations of the ECHR (Article 46 of the ECHR). However, states are, in principle, free to choose the means to be used to implement the judgment. The measures to be taken are thus, in principle, identified by the state concerned. The **CM**, the CoE intergovernmental body consisting of representatives of the governments of the 47 member states, has the mandate to supervise the implementation of ECtHR judgments. Although formally the CM is composed of the foreign ministers of each member state, in practice ministers delegate this role to their permanent representations in Strasbourg. Therefore, the supervision of the implementation of ECtHR judgments is normally carried out by Deputy Permanent Representatives of the member states.

In this supervisory role, the CM is assisted by its own **Secretariat** and the **DEJ**. The Secretariat of the CM is responsible for ensuring the smooth functioning of the CM in terms of its decision-making procedures (one of which is the supervision of implementation of the ECtHR's judgments). The DEJ (consisting of lawyers and other specialist advisers) works closely with the member states to determine the specific actions required to give full effect to the ECtHR's judgments and provides advice to the CM in respect of implementation in individual cases. The DEJ forms a part of the Directorate General of Human Rights and Rule of Law (DG1).

The **Committee on Legal Affairs and Human Rights** of the Parliamentary Assembly of the Council of Europe (PACE), the **PACE Rapporteur on implementation of ECtHR judgments** and the **Commissioner for Human Rights of the CoE** all have roles in respect of the implementation of ECtHR judgments (discussed further at p 16 below).

1.2. Scope of CM supervision

The CM supervises the execution of ECtHR judgments on the merits, decisions relating to friendly settlements and judgments by which cases are struck out (Articles 46 and 39 § 4 of the ECHR; Rule 43 of the Rules of Court).

Under the ECHR, member states have a legal obligation to remedy violations found by the ECtHR. In practice this obligation is fulfilled through implementing two types of measures:

Individual measures are aimed at fully remedying injured parties in order to restore, as far as possible, the situation existing before the breach (this is the principle of '*restitutio in integrum*'). Payment of compensation (known as 'just satisfaction') is the most common individual remedy and the amount is determined by the ECtHR. Compensation can constitute both pecuniary damages (i.e. direct financial losses) and non-pecuniary (i.e. moral) damages. Individual measures also include other actions such as the re-opening of unfair criminal proceedings, the return of property, the enforcement of domestic court decisions, the release of a person unlawfully detained and the reinstatement of a person to their former occupation, among others.

General measures target the states' obligation to prevent similar violations in the future. This may require adopting or amending domestic legislation, introducing a new policy or procedure, or ensuring a certain judicial practice. States may also be required to improve material conditions (e.g. refurbishment of detention centres or prisons). In short, general measures largely relate to domestic reforms of law, policy, practice, including judicial practice and general conditions of detention.

In 2004 and in 2008, the CM adopted its Recommendations (2004)6 on *improvement of domestic remedies* and (2008)2 on *efficient domestic capacity for rapid execution of ECtHR judgments*, inviting member states to set up effective remedies to avoid repetitive cases being brought before the ECtHR (see the 'NGO Implementation Tool Kit' below for full references).

1.3. Procedure

1.3.1. General procedure

Once a judgment or a decision becomes final[1] it is then transferred to the CM for supervision of its implementation and appears on the regular agenda of the CM (the CM holds four regular meetings a year in order to oversee the supervision of ECtHR judgments). From this point onwards information about the implementation of each ECtHR judgment can be found on the HUDOC EXEC database (see Appendix 2).

As soon as possible after the judgment becomes final – and at the latest within six months of the judgment becoming final – the respondent state is expected to provide its **action plan** setting out what steps it has already taken/will take in order to fully implement the judgment. The action plan should ideally set out an itemized plan setting out what exact steps the state will carry out in order to fully implement the judgment, together with an indicative timetable. Where it is not possible to determine all measures immediately, the plan will set out the steps to be taken to determine the measures required.

An action plan is an evolving document. It should be regularly updated in submissions to the CM with up-to-date information on progress in the adoption of the measures planned. It must also be revised where the measures originally planned need to be revisited in the light of new developments or in response to recommendations by the CM or discussions with the DEJ.

When all the measures described in the action plan and its updates have been adopted, the state makes a final update by turning it into an **action report**, listing the measures planned and the actions taken, and **inviting the CM to end its supervision of the case**. Where no measures are required, or the necessary measures have already been taken at an earlier stage, the state directly submits an action report.

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[1] As there is provision for referral of the judgment of a Chamber to the Grand Chamber, the judgment of a Chamber is not immediately final. The judgment of a Chamber will only become final when one of three conditions is satisfied (Article 44(2) of the ECHR):

1. when the parties declare that they will not request that the case be referred to the Grand Chamber; or
2. three months after the date of the judgment, if reference of the case to the Grand Chamber has not been requested; or
3. when the panel of the Grand Chamber rejects the request to refer the case.

The judgment of a Grand Chamber is final (Article 44(1)). Once final, judgments have binding force (Article 46(1)).

As regards the payment of just satisfaction, the execution conditions are laid down in the ECtHR's judgment (deadline, currency, interests for delays in payment). Existing CM practice on payment of just satisfaction is detailed in a memorandum prepared by the DEJ (document No. 9 in the NGO Implementation Tool Kit below).

