DOMESTIC ADVOCACY FOR THE IMPLEMENTATION OF JUDGMENTS OF THE EUROPEAN COURT OF HUMAN RIGHTS

EUROPEAN IMPLEMENTATION NETWORK

An EIN Guide for Civil Society

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Introduction

> *"[J]udgments rarely get implemented on their own. They require advocacy after a successful judgment – this ranges from nudging domestic authorities to raising awareness in the media, building coalitions with others, monitoring and reporting on implementation. We, as EIN, are committed to supporting our members and partners and enabling the sharing of domestic experiences so we can learn from each other what works…".*
>
> *EIN Chair, Başak Çalı, extract from the EIN activity report 2018*

Civil society organisations across Europe engage more and more with what is known as the 'judgment execution process': the process through which the Committee of Ministers (CM) of the Council of Europe supervises states' implementation of judgments of the European Court of Human Rights (ECtHR, 'the Court'). In 2019, NGOs – and notably EIN's member and partner organisations – and NHRIs have made a record number of written submissions to the CM. They have seen the CoE endorse their recommendations and requests for human rights reform; influenced the trajectory of the supervision process by successfully advocating for cases to put under stricter scrutiny; and avoided premature case closure. Yet, for these recommendations to translate into real human rights gains, they must be supported by sustained advocacy at the domestic level.

Domestic Civil society organisations are best placed to drive forward implementation at the national level, by conducting advocacy with the relevant institutions and engaging with the media to garner support from the general public. However, surveys conducted by EIN among its members and partners have shown that few NGOs or other civil society actors routinely engage in domestic advocacy for judgment implementation. This is due, in large part, to a widespread lack of awareness among domestic actors of the cases awaiting implementation and their potential to achieve change. Furthermore, even though some organisations use the Court's judgments in successful domestic advocacy, there is a lack of information-sharing about how this is being done throughout Europe.

This guide seeks to fill the knowledge gap about best practices of domestic advocacy for the implementation of human rights judgments in Europe. It presents lessons learned for the benefit of NGOs and other civil society actors wishing to strengthen the domestic component of their advocacy through engagement with the authorities, forming stronger alliances with other civil society actors, and winning over the public by effectively communicating through the media.

This guide collates and systematises the collective knowledge and experience from more than 20 NGOs and independent lawyers from 16 Council of Europe countries (listed in Annex 2) who responded to a questionnaire launched by EIN in 2019. It also draws on numerous meetings, phone calls and email exchanges between EIN and its members and partners across Europe over time.

The guide is divided into four sections. Section 1 discusses why it is useful for NGOs to draw up an 'implementation strategy' and what elements they should consider when doing so. The remainder of the guide is structured around three key ways for advancing implementation through domestic advocacy:

- Constructive engagement with and pressure on the authorities (2), which comprises three dimensions:
  - Calling the government out on its implementation record (2.1),
  - engaging with the executive, parliament and the judiciary to make headway on specific cases (2.2), and

  - working towards improving domestic structures and mechanisms for implementation that ensure meaningful civil society involvement in the process (2.3);
- Forming and strengthening domestic advocacy coalitions among civil society actors (3); and
- Communicating effectively about (non-)implementation of judgments (4).

Throughout this guide, examples of how EIN members and partners have used domestic advocacy tools to successfully promote ECtHR judgment implementation are provided. We hope you can gain new ideas for your own advocacy from this guide, which leaves you, in Annex 1, with a checklist of possible actions.

Happy reading!

1. Towards a comprehensive advocacy strategy for the implementation of ECtHR judgments

EIN's members and partners need no convincing that the **judgments of the Strasbourg Court can be a useful tool for change** – because they are legally binding, because they objectively identify a human rights problem, and because the finding of a violation triggers a formalised process of supervision of reforms. However, change can only happen if all stakeholders take implementation seriously. For civil society, this means following how the judgment is being implemented in the country, putting pressure on the authorities and monitoring individual cases to make sure that the right reforms are really taking place.

This is not to underplay the fact that the implementation of ECtHR judgments depends on the issue at stake and on the political and socio-economic environments in the country at any given time. While some NGOs have ongoing and constructive access to the authorities, others work in repressive environments, face severe restrictions on their activities or may not have access to independent media. Because the conditions for effective implementation and opportunities for domestic advocacy are unique to every country, this guide is conceived as a 'menu' of potential actions that NGOs may take at the national level to push for the execution of judgments as they see fit.

Two things to bear in mind when you want to advocate domestically for ECtHR judgment implementation

Implementation advocacy is not rocket science… There is a tendency among NGOs to think that advocating domestically for the implementation of Strasbourg Court judgments will require them to engage in a whole range of new, time-consuming activities adding to their already substantial workload. However, more often than one may think, NGOs may be able to streamline implementation advocacy across existing activities, because both will often use the same tools of nudging, cajoling and exposing relevant decision-makers, and using communications to garner support from the public.

… and you might already be engaging in it: EIN's contacts with members and partners in the preparation of this guide has revealed a mismatch between the level of NGO advocacy for ECtHR judgment implementation and their own perception of it: not infrequently, NGOs ventured that they were not conducting domestic advocacy around a specific case, only for it to emerge that they had been pushing for certain reforms that could indeed be seen as falling within the scope of that ruling. This points to a lack of civil society familiarity with the cases awaiting implementation, and suggests that the level of domestic advocacy for judgment implementation could be increased by NGOs making better strategic use of the implementation process and its supervision by the Council of Europe. In other words: sometimes, the main challenge is to connect the dots between ongoing thematic advocacy at the national level and advocacy for judgment implementation in Strasbourg.

The essentials of an implementation advocacy strategy

More and more of EIN's member organisations (as well as EIN partners) include in their annual work plan a strategy on how they intend to promote the implementation of judgments of the European Court of Human Rights. They **define case priorities, specify forms of engagement, and draw up timelines for their activities**, in line with the Committee of Ministers' supervision schedule. EIN assists them in defining their objectives, outputs, desired outcomes, and appropriate measurements for success.

As with most implementation advocacy, the focus of many organisations does, however, seem to be on advocacy in and through Strasbourg. Yet, defining clear goals for oneself as regards domestic advocacy – both in terms of advancing the implementation of specific cases (see 2.2) and strengthening the institutional framework for implementation (2.3) – is just as important. Drawing up a domestic advocacy strategy helps you

- Get an understanding of how conducive the conditions are for implementation (of certain measures);
- Identify objectives that are specific, measurable and achievable;
- Identify (potential or actual) obstacles to implementation as well as windows of opportunity to push implementation forward; and
- Map out the actors with whom you wish or need to engage.

While implementation strategies will vary from country to country, from cases to case, and even from year to year, certain generalisable findings can be extrapolated from the collective experience of EIN's members and partners. We list here nine tips for NGOs who wish to strengthen the domestic component of their advocacy strategy. This advice was compiled on the basis of feedback from members and partners as well as EIN's own observations.

☑ Have realistic expectations and make your success measurable

The prospect of getting a judgment from the Court implemented fully and effectively will depend on a variety of factors, such as

- the characteristics of the victims, which may determine the 'political costs' of implementation (e.g. where a reform may be perceived as benefitting an unpopular minority);
- the origin of the violation (in legislation, administrative practice, jurisprudence or even attitudes) and the corresponding nature and complexity of the implementation measures;
- the number, stature and attitude of the actors involved in implementation; and
- the financial costs of reform.

Conditions for implementation – and thus for implementation advocacy – will also vary over time, as governments, public opinion or other external factors change. These **domestic dynamics of implementation are important to understand for NGOs wishing to venture into or expand their domestic advocacy for judgment implementation**. Any implementation advocacy strategy must be tailored to take account of the political environment in which the NGO operates, and be regularly re-assessed and adapted when conditions change, becoming either more or less conducive to reform.

Relatedly, full implementation of Strasbourg Court judgments, especially those that are complex or politically salient, takes time. Quick human rights gains are hard to come by. This means it is important for NGOs **to have realistic expectations as to what they can achieve** in the short, medium and long(er) term, and to measure their success against these targets. It also means it is important to keep on pushing for reforms even when faced with protracted inactivity or setbacks.

As with any other strategy, you not only want to **make your goals clear and reachable, but also measurable**. As you set out your objectives, you may want to draw inspiration from EIN's own methodology for measuring

the impact of what we do. At EIN, we conceptualise 'impact' of implementation advocacy as coming in different forms,[1] three of which are of relevance when it comes to national-level advocacy for implementation:

- '**Engagement**': An increased willingness by the authorities to consult with NGOs in devising and implementing measures aimed at redressing human rights violations. This also encompasses the situation in which an NGO engages other institutional (e.g. parliamentary committees or government agents) or social actors to become involved in implementation. In other words: securing a seat at the table where implementation is discussed is an important achievement in and of itself.
- '**Adoption'**: The extent to which an NGO persuades the authorities to adopt its recommendations in the Action Plans submitted to the CM by the government. Where civil society is involved with the authorities in drafting the Action Plan, 'Engagement' and 'Adoption' may take place simultaneously.
- '**Execution'**: The extent to which the Action Plan measures are implemented effectively. This is of course the most significant level of impact. NGOs can support implementation by making available their expertise to the authorities. They can also use the judgment execution process to assure proper implementation by exposing to the CoE measures which are not being implemented effectively, or by challenging any government information which may give an unduly optimistic picture of progress.

For civil society activists, being able to point to successes on these three levels is important for two reasons. First, to boost morale: identifying one's impact serves as a reminder that, although the road towards full implementation can be long and bumpy, it is worth taking. Second, assessing your achievements on these three levels makes it easier to communicate your successes to the outside world. This can help secure urgently needed funding for implementation advocacy, which is by no means a simple endeavour at a time when few funders have appreciated the full potential of judgments leading to real change on the ground where their implementation is supported by civil society.

☑ Priority-setting: pick your fights

There are arguably two ways of conceiving of domestic advocacy for judgment implementation. One approach is to **start from a ruling and devising a plan to get it implemented**. Most smaller NGOs, including most of EIN's partners, follow this approach. They support, first and foremost, those cases that they litigated or in which they acted as a third-party intervener, as well as cases that fit their thematic focus area.

EIN's national member organisations have a broader remit and are expected to assume a more proactive role in coordinating and advancing implementation in their countries more generally. This is the second approach. In order to ensure that most 'leading' cases – these are cases that raise a new and often structural or systemic issue requiring the adoption of general measure to avoid repetition of the violation – are subject to civil society scrutiny and engagement, they must have a good **overview of the leading cases pending before the CM**, including by working closely with EIN to monitor new cases entering the execution stage.

Regardless of whether you view advocating for the implementation of judgments as an end in itself, or if you primarily use the judgments of the Strasbourg Court as additional pressure tools that you incorporate into an existing strategy to bring about reforms, resources are scarce and you will likely have to **set your case priorities**. (This is true both in respect of national advocacy and advocacy with the Council of Europe, or indeed other international organisations.)

