
1444th meeting, 28 September 2022

4 Human rights

4.2 Steering Committee for Human Rights (CDDH)

b. Guidelines of the Committee of Ministers on the prevention and remedying of violations of the Convention for the protection of human rights and fundamental freedoms

The Committee of Ministers,

Considering that the Interlaken Process, from 2010 to 2019, confirmed the central role played by the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5, "the Convention") in maintaining and fostering democratic stability across the European continent;

Recalling that acceptance of the Convention, including the compulsory jurisdiction of the European Court of Human Rights ("the Court") and the binding nature of its judgments against a State that is a party to the dispute, is a requirement for membership of the Organisation and that, in accordance with the principle of subsidiarity, the member States have the primary responsibility to secure the rights and freedoms set out in the Convention and that, in doing so, these States enjoy a margin of appreciation, subject to the supervisory jurisdiction of the Court; Recalling that, in 2004, it noted that the Convention had become part of the domestic legal orders of all member States;

Recalling that the Court's case law serves to elucidate, safeguard and develop the rules instituted by the Convention, thereby contributing to the observance by the member States of their commitments;

Recalling that all member States have undertaken to abide by the final judgments rendered in cases to which they are parties, that their obligation to execute such judgments is an obligation of result and, in accordance with the principle of subsidiarity, the member States concerned are free to choose the appropriate means to execute the judgments;

Recalling the important results achieved during the Interlaken Process with regard to national implementation of the Convention, including improved incorporation, domestic remedies and parliamentary procedures, as well as with regard to the domestic capacity for rapid implementation by the national authorities of the judgments and decisions of the Court;

Bearing in mind that, despite the progress achieved at national level, the Convention system continues to face significant and enduring challenges, including delays at different stages of its functioning, the persistence of serious or widespread violations, systemic and structural problems in the member States and the situation in Europe's unresolved conflict or post-conflict zones;

Bearing in mind also the steady influx of cases revealing important new structural or other complex problems, and the large number of repetitive applications to the Court and applications related to matters covered by well-established case law that also often reflect structural problems;

Conscious that the full enjoyment of human rights and fundamental freedoms and effective access to justice for all entail removing potential socio-economic, cultural, legal, gender-based and procedural barriers, notably by taking into account the specific situation of women and people belonging to vulnerable groups, in particular in the context of the prevention and remedying of violations of the Convention;

Recalling its decision “Securing the long-term effectiveness of the system of the European Convention on Human Rights”, adopted in Athens on 4 November 2020, which reiterated a firm and enduring commitment to the Convention system and stressed the need for further efforts, calling upon all member States to give full effect to the principle of subsidiarity by complying with their obligations to secure to everyone within their jurisdiction, the rights and freedoms defined in the Convention; to abide by the Court’s judgments rendered against them; and honour their undertakings in friendly settlements, while agreeing to continue to enhance the efficiency of the process of supervision of the execution of the Court’s judgments and decisions;

Recalling the recommendations it has adopted with a view to assisting member States in ensuring the efficient domestic implementation of the Convention and the judgments of the Court, and to facilitating the adoption, by member States, of responses to the numerous challenges facing their societies, while respecting the values of the Council of Europe and the rights and freedoms protected by the Convention;

Recalling also the recommendations and resolutions of the Parliamentary Assembly of the Council of Europe (“the Parliamentary Assembly”) to improve parliamentary procedures and the numerous relevant indications and recommendations given by other Council of Europe institutions and bodies;

Strongly encouraging national decision makers to take the Convention’s requirements more proactively into account, in order to better prevent all violations that are foreseeable on the basis of the Court’s case law and provide redress to victims without the need for a specific Court judgment against the State in each case;

Stressing that such a proactive attitude from member States involves in particular the development of parliamentary, executive and judicial capacity to respond to relevant well-established case law of the Court, including structures for identifying such case law and ensuring the translation and dissemination of relevant judgments and decisions or other materials, in line with Recommendation CM/Rec(2021)4 of the Committee of Ministers to member States on the publication and dissemination of the European Convention on Human Rights, the case law of the European Court of Human Rights and other relevant texts;

