

# Information note

*National Human Rights Institutions  
/ Communications to the  
Committee of Ministers of the  
Council of Europe*

2017

## **Introduction**

1. This information note has been prepared for the members of the European Network of National Human Rights Institutions ('ENNHRI'). Its purpose is to outline the role of National Human Rights Institutions ('NHRIs') in the supervision of the execution of judgments of the European Court of Human Rights (the 'Court').

## **Final judgments of the Court**

2. Contracting States have a legal obligation to comply with a final judgment of the Court in any case to which they are parties.
3. Where the Court finds that there has been a violation of a contracting State's obligations under the European Convention of Human Rights ('Convention'), the State must remedy the breach. To remedy the violation, the State is obliged to pay the applicant the sums awarded by way of just satisfaction<sup>1</sup>, if any, and take appropriate measures through its domestic legislation. The State may choose, subject to monitoring by the Committee of Ministers, the means by which it will discharge its legal obligation, provided that such means are compatible with the conclusions set out in the judgment.<sup>2</sup>

## **Supervision of the execution of judgments of the Court**

4. In accordance with Article 46 of the Convention, the Committee of Ministers, comprised of the Ministers for Foreign Affairs of the member States of the Council of Europe,<sup>3</sup> has responsibility for supervising the execution of judgments of the Court.<sup>4</sup> In general, the Committee of Ministers examine state compliance with judgments four times a year.<sup>5</sup>

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<sup>1</sup> See Article 41 of the Convention for the power to award:  
[http://www.echr.coe.int/Documents/Convention\\_ENG.pdf](http://www.echr.coe.int/Documents/Convention_ENG.pdf).

<sup>2</sup> *Broniowski v Poland* (Application no. 31443/96), *Scozzari and Giunta v Italy* (Application nos 39221/98 and 41963/98) *Scordino v Italy* (No.1) (Application no. 36813/97). See Abdelgawad, *The execution of judgments of the European Court of Human Rights* (Strasbourg: Council of Europe; 2008), pp.12 – 31, available here: [http://www.echr.coe.int/LibraryDocs/DG2/HRFILES/DG2-EN-HRFILES-19\(2008\).pdf](http://www.echr.coe.int/LibraryDocs/DG2/HRFILES/DG2-EN-HRFILES-19(2008).pdf).

<sup>3</sup> Statute of the Council of Europe, composition and role of Committee of Ministers see Chapter IV – see <http://www.coe.int/en/web/conventions/full-list/-/conventions/rms/0900001680306052>. Each of the Ministers may appoint a Deputy, who is typically also the Permanent Representative of the Member State to the Council of Europe.

<sup>4</sup> Article 46 of the Convention was amended to its current by Article 16 of Protocol No.14 to the Convention, in force on 1 June 2010, following its signature and ratification by all contracting States. A number of contracting States however entered declarations upon ratification – see [https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/194/signatures?p\\_auth=DEDYehp4](https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/194/signatures?p_auth=DEDYehp4).

<sup>5</sup> The Committee's human rights meetings generally take place four times a year, typically in March, June, September and December. Documents arising from meetings of the Committee are available here: <http://www.coe.int/en/web/execution/committee-of-ministers-human-rights-meetings>.

5. The Committee of Ministers is advised and assisted by the Department for the Execution of Judgments of the European Court on Human Rights (the 'DEJ').<sup>6</sup>
6. As part of its supervisory role, where the Committee of Ministers considers that a contracting State is refusing to abide by a final judgment, it may refer a question to the Court as to whether the contracting State has failed in its obligation to abide by the final judgment of the Court in any case to which they are a party (Article 46(4)).
7. Further, if the Court finds that a contracting State has violated its obligation to abide by the final judgment of the Court, it will thereafter refer the matter to the Committee of Ministers for consideration as to the measures to be taken (Article 46(5)).

