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Parliamentary scrutiny of the standards of the European Convention on Human Rights

Background document

prepared by the secretariat

This document provides extracts from documents AS/Jur (2008) 32 rev¹ and AS/Jur (2009) 36², as background information for the hearing on “Parliamentary scrutiny of standards of the European Convention on Human Rights” which will take place in Paris on 16 November 2009.

A. Extracts from document AS/Jur (2008) 32 rev entitled “Stockholm Colloquy: Towards stronger implementation of the European Convention on Human Rights at national level”, 9-10 June 2008

[...]

II. Speech by Mrs Marie-Louise Bemelmans-Videc: “The effectiveness of the European Convention on Human Rights at national level: the parliamentary dimension”

[...] it is also obvious that the double mandate of national parliamentarians – as members of PACE and of their respective national parliaments – can be of fundamental importance in ensuring that human rights guaranteed by the ECHR and the Strasbourg Court are effectively protected and implemented domestically without, in the vast majority of cases, the need to seek justice in Strasbourg. There is a heavy burden on us, parliamentarians, especially those with such a double mandate, to ensure stronger implementation of the Convention at national level.

It follows that member states, including their legislative bodies, must be more rigorous in ensuring regular verification of the compatibility of draft and existing legislation with ECHR standards, as well as the existence of effective domestic remedies.³ Indeed, as concerns draft legislation, such verification has in the last few years been systematically undertaken by parliamentary committees in several member states. The extent to which this is also carried out – specifically in the context of the ECHR – by the legal services of legislative bodies, I am simply not able to answer. Probably (hopefully?) quite often, but I lack empirical evidence to back up this statement. That said, the compatibility of existing

¹ Stockholm Colloquy: “Towards stronger implementation of the European Convention on Human Rights at national level”, 9-10 June 2008.

² Christos Pourgourides, Progress Report on the ‘Implementation of judgments of the European Court of Human Rights’, 31 August 2009, declassified by the Committee on 11 September 2009.

³ For a recent overview see Committee of Ministers doc CM (2008) 52, of 4 April 2008: CDDH Activity Report “Sustained action to ensure the effectiveness of the implementation of the ECHR at national and European levels”, especially Appendix IV (which refers to improvement of domestic remedies; including mechanisms within the legislature, at §§ 11–19), and Appendix VI (which concerns the need to verify draft and existing laws, including parliamentary verification at §§ 13- 18). See also my AS/Jur working document “The effectiveness of the ECHR at national level”, doc. AS/Jur (2007) 35 rev 2 (declassified by the Committee on 26.06.2007).

laws with ECHR standards often crops up within the framework of parliamentary debates. Likewise, oral or written questions are put to the executive when, for instance, the execution of a Strasbourg Court judgment is at issue. [...]

As explained in the background document prepared for the presentation I am making today, a questionnaire entitled “Parliament’s role in verifying State obligations to comply with the ECHR, including Strasbourg Court judgments”, was sent to the parliaments of all 47 Council of Europe’s member states in February of this year. To date, 39 have replied.⁴ This questionnaire was preceded, in November 2007, by a separate initiative taken by the former Assembly President, Mr René van der Linden, who invited the Speakers/Presidents of all parliaments of Council of Europe member states to submit information on the follow-up to PACE Resolution 1516 (2006) on the establishment of internal parliamentary systems to monitor the implementation of the Court’s judgments.

The result product of this, admittedly incomplete survey is – on the one hand - not too encouraging as concerns the lack of a pre-established and systematic parliamentary procedures of “Strasbourg ECHR vetting”, & - on the other hand - the readiness of an increasing number of parliaments to take a more pro-active approach to help ensure that appropriate and rapid following-up is given after an adverse finding by the Strasbourg Court.

Very few parliamentary mechanisms exist with a specific mandate to verify compliance with ECHR requirements; one could probably include the work of the UK Joint Committee on Human Rights in this rubric. Most replies indicated that “Strasbourg vetting” is carried out within existing “normal” parliamentary procedures (see, e.g., replies from Albania, Andorra, France, Poland, Portugal, Serbia and Slovakia). In other countries, the reply often given was that, as the ECHR is part of domestic law, this in itself necessitates the need to regularly check compatibility of national laws with Convention standards. In Austria, where the ECHR has “constitutional status”, special attention is indeed given to this. But in the vast majority of states this is not a function with respect to which national legislators appear to take a ‘lead role’. [...]

[...] [Resolution 1516 (2006) of the Parliamentary Assembly] “*invites all national parliaments to introduce specific mechanisms and procedures for effective parliamentary oversight of the implementation of the Court’s judgments on the basis of regular reports by the responsible ministries.*”⁵ [...]

[...] In the Netherlands, the Government Agent before the Court makes a yearly report on cases and judgments brought against the Netherlands, which is sent by the government to both houses of parliament. The parliamentary justice committees examine this report, ask questions, and make suggestions if they are not satisfied by the government’s actions. In 2006, the Senate requested that an overview of implementation of Strasbourg Court judgments be added to the report. As a result, this broadened report contains not only judgments against the Netherlands, but any judgment which could have a direct or indirect effect on the Dutch legal system. I understand that a similar procedure has been instituted in Switzerland, as of the beginning of this year, where regular reports to parliament now cover all Strasbourg Court judgements which may have a bearing on the Swiss legal system.