[1] For inspiration, see this EIN and ILGA-Europe paper, which provides an assessment of the impact achieved through NGO engagement with the Council of Europe's judgment execution process in the implementation of three cases in the field of sexual orientation and gender identity (SOGI). Note, however, that the focus of that paper is on Strasbourg advocacy.

In doing so, **all NGOs**, including EIN partners, NGOs working on one or a few specific issues, and NGOs wishing to engage in judgment implementation advocacy for the first time should, as a minimum:

- Routinely follow up on the cases **that they organisations litigated**, or in which they acted as a third-party intervener;
- identify cases covering **thematic issues** in which their organisation is specialising, and which they might be able to push forward.

Many civil society organisations, however, can and should think bigger. **Those pursuing a more ambitious agenda to push forward implementation, including EIN's member NGOs**, should

- Keep abreast of any **new cases** against the country or falling within their thematic focus area in which civil society involvement could help define the scope of implementation and the corresponding supervision;
- Carry out a comprehensive analysis of all pending leading cases using the HUDOC-EXEC database[2] to identify any **cases that appear to have slipped under the radar** (i.e. in the government has never or not recently submitted an Action Plan or Action Report), and where civil society pressure could help get the government to present an (updated) Action Plan/Action Report;
- On the basis of this analysis, develop a sense of where there might be **windows of opportunity** to push implementation forward in certain thematic areas, e.g. where public opinion seems to be tipping in favour of reform, or in politically less sensitive cases, or in relation to issues falling within the remit of a minister who is susceptible to human rights arguments; and
- Identify any cases in which the **government has submitted an Action Report**, calling for the Committee of Ministers' supervision to be ended. Here, urgent intervention might be needed to prevent the premature closure of the case.

☑ Start early…

At EIN, we believe that implementation advocacy starts with litigation. Victims wait years for a judgment from Strasbourg (and this, as a rule, after many years of litigation before the domestic courts). For NGOs that engage in strategic litigation, taking cases to Strasbourg with the intent to bring about broader reforms benefitting not only the applicant(s), but all people in a similar situation, it is important to **conceive of the litigation phase as the first step in their implementation advocacy**: it is here were they set the course for reforms.

The litigators among EIN's members and partners recommend that applications to the Strasbourg Court be framed in such a way as to **make it clear where the alleged violation stemmed from**. Through this, they hope to secure judgments that are specific as to what law (or legislative lacunae), practice or other shortcoming was at the root of the violation, and perhaps even recommend or prescribe how the violation should be remedied. Underlying this strategy is the experience that it is helpful for NGOs, in engaging with the authorities at the implementation stage, to be able to tie their recommendations and demands directly to the judgment. It helps them to avoid any allegation that they were seeking reforms that go beyond the scope of the ruling.

[2] To create (and export/print) a full list of all leading cases awaiting implementation in your country, go to HUDOC-EXEC and use the filters on the left-hand side of your screen to (i) select 'cases' in the Document Collections pane, and then go to the General Filters section to select the country you are interested in and limit your search to and 'leading' cases (see 'Type') that are pending ('Status'). Do not forget to either select English or French in the language menu (to avoid duplicate results). You can further refine your search by, e.g., only selecting judgments concerning a certain theme.

Making implementation advocacy part of your litigation: learning from EHRAC

The European Human Rights Advocacy Centre (EHRAC) uses international legal mechanisms to challenge serious human rights abuses in Russia, Georgia, Azerbaijan, Armenia and Ukraine, in partnership with local lawyers and NGOs. When EHRAC litigates before the ECtHR, they clearly spell out the origins of the alleged violations, and they occasionally invite the Court to specify remedies under Article 46 of the Convention.

In the case of Azerbaijani human rights defender Intigam Aliyev, for example, who was imprisoned for his human rights activities, EHRAC's application to the Court set out both on the individual situation of the applicant (him being an active human rights lawyer who closely cooperated with the Council of Europe and other international organisations, stigmatising statements of different state officials towards the applicant and other human rights defenders), and the general repressive context of NGOs in the country. The Court explicitly referred to these arguments in finding a violation of Article 18 (as well as Articles 3, 5 and 8) of the Convention.

In terms of remedies, EHRAC asked the Court, among other things, to require the government to make reparation and ensure restitution – which the Court did by requiring the government to take measures "aimed, among others, at restoring his professional activities". While the Court did not indicate specific steps to be taken, **this provided clear enough a framework for EHRAC to call for a series of individual measures**, from Intigam Aliyev's acquittal (which is still awaited) to the return of his sealed office (which has been secured).

As for general measures, EHRAC's situating the applicant's case in the wider context, i.e. a pattern of arbitrary arrest and detention of government critics, may have helped secure an Article 46 chapter in which the Court called on the government to adopt general measures focussing, "as a matter of priority, on the protection of critics of the government, civil society activists and human-rights defenders against arbitrary arrest and detention" – which, again, has provided EHRAC (and other NGOs who have supported the implementation of the case) with a rather clear framework for a debate as to what is needed to resolve the systemic issues at the root of this violation and those suffered by other Azerbaijani human rights defenders and opposition voices.

☑ … and be persistent

Once the Court hands down a judgment finding a violation (if not at the litigation stage already), civil society actors are encouraged to use the three months until it becomes final[3] and the six months after that which the government has to submit an Action Plan to the Committee of Ministers to develop the (individual and) general measures they deem necessary to remedy the violation and prevent its recurrence. Where this is possible, they are encouraged to **reach out to the authorities**, and notably the Government Agent, to present their views and recommendations, and thereby **seek to influence the content of the Action Plan** and to guarantee its timely submission. In EIN's experience, ensuring early on that the parameters for implementation are appropriate, especially where the Court is silent on remedies, can be easier than seeking to expand the scope of the implementation process (and the Committee of Ministers' corresponding supervision) at a later stage.

"My advice to NGOs is that they should not shy away from being uncomfortable."

Panayote Dimitras, Greek Helsinki Monitor Spokesperson and EIN Board member

Domestic advocacy, meanwhile, also depends on **consistent and continual pressure and engagement**. Compared to advocacy before the Committee of Ministers, the timing of which will often be dictated by the latter's supervision schedule, promoting implementation at the national level

[3] Unless it is a Grand Chamber judgment, which is final upon being issued.

follows more flexible dynamics. This also means that it calls for a great level of **proactivity** on the part of NGOs and civil society actors, who should be persistent in their advocacy with the authorities and ambitious in seeking to form and strengthen 'compliance coalitions'. This is important at all stages of the implementation process: initially, to help identify appropriate implementation measures; during phases of apparent inactivity, to push implementation forward where a case might not be a priority for the authorities; and where there might be a risk that the Committee of Ministers might close a case prematurely, without reforms having demonstrated the desired effect.

☑ Streamline implementation across your organisation's activities

Giving full effect to the rulings of the Strasbourg Court, especially where they identify structural or systemic human rights problems, can necessitate the adoption of a range of measures: from changing legislation, to training law enforcement personnel or judges and prosecutors, to drafting guidelines for practitioners and raising awareness of the human rights implications of specific practices. This diversity in measures is reflected in the wide range of:

- **tools which civil society will have to use**, such as written communications and meetings with officials, freedom of information requests to obtain relevant data, parliamentary questions and participation in hearings before parliamentary committees, commenting on legislative proposals, engagement with victims and affected communities, ongoing litigation, information campaigns and many others;
- **decision-makers who they will have to cajole, nudge and push towards adopting them**, from among the executive, legislative and judiciary; and
- **civil society actors**, including the media, with whom they want to cooperate to push for change.

"After we get a judgment from Strasbourg (if not before!), we proceed in three steps: We

1. *We **identify the measures** that we think are needed to remedy the violation and resolve the underlying issue;*
2. *We **map the actors** who will have to take action to implement these – and, in doing so, we already try to anticipate who among them will likely be in favour or opposed to our suggestions; and*
3. *Then we **decide how best to go about lobbying for our proposed changes**. This will usually be through a combination of substantive work (such as elaborating draft laws or regulations) and outreach to everyone who could support our advocacy, both among the authorities and civil society.*

We try and involve not only our legal staff in this, but also our colleagues from the campaigns and communications department."

Dr Krassimir Kanev, Chairperson of the Bulgarian Helsinki Committee and EIN Board member

A **comprehensive advocacy strategy** is best achieved when working towards implementation of a particular ruling is not seen as an end in itself, but integrated into relevant thematic advocacy. While it is important to gain clarity about what measures are strictly needed to implement a ruling, **streamlining implementation advocacy across your NGO's activities** can help you think beyond the confines of the judgment execution process and pursue a more ambitious agenda. Rule 9 submissions to the Committee of Ministers, in order to be effective, must not go beyond the scope of the judgment.[4] The same limitations do not necessarily apply in

[4] For guidance on the content and structure of a Rule 9 submission, consult EIN's Handbook for NGOs, injured parties and their legal advisers and our brief guide on Rule 9 submissions.

your domestic advocacy, where you may instead be able to **use a judgment from the Strasbourg Court as a trigger for reforms with a wider scope**.

Thinking holistically: Strasbourg Court judgments as drivers for broader reform

OSF Prague, for example, has used a judgment from Strasbourg concerning segregation of Roma children in Czech primary schools (*D.H. and Others v. Czech Republic*) to push for a comprehensive reform towards guaranteeing inclusive education benefiting not only members of ethnic minorities, but also children with disabilities, in line with the requirements under the UN Convention of the Rights of Persons with Disabilities. While the judgment has been pending since 2007, far-reaching measures have already been adopted. Among these are education reforms aimed at promoting inclusive education, including by foreseeing support measures for children with special educational needs, and the introduction of one year of compulsory pre-school education.

Streamlining implementation advocacy across your organisation's activities may also require that you…

☑ Involve your whole organisation

While litigation is a legal process, implementation, in particular of complex cases relating to structural, systemic or politically sensitive issues, involves a lot of political bargaining. And yet, in EIN's experience, the lion's share of implementation advocacy within NGOs is conducted by lawyers, which risks creating a 'silo' of implementation expertise within the legal or litigation department of larger organisations where everyone is not doing everything (as is often the case in smaller NGOs). This may explain why follow-up to cases won in Strasbourg often centres around (or is limited to) the drafting of written 'Rule 9' submissions to the Committee of Ministers and other forms of advocacy in Strasbourg.

The experience of EIN's members and partners shows, however, that they have had their greatest successes where they have taken a **multi-pronged approach to pushing for implementation, using various advocacy and communications tools to contribute to setting the agenda for reform**, continuously monitoring the status quo, working towards overcoming obstacles to implementation, raising awareness and winning over support for their demands. Especially in bigger NGOs, coming up with a holistic advocacy strategy may require the **involvement of colleagues from specialised legal, policy, campaigns, communications and fundraising departments**, who can all bring in their expertise to create a tailored 'advocacy package'. This could include proposing laws and policies, lobbying to get a budget allocated, exposing shortcomings through effective communications, and securing support from decision-makers and the wider public.