### **Rules for the supervision of the execution of judgments**

8. The exercise of the Committee of Ministers' powers of supervision is governed by the Rules of the Committee for the supervision of the execution of judgments and of the terms of friendly settlements (the 'Rules').<sup>7</sup>
9. Pursuant to Rule 6, when supervising the execution of a judgment by the relevant State the Committee of Ministers will examine:
  - a. whether any just satisfaction awarded by the Court under Article 41 of the Convention has been paid, including as the case may be, default interest; and
  - b. if required, and taking into account the discretion of the contracting State concerned to choose the means necessary to comply with the judgment, whether:
    - i. individual measures have been taken to ensure that the violation has ceased and that the injured party is put, as far as possible, in the same situation as that party enjoyed prior to the violation of the Convention;
    - ii. general measures have been adopted, preventing new violations similar to that or those found or putting an end to continuing violations.
10. The Rules provide examples of individual measures such as 'the striking out of an unjustified criminal conviction from the criminal records, the granting of a residence permit or the reopening of impugned domestic proceedings', and general measures such as 'legislative or regulatory amendments, changes of case-law or administrative practice or publication of the Court's judgment in the

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<sup>6</sup> For more detailed information in relation to the supervision of the execution of judgments of the Court, ENNHRI members are directed to the website of the DEJ (<http://www.coe.int/en/web/execution>).

<sup>7</sup> Adopted by the Committee on 10 May 2006 at the 964<sup>th</sup> meeting of the Ministers' Deputies, see <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016805905e5>.

language of the respondent State and its dissemination to the authorities concerned'.<sup>8</sup>

11. Contracting States are required to submit an 'action plan' to the Committee of Ministers to set out the measures the State has taken and intends to take to implement the judgment of Court, including a timetable for the adoption and implementation of those measures. Where it is not possible to determine all measures, the action plan shall include steps to be taken to determine the measures required.<sup>9</sup>
12. An action plan is an evolving document which must be regularly updated throughout the execution process with up-to-date information on developments that have occurred for the Committee of Ministers to consider. Once all the measures have been taken, an 'action report' is submitted by the State.

### **Communications from NHRIs**

13. During the supervision process, injured parties, non-governmental organisations ('NGOs') and NHRIs are permitted under Rule 9<sup>10</sup> to submit communications in writing to be considered by the Committee of Ministers. NGOs and NHRIs do not have an ancillary right to attend the meetings of the Committee of Ministers.
14. The Committee of Ministers is entitled to consider any communication from NGOs and NHRIs with regard to the execution of judgments under Article 46(2) of the Convention which affect their State (see Rule 9(2)).
15. Pursuant to Rule 9(3), where a communication is received from an NGO or NHRI, the Secretariat of the Committee of Ministers<sup>11</sup> (the 'Secretariat') must bring the communication 'in an appropriate way' to the attention of the Committee of Ministers. In this regard, the Secretariat shall bring the communication to the attention of the relevant State. If the State responds within 5 working days from the date of notification, both communication and response shall be brought to the attention of the Committee of Ministers and be made public. If the State does not submit a reply within this timeframe, the communication will be transmitted to the Committee of Ministers and only made public after 10 working days.
16. Communications to the Committee of Ministers from contracting States, NGOs and NHRIs are made available on the website of the DEJ.<sup>12</sup>

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<sup>8</sup> See notes (1) and (2) to Rule 6(2).

<sup>9</sup> The Glossary maintained on the DEJ of the European Court of Human Rights contains a useful definition of 'action plan' <http://www.coe.int/en/web/execution/glossary>.

<sup>10</sup> Updates to Rules were adopted on 18 January 2017 by the Committee of Ministers. The Rules should be checked for further updates since the publication of this information note. <https://rm.coe.int/16806eebf0>

<sup>11</sup> For the mandate of the Secretariat: <https://www.coe.int/en/web/portal/organisation-and-mandates-of-the-secretariat?desktop=true#sec2>

<sup>12</sup> Rule 8(2)(b) provides that information and documents submitted to the Committee by the injured party, NGOs, and NHRIs shall be accessible to the public unless the Committee decides otherwise in order to protect legitimate public or private interests. Requests for confidentiality are considered by the