From a very cursory overview of the replies to the questionnaire sent out in February, as well as to the letter of the former PACE President, Mr van der Linden, a few examples stand out:

- the conference of the presidents of the **Belgian** *Chambre des Représentants* has proposed that the *Commission de la Justice* be charged with the control of the implementation of Strasbourg Court judgments, with the report to be delivered on an annual basis.
- The **Finnish** government submitted a first report on the Finnish human rights policy to the Parliament in 2004, affirming that such reports, which shall include an assessment of the implementation of Strasbourg Court’s judgments, shall be regularly produced, with the next one being scheduled for early 2009.

⁴ No replies have as yet received from the parliaments of Azerbaijan, Luxembourg, Malta, Moldova, Monaco, Montenegro, San Marino and Slovenia.

⁵ PACE Res. 1516 (2006), § 22.1. Emphasis added.

- A particularly comprehensive model is the one recently established in **Luxembourg**: the Legal Committee of the Chamber of Deputies adopted a new mechanism to control the implementation of Strasbourg Court judgments. At the beginning of each year the Ministry of Justice will report on the Court's judgments with respect to Luxembourg. When so doing, the Ministry will inform the Luxembourg Parliament what action, if any, has been taken following any adverse findings by the Strasbourg Court.

As regards national parliamentary procedures foreseeing not only the monitoring of the implementation of Strasbourg Court judgments but also the prior screening of domestic legislation, the **United Kingdom** model appears particularly noteworthy (this work will be presented to you this afternoon by a member of the UK Joint Committee for Human Rights, the Earl of Onslow). The "UK model" is a rare example of the existence of a special parliamentary body with a specific mandate to verify and monitor the compatibility of national law and practice with the ECHR. I should also mention, in this connection, a recent development in the **Romanian** Parliament. As a direct result of 'prodding' by the Parliamentary Assembly (PACE Resolution 1516 of 2006), the Romanian Chamber of Deputies has set up a Sub Committee of their Committee of Legal Affairs which is specifically mandated to ensure a better and faster implementation of Strasbourg Court judgements. Other interesting procedures include the one put into place by **Italy** (based on "the Azzolini law", Law no 12, of 2006), and the **Ukraine**, law of 2006 which focuses on domestic procedures to enforce and apply the case-law of the Strasbourg Court. [...]

[...]

III. **Background document: The role of national parliaments in verifying state obligations to comply with the European Convention on Human Rights, including Strasbourg Court judgments: an overview**⁶

[...]

3. The present document attempts to provide a compilation (overview) of available information in order to determine the extent to which parliaments provide for mechanisms and procedures that permit them to verify whether states comply with the ECHR and, where relevant, the Strasbourg Court's judgments.⁷ This overview is principally, but not exclusively, based on member states' replies to a questionnaire sent to national parliaments by the Parliamentary Assembly, through the European Centre for Parliamentary Research and Documentation (ECPRD)⁸ (individual replies are contained in the Appendix II to this document), as well as work carried out by the Parliamentary Assembly, and in particular its Committee on Legal Affairs and Human Rights, in assisting the Committee of Ministers to implement Strasbourg Court judgments.

4. A questionnaire, entitled "Parliament's role in verifying State obligations to comply with the ECHR, including Strasbourg Court judgments", was sent to the parliaments of all 47 Council of Europe member states on 14 February 2008. It consisted of the following three questions:

1. *Is there, in your parliament, a special body empowered to:*
 - *verify compatibility of draft legislation with the Convention*
 - *monitor and/or control the compatibility of legislation with the Convention (ex officio or upon request)?*

⁶ This document, issued on 23.05.2008, was prepared by the Secretariat of the Committee on Legal Affairs and Human Rights (AS/Jur) and served as a background document for the presentation made by Mrs Marie-Louise Bemelmans-Videc on 09.06.2008 entitled "**The effectiveness of the European Convention on Human Rights at national level: the parliamentary dimension**".

⁷ For a previous, *ad hoc*, attempt at discussing "Mechanisms for treatment of human rights issues in national parliaments" see *Constitutional and Parliamentary Information of the Association of Secretaries General of Parliaments* 53 (2003) 186, pp.5-30.

⁸ [ECPRD](http://ecprd.org).

<https://ecprd.secure.europarl.europa.eu/ecprd/navigation.do;jsessionid=E40751BA04D49DFFF1D12672A2672D39FirefoxHTML\Shell\Open\Command>. The ECPRD was established at the request of the Speakers/Presidents of European parliamentary assemblies in 1977 as a "channel for requests for information whenever one parliament would like to know more about practice and policy in other countries".

2. *If no such parliamentary body exists, what possibilities do parliamentarians have to verify the State's compliance with the Convention (and the Strasbourg Court's judgments)?*
3. *What parliamentary procedure(s) exist to inform members when the Strasbourg Court finds your State in violation of the Convention or renders an important judgment? If non-existent, have there been/are there initiatives to introduce such possibilities?*

To date, replies from 39 states have been received.⁹ [...]

B. Parliamentary role in verifying state obligations *vis-à-vis* the European Convention on Human Rights

6. A cursory, and as yet incomplete, assessment of the information obtained from the replies received to the questionnaire (see Appendix II), together with the replies to Mr van der Linden's request of 16 November 2007 (see Appendix I), suggests that very few parliamentary mechanisms exist with a specific mandate to verify compliance with ECHR requirements. [...]