Convinced of the importance for member States of:

- i. encouraging a wide national dialogue to discuss matters related to the national implementation of the Convention in the face of both continuing and new challenges, including both the prevention and redress of violations;
- ii. encouraging experience sharing with other member States and full use, where appropriate, of the many possibilities offered by the Council of Europe to assist national efforts to ensure the effective implementation of the Convention and the rapid execution of the Court’s judgments and decisions;
- iii. maintaining a continued dialogue with Council of Europe institutions and expert bodies, including in the framework of the execution of judgments and decisions of the Court and of the Council of Europe’s co-operation activities;

Recalling its commitment to a more in-depth and effective dialogue with respondent States when supervising the execution of the Court’s judgments and decisions, and stressing the collective dimension of the supervision process which implies an active approach by all member States, primarily within the Committee of Ministers;

Noting the necessity of reinforcing the domestic execution process and the resources devoted thereto with a view to resolving persistent problems revealed in the context of the Committee of Ministers' supervision thereof, including slowness in developing effective remedies to prevent repetitive cases, and frequent problems related to the efficient handling of not only more important complex or structural problems, but also other cases that remain for lengthy periods under the Committee's standard supervision;

Noting that a number of situations have also revealed that the judiciary or executive authorities may not be capable of providing redress for violations established within the existing legal and/or constitutional framework, and that it is therefore necessary to ensure that legislative or other pertinent action is taken so that these obstacles can be overcome;

Recalling the close links between effective national implementation of the Convention and the proper functioning of the supervisory system that has been set up, and the responsibility shared by the States Parties, the Court and the Committee of Ministers to ensure the proper functioning of the Convention system as a whole;

Convinced that it is necessary to adopt general guidelines for the further improvement of the national implementation of the Convention, including as regards the domestic capacity to abide by judgments of the Court in cases to which States are parties;

Adopts the following guidelines aimed at assisting the member States in their efforts to:

- give full effect to the principle of subsidiarity by complying with their obligations to secure to everyone within their jurisdiction, the rights and freedoms defined in the Convention;
- abide by the Court's judgments rendered against them and honour their undertakings in friendly settlements and unilateral declarations.

Guidelines

I. PREVENTION OF VIOLATIONS THROUGH EFFECTIVE NATIONAL IMPLEMENTATION

Guideline 1 – Ensuring a positive global framework

1.1. Member States should ensure a legal and policy environment which is favourable to the exercise and enjoyment of human rights and fundamental freedoms under the Convention and conducive to respect for the rule of law and the principles of democracy inherent in the Convention. Member States should develop their capacity to deal swiftly with systemic or other structural human rights problems identified by the Court or revealed through domestic proceedings. This encompasses a wide range of actions which are set out in the following guidelines.

1.2. Member States should continue to implement recommendations and guidelines adopted by the Committee of Ministers concerning the prevention of violations of the Convention at the national level and the improvement of domestic remedies, notably:

- Recommendation Rec(2000)2 on the re-examination or reopening of certain cases at domestic level following judgments of the European Court of Human Rights;
- Recommendation Rec(2004)5 on the verification of the compatibility of draft laws, existing laws and administrative practice with the standards laid down in the European Convention on Human Rights;
- Recommendation Rec(2004)6 on the improvement of domestic remedies;
- Recommendation CM/Rec(2008)2 on efficient domestic capacity for rapid execution of judgments of the European Court of Human Rights;
- Recommendation CM/Rec(2010)3 on effective remedies for excessive length of proceedings;
- Recommendation CM/Rec(2018)11 on the need to strengthen the protection and promotion of civil society space in Europe;
- Recommendation CM/Rec(2019)5 on the system of the European Convention on Human Rights in university education and professional training;

- Recommendation CM/Rec(2019)6 on the development of the Ombudsman institution;
- Recommendation CM/Rec(2021)1 on the development and strengthening of effective, pluralist and independent national human rights institutions;
- Recommendation CM/Rec(2021)4 on the publication and dissemination of the European Convention on Human Rights, the case law of the European Court of Human Rights and other relevant texts;
- the Guide to good practice in respect of domestic remedies (2013);
- the guidelines *The efficiency and the effectiveness of legal aid schemes in the areas of civil and administrative law* (2021);
- other relevant texts of the Committee of Ministers which contribute to enhancing the national capacity to execute judgments of the Court as rapidly as possible.