As for non-compensatory measures (individual or general), the ECtHR judgments usually do not indicate specific measures. In the majority of cases, it is up to the respondent state, in dialogue with the CM, to decide what measures need to be taken in order to fully implement the judgment. That is why the CM and the DEJ play a crucial role in supervising member states' efforts to implement human rights judgments by providing guidance, advice and control over their actions through adoption of decisions, and interim resolutions on the implementation of individual cases. However, especially since 2004 following Resolution Res(2004)3 of the CM on judgments revealing an underlying systemic problem, the ECtHR has delivered a number of judgments where it has specified the required individual measures, or the general measure under Article 46 of the ECHR or by delivering 'pilot judgments'.

To assist member states, the DEJ has published a Guide for the drafting of action plans and reports for the execution of Judgments of the European Court of Human Rights. This is a very useful practical resource for gaining a deeper insight into the preparation and role of action plans/reports.

1.3.2. Classification of cases as 'leading', 'repetitive', and 'isolated'

The classification of cases as 'leading', 'repetitive' or 'isolated', is an important means of streamlining the supervision system. The key to the classification is the identification of the '**leading cases**'. These are cases revealing new structural and/or systemic problems that require new general measures. Cases not identified as 'leading' are either 'repetitive', because they give rise to structural and/or systemic problems already identified in a leading case, or '**isolated**' because the violations found appear closely linked to specific circumstances, and do not usually require any general measures.

For the purposes of the judgment execution process, **repetitive cases** are grouped with their leading case and appear on CM agendas (and in its database) under that name. The general measures set out in the action plan for the leading case are deemed to apply to repetitive cases in the group, so that when the leading case is judged by the CM to have been implemented, the associated repetitive cases are also considered to have been implemented. Where individual measures are necessary for execution of a repetitive case, information on them is usually provided when the action plan for the group as a whole is updated.

Cases which raise more than one issue may qualify as a leading case on one issue, and a repetitive case on another.

The HUDOC-EXEC database records leading/repetitive case relationships.

1.3.3. Twin-track supervision system

In January 2011, the CM introduced a new twin-track supervision system aimed at increasing the efficiency and transparency of the process. The system provides for classification of cases to be reviewed under '**standard supervision**' and '**enhanced supervision**'. The difference between the two is as follows: for cases under enhanced supervision, the CM plays an active role in monitoring implementation, in particular, through reviewing cases at the quarterly CM Human Rights meetings (see 1.3.4. below); on the other hand, for cases under standard supervision, the review function is largely carried out by the DEJ, the CM limiting its role to ensuring that adequate action plans/reports have been presented and verifying the adequacy of the measures announced and/or taken at the appropriate time.

The criteria for allocating new cases to the 'enhanced supervision' category are as follows:

- Cases requiring urgent individual measures;
- Pilot judgments;
- Judgments otherwise disclosing major structural and/or complex problems as identified by the ECtHR and/or by the CM;
- Interstate cases.

The classification decision is taken at the first presentation of the case to the CM on the basis of advice by the DEJ.

The CM may also decide at any time during the supervision process to transfer a case from the standard to the enhanced procedure, upon request of a member state or the DEJ. In their written submissions, injured parties, NGOs or National Human Rights Institutions (NHRIs) may also ask the CM and the DEJ to examine a case under enhanced supervision. Similarly, a case under enhanced supervision may be transferred to standard supervision, when the CM is satisfied with the action plan presented and/or its implementation, when obstacles to the implementation no longer exist, or when the requisite urgent individual measures have been taken. Member states are usually keen to move cases from enhanced to standard supervision, and push for this in updates to their action plans.

A regularly updated list of cases under enhanced supervision is available on the website of the DEJ.

Of the approximately 1,300 leading cases pending in May 2018, some 300 were subject to enhanced supervision, and 1,000 to standard supervision.

The current working methods of the CM establishing a member state's obligation to provide action plans and reports and the twin-track supervision system aim to ensure that all judgments pending full implementation are under continuous supervision by the CM. The DEJ is responsible for the ongoing communication with member states and receives their actions plans, reports, updates and other relevant information and disseminates it to CM members.

1.3.4. CM Human Rights Meetings

The CM holds quarterly Human Rights Meetings (also called DH meetings), over three days, where it reviews the implementation progress of some 25-40 judgments under closer scrutiny and adopts decisions or interim resolutions with recommendations, directions or concerns to member states.

The CM Human Rights meetings take place in March, June, September and December each year. The meetings are closed – it is not possible for injured parties or NGOs to attend them.

An indicative list of cases on the agenda for the next CM Human Rights meeting is adopted at the end of each CM Human Rights meeting and is published on the CM website soon after the meeting. Out of this list, a number of cases are identified for debate by the CM where it is believed that closer scrutiny may be necessary. The meetings thus serve as an opportunity for the CM to exert additional leverage on, or encouragement for, member states to enhance their efforts, particularly for cases where structural, complex human rights issues have been identified.

Cases on the agenda of the meeting, but not debated during the meeting, are still the subject of supervision by the CM through a procedure by which draft decisions are prepared by the DEJ, circulated in advance to CM members, and then adopted without debate at the CM Human Rights meeting. The pre-circulation of draft decisions ensures that if CM members have concerns about a draft decision, it can be amended, or, if necessary, the case in question can be added to the list of those that will be debated.[2]

[2] See the CM Rules for the supervision of the execution of judgments and of the terms of friendly settlements, adopted on 10 May 2006 and amended on 18 January 2017, for further details.

2. Involvement by NGOs and injured parties

There are several ways for NGOs, injured parties and their legal advisers to engage with the CM judgment execution process and contribute to enhancing full, timely and effective implementation of ECtHR judgments. In many cases, such engagement can make a vital contribution to the effectiveness of the process. Indeed, without stakeholder involvement the CM faces the risk of hearing only the state's account concerning the implementation of judgments.