7. As regards the specific issue of implementation of Court judgments, it should be borne in mind that it is the Committee of Ministers (the Council of Europe's executive organ) which has the principal task – by virtue of Article 46 of the ECHR – to supervise the execution of the Strasbourg Court's judgments.¹⁰ Here, however, it is important to underline the role played by the Parliamentary Assembly, especially by its Legal Affairs and Human Rights and Monitoring Committees (and in effect, national parliamentarians). Since 1993, the Assembly has played an increasingly prominent role in the process of implementation of the Court's judgments.¹¹ Since 2000, the Assembly has adopted six reports¹² and resolutions¹³ and five recommendations¹⁴ to help states overcome structural deficiencies and to accelerate the process of fully complying with the Court's judgments. In addition, various implementation issues have been regularly raised by other means, notably through oral and written parliamentary questions. The dual role of parliamentarians, as members of the national legislative and European parliamentary (PACE) bodies is of significance. Suffice to note, in this connection, that a number of complex implementation issues – at the domestic level – have been resolved with the assistance of the Assembly and of national parliaments and their delegations to the Assembly. Indeed, subsequent to its most recent Resolution 1516 (2006) on the implementation of judgments of the European Court of Human Rights¹⁵ – based on the AS/Jur Rapporteur's (Mr Erik Jurgens) sixth report on this subject – the Parliamentary Assembly emphasised that "*member states' methods and*

⁹ No replies have been received from Azerbaijan, Luxembourg, Malta, Moldova, Monaco (not a member of the ECPRD network), Montenegro, San Marino and Slovenia.

¹⁰ See, e.g., Committee of Ministers 1st annual report on the supervision of the execution of judgments of the European Court of Human Rights 2007 (Council of Europe, March 2008), *passim*.

¹¹ See PACE Resolution 1516 (2006), § 3. See also, E Lambert Abdelgawad *The execution of judgments of the European Court of Human Rights*. Human Rights File No. 19 (Council of Europe Publishing, 2008), at p. 59.

¹² Reports on the subject: Execution/Implementation of judgments of the European Court of Human Rights: [PACE Doc 8808](#), *Execution of judgments of the European Court of Human Rights*, Committee on Legal Affairs and Human Rights, Rapporteur: Mr Erik Jurgens, 12.07.2000; [PACE Doc 9307](#), *Implementation of decisions of the European Court of Human Rights*, Committee on Legal Affairs and Human Rights, Rapporteur: Mr Erik Jurgens, 21.12.2001; [PACE Doc 9537](#), *Implementation of decisions of the European Court of Human Rights by Turkey*, Committee on Legal Affairs and Human Rights, Rapporteur: Mr Erik Jurgens, 5.09.2002; [PACE Doc 10192](#), *Implementation of decisions of the European Court of Human Rights by Turkey*, Committee on Legal Affairs and Human Rights, Rapporteur: Mr Erik Jurgens, 01.06.2004; [PACE Doc 10351](#), *Implementation of decisions of the European Court of Human Rights*, Committee on Legal Affairs and Human Rights, Rapporteur: Mr Erik Jurgens, 21.10.2004; [PACE Doc 11020](#), *Implementation of judgments of the European Court of Human Rights*, Committee on Legal Affairs and Human Rights, Rapporteur: Mr. Erik Jurgens, 18.09.2006.

¹³ Resolutions on the subject:

Execution/Implementation of judgments of the European Court of Human Rights: PACE Resolution [Res 1226 \(2000\)](#); PACE Resolution [Res 1268 \(2002\)](#); PACE Resolution [1297\(2002\)](#); PACE Resolution [Res 1381\(2004\)](#); PACE Resolution [Res 1411\(2004\)](#); PACE Resolution [Res 1516\(2006\)](#).

¹⁴ Recommendations on the subject:

PACE Recommendation [1477 \(2000\)](#); PACE Recommendation [1546 \(2002\)](#); PACE Recommendation [1576 \(2002\)](#); PACE Recommendation [1684 \(2004\)](#); PACE Recommendation [1764 \(2006\)](#)

¹⁵ The AS/Jur closely monitors (lack of) progress made in the execution of old or otherwise specially deserving cases. In the preparation of his 6th report, Mr Erik Jurgens, Rapporteur, found problems to exist in 13 states. He visited five of them (Italy, the Russian Federation, Turkey, Ukraine and the United Kingdom), where he met fellow parliamentarians, and also made use of written contacts with parliamentary delegations of the 8 other countries he did not visit (Bulgaria, France, Germany, Greece, Latvia, Moldova, Poland and Romania). For details see §§ 5 and 6 of PACE Resolution 1516 (2006) and Mr Jurgens' report, PACE Doc 11020.

procedures should be changed to ensure immediate transmission of information and involvement of all domestic decision-makers concerned in the implementation process, if necessary with the assistance of the Council of Europe.¹⁶ The Resolution further **“invites all national parliaments to introduce specific mechanisms and procedures for effective parliamentary oversight of the implementation of the Court’s judgments on the basis of regular reports by the responsible ministries.”**¹⁷

8. The ‘double mandate’ of parliamentarians – as members of PACE and of their respective national parliaments – can be of considerable importance when, in particular, legislative action is required to ensure rapid compliance with Strasbourg Court judgments. This makes the PACE a “*natural partner of the Committee of Ministers for any follow-up action on Council of Europe decisions in national parliaments.*”¹⁸ Indeed, the need for national parliaments to take a more pro-active role in this respect was clearly illustrated by the PACE President, Mr Lluís Maria de Puig, in his concluding remarks at the 19th European Conference of Presidents of Parliaments held in Strasbourg on 22 and 23 May 2008. He stressed that “[n]ational parliaments have a special obligation to oversee the execution of judgments of the European Court of Human Rights and introduce legislative changes to bring legislation into line with these standards where necessary [and that] steps should be taken to ensure that legislation and draft legislation is made ‘Strasbourg proof’. This means that legislation should be screened to make sure it is compatible with the European Convention on Human Rights ... The Council of Europe could be encouraged, for example, through its Venice Commission, to provide guidelines to States on how to carry out such ‘Strasbourg proofing’ and assist in training those involved in such exercises.”¹⁹

[...]