1.3. Member States should ensure that a perspective reflecting gender equality is incorporated and that the specific situation of other people belonging to vulnerable groups is taken into account, whenever appropriate, at all stages of policy development and when implementing these guidelines.

1.4. Member States should pay particular attention to all situations in which they exercise jurisdiction under the Convention outside their national territory, especially in Europe's conflict or post-conflict zones, to ensure that all individuals under their jurisdiction in such areas are guaranteed the protection of the Convention.

Guideline 2 – Extending awareness raising of, and training on, the Convention system

2.1. Member States should make greater efforts to publish and disseminate the Convention, the case law of the Court, including case law relating to other States when pertinent, as well as other relevant texts, in the language(s) of the State concerned, in line with the standards of Recommendation CM/Rec(2021)4.

2.2. Member States should, where appropriate, support university education and professional training programmes on the Convention system, in line with Recommendation CM/Rec(2019)5, paying special attention to the well-established case law of the Court and the execution of its judgments (see also paragraph 14.3 below).

2.3. Member States should raise public awareness of co-operation and assistance activities offered by the Council of Europe in relevant university and training events, as deemed appropriate. They should also support the participation of Council of Europe experts in such training programmes, possibilities for exchanging experience with other States and the promotion of knowledge-building activities such as moot court competitions with the participation of relevant stakeholders for example, civil society organisations, national human rights institutions (NHRIs), legal practitioners and judges, including those of the Court (see also Guideline 9).

2.4. Member States should raise awareness, within their domestic authorities, NHRIs, representative organs of the legal profession and, where appropriate, civil society organisations, of the resources and tools offered by the European Programme for Human Rights Education for Legal Professionals (the HELP Programme) on issues concerning the implementation of the Convention (see also paragraph 14.5 below), including by translating these resources and tools into their national language(s), whenever necessary.

2.5. Member States should, where appropriate, encourage and provide material support for study visits, notably of parliamentarians, parliamentary legal advisers, judges, prosecutors, senior police officers, senior prison officers, government agents, representatives of NHRIs and legal professional associations, to the Court and to other Council of Europe bodies and departments engaged in the implementation of the Convention and the execution of the Court's judgments.

Guideline 3 – Improving domestic remedies

3.1. Member States should ensure the provision of efficient domestic remedies that allow individuals to submit any arguable claim of a violation of the Convention to an independent authority providing adequate procedural safeguards, obtain a decision on the merits of the claim taking full account of the relevant case law of the Court or

obtain adequate redress for any violation established, in the form of monetary compensation or specific individual measures as appropriate^[1] (see also Guideline 15 below).

3.2. Member States should ensure that all persons have effective access to legal services provided by well-trained and independent lawyers, taking into account, *inter alia*, the Committee of Ministers' guidelines *The efficiency and the effectiveness of legal aid schemes in the areas of civil and administrative law*.

3.3. Member States should ensure equal access to efficient domestic remedies, notably by means of addressing economic and social inequalities, gender bias and stereotypes as well as gaps in legislation or deficiencies in its implementation.

3.4. Member States should encourage, whenever appropriate and with due respect for judicial independence, sufficient reasoning by courts or other independent bodies for decisions taken in the framework of effective remedies, with a view to inspiring the confidence of the individuals concerned in particular and the public in general, promoting the development of coherent domestic practices and positions and providing a good basis for any potential subsequent review by the Court.

3.5. Member States are encouraged to consider the generally positive experiences of States that have put in place a general remedy applicable to all kinds of Convention complaints.