2.1. Written communications to the CM

Submissions of written communications to the CM are the main and most formalized avenue for injured parties, NGOs and their legal advisers to engage in the process. Under Rule 9 of the CM Rules, injured parties and NGOs may submit communications to the CM to assist the execution process. It should be noted that NHRIs and (since January 2017) international organizations (or their bodies or agencies) may also make such communications.

Rule 9 - Communications to the Committee of Ministers

This rule was amended by the Ministers' Deputies at 1275th meeting of the Committee of Ministers. Paragraphs that have been added or modified are highlighted.

1. The Committee of Ministers shall consider any communication from the injured party with regard to payment of the just satisfaction or the taking of individual measures.
2. The Committee of Ministers shall be entitled to consider any communication from non-governmental organisations, as well as national institutions for the promotion and protection of human rights, with regard to the execution of judgments under Article 46, paragraph 2, of the Convention.
3. The Committee of Ministers shall also be entitled to consider any communication from an international intergovernmental organisation or its bodies or agencies whose aims and activities include the protection or the promotion of human rights, as defined in the Universal Declaration of Human Rights, with regard to the issues relating to the execution of judgments under Article 46, paragraph 2, of the Convention which fall within their competence.
4. The Committee of Ministers shall likewise be entitled to consider any communication from an institution or body allowed, whether as a matter of right or upon special invitation from the Court, to intervene in the procedure before the Court, with regard to the execution under Article 46, paragraph 2, of the Convention of the judgment either in all cases (in respect of the Council of Europe Commissioner for Human Rights) or in all those concerned by the Court's authorisation (in respect of any other institution or body).
5. The Secretariat shall bring, in an appropriate way, any communication received in reference to paragraph 1 of this Rule, to the attention of the Committee of Ministers.
6. The Secretariat shall bring any communication received under paragraphs 2, 3 or 4 of this Rule to the attention of the State concerned. When the State responds within five working days, both the communication and the response shall be brought to the attention of the Committee of Ministers and made public. If there has been no response within this time limit, the communication shall be transmitted to the Committee of Ministers but shall not be made public. It shall be published ten working days after notification, together with any response received within this time limit. A State response received after these ten working days shall be circulated and published separately upon receipt.

All submissions are published on the CM's HUDOC EXEC database (see Appendix 2).

2.1.1. Injured parties' communications under Rule 9.1

Under Rule 9.1 of the CM Rules, injured parties can submit communications to the CM with respect to the question of payment of just satisfaction and individual measures only.

The current CM rules lay significant responsibility on injured parties to inform the CM of any problems relating to the payment of just satisfaction. Once the DEJ receives information from the respective state about the payment of compensation, such information is published on the DEJ's website (www.coe.int/execution) indicating that the injured parties then have two months to bring any complaints to the attention of the DEJ. Injured parties will have had prior warning through the letters accompanying the ECtHR's judgment that it is henceforth their responsibility to react rapidly to any apparent shortcoming in the payment, as registered and published. If such complaints are received, the payment will be subject to a special examination. The injured party should also inform the CM if the state is late in paying the compensation. If no complaint has been received within the two-month deadline, the issue of payment of just satisfaction is considered closed.

All communications relating to the payment of just satisfaction should be sent to the DEJ by post, email or fax:

DGI Directorate General of Human Rights and Rule of Law
Department for the Execution of Judgments of the ECtHR
Just Satisfaction Section
F-67075 Strasbourg Cedex
FRANCE
Fax +33(0)3.88.41.27.93
Email: dgI_execution_just_satisfaction@coe.int

Information relating to payment questions is available on the DEJ's website in several languages under 'Payment Information'.

No specific time limitations or other regulations apply for injured parties' complaints or other observations with respect to individual measures.

2.1.2. NGO communications under Rule 9.2

NGOs can submit communications with respect to all issues relating to implementation of ECtHR judgments. The wording of Rule 9.2 as to the communication content is broader than that of Rule 9.1. As a result, NGOs may submit communications 'with regard to the issues relating to the execution of judgments' or 'with regard to the execution of the terms of friendly settlements'. **NGO communications may thus cover both individual and general measures, and can be submitted at any point of time in respect of any case pending before the CM.**

2.1.2.1. The content of communications

The content of communications can address both the substance of the action plan/report and procedural questions.

So far as substance is concerned, communications should respond to the scope and content of a state's action plan (or the action plan updates):

- in respect of individual measures, addressing the adequateness of the individual measures adopted/envisaged, pointing out where individual measures require prior adoption of general measures and how these should be conceived, and providing any updated information on actions taken regarding individual measures;
- recommending additional general measures where those proposed by the state are insufficient (perhaps because the case reveals systemic or structural human rights issues not directly identified in the judgment and ignored by the state);
- providing evidence to justify the need for these additional measures;
- challenging any information provided by the state which is considered to misrepresent or exaggerate progress achieved in implementing the measures;
- providing 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 (this might arise, for example, where a violation is dismissed by the state as isolated, when in fact it is part of a wider pattern of negative behaviour);
- where general measures already taken by the state are proving ineffective, providing evidence to that effect.

NGOs can also:

- refer to relevant data from reports of expert bodies of the CoE (e.g., Committee for the Prevention of Torture (CPT), the European Commission for the Efficiency of Justice (CEPEJ), the European Commission against Racism and Intolerance (ECRI), the Commissioner for Human Rights, the Monitoring Committee of the Parliamentary Assembly), or by expert bodies of other national and international institutions, bearing in mind though that these reports are usually known to and used by the DEJ;
- suggest the types of evidence the CM might request that the state provide to demonstrate progress in implementing measures, or the efficacy of measures already implemented.