9. The United Kingdom's Joint Committee on Human Rights, which is appointed by the House of Lords and the House of Commons, and mandated to consider matters relating to human rights, appears to be a rare example of a special parliamentary body with a specific mandate to verify and monitor the compatibility of United Kingdom law and practice with the ECHR. In fact, of the replies received, only six parliaments indicated that they possess such a special body: Croatia, Finland, Hungary, Romania²⁰, Ukraine and the United Kingdom. Most other replies made reference to recourse to so-called “traditional means”, such as work undertaken by parliamentary (standing) committees whose mandate encompasses – if and when need arises – verification of national law with international obligations, including the ECHR, or by means of written or oral questions (see Appendix II for details).

10. As regards the existence of parliamentary procedures to ensure that parliamentarians are at least informed of adverse findings of the Strasbourg Court, twelve states indicated that they possess such information procedures, namely Austria, Bosnia and Herzegovina, Croatia, Cyprus, Germany, Hungary, Italy, the Netherlands, Norway, Sweden, Switzerland and the United Kingdom.²¹ Be that as it may, it would appear that the Finnish, Dutch, Swedish and the United Kingdom parliaments possess the most effective procedures to monitor implementation of Strasbourg Court judgments²². And last but not least, the Italian authorities (Executive and Parliament) have recently instituted a “permanent committee” for the examination of judgments of the Court with two main tasks: collecting data about the specific requirements of the ECHR and putting them at the disposal of Parliament during the

¹⁶ PACE Res. 1516 (2006), *supra* note 24, § 19.

¹⁷ *Idem*, § 22.1. Emphasis added.

¹⁸ PACE Rec 1763 (2006), *The institutional balance at the Council of Europe*, § 17. See also e.g., PACE Resolutions [1226 \(2000\)](#) and [1411\(2004\)](#), *passim*.

¹⁹ The complete text of the PACE President’s concluding remarks can be accessed at <http://assembly.coe.int/ASP/APFeaturesManager/defaultArtSiteView.asp?ID=779>

²⁰ In the case of Romania, the Chamber of Deputies has a Committee on Human Rights, Religious Issues and National Minorities’ Issues, which verifies compatibility of draft legislation with the Convention, but there is no parliamentary control of the implementation of Strasbourg Court judgments (Romanian Chamber of Deputies reply to questionnaire, on file with AS/Jur Secretariat).

²¹ It is not clear from the Russian Federation’s reply whether such a mechanism exists in the Russian Parliament. In addition, two member states have indicated that the introduction of such a procedure is under consideration: Liechtenstein and “the former Yugoslav Republic of Macedonia”.

²² So does Ukraine, as it would appear from the information in the Appendix to this document (although it is not certain to what extent the law of February 2006 has been put into effect).

legislative process, and providing specific suggestions to Parliament on the need to amend or adopt specific laws in order to comply with the requirements of the Convention, as interpreted by the Court.²³

11. Despite the foregoing examples, however, it would appear that parliaments in very few states exercise regular control over the effective implementation of Strasbourg Court judgments.

[...]

B. Extracts from document AS/Jur (2009) 36 entitled “Implementation of judgments of the European Court of Human Rights” (Progress report, Rapporteur: Mr Christos Pourgourides, Cyprus, EPP/CD)

[...]

III. Reinforcing parliamentary involvement in the implementation of Strasbourg Court judgments

i. Need to reinforce parliamentary involvement

[...]

23. [...] Indeed, the Assembly may – in the future – seriously need to consider suspending the voting rights of a national delegation where its national parliament does not seriously exercise parliamentary control over the executive in cases of non-implementation of Strasbourg Court judgments.

24. A recent comparative report disclosed that state parties with strong implementation records are regularly characterised by active involvement of parliamentary actors in the execution process.²⁴ Organs of the Council of Europe have acknowledged that the implementation of Strasbourg judgments greatly benefits from enhanced involvement of national parliaments.²⁵ Despite such observations, an analysis presented by the Parliamentary Assembly’s Committee on Legal Affairs and Human Rights (hereinafter ‘the CLAHR’) in May 2008, revealed that not only do ‘very few parliamentary mechanisms exist with a specific mandate to verify compliance [of draft legislation] with ECHR requirements’, but furthermore ‘parliaments in very few states exercise regular control over the effective implementation of Strasbourg Court judgments’.²⁶

25. Being composed of national parliamentarians, the Assembly is uniquely placed in seeking to strengthen the role of national parliaments in the implementation of Strasbourg Court judgments. Indeed, there is an implicit responsibility upon the Assembly’s national delegates to ensure that they contribute to this process in their capacity as national parliamentarians.²⁷ [...]

²³ See document CM (2008) 52, Appendix VI, § 14 (footnote 15, *supra*), and information available in the Addendum and the report of Mr Jurgens (PACE Doc II020 – implementation of the Azzolini law).

²⁴ JURISTRAS Project, *Why do states implement differently the European Court of Human Rights judgments? The case law on civil liberties and the rights of minorities*, April 2009, p. 23, available at: <http://www.juristras.eliamep.gr/wp-content/uploads/2009/05/why-do-states-implement-differently-the-european-court-of-human.pdf>.

²⁵ Ministers’ Deputies, *Implementation of judgments of the European Court of Human Rights*, Parliamentary Assembly Recommendation 1764 (2006), document CM/AS(2007)Rec1764 final 30 March 2007, Reply adopted by the Committee of Ministers on 28 March 2007 at the 991st meeting of the Ministers’ Deputies, paragraph 1; Resolution 1516 (2006), *Implementation of judgments of the European Court of Human Rights, adopted by the Assembly on 2 October 2006*, paragraph 2.

