



Guide for the drafting of action plans and reports for the execution of judgments of the European Court of Human Rights

FOREWORD

In order for the system for the supervision of the execution of judgments of the European Court of Human Rights to be effective, it is important for the respondent state to indicate as soon as possible after a judgment has become final what it considers necessary for the judgment's execution. This requirement emerges clearly from the Rules of the Committee of Ministers and, to make it clear what it expects from respondent states in this regard, the Committee introduced the notion of "action plan" into its working methods in 2004¹. Subsequently, in a decision on measures to improve the execution of the Court's judgments, adopted at the 1059th (DH) meeting in June 2009, the Committee of Ministers invited States to provide an action plan and/or an action report as soon as possible, and at the latest within six months of a judgment becoming final.

The reform of the working methods of the Committee of Ministers undertaken after the Interlaken Conference, which resulted in the twin-track supervision process, gives action plans and reports a crucial role in this process. The submission of action plans and reports accordingly became obligatory in 2011.

In the declaration adopted on 27 March 2015 at the High Level Conference held in Brussels, the State Parties were invited "to continue to increase their efforts to submit, within the stipulated deadlines, comprehensive action plans and reports, key tools in the dialogue between the Committee of Ministers and the States Parties, which can contribute also to enhanced dialogue with other stakeholders, such as the Court, national parliaments or National Human Rights Institutions".

Action plans and reports have thus become key elements in the supervision of execution, making a major contribution to the increased transparency and dynamism of the execution process.

¹ On the initiative of the Norwegian Chairmanship

Reference documents:

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

Decision adopted at the 1100th (DH) meeting in December 2010 (point e.)

Information document CM/Inf/DH(2010)37, 6 September 2010 – Supervision of the execution of judgments and decisions of the European Court of Human Rights: Implementation of the Interlaken Action Plan – Modalities for a twin-track supervision system

Information document CM/Inf/DH(2010)45 final, 7 December 2010 - Supervision of the execution of judgments and decisions of the European Court of Human Rights: Implementation of the Interlaken Action Plan – Outstanding issues concerning the practical modalities of implementation of the new twin-track supervision system

Conclusions of the *Round table on action plans and reports in the twin-track supervision procedure*, held in Strasbourg on 13-14 October 2014

The purpose of this document is to:

- clarify the structure of action plans and reports and the type of information required;
- reiterate the time-limits for submitting these documents to the Committee of Ministers and updating them;
- present examples of good practices put in place by the authorities to optimise the collection of the necessary information and the timely production of these documents, inter alia, in the light of the discussions and conclusions of the *Multilateral round table on states' action plans and reports for the implementation of the European Court's judgments: current practice and future perspectives*, held in Strasbourg on 13 and 14 October 2014.

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I – What is an action plan/report?

A. Definition of action plan/report

Action plan

An action plan is a document setting out the measures the respondent state has taken and intends to take to implement a judgment of the European Court of Human Rights, including an indicative timetable for the adoption and implementation of those measures.

The plan will, if possible, set out all measures necessary to implement the judgment. Where it is not possible to determine all measures immediately, the plan will set out the steps to be taken to determine the measures required.

An action plan is an evolving document. It must be regularly updated throughout the execution process with up-to-date information on developments that have occurred in the adoption of the measures originally planned. An action plan must also be revised if the authorities consider that the measures originally planned need to be revisited in the light of new developments.

Action report

An action report is a report by the respondent state setting out all the measures taken to implement a judgment of the European Court of Human Rights and/or an explanation of why no measures, or no further measures, are necessary.

When all the measures described in the action plan(s) initially submitted by the State have been adopted, the final updating of the action plan turns it into an action report. Where no measures are required or the necessary measures were already taken at an early stage, the State directly submits an action report.

It should be noted that an action plan or report is only required for:

- reference cases (“precedents”),
- groups of cases,
- repetitive (“clone”) cases whose precedents have been closed,
- friendly settlements containing specific undertakings (other than payment of a sum of money).