☑ Link up your domestic and Strasbourg advocacy

When asked how to enhance the effectiveness of one's domestic advocacy for the judgment implementation of ECtHR judgments, another piece of advice that several of EIN's members and partners wanted to share was for NGOs **not to think of their Strasbourg and national-level advocacy in isolation**, but to better integrate their efforts in Strasbourg and at national level. For many, a simple starting point can be to better feed their achievements in Strasbourg, before the Committee of Ministers, back into their engagement at national level.

This starts by systematically using CM decisions or Interim Resolutions in engaging with domestic decision-makers, in interactions with diplomats in your capital or others who might be able to influence the authorities. It also involves effective communication activities around Strasbourg submissions (more on this in section 4 below): why not follow the example of many of EIN's members and partners and **alert the media when you make a Rule 9 submission, and when the Committee of Ministers adopts a decision** in a case you are supporting?

Speaking of Strasbourg advocacy: do you already know EIN's other guidance documents?

You find a number of useful resources on our website:

- EIN's Handbook for NGOs, injured parties and their legal advisers on how to get involved in the supervision mechanism for ECtHR judgment implementation at the Council of Europe level;
- Our short guide on how to draft 'Rule 9' submissions to the Committee of Ministers; and
- Our handy FAQ on how to advocate for cases pending under 'standard supervision.

Where opportunities for direct interaction are limited: working domestically and in Strasbourg in parallel

EIN's members have perfected the use of a two-pronged approach to implementation advocacy where they face difficulties getting access to domestic decision-makers, but the door is not completely shut to pursuing dialogue. In such cases, NGOs often **seek direct engagement with the authorities while lamenting the latter's lack of engagement with civil society in submissions to the Committee of Ministers**. And with some success:

ACCEPT, a Romanian NGO that advocates for the rights of LGBTI persons, expressed regret in a Rule 9 submission in March 2017 in a case concerning homophobic hate crime that the police and other authorities were not meaningfully engaging with communities most at risk of being the target of hate crimes and NGOs working on their behalf. After this submission, two meetings with the authorities demonstrated a much greater willingness to engage with ACCEPT and to take their proposals more seriously.

☑ Make your advocacy strategy a 'living document'

Your domestic **advocacy strategy should be developed on a case-by-case basis**: the issue at stake, its political salience, its cost implications and the types of implementation measures will determine what network of stakeholders an NGO may want to activate. Moreover, because implementation advocacy is, in the words of one EIN member, "a marathon, not a sprint", and because the domestic dynamics of implementation can change over time, it is important that implementation plans be flexible enough to be adapted in the light of changing conditions. This goes back to the importance, set out above, of **making progress measurable and constantly (re-)assessing your advocacy strategy** based on a critical assessment of your achievements.

☑ Let EIN know what cases you are working on…

… so that we can provide you with case updates, such as information on the submission of Action Plans or Action Reports or the scheduling of your case for examination at a forthcoming CM human rights ('DH') meeting. Generally, feel free to discuss your strategy with EIN. We are happy to provide input and feedback.

2. Engaging with the authorities: holding the government to account and working towards reform

Human rights judgments do not get implemented in a vacuum. While litigation is a legal process, implementation is, first and foremost, a *political* process. **In most countries, there are clear benefits for NGOs in engaging with allies among political decision-makers to make progress on implementation** – this can be a conscientious government agent, a parliamentarian who can be sensitised to a specific cause, or a judicial or police training institute willing to cooperate with civil society on devising and delivering training on Convention standards and the ECtHR's case law.

The opportunities for direct engagement with the authorities vary vastly across Europe. Several EIN members and partners reported that letters they had sent to the Government Agent or the General Prosecutor's office had remained unanswered, and that meeting requests were being declined. Experience also shows that even those authorities that are usually open to speaking with – and listening to – civil society actors may be less willing to cooperate in politically sensitive cases where there is opposition to reform among the public.

Others are faced with governments that are more hostile still to civil society involvement, or known for harassment and retaliation against human rights defenders and NGOs. In these circumstances, the emphasis of implementation advocacy will shift away from engagement with the authorities towards seeking to exert pressure through other avenues, including, in particular, the Committee of Ministers' judgment execution process. Naturally, then, **NGOs and civil society activists on the ground are best placed to assess what type of engagement is safe, feasible and promising to deliver results over time**.

This section presents several forms of advocacy with domestic authorities within all branches of government that have successfully been used by EIN's members and partners. Section 2.1 highlights the need for NGOs to hold the authorities accountable for their record on implementation, by sounding the alarm in cases of non- or protracted implementation. Section 2.2 focuses on case-level advocacy. It will become apparent that advocacy for judgment implementation uses the same tools as advocacy for other purposes – meaning that at least those NGOs whose activities are not limited to litigation or legal advice will likely be familiar with them already. We shall also see that most successful domestic advocacy uses a combination of tools. Finally, in Section 2.3, emphasis will be placed on ways for civil society to contribute to strengthening the institutional framework for judgment implementation whilst in parallel securing greater civil society representation in fora created to strengthen inter-agency coordination of implementation activities.

2.1. Holding the government to account for its implementation record

We will see that there are many ways to encourage, nudge or push state authorities to carry out the steps that are necessary to implement a judgment from the Strasbourg Court. All of them are context specific. One commonality, however, that can be detected across several states is a mismatch between the authorities' perception of how well implementation is going and the real state of implementation in the country.

For civil society, this often means that their first challenge will be **to convince the authorities**, and in particular the government, **that there is a non-implementation problem** that must be tackled. They might encounter outright denial of the existence of any structural challenges with implementation. Still, there are ways for civil society to sound the alarm and shine a spotlight on weak government performance in implementing judgments. In particular, civil society can rely on two important indicators that reveal deficiencies in the implementation of judgments:

☑ Making sense of the figures: how well is implementation really going?

When it comes to overall implementation records, it is hard to argue with the figures – but you want to **use those figures that tell the whole story**. Absolute numbers of cases pending and closed can be misleading. Often, they only provide a snapshot instead of allowing for an assessment of how well implementation is really going. This is particularly true where *all* cases are counted: 'leading' cases *and* 'repetitive' cases. To examine how many human rights issues a state has not resolved, it is important to focus on *leading* cases. These identify new (and often structural or systemic) problems that must be resolved by adopting wider (so-called 'general') measures. Repetitive cases stem from the same underlying issue.

The statistics in the Committee of Ministers' annual reports on the execution of judgments tend to paint an overly positive picture of the state of implementation across the Council of Europe, as EIN Co-Director George Stafford highlights in a two-part blog post (here and here).

A more accurate picture of how well or poorly a state performs in implementing Strasbourg Court judgments, in our view, is conveyed by looking at the **proportion of leading cases from the last ten years that remain to be implemented**. This methodology takes account of the fact that speed is an inadequate indicator for successful implementation, and it allows the data from each state to be effectively compared (as some states have been signatories to the European Convention on Human Rights for 60 years – others, for less than 20).[5]

> *"The Committee of Ministers' latest annual report states that, in 2019, the CM closed the supervision of 732 cases in respect of Turkey. Obviously, the Turkish Government was quick to use this figure to congratulate themselves on a job well done. What they don't tell you is that the overwhelming majority of these cases were repetitive cases that the Government was able to make 'go away' simply by paying compensation. But they haven't resolved the underlying structural or systemic issues. There are currently 158 pending leading cases, and Turkey has not implemented more than two thirds (64.3 %) of the leading judgments from the last ten years!"*
>
> Dr Kerem Altıparmak, EIN member, 1 May 2020

EIN's interactive map shows the numbers of leading cases that states have failed to implement.

NGOs and other civil society actors are encouraged to **confront their governments (and other state authorities) with these statistics**. EIN has done most of the work for you: we created webpages to clearly highlight how well (or badly) states are implementing judgments of the European Court of Human Rights. We published an interactive map showing the numbers of leading cases that Council of Europe member states have failed to implement. You also find detailed data for each country on our website. Feel free to use this information in your advocacy!

This can be done both on an *ad hoc* basis, when(ever) you engage with an official who needs convincing that all is not good when it comes to the implementation of judgments. At the same time, NGOs can also publish **comprehensive (annual) reports on the state of implementation in their country**. Inspiration can be drawn, in this regard, from the Helsinki Foundation for Human Rights' report on the execution of judgments of the European

[5] A word of caution is in order here. This indicator is not perfect, either. It is also necessary to look at the *overall number* of pending leading cases. The countries with the most serious non-implementation problem have both a high number of leading cases still awaiting implementation *and* a high overall number of pending leading cases.

Court of Human Rights and a recent report on the execution of rulings of the European Court of Human Rights and the United Nations treaty bodies in Georgia by Rights Georgia (formerly 'Article 42 of the Constitution').

☑ Is the government complying with its reporting obligations?

Another indicator for how serious governments are taking their obligation to implement the judgments of the Strasbourg Court is the extent to which they engage with the Council of Europe. Where states fail to report to the Committee of Ministers and the Department for the Execution of Judgments of the European Court of Human Rights (DEJ), they obstruct the Council of Europe's assessment of the progress made and any outstanding issues in the implementation of judgments. They also make it more difficult for civil society to monitor implementation and engage in the Committee of Ministers' supervision process.

Against this backdrop, it is useful for NGOs to browse the HUDOC-EXEC database and do some research to **identify those leading cases that have not been subject to an** initial **Action Plan** even six months or more after the judgment became final, and leading cases in which the government has not presented an updated Action Plan or an Action Report in a long time. (For standard cases, this would usually be more than 18 months. For cases under enhanced supervision, the Committee of Ministers often indicates a deadline by then the state has to report back to it, which you will find in the Committee's latest Decision.)

You can **point out delays in government reporting to the Council of Europe in your interactions with the authorities** and request that they submit updated information. Sometimes, especially in high case-count countries, they might not even be aware of such delays, and such a reminder may indeed be appreciated. Where the government continues to fail to submit an Action Plan or Action Report, NGOs should consider making a Rule 9 submission to seek endorsement from the Council of Europe for their demand. (Note that serious delays to submit and Action Plan or Action Report can be a ground for a case to be transferred from the standard to the enhanced supervision procedure, which gives it greater expose and leads to enhanced levels of technical support by the DEJ.[6]) Exposing the government's non-compliance with its reporting obligations through the media may also help increase the pressure on the authorities (see 4 below).

Challenge identified: weak government systems for tracking progress

Deliberations with civil society actors during a recent EIN workshop in Yerevan and bilateral meetings with Armenian authorities revealed that changes in administration (and notably within the Government Agent's office) can provide an opportunity for strengthening the institutional framework for judgment implementation. At the same time, government changes may sometimes lead to a loss of institutional memory or risk certain cases slipping 'under the radar'. **Government Agents may lack an internal system for tracking progress and outstanding actions required for the implementation of all the leading judgment pending implementation.** In Armenia, this appears to have contributed to delays in the submission of Action Plans/Action Reports regarding 'old' cases inherited from the previous government.

