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Ministers' Deputies / Working Parties**GT-REF.ECHR****Ad hoc Working Party on Reform of the Human Rights Convention system****GT-REF.ECHR(2013)2 rev2** 2 May 2013¹

Measures to improve the execution of the judgments and decisions of the Court

Working document under discussion within the GT-REF.ECHR

I. INTRODUCTION

1. It is recalled that following the GT-REF.ECHR's first examination of possible measures to improve the execution of judgments and decisions of the Court, the Deputies endorsed at their 1159th meeting (16 January 2013) the proposals to:

- *make public the list of cases proposed for examination in the draft Order of Business of its human rights (DH) meetings, but without the notes, points to be debated and/or draft decisions (information should be limited to already public information, i.e. case description and status of execution, as the case may be with references to other public documents);*
- *make more visible presentation of positive results achieved in the execution of the judgments and decisions.*

2. Measures to improve the execution of the judgments and decisions of the Court were examined by the GT-REF.ECHR on 12 March 2013 and 9 and 29 April 2013. At the latter meeting, the working party agreed to propose to the Deputies to declassify this working document, which has been elaborated by the Secretariat in the light of proposals made by delegations. The working party underlined that the proposals made in the document are still under consideration and have not been agreed by it.

II. Consolidated presentation of the means available to the Committee of Ministers when supervising the execution of the Court's judgments on the basis of existing practices

3. The measures/responses presented below have all been used by the Committee of Ministers on one or more occasions (some regularly) in order to ensure the timely execution of the Court's judgments.

A. Special tools relating to the payment of just satisfaction

4. Certain special tools have been developed to address problems relating to the payment of just satisfaction:

- Insistence on the respondent State's duty to pay default interest or otherwise safeguard the value of just satisfaction awarded
- Publication of lists of cases with outstanding payment questions
- Assistance to States through the publication of guides to CM and State practices and in the context of regular contacts with the Department for the execution of the Court's judgments

B. General tools

5. An essential tool to ensure the execution of the Court's judgment was the introduction, in 2009, of an obligation to present to the Committee of Ministers adequate action plans, with timetables, covering the different measures required for execution. Such action plans should be submitted as rapidly as possible, and, in any event, not later than 6 months from the date judgments become final. Action plans should, to the extent necessary, also address the issue of effective remedies and be kept up to date. They should preferably cover all the cases in a group, and not be submitted individually in each case unless this is necessary e.g. because of questions linked with individual measures.

6. In the light of this situation, a first group of measures relate to peer pressure with the aim of ensuring, through dialogue that action plans are duly submitted and also implemented in accordance with the time tables presented. A second group of measures aim at providing support for execution in different forms, in particular to facilitate the preparation of action plans and/or the adoption of the reforms required and to promote synergies with other relevant mechanisms or bodies. A third group of measures aim at building up sufficient peer pressure to overcome persistent resistance to execute.

7. These different groups of tools are evidently closely interconnected. Indeed, experience shows that the solution of more complex execution situations frequently requires a mix of peer pressure and support.

8. Below follows an overview of practices up to date. Different proposals made as regards possible further action are presented in Section III.

1. Peer pressure through dialogue to ensure that execution measures are planned, implemented and

1. Peer pressure through dialogue to ensure that execution measures are planned, implemented and evaluated timely and effectively

- a) Ensure that cases under standard supervision are transferred to enhanced supervision, where required to allow an in depth examination of the reasons underlying a possible delayed adoption of an action plan, or the absence of diligent implementation of execution measures required; immediate examination of the issues, if the case is already under enhanced supervision. On the other hand, where appropriate, consider transferring cases from enhanced to standard supervision to recognise clear progress achieved by the authorities.
- b) Ensure an in depth and prompt examination of information regarding action plans with a view to adopting at an early stage, preferably one clear and targeted Committee of Ministers position, strictly responding to the relevant findings of the Court, which can facilitate and encourage national authorities in their execution work.
- bis) ensure a prompt and adequate response to the information regarding progress achieved or execution accomplished or, where necessary, criticise the absence of progress and/or set time-limits, and where appropriate provide also recommendations and other indications regarding appropriate action.
- c) Organise special debates to address signs of delay or negligence in the implementation of the duty to inform the Committee of Ministers of the responses adopted to violations found.
- d) Ensure, wherever necessary, that States rapidly translate and disseminate the Committee of Ministers' decisions in order to efficiently reach out to authorities concerned.
- e) Ensure more frequent examination of cases under enhanced supervision in case of problems.
- f) Adopt Interim Resolutions in situations where concerns raised reach a certain level of seriousness in order to attract the attention not only of the domestic authorities concerned but also of other authorities.
- g) Invite the Chair of the Human Rights meetings or of the Committee of Ministers itself to take action – notably in the form of high level meetings or letters to the government of the respondent state.
- h) Bring the matter up at a ministerial session.