With regard to repetitive cases added to groups of cases still pending before the Committee of Ministers, information on the individual measures necessary for execution can usually be provided when the action plan is updated for the group as a whole. However, if it appears from the judgment that urgent individual measures are required, the relevant information will need to be provided as quickly as possible, if necessary in a separate communication (see section III.A below). The authorities will subsequently include this information in an updated action plan or in the action report on the group as a whole.

Reference documents:

Information document CM/Inf/DH(2010)37, 6 September 2010 – Supervision of the execution of judgments and decisions of the European Court of Human Rights: Implementation of the Interlaken Action Plan – Modalities for a twin-track supervision system, Appendix I, §§ 5-7

Information document CM/Inf/DH(2009)29rev of 3 June 2009 – Action Plans – Action Report

B. General aspects

The purpose of action plans and reports is to enable the Committee of Ministers to exercise informed supervision. It is vital, therefore, that these documents provide a clear and accurate picture of the issues/problems raised by a case, the nature of the measures planned and/or adopted, as well as their impact and their ability to resolve the problems involved.

Concision

An action plan/report must be concise and relate exclusively to the execution stage of the final judgment in question. It is not useful therefore to information already laid before the Court which is no longer relevant at the execution stage.

When the issues raised in a case form part of a wider set of issues, it may sometimes be difficult to choose which information to include in the action plan/report. To facilitate this choice, it may be useful to classify measures according to their relevance to the process of executing the Court's judgment. Two categories of measures can be identified:

- Measures necessary for the execution of the judgment: these measures must absolutely be included and explained in the action plan or report;
- Additional measures, complementing the first category, which go beyond what is strictly necessary to execute the judgment, but which, in a wider perspective than that of the judgment, are useful for ongoing development of the national legislation referred to in the judgment: these measures can be included in the action plan or report.

Clarity and accessibility

When drafting action plans or reports, it should be borne in mind that the readers of these documents are not necessarily familiar with the domestic law of the country in question. Furthermore, although they are intended primarily for the Committee of Ministers, action plans and reports are public documents which are closely followed in the outside world too. Measures taken or planned should therefore be presented and explained in a clear and accessible manner.

In this connection, it is important to ensure that action plans and reports permit an understanding of the situation and of the execution status without there being any need to consult other documents such as the Court's judgment or previous submissions by the Government.

Reference documents:

Information document CM/Inf/DH(2010)37, 6 September 2010 – Supervision of the execution of judgments and decisions of the European Court of Human Rights: Implementation of the Interlaken Action Plan – Modalities for a twin-track supervision system

Information document CM/Inf/DH(2010)45 final, 7 December 2010 - Supervision of the execution of judgments and decisions of the European Court of Human Rights: Implementation of the Interlaken Action Plan – Outstanding issues concerning the practical modalities of implementation of the new twin-track supervision system

Information document CM/Inf/DH(2009)29rev of 3 June 2009 – Action Plans – Action Report

II - Structure of action plans and reports and type of information required

An action plan/report comprises the following sections: description of the case or group of cases concerned (A), individual measures (B), general measures (C) and the conclusion of the authorities (D) ; it may also include appendices (E).

Taken together, the main sections of the action plan or report (parts A to C above) must show that the proposed measures meet the state's obligation to produce a result. The case description must establish the framework for execution: it sets out the source of the violation (or each violation if there are several) which will enable an assessment of the relevance of the measures proposed to remedy the violation. In the same way, the presentation of individual measures must bring out the link between the just satisfaction awarded by the Court and other individual measures needed to ensure, as far as possible, *restitutio in integrum* for the injured party.

If the general measures needed to redress one or more violations are being considered in the context of other cases or groups of cases, a simple reference to the cases or groups of cases concerned is sufficient.

A. Case description

The description of the case must show the origin of the violation found by the Court.

To be included:

- a brief indication of the subject of the case/group of cases
- a summary of the relevant facts with dates
- a brief description of the violation(s) found by the Court

To be avoided:

- a statement of all the grounds of complaint pleaded before the Court (only findings of violations are relevant)
- an excessively long and detailed description of the facts (only the key elements constituting the violation are relevant)

Advice:

- it is possible to use the case description published on the Execution Department's website

Further details:

The description of the violation sets out what the Court found to be in breach of the Convention. The aim is not to summarise the Court's judgment but to identify the problem identified.