²⁶ *Background document: The role of national parliaments in verifying state obligations to comply with the European Convention on Human Rights, including Strasbourg Court judgments: an overview*, issued on 23 May 2008 by Secretariat of the Committee on Legal Affairs and Human Rights, contained in *Stockholm Colloquy: Towards stronger implementation of the European Convention on Human Rights at national level*, 9-10 June 2008, document AS/Jur (2008) 32 rev, of 23 June 2008, paragraphs 6 and 11.

²⁷ *Execution of Judgments of the European Court of Human Rights*, E. Jurgens, Doc. 8808, of 12 July 2000, paragraph 21.

ii. Role of national parliaments

26. National parliaments should exercise a prominent role in supervising the execution of the Court's judgments, and systematically verify the compatibility of draft laws, existing laws and administrative practice with Convention standards. Moreover, national parliaments should contribute to guaranteeing the existence of appropriate procedures to systematically facilitate the full and expeditious implementation of Strasbourg judgments. These functions are not necessarily exercised mutually independent of one another: comprehensive supervision facilitates the identification of the legislative provisions from which the violation derived, consequently initiating legislative reform. Although the execution of Court judgments generally involves a limited contribution from parliamentary actors, there are examples of effective procedures exercised in the legislative organ of certain state parties. The remainder of this section will address the role which national parliaments should exercise in implementing judgments of the Court, with examples of 'best practice' from individual state parties.

[...]

a. Informing national parliaments

28. To enable national parliaments to exercise an effective supervisory role, procedures must be established to ensure that they are systematically and promptly informed of adverse decisions delivered by the Court and the measures implemented domestically in their execution. [...]

29. Despite the practical importance of informing national parliaments about adverse judgments of the Court and measures taken in their execution, the assessment conducted by the CLAHR disclosed that few state parties possess such a procedure.²⁸ The Netherlands provides a model mechanism for informing national parliament about relevant decisions of the Strasbourg Court and measures taken in their implementation.²⁹ [...] In addition, the annual report contains not only judgments against the Netherlands, but also those against any other state party which could have a direct or indirect effect on the Dutch legal system. While the latter aspect does not strictly fall within execution of Strasbourg judgments, but rather a broader obligation to observe the Convention and the Court's interpretation thereof, it is nevertheless a valuable preventative procedure, demonstrating a strong commitment to adhere to Convention standards.³⁰

30. Italy also possesses a procedure for informing parliament about adverse judgments of the Court, and measures adopted in implementation thereof. Under the Italian mechanism, the Government representative in Strasbourg (Agent before the Court) systematically informs the Presidency of the Council of Ministers regarding Strasbourg judgments delivered against Italy. The Presidency of the Council of Ministers, in accordance with the Azzolini Law (No.12 of 2006), must, in its role of coordinating and supervising the execution of the Court's judgments, promptly inform the Chambers of Parliament about the adverse judgments of the Court. This allows the relevant Parliamentary committees to examine judgments of the Court delivered against Italy. Moreover, the Presidency of the Council of Ministers provides Parliament with an annual report on the execution of

²⁸ Twelve state parties indicated that they possess procedures to ensure parliament is informed about adverse findings of the Strasbourg Court, to which the state was the respondent party: Austria, Bosnia and Herzegovina, Croatia, Cyprus, Germany, Hungary, Italy, the Netherlands, Norway, Sweden, Switzerland and the United Kingdom. Furthermore, it is unclear whether such a mechanism exists in the Russian Federation, and two state parties indicated that the introduction of such a procedure judgments is under consideration, namely Liechtenstein and "the former Yugoslav Republic of Macedonia". *Background document: The role of national parliaments in verifying state obligations to comply with the European Convention on Human Rights, including Strasbourg Court judgments: an overview*, issued on 23 May 2008 by Secretariat of the Committee on Legal Affairs and Human Rights, contained in *Stockholm Colloquy: 'Towards stronger implementation of the European Convention on Human Rights at national level', 9-10 June 2008*, document AS/Jur (2008) 32 rev, of 23 June 2008, paragraph 10 and note 33. When recently in Ukraine, in July 2009, I received assurances that the Verkhovna Rada (Parliament) will now also regularly supervise Strasbourg Court judgments.

²⁹ *Speech by Mrs Marie-Louise Bemelmans-Videc: The effectiveness of the European Convention on Human Rights at national level: the parliamentary dimension*, presented on 9 June 2008, contained in *Stockholm Colloquy: 'Towards stronger implementation of the European Convention on Human Rights at national level', 9-10 June 2008* (AS/Jur (2008)32rev), 23 June 2008, p. 6.

³⁰ '[T]he Court's judgments in fact serve not only to decide those cases brought before the EctHR but, more generally, to elucidate, safeguard and develop the rules instituted by the ECHR, thereby contributing to the observance by the states of the engagements undertaken by them as Contracting Parties (Article 19)', *Ireland v. the United Kingdom*, 18 January 1978, paragraph 154, Series A no. 25.

the Court's judgments against Italy.³¹ The report both identifies new judgments deriving from Strasbourg, and summarises the state of execution of all Italian judgments under the supervision of the Committee of Ministers. In addition to this procedure, the legal counsel to the Chamber of Deputies produces an annual report analysing adverse judgments of the Strasbourg Court with respect to Italy.³² The fact that this report is in Italian facilitates greater knowledge of relevant Strasbourg case law among parliamentarians, and provides a valuable reference in parliamentary debates which concern issues previously addressed by the Court.³³ The mechanisms exercised in Italy raise awareness regarding adverse judgments of the Court and increase political transparency concerning the implementation thereof. When I visit Italy, in the coming months, I will be able to assess the effectiveness of this procedure.

b. Supervising the implementation of Strasbourg Court judgments

31. [...] Too few parliaments have, to date, set-up appropriate oversight mechanisms to ensure the rapid and effective implementation of Strasbourg Court judgments. The Assembly has not received (satisfactory) responses from many parliaments. In this situation, members of the Assembly's parliamentary delegations from the countries concerned are strongly encouraged to pursue this important initiative in their respective national parliaments.