Challenge tackled: partnering with EIN to prepare country report and case analyses

Participants of EIN's training workshop considered that there could be use in preparing a **synthesis and brief analysis of the state of implementation of all pending leading cases**, including information on delays in government reporting to the Committee of Ministers and any civil society advocacy (e.g. in the form of Rule 9

[6] For more information on the two-track supervision process and transfer of cases between 'standard' and 'enhanced' supervision, see EIN's Handbook for NGOs, injured parties and their legal advisers on how to get involved in the supervision process for the implementation of ECtHR judgments.

submissions). Such a report, which is currently being prepared by an EIN volunteer, they ventured, could form the basis of a series of domestic advocacy efforts. It could be used to:

- Call upon the Government to submit outstanding Action Plans/Action Reports;
- Identify priority cases for civil society engagement and coordinate advocacy efforts across NGOs and other civil society actors (see section 1);
- Sensitise officials who (should) hold a stake in implementation about the problem of non-implementation and their role in addressing it (section 2.2); and
- Contribute to effective media reporting on (non-)implementation (section 4).

2.2. Case advocacy with the executive, parliament and the judiciary

While the executive is the main interlocutor of the Council of Europe in the implementation process and the main driver of reform to give effect to the Court's judgments, **the obligation to implement a rulings from Strasbourg is binding on a state as a whole**, that is on all state authorities and not just the executive.

A prerequisite for any form of direct advocacy with the authorities is for NGOs to find out what implementation measures are needed, and who ought to adopt them. Several ministries and parliament may (need to) be involved in reforming policies and laws to ensure compliance with Convention standards and the case law of the Strasbourg Court, and judges, prosecutors and law enforcement agents might have to change their practice to ensure human rights violations are not repeated. **Only once there is clarity about who the target audience is can one scope out the potential and appropriate ways for reaching out to them** – through face-to-face meetings, letters, phone calls, by involving stakeholders in workshops and (press) conferences, through participation in fora established by the authorities, writing of analyses, submission of freedom of information requests, preparation of shadow reports, drafting legislative proposals or commenting on bills, etc.

Meanwhile, providing advice on how best to engage with the authorities is compounded by two factors:

- Who your allies are among the authorities can change depending on time, circumstances and the issue at hand, and no single way of seeking them out can always promise success.
- Some situations call for pressure and exposure, whilst others lend themselves better to cooperative, non-contentious collaboration. Also, what worked yesterday could be counterproductive tomorrow.

This is why it is important for NGOs to evaluate their activities and the impact they have achieved on a regular basis, and adjust their domestic advocacy strategies as appropriate. The choice of who you engage with and how is yours, but we hope you can draw inspiration from the tools that EIN's members and partners have successfully used.

What you should know about the structures and mechanisms for implementation in your country:

Any efforts for advocating for full implementation of an ECtHR judgment would require that you have **a good knowledge of the institutional framework and procedures** that exist in your country, and know the domestic avenues that are open to NGOs to take part in the implementation process. Sometimes, there are no official bodies or clear consultation procedures. It is then even more important to identify the right stakeholders and the levers for action which are at your disposal. NGOs are advised to seek clarity regarding the following:

- Who ensures coordination among executive actors? What stature does this person or body have within and beyond the executive to influence practices and attitudes? Are they open to involving civil society in the implementation process?

- What role (if any) does parliament play in the implementation of judgments?
- Is there a forum for multi-stakeholder dialogue and collaboration on implementation, for instance in the form of an inter-agency committee on implementation?

2.2.1. Executive

Of primary importance in the execution of judgments is the role of the executive. The executive is the main interlocutor for the Committee of Ministers and the DEJ, which provides technical assistance to member states in identifying and adopting the measures necessary to execute the rulings of the ECtHR. As such, the government 'controls' most of the information about outstanding issues and demands from Strasbourg. At the domestic level, the executive is responsible for ensuring that reforms are actually being adopted.

The implementation of Strasbourg Court judgments is coordinated by the **office of the Government Agent** (or an equivalent executive body), which commonly operates within the ministry of justice, the ministry of foreign affairs or (rarely) directly under the prime minister's or president's office or within the prosecution service. The Government Agent assumes a series of functions in the implementation process that make them an important interlocutor for NGOs wishing to advance implementation. Notably, the Government Agent:

- Disseminates information about new judgments among government agencies and other relevant actors, soliciting, if need be, their views on what implementation measures should be adopted;
- Convenes, as appropriate, working groups tasked with the implementation of specific cases;
- Is responsible for submitting Action Plans and Action Reports to the Committee of Ministers; and
- Oversees implementation and monitors the progress made.

Unsurprisingly, then, effective implementation of judgments will depend in part on the experience and political clout of the Government Agent and how well their office is resourced. **Because of the Government Agent's important role in the implementation process, it is highly advisable for NGOs to establish, maintain and strengthen working relationships with their office wherever possible. The same is true for other ministries and agencies that need to take action to implement a judgment**, often including the ministries responsible for justice, internal affairs, health, education, women and family affairs (and finance).

☑ 4 reasons for seeking engagement with the government

In countries where direct engagement with the Government Agent and other executive actors is possible, this can help achieve four overarching goals that are crucial to securing the effective implementation of judgments:

- **Contributing to the drafting of Action Plans**, and thereby getting the government to commit to taking certain steps and **influencing the direction and scope of implementation**;
- **Initiating reforms** where these have not yet been taken;
- **Pushing implementation forward** where the process is stalling or needs to be accelerated; and
- **Monitoring** the effects of reforms and documenting ongoing violations or problems.

☑ Shaping draft laws

In most states, it is the government that proposes most new laws or amendments to existing legislation. Often, there are formal ways for NGOs to get involved in drafting **bills or amendments to laws**, such as consultation phases. The activities of EIN members and partners show that they routinely use their expert knowledge and expertise to influence the legislative process as this early stage, and often with (some) success, as the examples below show. We also learned that NGOs were able to **use insights gained from monitoring judicial or administrative practices to formulate legislative and policy proposals** and engage directly with the relevant authorities.

Shaping legislation through research: reducing unwarranted pre-trial detention in Hungary

One of the Hungarian Helsinki Committee's (HHC) primary strategic goals is to decrease unjustified pre-trial detention in Hungary – a problem identified in nearly four dozen judgments grouped together under *X.Y. v. Hungary*. To this end, the HHC participated in domestic and international research projects relating to pre-trial detention and the right to an effective defence. It also compiled and disseminated a manual for judges and attorneys on how to use the case law of the ECtHR concerning pre-trial detention in Hungary in practice.

Insights gained from research have fed into the HHC's comments on legislative steps pertaining to pre-trial detention. Most notably, the NGO provided extensive comments on the working papers and draft of the new Code of Criminal Procedure in 2015-16. To follow up on their written recommendations, they also met with officials from the Ministry of Justice. The final text of the new Code of Criminal Procedure, in force since July 2018, includes several new provisions for which the HHC had advocated for years. Importantly, it brought about a positive conceptual change, by establishing that pre-trial detention is a measure of last resort. It also broadened the scope of alternative measures.

The HHC has also actively worked towards ensuring the proper implementation of this improved legislation: one of its projects culminated in the publication of a handbook on effective legal assistance in pre-trial detention decision-making, which the HHC has disseminated among lawyers. This comprehensive advocacy strategy seems to bear fruit: the number of pre-trial detainees in Hungary has been decreasing in the past years.

Providing expert opinions on safeguards against arbitrary confinement in care homes: *Červenka v. Czech Republic*

EIN's member Validity litigated the case of Červenka against the Czech Republic before the Strasbourg Court, together with a local lawyer for Validity, who subsequently followed up on the implementation. The case concerned the involuntary placement of a man with a disability in a care home at his guardian's request, without him being able to challenge this decision. Validity's lawyer was involved in drafting new methodological guidance on involuntary provision of social services, and successfully cooperated with the national authorities to **amend the Act on Social Services to introduce safeguards** against arbitrary placement in care homes similar to those applicable to detention in a psychiatric institution.

From a petition towards legislative changes: the HFHR's support for juvenile delinquents

Maksymilian Grabowski was a teenager when he was unlawfully detained as a juvenile offender. The violation of his rights under Article 5 of the Convention had originated from a lack of clarity in the Polish legislation governing juvenile detention, due to which the domestic courts would not issue a separate judgment each time a person's placement in juvenile detention was extended.

The Helsinki Foundation for Human Rights had been involved in this case as a third-party intervener before the ECtHR. Following the judgment, they enlisted the support of key domestic players – the Ombudsman, the Ombudsman for Children and the Polish Bar Council – and presented a **petition before the Polish Senate**. The Foundation's efforts **kickstarted a project designed to amend Polish legislation**, so that courts would be obliged to periodically review juvenile detention. While parliament has yet to adopt the draft law, these concerted efforts have led to the development of a practice on the part of domestic courts of adopting a specific decision for each extension of detention in a juvenile shelter.

☑ Sensitising the government to the needs of victims

The implementation of judgments, because it is a formalised process, may at times seem abstract and technical. There can be benefits to civil society bringing the human stories behind the cases to the fore (on how to use the media to do so, see below, at section 4). One of EIN's partners encourages NGOs to "have the government hear your demands from those who are most affected by cases not being implemented." This approach may be most promising where personal convictions, bias and prejudice stand in the way of reform. Here, **creating opportunities for victims to tell their stories directly to the authorities** may help change hearts and minds, by confronting decision-makers with the harmful consequences of them failing to take action.

Facilitating contact between government officials and victims of human rights violations

ACCEPT, an LGBTI rights organisation from Romania, has had some success in pushing forward implementation in a hate crime case (*M.C. and A.C. v. Romania*). The judgment highlighted how police and other authorities were failing to investigate homophobic violence. One of the steps taken by the organisation, as part of a holistic advocacy strategy,[7] was to **bring victims of hate crimes to meet key government officials** in order to explain the effect that the violence had on their lives, and how a continued failure to investigate the attacks on them perpetuated the harm. Thanks to ACCEPT's advocacy, the judgment is now thoroughly integrated into the training of new police officers and significant progress has been made in addressing this issue.

☑ Indirect messaging through foreign embassies

(Not only) where direct engagement with the authorities is difficult it can be a promising strategy for NGOs to seek to have pressure mounting from different sources (see also below, at section 3, where we discuss coalition-building). One underexplored way of doing so is by harnessing the leverage that diplomatic representations in your capital that are sympathetic to the cause can exert on the authorities. It is possible, for instance, to routinely **share Rule 9 submissions with selected diplomatic representations in your capital**, and to ask them to bring up your recommendations in contacts with relevant state authorities. Another way to seek support from diplomats is by meeting with them directly, as OSF Prague can report:

Reaching out to embassies in your capital: example from the Czech Republic

Most readers will be familiar with EIN's quarterly advocacy briefings in Strasbourg. EIN's Czech member, OSF Prague, has successfully replicated this advocacy format at the national level in support of a case concerning discrimination of Roma children in education which has been pending under enhanced supervision before the CM for many years.