3.6. Member States should enhance their efforts to ensure a prompt and efficient response to systemic or structural problems, whether revealed through domestic proceedings or a judgment of the Court. This should aim at preventing repetitive applications, expediting the solution of other cases, effectively overcoming obstacles and offering other efficient solutions.^[2] Member States should devote particular attention to providing remedies for the main general problems revealed in the cases brought before the Committee of Ministers for supervision of their execution.

3.7. Member States should enhance, wherever appropriate and with due respect for judicial independence, the capacity of courts and other domestic authorities to prevent or proactively address clearly foreseeable violations in a Convention-compliant manner, bearing in mind the continuing high number of new systemic violations in areas covered by a well-established case law of the Court.

3.8. Member States should ensure that, in addition to providing effective remedies for violations, they also resolve any underlying general problems.

3.9. Member States are encouraged to consider whether the means to address general problems revealed when executing the Court's judgments could be extended also to general problems of compliance with the Convention revealed by the judgments of domestic courts.

Guideline 4 – Facilitating the domestic application of the Convention and relevant case law of the Court by further action

4.1. Member States should ensure that Convention rights are effectively incorporated into the domestic legal order, having regard to the relevant case law of the Court.

4.2. Member States should, with due respect for judicial independence, take all other measures necessary to promote the active implementation of the Convention in their domestic judicial systems, having regard to the relevant case law of the Court so as to improve its capacity to prevent foreseeable violations of the Convention.

4.3. Member States should more closely follow developments in terms of newly communicated cases brought against other member States, with a view to intervening as third parties, where deemed appropriate, in order to ensure that their national concerns are considered by the Court.

4.4. Member States should ensure a Convention-compliant solution to any conflict between Convention rights and the national legal framework.

4.5. Member States should ensure an environment which encourages the judicial system to take account of Convention requirements as developed in the relevant case law of the Court.

4.6. Member States should also encourage the thorough training of lawyers in the Court's case law and in the functioning of the Convention system, enabling them to efficiently assist individuals and authorities to secure respect for Convention rights and freedoms.

Guideline 5 – Improving verification of the compliance of draft laws, existing laws and administrative practices with the Convention

5.1. Member States should maintain and, where necessary, enhance their efforts to give full effect to the Convention by ensuring continued compliance of national norms and practices with the Convention, in the light of the case law of the Court.

5.2. Draft laws

5.2.1. Member States should ensure that draft legislation prepared by the government, especially where it may affect the rights and freedoms protected by the Convention, is sent to the parliament only after a thorough scrutiny of its compliance with the Convention, taking into account the relevant case law of the Court.

5.2.2. Member States should, to this end, ensure timely consultations with NHRIs and, as appropriate, different bodies such as relevant civil society organisations and representative organs of the legal profession.

5.2.3. Member States should consider establishing parliamentary structures with special responsibility for human rights in general and for the Convention in particular, including the compliance of draft legislation with the Convention, and that such structures have access to independent expertise.

5.2.4. Member States should consider applying a special parliamentary procedure, or adopting other safeguards, if the bodies entrusted with assessing the compliance of draft legislation with the Convention conclude that a proposal would violate the Convention.

5.3. Existing laws

5.3.1. Member States should ensure that there are mechanisms to verify the compliance of existing laws and administrative practice with the Convention,^[3] whenever necessary by virtue of Article 46 or appropriate, following a judgment of the Court concerning another State.

5.3.2. Member States should ensure the existence of procedures allowing for the adoption of the changes necessary to achieve compatibility of existing legislation or administrative practice with the Convention.

5.4. Practice

5.4.1. Member States should ensure that all major central, regional and local authorities that are regularly confronted with Convention issues^[4] have easy access to quality advice on Convention matters and that internal policies promote the integration of the Court's well-established case law in day-to-day work. They should also have the necessary resources to assess the compliance of existing regulations, practices or unwritten procedures with the Convention.

5.4.2. Member States are encouraged to ensure that the examination of the compliance of draft laws, existing laws and domestic practices with the Convention is carried out, wherever deemed appropriate, on the basis of Council of Europe expertise (see also Guideline 9 below).

Guideline 6 – Improving parliamentary involvement

6.1. Member States should continue to promote the important role parliaments play in safeguarding human rights and monitoring the State's compliance with international human rights obligations, in line with the resolutions of the Parliamentary Assembly.