The relevant facts are those which led to the Court's findings. Even if this is explained in detail in the section on general measures, the summary should highlight the cause of the dysfunction.

It is essential to specify the date of the violation. By having a timeframe for the violation, the authorities can identify the applicable legal or regulatory framework or the practice of the courts at the material time and whether there have been any changes in the meantime. This information is crucial for identifying the need to adopt measures.

For example, if the case is similar to another one pending before the Committee of Ministers, the date makes it possible to determine whether the violation occurred before the general measures taken in the reference case (in which case no further general measures are needed) or whether, having occurred after the adoption of the general measures in the reference case, the violation is a sign that those measures were insufficient and that additional general measures are needed.

B. Individual measures

The purpose of individual measures is to ensure that the violation has ended and that the injured party is restored, as far as possible, to his or her situation prior to the violation of the Convention.

This section must therefore describe:

- the consequences of the violation suffered by the applicant;
- the damages covered by the just satisfaction awarded;
- the measures taken or envisaged to remedy any consequences of the violation not covered by the just satisfaction awarded.

It is important for the authorities to state their conclusion regarding individual measures:

- If no measure is considered necessary, it is important to explain why no consequences of the violation persist or why the consequences suffered by the applicant as a result of the violation cannot be redressed;
- if the consequences of the violation suffered by the applicant can only be partially redressed, it is important to explain why;
- if the individual measures required depend on the prior adoption of general measures, it is important to indicate this.

Further details:

The two aspects of individual measures

There are two aspects to the obligation to adopt individual measures and provide redress to the applicant. The first is the obligation for the state to provide any just satisfaction – usually a sum of money – which the Court may have awarded under Article 41 of the Convention.

The second aspect is related to the fact that the consequences of a violation for the applicant are not always suitably redressed through the mere award of a sum of money by the Court or the finding of a violation. Depending on the circumstances, the fundamental obligation to ensure as far as possible *restitutio in integrum* may therefore call for additional measures (for example, the reopening of criminal proceedings found to be unfair, the implementation of a non-enforced national judicial decision or the revocation of an expulsion order issued against a foreigner despite a real risk of torture or other forms of ill-treatment in the country of return).

For this reason, although the new procedure for supervision of the execution of judgments of the Court includes simplified registration of the payment of just satisfaction², it is useful to recall in the action plan/report what the sums, if any, awarded by the Court covered. The Court may also have provided other indications under Article 41 which will be important for assessing the individual measures required.

The presentation of individual measures in large groups of cases

It is recommended that information on individual measures be provided for all the cases forming part of a group in the action plan/report for that group. If there are a large number of cases, this information may also be set out in an appendix to the action plan/report. When a

² It is sufficient to complete the special form for recording payment - which can be accessed by delegations on the restricted collaborative space https://cs.coe.int/team21/DM_EXEC/Just%20satisfaction%20form/Forms/AllItems.aspx - and return it to the Execution Department, which will register it and send an acknowledgement of receipt to the state concerned. If the applicant raises any objection, the problem will be discussed by the Execution Department with the delegation concerned on the basis of the supporting documents kept by the national authorities and in the light of any other relevant information, in order to find an appropriate solution. In exceptional cases, if warranted by the situation, the matter can be referred to the Committee of Ministers.

new case is added to a group, information on the individual measures required may initially be set out in a separate communication, but will have to be added in due course to the action plan/report when it is updated.

The importance of giving an indicative timetable for the further stages of the execution process

Action plans which state that there are still individual measures to be taken must include an indicative timetable for their implementation. This timetable plays an important role in the execution process by ensuring that it is transparent and foreseeable for all concerned, particularly applicants. Thus, in the case of a continuing violation, such as ongoing judicial proceedings whose outcome is awaited, it is important not only to state the measures the authorities intend to take to put an end to this situation, but also to indicate as far as possible a timeframe for their implementation (next hearing, deadline for the submission of an expert's report, etc.). The same applies to individual measures intended to erase the consequences of a violation which has ceased.