[7] See EIN and ILGA-Europe paper (2020), pages 16-22.

Some two or three months ahead of a CM/DH meeting at which the ministers' deputies were due to consider the case, OSF Prague would reach out to a supportive embassy in the capital to help them organise an event. They would bring in experts from civil society, grassroots activists, and staff from the Ombudsman's office for a one-hour briefing, usually over lunch or dinner. At one such event, state officials were present as well. The speakers would be asked to give brief (three to four minute) presentations, and conclude with two or three suggestions regarding the matters that attending diplomats could raise in their meetings with the Czech officials (as well as in Strasbourg). While it is difficult to measure the impact that these briefings have had, participants' reactions were positive and the contacts thus established between grassroots activists and embassy staff were maintained.

☑ Striking the right tone

Civil society actors that engage in any kind of advocacy tend to learn, over time, how to 'read the room' and find the most expedient ways of engaging with the authorities. This is equally true for advocacy aimed at ensuring the effective implementation of the judgments of the European Court of Human Rights. Here, too, civil society can draw from a **wide array of instruments to seek to cajole, nudge, or push the authorities to adopt their recommendations**, or even to shame them into doing so.

On some occasions, this might entail giving ammunition to conscientious state actors who are working behind the scenes to overcome resistance from other decision-makers. Sometimes, those allies within the authorities might appreciate receiving a strongly worded Decision from the Committee of Minister that draws on a Rule 9 submission and which they can use to exert pressure on their peers. On other occasions, however, public exposure may drive the authorities to disengage entirely. These dynamics can be difficult to anticipate, and civil society actors have to navigate a certain level of uncertainty in deciding whether to use 'carrot' or 'stick' in engaging with the authorities.

Making written submissions to the Government Agent: *L. v. Lithuania*

L., a transgender person from Lithuania, was prevented from completing his gender reassignment surgery and changing his gender identification in official documents because of the state's failure to enact laws regulating the gender-reassignment procedure. His case was subject to several Rule 9 submissions by different NGOs. Domestically, two local NGOs – EIN's Lithuanian member, the Human Rights Monitoring Institute (HRMI), together with National LGBT rights organisation Lithuanian Gay League (LGL) – consistently raised this issue in their publications, discussions with government actors, and when talking with the media.

On one occasion, the NGOs decided *not* to write to the CM. Instead, they sent a joint submission to the Government Agent in which they provided their assessment of draft legislative amendments introduced by the Ministry of Justice, and made recommendations on the proper implementation of *L. v. Lithuania*. **It was felt that refraining from exposing a lack of progress in the reform process to the CM would allow for a more constructive and cooperative approach aimed at lending support to a Government Agent who was genuinely working towards overcoming resistance** to the proposed reforms among political decision-makers.

This approach paid off: the authorities moved from little or no engagement with the NGOs to including them in a working group tasked with drafting a law on gender recognition, where they were able to substantially influence the wording of the text. While full execution of the case is hampered by strong opposition both in parliament and by the Catholic Church, the inclusion of trans people and NGOs, whose viewpoints are now being respected, marks clear progress from a years-long phase of disengagement. Through strategic litigation at the domestic level, the LGL has moreover contributed to significant changes in judicial practice: Lithuanian courts today authorise legal gender recognition of trans person without sterilisation.

2.2.2. Parliament

Parliamentarians play an important role in the implementation of many cases. Three of their primary functions make them important interlocutors for civil society actors seeking to lobby the authorities to adopt implementation measures:

- Parliamentarians are mandated to hold the executive to account, which entails **oversight** of government and administrative bodies as regards the implementation of Strasbourg Court judgment.
- Their **legislative function** means that national parliaments have an important role to play in making sure that draft legislation is in conformity with European Convention standards, so that human rights violations can be prevented in the first place.
- Last, but not least, because parliamentarians **approve budgets**, they have a responsibility to allocate adequate resources for the adoption of reforms necessary to give effect to the ECtHR's judgments.

☑ Reminding parliamentarians of their human rights obligations and providing information

It will often fall on civil society to **'remind' parliamentarians of their human rights functions** and their obligations when it comes to the implementation of judgments. This is because one of the main obstacles for greater cooperation with parliament identified by EIN's members and partners is that many parliamentarians do not see themselves as bearing any responsibility for ECtHR judgment implementation. Where parliamentarians do not see themselves as stakeholders in the implementation of judgments, it will be difficult for civil society actors to win their support in pushing for and adopting reforms.

It is true that prevailing political majorities can also make it difficult to make progress on specific human rights issues. This notwithstanding, EIN's members and partners have detected a correlation between a lack of parliamentary involvement in the implementation of judgments and parliamentarians' lack of familiarity with the process generally and knowledge of the cases awaiting pending before the Committee of Ministers specifically. Sometimes, it was reported, parliamentarians also appeared to see implementation as a continuation of the (legal) process before the Court, rather than a political process involving the state as a whole. Meanwhile, parliamentarians' lack of awareness is exacerbated where the executive is unwilling to facilitate greater parliamentary involvement, for example by withholding information from parliament.

To address these obstacles, there is a role for civil society to **provide accurate information** that is **accessible** even to non-lawyers and, at the same time, **specific** enough to set out responsibilities for implementation and **persuasive** in stressing the need for reforms. This has two dimensions:

- NGOs can prepare brief documents setting out the **basics of the implementation process** and the role of parliament therein.
- In addition, that can prepare and disseminate **case notes**, setting out the issues at stake, explaining what measures are needed to implement the case, and what parliament should do to foster implementation.

Case information notes: everything you need to know in three pages

An excellent example of how this can be achieved is a three-page information note by the Hungarian Helsinki Committee (HHC) about a pilot judgment concerning compensation for inadequate detention conditions. In a succinct yet detailed fashion, the note, which was published on the HHC's website, sets out:

- **Why** detainees in Hungary are eligible for compensation;
- **What shortcomings** there are in the current remedy system; and
- **What measures** the government has taken since the judgment was handed down, and **why** these are problematic.

The note concludes with a set of **recommendations** addressed to the government as well as the CM, and linking to additional background material, including two recent Rule 9 submissions.

COMPENSATIONS FOR INADEQUATE DETENTION CONDITIONS THREATENED BY THE HUNGARIAN GOVERNMENT

INFORMATION NOTE BY THE HUNGARIAN HELSINKI COMMITTEE JANUARY 2020

WHY ARE DETAINEES IN HUNGARY ELIGIBLE FOR COMPENSATIONS?

In March 2015, the European Court of Human Rights issued a pilot judgment in the *Varga and Others v. Hungary* case **on detention conditions in Hungary**, condemning the country because

- the inadequate detention conditions of the applicants in the case amounted to the violation of the prohibition of inhuman or degrading treatment, and because
- the applicants' rights were violated also by the lack of effective preventive and compensatory remedies with respect to their detention conditions.

The European Court of Human Rights concluded that the **overcrowding of penitentiary institutions constituted a structural problem in the country, and set out that Hungary should** produce "a time frame in which to make appropriate arrangements and to **put in practice preventive and compensatory remedies"** in respect of the alleged violations. According to the judgment, the solution would be the reduction of the number of prisoners by more frequent use of non-custodial punitive measures and minimising the recourse to pre-trial detention – thus, the solution lies not in simply building new prisons.

As a result, **as of 1 January 2017, Hungary put in place a preventive and a compensatory remedy system,** namely a mechanism for complaints about conditions of detention and one to claim compensation in respect of conditions of detention violating fundamental rights. Furthermore, it undertook further measures to decrease prison overcrowding, such as creating additional prison capacity and the promotion of alternative, non-custodial sanctions.

HOW DOES THE HUNGARIAN REMEDY SYSTEM LOOK LIKE?

➔ While the note in this case was mainly targeted to international audiences, similar case analyses in local languages can be shared with a variety of domestic stakeholders, including parliamentarians.

☑ Strengthening parliamentary oversight: finding and 'using' allies within parliament

Establishing informal relationships with members of parliament who are open to cooperating with civil society can be key to strengthening parliamentary oversight of the executive. This is true in general, but specifically when it comes to parliament holding the government to account for its implementation record. EIN's members have had particular successes when reaching out to parliamentarians with international experience, notably those who are also members of their country's delegation to the Parliamentary Assembly of the Council of Europe (find out here who these delegates are). They also ventured that 'natural allies' could be found among parliamentarism who themselves used to work in a human rights NGO.

"I cannot stress enough how useful it can be to get parliamentarians on board, and in particular those who are members of your national delegation to the Parliamentary Assembly of the Council of Europe. They tend to have a basic understanding of the notions of human rights, and are eager to have something positive to report in Strasbourg. That makes them potentially powerful allies in your advocacy for judgment implementation."

Vladislav Gribincea, LRCM Executive Director and EIN Board member, May 2020

Getting MPs to join the cause: an experience from Serbia

"In late 2019, we spearheaded a concerted push by civil society to block the adoption, by parliament, of a draft law that would have failed to ensure that the parents of thousands of babies who disappeared from hospitals in the 1980s finally have the fate of their children established. It was great to see that one of the parliamentarians who attended one of our press conferences immediately took action. She organised another press conference at the Parliament right afterwards, and helped secure the meaningful participation of civil society in a subsequent committee hearing. We were ultimately successful in securing important amendments to the draft law, which was adopted in March 2020."

Savo Manojlović, President of UZUZ, April 2020

These personal contacts, often cultivated over many years, with politicians who understand the basic notions of human rights have helped them use the following additional tools:

- **Parliamentary questions**: Written and oral parliamentary questions are a common instrument to hold cabinet ministers to account. They can also be used to enquire about the implementation of specific judgments of the ECtHR or about the reasons for the government's failure to report to the Committee of Ministers. NGOs can formulate such questions and have them be posed by their contacts within parliament. They provide an important tool for oversight of executive (in)action in terms of judgment implementation and the monitoring of the effects of reforms adopted in the wake of an adverse ruling from Strasbourg.

- **Participation in hearings** of parliamentary (sub)committees. It is important for NGOs to be aware of the agendas of these various partners, to be able to influence the agenda setting and plans drafted for the implementation of cases. Some EIN members have lobbied successfully for a hearing on issues relating to the implementation of specific cases pending before the Committee of Ministers. Others have been able to use scheduled parliamentary hearings as platforms to lay bare the vacuity of Action Plans and make recommendations for reform. Where parliaments receive and review (annual) government reports on the state of execution, members have presented comments (for example in the form of shadow reports) and recommendations for additional or alternative implementation measures.

