



European Network of  
National Human Rights Institutions

PROMOTING AND PROTECTING  
HUMAN RIGHTS ACROSS WIDER EUROPE

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## GUIDANCE FOR NATIONAL HUMAN RIGHTS INSTITUTIONS TO SUPPORT IMPLEMENTATION OF JUDGMENTS FROM THE EUROPEAN COURT OF HUMAN RIGHTS

LEGAL WORKING GROUP ENNHRI

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# Scoping of the Judgment

The first step for an NHRI is to scope the ECtHR judgment to identify the issues it addresses, what can and should be done to comply with it, and to share this view with the relevant authorities and stakeholders.

*NHRIs may consider the following:*

1

Establish the necessary legal expertise to inform your position on the implications of the judgment;

2

Analyse the nature of the violation of the Convention identified by the ECtHR and identify the relevant human rights issues arising, including whether the judgment requires a) law reform and/ or b) amendment to administrative or judicial practice;

3

Establish an appreciation of the competing individual and State interests raised in the proceedings and the challenges the State faces in implementing the judgment;

4

Review your organisation's past experience in dealing with the human rights issues identified by the ECtHR in the judgment;

5

Identify practical mechanisms and measures that the State could adopt to comply with the judgment in a timely manner and hence give effect to its obligations under the Convention.

6

Identify other stakeholders who work in this area (Parliamentary committee, relevant ministry, NGOs, legal profession, media etc.) and provide them with a copy of the judgment and your NHRI's views on the measures required to comply with it.

7

Identify the State agent or other official who is the national liaison officer for the purposes of Execution and provide your views to her/him.

8

Review and comment on the State's proposed timetable for implementation of the judgment (as set out in its Action Plan<sup>3</sup>), considering the following:



Once judgments and decisions are final, states indicate to the Committee of Ministers as soon as possible the measures planned and/or taken in an "action plan".



Once all the measures have been taken, an "action report" is submitted.



During the supervision process, applicants, NHRIs and NGOs can submit communications in writing to the Department for the Execution of Judgments.

*The supervision of the adoption and implementation of action plans has followed a twin-track procedure since January 2011. Most cases follow the standard procedure. An enhanced procedure is used for cases requiring urgent individual measures or revealing important structural and/or complex problems in judgments and for inter-state cases.*

9

Consider making a Rule 9 submission to the Committee of Ministers,<sup>4</sup> via the Department for the Execution of judgments of the Court, taking into account the following:



A submission under Rule 9 can be made at any stage whilst the Committee of Ministers' consideration of the case is still live.



The submission may be equally or more relevant after engagement with the national authorities.



The Department for Execution of Judgments will bring any communication received to the attention of the Committee of Ministers, together with any observations in reply from the state party concerned.

<sup>3</sup> For more information see Council of Europe website: <http://www.coe.int/en/web/execution>. See in particular the Guide for the drafting of action plans and report for the execution of judgments of the European Court of Human Rights.

<sup>4</sup> Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements, Rule 9: 'Communications to the Committee of Ministers'. Available at: <http://bit.ly/1Tfg9QG>

# Engagement with authorities and stakeholders

If initial contact with the authorities and relevant stakeholders at the scoping stage does not succeed in securing state compliance, deeper engagement may be required. This section sets out the various parties with whom the NHRI may wish to engage and a list of potential actions.

## A. THE EXECUTIVE

*How can NHRIs influence the Executive branch of government to act positively to remedy the Convention breach?*

- 1 Contact the relevant government ministry or national authority raising your concerns about the violation(s) identified by the ECtHR in its judgment and seeking information on how the State proposes to execute the judgment.
- 2 Open a line of dialogue with the relevant government ministry or national authority, in order to better understand the position of the State vis-à-vis the rights violation(s) identified by the ECtHR.
- 3 Establish an appreciation of the level of the State's commitment to complying with the judgment/capacity to comply with the judgment and the timeframe involved.
- 4 Submit a letter or report to the relevant government ministry or national authority outlining the issue(s) and suggesting human rights based solutions to remedy the deficiencies in the State's structures (law and/or practice) identified in the judgment.
- 5 Identify and engage with the domestic Action Plan mechanism, for example the person or committee responsible for its implementation.
- 6 Request a meeting with the relevant government ministry or national authority to discuss the implications for the State emanating from the judgment and to seek a commitment on the timely implementation of the Action Plan.
- 7 Submit draft legislation and/or guiding principles to the relevant government ministry that could remedy the breach of human rights identified by the ECtHR in its judgment.
- 8 Submit observations on draft legislation/other measures to Government when published.



