

Strasbourg, 25 May 2016

DH-SYSC-REC(2016)R1

**STEERING COMMITTEE FOR HUMAN RIGHTS
(CDDH)**

**COMMITTEE OF EXPERTS ON THE SYSTEM OF THE EUROPEAN
CONVENTION ON HUMAN RIGHTS
(DH-SYSC)**

**DRAFTING GROUP ON RECOMMENDATION CM/REC(2008)2
(DH-SYSC-REC)**

MEETING REPORT

1st meeting

23-25 May 2016

Item 1: Opening of the meeting, adoption of the agenda and order of business, and election of a vice-President

1. The drafting Group on the Recommendation CM/Rec(2008)2 (DH-SYS-REC) held its 1st meeting in Strasbourg, from 23 to 25 May 2016, with Ms. Emanuela TOMOVA (Bulgaria) in the chair. The list of participants appears in Appendix I. The agenda, as it was adopted, appears in Appendix II. The Group elected E. Emilija PLAKSINS (Latvia) as its Vice-Chairperson.

Item 2: Work on the Recommendation CM/rec(2008)2

2. The Chair recalled that the DH-SYSC-REC will carry out its work according to the working methods adopted by the Committee of Experts on the reform of the Court (DH-GDR; see document DH-GDR (2015)R9, Appendix III), endorsed by the CDDH (see document CDDH(2015)R84, §8). The DH-SYSC-REC examined the working document prepared by the Secretariat, at the request of the DH-SYSC,¹ as a basis for the Group discussions and a guide for the decisions related to working methods and substantive work.²

3. The Group endorsed the structure of the document, as it appears in Appendix III to the present report, presenting the different elements of the Recommendation CM/Rec(2008)2. The Group accepted this thematic structure even if it does not present the good practices following the structure of the recommendation (paragraph by paragraph), as requested by the DH-SYSC. Noting that this thematic structure considers all paragraphs of the recommendation, the Group decided to follow this approach as it enables a better visibility and highlights the different aspects addressed by the Recommendation, while limiting certain overlaps. For each of the main topics identified, it is specified which relevant paragraphs of the Recommendation are being discussed.

4. The Group considered, for the purpose of this exercise, that it was necessary to establish objective and/or measurable criteria to enable the determination of what constitutes a “good practice” with a view to achieving the full, effective and prompt execution of judgments of the Court. This was determined as a measure or an action, which addresses one or more of the following non-exhaustive criteria:

- endorsed by the European Court of Human Rights and/or the Committee of Ministers;
- responds to the objectives regarding the execution of judgments as defined by the High-Level Declarations of Brighton (item F.§29a) and Brussels (item B.2); in particular:
 - strengthens the authority of the actors in charge of the execution;
 - enables the enhanced involvement of all relevant actors in the execution process at national level;

¹ At its 1st meeting, the DH-SYSC instructed the Secretariat to prepare a document containing a) good practice in member States and b) a first stock tacking of the implementation of this recommendation, pursuant to the sources proposed by the Secretariat in document DH-SYSC (2016)007 (paras. 3-5) and following the structure of Recommendation (2008)2.

² Document DH-SYSC-REC(2016)001REV, available online, contains a non-exhaustive selection of good practices examples, some of which have been added during the meeting.

- ensures the visibility of and promoting sufficient acquaintance with the execution process;
- promotes the co-operation with the Committee of Ministers and the Department for the Execution of Judgments of the Court;
- helps to overcome a difficulty in the execution process at national level.

It was specified that, due to the diversity of legal, constitutional and political systems, what is considered as a good practice in a specific State may not be applicable in another State.

5. The Group proceeded to a discussion on each theme discussed in the structure, in order to identify sub-themes as well as main issues which must be addressed, difficulties experienced at national level, and possible good practices implemented to overcome them. It benefited from the practical experience presented by Representatives of the Department for the Execution of judgments of the European Court of Human Rights. The detailed structure as it appears in Appendix III of the present report presents the guidance given by the Group with the view to the drafting of the consolidated text which will be prepared for the 2nd meeting of the DH-SYSC (8-10 November 2016).