6.2. Member States are encouraged to support Parliamentary Assembly activities to enhance the knowledge of the Convention system and the case law of the Court of parliamentarians and the legal staff of all relevant parliamentary committees and departments. Independent expertise on Convention matters should be available to

parliamentary committees responsible for assessing human rights compliance and overseeing the implementation of the execution of Court's judgments (see also paragraph 5.2.3 above).

6.3. Member States should encourage the further development of parliamentary mechanisms and procedures enabling effective control of the execution of the Court's judgments, for example on the basis of the regular dissemination of action plans and reports; parliamentary debates on outstanding issues, with presentations by responsible ministries/ministers as appropriate; or annual presentations by the government of an overview of the execution situation.

Guideline 7 – Strengthening the role of NHRIs, civil society organisations and other key bodies

7.1. Member States that have not yet done so are encouraged to establish and, when established, maintain and strengthen effective, pluralist and independent NHRIs in accordance with the Principles Relating to the Status of National Human Rights Institutions (Paris Principles).

7.2. Member States should, to the extent possible, promote the engagement of, and interaction with, NHRIs, relevant civil society organisations and representative organs of the legal profession when implementing the Convention.

7.3. Member States should continue to give full effect to Recommendation CM/Rec(2021)1 and Recommendation CM/Rec(2019)6 (see paragraph 1.2 above). In this context, they should ensure a safe and enabling environment for human rights, effectively protecting ombudsmen and NHRIs against threats, unlawful actions and arbitrary reprisals, including from State authorities. Member States should ensure rapid and efficient investigations into any such unlawful action.

7.4. Member States should continue, to the extent possible, to encourage the meaningful participation of NHRIs, relevant civil society organisations and representative organs of the legal profession in the activities of the Council of Europe related to the implementation of the Convention, for example in specialised forums and events.

Guideline 8 – Promoting experience sharing

8.1. Member States should, when confronted with issues related to the implementation of the Convention, promote exchanges of experiences and the development of synergies between their national authorities concerned wherever a solution could be facilitated by common or concerted action.

8.2. Member States should make full use of the capacities of national co-ordinators or co-ordinating structures for the implementation of the Court's judgments and decisions to facilitate experience sharing (see also Guideline 13 below). They should also consider making use of the capacities of relevant civil society organisations and NHRIs, and legal professional associations to this end (see also paragraph 7.2 above). The integration of Council of Europe expertise should be promoted.

8.3. Member States are encouraged to raise new Convention issues with a pan-European dimension in appropriate Council of Europe intergovernmental forums with a view to possible joint action.[5]

8.4. Member States are encouraged to promote the use of Council of Europe specialised forums[6] and to provide similar arrangements for other important institutions or stakeholders, notably senior police officers or legal professional associations.

8.5. Member States should promote and enhance dialogue between their national courts and the Court, for example through the Superior Courts Network, visits and conferences.

Guideline 9 – Enhancing co-operation programmes with the Council of Europe

9.1. Member States should consider using the support offered by the Council of Europe's co-operation and assistance programmes when undertaking more important Convention-related reforms, for example to obtain general expertise on Convention standards, more specific expertise on different pieces of legislation, assistance in

finding the root causes of important systemic problems to ensure the adequacy of reforms, facilitated exchange of experience with other States, assistance in the organisation of training activities or of forums to promote experience exchanges and synergies between domestic authorities.

9.2. Member States should, in this context, support and promote, where appropriate, any specific initiatives by competent State institutions to seek advice from relevant Council of Europe institutions, such as the Commissioner for Human Rights, or expert bodies, such as the European Commission for Democracy through Law (Venice Commission).

9.3. Member States should also consider possibilities of contributing to the Council of Europe's capacity to offer such co-operation programmes, whether through voluntary contributions or contributions to the Human Rights Trust Fund.

Guideline 10 – Ensuring the effective functioning of the Convention system: other measures

10.1. Member States should consider providing additional human and financial resources, beyond providing all necessary assistance to, and ensuring efficient interaction with, the Court and the Committee of Ministers in the context of ongoing proceedings.

