



Proposals for the work of the Council of Europe on the Implementation of Judgments of the European Court of Human Rights

This document sets out some proposals of the European Implementation Network (“EIN”) on the work done by the Council of Europe to promote the implementation of judgments of the European Court of Human Rights (“ECtHR”). The proposals set out below result from discussions among the EIN Board and Secretariat, as well as the general assembly of EIN members held on 19 November 2021.

The proposals are made in the context of the priorities set out in the Secretary General’s [Four-Year Strategic Framework for the Council of Europe](#), as agreed by the Committee of Ministers in May 2021: namely, the need to implement the ECHR and judgments of the ECtHR at national level (priority 1), and to have a stronger and more active involvement of civil society in the work of the Council of Europe’s statutory bodies (priority 11).

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1. The Implementation Monitoring Process

The Frequency and Transparency of CM/DH Hearings

Issue:

The number of ECtHR judgments pending implementation presents a significant challenge. In particular, there are around 1300 leading judgments pending implementation, which require general measures reforms. However, the body which is responsible for the implementation of judgments, the Committee of Ministers ("CM"), issues decisions on less than 12% of the leading judgments each year (around 150 out of the 1300). It also presents a very limited opportunity for governments to be held accountable for non-implementation, because its deliberations are not public.

The implementation of ECtHR judgments could be significantly improved if many more cases were debated by the CM each year; and if government representatives could be held publicly accountable for their reporting to the CM on the implementation of their cases.

Proposals:

- 1.1. In exceptional cases, make CM/DH hearings entirely public.
- 1.2. For all CM/DH hearings, allow NGOs/NHRIs to attend.
- 1.3. Develop a practice of calling for ministers or other senior government officials to attend CM/DH sessions.
- 1.4. Double the number of CM/DH sessions held each year.

An Alternative to Infringement Proceedings

Issue:

Infringement proceedings are an effective tool that we hope to see used more often. Nevertheless we recognise that the Council of Europe is reluctant to use this tool, as it carries the risk of states being expelled from the organisation. It would therefore be useful for there to be a sanctioning measure that lies between Interim Resolutions and infringement proceedings. The consequences of this should be less severe than those for infringement proceedings, but substantial enough to create real and credible pressure on states to implement. Diplomatic declarations by the organisation will not be sufficient.

Proposal:

- 1.5. Develop a procedure that lies between Interim Resolutions and the infringement procedure, which can create real and credible pressure to implement.

Handling of Public Information in the Implementation Monitoring Process

Issue:

Litigants, NGOs and NHRIs provide valuable input into the implementation monitoring procedure, which has been recognised by the CM, DEJ and the Secretary General. However, information in the implementation monitoring procedure is not communicated to these groups. This applies to the following in particular: parties who have won cases at the European Court of



Human Rights; parties who have intervened at the European Court of Human Rights; and parties who have previously made a Rule 9 submission in any particular case. These groups are not informed when the following important events occur in the monitoring process: the case is classified as standard or enhanced; the CoE receives government Communications, Action Plans, or Action Reports (which will have a decisive influence on the implementation of the case); or if the case is scheduled for debate by the Committee of Ministers. Although this information is publicly available, the lack of any direct communication about it to litigants, NGOs and NHRIs means that these groups regularly miss important developments in the implementation monitoring process – and are therefore unable to make a contribution.

Proposals

- 1.6. Information listed under (a) is communicated to groups falling under (b):
- (a) A case is classified as coming under either standard or enhanced supervision; submission of government communications, action plans, and reports; the scheduling of the case for consideration by the Committee of Ministers; CM Decisions and Interim Resolutions; and Final Resolutions.
 - (b) Parties who have won the relevant case at the European Court of Human Rights; parties who have intervened in the relevant case at the European Court of Human Rights; parties who have previously made a Rule 9 submission in the relevant case; and NHRIs.

Handling of Non-Public Information in the Implementation Monitoring Process

Issue:

The majority of leading cases pending implementation are being dealt with under the standard procedure (909 out of 1300 at the time of writing). It is currently challenging for litigants, NGOs and NHRIs to engage with these cases, due to the lack of publicly available information. In particular, it is not known what steps have been indicated by the Department for the Execution of Judgments to the state as necessary for the implementation of the judgment. This makes it difficult to comment on whether such steps are being taken effectively, in the absence of a government action plan. We estimate that, for the majority of cases, there is no government action plan that is recent enough to be relevant to the implementation process.