For cases under the enhanced procedure, it is important to examine the last decision of the CM, since this may suggest a focus for an NGO submission, or limit discussions at the forthcoming CM meeting to a particular aspect of the case.

NGOs should avoid presenting recommendations or information which goes beyond the scope of what is required for implementation of the judgment.[3] What steps are required by a particular judgment may, to a certain extent, be open to debate, in particular as regards general measures. In making proposals as to any broader steps to be taken (such as law or policy reform, or training) NGO submissions should seek to show that such steps are indeed required in order to implement the judgment in question.

It is also advised that NGOs should avoid adopting a tone that is too "campaigning" or emotive.

[3] Wider concerns can be taken up with other CoE institutions (e.g. PACE, the Office of the Commissioner for Human Rights, ECRI, CPT).

As has already been noted, NGO submissions perform a crucial role in counter-balancing the CM's dependence on information provided by the state. This is supported by a further mechanism: as described below (p 16), the state has a **right of reply** to information contained in NGO communications. The weight attached to information presented by an NGO is substantially enhanced if the state is unable to refute evidence of errors, omissions or misrepresentations, or justify excluding a general measure recommended by the NGO. Thus, where an NGO shows the information presented by a state to be unreliable, the implementation process for that case is strengthened, the state concerned may be persuaded to take the judgment execution process more seriously and may be persuaded to pay greater attention in the future to advocacy by the NGO. Equally, this right of reply mechanism places a particular onus on NGOs to ensure their facts are correct.

So far as procedural questions are concerned, NGOs may:

- Call for a detailed examination of the case to be conducted rapidly
  In circumstances where developments call for urgent examination of the case.

- Request that states present action plan/reports where delayed
  States are required to present action plans/reports not later than six months after a judgment becomes final.

- Call for a change from standard to enhanced supervision procedure
  Justification for such a call may include continuous failure to present an action plan, disagreement between a state and the DEJ on the content of the action plan/report, and serious delay in the implementation of the announced measures.[4]

- Call for a debate on a case at the quarterly CM Human Rights meeting
  As mentioned above, only certain cases under enhanced supervision are debated at the CM Human Rights meetings.[5] NGOs that consider that a particular case needs greater attention by the CM should provide clear, convincing arguments why and how such attention will benefit the implementation process.

- Call for an interim resolution of the CM
  The CM may, under Rule 16 of the CM Rules, adopt interim resolutions as a means of, e.g. expressing concern or making suggestions about implementation, or putting increased pressure on a state to provide information on progress achieved. It is a weightier procedural instrument than the decisions adopted routinely at the CM Human Rights meetings.

- Call for the CM to refer the judgment to the ECtHR for interpretation
  Pursuant to Article 46 (3) of ECHR, if the CM considers that the supervision of the execution of a judgment is hindered by a problem of interpretation, it may refer the matter to the ECtHR for a ruling on the question of interpretation. NGOs should provide evidence that

[4] Committee of Ministers, *Supervision of the execution of judgments and decisions of the European Court of Human Rights: implementation of the Interlaken Action Plan – Modalities for a twin-track supervision system*, CM/Inf/DH(2010)37, p. 6.

[5] Ibidem, p. 6. A request for debate may be made by a state or the Secretariat. "*It emerges from the spirit of the new twin-track system that the issues to be proposed for debate are closely linked to the progress in the execution process and to the need to seek the guidance and/or support of the CM.*"

the problem of interpretation hinders the proper execution. This mechanism requires a two thirds majority of the CM and so is likely to be invoked only rarely.

- Call for the initiation of infringement proceedings in exceptional circumstances
  Under Article 46 (4) of the ECHR, if the CM considers that the state refuses to abide by a final judgment, it may refer to the ECtHR the question whether that state has failed to fulfil its obligation. This mechanism was introduced in 2010 (when Protocol No. 14 to the ECHR came into force), as a new means of facilitating implementation (although there is no 'sanction' as such available to the Court). It requires a two thirds majority of the CM and so is likely to be invoked only exceptionally.

In December 2017, applying the infringement procedure mechanism for the first time, the CM referred the case of Ilgar Mammadov v Azerbaijan back to the ECtHR. As the experience with the Mammadov case shows, the CM will refer cases back to the ECtHR in very exceptional cases when fundamental values, such as a right to liberty, are grossly violated. However it is likely to take long and continuous advocacy efforts by NGOs. NGOs willing to take up this option should therefore aim to provide strong evidence of the state's failure to comply with the judgment (as opposed to, for example, the ongoing implementation or delayed process).

2.1.2.2. The structure of communications

NGO communications will usually be a response to a state's action plan or report. They should follow a standard structure, as follows:

- Description of the case or group of cases
- Individual measures
- General measures
- Conclusions

NGO communications should in most cases follow this standard structure (and where possible, further sub-divisions adopted by the state in the action plan/report), so that the CM is able easily to relate the arguments made by the NGO to those of the state. They should be as concise as possible – a recommended length is five pages. More detailed information can be included in appendices.

The case description should include a brief indication of the subject of the case/cases, a summary of the relevant facts, and a brief description of the violation(s) found by the ECtHR. It should be brief and 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.