10.2. Member States should endeavour to: *a.* attract people of the highest calibre to sit as judges on the Court, so as to continue to safeguard its authority; *b.* continue to guarantee, by all possible means, the independence and impartiality of the Court's judges; and *c.* consider providing the necessary additional safeguards also after the end of the judges' terms of office, notably by due recognition of their status as judges and their service on the Court.

10.3. Member States should co-operate with the Secretary General in case of requests under Article 52 of the Convention.

Guideline 11 – Considering the ratification of Protocol No. 16 to the Convention

11.1. All member States that have not signed or ratified Protocol No. 16 to the Convention are invited to consider doing so, with a view to further enhancing the interaction between the Court and national courts, thereby reinforcing the implementation of the Convention, in accordance with the principle of subsidiarity.

11.2. Member States are also encouraged to exchange experiences with regard to the use of the new procedure, in co-operation with the Court and other Council of Europe bodies concerned.

II. THE REMEDYING OF VIOLATIONS FOUND BY THE COURT

Guideline 12 – Strengthening domestic capacity for rapid and effective remedial action

12.1. Member States should further improve their domestic capacities for effective execution of the Court's judgments and decisions in all cases to which they are parties.

12.2. Member States should, wherever necessary, enhance their procedures guaranteeing the payment of any just satisfaction awarded by the Court and rapidly erase, to the extent possible, the consequences for applicants of violations established and ensure *restitutio in integrum*.

12.3. Member States should ensure that violations established by the Court are duly recognised by the authorities involved, and action is rapidly taken to provide individual redress and prevent similar violations; and that all possible measures, including temporary or interim ones, are taken to limit as far as possible the effects of the violation(s) where more extensive reforms are necessary but would take time.

12.4. Member States should take into account and implement the relevant standards of the Council of Europe, notably Recommendation Rec(2000)2 and Recommendation CM/Rec(2008)2, (see paragraph 1.2 above), in view of the close links between the measures required for the rapid execution of judgments of the Court and those necessary for the effective general implementation of the Convention.

Guideline 13 – Strengthening co-ordination structures

13.1. Member States should enhance the support provided to co-ordinators or co-ordinating structures, in the form of improved resources, status or authority, and capacity building in co-operation with relevant national authorities and the Council of Europe's Department for the Execution of Judgments, with a view to these structures contributing to the timely development, presentation and implementation of action plans, the resolution of more important structural or complex problems, in particular those placed under enhanced supervision, as well as the rapid resolution of cases placed under standard supervision.

13.2. Member States should ensure that co-ordinators or co-ordinating structures, where appropriate, establish contacts with relevant parliamentary committees or departments and judicial authorities, as well as NHRIs, and that the continuity of their work and structures over time is safeguarded, as interruptions may have very negative effects on the handling of important execution issues and lead to unnecessary violations of the Convention and applications to the Court.

13.3. Member States should ensure the protection of co-ordinators from unjustified attacks and from any form of harassment or threat linked to the performance of their duties.

Guideline 14 – Improving the publication and dissemination of information on the execution of judgments of the Court

14.1. Member States should ensure that action plans and reports on the implementation of judgments of the Court explain how the changes proposed or the measures taken have remedied the violation found and ensured compliance with the Convention. They should take into account the "Guide for the drafting of action plans and reports for the execution of judgments of the European Court of Human Rights" and, as appropriate, also draw on other relevant recommendations and advice by Council of Europe institutions and expert and monitoring bodies when defining execution measures.

14.2. Member States should ensure a prompt and effective dissemination to relevant actors of all judgments and decisions of the Court that they are obliged to execute, in line with Recommendation CM/Rec(2021)4 (see paragraph 1.2. above). They should ensure that these actors are also promptly informed, in a format deemed appropriate, of the decisions and resolutions of the Committee of Ministers in the context of the execution of judgments of the Court, as well as action plans they have submitted. Member States should also publish these texts of the Committee of Ministers and action plans in a format deemed appropriate.

