



COMMISSIONER FOR HUMAN RIGHTS

COUNCIL OF EUROPE



Strasbourg, 7 February 2008

CommDH/NHRS(2008)7
Original version

**Enhancing the role of National Human Rights Structures
in the execution of the European Court
of Human Rights' judgments**

Pilot project, 31 January – 1 February 2008
Palais de l'Europe, Room 14

**DEBRIEFING AND FOLLOW-UP
TO THE PILOT PROJECT MEETING**

1. The meeting was the first one dedicated exclusively to the enhancement of the NHRS' role in the execution of the European Court of Human Rights' (the Court) judgments. It was attended by 5 pilot NHRS from 4 countries and 6 observer HRS coming from 6 countries.

2. The meeting's principal aim was to provide information to but also to receive information from the NHRS who attended on how a NHRS may be able to aid best its own State which is bound to execute promptly and effectively the Court's judgments.

3. The Commissioner's feeling is that the above aim has been achieved. The discussions during the meeting had been fruitful. Indications are already available showing the willingness of NHRS to continue (as is the case of the Northern Ireland Human Rights Commission - NIHRC)) or to start (as is the case of the French National Consultative Commission for Human Rights - CNCDH) interacting with the Committee of Ministers (CM), making use of the CM Rules on the supervision of execution of the Court's judgments (see Appendix), given that the majority of (if not all) the human rights structures present in the meeting are competent and already active in the three major thematic fields which were discussed (detention, aliens, actions of security forces). In this respect, the Director of Monitoring also stressed the significance of the past and ongoing contribution by the NIHRC to the work of the Department for the Execution of the Court's judgments.

4. It is worthy to mention a series of **good practices** / **actions** which surfaced at the meeting and are or may well be followed for boosting further the execution process and, thus, ensuring the non-repetition of violations at national level (hence fostering the effectiveness of the ECHR system):

I. Possible good practices of the NHRS

i) NHRS could consider including systematically in their annual Reports a special section dedicated to the execution or non-execution by their States of the Court's judgments.

ii) NHRS could alert their Governments of Court judgments that originate in cases previously examined by the NHRS and where the recommendations made by them had been ignored or not fully followed by the authorities which, in turn, caused the case to be brought to Strasbourg.

iii) NHRS could follow more closely the Interim Resolutions and the “instructive decisions”¹ issued by the CM in the context of the supervision of the execution of the Court’s judgments. These documents usually show the existence of special human rights issues requiring respondent States’ particular attention and action (adoption of individual and/or general measures).

iv) In the context of the human rights proofing by NHRS of existing or draft laws and administrative practices, special attention should be paid to the Court’s case law. Possible incompatibilities should be highlighted and brought to the attention of the competent authorities in due time.

v) In cases where new legislation or other general measures are under way, including in cases where these occur in reaction to a Court’s judgment (especially as regards remedies under Article 13 ECHR), NHRS could promptly provide their comments to the competent Ministries and/or parliamentary committees on the appropriateness of such legislation or measures for addressing the human rights issue at hand.

vi) The effectiveness of (new) general measures taken by a State, in the context of execution of a Court’s judgment, could be systematically gauged by NHRS by examining whether new similar applications are pending before the Court and whether, despite the adoption of measures by the respondent State, these applications have been declared admissible by the Court.

vii) The contact persons of the NHRS could forward all information as well as comments they may have on individual or general measures required by the CM or reported as taken by the authorities directly to the Department for the Execution of the Court’s judgments (DGII.Execution@coe.int), with a copy to the NHRS Unit (for the attention of Nikos Sitaropoulos, nikolaos.sitaropoulos@coe.int and Stefano Montanari, stefano.montanari@coe.int). The provision of such information will be particularly useful for the Commissioner’s country or thematic work. All issues relating to the submission of such information by NHRS are regulated by Rules 9 and 15 (see Appendix).

viii) NHRS could explore the way in which they can contribute to a more effective dissemination of the Court’s case law to all State organs concerned, at the appropriate levels.

ix) Particular attention should be paid to the training of medium- and low- level State organs (e.g. individual officers or prison guards) that have the everyday task of implementing the Court’s case law/standards. The organization by NHRS of specialized thematic seminars targeting State actors could be considered. Requests for assistance to that effect may be addressed to the Council of Europe via the Commissioner’s Office.

¹ This is an unofficial term making reference to decisions adopted by the Ministers’ Deputies in the context of their supervision of the execution of the Court’s judgments, which do not merely indicate the date of the next examination of a case by the CM but also include the CM’s substantive evaluation of the progress of execution by the respondent State.