With specific reference to urgent individual measures, see section III.A below.

Reference documents:

Recommendation (2000) 2 of 19 January 2000 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

Information document CM/Inf/DH(2008)7 final – Monitoring of the payment of sums awarded by way of just satisfaction: an overview of the Committee of Ministers' present practice

Information document CM/Inf/DH(2010)37, 6 September 2010 – Supervision of the execution of judgments and decisions of the European Court of Human Rights: Implementation of the Interlaken Action Plan – Modalities for a twin-track supervision system

C. General measures

General measures must be taken to prevent further violations similar to those found and/or to put an end to continuing violations.

This section should therefore present:

- the authorities' assessment as to the source of the violation;
- their assessment of the extent of the violation and of the need for general measures;
- any measures already taken;
- measures still envisaged, including, where appropriate, interim measures, with an indicative timetable for their adoption;
- the authorities' assessment as to the impact – noted or expected – of these measures.

If a specific violation is regarded as an isolated case, it is important to explain briefly why it is regarded as such.

In any event, as with individual measures, it is important that the authorities indicate clearly their conclusion on the status of execution of this aspect of the case, specifying whether the measures already taken are considered sufficient for the purposes of execution or whether additional measures are necessary or envisaged, or whether the need for further measures has still to be assessed.

Further details:

Origin/source(s) of the violation

To determine the appropriate measures it is first necessary to identify the origin of the violation found by the Court. The action plan or report must therefore contain the authorities' assessment

on this subject, including, where appropriate, a reference to the Court's findings enabling the sources of the violation to be identified. Any other information corroborating this assessment may be added, such as details of domestic law and practice in the matter with which the judgment is concerned.

A violation is sometimes the result of several different causes, such as the lack of an appropriate legal framework combined with complex administrative procedures and an unforeseeable change in the relevant case law. If this is the case, the action plan or report must set out all these causes.

Assessment of the extent of the violation and of the need for general measures

The action plan should include the authorities' assessment as to the extent of the violation and the need to take general measures (or general measures complementing those already set out in an earlier version of the action plan). The measures required will of course be assessed in relation to the present situation. It is possible that the situation may have changed since the material time. In such a case, any changes should first be presented in order to infer from them any measures which may still be necessary. It is very important to clearly show how the proposed changes will remedy the situation criticised by the Court's judgment.

Presentation of measures taken and/or envisaged

The action plan should describe the measures to be taken and give an indicative timetable for their implementation. If adopting the necessary measures is a lengthy process, it is important also to indicate any interim measures adopted to prevent as far as possible similar violations from occurring pending the adoption of more comprehensive or permanent reforms.

The action plan should also include an explanation of the expected effects of the measures. In other words, the action plan or report should reveal how these measures will prevent similar violations in future.

Impact of the measures adopted

In an action report, it may be necessary in some situations to present not only the measures adopted but also an assessment of their impact. This is very important when the problem stems from an administrative or judicial practice and it has to be shown that this practice has changed as a result of the general measures.

The ability of the authorities to analyse the impact of measures adopted is also of paramount importance in situations calling for a wide range of different measures (for example, in cases of excessive length of proceedings or prison overcrowding). In such circumstances, it may be useful for the action plan/report to present not only information making it possible to assess the impact of the measures adopted, but also the measures taken to ensure that the authorities are able to assess the impact of the measures and respond quickly if further measures prove necessary.

The importance of giving an indicative timetable for the further stages of the execution process

At national level, the indicative timetable may help, among other things, to establish a clear framework for the actions of the different parties involved in the execution process. At European level, the indicative timetable will help to determine the pace of the Committee of Ministers' supervisory activity. It is also important for other interested parties, such as the European Court of Human Rights and the Parliamentary Assembly, which may find grounds in the indicative timetable to consider that the execution process seems to be progressing in a foreseeable and justified manner at national level.