14.3. Member States should ensure more general awareness of the requirements of the execution of the Court's judgments, notably by the dissemination of information in the relevant language(s), on appropriate execution practices and on the scope and expected results of the Committee of Ministers' supervision procedure. In so doing, they may be inspired by the Vademecum, the general overviews of achievements made in the annual reports of the Committee of Ministers and by the Parliamentary Assembly, as well as the fact sheets published by the Department for the Execution of Judgments.

14.4. Member States are also encouraged to widely publicise the special websites developed by the Committee of Ministers to present both the general execution requirements and the state of execution of cases.

14.5. Member States should also encourage wide use of the special HELP course on execution designed to assist national authorities, legal professional associations, civil society organisations, NHRIs and others interested in better understanding the execution process and its supervision by the Committee of Ministers.

Guideline 15 – Ensuring that remedies are fully effective in the execution context

15.1. Member States should ensure, with due respect for judicial independence, that courts and other relevant authorities have appropriate means to fully implement, within the limits of their competence, the Court's findings and to ensure the enforcement of judgments in the national legal system (see also paragraphs 3.1 and 3.2 above).

15.2. Member States should ensure that all judgments and decisions of the Court that they are required to execute, including those which are important for applicants to obtain individual redress, are duly and promptly disseminated to relevant actors in the execution process, in line with Recommendation CM/Rec(2021)4 (see

paragraph 1.2 above).

15.3. Member States should encourage, to the extent possible and with due respect for judicial independence, an open and constructive approach on the part of courts and other relevant authorities when a judgment of the Court may imply the need to provide individual redress, so as to prevent unnecessary delays in providing such redress and ensure that all applicants receive redress without discrimination.

15.4. Member States are encouraged to ensure that the competent authorities may reach friendly settlements in cases pending at the national level as part of the measures taken to address systemic problems identified in a judgment of the Court whose execution is under the supervision of the Committee of Ministers.

15.5. Member States could also consider whether, beyond the existing integration of a number of specific execution obligations into domestic law, other such obligations, notably the payment of sums due by virtue of judgments and decisions of the Court, could also be integrated, in particular in the case of friendly settlements or unilateral declarations.

15.6. Member States should ensure remedies capable of preventing, as far as possible, repetitive applications to the Court, through legislative action, constructive judicial practice or otherwise, and seek other solutions erasing more generally the consequences of violations of the Convention found in their respect (see also paragraph 3.4 above).

Guideline 16 – Enhancing efforts to deal with technical and other obstacles regarding the execution of the Court’s judgments

16.1. Member States could consider preparing, during the proceedings before the Court, for possible findings of violations likely to generate significant execution problems, in order to anticipate constructive reactions on the part of those concerned and explore possible ways forward.

16.2. When faced with important technical or other obstacles to the execution, member States should ensure, wherever possible, the means for securing durable political support, co-ordination of action and the allocation of resources needed to overcome the problems.

16.3. Member States should, when confronted with important structural and/or complex problems, provide all necessary support to the co-ordinators or co-ordinating structures (see also Guideline 13 above). They should also explore all possibilities of assistance from the relevant Council of Europe institutions and bodies, whether in the form of forums for dialogue or expertise and co-operation programmes.

16.4. Member States are encouraged, when faced with structural problems, to explore possible synergies with the activities and programmes engaged or planned with the European Union, other international organisations such as the United Nations, the International Monetary Fund, the World Bank or other States.

Guideline 17 – Promoting stakeholders’ participation in the execution process

17.1. Member States should encourage the involvement of all authorities concerned by a certain problem revealed by a judgment of the Court and promote, through meetings, liaison officers, joint working groups or in other ways, the development of synergies between them, whether in the reflection on necessary action or in the implementation of action plans that have been decided upon and the assessment of the results obtained.

17.2. Member States are encouraged to include NHRIs, relevant civil society organisations and legal professional associations, where the nature of the violation so requires, in consultations on the human rights implications of draft legislation and policy strategies relating to the execution of judgments at the earliest possible stage.