II. Future action by the NHRS Unit, Commissioner's Office

i) Information regarding the CM DH Interim Resolutions and “instructive decisions” will be sent to NHRS by the NHRS Unit of the Commissioner's Office at regular intervals.

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Next steps:

5. The next meeting of the CM dedicated to the supervision of the execution of the Court's judgments is due to take place on 4-6/03/2008 (1020th CM DH meeting)². The relevant cases under examination by the CM are available at: http://www.coe.int/T/E/Human_Rights/execution/. The NHRS which participated in the Pilot Project may resort to action as devised specifically in the meeting and recalled in general terms in this document (cf. Rules 9 and 15, Appendix and above paragraph vii).

6. On his side, the Commissioner will positively respond to the fact that at their meeting on 05/12/2007 the Chair of the CM Deputies said that he “*wished to invite the Council of Europe Commissioner for Human Rights to an exchange of views with the Deputies at a future meeting on issues related to execution methods and measures*”³.

7. Finally, it is noted that the issue of the enhancement of NHRS' role in the execution of the Court's judgments is likely to be one of the themes of workshops that will be organized by the Commissioner's NHRS Unit in the framework of the two-year “Peer to peer” project, which is co-financed by the European Commission and aimed at setting up an active network of independent non-judicial human rights structures in Council of Europe member States. That project is due to start in April 2008 and more information on the project will be provided shortly to the NHRS.

² The total number of CM DH meetings per year is four. The three other CM DH meetings in 2008 will be: 1028th, 3-5 June 2008; 1035th, 16-18 September 2008; 1043rd, 2-4 December 2008.

³ Doc. CM/Del/Dec(2007)1013, 11 December 2007, www.coe.int/t/cm.

APPENDIX

Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements

*(Adopted by the Committee of Ministers on 10 May 2006
at the 964th meeting of the Ministers' Deputies)*

I. General Provisions

Rule 1

1. The exercise of the powers of the Committee of Ministers under Article 46, paragraphs 2 to 5, and Article 39, paragraph 4, of the European Convention on Human Rights, is governed by the present Rules.
2. Unless otherwise provided in the present Rules, the general rules of procedure of the meetings of the Committee of Ministers and of the Ministers' Deputies shall apply when exercising these powers.

Rule 2

1. The Committee of Ministers' supervision of the execution of judgments and of the terms of friendly settlements shall in principle take place at special human rights meetings, the agenda of which is public.
2. If the chairmanship of the Committee of Ministers is held by the representative of a High Contracting Party which is a party to a case under examination, that representative shall relinquish the chairmanship during any discussion of that case.

Rule 3

When a judgment or a decision is transmitted to the Committee of Ministers in accordance with Article 46, paragraph 2, or Article 39, paragraph 4, of the Convention, the case shall be inscribed on the agenda of the Committee without delay.

Rule 4

1. The Committee of Ministers shall give priority to supervision of the execution of judgments in which the Court has identified what it considers a systemic problem in accordance with Resolution Res(2004)3 of the Committee of Ministers on judgments revealing an underlying systemic problem.
2. The priority given to cases under the first paragraph of this Rule shall not be to the detriment of the priority to be given to other important cases, notably cases where the violation established has caused grave consequences for the injured party.

Rule 5

The Committee of Ministers shall adopt an annual report on its activities under Article 46, paragraphs 2 to 5, and Article 39, paragraph 4, of the Convention, which shall be made public and transmitted to the Court and to the Secretary General, the Parliamentary Assembly and the Commissioner for Human Rights of the Council of Europe.

II. Supervision of the execution of judgments

Rule 6

Information to the Committee of Ministers on the execution of the judgment

1. When, in a judgment transmitted to the Committee of Ministers in accordance with Article 46, paragraph 2, of the Convention, the Court has decided that there has been a violation of the Convention or its protocols and/or has awarded just satisfaction to the injured party under Article 41 of the Convention, the Committee shall invite the High Contracting Party concerned to inform it of the measures which the High Contracting Party has taken or intends to take in consequence of the judgment, having regard to its obligation to abide by it under Article 46, paragraph 1, of the Convention.

2. When supervising the execution of a judgment by the High Contracting Party concerned, pursuant to Article 46, paragraph 2, of the Convention, the Committee of Ministers shall examine:

a. whether any just satisfaction awarded by the Court has been paid, including as the case may be, default interest; and

b. if required, and taking into account the discretion of the High Contracting Party concerned to choose the means necessary to comply with the judgment, whether:

i. individual measures¹ have been taken to ensure that the violation has ceased and that the injured party is put, as far as possible, in the same situation as that party enjoyed prior to the violation of the Convention;

ii. general measures² have been adopted, preventing new violations similar to that or those found or putting an end to continuing violations.