17. NHRIs have frequently used the communication mechanism provided for by Rule 9(2) to contribute to the supervision of the execution of judgments of the Court by the Committee of Ministers. Notably, the NHRI is not required to have been granted leave to intervene as a third party in the proceedings concerned in order to make communications to the Committee of Ministers during the supervision of execution stage. Communications under Rule 9 are a distinctive right of NHRIs and NGOs with regard to the execution of judgments which affect their State, under Article 46(2) of the Convention.<sup>13</sup>
18. The nature and scope of the communications made by NHRIs will necessarily vary having regard to the facts of the individual case, the nature of the violation(s) of the Convention at issue, and the terms of the final judgment of the Court. For example, the communications may contain submissions on the implementation of specific measures identified in the judgment, general measures adopted in the action plan, revisions made by States to their action plan and requests for a referral to the Court for an interpretive ruling in respect of the judgment, or part thereof.
19. A summary of some of the communications previously submitted by NHRIs to the Committee of Ministers under Rule 9(2) provide an illustration of the diversity and breadth of the NHRIs' contribution to the supervisory process.<sup>14</sup>

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Committee under the terms of Rule 8(3). In general, submissions to the Committee are made available here: <http://www.coe.int/en/web/execution/submissions>.

<sup>13</sup> NHRIs may apply to the Court for leave to intervene as a third party under Article 36(2) of the Convention, and pursuant to Rule 44(2) of the Rules of Court should they wish to submit written comments or take part in the hearings.

<sup>14</sup> It should be stressed that this overview represents an indicative, rather than an exhaustive, overview of communications made by NHRIs to the Committee. For further examples of communications made by NHRIs under Rule 9(2), see also (in alphabetical order with regard to the respondent State):

*France*

- Communication from the Commission Nationale Consultative des Droits de l'homme, 15 April 2015, *Winterstein v France* (Application no. 27013/07), DH-DD (2015) 427, available here: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016804ac24e>.

*Ireland*

- Communication from the Irish Human Rights Commission, 4 August 2011, *McFarlane v Ireland* (Application no. 31333/2006), DH-DD (2011) 573E, available here: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016804a039e>.

*Serbia*

- Communication from the Protector of Citizens, 4 March 2016, *Jovanović v Serbia* (Application no. 21794/08), DH-DD (2016) 254, available here: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016805acecc>.

*United Kingdom*

- Communication from the Northern Ireland Human Rights Commission, 6 June 2011, *S and Marper v United Kingdom* (Application no. 30562/04), DH-DD (2011) 437, available here: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016804a364e>.
- Communication from the Equality and Human Rights Commission, 3 October 2014, *Vinter and Others v United Kingdom* (Application no. 66069/09), DH-DD (2014) 1150, available here:

*France | Popov v France (Application nos. 39472/07 and 39474/07)*

The applicants in Popov comprised a family of Kazakhstani nationals who had sought asylum in France. The applicants were initially unsuccessful in their claim for asylum, and were detained pending their deportation to Kazakhstan. The applicants claimed that their administrative detention while awaiting deportation amounted to a violation of Article 3 (prohibition of inhuman or degrading treatment), Article 5 (right to liberty and security) and Article 8 (right to respect for private and family life).

The Court held that there had been a violation of Article 3 and Article 5, paragraphs 1 and 4, in respect of the detention of the children concerned, and that there had been a violation of Article 8 in respect of the family as a whole.<sup>15</sup>

Two French based human rights bodies, Commission Nationale Consultative des Droits de l'Homme (an NHRI) and the Défenseur des Droits, submitted a communication to the Committee of Ministers to draw attention to the exclusion of the overseas Department of Mayotte (a French island) from the scope of measures adopted by the French Government to implement the decision in Popov. The communication also outlined the difficulties concerning the status of minors under the relevant migration and asylum laws and the need to protect minors by refraining to place them in administrative detention. The interveners further stated that it was impossible to ascertain whether families with children had been placed in administrative detention since the delivery of the judgment of the Court.<sup>16</sup>

*Ireland | O'Keeffe v Ireland (Application no. 35810/09)*

In O'Keeffe the applicant's complaint concerned the failure by Ireland to implement an adequate legal framework to protect children within the national school system from sexual abuse, in violation of its positive obligations under Article 3 of the Convention. The complaint arose in circumstances where the applicant had been sexually abused while attending a school owned (through trustees) by a Roman Catholic bishop, and managed by a local priest. The abuse was carried out by the school's principal teacher, who was an employee of the school manager.

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<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016804a6b62>.

<sup>15</sup> Popov v France (Application nos 39472/07 and 39474/07), available here:

<http://hudoc.echr.coe.int/eng?i=001-108710>.

<sup>16</sup> Communication from the Commission Nationale Consultative des Droits de l'Homme, and the Défenseur des Droits, 27 May 2013, DH-DD (2013) 588, available here:

<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168063d222>.