2. Synergies and co-operation programmes

- a) Ensure adequate interaction with the Court and well-targeted response to its findings through
 - i) Speedy and efficient sharing and use of information notably regarding the Court's findings (the effectiveness of new domestic remedies, the historical character of a violation, etc.) on the influx of repetitive applications and the development of execution to facilitate appropriate use of different procedures (e.g. the pilot judgment procedure) and the definition of priorities, and/or
 - ii) Committee of Ministers' resolutions inviting the Court to take specific actions (e.g. identify structural problems – adopt viable practices of friendly settlements)
- iii) Contacts between the Registry and the Department for the execution judgments.
- b) Exchanges of information with the Parliamentary Assembly, the Human Rights Commissioner and the Secretary General, notably through the web sites of the Committee of Ministers and of the Department for the execution of judgments, the annual report, in order to promote adequate support for execution.
- c) Improve possibilities for different authorities and civil society to follow the Committee of Ministers' supervision of execution by publishing the list of cases proposed for inclusion on the Order of Business.
- d) Ensure that the recommendations and opinions of different Council of Europe expert bodies, notably as regards good practices, are duly taken into account in action plans and Committee of Ministers' decisions wherever this may facilitate execution.
- e) Ensure, in the same spirit, that achievements made in the execution of the Court's judgments receive greater publicity.
- f) Organise thematic debates before the Committee of Ministers in order to allow States to share experiences, where necessary with the participation of different expert bodies, such as the CEPEJ and the Venice Commission.
- g) Adopt recommendations to the States on specific issues of relevance for good execution, e.g. Recommendation (2000)2 on the re-examination and reopening of procedures at the domestic level to give effect to the judgments of the Court, or (2004)6 on effective remedies or (2008)2 on improved domestic capacity for the rapid execution of the Court's judgments, combined with different follow-up activities (so far, either of a general scope, by CDDH, or on a case-by-case basis, by the Committee of Ministers, in the context of its supervision of the execution of the Court's judgments).
- h) Encourage States to avail themselves of assistance and co-operation activities wherever needed and ensure that targeted co-operation or assistance programs can be rapidly made available in case of need.
- i) use fully the potential of IT tools and website, including through their further development, so that they offer more interactivity and concrete support for member States and the Secretariat in their effort to manage cases effectively and within deadlines (e.g. automatic warnings on approaching or passed deadlines, standardised forms to fill with information, interactive use of information already submitted in similar cases, more operational search functions, fine-tuned presentation of various lists of cases, transparency and clear visibility of the actual progress, etc.).

3. Peer pressure to overcome persistent difficulties in obtaining execution

- a) Issue a warning that the Committee of Ministers may consider that the State is disrespecting its obligations under the Convention where there is still clear evidence of lack of any execution.
- b) If the situation persists, either conclude itself that the State in question is disrespecting its obligations under the Convention or, if deemed more appropriate, start the procedure necessary to engage infringement proceedings before

the Court in order to obtain a similar conclusion.

c) In case disrespect is found through one or the other of the above procedures, underline that such disrespect is also disrespect of the State's obligations as a member of the Council of Europe.

d) In case disrespect is found, also ensure that the question of compliance will be borne in mind in the context of the Council of Europe's external relations with other organisations (e.g. EU, OSCE, UN and others) and in bilateral discussions with the States.

e) Follow up such a conclusion by calls on the member States to adopt the measures they deem appropriate to ensure execution.

f) Follow up the effect given by States to such calls.

g) Publicly announce that the situation will have to be examined under Article 8 of the Statute of the Council of Europe.