Rule 7

Control intervals

1. Until the High Contracting Party concerned has provided information on the payment of the just satisfaction awarded by the Court or concerning possible individual measures, the case shall be placed on the agenda of each human rights meeting of the Committee of Ministers, unless the Committee decides otherwise.

2. If the High Contracting Party concerned informs the Committee of Ministers that it is not yet in a position to inform the Committee that the general measures necessary to ensure compliance with the judgment have been taken, the case shall be placed again on the agenda of a meeting of the Committee of Ministers taking place no more than six months later, unless the Committee decides otherwise; the same rule shall apply when this period expires and for each subsequent period.

Rule 8

Access to information

1. The provisions of this Rule are without prejudice to the confidential nature of the Committee of Ministers' deliberations in accordance with Article 21 of the Statute of the Council of Europe.

2. The following information shall be accessible to the public unless the Committee decides otherwise in order to protect legitimate public or private interests:

a. information and documents relating thereto provided by a High Contracting Party to the Committee of Ministers pursuant to Article 46, paragraph 2, of the Convention;

b. information and documents relating thereto provided to the Committee of Ministers, in accordance with the present Rules, by the injured party, by non-governmental organisations or by national institutions for the promotion and protection of human rights.

3. In reaching its decision under paragraph 2 of this Rule, the Committee shall take, inter alia, into account:

a. reasoned requests for confidentiality made, at the time the information is submitted, by the High Contracting Party, by the injured party, by non-governmental organisations or by national institutions for the promotion and protection of human rights submitting the information;

b. reasoned requests for confidentiality made by any other High Contracting Party concerned by the information without delay, or at the latest in time for the Committee's first examination of the information concerned;

c. the interest of an injured party or a third party not to have their identity, or anything allowing their identification, disclosed.

4. After each meeting of the Committee of Ministers, the annotated agenda presented for the Committee's supervision of execution shall also be accessible to the public and shall be published, together with the decisions taken, unless the Committee decides otherwise. As far as possible, other documents presented to the Committee which are accessible to the public shall be published, unless the Committee decides otherwise.

5. In all cases, where an injured party has been granted anonymity in accordance with Rule 47, paragraph 3 of the Rules of Court; his/her anonymity shall be preserved during the execution process unless he/she expressly requests that anonymity be waived.

Rule 9

Communications to the Committee of Ministers

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 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. It shall do so in respect of any communication received in reference to paragraph 2 of this Rule, together with any observations of the delegation(s) concerned provided that the latter are transmitted to the Secretariat within five working days of having been notified of such communication.

Rule 10

Referral to the Court for interpretation of a judgment

1. When, in accordance with Article 46, paragraph 3, of the Convention, the Committee of Ministers considers that the supervision of the execution of a final judgment is hindered by a problem of interpretation of the judgment, it may refer the matter to the Court for a ruling on the question of

interpretation. A referral decision shall require a majority vote of two thirds of the representatives entitled to sit on the Committee.

2. A referral decision may be taken at any time during the Committee of Ministers' supervision of the execution of the judgments.

3. A referral decision shall take the form of an interim resolution. It shall be reasoned and reflect the different views within the Committee of Ministers, in particular that of the High Contracting Party concerned.

4. If need be, the Committee of Ministers shall be represented before the Court by its Chair, unless the Committee decides upon another form of representation. This decision shall be taken by a two-thirds majority of the representatives casting a vote and a majority of the representatives entitled to sit on the Committee.

Rule 11

Infringement Proceedings

1. When, in accordance with Article 46, paragraph 4, of the Convention, the Committee of Ministers considers that a High Contracting Party refuses to abide by a final judgment in a case to which it is party, it may, after serving formal notice on that Party and by decision adopted by a majority vote of two thirds of the representatives entitled to sit on the Committee, refer to the Court the question whether that Party has failed to fulfil its obligation.

2. Infringement proceedings should be brought only in exceptional circumstances. They shall not be initiated unless formal notice of the Committee's intention to bring such proceedings has been given to the High Contracting Party concerned. Such formal notice shall be given ultimately six months before the lodging of proceedings, unless the Committee decides otherwise, and shall take the form of an interim resolution. This resolution shall be adopted by a majority vote of two-thirds of the representatives entitled to sit on the Committee.