> *"We check the websites and social media accounts of members of relevant committees, as well as transcripts of their speeches or interviews. You quickly get an idea of where they stand on an issue, and if it is worthwhile engaging with them on a particular issue."*
>
> Maksym Sherbatyuk, UHHRU
> meeting with EIN, December 2019

Making sure parliament gets the whole picture: discussing government and NGO shadow reports in Georgia

The Georgian government reports annually to parliament about the execution of Strasbourg Court judgments. In 2019, EIN's member GYLA submitted an 'alternative' report to the parliamentary Human Rights and Civil Integration Committee, and was promptly invited to a hearing before the latter. GYLA and another local NGO, Rights Georgia, had lobbied extensively with the Head of the Committee to ensure civil society representation at this hearing. This presented an opportunity to share their concern about certain adopted and outstanding measures to fully implement several judgments requiring legislative changes.

Among these was a case concerning a violation of three brothers' right to respect for their family life because they had not been properly represented in court proceedings which were to determine whether they should be returned to their father's custody against their will (*N.Ts. v. Georgia*). GYLA presented their views to the Human Rights and Civil Integration Committee. This, in conjunction with their active participation in various other parliamentary working meetings, fed into the elaboration of a new Code on the Rights of the Child, containing stronger safeguards for consideration of children's best interests in court proceedings, which was adopted in September 2019.

☑ Getting involved in the legislative process and lobbying for the approval of budgets

Turning away from parliament's oversight and towards its legislative function, civil society can use all the tools they would usually use to monitor and influence legislative processes to push for ECtHR judgment implementation requiring changes in the law. In this regard, we have learned through our engagement with EIN members and partners that their advocacy typically involves **commenting on legislative proposals** under

consideration by parliament and **lobbying for support for amendments** to draft laws with parliamentarians who are susceptible to rights-based policy proposals. In addition, where parliament can initiate legislative action of its own motion, NGOs can lobby parliamentarians to do so. Inspiration, in this regard, can be drawn from the examples contained in section 2.2.1 above.

Meanwhile, **lobbying for the approval of budgets** that ensure proper funding for measures needed to implement the judgments of the European Court of Human Rights seems to be an underexplored area of advocacy.

2.2.3. Judges, prosecutors, law enforcement agencies and other officials

Judicial actors, notably judges and prosecutors, tend to be the most difficult actors for NGOs to engage with, as civil society may be wary to be seen as encroaching on judicial independence. Still, may judgments require changes in judicial practice, which can be difficult to bring about. This is because some of the common obstacles to implementation of judgments requiring a change of judicial practice are judges and prosecutors' lack of familiarity with the ECtHR's case law, and, often even more difficult to tackle, deep-rooted attitudes or structural problems regarding the independence of the judiciary. Similar challenges often exist when it comes to changing the practice of law enforcement agents; here as well, deficiencies may have deep-rooted causes where they are not a result of a lack of guidance and training.

This presents challenges for civil society actors wanting to push for the implementation of judgments. NGOs that engage in **strategic litigation** before domestic courts try to influence judicial practice through framing their legal arguments in such ways as to make sure Convention standards are upheld.

But EIN members and partners have employed other tools as well in seeking to bring judicial and law enforcement practice in line with the case law of the Strasbourg Court:

> *"We use the rulings from the European Court to educate judges; when a case raises the same issues on which the ECtHR has already pronounced itself, we point this out in our litigation and remind the judge of [their] obligation to follow the principles established by the Court. We have had a number of successes doing so, where domestic judges did indeed make reference to relevant Strasbourg case law in upholding our complaints."*
>
> Vivien Brassói, Lawyer
> European Roma Rights Centre

- Some NGOs have monitored and analysed case files and decisions of domestic courts with a view to identifying prevailing shortcomings, and carried out **research** into international best practices.
- Others have monitored and **evaluated the content of existing trainings**, which has allowed them to point out, in their domestic advocacy and in Rule 9 submissions to the CM, where training curricula omitted key rulings from the Strasbourg Court and their implications. These insights and those generated through other forms of research were then taken into account in **new or improved trainings** they designed for and delivered to judges, prosecutors, other legal professionals and law enforcement agents, sometimes in cooperation with national schools for judges, prosecutors and police.
- Last, but not least, in response to failures of domestic authorities to comply with their duty to investigate, prosecute and punish serios human rights violations, NGOs have contributed to the **elaboration of practical instructions, methodologies or protocols** to be used by, for example, investigative and prosecutorial services.

Towards changing police practice: elaborating investigative protocols and bias indicators

In a series of judgments against Hungary, the Court identified shortcomings regarding investigations into hate crimes: the authorities were found to have failed to carry out effective investigations into offences allegedly committed in the context of anti-Roma demonstrations, and into whether ill-treatment inflicted on Roma applicants by law enforcement agents in their official capacity or off-duty were motivated by racial bias.

The Hungarian Helsinki Committee (HHC) forms part of a strong NGO coalition formed to support hate crime victims before domestic and international courts, the Working Group Against Hate Crimes. Domestically, the Working Group successfully lobbied for changes in the practice of prosecuting and preventing hate crimes. It elaborated a list of bias indicators, forming a basis of the police's investigative protocol, and also elaborated the structure of the protocol, based on which the police and the prosecution ultimately adopted practical instructions to better police bias motivated crimes. The Working Group also lobbied successfully for improved data collection: under the new crime registration system, the authorities must now document any bias motivation as well as the protected characteristic of the victim.

Key to these achievements was the Working Group's approach of submitting detailed, professionally elaborated proposals based on international practices to the ministries and the police, and initiating various high-level meetings with the relevant stakeholders. The HHC continues to lobby for further improvements to bring police and prosecutorial practice fully in line with Convention standards.

Exposing and tackling hate crimes: *Šečić v. Croatia*

Šemso Šečić was collecting old metal in a street in Zagreb in 1999 when two unidentified men attacked him with wooden planks while shouting racist slurs. He sustained multiple rib fractures and, as a result of the incident, suffered from post-traumatic stress syndrome. Despite having strong evidence that the attackers belonged to a skinhead group, the police did not investigate the apparent racist motivation. This followed a pattern of hate crimes in Croatia and failures by the authorities to protect victims or investigate bias motivation. In 2007 the ECtHR found that Mr Šečić had been attacked because of his ethnicity, and held that Croatia had violated Article 3 of the Convention in conjunction with Article 14.

Following an EIN training event in Zagreb in May 2019, EIN's Croatian member, Human Rights House Zagreb (HRHZ), together with the Centre for Peace Studies (a training participant), engaged in a series of steps that initiated proper reforms to implement the case. Besides presenting a Rule 9 submission to the Committee of Ministers, **they developed guidelines for trainings addressed to legal practitioners, police officers and CSOs.** A training for CSOs and officials sought to enhance the skills, knowledge and attitudes of professionals involved in providing support for victims of crime for the purpose of better understanding the hate crime and its consequences and the specific challenges it carries with it. This was followed by meetings with government representatives and senior members of the CoE to discuss future reforms.

As a result of these concerted efforts, in 2020 **new trainings have been conducted for police officers on hate crimes, run by HRHZ**. Amendments have been made to the relevant Rules of Procedure that will alter how the police deals with hate crimes, which are expected to enter into force in the next few months. The local partners continue to monitor progress closely.

2.3. Strengthening mechanisms and procedures for judgment implementation

The prospect of effective implementation is influenced not only by whether there is *political will* to remedy the violations found by the Court; it is also dependent on domestic *capacity* to trigger necessary changes in domestic law, policies and practice. Poor executive reporting to the Committee of Ministers, for example, can stem not only from deliberate government attempts to mislead the Council of Europe; it can also result from poor coordination within the government and other state authorities.

NGOs can work towards strengthening domestic structures and mechanisms for the implementation of judgments, especially where the government recognises the need to optimise these. Contributing to creating a robust institutional framework for judgment implementation is not only in the interest of the government, it also entails concrete advantages for civil society: it clarifies responsibilities for implementation across the executive, and can **help civil society 'secure a place at the table' for themselves** during deliberations about how judgments should be implemented. Ideally, this contributes to 'normalising' civil society involvement, thus making consultations and deliberations less confrontational and more cooperative.

☑ Strengthening the position of the Government Agent

Where effective implementation is hampered by poor coordination among the government, NGOs may want to **advocate for the adoption of regulations that specify the mandate, powers and duties of the Government Agent**, and establish a transparent, merit-based appointment process.

Promoting the adoption of a Law on the Government Agent and parliamentary oversight of implementation

Between 2014 and 2015 the Legal Resources Centre from Moldova (LRCM) successfully advocated for the adoption and implementation of a new Law on the Government Agent. The previous legislation had been vague as regards the Agent's responsibilities and powers in the field of execution of ECtHR judgments. Before reaching out to the Government Agent with proposals regarding a new law, the LRCM had already established a productive working relationship with him. They collaborated for a year to craft new legislation to improve the domestic implementation mechanism, drawing inspiration from other countries, notably the German, UK and (then exemplary) Polish models. A new Law on the Government Agent, largely reflecting the LRCM's recommendations, was adopted in 2015. It clarifies the Agent's role in the implementation of ECtHR judgments, provides for annual government reporting, and lays the foundation for a parliamentary oversight in this domain.

More recently, the LRCM has also made progress in another long-standing advocacy activity of theirs: the lobbying for new Rules for parliamentary supervision of the execution of ECtHR judgments.

☑ Strengthening inter-agency cooperation while ensuring meaningful civil society involvement

Full implementation can require the adoption of a range of 'general measures': amending legislation or even the Constitution, changing judicial practice, amending rules and regulations, allocating a budget to the provision of services, training of law enforcement officers, judges and prosecutors, or other actors. These measures require action from a range of stakeholders from among the executive, legislative and judicial branches of government.

It primarily falls on the Government Agent to coordinate, steer and monitor the implementation of these measures. Academic research has highlighted the benefit of institutionalising dialogue about implementation. The Open Society Justice initiative has recommended the setting-up of **a standing inter-ministerial committee** on the implementation of judgments of regional human rights courts.

Where NGOs identify poor executive coordination as one obstacle to effective implementation of judgments, they may want to **lobby for the creation of a multi-stakeholder committee or working group that can bring together the various stakeholders of implementation**. Very few countries have an institutionalised consultation mechanism allowing for the systematic involvement of civil society and other relevant actors in identifying and adopting the measures needed to implement a ruling from Strasbourg. One model from which to draw inspiration is a Committee (or *Komitet*) established by the Government Agent in the Czech Republic:

Committee of experts for the execution of judgments of the ECtHR and the implementation of the European Convention on Human Rights (Czech Republic)

Established by the Government Agent of the Czech Republic, this expert committee brings together representatives of ministries, parliament, the highest courts, the Bar Association, the Ombudsman's Office, academia and NGOs. It was set up to promote constructive dialogue about selected judgments against (or of relevance to) the Czech Republic. This is important in the Czech Republic, where the Government Agent is highly respected. While this allows him to effectively coordinate with various ministries and other stakeholders, it may, to a certain extent, have created a 'silo' of expertise within his office, meaning that other actors do not always see themselves as having a role to play in implementation.