32. Being composed of democratically elected representatives, it is essential that national parliaments hold governments to account concerning adherence to commitments under the Convention, including implementation of the Court's judgments.³⁴ A mechanism of parliamentary oversight implies more than the verification of legislation drafted in response to an adverse judgment from Strasbourg, it requires active supervision, ensuring that effective measures are implemented which prevent the future recurrence of similar infringements. Where the response of national authorities to a violation of the Convention is inadequate or unreasonably delayed, parliament should exert pressure by posing written or oral questions to the responsible authority, requesting it to account for its actions, or lack thereof. During such dialogue parliament may propose measures to be implemented, strengthening the domestic mechanisms ensuring execution of the Court's judgments. Such supervision not only exerts political pressure on national authorities to execute fully and expeditiously judgments of the Court, it also promotes a culture of human rights dialogue, increasing political transparency of the implementation process.

33. The United Kingdom's Joint Committee on Human Rights (hereinafter 'the JCHR') provides a good example for parliamentary supervision of the execution of Strasbourg judgments. [...]

34. The JCHR produces an annual report monitoring the Government's response to adverse Strasbourg Court judgments (hereinafter 'the monitoring report').³⁵ This report synthesises the supervisory work conducted by the JCHR with respect to the Government's response to both adverse Strasbourg judgments and declarations of incompatibility by domestic courts.³⁶ It is not merely a summary of the measures taken by the government in response to adverse Strasbourg judgments: it is the product of continual dialogue between the JCHR and national authorities on the matter. The monitoring report assesses the adequacy of measures adopted in executing the Court's judgments and, where action has been insufficient, exerts pressure on the Government to expeditiously

³¹ L'esecuzione delle pronunce della Corte europea dei diritti dell'uomo nei confronti dello Stato italiano, Legge No 12/2006.

³² The Chamber of Deputies is also the relevant parliamentary actor to verify the compatibility of draft legislation with Convention standards.

³³ The website of the Italian Court of Cassation contains a database on all the Court's judgments with respect to Italy and contains links to relevant domestic legislative provisions. This provides another valuable tool to national parliamentarians in addressing issues which concern the Convention.

³⁴ '[Parliaments should] exercise parliamentary oversight of the implementation process conducted by other national authorities', Ministers' Deputies, *Implementation of judgments of the European Court of Human Rights*, Parliamentary Assembly Recommendation 1764 (2006), document CM/AS(2007)Rec1764 final 30 March 2007, Reply adopted by the Committee of Ministers on 28 March 2007 at the 991st meeting of the Ministers' Deputies, paragraph 1.

³⁵ Joint Committee on Human Rights, *Monitoring the Government's response to human rights judgments: Annual report 2008*, Thirty-first Report of Session 2007-08 (HL Paper 173, HC 1078), published on 31 October 2008; Joint Committee on Human Rights, *Monitoring the Government's response to Court judgments finding breaches of human rights*, Sixteenth Report of Session 2006-07 (HL Paper 128, HC 728), published on 28 June 2007; Joint Committee on Human Rights, *Implementation of Strasbourg judgments: First progress report*, Thirteenth Report of Session 2005-06 (HL Paper 133, HC 954), published on 8 March 2006.

³⁶ Human Rights Act 1998 ch. 42, Section 4.

implement effective measures. In addressing the adequacy of the Government's response, the JCHR provides recommendations as to measures which will effectively execute the Court's judgment, thus providing a medium for increased cooperation between the Parliament and the Government in the execution process. The observations and recommendations of the JCHR then facilitate wider parliamentary debate regarding the implementation of Strasbourg Court judgments delivered against the United Kingdom.³⁷

35. In its recent monitoring report, the JCHR identified systemic problems which have produced repetitive violations before the Court.³⁸ Ascertaining a trend of repetitive infringements, which is the amalgamated product of supervising the execution of individual judgments, identifies persisting systemic deficiencies in existing law or administrative practice, and highlights the urgent need to implement effective general measures to prevent the recurrence of similar violations. In its most recent monitoring report the JCHR recommended that 'the Government's approach to clone cases should be more proactive', and depart from its policy that the existence of an admissible application to the Court is a prerequisite for settlement.³⁹

c. Ensuring the existence of effective domestic mechanisms for the implementation of Strasbourg Court judgments

36. The Committee of Ministers has identified that there is a responsibility on national parliaments to 'establish appropriate procedures to ensure rapid adoption of legislative changes required by judgments'.⁴⁰ However, the influence of national parliaments in establishing effective mechanisms for the implementation of the Court's judgments need not be restricted to legislative procedures. In Resolution 1516, the Assembly called upon state parties to 'set up, either through legislation or otherwise, domestic mechanisms for the rapid implementation of the Court's judgments, and that a decision-making body at the highest political level within the government take full responsibility for and co-ordinate all aspects of the domestic implementation process'.⁴¹ Parliamentary oversight concerning the existence of effective domestic mechanisms facilitating the execution of Strasbourg judgments constitutes an important aspect of parliaments' supervisory function.