NGOs should also provide:

- an introductory paragraph briefly describing the NGO, its key focus areas and expertise, and the relevance of its experience to the subject matter of the case;
- a short introductory statement of a couple of sentences summarizing the key objectives of the submission; and
- where relevant, a clear list of recommendations to the CM. These should be as realistic as possible, setting out what you request the CM to urge the respondent state to do.

NGO communications may be usefully copied to other institutional stakeholders such as the PACE Committee on Legal Affairs and Human Rights and the CoE Commissioner for Human Rights. They may also be copied to the UN High Commissioner on Human Rights, relevant UN Rapporteurs (e.g., on torture, racism) and others such as the OSCE High Commissioner on National Minorities.

2.1.2.3. The timing of NGO involvement

To engage effectively with the judgment execution process, it is essential that NGOs are familiar with the timetable for the process and follow developments in their case(s) regularly on the website of the DEJ.

The judgment execution process timetable can be summarized as follows:

- On becoming final, the case is transferred by the ECtHR to the CM for supervision.
- Within 2 to 3 months of the case becoming final, the DEJ decides whether the case is a leading or repetitive case.
- If leading, at the next quarterly CM Human Rights meeting a decision on allocation of the case to enhanced or standard procedure is taken. If repetitive, it will automatically come under the procedure of the leading case to which it is attached.
- As soon as possible, and in any event no later than six months after the judgment becomes final, the state must submit the action plan or (if it considers none is required) the action report.
- Following submission of the action plan, the DEJ makes a preliminary assessment of the measures envisaged and the timetable proposed and contacts the national authorities for further information and clarification as necessary.
- Thereafter, further action plans are submitted, as necessary, until finally the state considers itself in a position to submit its action report, inviting the CM to close supervision.
- The DEJ makes a final assessment of the action report at the latest within six months of its submission. If it agrees that the measures implemented are appropriate and sufficient, it will propose that the CM adopt a final resolution putting an end to its examination of the case.

The above suggests the following steps for an NGO's involvement:

Immediately following the judgment,

- Begin developing proposals for individual and general measures and assemble any evidence of continuing similar violations;
- Regularly review the HUDOC-EXEC database until the DEJ publishes information as to whether the case has been designated leading or repetitive.

If designated 'leading',

- Contact the relevant government officials with a view to contributing proposals for the development of the action plan;
- Following publication of the action plan, and if considered necessary, as soon as possible, submit a Rule 9.2 communication addressing any concerns.

If designated 'repetitive',

- Make a Rule 9.2 submission to the CM addressing the last government action plan for the leading case in the group and bringing to its attention any issues relating to individual measures for the repetitive case.

From then on, make submissions as and when needed, addressing:

- developments that need to be communicated to the CM;
- updated action plans;
- the action report.

Once the first action plan has been published, the steps for following up the case will vary, depending on whether the case is subject to enhanced or standard supervision.

Cases under enhanced supervision

The process by which the CM Human Rights meetings are prepared is as follows:

- Provisional lists of cases to be considered at the next CM Human Rights meeting are published immediately following the preceding CM Human Rights meeting.
- Approximately two months before the meeting the DEJ begins preparing 'notes on the agenda' for the cases that will be considered under the order of business for the meeting. These notes contain summaries of the cases and any issues arising, together with draft CM decisions on each case. They are circulated with the order of business, which is finalized two weeks before the meeting, and are very important as a source of information for CM members.
- States usually submit an action plan/report ahead of the meeting. The timing of these varies, but it is typically about six weeks before the meeting.
- Two weeks before the meeting the order of business is finalized and the 'notes on the agenda' circulated to CM members.

It should be noted that it is unusual for any case to be addressed more than once in 12 months; also, for cases under enhanced supervision, CM decisions sometimes indicate at which CM Human Rights meeting the case will be re-examined.

It will be evident from the above that for an NGO communication to have maximum impact, it needs to be submitted in time to be mentioned in the 'notes on the agenda'. This allows the DEJ to take account of it when making its analysis of the situation for the case, and thus ensures that the NGO's information, to the extent considered relevant, comes to the attention of CM members. It should therefore be sent in in good time before the finalization of the order of business. **The DEJ recommends submitting six weeks before the meeting**, and certainly not later than four weeks before the meeting.[6] In some circumstances, it may also be helpful for the NGO communication to be sent directly to the relevant government body.

The **question of timing** often presents NGOs with a dilemma, since they will usually wish to respond to the state's action plan/report, whose timing will be uncertain, and will sometimes be such as to make it difficult to present a submission in the timeframe recommended by the DEJ.

[6] The same rules apply in respect of Friendly Settlements.

A possible solution is for NGOs to make two submissions: a first submission detailing any new developments or comments they wish to make to the CM 4 to 6 weeks before the meeting; and a follow-up submission as soon as possible after the state's action plan, addressing any additional concerns raised by that.

Communications received from NGOs are immediately brought to the attention of the respondent state concerned. **The respondent state is allowed five working days to respond**. Once it does, both the NGO communication and the state response are brought to the attention of the CM and made public on the CM and HUDOC-EXEC websites.

If there has been no response by the member state within these five working days, the communication is transmitted to the CM but is not made public. Instead, it is published 10 working days after notification, together with any response received within this time limit. A member state response received after these 10 working days is circulated and published separately upon receipt.

These timelines mean that any NGO communication intended for a particular CM Human Rights meeting should be sent a minimum of 10 working days before the meeting (five for the member state response, five to allow time for CM members to review the submission). This timing will also ensure that the communication is made public by the start of the meeting. However, communications at this late stage will not benefit from inclusion in the 'notes on the agenda' for the meeting.

