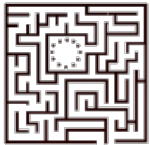




JUSTICE



**THE AIRE CENTRE**  
Advice on Individual Rights in Europe



**OPEN SOCIETY**  
JUSTICE INITIATIVE

11 December 2015

Dear Ambassador Šahović:

We write in response to your letter of 9 November 2015, inviting written comments on implementation of Chapter C of the Brussels Declaration on the Supervision of the execution of judgments. Having collectively contributed comments during the drafting of the Declaration, we welcome the opportunity to engage the Ad hoc Working Party (GT-REF.ECHR) in ensuring that all engaged stakeholders—including civil society and national human rights institutions—can give full effect to the Brussels Action Plan of March 2015.

We welcome the Declaration's focus on national implementation of the Convention and effective execution of judgments of the European Court of Human Rights, as well as a number of the important steps that member states and the Council of Europe can take in this regard. As requested, our comments below respond to certain points raised in Section C of the Declaration, addressing in particular the Committee of Ministers (CoM), the Secretary General of the Council of Europe (CoE), and the Parliamentary Assembly (PACE). Where relevant, we note as well the CDDH's draft final report on the longer-term future of the Convention system, as prepared by the Committee of Experts on the Reform of the Court (DH-GDR), which complements the Declaration in important respects.

### **Chapter C(1)**

**(a) and (b):** We consider the Declaration's encouragement that the Committee of Ministers "use, in a graduated manner, all the tools at its disposal" to be of utmost importance and agree that the adding of "appropriate political leverage" is essential in responding to cases of non-execution. The Committee's use of interim resolutions currently serves as the primary tool for publicly exercising such leverage; however, no apparent distinction is drawn between the publication of such resolutions and its

resort to other, possibly more robust, enforcement measures.<sup>1</sup> As a result, the legal and/or political significance of the Committee’s repetitive interim resolutions is often unclear. Related to the Committee’s “graduated measures” is the use of the procedures foreseen under Article 46(4) of the Convention. Despite the explanatory report to Protocol 14 stating that the provision applies where a state’s conduct demonstrates a refusal to abide by a decision, as well as in cases where the state expressly refuses to do so, it is currently unclear when this threshold would be reached in practice. To that end, **a greater variety of graduated measures should be identified and employed as a matter of priority.** These measures should, to the extent possible, be sequenced, so that the **significance of these graduated measures is better understood and communicated.**

The Committee and/or the CDDH should also promptly develop, in consultation with civil society, **more precise guidance as to the circumstances in which Article 46(4) could apply.** As a first step towards making the Article operational, consideration should be given to the following proposals:

- An independent expert review could provide advice to the Committee on a group of pending cases—rather than just a single one—in which application of Article 46(4) proceedings would be appropriate.
- The Committee might seek to intensify its dialogue with national authorities on a select group of judgments, pending their execution within a limited timeframe, in advance of /or as part of a “pre-Article 46(4)” procedure. In this process, the Committee should avail itself of the information provided by the applicant(s), civil society, national human rights institutions, and international organizations, including through exchanges of views.
- Rule 11 of the Committee of Ministers could be clarified by, *inter alia*, elaborating upon the consequences that a repeated lack of compliance with interim resolutions may have on the triggering of infringement proceedings and by specifying the measures to be taken by the CoM under Article 46(5).

**(c):** We strongly support the Declaration’s call to “promote the development of enhanced synergies with other Council of Europe stakeholders,” including notably the Parliamentary Assembly, the Commissioner for Human Rights, and the Court itself. Consistent with this effort, **the Secretary General should initiate and chair a formal process of communication among relevant CoE bodies engaged in supervising the execution of judgments.** The Secretary General’s Office would be well positioned to convene such a process and to mobilize requisite support among relevant CoE actors. He could, for instance, convene a biannual meeting of the CoM

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<sup>1</sup> In order of severity, some of these consequences could include, *inter alia*, the transfer of cases from “standard” to “enhanced” supervision procedure; public communication and condemnation of non-compliance; additional enforcement measures either as a condition precedent to an interim resolution, or as a consequence of failing to comply with it; *in situ* missions followed by a public report; use of proceedings under Article 46(4); as well as further measures contemplated under the Statute of the Council of Europe.