The Grand Chamber<sup>17</sup> held that there had been a violation of the substantive aspect of Article 3 as regards the State's failure to fulfil its obligation to protect the applicant, and of Article 13 (taken together with the substantive aspect of Article 3) on account of the lack of an effective remedy.<sup>18</sup>

In its initial communication, the Irish Human Rights and Equality Commission ('IHREC') submitted that the State had adopted an overly restrictive interpretation of 'victims' within the scope of the Court's judgment, by limiting its application to cases in which a prior complaint had been made against an abuser, which had not been acted upon. The IHREC also expressed concern that the State had not put in place an effective remedy at the domestic level for individuals who, like the applicant, had suffered a violation of their rights under the substantive aspect of Article 3.<sup>19</sup>

In a subsequent communication to the Commission of Ministers, the IHREC submitted that the matter be referred back to the Court pursuant to Article 46(3) of the Convention, for an interpretive ruling as to whether the finding of a violation by the Court had been contingent upon the existence of a prior complaint of abuse to the school authorities in the instant case.<sup>20</sup>

*Poland | Orchowski and Sikorski v Poland (Applications no. 17885/04 and 17599/05)*

In its pilot judgments<sup>21</sup> in *Orchowski and Sikorski*, the Court held that the conditions of the applicants' detention amounted to a violation of Article 3. In its judgment, the Court analysed the respondent State's obligations under Article 46(1) of the Convention, having particular regard to the 160 pending applications against Poland related to prison overcrowding in the context of Article 3.

In its *Orchowski* judgment, the Court considered that overcrowding in Polish prisons and remand centres revealed a structural problem

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<sup>17</sup> For details on the composition of the Grand Chamber of the Court:

[http://www.echr.coe.int/Documents/FAQ\\_GC\\_ENG.pdf](http://www.echr.coe.int/Documents/FAQ_GC_ENG.pdf).

<sup>18</sup> *O'Keeffe v Ireland* (Application no 3581/09), available here: <http://hudoc.echr.coe.int/eng?i=001-140235>.

<sup>19</sup> Communication from Irish Human Rights and Equality Commission in the case of *O'Keeffe v Ireland* (Application no 3581/09), 29 October 2015, DD (2015) 1136, available here: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016804b190e>.

<sup>20</sup> Communication from the Irish Human Rights and Equality Commission, 21 October 2016, DD (2016) 1167, available here:

<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806b193c>.

<sup>21</sup> The Court's pilot judgment procedure is provided for under Rule 61 of the Rules of Court and applies where the facts of an application reveal in the member state concerned the existence of a structural or systemic problem or other similar dysfunction which has given rise or may give rise to similar applications. Rule 61 is available here:

[http://www.echr.coe.int/Documents/Rules\\_Court\\_ENG.pdf](http://www.echr.coe.int/Documents/Rules_Court_ENG.pdf).

consisting of a practice that was incompatible with the Convention. The Court encouraged the respondent State 'to develop an efficient system of complaints to the authorities supervising detention facilities, in particular a penitentiary judge and the administration of these facilities which would be able to react more speedily than courts and to order, when necessary, a detainee's long-term transfer to Convention compatible conditions'.<sup>22</sup>

In its communication under Rule 9(2), the Office of the Human Rights Defender (an NHRI) drew the Committee's attention to unresolved issues relating to overcrowding in Polish prisons and pre-trial detention centres, drawing on information arising from preventive visits that it had carried out at Polish detention facilities, acting in the capacity of the 'National Preventive Mechanism' (Krajowy Mechanizm Prewencji).<sup>23</sup>

The Office of the Human Rights Defender considered that statistical information which appeared to show the improvement of overcrowding in prisons and detention centres was the product of 'misrepresentation [...] caused by many inadmissible practices', including adapting recreational areas for housing purposes, placing prisoners in infirmaries, isolation and transit cells for periods longer than that prescribed by law, placing prisoners in special surveillance and security units, and placing different categories of prisoners together. The Office of the Human Rights Defender also expressed concerns over the potential large scale application of the Executive Penal Code which permitted courts to adjourn execution of sentences due to overcrowding of penitentiary facilities.