37. The JCHR regularly initiates consultations with relevant Government ministries concerning the effectiveness of domestic mechanisms for the implementation of the Court's judgments. This dialogue is presented in the JCHR's annual monitoring reports, which also provide recommendations aimed at ensuring 'an improved and systematic mechanism for responding promptly and appropriately to court judgments finding a breach of human rights'.⁴² In January 2007, in light of recommendations of the Assembly, the JCHR requested that the Lord Chancellor provide information as to the steps taken within the Department for Constitutional Affairs to improve or enhance domestic mechanisms for rapid and effective implementation of Strasbourg judgments. Following a response of the Lord Chancellor, the JCHR recommended that the Ministry of Justice adopt a central coordinating role in Government to ensure the effective and efficient implementation of judgments of the Court.⁴³ The recommendation of the JCHR consequently facilitated parliamentary debate on the mechanisms for implementing Strasbourg judgments, increasing transparency of the execution of Court judgments, and raising awareness as to the adequacy of the procedures established for implementation.⁴⁴

³⁷ Hansard, House of Lords, 24 November 2008: Column GC123.

³⁸ Joint Committee on Human Rights, *Monitoring the Government's response to human rights judgments: Annual report 2008*, Thirty-first Report of Session 2007-08 (HL Paper 173, HC 1078), published on 31 October 2008, paragraphs 111-124.

³⁹ Joint Committee on Human Rights, *Monitoring the Government's response to human rights judgments: Annual report 2008*, Thirty-first Report of Session 2007-08 (HL Paper 173, HC 1078), published on 31 October 2008 paragraph 119.

⁴⁰ Ministers' Deputies, *Implementation of judgments of the European Court of Human Rights*, Parliamentary Assembly Recommendation 1764 (2006), document CM/AS(2007)Rec1764 final 30 March 2007, Reply adopted by the Committee of Ministers on 28 March 2007 at the 991st meeting of the Ministers' Deputies, paragraph 1.

⁴¹ Resolution 1516 (2006), *Implementation of judgments of the European Court of Human Rights*, adopted by the Assembly on 2 October 2006, paragraph 22.2.

⁴² Joint Committee on Human Rights, *Monitoring the Government's response to Court judgments finding breaches of human rights*, Sixteenth Report of Session 2006-07 (HL Paper 128, HC 728), published on 28 June 2007, paragraph 153.

⁴³ Committee on Human Rights, *Monitoring the Government's response to human rights judgments: Annual report 2008*, Thirty-first Report of Session 2007-08 (HL Paper 173, HC 1078), published on 31 October 2008, paragraph 18.

⁴⁴ Hansard, House of Lords, 24 November 2008: Column GC124.

38. In the monitoring reports presented to date, the JCHR has addressed judgments where there have been particular problems with respect of delays in implementation, and systemic problems which have produced repetitive violations.⁴⁵ Acknowledging delays and repetitive infringements identifies deficiencies in existing domestic mechanisms for the execution of the Court's judgments. This constitutes an important aspect of national parliaments' wider supervisory function, which should produce enhanced implementation procedures.

d. Verifying the compliance of draft laws, existing laws and administrative practice with Convention standards

39. [...] The Committee of Ministers has recommended that state parties:

- i. ensure that there are appropriate and effective mechanisms for systematically verifying the compatibility of draft laws with the Convention in the light of the case-law of the Court;
- ii. ensure that there are such mechanisms for verifying, whenever necessary, the compatibility of existing laws and administrative practice, including as expressed in regulations, orders and circulars.⁴⁶

[...]

44. The assessment conducted by the CLAHR disclosed that 'very few parliamentary mechanisms exist with a specific mandate to verify compliance [of draft legislation] with ECHR requirements'.⁴⁷ Verification of draft laws with Convention standards is often performed by the relevant parliamentary committee, depending on the subject of the draft law, within ordinary parliamentary procedure.⁴⁸ In other state parties, Convention compliance of draft law is addressed under a more general review as to compatibility with the national Constitution.⁴⁹

⁴⁵ Joint Committee on Human Rights, *Monitoring the Government's response to human rights judgments: Annual report 2008*, Thirty-first Report of Session 2007-08 (HL Paper 173, HC 1078), published on 31 October 2008 paragraphs 64-80, 111-124; Joint Committee on Human Rights, *Monitoring the Government's response to Court judgments finding breaches of human rights*, Sixteenth Report of Session 2006-07 (HL Paper 128, HC 728), published on 28 June 2007, paragraphs 94-108, 141-143; Joint Committee on Human Rights, *Implementation of Strasbourg judgments: First progress report*, Thirteenth Report of Session 2005-06 (HL Paper 133, HC 954), published on 8 March 2006, paragraphs 8-14.

⁴⁶ Recommendation Rec(2004)5 of the Committee of Ministers to member states on the verification of the compatibility of draft laws, existing laws and administrative practice with the standards laid down in the European Convention on Human Rights, adopted by the Committee of Ministers on 12 May 2004 at its 114th Session.

⁴⁷ *Background document: The role of national parliaments in verifying state obligations to comply with the European Convention on Human Rights, including Strasbourg Court judgments: an overview*, issued on 23 May 2008 by Secretariat of the Committee on Legal Affairs and Human Rights, contained in *Stockholm Colloquy: 'Towards stronger implementation of the European Convention on Human Rights at national level', 9-10 June 2008*, document AS/Jur (2008) 32 rev, of 23 June 2008, paragraph 6.