Cases under standard supervision

For cases under standard supervision there is no timetable, with supervision being conducted behind the scenes between the DEJ and the state. From time to time the DEJ publishes an update of developments on the 'status of execution' page for the case on the HUDOC-EXEC website. NGOs should monitor cases regularly, to identify and respond to action plans/reports.

Action reports

As already noted, when the state submits an action report, it proposes that supervision of the case be closed. NGOs should follow closely any cases they consider have not been fully implemented, should monitor the HUDOC-EXEC website regularly (e.g. monthly) for action plan/reports, and where an action report is submitted by the state, should urgently submit a communication demonstrating why it would be premature to close the case.

Assessing the impact of NGO communications on the judgment execution process

Following an intervention, NGOs can examine whether any of their comments or concerns are reflected in the case 'status of execution' page on the HUDOC-EXEC website, and, for cases under the enhanced supervision procedure, whether they are reflected in the CM decision taken at the relevant CM Human Rights meeting. The strength or otherwise of a state's response to an NGO communication also provides useful feedback, particularly where a state is unable to challenge the validity of recommendations or the accuracy of data presented.

2.2. Other advocacy avenues in Strasbourg

In addition to preparing written communications under Rule 9 of the CM Rules, NGOs can directly engage with the CM permanent representations. Such engagement enables NGOs to present their position to supportive states, enabling them to understand NGO concerns better, and increasing the likelihood that they will actively support the NGO's proposals. **EIN is in a position to assist NGOs in providing a platform for such interaction**, either by organizing a meeting or informal briefing in Strasbourg or by providing the contact details of relevant officials in Strasbourg.

- **NGO briefings to CM**

EIN organizes informal briefings to CM members approximately two weeks before the quarterly CM Human Rights meetings, to provide them with civil society input on some of the cases to be examined.

The briefings are usually attended by representatives of 20 – 25 permanent representations and allow for presentations on 3 to 5 cases. They provide a unique opportunity for permanent representation staff to hear directly from NGOs on the implementation status of the cases, sharpening the focus of the CM on these cases, and for NGOs to engage directly with the Strasbourg process.

NGO representatives participating in these briefings should aim to provide a very clear analysis of the status of implementation along with 3 to 5 practical recommendations for improved general measures or issues to raise concerning progress in implementation. In this way, there is a stronger likelihood that the information provided by NGOs will be included in assessments by permanent representations and will be sent to capitals to help inform the overall decision-making process of respective member states.

Detailed information on all cases discussed at such briefings can be found on the EIN website, under 'NGO Briefings'.

- **Bilateral meetings with the CM, the DEJ and other CoE bodies**

When in Strasbourg, NGOs are also advised to hold meetings with the **DEJ** staff responsible for the case(s) they are supporting. DEJ staff are responsible for cases from particular states and, as would be expected, are fully aware of the implementation status of these cases. They maintain regular contact with respective government officials, and welcome information updates from NGOs.

NGOs may also want to meet **representatives of CM delegations** who are keen to advocate for full and effective implementation of ECtHR judgments.

The **Office of the Commissioner for Human Rights** has become increasingly active on the implementation matters and can address related issues in various platforms, such as country visits, reports, and other publications.

The **PACE Committee on Legal Affairs and Human Rights** and the **PACE Rapporteur on implementation of ECtHR judgments** publish reports every few years on the implementation of ECtHR judgments and often rely on information provided by civil society. These reports tend to focus on cases which raise important implementation questions, and judgments concerning violations of a

particularly serious nature. The Committee also conducts hearings and undertakes country visits in order to take up matters of implementation. EIN can assist NGOs with the relevant contact details and introductions to staff of the PACE Secretariat. All PACE reports on implementation can be found under 'List of Documents' below.

PACE delegates are entitled to address written questions to the CM, or to its Chairperson-in-office on matters falling within its competence.[7] These provide further opportunities for advocacy. The CM replies, whenever possible, within three months. The texts of replies are subject to unanimous vote in the CM[8] and consequently can be rather uninformative. If the Chairman is asked a question, there is no need for unanimity. Therefore, a country that is criticised can block a reply. However, written questions can still have value as a means of drawing the attention of CM members to implementation problems affecting a particular case.[9]

3. How EIN can help

EIN works with its members and partners – lawyers, civil society organizations and communities – from across the CoE region to advocate for the full and timely implementation of ECtHR judgments. Based in Strasbourg, EIN serves as a hub for European civil society organizations and facilitates engagement with the CoE structures.

Among other activities, EIN organizes regular NGO briefings with the CM (see: NGO briefings to CM, p 16), which supervises the implementation of human rights judgments. Usually taking place shortly prior to the quarterly Human Rights meetings, the aim of the briefings is to provide the CM with updated information on the progress of specific cases from civil society organizations on the ground. Information and documents from the briefings are published here.

EIN may also be in a position to assist NGOs in setting up bilateral meetings with the CM, the DEJ and other CoE bodies (see: Bilateral meetings with the CM, the DEJ and other CoE bodies, p 16).

[7] Parliamentary Assembly, *Rules of Procedure of the Assembly*, Rule 61 - Questions to the Committee of Ministers and Chairperson-in-office.

[8] Committee of Ministers, *Procedures and working methods*, ix. Relations with other Council of Europe bodies, states, international organizations and non-intergovernmental organizations, 1.5.1 Written questions addressed to the CM and to Chairperson-in-office.

[9] For a list of PACE delegates, see: http://www.assembly.coe.int/nw/xml/AssemblyList/MP-Alpha-EN.asp.