17.3. Member States are encouraged to associate relevant Council of Europe structures in the above processes. They are also encouraged to ensure that the experience of other States is taken into account.

17.4. Member States should, if need be, ensure the presence of representatives of the relevant authorities in Strasbourg when execution problems relating to their field of competence are being debated in the Committee of Ministers and, where appropriate, the presence of responsible ministers, which may be especially important to

reassure the Committee of Ministers of the domestic political will to overcome major problems.

17.5. Member States should consider encouraging their national authorities and stakeholders to take note of relevant ongoing execution processes concerning other States and of the experiences of the Committee of Ministers' supervision process, in order to foster a better understanding of the collective nature of the Convention system as well as a climate of openness, dialogue and mutual support and experience sharing.

[1] Examples include the release from unlawful detention, the resumption of criminal investigations with a view to rectifying shortcomings established or the annulment of extradition or expulsion orders adopted notwithstanding serious risks of violations of Articles 2 or 3 of the Convention in the receiving country.

[2] Examples of frequent ad hoc measures include friendly settlements and unilateral declarations, including in relation to large numbers of repetitive cases or otherwise clearly foreseeable cases, as well as special structures to facilitate the rapid adoption of such measures. Other special measures in response to large numbers of victims may imply legislative changes, for example the adoption of amnesty legislation erasing the consequences of unjust criminal convictions; the restitution of rights, for example citizen or residence rights, unjustly taken away, or measures otherwise erasing more generally the consequences of violations.

[3] For example, such assessment may take place in the context of judicial proceedings, or through other procedures, most notably in the context of ordinary governmental or parliamentary scrutiny of the adequacy of legislation, but possibly also through the putting in place of specialised procedures, for example within the co-ordination structures adopted to facilitate the execution of the judgments of the Court or special parliamentary committees and procedures (see also Guideline 13 below).

[4] Examples include courts, prosecutors, police, customs, NHRIs, authorities responsible for the registration of churches or more generally of associations, or the handling of announced peaceful assemblies, broadcasting authorities, immigration authorities, authorities responsible for protecting privacy or public access to official documents, or social authorities responsible for child and family questions.

[5] For example in the form of recommendations, guidelines or collections of best practices.

[6] For example the councils or conferences of judges, prosecutors, heads of detention and probation centres, the Conference of International Non-Governmental Organisations (INGOs).

Related documents

CM(2022)141

[1444/4.2a] Steering Committee for Human Rights (CDDH) - a. Abridged report of the 96th meeting (Strasbourg, 14-17 June 2022)



23/08/2022

English

CM-Public

CM(2022)141-add3final

[1444/4.2c] Steering Committee for Human Rights (CDDH) - c. Explanatory Memorandum to Recommendation CM/Rec(2022)20 of the Committee of Ministers to member States on human rights and the protection of the environment



27/09/2022


English

CM-Public

CM(2022)141-add5final

[1444/4.2d] Steering Committee for Human Rights (CDDH) - d. Explanatory Memorandum to Recommendation CM/Rec(2022)21 of the Committee of Ministers to member States on preventing and combating trafficking in human beings for the purpose of labour exploitation

 DOCX

 27/09/2022


English

CM-Public

CM/Del/Dec(2022)1444/4.2

Steering Committee for Human Rights (CDDH) - a. Abridged report of the 96th meeting (14-17 June 2022) - b. Guidelines of the Committee of Ministers to member States on the prevention and remedying of violations of the European Convention on Human Rights - c. Recommendation CM/Rec(2022)20 of the Committee of Ministers to member States on human rights and the protection of the environment and its Explanatory Memorandum - d. Recommendation CM/Rec(2022)21 of the Committee of Ministers to member States on preventing and combating trafficking in human beings for the purpose of labour exploitation and its Explanatory Memorandum

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 27/09/2022

English

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1444th meeting of the Ministers' Deputies (28 September 2022... 06/07/2022
www.coe.int/.../september-2022?p_p_id=101_INSTANCE_FJJuJash2rEF&...

13 September 2022 - Meeting - GR-H - Meetings and events - S... 04/07/2022
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