The *Komitet* addresses this risk. Its members can recommend appropriate general measures of execution, and they create a direct link for the Government Agent to all relevant state institutions and to civil society in order to facilitate monitoring progress and outstanding challenges in the implementation process.[8] For NGOs, the Committee provides a forum to influence the scope and direction of reform, voice any concerns they may have about the government's plans, and, importantly, gain direct insights into the various positions of relevant stakeholders, which allows them to better adapt their advocacy strategies.

☑ Advocating for parliamentary structures promoting judgment implementation

Their legislative, policy-making and budgetary functions make national parliaments key stakeholders in the implementation of (many) judgments. Yet, we have seen (at 2.1.2) that parliaments do not always assume an active role in driving, supporting or even just overseeing the implementation of judgments. This was said to often be due to them not being aware of the cases pending implementation and what general measures are needed to resolve the underlying issues. An additional (and often related) problem is a lack of clarity as to who, within parliament (e.g. which committee), should assume primary responsibility for holding the government to account for its response to adverse judgments from Strasbourg, and through what processes.

The way in which NGOs can work towards the creation of stronger parliamentary mechanisms in this area is presented here on the basis of two examples: one from Poland, where initial successes were short-lived, and the other from Georgia, where continued pressure is needed to keep parliament engaged on a regular basis.

[8] See Vít Alexander Schorm, 'It takes a village to implement a judgment: creating a forum for multi-stakeholder involvement in the Czech Republic', *Journal of Human Rights Practice* (forthcoming 2020).

Setting up a 'permanent' parliamentary sub-committee on implementation: mixed results in Poland

Among the first countries whose parliament set up a specialised body tasked exclusively with promoting the implementation of the judgments of the European Court of Human Rights was Poland – thanks, in large part, to the advocacy of the Helsinki Foundation for Human Rights (HFHR). HFHR and EIN Board member, Dominika Bychawska-Siniarska, recounts her experience:

The beginnings: government reporting does not translate into parliamentary scrutiny

Back in the early 2010s, the Government Agent was already required to send an annual report to parliament about the state of execution in Poland. However, the MPs never really seemed to properly read the report before approving it. We saw potential for strengthening parliamentary involvement.

HFHR's response: pushing for a dedicated committee

We sought to use the momentum created by a resolution from the Parliamentary Assembly of the Council of Europe to increase the involvement of national parliaments and to strengthen cooperation between the various actors responsible for implementing ECtHR judgments. We presented the different models that existed across Europe, and **lobbied for a dedicated structure tasked with overseeing implementation**.

We were hoping that the Committee on Petitions and Human Rights Commissions would change its Rules to explicitly mandate it to oversee and promote the implementation of ECtHR judgments. Unfortunately, expanding the Committee's mandate would have required it to hire an expert on the European Convention for its specialised Legal Analysis Office – we knew how important it was to have specialised parliamentary staff to support the MPs – which they were either unable or unwilling to do.

Instead, **a permanent sub-committee on the execution of judgments of the ECtHR was created** at a joint session of the Justice and Human Rights Committee and the Foreign Affairs Committee of the lower house of the Polish parliament (Sejm) on 5 February 2014. The sub-committee's mandate included the performance of a review of the Committee of Ministers' decisions on the state of execution of ECtHR judgments in respect of Poland; the monitoring of new judgments handed down by the Court against Poland; and the preparation of draft opinions to the attention of the Justice and Human Rights Committee and the Foreign Affairs Committee on the Government's compliance with its obligation to execute ECtHR judgments.

Progress as regards parliamentary scrutiny…

The sub-committee, thanks to its clear mandate, significantly enhanced parliamentary expertise regarding the requirements stemming from the case law of the European Court, as well as parliament's involvement in scrutinising the government's responses to violation findings from Strasbourg. They had the time and willingness to organise hearings on just two pending cases, for instance, which **allowed for constructive, in-depth discussions about the steps that needed to be taken. It also helped the HFHR and other civil society organisations to make our voices heard and better influence the scope and direction of reforms debated in parliament.** The initial signs were very encouraging.

… was short-lived

Unfortunately, the subcommittee was discontinued at the end of 2015 when a new Government came into power and, despite appeals from the HFHR and the Polish Ombudsman, it since has not been reinstated. The failure to appoint a new sub-committee is a setback to the institutional execution of ECtHR judgments in Poland.

Lessons learned

At the time, we considered that it would be best to first get the sub-committee 'up and running', and then push for further changes safeguarding its existence and powers. The HFHR drafted relevant amendments to the Standing Orders of the Sejm, but we failed to get them passed. With the benefit of hindsight, we should have pushed for a full, standing committee whose existence was enshrined in the Standing Orders of the Parliament. But we have not given up. We are currently in contact with members of the Senate who seem willing to advocate internally for setting up a Committee on the Execution of ECtHR Judgments.

Strengthening parliamentary oversight of implementation: example of Georgia

Georgia has had a parliamentary control mechanism based on annual executive reporting on the state of implementation since 2016. Between 2017 and 2019, EIN's Georgian member, GYLA also successfully advocated for the strengthening of the reporting procedure.

"In 2017, we observed that the Ministry of Justice submitted information only on those cases that were pending before the Committee of Ministers, while the cases struck out of the list of the Court on the basis of a unilateral declaration [which are not subject to the Committee of Ministers' supervision] were omitted from the ministry's report. As the provisions in the Regulation were not quite clear in this regard, GYLA advocated for amending the relevant provisions to clarify that the Ministry was obliged to submit information on the cases struck out on the basis of a unilateral declaration as well. The Regulations of the Parliament were amended to this effect in early 2019 upon GYLA's initiative."

Nino Jomarjidze, Strategic Litigation Coordinator at GYLA

The Council of Europe is working with the Human Rights and Civil Integration Committee to improve the parliamentary implementation oversight mechanism. GYLA continues to follow these developments and to lobby for further improvements to address several shortcomings they have identified regarding the parliamentary control mechanism on the execution of ECtHR judgments. In particular, GYLA is working towards having the Rules of Parliament amended to specify which committee shall review the report of the Ministry of Justice and issue recommendations. This would allow that committee to keep the substantive implementation issues under review, as well as to monitor how the government implements parliament's recommendations.

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☑ Looking for more inspiration of good parliamentary models?

Both examples set out above are imperfect. Both the HFHR and GYLA have had mixed results in their advocacy for stronger parliamentary supervision of and support for the implementation of judgments. They show that NGOs seeking to improve domestic structures and mechanisms need to be in it for the long haul, and willing to deal with obstacles and setbacks along the way. Equally important is that you know what you are working towards. There are different ways to organise parliamentary human rights work, and different models of parliamentary involvement in the implementation of judgments exist in Europe. Perhaps one the best examples of the 'specialised' model, where one standing committee assumes responsibility for

implementation, is the UK parliament's Joint Committee for Human Rights. For inspiration as to how parliamentary human rights structures with a remit for overseeing the implementation of judgments can function well, you may want to consult a useful resource of the Parliamentary Assembly of the Council of Europe – a handbook that can also be used by NGOs as a handy reminder for parliamentarians of their human rights obligations and what they should do to fulfil them.

What model to enhance parliamentary involvement in the implementation of judgments?

A Parliamentary Assembly of the Council of Europe (PACE) Handbook on *National parliaments as guarantors of human rights in Europe* provides an overview of the different ways in which parliaments can organise human rights work, including oversight over the executive's response to judgments from the European Court of Human Rights. NGOs can find inspirations therein for their own advocacy: if you are advocating for the setting-up of a parliamentary (sub-)committee to deal with the implementation of ECtHR judgments, you will find answers as to what status, remit, powers, membership and working practices should it should have. Consult the Checklist in the Annex, in particular.

3. Enhancing coordination and cooperation with other civil society actors

We are all stronger together. To be fully effective, domestic advocacy for judgment implementation will often require a **concerted effort by several civil society actors – NGOs, human rights defenders, activists and campaigners, bar associations, media actors, victims' organisations, affected communities and others**. Meanwhile, where they can operate effectively and independently, National Human Rights Institutions (NHRIs) can use their protection and promotion mandates to promote judgment implementation. This makes them potentially powerful allies for civil society organisations, not least since, in some states, NHRIs can also create an important link between civil society and the government.

Want to know if EIN has a member in your state? Or want to join EIN as a member or partner? Check out our webpage to find out more.

Also, don't hesitate to get in touch with EIN if you want us to link you up with a member or partner in your country or with expertise in your area of work. There is a wealth of experience within the network, and we are here to help you learn from each other.

The need for cooperation and coordination among civil society is particularly pronounced where human rights problems are deep-rooted and numerous, and the ambition is to improve a state's overall implementation record rather than just engage in an *ad hoc* fashion on specific cases. But, equally, case-level advocacy will often be most effective when it uses a range of tools, activates a variety of networks, and is persistently pursued until all measures have been taken and the case can be closed.

Few national NGOs will have the capacity to monitor developments in respect of all leading cases against their state, engage with all relevant authorities to influence the development and implementation of Action Plans, and involve the media to raise awareness of implementation issues. It may be unsurprising, then, that EIN's members and partners reported that NGOs' impact can be greatest where they work together with other civil society actors to push implementation forward. They ventured that doing so allowed civil society to **speak with one voice**, thus amplifying their messaging. Stronger civil society alliances could **share the work** and **use their respective networks** to reach broader audiences. Such collaboration was also said to **facilitate gathering evidence to demonstrate that further implementation measures are needed** – evidence that could be used in discussions with the authorities as well as Rule 9 submissions or other international-level advocacy.

The national NGOs among EIN's membership have a particular responsibility to form and strengthen domestic advocacy coalitions. They act as 'implementation hubs', which entails that they:

- routinely receive information from EIN about important case developments at the Strasbourg level, such as the submission of a government Action Plan or Action report, which they analyse and pass on to NGOs and others should or who might want to take action;
- are prepared to coordinate implementation advocacy by civil society actors; and
- function as a primary 'implementation focal point' for the authorities, the Council of Europe, the media and EIN.

A novel form of 'implementation hub': recent developments in Armenia

In Armenia, a recent EIN training workshop resulted in the setting up of a new implementation structure, to be headed by OSF Armenia. This will involve incorporating ECtHR judgment implementation into the work of an existing group of NGOs and lawyers working on justice issues so that the key NGOs in the country will regularly meet to discuss the situation of implementation in the country, coordinate domestic and Strasbourg advocacy, and create a contact point for the authorities, media and the Council of Europe. EIN welcomes this innovative, collaborative approach to enhancing the implementation of judgments through coordinated work at the domestic level. We will work closely with our Armenian partners to support the functioning of their new **'implementation platform'**, a model that could potentially be replicated elsewhere.