For cases under enhanced procedure, we believe that the indicative calendar detailing when such cases will be considered by the CM is made available to the CM well before it is made public. This reduces the capacity for litigants, NGOs and NHRIs to submit timely submissions.

Proposals:

- 1.7. For standard cases, when the DEJ agrees with the government what steps will be necessary to implement a judgment, a summary of this is made public on the HUDOC-Exec website, and communicated to the parties listed in 1.6(b).
- 1.8. For enhanced cases, the indicative timetable for when cases will be considered by the Committee of Ministers is made public at the earliest possible opportunity, and communicated to the parties listed in 1.6(b).

2. Facilitating Engagement with Litigants, NGOs and NHRIs

Forum for Exchange on the Implementation Process

Issue:

The European Court of Human Rights currently administers a biennial meeting for litigators, including lawyers and NGOs from across Europe. This provides an important opportunity for lawyers and civil society organisations to understand the Court's procedures and the way in which these impact upon their work. It also provides an opportunity for Court judges and registry personnel to understand the challenges faced by litigators.

Meanwhile, no such event exists in the implementation process. For the vast majority of those engaging in the implementation monitoring system, there is no forum in which they can communicate about the execution process with those who administer it. Such a forum would enhance understanding by litigators and civil society, increase the standard of their engagement, and build further trust in the process. Meanwhile, it would also provide an opportunity for the CoE to understand the challenges faced by litigators, NGOs and NHRIs in the implementation monitoring process.

Proposal:

- 2.1 A biennial meeting for litigators, NGOs, and NHRIs that engage in the implementation monitoring process. This would be similar in structure to the biennial meeting organised by the European Court of Human Rights, and could involve members of the secretariat of the DEJ, secretariat of the CM, and members of the CM itself that might want to volunteer for such an event.

Engagement with Civil Society on Country Visits

Issue:

EIN has been happy to see examples of members of the Department for the Execution of Judgments engaging with local civil society, when conducting country visits. We believe that this engagement is essential for a more complete understanding of ECtHR implementation in any state. It is also important for validating the role of civil society in the implementation process. However, in some visits, civil society engagement does not occur. Furthermore, when it does occur, civil society groups are (to our knowledge) often not provided with advance warning about which judgments are to be under discussion with the government. This reduces the opportunity for civil society to provide a meaningful contribution.

Proposals

- 2.2 During country visits by the Department for the Execution of Judgments, there should be an established practice that there is an exchange with members of civil society.



2.3 Civil society is to be informed in advance about which the cases which are scheduled for discussion during the country visit.

3. Council of Europe Activities – Beyond the Monitoring Process

Increasing the Frequency and Transparency of Technical Co-Operation Projects

Issue:

The large number of leading cases pending implementation require a huge amount of general measures reforms. The CoE's technical co-operation projects have a significant role to play in promoting these. Given the considerable difficulties there are in promoting systemic reforms, the implementation process would benefit from a massive increase in co-operation projects focused on the implementation of ECtHR judgments. This includes co-operation projects that focus on the implementation of particular cases (or particular themes); and co-operation projects that focus on structural improvements to domestic capacity to promote the implementation of ECtHR judgments overall (e.g. including reforms to the office of government agent / national co-ordinator; creation/effective running of government working groups; and parliamentary oversight mechanisms).

NGOs can play an important role in promoting the creation of national implementation mechanisms, and monitoring their effectiveness (Moldova and Georgia are two examples). According to a survey of EIN members, the number one reason given by NGOs that they do not do this kind of work, is because there is a lack of funding for it. If the co-operation projects outlined above were to include even small budgets for local civil society, this could go a long way to helping to promote the creation of structural solutions.

Finally, it is not currently clear which leading cases benefit from a co-operation project, and which countries are already the subject of co-operation projects seeking to promote structural solutions. Public information about this would help civil society contribute to such projects, to tailor their advocacy in a constructive way in the context of the project, and to know which cases are being addressed in this way (perhaps enabling them to focus on promoting reforms in other areas). Furthermore, public information about the overall number of leading cases that benefit from a CoE technical co-operation project would assist in understanding the degree to which the implementation issue is being addressed by such projects.