As the term "indicative timetable" suggests, the timeframes indicated by the respondent state are not set in stone. The indicative timetable may be reviewed and adjusted depending on how the execution process develops. It may be thought of as a kind of "roadmap" accompanying the action plan, subject to change in the event of obstacles or difficulties encountered during the execution process.

Question of the existence of domestic remedies

Given its importance for avoiding repetitive applications before the Court, the question of effective remedies should always be addressed in the action plan/report, even where no violation of Article 13 is found, especially if the Court's judgment notes the existence of a structural problem. Indeed, the Brighton Conference expressed concern at the large number of repetitive applications pending before the Court and emphasised the importance for states to provide remedies for all alleged violations of a right protected by the Convention (see also Recommendation Rec(2004)6 of the Committee of Ministers on the improvement of domestic remedies, which encourages member states to examine their respective legal systems in the light of the case-law of the Court and to take, if need be, necessary and adequate measures to guarantee effective remedies as secured by Article 13 of the Convention).

Question of the publication/dissemination of the Court's judgment

It should be stressed that the publication and dissemination of a judgment of the Court serve two purposes. Generally, the aim is to inform interested parties about developments in the Court's case-law. In this context, it is useful to note that the Committee of Ministers has recommended that states should ensure that judgments and decisions which constitute relevant case-law developments are rapidly and widely published, in their entirety or at least in the form of substantial summaries or excerpts (together with appropriate references to the original texts) in the language(s) of the country, in particular in official gazettes, information bulletins from competent ministries, law journals and other media generally used by the legal community, including, where appropriate, Internet sites.

In some cases, publication/dissemination also has a specific purpose where it is conceived as a general measure designed to bring about a change of practice on the part of those at whom it is aimed (the parties involved in the violation). Sometimes it may even be the only measure envisaged by the authorities to execute a judgment. In such situations, it is important for the authorities to explain in the action plan/report what is expected of this measure and how it can produce this result.

Isolated cases

A specific violation may be regarded as an isolated case where it is intrinsically linked to the specific circumstances of the case. However, it is not enough to state without an explanation that the case is an isolated one or a violation linked to the specific circumstances of the case. The isolated nature of the violation must be demonstrated by indicating what specific circumstances of the case rule out the occurrence of similar violations in future.

Reference documents:

Recommendation (2004) 6 of 12 May 2004 of the Committee of Ministers to member states on the improvement of domestic remedies

Recommendation (2002) 13 of 18 December 2002 of the Committee of Ministers to member states on the publication and dissemination in the member states of the text of the European Convention on Human Rights and the case-law of the European Court of Human Rights

Information document CM/Inf/DH(2010)37 of 6 September 2010 – Supervision of the execution of judgments and decisions of the European Court of Human Rights: Implementation of the Interlaken Action Plan – Modalities for a twin-track supervision system

D. Conclusion of the authorities

In the case of an action plan, the conclusion of the authorities should refer to the next stage in the execution process, indicating when an updated version of the action plan may be submitted to the Committee of Ministers.

An action report should state the conclusion of the authorities on the individual and general measures adopted and invite the Committee to end its supervision of the case. If a repetitive (“clone”) complaint is still under the Committee’s supervision in the context of another case or group of cases, the action report’s conclusion should point this out, stating the commitment of the authorities to resolving the problem in that context.

E. Appendices to action plans and reports

In view of the need for concision in an action plan/report, appendices can be a useful tool for providing further information or examples in support of the statements made. For this tool to be effective, however, it is important to avoid appending voluminous documents or documents in languages other than the official languages of the Council of Europe. In such situations, it is recommended that a summary of the information contained in the appendices be included in the action plan or report. A reference in the text of the action plan or report is not enough.

III – Procedural questions

This section concerns the different stages which action plans/reports go through in the course of the execution supervision process. Its purpose is to make it easier to understand where these documents fit in to the process.