Item 3: Organisation of future work

6. The DH-SYSC-REC instructed the Secretariat to prepare the document which will be presented to the DH-SYSC, on the basis of the detailed structure, guidance adopted and examples of good practices given. To this end, it is decided on the following procedure and calendar:

- The experts are invited to address to the Secretariat (DGI-CDDH-Reform@coe.int) examples of good practices, meeting the criteria determined on paragraph 4 above and addressing the items identified on the detailed structure, by **Friday 1st July 2016**;
- The Secretariat will prepare a draft consolidated document by **Friday 30th September 2016**;
- The experts will be invited to comment on the draft text by **Monday 17th October 2016**, in order to ensure that an amended version is addressed to the DH-SYSC in due time before its 2nd meeting.

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Appendix I

List of participants

MEMBERS / MEMBRES

BELGIUM/BELGIQUE

Mme Stéphanie GRISARD, Attachée, Co-Agent du Gouvernement devant la Cour européenne des droits de l'Homme, SPF Justice, Direction générale de la législation et des libertés et droits fondamentaux, Service des droits de l'Homme

BULGARIA/BULGARIE

Ms Emanuela TOMOVA, **Chairperson of the DH-SYSC-REC/Présidente du DH- SYSC-REC**, First Secretary, Human Rights Directorate

CZECH REPUBLIC/REPUBLIQUE TCHÈQUE

Mr Ota HLINOMAZ, Office of the Government Agent, Ministry of Justice

FINLAND/FINLANDE

Ms Satu SISTONEN, Legal Officer, Ministry for Foreign Affairs, Legal Service, Unit for Human Rights Courts and Conventions

FRANCE

Mme Mathilde JANICOT, Rédactrice, Direction des affaires juridiques, Sous-direction des droits de l'homme, Ministère des Affaires étrangères

GREECE/GRÈCE

Mme Efstathia TSAOUSHI, Conseillère Juridique, Conseil Juridique de l'Etat

Mme Ourania PATSOPOULOU, Conseillère, Bureau de l'Agent du Gouvernement devant la CEDH, Représentation Permanente de la Grèce auprès du Conseil de l'Europe

LATVIA/LETTONIE

E. Emilija PLAKSINS, Deputy Head of the Office of the Government Agent, Ministry of Foreign Affairs

LUXEMBOURG

Mlle Camille BESANÇON, Stagiaire, Représentation permanente du Luxembourg

MONTENEGRO/MONTÉNÉGRO

Ms Vanja RADEVIĆ, Advisor of the Representative of Montenegro before the European Court of Human Rights

POLAND/POLOGNE

Ms Aleksandra ORR, Specialist, Civil and Administrative Proceedings Unit, Department of Proceedings before International Human Rights Protection Bodies, Ministry of Foreign Affairs

ROMANIA/ROUMANIE

Mme Ileana-Gabriela POPA, Juge détachée, Direction de l'Agent du Gouvernement, Ministère des Affaires étrangères

RUSSIAN FEDERATION / FEDERATION DE RUSSIE

Mr Vladislav ERMAKOV, Ministry of Foreign Affairs

M. Stanislav KOVPAK, Représentant du Ministère de la Justice de la Fédération de Russie, Représentation de la Fédération de Russie auprès du Conseil de l'Europe

Ms Kseniya ROGOZYANSKAYA, Attaché, Ministry of Justice of Russian Federation, Permanent Representation of Russian Federation to the Council of Europe

SWITZERLAND/SUISSE

Mr Adrian SCHEIDEGGER, Agent suppléant du Gouvernement suisse devant la Cour européenne des droits de l'homme et le CAT, le CERD et le CEDAW, Département fédéral de justice et police DFJP, Office fédéral de la justice

TURKEY/TURQUIE

Mr Ibrahim YUSUFOĞLU, Rapporteur Judge, Ministry of Justice, Adalet Bakanlığı Ek Binası,

M. Ramazan DEMIRASLAN, Assistant Expert, Ministère de la Justice

M^{me} Aysen EMÜLER, Experte juridique, Représentation permanente de la Turquie auprès du Conseil de l'Europe

UNITED KINGDOM/ROYAUME-UNI

Mr Alex SCOTT, Policy Adviser, Human Rights and Security Policy, Ministry of Justice

OBSERVERS / OBSERVATEURS

EUROPEAN NETWORK OF HUMAN RIGHTS INSTITUTIONS (ENNHRI) / RÉSEAU EUROPÉEN DES INSTITUTIONS NATIONALES DES DROITS DE L'HOMME