III. Proposals for improvements of the tools at the Committee of Ministers' disposal for its supervision of the execution of the Court's judgments – presented in different contexts but never implemented, or at least not on a regular basis

1. Peer pressure through dialogue to ensure that execution measures are planned, implemented and evaluated timely and effectively

a) Presentation – to start after a certain transitional time – of lists highlighting cases awaiting certain standard information regarding execution problems, e.g. lists of cases in which the Committee of Ministers is awaiting information regarding the presentation of an action plan or the payment of just satisfaction.

b) Making more frequent use of other Committee of Ministers meetings in case urgent questions arise.

c) More regular examination of the situation of all cases under supervision, and possibly their closure if appropriate, including cases under standard supervision.

cbis) More regular special debates to address signs of delay or negligence in the implementation of the obligation to inform the Committee of Ministers of responses adopted to violations found.

d) Regular detailed examination of all cases under enhanced supervision through inclusion on the Order of Business at least once every two years for the adoption of a formal decision.

e) More frequent setting of time-limits or, if requested by the respondent, indicating the domestic authorities concerned in the Committee of Ministers' decisions.

f) Resumption of the practice of press releases, notably to present more important decisions and/or interim resolutions.

g) Invite the Department for the execution of judgments to offer more frequently its good offices to solve different execution problems.

h) Ensure that the Committee of Ministers' action better concentrates on issues to be solved, e.g. through improved presentation of the actual execution situation so as to highlight outstanding and resolved issues and more and better use, whenever possible, of various types of decisions and resolutions (e.g. more frequent decisions or interim resolutions formally closing those execution issues which have been fully addressed).

i) Fine-tune the applied categorisations of cases to facilitate the case-management (e.g. consider adding "simple case" category, for example in cases requiring mainly payment of just satisfaction, friendly settlements, cases with historic violations or for which general measures have been taken in other similar cases).

j) Keep under review and adjust regularly the division of cases into groups so that the respective groups cover similar issues to be solved or closed.

k) Fine-tune the presentation of statistics and lists of cases on the website to better reflect actual progress (e.g. lists with headings: all individual measures taken/executed, general measures taken under verification, introduce a separate list for friendly settlements and unilateral declarations).

l) Encourage the participation of high-level decision makers and experts at the Human Rights meetings.

2. Synergies and co-operation programmes

a) The setting of medium-term thematic priorities, allowing for the possibility of more thematic debates, the involvement of relevant Council of Europe expert bodies and monitoring mechanisms, and targeted meetings outside the Committee of Ministers to identify best practices and options for solving complex problems.

b) Organisation of tri-partite meetings to discuss execution (Committee of Ministers, Parliamentary Assembly, Human Rights Commissioner) and encouragement of more activity to promote execution on the part of the Parliamentary Assembly and Commissioner.

c) Institute a regular dialogue with the Parliamentary Assembly, the Human Rights Commissioner, the Secretary General and the Court on the occasion of the issuing of the annual report.

d) Raising the visibility of the Annual Report through a press conference under the auspices of the Chair.

e) Assessing and raising the visibility of co-operation with the interested member States.

f) Raise awareness of execution procedures and the Committee of Ministers' expectations among Government Agents and other authorities responsible for the coordination of execution through increased co-operation activities.

g) Reinforce the interaction with the Court through more regular contacts between the Registry and the Department for the execution of the Court's judgments.

h) Improve the targeting of the Council of Europe's different co-operation activities to better take into account the needs of execution.

i) Increase the accessibility of information on the various co-operation activities of the Council of Europe with the respective countries as well as the co-ordination of these activities (e.g. one contact point in the Secretariat, Internet database/platform, etc.).

j) Increase the accessibility of information on good practices and effective mechanisms and procedures for the execution of judgments.

3. Peer pressure to overcome persistent difficulties to execute

a) Instruct steering committees not to allow the defaulting state to assume any leading role in inter-governmental co-operation by holding positions as Chair or being represented in committee bureaux.

b) Refuse to allow important political events to be organised (e.g. ministerial conferences) in the defaulting State.

c) Refuse to permit the State concerned to assume leading positions at the level of the Organisation (notably the chairmanship of the Committee of Ministers, positions in the Bureau, or chairmanship of rapporteur groups).

d) At appropriate moments, the Committee could supplement the above actions by appeals to the Parliamentary Assembly, or otherwise concerted action with the Assembly to take all useful action to ensure compliance.

ANNEXE

ANNEXE au document [CM/Inf/DH\(2006\)18](#)

EXTRACT

(...)