#### *United Kingdom | Al-Skeini v United Kingdom (Application no. 55721/07)*

In Al-Skeini the Court held that there had been a breach of the procedural obligation under Article 2 of the Convention to carry out an adequate and effective investigation into the deaths of the relatives of the applicants,<sup>24</sup> who were killed by members of the British Armed Forces during the military occupation of Iraq. Significantly, the Court was of the view that the applicants' deceased relatives fell within the jurisdiction of the respondent State, dismissing the United Kingdom's preliminary objection in this regard.

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<sup>22</sup> *Orchowski v Poland* (Application no. 17885/04), at paras 147 – 154, available here: <http://hudoc.echr.coe.int/eng?i=001-95314>. Generally see judgment in *Sikorski v Poland* (Application no. 17599/05) here: <http://hudoc.echr.coe.int/eng?i=001-95316>.

<sup>23</sup> Communication from the Office of the Human Rights Defender in the cases of *Orchowski and Sikorski v Poland* (Application no. 17885/04 and 17599/05), 9 December 2011, DH-DD (2011) 1108, available here: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168063da2c>.

<sup>24</sup> The Court held that there had been a breach in respect of the relatives of first, second, third, fourth and fifth applicants, while the sixth applicant could no longer claim to be a victim of a violation of the procedural obligation under Article 2.

In its judgment, the Court declined to prescribe specific measures which the United Kingdom was required to take in fulfilment of its obligations under Article 46(1) of the Convention. As such, the United Kingdom remained free to choose the means by which it would discharge its obligation to abide by the final judgment of the Court, provided that such means were compatible with the conclusions set out in the Court's judgment. Consequently, the Court deferred to the Committee of Ministers to consider the practical steps required to comply with the judgment.<sup>25</sup>

In its communication under Rule 9(2) to the Committee of Ministers, the Equality and Human Rights Commission ('EHRC', an NHRI) voiced concern over the general measures implemented by the United Kingdom and the United Kingdom's view that the Court's judgment in *Al-Skeini* related to the particular circumstances of past operations in Iraq and had no implications for its ongoing military operations elsewhere. The EHRC also highlighted the discrepancy between the standard level of supervision identified in the action plan compared to the more enhanced level suggested by the Committee of Ministers.

The EHRC also recorded to its concerns over the delay and adequacy of investigations under Articles 2 and 3 of the Convention and cross referred to concluding observations of the United Nations Committee against Torture in respect of periodic reports submitted by the United Kingdom relating to the excessive delays in the Iraq Historical Allegations Team investigations, and to the recommendations made by the United Nations Human Rights Committee that the United Kingdom establish more robust accountability measures to ensure prompt, independent, impartial and effective investigations.<sup>26</sup>

## Interim and final resolutions

20. In supervising the execution of judgments, the Committee of Ministers may adopt interim resolutions, in order to provide information on the state of progress of the execution or, where appropriate, to express concern and/or to make suggestions with respect to the execution (Rule 16).<sup>27</sup>

21. As part of the Rule 9 communications process, NHRIs may recommend that an interim resolution in respect of the execution of the judgment is adopted by the

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<sup>25</sup> *Al-Skeini v United Kingdom* (Application no. 55721/07), at para. 181, available here:

<http://hudoc.echr.coe.int/eng?i=001-105606>.

<sup>26</sup> Communication from the Equality and Human Rights Commission in the case of *Al-Skeini v United Kingdom* (Application no. 55721/07), 17 December 2015, DH-DD (2015) 1374, available here:

<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016804a44d2>.

<sup>27</sup> See Rule 16 (find the latest Rules at: <http://www.coe.int/en/web/execution/rules-and-working-methods>). For a recent example, see the interim resolution adopted by the Ministers' Deputies at their meeting held on 22 September 2016 in the matter of Ivanov (Application no. 40450/04) and Zhovner group (Application no. 56848/00), Item H46-34, available here: [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectId=09000016806a6d0a](https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016806a6d0a).

Committee of Ministers.<sup>28</sup> In this regard, NHRIs may draw on their experience in engaging with international human rights treaty monitoring bodies to follow up on their recommendations and make concluding observations in response to particular issues arising from country reports.

22. The nature and breadth of the interim resolutions that may be adopted by the Committee of Ministers is well illustrated by reference to the Khashiyev and Akayeva group of cases.