Mme Morgane COULON, Chargée de mission au CNCDH

CONFERENCE OF INGOS OF THE COUNCIL OF EUROPE / CONFÉRENCE DES ONG DU CONSEIL DE L'EUROPE

M. Jean-Bernard MARIE

DEPARTMENT FOR THE EXECUTION OF JUDGMENTS OF THE EUROPEAN COURT OF HUMAN RIGHTS / SERVICE DE L'EXÉCUTION DES ARRÊTS DE LA COUR EUROPÉENNE DES DROITS DE L'HOMME

Mr Fredrik SUNDBERG, Deputy to the Head of Department

Mme Corinne AMAT, Chef de la Division I

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SECRETARIAT

DG I – Human Rights and Rule of Law / Droits de l’homme et Etat de droit
Council of Europe / Conseil de l’Europe, F-67075 Strasbourg Cedex

M. Alfonso DE SALAS, Head of the Human Rights Intergovernmental Cooperation Division / Chef de la Division de la coopération intergouvernementale en matière de droits de l’Homme, **Secretary of the CDDH / Secrétaire du CDDH**

Mme Irène KITSOU-MILONAS, Head of the Unit on the system of the European Convention on Human Rights / Chef de l’Unité sur le système de la Convention européenne des droits de l’homme, **Secretary of the DH-SYSC / Secrétaire du DH-SYSC**

Mme Virginie FLORES, Administrator / Administratrice, Unit on the system of the European Convention on Human Rights / Unité sur le système de la Convention européenne des droits de l’homme

Mme Haldia MOKEDDEM, Assistant/Assistante, Unit on the system of the European Convention on Human Rights / Unité sur le système de la Convention européenne des droits de l’homme

Mle Carole DERON, Trainee / Stagiaire

INTERPRETERS/INTERPRETES

Michael HILL
Didier JUNGLING
Isabelle MARCHINI
Cynera JAFFREY

Appendix II**Agenda (as adopted)****Item 1 : **Opening of the meeting, adoption of the agenda and order of business and election of the Vice-Chairperson****

- Draft annotated agenda DH-SYSC-REC(2016)OJ001
- Report of the 1st DH-SYSC meeting (25-27 April 2016) DH-SYSC(2016)R1
- Report of the 84th CDDH meeting (7-11 December 2015) CDDH(2015)R84
- Report of the 9th DH-GDR meeting (17-20 November 2015) DH-GDR(2015)R9
- Terms of reference of the Committee of Experts on the System of the European Convention on Human Rights (DH-SYSC) for 2016-2017 DH-SYSC(2016)003
- Committee of Ministers' Resolution CM/Res(2011)24 on intergovernmental committees and subordinate bodies, their terms of reference and working methods CDDH(2011)012

Item 2 : **Work on the Recommendation CM/Rec(2008)2**

- Working document in view of the 1st DH-SYSC-REC meeting DH-SYSC-REC(2016)001 REV

Reference documents

- Reference document in view of the work of DH-SYSC on the Recommendation CM/Rec(2008)2 on efficient domestic capacity for rapid execution of judgments of the European Court of Human Rights. DH-SYSC(2016)007
This document contains relevant extracts of the national reports on the implementation of the Brighton Declaration in the appendix as well as the sources below, with hyperlinks:
 - Compilation of the replies of member States in view of the Round table on efficient domestic capacity for rapid execution of judgments of the European Court of Human Rights (Tirana, 15-16 December 2011)
 - Conclusions of the Tirana Round table
 - Conclusions of the Round table on “action plans and reports in the twin-track supervision procedure”, organised by the Department for the Execution of the Judgments of the Court (Strasbourg, 13-14 October 2014)
 - National reports and general overview drafted during the International conference on effective implementation of the European Convention on Human (Saint Petersburg, 22-23 October 2015)
- Report of the 1st DH-SYSC meeting (25-27 April 2016) DH-SYSC(2016)R1
- Report of the 9th DH-GDR meeting (17-20 November 2015) DH-GDR(2015)R9
- Terms of reference of the Committee of Experts on the System of the European Convention on Human Rights (DH-SYSC) for 2016-2017 DH-SYSC(2016)003

Item 3 : **Organisation of future work**

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Appendix III

**Detailed structure for the presentation of good practices under Recommendation (2008)2
and its initial stock taking**

I. The compilation of good practices

N.B. The good practices should respond to the criteria defined in paragraph 4 of the meeting report. For all themes, outstanding difficulties also need to be presented.