A. Submission of action plans and reports and updating of action plans

Initial time-limit

The action plan or report must be submitted as soon as possible, and in any event no more than 6 months after the judgment becomes final. It is important to under that this is the maximum time-limit. Often, the action plan or report could be submitted earlier. An earlier submission will even be necessary in urgent situations or in a pilot judgment which itself contains a deadline for the adoption of certain measures prescribed by the European Court.

In the latter case, for example, the action plan must be submitted in time for the Committee to be able to ensure compliance with the time-limit set by the Court.

For cases involving urgent individual measures, the authorities must provide information on individual measures as soon as the judgment becomes final, if need be in a specific communication. This information will subsequently be included in the full action plan or report which is to be submitted within 6 months of the judgment becoming final.

Reminder

Under the new working methods, when states fail to comply with the 6-month time-limit for submitting an action plan or report to the Committee of Ministers, the Execution Department sends a reminder letter to the delegation concerned, setting a new time-limit of 3 months under the standard procedure / 2 months under the enhanced procedure. If a member state has still not

submitted an action plan or report upon expiry of this new time-limit and offers no explanation of this situation to the Committee of Ministers, the Secretariat is instructed to propose that the question be examined in detail by the Committee of Ministers under the enhanced procedure³.

Compliance with the time-limit for submitting information in complex situations

Structural and/or complex problems call, for the most part, for a longer period of reflection to identify optimal solutions and make a proper evaluation of the time needed to implement them. The question which therefore arises is what the content of the "General Measures" section will be in the initial action plan, including as regards the indicative timetable.

In such a situation, the authorities are not expected to submit an initial action plan containing actual measures of execution, as they have not yet been identified. On the other hand, the action plan will need to indicate the steps taken by the authorities to identify those measures.

The same applies to the indicative timetable. This will not be a timetable for implementation of the measures which are supposed to result in execution of the judgment, but a "roadmap" for the reflection undertaken by the authorities at national level as the first stage in the execution process (setting up of a group of experts to analyse the situation, approximate timeframe for this group to deliver its conclusions, etc.).

Updating the initial action plan

The idea underlying the system of continuous monitoring put in place by the twin-track supervision procedure⁴ is that the Committee of Ministers should be able to follow the progress of the execution process through regular updating of the action plan.

The action plan must be updated as soon as there are any significant developments in the adoption of the measures planned. This will involve presenting the measures implemented since the submission of the previous version of the action plan together with an assessment of their impact. In this way, the action plan will gradually evolve into the action report, on the basis of which the Committee of Ministers will be able to decide to end its supervision.

It should be emphasised in this context that it is unnecessary to present an update for every development in the execution process, but it is important to inform the Committee of Ministers of any significant advances in the process. It is also necessary to ensure transparency with regard to any problems or obstacles encountered in the implementation of the action plan and indicate the solutions envisaged for overcoming those difficulties. Out of the same concern for transparency, the authorities might wish to include in their updates certain comments made in submissions from NGOs and the replies given⁵.

To aid understanding, it is useful to ensure that the updated action plan retains as far as possible the structure of the initial plan. It is also desirable for the respondent state to set out all the up-to-date information in a single document, without references to earlier communications. If, in exceptional cases, it prefers to supplement its action plan with a separate communication, it is important to ensure that this communication is followed as soon as possible by the submission of a consolidated

³ See section IV of information document CM/Inf/DH(2010)45final

⁴ In this procedure, all cases are permanently on the agenda of the Committee of Ministers (an order of business specifying the cases on which the Committee of Ministers will focus at a given meeting)

⁵ In accordance with the *Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements* (see Rule 9.3), communications from NGOs are brought to the attention of the Committee of Ministers together with any observations of the delegation concerned provided that the latter are transmitted to the Secretariat within five working days of having been notified of such communication. Even if they have not replied to the NGOs' submissions within the prescribed time-limit, the authorities can still do so by means of a separate communication submitted after the expiry of that time-limit or in the next updating of the action plan.

plan (or, if applicable, report) including the content of that separate communication. Generally, it is undesirable for the Committee to have to refer to different documents from the authorities in order to have an overview of the execution status of a case.