3. The referral decision of the matter to the Court shall take the form of an interim resolution. It shall be reasoned and concisely reflect the views of the High Contracting Party concerned.

4. The Committee of Ministers shall be represented before the Court by its Chair unless the Committee decides upon another form of representation. This decision shall be taken by a two-thirds majority of the representatives casting a vote and a majority of the representatives entitled to sit on the Committee.

III. Supervision of the Execution of the Terms of Friendly Settlements

Rule 12

Information to the Committee of Ministers on the execution of the terms of the friendly settlement

1. When a decision is transmitted to the Committee of Ministers in accordance with Article 39, paragraph 4, of the Convention, the Committee shall invite the High Contracting Party concerned to inform it on the execution of the terms of the friendly settlement.

2. The Committee of Ministers shall examine whether the terms of the friendly settlement, as set out in the Court's decision, have been executed.

Rule 13
Control intervals

Until the High Contracting Party concerned has provided information on the execution of the terms of the friendly settlement as set out in the decision of the Court, the case shall be placed on the agenda of each human rights meeting of the Committee of Ministers, or, where appropriate,³ on the agenda of a meeting of the Committee of Ministers taking place no more than six months later, unless the Committee decides otherwise.

Rule 14
Access to information

1. The provisions of this Rule are without prejudice to the confidential nature of the Committee of Ministers' deliberations in accordance with Article 21 of the Statute of the Council of Europe.

2. The following information shall be accessible to the public unless the Committee decides otherwise in order to protect legitimate public or private interests:

a. information and documents relating thereto provided by a High Contracting Party to the Committee of Ministers pursuant to Article 39, paragraph 4, of the Convention;

b. information and documents relating thereto provided to the Committee of Ministers in accordance with the present Rules by the applicant, by non-governmental organisations or by national institutions for the promotion and protection of human rights.

3. In reaching its decision under paragraph 2 of this Rule, the Committee shall take, inter alia, into account:

a. reasoned requests for confidentiality made, at the time the information is submitted, by the High Contracting Party, by the applicant, by non-governmental organisations or by national institutions for the promotion and protection of human rights submitting the information;

b. reasoned requests for confidentiality made by any other High Contracting Party concerned by the information without delay, or at the latest in time for the Committee's first examination of the information concerned;

c. the interest of an applicant or a third party not to have their identity, or anything allowing their identification, disclosed.

4. After each meeting of the Committee of Ministers, the annotated agenda presented for the Committee's supervision of execution shall also be accessible to the public and shall be published, together with the decisions taken, unless the Committee decides otherwise. As far as possible, other documents presented to the Committee which are accessible to the public shall be published, unless the Committee decides otherwise.

5. In all cases, where an applicant has been granted anonymity in accordance with Rule 47, paragraph 3 of the Rules of Court; his/her anonymity shall be preserved during the execution process unless he/she expressly requests that anonymity be waived.

Rule 15

Communications to the Committee of Ministers

1. The Committee of Ministers shall consider any communication from the applicant with regard to the execution of the terms of friendly settlements.
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 the terms of friendly settlements.
3. 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. It shall do so in respect of any communication received in reference to paragraph 2 of this Rule, together with any observations of the delegation(s) concerned provided that the latter are transmitted to the Secretariat within five working days of having been notified of such communication.

IV. Resolutions

Rule 16

Interim resolutions

In the course of its supervision of the execution of a judgment or of the terms of a friendly settlement, the Committee of Ministers may adopt interim resolutions, notably in order to provide information on the state of progress of the execution or, where appropriate, to express concern and/or to make suggestions with respect to the execution.

Rule 17

Final resolution

After having established that the High Contracting Party concerned has taken all the necessary measures to abide by the judgment or that the terms of the friendly settlement have been executed, the Committee of Ministers shall adopt a resolution concluding that its functions under Article 46, paragraph 2, or Article 39 paragraph 4, of the Convention have been exercised.

Note 1 For instance, the striking out of an unjustified criminal conviction from the criminal records, the granting of a residence permit or the re-opening of impugned domestic proceedings (see on this latter point Recommendation Rec(2000)2 of the Committee of Ministers to member states on the re-examination or reopening of certain cases at domestic level following judgments of the European Court of Human Rights, adopted on 19 January 2000 at the 694th meeting of the Ministers' Deputies).

Note 2 For instance, legislative or regulatory amendments, changes of case law or administrative practice or publication of the Court's judgment in the language of the respondent state and its dissemination to the authorities concerned.

Note 3 In particular where the terms of the friendly settlement include undertakings which, by their nature, cannot be fulfilled within a short time span, such as the adoption of new legislation.