*Russian Federation | Khashiyev and Akayeva (Application nos 57942/00 and 57945/00)*

The joined applications of Khashiyev and Akayeva related to the Russian federal military in the Chechen Republic. The applicants claimed that their relatives had been tortured and killed by members of the Russian federal military, and that the investigation conducted by the authorities into the death of their relatives had been inadequate.

The Court held that there had been a violation of Article 2 of the Convention in respect of the applicants' relatives' deaths. Further, the Court found that there had been a failure of the authorities to carry out an adequate and effective investigation, both into the circumstances of those deaths and into the allegations of torture made by the applicants. The Court held by a majority that there had also been a violation of Article 13 of the Convention in respect of the unavailability of an effective remedy within the domestic legal system.

As at the date of this Note, the Committee of Ministers supervises the execution of Khashiyev and Akayeva as part of a group of some 225 cases relating to the actions of the Russian security forces in the Chechen Republic, Ingushetia, Dagestan, and North Ossetia.<sup>29</sup>

Submissions have been made under Rule 9(2) by a number of NGOs, including the Russian Justice Initiative, the European Human Rights Advocacy Centre, the Centre for International Protection and the Memorial Human Rights Centre.<sup>30</sup>

In accordance with a decision adopted by the Committee of Ministers at its 1035th meeting,<sup>31</sup> the Secretariat of the DEJ organised bilateral consultations with representatives of the Prokuratura (Prosecutor

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<sup>28</sup> See for example the communication by NGO Minority Rights Group International, 6 December 2016, DH-DD(2016)1366 (<https://rm.coe.int/16806c6818>) arising in the execution of the judgment in *Sejdic and Finci v Bosnia and Herzegovina* (Application No. 27996/06) and the interim resolution of the Committee of Ministers (<https://rm.coe.int/168059ddb0>) at page 12.

<sup>29</sup> For a list of cases, see: [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=09000016805af9c4](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805af9c4).

<sup>30</sup> See e.g. [DH-DD\(2013\)491](https://rm.coe.int/168059ddb0), [DH-DD\(2013\)873](https://rm.coe.int/168059ddb0), [DH-DD\(2014\)154](https://rm.coe.int/168059ddb0), [DH-DD\(2015\)257](https://rm.coe.int/168059ddb0) and [DH-DD\(2015\)934](https://rm.coe.int/168059ddb0).

<sup>31</sup> See minutes of decisions made in 1035<sup>th</sup> meeting: [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=09000016805d2a1c](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805d2a1c).

General) of the Russian Federation, the Supreme Court, and the Ministry of the Interior.

Following these bilateral meetings, the Secretariat prepared detailed memorandums to assist the Committee of Ministers in its supervision of the execution by the Russian Federation of the relevant judgments relating to the actions of security forces in the Chechen Republic.<sup>32</sup>

The Committee of Ministers subsequently adopted an interim resolution setting out the progress achieved and the outstanding issues in respect of the legal and regulatory framework governing (a) domestic investigations, (b) the search for disappeared persons, (c) the involvement of victims in domestic investigations, and (d) the remedies available to victims.

The interim resolution urged the Russian authorities to enhance their efforts to ensure that independent and thorough investigations be conducted, and that the necessary measures be taken to intensify the search for disappeared persons and to secure the participation of victims in investigations.<sup>33</sup>

In a subsequent interim resolution adopted on 12 March 2015, the Committee of Ministers referred to the recommendations made by the Court in its judgment in *Aslakhanova & Ors v Russia*,<sup>34</sup> and urged the Russian authorities to create a single high-level body mandated with searching for persons reported as missing as a result of counterterrorist operations in the North Caucasus.<sup>35</sup>

In its decision of 24 September 2015<sup>36</sup> the Committee of Ministers sought clarification from the Russian authorities in relation to DNA samples taken by the Russian authorities. The Committee raised questions as to (a) the location in which the bodies had been found, (b) the location in which the remains had been stored, and (c) the preservation of other material evidence and forensic data. The Committee sought further information from the respondent State as to the steps taken to locate, secure and exhume mass graves or burial sites in the region.

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<sup>32</sup> See CM/Inf/DH (2008) 33 (available here:

[https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=09000016805aec57](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805aec57)) and CM/Inf/DH (2010) 26 (available here:

[https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=09000016805aec57](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805aec57)).