⁴⁸ See replies from Albania, Andorra, France, Poland, Portugal, Serbia and Slovakia, Appendix II *Overview of replies, Background document: The role of national parliaments in verifying state obligations to comply with the European Convention on Human Rights, including Strasbourg Court judgments: an overview*, issued on 23 May 2008 by Secretariat of the Committee on Legal Affairs and Human Rights, contained in *Stockholm Colloquy: 'Towards stronger implementation of the European Convention on Human Rights at national level', 9-10 June 2008*, document AS/Jur (2008) 32 rev, of 23 June 2008.

⁴⁹ See reply from Austria, Appendix II, *Overview of replies, Background document: The role of national parliaments in verifying state obligations to comply with the European Convention on Human Rights, including Strasbourg Court judgments: an overview*, issued on 23 May 2008 by Secretariat of the Committee on Legal Affairs and Human Rights, contained in *Stockholm Colloquy: 'Towards stronger implementation of the European Convention on Human Rights at national level', 9-10 June 2008*, document AS/Jur (2008) 32 rev, of 23 June 2008.

45. The United Kingdom provides a mechanism for parliamentary verification of draft legislation, including that introduced in response to an adverse judgment of the Court. The Minister in charge of a draft law is required to make one of two statements to Parliament prior to the second reading of the bill: either that the provisions of the bill are, in his or her view, compatible with the Convention rights, or that no such statement of compatibility can be made but the government, nevertheless, intends to proceed with the bill.⁵⁰ While this initial 'Strasbourg vetting' procedure is performed by the minister in his executive role, it nevertheless provokes parliamentary scrutiny, by providing a basis for verifying the compliance of the bill with Convention standards, especially when reasons provided are terse and/or considered insufficient. In addition, the requirement of a compatibility statement focuses the attention of the drafters, from the outset of the bill's development, as to Convention compliance. Where 'a proposed policy or legislative measure raises human rights concerns' the JCHR will undertake pre-legislative scrutiny of compliance with international human rights standards.⁵¹ The observations of the JCHR, presented in a report, subsequently contribute to parliamentary debate during the legislative process.

46. Implementation of the Court's judgment in *A v the United Kingdom*,⁵² illustrates the instrumental role of parliament in verifying the Convention compatibility of draft legislation introduced in response to an adverse Strasbourg judgment. In this case the Court held that the defence of reasonable chastisement, which provided parents a legal defence against physical punishment of a child, was in breach of the right to be free from inhuman or degrading treatment and punishment, as guaranteed by Article 3 of the Convention.⁵³ A subsequent Children Bill, introduced by the Government, failed to replace or repeal the defence of reasonable chastisement. In its initial scrutiny of the Bill the JCHR expressed concern that 'the failure to remove the reasonable chastisement defence is in breach of the UK's obligation under Article 46 ECHR to abide by final judgments of the European Court of Human Rights. The decision in *A v UK* gives rise to an obligation on the UK to adopt general measures to prevent a repetition of the violation found in that case'.⁵⁴

47. During debate in both Houses of Parliament the observations of the JCHR were referred to in support of an amendment to the reasonable chastisement provision. Indeed, the amendment ultimately adopted, which significantly restricted the scope of the defence, was proposed by Lord Lester, a member of the JCHR. In substantiating his proposed revision Lord Lester asserted 'My amendment seeks to give effect to that important government undertaking to the Strasbourg Court'.⁵⁵ In its subsequent principal report on the Children Bill, the JCHR concluded that the amendment 'may well be considered sufficient to satisfy the UK's obligation to comply with the judgment of the European Court of Human Rights in *A v United Kingdom*'.⁵⁶ The Committee of Ministers has closed its examination of *A v the United Kingdom* and has mandated its Secretariat to prepare a final draft resolution⁵⁷. The Committee of Ministers' Deputies have noted 'with satisfaction the changes in the legislative framework made following this judgment'⁵⁸.

[...]

⁵⁰ Human Rights Act 1998 ch. 42, Section 19. That said, a simple statement of compatibility in itself does not provide a basis for verification. The accompanying reasons (Explanatory Notes attached to the Bill) are often not as clear as they should be, necessitating follow-up correspondence with the JCHR.

⁵¹ Joint Committee on Human Rights, *The Work of the Committee in 2007-08*, Second Report of Session 2008-09 (HL Paper 10, HC 92), published on 26 January 2009, paragraph 35.

⁵² *A. v. the United Kingdom*, 23 September 1998, Reports of Judgments and Decisions 1998-VI.

⁵³ *A. v. the United Kingdom*, 23 September 1998, paragraphs 23-24, Reports of Judgments and Decisions 1998-VI.

⁵⁴ Joint Committee on Human Rights, *Scrutiny of Bills: Fifth Progress Report*, Twelfth Report of Session 2003-04 (HL Paper 93, HC 603), published on 20 May 2004, paragraph 1.33.

⁵⁵ 5 Jul 2004 : Column 524

⁵⁶ Joint Committee on Human Rights, *Children Bill*, Nineteenth Report of Session 2003-04, (HL Paper 161, HC 537), published on 21 September 2004, paragraph 137.

⁵⁷ Ministers' Deputies, *A. against the United Kingdom, Judgment of 23 September 1998*, document CM/Inf/DH(2008)34, of 28 August 2008 (declassified at the 1035th meeting of the Ministers' Deputies, 18 September 2008) paragraph 76.

⁵⁸ Ministers' Deputies, *Decisions adopted at the 1035th (DH) meeting, 17-18 September 2008*, document CM/Del/Dec(2008)1035, of 22 September 2008.