4. Implementation toolkit for NGOs

Also available under 'Resources' on the EIN website

Committee of Ministers documents:

1. HUDOC EXEC database on implementation of all ECtHR judgments
2. CM annual reports on supervision of the execution of judgments and decisions of the ECtHR
3. Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements, adopted on 10 May 2006 and amended on 18 January 2017
4. Committee of Ministers iGuide on procedures and working methods
5. Country fact sheets on implementation of ECtHR judgments
6. CM recommendations:
   - On efficient domestic capacity for rapid execution of judgments (Rec(2008)2, 6 February 2008)
   - Improvement of domestic remedies (Rec(2004)6, 12 May 2004)
   - Re-examination or reopening of certain cases at domestic level following judgments of the European Court of Human Rights (R (2000) 2, 19 January 2000)
7. Brussels Declaration on the "Implementation of the European Convention on Human Rights, our shared responsibility" of 27 March 2015
8. CM Information Document 'Supervision of the execution of judgments and decisions of the European Court of Human Rights: implementation of the Interlaken Action Plan – Modalities for a twin-track supervision system', CM/Inf/DH(2010)37
9. FCM Information Document 'Monitoring of the payment of sums awarded by way of just satisfaction: an overview of the Committee of Ministers' present practice', CM/Inf/DH(2008)7, 15 January 2009
10. Copenhagen Declaration on the reform of the European Convention on Human Rights of 13 April 2018

Reports of PACE rapporteurs on the implementation of judgments:

11. 9th Report on the Implementation of Judgments of the European Court of Human Rights, by Mr. Pierre-Yves Le Borgn, 2017
12. 8th Report on the Implementation of Judgments of the European Court of Human Rights, by Mr. Klaas de Vries, 2015
13. Report on the Implementation of Judgments of the European Court of Human Rights, Mr. Christos Pourgourides, 2010

PACE Overview on implementation, prepared by its Committee on Legal Affairs and Human Rights:

14. Impact of the European Convention on Human Rights in States Parties: selected examples, 8 January 2016

PACE Resolutions and Recommendations relating to the implementation of judgments:

15. Resolution 2178 (2017)
16. Recommendation 2110 (2017)
17. Recommendation 2079 (2015)
18. Resolution 2075 (2015)
19. Recommendations 1955 (2011)
20. Resolution 1823 (2011)
21. Resolution 1787 (2011)
22. Resolution 1516 (2006)
23. Resolution 1226 (2000)

Commissioner for Human Rights:

24. «Non-implementation of the Court's judgments: our shared responsibility», by Nils Muižnieks (August 2016)

Venice Commission:

25. Comments on PACE Recommendation 2110 (2017) on the implementation of judgments of the European Court of Human Rights

5. Appendices

5.1. Appendix 1 – Glossary[10]

Action plan – document setting out the measures taken and/or envisaged by the respondent State to implement a judgment of the European Court of Human Rights, together with an indicative timetable.

Action report – report transmitted to the Committee of Ministers by the respondent State setting out all the measures taken to implement a judgment of the European Court and/or the reasons for which no additional measure is required.

'Article 46 judgment' (Judgment with indications of relevance for the execution) – judgment by which the Court seeks to provide assistance to the respondent State in identifying the sources of the violations established and the type of individual and/or general measures that might be adopted in response.

Case – generic term referring to a judgment (or a decision) of the European Court.

Case awaiting classification – case for which the classification – under standard or enhanced supervision – is still to be decided by the Committee of Ministers.

CEPEJ – European Commission for the Efficiency of Justice.

Classification of a case – Committee of Ministers' decision determining the supervision procedure – standard or enhanced.

Closed case – case in which the Committee of Ministers adopted a final resolution stating that it has exercised its functions under Article 46 § 2 and 39 § 4 of the Convention, and thus closing its examination of the case.

CM – Committee of Ministers of the Council of Europe.

CM Rules – Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements, adopted on 10 May 2006 and amended on 18 January 2017.

CoE – Council of Europe.

Deadline for the payment of the just satisfaction – when the Court awards just satisfaction to the applicant, it indicates in general a deadline within which the respondent State must pay the amounts awarded; normally, the time-limit is three months from the date on which the judgment becomes final.

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[10] This glossary is based on the glossary contained in *Supervision of the Execution of Judgments and Decisions of the European Court of Human Rights 2017, 11th Report of the Committee of Ministers*, Council of Europe, March 2018, pp. 53-56.

DEJ – Department for the Execution of Judgments of the ECtHR.

DH meeting – meetings of the Committee of Ministers specifically devoted to the supervision of the execution of judgments and decisions of the European Court. If necessary, the Committee may also proceed to a detailed examination of the status of execution of a case during a regular meeting.

ECHR – European Convention on Human Rights.

ECRI – European Commission against Racism and Intolerance.

ECtHR – European Court of Human Rights.

Enhanced supervision procedure – supervision procedure for cases requiring urgent individual measures, pilot judgments, judgments revealing important structural and/or complex problems as identified by the Court and/or by the Committee of Ministers, and interstate cases. This procedure is intended to allow the Committee of Ministers to closely follow progress of the execution of a case, and to facilitate exchanges with the national authorities supporting execution.

Final judgment – judgment which cannot be the subject of a request of referral to the Grand Chamber of the European Court. Final judgments have to be executed by the respondent State under the supervision of the Committee of Ministers. A Chamber judgment (panel of 7 judges) becomes final: immediately if the parties declare that they will not request the referral of the case to the Grand Chamber of the Court, or three months after its delivery to ensure that the applicant or the respondent State have the possibility to request the referral, or when the Grand Chamber rejects the referral's request. When a judgment is delivered by a committee of three judges or by the Grand Chamber, it is immediately final.