Proposals

- 3.1. Significant increase in the number of CoE technical co-operation projects focused on the implementation of particular ECtHR judgments, including work on similar judgments pending across different states.
- 3.2. Significant increase in the number of CoE technical co-operation projects focused on national structural solutions to promote the implementation of judgments overall, including funding for the work of civil society in this area.
- 3.3. Publishing of a list of the pending leading cases that benefit from a CoE technical co-operation project.
- 3.4. Adding information to case profiles on HUDOC-Exec about CoE technical co-operation projects.

A Special Representative on the Implementation of ECtHR Judgments

Issue:

Those working on ECtHR implementation often remark that the lack of national capacity is the root cause of the high number of pending leading cases (e.g. small government agents' offices that lacks effective power; lack of inter-departmental working groups; lack of parliamentary oversight committees). Improvements to this national capacity needs to happen as a matter of priority. However, it is not clear what the Council of Europe's strategy is for promoting such structural improvements at the national level.

It appears that this work falls within the mandate of the Department for the Execution of Judgments (DEJ). However, it is not clear that the DEJ has sufficient capacity to do this at the scale at which this is needed. The promotion of structural reforms can only be done by high-ranking members of Secretariat staff, conducting meetings at ministerial level. The high-ranking DEJ staff are already tasked with a significant amount of work in the monitoring process for standard and enhanced cases (particularly the quarterly CM/DH meetings). Even if the DEJ were to benefit from an increase in budget (which is highly necessary), it is not clear whether this will include high-ranking staff, who would be in a position to promote structural reforms at ministerial level, and whether such staff would have sufficient time to focus on this enormous task.

The lack of national capacity for ECtHR judgment implementation is the fundamental cause of the non-implementation problem. Improving national capacity will be very difficult – but without such improvements, the implementation problem will never be resolved. It would therefore be helpful if a high-ranking member of the CoE secretariat was given a mandate to work solely on developing ECtHR implementation capacity at national level. A Special Representative on the Implementation of ECtHR judgments could identify opportunities for structural reforms in particular states; have the flexibility to carry out country visits to promote reforms within such political windows; and have the profile to promote change at the Ministerial level.

Proposal:

- 3.5. The appointment of a Special Representative on the Implementation of ECtHR Judgments, with a mandate to promote capacity for implementation at the national level through structural solutions.



High-Level Accountability for Overall Non-Implementation

Issue:

The implementation of the ECHR and ECtHR judgments at national level has become the number one priority of the Council of Europe. Nevertheless, there is very little holding of government to account for poor implementation records. Ministers or ambassadors do not need to answer questions about the overall implementation records of their country, or what their government is doing about this. Although representatives of governments are asked questions about the implementation of individual cases, they are not held to account for systemic non-implementation. Doing this could create pressure for much-needed systemic improvements at the national level.

Accountability could be carried out in biennial CM questioning of ministers/deputy ministers/ambassadors about overall implementation records of each country (based on number of pending leading cases, time that they have been pending, etc).

Holding to account of ministers could also be carried out by the PACE Committee on Legal Affairs and Human Rights.

Proposals:

- 3.6. Sessions in the Committee of Ministers dedicated to questioning government ministers about the overall implementation record of their country, with the highest possible level of representation.
- 3.7. Sessions of a PACE Committee dedicated to questioning government ministers about the overall implementation record of their country, with the highest possible level of representation.

Reporting on the Overall State of Implementation

The current annual reports on the implementation of ECtHR judgments include a huge variety of statistical data on implementation in each country. However, they do not include a written assessment about what this means: i.e. how well implementation is going overall in each state. This makes it very difficult for those engaged in the ECHR system to understand how well a state is implementing overall, and to hold the state to account.

If we hope for there to be an improvement in overall implementation by states, there has to be an assessment of how well states are implementing on an annual basis.

Importantly, there is also no analysis of the national capacity to promote the implementation of ECtHR judgments. Although improved national capacity is the key to resolving overall non-implementation, the Council of Europe is not systematically monitoring whether such structures are in place, or whether they are operating effectively. This could include annual or biennial reporting on the existence and effectiveness of domestic capacity to implement ECtHR judgments in each CoE state (including implementation structures, their capacities, and their resources). This could be a stand-alone document, or it could be included in the Annual Report on the implementation of ECtHR judgments.

Proposals:

- 3.8. Annual Reports on the Implementation of ECtHR Judgments to contain a written analysis of the overall state of ECtHR implementation in each CoE country
- 3.9. Reporting on the existence and effectiveness of mechanisms at the national level for the implementation of ECtHR judgments