III. RESPONSES IN CASE OF PERSISTENT NON-RESPECT

III.1. General considerations

30. The Committee of Ministers has indicated that it has the duty to ensure, with all the means available to the Council of Europe ("the CoE"), the respondent state's compliance with its obligations under the Court's judgment. What measures are then at the organisation's disposal?

31. Taking into account existing practice and proposals, as well as the newly adopted Protocol No. 14 (even if it is not yet in force), the measures listed below could be considered in order to respond publicly to the breach. It should be noted that the Committee would only consider the responses below once the measures referred to in connection with the responses to delay and negligence have led to no result, or where it is otherwise clear that no other solution can be envisaged.

32. Another matter is that compliance may also necessitate parallel, possibly confidential, consultations with a view to finding a solution. The taking of any of the measures mentioned below should thus not necessarily prevent recourse to further informal contacts at different levels.

III.2. Current practice so far

33. The current practice may be summarised as follows:

a) adopting an *interim* resolution e.g. deploring the absence of execution, or, if the breach nevertheless persists, declaring the non-respect of the State's obligation as a High Contracting Party to the Convention and, possibly, also of its obligations as a member State of the CoE (in addition the Committee will insist on the adoption of the necessary execution measures)²; ensuring the rapid and wide distribution of this resolution and maximum publicity so that states or different bodies or organisations concerned or potentially interested³ are made aware of the breach;

b) issuing a *formal warning* that action, e.g. through the adoption of a *new interim resolution*, under Article 8 of the Statute may follow;

c) *appealing to the authorities of the member states* to take more or less specific actions.

III.3. Proposal for a gradual approach to persistent non-respect

34. A proposal for a gradual approach to persistent non-respect of the obligation to abide by a judgment is set out below, integrating and building on the practice so far in such situations and on the proposals made by different CoE bodies over the last years:⁴

III.3.i. Declare the non respect of the obligation to comply⁵ and bring it effectively to the public domain

- adopt an *interim resolution*, declaring the non respect of the obligation to comply with the judgment of the Court⁶ and urging the state concerned to abide by its obligations⁷ and ensure its wide publicity and dissemination;

- consider the advisability of formally bringing the non-respect to the attention of other bodies potentially concerned (EU, UN, OSCE and others);

- ensure that the question of compliance will be borne in mind in the context of the CoE's external relations with other organisations (e.g. EU, UN, OSCE) and in bilateral discussions with states;

- where appropriate, raise the visibility of the non-respect further by taking up the matter at a Ministerial meeting.

III.3.ii. If the non respect persists: action to manifest dissatisfaction with a government which is not respecting its obligations towards the Organisation

- issue a formal warning, through a further interim resolution, that continued manifest non respect for the state's obligation to comply⁸ may lead the Committee to conclude that the State does not respect its obligations as member State of the Council of Europe, and, if appropriate, also to the institution (if Protocol No. 14 has entered into force) of infringement proceedings;⁹
- appeal to the authorities of member states to take whatever action they deem appropriate to ensure execution; for example:
 - diplomatic activity in relevant multilateral fora (EU, UN, OSCE others...);
 - bilateral diplomatic initiatives;
- instruct Steering Committees not to allow the defaulting state to assume any leading role in inter-governmental co-operation by holding positions as Chair or being represented in committee bureaux¹⁰;
- refusal to permit important political events to be organised (e.g. Ministerial conferences) in the defaulting state;
- refusal to permit the state concerned to assume leading positions at the level of the Organisation (notably the Chairmanship of the Committee, positions in the Bureau, or chairmanship of Rapporteur Groups)¹¹.

III.3.iii. Where all other means have failed: sanctions or other forcible measures

- adopt a further interim resolution declaring that the respondent State is violating its obligations as a High Contracting Party to the Convention and as a member State of the Council of Europe; or if appropriate,
- engage (if Protocol No. 14 has entered into force) infringement proceedings before the Court;
- consider the measures to be taken in response to the violation¹², e.g.:
 - appeal to the authorities of member states to :
 - engage diplomatic sanctions of different kinds (e.g. annulment of state visits, etc.);
 - contribute towards enforcing the obligations of the defaulting state (e.g. freezing of assets, etc.);
 - examine the breach under Article 8 of the Statute of the CoE with a view to suspending the rights of representation for as long as the breach continues;¹³
 - and/or, finally,
 - request the respondent State to withdraw from the CoE;
 - exclusion from the CoE.