Final resolution – Committee of Ministers' decision whereby it decides to close the supervision of the execution of a judgment, considering that the respondent State has adopted all measures required in response to the violations found by the Court.

Friendly settlement – agreement between the applicant and the respondent State aiming at putting an end to the application before the Court. The Court approves the settlement if it finds that respect of human rights does not justify maintaining the application. The ensuing decision is transmitted to the Committee of Ministers which will supervise the execution of the friendly settlement's terms as set out in the decision.

General measures – measures needed to address more or less important structural problems revealed by the Court's judgments to prevent similar violations to those found or put an end to continuing violations. The adoption of general measures can notably imply a change of legislation, of judicial practice or practical measures such as the refurbishing of a prison or staff reinforcement, etc. The obligation to ensure effective domestic remedies is an integral part of general measures (see notably Committee of Ministers Recommendation (2004)6). Cases revealing structural problems of major importance will be classified under the enhanced supervision procedure.

Group of cases – when several cases under the Committee of Ministers' supervision concern the same violation or are linked to the same structural or systemic problem in the respondent State, the Committee may decide to group the cases and deal with them jointly. The group usually bears the name of the first leading case transmitted to the Committee for supervision of its execution. If deemed appropriate, the grouping of cases may be modified by the Committee, notably to allow the closure of certain cases of the group dealing with a specific structural problem which has been resolved (partial closure).

Individual measures – measures that the respondent States' authorities must take to erase, as far as possible, the consequences of the violations for the applicants – restitutio in integrum. Individual measures include for example the reopening of unfair criminal proceedings or the destruction of information gathered in breach of the right to private life, etc.

Interim resolution – form of decision adopted by the Committee of Ministers aimed at overcoming more complex situations requiring special attention.

Isolated case – case where the violations found appear closely linked to specific circumstances, and does not require any general measures.

Just satisfaction – when the Court considers, under Article 41 of the Convention, that the domestic law of the respondent State does not allow complete reparation of the consequences of this violation of the Convention for the applicant, it can award just satisfaction. Just satisfaction frequently takes the form of a sum of money covering material and/or moral damages, as well as costs and expenses incurred.

Leading case – case which has been identified as revealing new structural and/or systemic problems, either by the Court directly in its judgment, or by the Committee of Ministers in the course of its supervision of execution. Such a case requires the adoption of new general measures to prevent similar violations in the future. Leading cases also include certain possibly isolated cases: the isolated nature of a new case is frequently not evident from the outset and, until this nature has been confirmed, the case is treated as a leading case.

Partial closure – closure of certain cases in a group revealing structural problems to improve the visibility of the progress made, whether as a result of the adoption of adequate individual measures or the solution of one of the structural problems included in the group.

Pending case – case currently under the Committee of Ministers' supervision of its execution.

Pilot judgment – when the Court identifies a violation which originates in a structural and/or systemic problem which has given rise or may give rise to similar applications against the respondent State, the Court may decide to use the pilot judgment procedure. In a pilot judgment, the Court will identify the nature of the structural or systemic problem established, and provide guidance as to the remedial measures which the respondent State should take. In contrast to a judgment with mere indications of relevance for the execution under Article 46, the operative provisions of a pilot judgment can fix a deadline for the adoption of the remedial measures needed and indicate specific measures to be taken (frequently the setting up of effective domestic remedies).

Under the principle of subsidiarity, the respondent State remains free to determine the appropriate means and measures to put an end to the violation found and prevent similar violations.

Repetitive case – case relating to a structural and/or general problem already raised before the Committee in the context of one or several leading cases; repetitive cases are usually grouped together with the leading case.

Standard supervision procedure – supervision procedure applied to all cases except if, because of its specific nature, a case warrants consideration under the enhanced procedure. The standard procedure relies on the fundamental principle that it is for respondent States to ensure the effective execution of the Court's judgments and decisions. Thus, in the context of this procedure, the Committee of Ministers limits its intervention to ensuring that adequate action plans/reports have been presented and verifies the adequacy of the measures announced and/or taken at the appropriate time. Developments in the execution of cases under standard procedure are closely followed by the Department for the Execution of Judgments, which presents information received to the Committee of Ministers and submits proposals for action if developments in the execution process require specific intervention by the Committee of Ministers.

Transfer from one supervision procedure to another – a case can be transferred by the Committee of Ministers from the standard supervision procedure to the enhanced supervision procedure (and vice versa).

Unilateral declaration – declaration submitted by the respondent State to the Court acknowledging the violation of the Convention and undertaking to provide adequate redress, including to the applicant. The Committee of Ministers does not supervise the respect of undertakings formulated in a unilateral declaration. In case of a problem, the applicant may request that its application be restored to the Court's list.

'WECL' case – judgment on the merits rendered by a Committee of three judges, if the issues raised by the case are already the subject of 'well-established case-law of the Court' (Article 28 § 1b).

5.2. Appendix 2 – Note on HUDOC-EXEC

The HUDOC-EXEC database provides the latest available information (in English and French) about the status of the implementation of ECtHR judgments.

Cases can be searched for by various criteria, including name and application number. There are brief details about each case, followed by a section on the status of execution (including both general measures and individual measures). Cases raising the same or similar issues are grouped together under a 'Leading Case'.

Links are also provided to all relevant Government and NGO communications and submissions, as well as all CM decisions, relating to the case.

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