A. The co-ordinator: status and resources

1. designate a co-ordinator – individual or body – of execution of judgments at the national level, with reference contacts in the relevant national authorities involved in the execution process.

A factual, short presentation of the status of the coordinator in all member States will be made. The various models adopted will be presented thematically.

Good practices will concentrate on measures taken to reinforce the coordinator's authority (establishment via a legal or other basis; function of oversight; visibility). The question of the coordinators human and financial resources will be considered. To this end, the Saint Petersburg International Conference (22-23 October 2015) findings of the general overview of national reports will be taken under consideration.

B. The role of the co-ordinator in identifying execution measures and drawing up action plans and reports

4. identify as early as possible the measures which may be required in order to ensure rapid execution;

6. rapidly prepare, where appropriate, action plans on the measures envisaged to execute judgments, if possible including an indicative timetable;

1. [...] This co-ordinator should have the necessary powers and authority to:

- acquire relevant information

- [...]

- if need be, take or initiate relevant measures to accelerate the execution process

This theme will be divided into two sub-themes: a) identification of execution measures b) drawing up of action plans and reports (including their follow-up with a view to an update). Each subtheme will address good practices regarding specific action taken to overcome difficulties in the adoption of individual measures (including just satisfaction) and general measures (including structural problems).

C. National synergies

a) Within the executive

1. [...] *This co-ordinator should have the necessary powers and authority to:*
- [...]
 - *liaise with persons or bodies responsible at the national level for deciding on the measures necessary to execute the judgment [...]*
5. *facilitate the adoption of any useful measures to develop effective synergies between relevant actors in the execution process at the national level either generally or in response to a specific judgment, and to identify their respective competences;*

Good practices will address effective coordination action at national level (e.g. inter-ministerial committees, advisory bodies and other formal or informal channels of communication) including the establishment of contact persons in light of the Brussels Declaration (item B. 2. i).

b) With the legislature

9. *as appropriate, keep their parliaments informed of the situation concerning execution of judgments and the measures being taken in this regard;*

While stressing the independence of parliaments, this part will address good practices to enhance information of parliaments (e.g. annual reporting) and their involvement in the execution process (e.g. participation in various subcommittees, working groups, formal or informal channels of communication) in particular when the execution of a judgment requires the adoption of legislative measures.

c) With the judiciary

5. *facilitate the adoption of any useful measures to develop effective synergies between relevant actors in the execution process at the national level either generally or in response to a specific judgment, and to identify their respective competences;*

While stressing the independence of the judiciary, this part will address good practices to enhance information of the judiciary and its involvement in the execution process (e.g. awareness raising activities, training of judges, round tables, formal or informal channels of communication) in particular when the violation found in the Court's judgment derives from action by the judiciary.

d) With national human rights structures and NGOs

5. *facilitate the adoption of any useful measures to develop effective synergies between relevant actors in the execution process at the national level either generally or in response to a specific judgment, and to identify their respective competences;*

This part will address the measures taken to reinforce the information and involvement of these actors. Good practices should highlight, where appropriate, the added value for the execution process.

D. Ensuring the visibility of and promoting sufficient acquaintance with the execution process

3. *take the necessary steps to ensure that all judgments to be executed, as well as all relevant decisions and resolutions of the Committee of Ministers related to those judgments, are duly and rapidly disseminated, where necessary in translation, to relevant actors in the execution process;*

7. *take the necessary steps 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 practice;*

8. *disseminate the vademecum prepared by the Council of Europe on the execution process to relevant actors and encourage its use, as well as that of the database of the Council of Europe with information on the state of execution in all cases pending before the Committee of Ministers;*

Regarding steps to ensure dissemination and publication of the judgments of the Court, reference will be made to the information contained in the [Draft] report on measures taken by member States to implement the relevant parts of the Brighton Declaration (doc. [DH-SYSC\(2016\)R1Addendum](#)).

This part will address examples of good practices to specify how decisions of the Committee of Ministers (including final resolutions closing cases) regarding the country in question, action plans and reports and other documents relevant for the execution process such as the [Guide for the drafting of action plans and reports for the execution of judgments of the European Court](#) prepared by the Department for the Execution of Judgments, are translated and/or notified to relevant actors in the execution process.