Submission of the action report

When the member state considers that all the measures have been taken and that it has discharged its obligation under Article 46 of the Convention, the action plan is turned into an action report.

The Secretariat will make a final assessment of the action report at the latest within 6 months of the submission of this information. If the member state and the Secretariat agree that the measures implemented are appropriate and sufficient, the Secretariat will propose that the Committee adopt a final resolution putting an end to its examination of the case.

Reference documents:

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

Information document CM/Inf/DH(2010)45 final, 7 December 2010 - Supervision of the execution of judgments and decisions of the European Court of Human Rights: Implementation of the Interlaken Action Plan – Outstanding issues concerning the practical modalities of implementation of the new twin-track supervision system. Also (2010)37.

IV – Current practices concerning measures to be taken by the authorities to optimise the collection of the necessary information and the timely production of action plans and reports

This section presents some examples of practices presented in the round tables held in Tirana and Strasbourg. These examples are not exhaustive and have no binding force. They are solely intended to serve as a source of inspiration to those who so wish.

Reference documents⁶:

Multilateral Round Table on efficient domestic capacity for rapid execution of judgments of the European Court of Human Rights, Tirana, 15-16 December 2011

Multilateral round table on states' action plans and reports for the implementation of the European Court's judgments: current practice and future perspectives, Strasbourg on 13 and 14 October 2014

http://www.coe.int/t/dghl/monitoring/execution/Themes/Tables_rondes/RoundTables_fr.asp

A. Collection of information

Authority(ies) responsible

The Committee of Ministers has recommended that member states appoint a co-ordinator – an individual or a body – for the execution of judgments at national level, who/which should have the necessary powers and authority to acquire relevant information⁷.

⁶ The Conclusions of the round tables are available at

http://www.coe.int/t/dghl/monitoring/execution/themes/tables_rondes/roundtables_EN.asp?

⁷ See Recommendation CM/Rec(2008)2 of the Committee of Ministers to member states on efficient domestic capacity for rapid execution of judgments of the European Court of Human Rights, as well as more recently the Brussels Declaration (Action Plan part B 2) fully endorsed by the Committee of Ministers at the Ministerial session (May 2015)

In most member states, the role of general co-ordinator is played by the Agent of the Government. But this is not always the case. In the United Kingdom, for example, the role of co-ordinator is transferred from the Agent of the Government to the Ministry of Justice in the execution phase.

However, the primary responsibility for the execution of the judgment often falls to the authority concerned by the judgment. Inter-ministerial committees or working groups may be set up to decide on the measures to be taken to execute the judgment, especially where the judgment reveals a structural or complex problem.

Sources of information

To draw up a good action plan/report, it is crucial to first collect all the information relevant to execution. It is therefore advisable not merely to consult the authorities concerned, but also to call on other potential sources of information such as national human rights structures (national human rights institutions and ombudsmen), the various specialist bodies within the Council of Europe (CPT, ECRI, CEPEJ, etc.) and other intergovernmental organisations (EU, UN), civil society or the media.

Regarding co-operation with civil society, some participants in the round table held in Strasbourg, sharing their experience in this regard, drew attention to the usefulness of initiating such co-operation at the preparatory stage of action plans and reports in order to avoid prolonging the process unnecessarily because of the need to amend the action plan after its publication to reflect the observations made by NGOs.

Sometimes the necessary information has already been collected in the preparation of a report for another international body on the same questions. This report can be a source of inspiration for the action plan or report.

Measures to facilitate the collection of necessary information and to ensure publication of action plans/reports

The Committee of Ministers has given a series of relevant recommendations for the collection of necessary information for the drafting of action plans and report (see the Recommendation (2008)2 and the recent Brussels Declaration). In this context, it underlined in particular, the importance of developing effective synergies between relevant actors in the execution process at the national level either generally or in response to a specific judgment⁸.