<sup>33</sup> Interim Resolution CM/Res DH (2011) 292, adopted on 2 December 2011 at the 1128<sup>th</sup> meeting of the Ministers' Deputies, available here:

[https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=09000016805ae159#\\_ftn2](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805ae159#_ftn2)

<sup>34</sup> Judgment in *Aslakhanova & Ors v Russia* (Application nos 2944/06, 8300/07, 50184/07, 332/08, 42509/10), at paras 222 – 238, available here: <http://hudoc.echr.coe.int/eng?i=001-115657>

<sup>35</sup> Interim resolution CM/Res DH (2015) 45, adopted on 12 March 2015 at its 1222<sup>nd</sup> meeting of the Ministers' Deputies, available here:

[https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=09000016805c3c31](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805c3c31)

<sup>36</sup> See minutes of 1236<sup>th</sup> meeting of Committee of Ministers:

[https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=09000016805c2c03](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805c2c03).

Most recently in December 2016, the Committee of Ministers noted that it had invited delegations to provide written questions to the Russian authorities and the Russian authorities to provide the answers in writing in due time for the meeting. The Committee of Ministers recorded that the results for effective execution were still “largely absent” some 10-15 years after the judgments.<sup>37</sup>

This group of cases remains before the Committee of Ministers under the enhanced supervision procedure.

## **Competence of NHRIs to make communications to Committee**

23. As a preliminary consideration, NHRIs contemplating making a communication to the Committee of Ministers should determine whether the communication falls within their institutional competence.
24. The minimum competences of NHRIs, as provided for in the Principles relating to the Status of National Institutions (the ‘Paris Principles’),<sup>38</sup> include that of submitting to any ‘competent body’ opinions, recommendations, proposal and reports on any matters concerning the protection and promotion of human rights (Article A.3(a)). NHRIs should also enjoy the competence to contribute to, and express an opinion on, the reports which States are required to submit to United Nation bodies, committees and regional institutions, pursuant to their treaty obligations (Article A.3(d)), and to cooperate with regional institutions that are competent in the areas of the protection and promotion of human rights.
25. On the basis that that the Council of Europe is a regional institution that is competent with respect to the protection and promotion of human rights, the making of communications to the Committee of Ministers of the Council of Europe in relation to the execution of judgments of the Court may reasonably be regarded as falling within the minimum competences of NHRIs as set out in the Paris Principles. It may also be argued that the competence of NHRIs to contribute to, and express an opinion on, reports which States are required to submit to, among others, regional institutions pursuant to their treaty obligations includes within its scope communications submitted to the Committee of Ministers by contracting States pursuant to their obligations under Article 46(1) of the Convention.<sup>39</sup>

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<sup>37</sup> See minutes of 1273th meeting of Committee of Ministers:

[https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectId=09000016806b73c0](https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016806b73c0).

<sup>38</sup> Adopted by UN General Assembly resolution 48/134 of 20 December 1993, available here:

<http://www.ohchr.org/EN/ProfessionalInterest/Pages/StatusOfNationalInstitutions.aspx>

<sup>39</sup> Valuable guidance in relation to the interpretation of the Paris Principles may be drawn from the General Observations issued by the International Coordinating Committee’s Sub-Committee on Accreditation

([http://nhri.ohchr.org/EN/AboutUs/GANHRIAccreditation/General%20Observations%201/GeneralObservations\\_adopted%2006.03.2017\\_EN.pdf](http://nhri.ohchr.org/EN/AboutUs/GANHRIAccreditation/General%20Observations%201/GeneralObservations_adopted%2006.03.2017_EN.pdf)). The question however of NHRIs making submissions to bodies tasked with supervising the execution of judgments of international/regional courts is not specifically addressed in the General Observations.

26. It is essential that NHRIs consider the legislative or other instrument setting out their composition and sphere of competence with a view to determining whether the making of communications to the Committee of Ministers is an express and/or implied competence enjoyed by the NHRI under domestic law.

### **Submission of communications**

27. Communications to the Committee of Ministers relating to the execution of judgments may be addressed to –

Department for the Execution of Judgments of the European Court of  
Human Rights  
Council of Europe  
F-67075 Strasbourg Cedex  
France

Email: [DGI-Execution@coe.int](mailto:DGI-Execution@coe.int)