The Vademecum – which is not finalised yet – referred to in paragraph 8 will be addressed under the initial stock taking of the recommendation (part. II)

E. Co-operation with the Committee of Ministers and the Department for the Execution of Judgments of the Court

2. *ensure, whether through their Permanent Representation or otherwise, the existence of appropriate mechanisms for effective dialogue and transmission of relevant information between the co-ordinator and the Committee of Ministers;*

This part will specify the forms of promoting co-operation and their added value, especially with regard to cases revealing structural or complex problems; participation in “Human Rights” meetings and the added value of such participation.

F. Instances of a significant persistent problem in the execution process

10. *where required by a significant persistent problem in the execution process, ensure that all necessary remedial action be taken at high level, political if need be.*

This part will address instances of a significant persistent problem in the execution process and the helpful remedial steps taken at high – political if necessary – level. Examples of success stories, highlighting the means adopted to overcome such situations could form an appendix. The difficulties in – or indeed the impossibility of – undertaking such action must also be highlighted in order to make a real stock taking of this issue. In this connection, it would be helpful to specify the possible solutions found in dealing with situations of disagreement between the various national actors concerned regarding the implementation of measures in response to a Court judgment.

II. Elements for the initial stock taking of the implementation of Recommendation CM/Rec (2008)2 as endorsed by the DH-SYSC REC

- **The first key finding** in light of the analysis of the sources is that the momentum that has developed since 2008 at national and European level has extensively modified the context in which the recommendation operates. This is largely due to the new working methods for the supervision of the execution of judgments and to the enshrining, in 2011, of action plans and reports as a main tool in the execution of judgments and supervision processes. Other factors, both upstream and downstream, have played a part: upstream, the growing use by the Court of the practice of pilot judgments together with a wide range of procedural tools in order to resolve a large number of cases resulting from systemic problems; downstream, the increasingly stronger support given to the question of the execution of judgments under the Interlaken process culminating in the action advocated by the Brussels Declaration of 27 March 2015. The CDDH also contributed to this with its report on the longer-term future of the Convention system. Follow-up to these two texts will further add to this momentum. It is suggested that the future work incorporate this dimension.

- **The second finding**, as it results from all the sources analysed, is that a very large number of measures and actions taken by member States, since 2008, to implement Recommendation (2008)2 must considerably enrich the message which the DH-SYSC, and subsequently the CDDH, could convey, in the form of good practices to be encouraged, or in any other form. In five of the six themes studied in this document, it is certain that a genuine implementation *methodology* has developed at national level for the implementation of the Recommendation. This is a methodology arising, in particular, from the obligation to draw up action plans and reports, but it also encompasses questions which were initially addressed in general terms, such as the parliamentary dimension, or issues not explicitly referred to in the recommendation, e.g. the establishment of synergies with actors such as the judiciary and civil society, and action relating to judgments revealing structural problems or requiring the introduction of effective remedies.
- **The third finding** is that important difficulties remain regarding a number of points. *This part will be completed following the information that will be submitted with a view to the consolidated document that will be presented to the DH-SYSC.* At this stage, mention could be made, for example, of the difficulties relating to the role of the co-ordinator whose activities are not always supported or followed up. There are also difficulties in interpreting certain judgments for the purposes of identifying the measures required, difficulties regarding the payment of just satisfaction, and reticence on the part of the judiciary. The work of the Committee of Ministers is not always sufficiently well-known, and the relevant decisions are not always translated or disseminated to the relevant actors in the execution process. The work on the possible “upgrading” of the memorandum on “monitoring of the payment of sums awarded by way of just satisfaction: an overview of the Committee of Ministers’ present practice” (document CM/Inf/DH(2008)7 final, 15 January 2009) called for by the CDDH and approved by the decision of the Committee of Ministers of 30 March 2016 and the finalisation of the vade-mecum on the execution process, referred to in paragraph 8 of the Recommendation could help provide a response to some of the challenges and/or difficulties encountered.
- Necessary steps that can be taken at high – political if necessary – level to address a significant persistent problem in the execution process is a key issue for resolving complex situations. The need for an appropriate political lever underpinning technical solutions has been emphasised at various conferences and was one of the central points in the concluding observations of the Director General Human Rights and Rule of Law of the Council of Europe at the Saint Petersburg international conference, and also underlined by the CDDH in its report on the longer-term future of the Convention system.