## B. THE LEGISLATURE

*How can NHRIs influence the national parliament to review the human rights issues identified by the ECtHR in its judgment and to review and adopt appropriate remedying legislation?*

1

Consider initiatives to promote the harmonisation of national legislation with the provisions of the Convention.

2

Identify the relevant Parliamentary Committee with responsibility for the rights issue(s) identified by the ECtHR in the judgment.

3

Submit a letter or report to the relevant Parliamentary Committee setting out the substance of the violation(s) found by the ECtHR, identifying the nature and extent of the issue domestically and suggesting options for reform.

4

Advise the Parliamentary Committee of other initiatives being taken by you.

5

Request an audience with the relevant Parliamentary Committee to discuss the implications for the State emanating from the judgment.

## C. CIVIL SOCIETY

*How can NHRIs engage best with its partner civil society groups to promote the objective of securing domestic compliance with the Convention?*

1

Engage with NGOs and other stakeholders on the question of remedying the breach of human rights identified by the ECtHR in the judgment and other ECtHR case law.

2

Establish and develop long-term issue-specific relations with NGOs involved in the promotion and protection of human rights.

3

Convene a roundtable of lawyers or advocates working for victims in the area.

## D. EDUCATION & AWARENESS INITIATIVES

*How can your NHRI promote better understanding (at governmental and civil society level etc.) of the nature and extent of the gap in the protection of human rights identified by the ECtHR in the judgment and work towards establishing best practice solutions?*

1

Conduct, commission or review research establishing the nature and extent of the specific human rights concern in your State as identified by the ECtHR in the judgment.

2

Conduct, commission or review research concerning international best practice on how to promote and protect the Convention right(s) at issue.

3

Organise education events raising awareness of the breach of human rights identified by the ECtHR in its judgment and promoting the engagement of civil society with the Convention right(s) at issue.

4

Hold conferences to promote ECtHR case law in conjunction with NGOs / lawyers / professional associations etc.

5

Consider the use of media and social media reporting, or a dedicated space on your NHRI website<sup>5</sup> to raise awareness of the judgment of the ECtHR, the human right(s) at issue and the persons affected.

## E. OTHER INDEPENDENT STATE BODIES

*Are there other independent state bodies at the domestic level that could help to promote the objective of securing compliance with the judgment?*

1

Consult with other independent state bodies with a remit in the relevant field (e.g. Ombudsmen, Médiateurs, Equality Bodies, specialist bodies (focussing on specific groups or geographic areas), Data Protection Bodies, etc).

<sup>5</sup> For example see <http://www.ihrec.ie/legal/eurocourtcases.html>

## F. INTERNATIONAL DIMENSION

*How can your NHRI engage best with international treaty and other bodies to promote domestic compliance with the ECHR?*

- 1 Identify the relevant international human rights committees and processes through which you can raise the breach of human rights identified by the ECtHR in the judgment, if it remains unaddressed.
- 2 Contribute to the reporting processes which States are required to submit to United Nations bodies (including UN supervisory committees, the Universal Periodic Review process), making proposals for initiatives to remedy the rights violation(s) identified by the judgment.
- 3 Liaise with other European NHRIs for information exchange and to discuss possible combined initiatives to address the human rights breach identified by the ECtHR in its judgment.

## Possible Legal Proceedings

If engagement does not secure state compliance with the judgment, NHRIs may wish to consider whether the institution or threat of legal proceedings could help to achieve this.

- 1 Consider whether your NHRI can support an appropriate legal case before your domestic courts where a clear lacuna in the law/practice arising from the ECtHR judgment continues to violate individuals' rights.
- 2 If the implementation of the judgment is delayed, consider the benefit of acting as amicus curiae (friend of the court) in a new relevant case, drawing the attention of the Court to relevant principles of the ECtHR's judgment.

## About ENNHRI

The European Network of National Human Rights Institutions (ENNHRI) brings together 40 NHRIs across the wider European region. ENNHRI's goal is to enhance the promotion and protection of human rights across the Europe region. It carries this out through assisting in the establishment and accreditation of NHRIs; coordinating exchange of information and best practice between members; facilitating capacity building and training; engaging with regional mechanisms; and intervening on legal and policy developments at a European level.

ENNHRI is one of four regional networks of NHRIs, which together make up the Global Alliance of NHRIs. Since 2013, ENNHRI has been constituted as an international not-for-profit association under Belgian law, with a Permanent Secretariat and registered office in Brussels.



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