Executive Secretariat, the Parliamentary Assembly's Committee of Legal Affairs and Human Rights, the Commissioner, and other relevant bodies (e.g., CPT, ECRI, UNHCR) on cases raising complex issues or where there has been a demonstrated lack of political will. Such a convening would also afford an additional opportunity for civil society to provide information on the state of execution, and develop complementary strategies for national-level implementation.

**(d):** Enhancing the efficiency of the CoM's Human Rights meetings is key to improving the supervision of the execution of judgments. To that end, **the establishment of a permanent, independent (non-state) chair for the Committee of Ministers' Human Rights Meetings should be given serious consideration by the Ad hoc Working Party.** The current system of a rotating, six-month chair for these meetings often politicizes which cases are placed on the Committee's agenda and the frequency with which they are reviewed. Furthermore, the incoming chairs of the Committee of Ministers should also, as part of the presiding state's priorities, make a firm political commitment to speedily executing the Court's outstanding judgments.

**Serious consideration should also be given to expanding the length and frequency of CM-DH meetings.** Currently, the quarterly basis for Committee meetings is too limited a cycle to ensure adequate discussion of all judgments that merit debate at the ministerial level. CoM meetings should be increased from 4 to 6-8 times per year. These additional meetings could also permit potentially different formats for discussion, including, where appropriate, the participation of civil society actors and other third parties (such as international organizations and national human rights institutions), as well as the consideration of thematic discussions, as envisioned in C(1)(g).

**(e):** We have long supported **reform of Rule 9 so that written communications from international organizations or "bodies identified for this purpose" can be made to the Committee.** Notably, the draft CDDH report on the longer-term future of the ECHR system endorses this extension as well (see para. 159). Furthermore, Rule 9 should be amended to require the CoM to consider equally communications in respect of both individual and general measures, and that third party interveners in the relevant cases be informed and provided with the opportunity to communicate with the Committee at important moments in the execution process, e.g., when a state submits its Action Plan. These are simple amendments that could be effectuated promptly.

**(f):** This section currently refers only to encouraging the presence of "representatives of national authorities" at the Committee's Human Rights meetings. **The Working Party should consider adding, where appropriate, civil society stakeholders, many of whom also contain the requisite competence, authority, and expertise to assist the Committee in its supervisory function.** Such an addition would affirm similar recommendations made by the Parliamentary Assembly, which called upon the CoM to "involve, to a greater extent, applicants,

civil society, national human rights institutions and other intergovernmental organizations in the process of the implementation of Court judgments.”<sup>2</sup>

**(g)** As with the Committee’s Human Rights meetings, the CoM should **consider inviting representatives of civil society to thematic discussions on issues related to the execution of judgments.** These representatives should include those NGOs who have delivered relevant submissions under Rule 9 to the themes under consideration.

**(i):** The supervision of execution remains opaque and non-inclusive for outside observers, including members of civil society. **In the interest of increasing transparency and promoting informed exchanges with all affected parties, the following measures should be implemented promptly:**

- Civil society should have access to the same information provided to member states as to which cases will be on the next CM-DH agenda.
- Decisions of the Committee should be easily accessible, meaning that the website should be improved to ensure that documents are easy to find, up to date, and publicly available. The themes of grouped cases identified with a leading case should, in particular, be easily accessible on the Committee’s website.
- Rule 8 should be amended to require that an applicant be notified in general terms about the supervision process once a judgment is final, and when the CoM adopts a resolution expressing its intention to close examination of a case.
- Personnel from the Department for the Execution of Judgments should ensure that the terms of reference of any missions undertaken to member states include the entitlement to meet with members of civil society and officials should affirmatively seek out such meetings in practice.

**(j): We strongly believe that High Contracting Parties should make a commitment to providing an appropriate and meaningful increase in resources to the Department for the Execution of Judgments.** The significance of committing additional resources is likewise underscored in the draft CDDH report, “to process effectively the growing number of cases decided by the Court” (para. 155). The practice of seconding civil servants to the Department for the Execution of Judgments—effectively placing them in charge of monitoring judgments concerning their own countries—is not an adequate substitute for committing greater resources that would preserve both the Department’s independence as well as its expertise.