One such measure is the establishment of an inter-institutional network with a rapid response capacity. To facilitate the collection of information, it may be useful to identify contact persons within the national authorities involved in the process of executing judgments, in accordance with the recommendation of the Committee of Ministers⁹. In Germany, for example, liaison officers have been appointed both at federal level and at the level of the *Länder*; in Austria, human rights co-ordinators meet regularly to discuss, inter alia, questions relating to the execution of the Court's judgments; in the United Kingdom, human rights lawyers and government officials responsible for human rights policies meet and stay in contact throughout the year.

⁸ See previously cited *Recommendation CM/Rec(2008)2*, as well as the Brussels Declaration

⁹ Idem

It is also recommended that steps be taken to ensure that relevant actors in the execution process are sufficiently acquainted with the Court's case law as well as with the relevant Committee of Ministers' recommendations and practice¹⁰. There are several ways of achieving this. For example, training programmes can be put in place, like the seminars for judges in Slovakia. Annual conferences can be organised for all contact persons, as is the case in Germany, for example, where meetings are organised every year for liaison officers at federal and *Länder* level, in which Germany's judge at the Court also participates.

Another significant development is the growing practice on the part of governments to keep their parliaments informed, as appropriate, of the situation concerning execution of judgments and the measures being taken in this regard. Such practices were recommended by the Committee of Ministers in its Recommendation (2008)². They also respond to the calls by the Parliamentary Assembly¹¹ to national parliaments to monitor the effective implementation of Convention standards at national level and, in particular, ensure that the competent parliamentary committees play an active role in the execution of the Court's pilot judgments and other judgments revealing major structural problems. In the same connection, the Parliamentary Assembly launched a training programme in 2013 comprising visits to Strasbourg for lawyers responsible for advising the relevant parliamentary committees on questions relating to the Convention, including as regards the execution of the Court's judgments¹². Mention should also be made of the practice, established in some countries, of annual reports on the case-law of the Court and the execution of its judgments, which are produced by the government and submitted to Parliament. In Germany, for example, a report of this kind, containing information on the execution procedure and the measures taken in specific cases, is published on the website of the Federal Ministry of Justice and widely disseminated, including in Parliament.

In this context, the Committee has also called upon states to promote the exchange of information and good practices with other state parties, in particular for the implementation of general measures. It has also called upon states to encourage access to the Committee of Ministers decisions and resolutions as well as to action plans and reports.

Methods used to collect information

In some countries, standard forms or questionnaires have been drawn up to help the authorities concerned provide the necessary information for the preparation of the action plan or report (for example, in Belgium and the United Kingdom). This can also give the authorities concerned a greater sense of responsibility and guide them in the execution process.

B. Drafting of action plans and reports

Authority(ies) responsible

Once the collection of information has been completed, the responsible authority drafts the action plan or report. In a number of states this task falls to a specialised body, often the Government Agent or sometimes a department focussed uniquely on the execution of judgments (for example in Armenia). However, in some countries, this task is decentralised, such as in Ireland and the United Kingdom, where the action plan is prepared by the authority most directly concerned by the Court's judgment. Permanent Delegations may also be involved in the drafting of action plans or reports, for example, in Estonia.

¹⁰ *Idem*

¹¹ See, *inter alia*, Resolution 1823(2011) and Resolution 1914(2013)

¹² See *Annual Report 2013*

Depending on the complexity of the case and the type of general measures to be taken, an inter-ministerial committee or a working group may also be set up.

Time-limits

In order to comply with the time-limit for submitting action plans/reports (normally 6 months), some states use the first 3 months to analyse the judgment and think about the measures to be taken and the last 3 months to draft the action plan (e.g. Germany and Ireland).

Sometimes, draft action plans have to be formally approved by the government, especially in cases revealing systemic problems which require significant legislative amendments and/or budgetary expenditure. It is thus often useful to also include a period of time for this step.

Language used for drafting

Sometimes, action plans and reports are drafted in the national language and then translated into English or French. This facilitates compliance with the recommendation in the Brighton Declaration that action plans for the execution of judgments should be made as widely accessible as possible, including through their publication in national languages.

Reference document:

Recommendation (2008) 2 of 6 February 2008 of the Committee of Ministers to member states on efficient domestic capacity for rapid execution of judgments of the European Court of Human Rights