III.4. Complementary action of the Committee of Ministers vis à vis the Parliamentary Assembly

35. At appropriate moments, the Committee could supplement the above actions by appeals to the Parliamentary Assembly, or otherwise concerted action with the Assembly (e.g. on the lines proposed for the monitoring procedure see [CM/Del/Dec\(98\)630](#) point 1) to take all useful action to ensure compliance¹⁴. Such an appeal or concerted action could lead the Assembly to envisage for example¹⁵:

- *Action by members of national delegations in their national parliaments*¹⁶;
- *Engaging a monitoring procedure or reinforce an ongoing one*¹⁷;
- *Appealing to member states to lodge inter-state complaints before the Court*;
- *Suspension of the voting rights of the delegation of the defaulting state.*

¹ This document has been classified restricted at the date of issue; it will be declassified in accordance with Resolution [Res\(2001\)6](#) on access to Council of Europe documents.

² Proposal by the Secretariat in order to take into account the observations made by the Delegation of France at the 847th meeting, 8-9 July 2003 and the practice of the Committee as it appears in several interim resolutions adopted over the last years in which the Committee has notably concluded/declared that the state concerned has not respected its obligation under the Convention or to abide by the judgments of the Court (see e.g. Interim resolution DH(1999)529 in the Socialist Party case, DH(2000)105 and DH(2001)80 in the Loizidou case). The French proposals were also contained in a letter of 10 July 2003 addressed to the Director General.

³ Proposal by the Secretariat in order to take into account the observations made by the Delegation of France at the 847th meeting, 8-9 July 2003. These are also contained in a letter of 10 July 2003 addressed to the Director General. This also harmonises with paragraph 34, III.3.i.

⁴ Proposal by the Secretariat in order to take into account the observations made by several Delegations, including the Delegation of France at the 847th meeting, 8-9 July 2003. The French proposals are also contained in a letter of 10 July 2003 addressed to the Director General.

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⁵ See note 20. [Footnote 1 in this extract].

⁶ See note 20. [Footnote 1 in this extract].

⁷ Proposal by the Parliamentary Assembly, see Recommendation 1546(2002).

⁸ See note 20. [Footnote 1 in this extract].

⁹ It should be noted that Article 54 of the ECHR ("Powers of the Committee of Ministers") states that "nothing in this Convention shall prejudice the powers conferred on the Committee of Ministers by the Statute of the Council of Europe."

¹⁰ Proposal by the Secretariat in order to take into account the observations regarding the need for better legal certainty when exercising the Committee's power to impose sanctions, made by the Delegation of France at the 847th meeting, 8-9 July 2003. The French proposals are also contained in a letter of 10 July 2003 addressed to the Director General.

¹¹ See notably the Parliamentary Assembly Recommendation 1576(2002) and the opinion of the Venice Commission, see document CDL-AD (2002) 34.

¹² The new Article 46, paragraph 5, specifies that "If the Court finds a violation of paragraph 1, it shall refer the case to the Committee of Ministers for consideration of the measures to be taken". The Parliamentary Assembly had not excluded (see Recommendations 1477(2000), 1546(2002) and 1576(2002)), just as the CDDH in its final activity report of April 2003 (CDDH(2003)6), pecuniary sanctions among possible measures. The explanatory report to Protocol N° 14 states, however, that the infringement procedure "does [not] provide for payment of a financial penalty by a High Contracting Party found in violation of Article 46, paragraph 1. It is felt that the political pressure exerted by proceedings for non-compliance in the Grand Chamber and by the latter's judgment should suffice to secure execution of the Court's initial judgment by the state concerned" (paragraph 99).

¹³ Proposal of the Parliamentary Assembly, see Resolution 1226(2000).

¹⁴ Proposals by the Steering Committee for Human Rights (CDDH), see document [CM\(2003\)55](#), proposals C2 and C5.

¹⁵ See also Resolutions 1268 and 1297(2002).

¹⁶ Proposals by the Parliamentary Assembly, see Resolution 1226(2000), Recommendation 1268(2002) and opinion of the Venice Commission, documents CDL (2000) 16 and CDL-AD (2002) 34.

¹⁷ Proposals by the Parliamentary Assembly, see Resolution 1226(2000) and Recommendation 1268(2002).

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