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<sup>2</sup> Recommendation 2019(2015), para 1.3. In addition, the PACE Committee on Legal Affairs and Human Rights’ report on implementation of judgments of the European Court of Human Rights by Mr. Klaas de Vries (Doc.13864, September 2015) proposes that the Committee invites “applicants, their representatives and representatives of NGOs for exchanges of views at their DH meetings.”

## Chapter C(2)

**(d):** As the Declaration notes, the Secretary General's Office has an important role as an advocate and facilitator for the execution of judgments, to identify political momentum and engage in bilateral dialogue with High Contracting Parties, and to coordinate and promote cooperation programs. In this respect, the Secretary General's Office could **ensure that civil society at the national level is included in the development of Action Plans, while making better and more frequent use of media to publish statements and reports that are relevant to the execution of judgments.**

## Chapter C(3)

**(c):** The Council currently operates approximately 130 cooperation and assistance projects, many of which are relevant to implementation of the Convention and some more specifically to the execution of judgments. **The Secretary General could further promote the training of professionals dealing with Convention implementation and execution issues and could encourage the organization of roundtables in the national fora for relevant stakeholders, also including civil society organizations.**

**(d):** We strongly support the Secretary General prioritizing the execution of judgments in his bilateral dialogue with High Contracting Parties and other international organizations. In addition, **we support the Secretary General making more frequent use of his powers under Article 52.** Such power has only been used exceptionally but would provide additional "political leverage" in cases of non-execution. While the Secretary General would have to be careful not to interfere with the competency of the Committee of Ministers in supervising the execution of judgments, **Article 52 could be used with greater frequency as a preventive tool at an early stage,** e.g., in response to problematic legislation of a member state. It could possibly also be used in individual cases of non-execution as a complementary tool to support the decisions of the Committee of Ministers as well as in politically sensitive cases. An Article 52 request would strengthen the Committee's call to execute judgment(s) and would also require follow-up by relevant states.

**(f):** The Parliamentary Assembly has played an important role in monitoring and supporting the execution of judgments, notably in the framework of its reports and the country visits of the Committee on Legal Affairs and Human Rights' rapporteur. In line with the Declaration's call for developing "enhanced synergies," **the Committee of Ministers and the PACE Sub-Committee on the Implementation of Strasbourg Court Judgments should enhance their cooperation and reinforce each other's roles through a more regular process of communication and consultation.** As a first step in this process, the CoM should provide an appropriate follow-up to PACE Recommendation 2019 (2015) and Resolution 2075

(2015), considering as a matter of urgency the major problems identified by the Committee on Legal Affairs and Human Rights in the nine member states with the highest number of non-executed judgments: Italy, Turkey, The Russian Federation, Ukraine, Romania, Greece, Poland, Hungary and Bulgaria (see Doc. 13864, 08 September 2015). Equally, the Committee could consider inviting the PACE rapporteur for regular presentations of the reports on implementation of judgments adopted by the Committee on Legal Affairs and Human Rights.

Finally, in addition to Section C of the Declaration, we also refer the Working Party to the Joint NGO response that was issued on 27 March 2015, which addressed measures that States Parties must take to ensure effective implementation of the Convention at the national level. To that end, we reiterate our call that by June 2016, States Parties should report to the Committee of Ministers on the following:

1. How the compatibility of draft and existing legislation with the European Convention and with the European Court's case law is assessed;
2. How national parliaments hold governments to account for executing judgments (both individual and general measures);
3. How the case law of domestic courts takes into account, and where appropriate, implements European Court judgments, and how judgments are reported and disseminated to the judiciary and judicial training institutions;
4. How civil society is involved in the execution of judgments at the national level, including being consulted as to the contents of Action Plans;
5. What domestic accountability mechanisms exist for the non-execution of judgments, in particular where the failure to execute is persistent.

We trust these comments will assist the Working Party in its efforts and would welcome further exchange as this process moves forward.

Sincerely yours,

The AIRE Centre  
Amnesty International  
European Human Rights Advocacy Centre  
International Commission of Jurists  
Judgment Watch  
JUSTICE  
Open Society Justice Initiative