EIN is working closely, and will continue to work closely, with its members to enhance their capacity to assume these important functions. Projects we consider pursuing in the future include helping them create public **databases of ECtHR judgments pending implementation** in the official language(s) of their country, which could be used by civil society actors to identify priority cases, and **comprehensive implementation reports** that feature analyses of the statistics and short summaries of the (main) pending leading cases.

Zorica Jovanović v. Serbia: How a civil society alliance pushed for decisive parliamentary action to ensure investigation of the fate of thousands of 'missing babies'

Decades ago in Serbia, the new-born babies of over 2,000 couples disappeared from maternity wards of Serbian hospitals in mysterious circumstances that suggested the involvement of a criminal gang. In 2013, some of the parents won a case at the European Court of Human Rights, which ruled that there had to be an investigation. But years on, and despite two Interim Resolutions and numerous decisions from the Committee of Ministers, no effective investigation had taken place. The parents of the disappeared new-borns were still left wondering what had happened to their children.

The 'missing babies' case has long been subject to civil society lobbying by and on behalf of parents' organisations. The CM has to date received nearly two dozen Rule 9 submissions from NGOs. In 2019, after years of protraction, Serbia was nearing the adoption of a law to set up a mechanism aimed at providing individual redress to all parents of 'missing babies'. But parents' organisations and human rights NGOs were united in their concern about deficiencies in the draft law presented to parliament, which they said would fail to guarantee that all parents are given credible answers regarding the fate of their disappeared children.

Three EIN member/partner organisations – the Lawyers' Committee for Human Rights (YUCOM), the Association for Constitutionality and Legality (UZUZ) and ASTRA – alongside other civil society actors, conducted a sustained advocacy campaign in Serbia and the Council of Europe. In Belgrade, this included a television appearance by a representatives of YUCOM, extensive press coverage (see here, here, here and here), public protests, assistance to parental organisation in the elaboration and publication of an alternative draft law, and parliamentary advocacy. Through direct contacts and pressure through the media, the NGOs won the support of two members of parliament, who in turn ensured that parents and NGOs were able to address parliament at a crucial public hearing in November 2019. In Strasbourg, the case was presented at an EIN briefing, and written submissions were made with the benefit of EIN training and advice. The CoE gave the case the highest priority.

In March 2020 a special law was passed in Serbia to ensure investigations into the disappearances will now take place. Read the full story of this successful concerted civil society effort in this EIN Voice.

Involving bar associations in domestic advocacy

"It is all about building coalitions. ***We saw a huge difference once we started working with the Bar Association.*** *When they, too, started to take part in the meetings with the [then existing] parliamentary sub-committee on execution of ECtHR judgments and the inter-ministerial working group on implementation. The Petitions and Human Rights committee in parliament also started involving the Bar Association. This gave a real boost to the effectiveness or our advocacy for reforms aimed at implementing a series of important ECtHR judgments.* ***It was as if the volume of our voice had suddenly doubled.****"*

Dominika Bychawska-Siniarska, HFHR and EIN Board member, July 2019

Forming a strong coalition for addressing unresolved legacy investigations regarding the Northern Ireland Troubles: CAJ's work on the *McKerr* group of cases

Patrick Finucane, a human rights lawyer, was shot by gunmen from a loyalist paramilitary group during the Northern Ireland Troubles. His death, like that of many others, was never properly investigated.

The Committee on the Administration of Justice (CAJ) has lobbied extensively for the setting up of effective investigatory units to investigate deaths in Northern Ireland in the 1980s and 1990s during security force operations or in circumstances giving rise to suspicion of collusion with those forces.

CAJ convenes a practitioners' working group which is comprised of civil society and lawyers working on the issue. The group has published a number of reports and has lobbied the devolved administration and UK authorities on implementation. In recent years CAJ collaborated with academics at Queen's University Belfast and Ulster University to produce a Model Bill for implementation of the Stormont House Agreement proposals for addressing unresolved legacy investigations. This was well received and had a significant impact on government advisors working on these issues. This was followed by a further report providing a critical analysis of the government's 2020 proposals on dealing with the past which was welcomed by both civil society and politicians. CAJ has also held a number of conferences to disseminate their work to civil society, national human rights institutions and the government.

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4. Communicating effectively about (non-)implementation

Engaging others – from among the authorities and civil society – in efforts to promote implementation is rendered difficult where, as is often the case, potential allies lack knowledge or familiarity with the implementation process. NGOs may not realise the full potential for the judgment execution process to lead to sustained human rights improvements. The media often fails to report on (non-)implementation because journalists do not understand what happens after the European Court of Human Rights issues a judgment, or because they are not aware of how ongoing reform discussions relate to cases awaiting implementation. This means **an opportunity is lost to harness support for the adoption of implementation measures from the public**. Finally, EIN's members and partners have observed that ministerial staff, parliamentarians, judges and prosecutors, and even people within the legal profession may not see themselves as having a stake in promoting implementation of the rulings from Strasbourg – another problem that civil society actors can address through effective communication.

Effective communication about implementation is key to raising awareness of the issue among all these groups. It also **helps de-mystify the process**, and thus reduce the barriers for those sympathetic to the cause to rally behind it. This way, coverage in TV, radio, print media, on social media and political messaging through poster campaigns are key means to expose failures to implement, are instruments to showcase what devastating effects non-implementation can have on people's lives, garner public support for reforms, and thus build up pressure on reluctant officials to make progress on implementation.

How you expose non-implementation and call for reforms – be it by securing airtime on TV or radio, writing an op-ed in a newspaper, launching a major social media campaign, or giving prominence to EIN's country pages showing the state of implementation across Europe – will depend on the case and your target audience. We present here examples from our members and partners which you may want to adapt and replicate.

☑ Getting journalists on board

No matter how effective NGOs are in their own communications, grand exposure of their advocacy for judgment implementation is most likely to be generated through partnerships with journalists and other media actors who are able to reach large audiences and influence public opinion. Yet, using the force of the media to 'speak to' decision-makers and the public at large is often difficult because journalists are unaware of the stories and issues behind non-implementation of judgments. Where this is the case, civil society has an opportunity (if not to say a responsibility) to step in and fill this knowledge gap.

While EIN itself has only recently ventured into including media actors in its capacity-building activities, several of EIN's members and partners from across Europe have longstanding, constructive relationships with journalists. These have allowed them to secure airtime on prime-time TV, on national radio, and coverage by high-circulation newspapers.

> *"I was not aware that the Council of Europe is monitoring how Poland's legislative framework is affecting women's access to safe and legal abortions. I should write an article about this for a high-circulation women's magazine. The debate about abortion is highly politicised in Polish mainstream media, and I think many of the (mostly female) readers of these magazines might have no idea that they have the European Court on their side."*
>
> Ewa Siedlecka, journalist for Poland's weekly newsmagazine *Polityka*, at EIN and HFHR's multi-stakeholder workshop in Warsaw, November 2019

They have effectively used these outlets to do two things:

- **spread information about the scale of non-implementation**; and
- **call for urgently needed reforms in specific cases**.

How well does your state implement cases? Presenting the full picture through the media

In the experience of the Bulgarian Helsinki Committee (BHC), the publication of the Committee of Ministers' annual report presents a good opportunity for civil society to secure wide media coverage of the state of execution, and publicly expose the government's implementation record. In April 2020, BHC Chair and EIN Board member, Dr Krassimir Kanev, was quoted in *Capital*, a Bulgarian weekly newspaper, in an article that makes key findings of the CM's report accessible to a wider audience. Through contacts with the BHC prior to publication, the author was able to provide a detailed picture of the state of execution. The article covers, inter alia:

- Elements of implementation that generally work well, notably the payment of compensation;
- how Bulgaria continues to be among the ten countries with the largest number of cases under enhanced supervision by the Committee of Ministers;
- case examples that are emblematic of severe delays in the adoption of general measures, including in cases regarding structural or systemic problems dating back up to twenty years; and
- a series of Interim Resolutions that the BHC expected the CM to adopt this year.

Using the media for case advocacy even where the prospects for implementation are slim: example from Russia

A Russian human rights defender has had success in implementing ECtHR judgments with the help of the media, in spite of Russia's poor implementation record. He worked to establish a collaboration with a particular journalist in a widely read Russian daily newspaper. The journalist was a particularly powerful ally, as someone whose work was published in a mainstream Russian media outlet and read widely within the legal community as well.

This proved highly influential. It is argued that her articles helped implement two or three ECtHR judgments "almost single-handedly". Although this example applied to cases which did not involve political rights, which have proved to be the most difficult to implement in Russia, it demonstrates how a sophisticated use of the media can lead to implementation where implementation success stories are rare.

Kirill Koroteev, lawyer at Agora International Human Rights Group, recalls:

"We had a problem in Russia regarding the detention of stateless persons pending expulsion: they would be found to have breached Russian regulations concerning aliens, but could not usually be expelled because no state has the obligation to accept them. As a result, stateless persons could be detained for up to two years, after which they risked being re-arrested and detained again. The ECtHR, in Kim v. Russia*, found this situation to constitute a violation of Article 5 ECHR.*

Since the Russian authorities continued to detain stateless persons, two human rights NGOs made a Rule 9 submission to the CM, detailing similar instances as evidence of Russia's failure to implement the case. Anna Pushkarskaya, a court reporter with one of the then leading Russian business dailies, Kommersant*, was browsing through the submissions on the CM's website, contacted the lawyers who had prepared the Rule 9, and ran a half-page story in the* Kommersant*.*

Anna Pushkarskaya is a renowned journalist whose articles are read in the Constitutional Court, which she has covered since its creation. After her publication,

Совет Европы просят вступиться за лиц без гражданства

"Мемориал" считает, что Россия не выполняет решение Страсбургского суда

Газета "Коммерсантъ" №168 от 13.09.2016, стр. 3

A. Pushkarskaya's article in *Kommersant*, 13 September 2013

that court found a stateless person's case in its docket and scheduled an oral hearing. It handed down a ruling in this case (commonly referred to as the Mskhiladze *case) which prohibited detaining stateless persons pending expulsion. It was reported that several dozens of individuals were released from custody following the Constitutional Court's* Mskhiladze *judgment.*

This goes to show what an impact one pro-active journalist with an interest in human rights matters can have. It also shows that ***the main point for making Rule 9 submissions is not to support the CM, but to trigger a debate domestically****. Even if you don't win against the government, this may help you win over the public. As Anastasia Kornya, a journalist with Vedomosti, put it bluntly: 'I don't care what the Committee of Ministers decides, it will be late, obscure and irrelevant. I am interested in that there is a debate, a discussion between [] a part of civil society and the government.'"*

☑ Securing publicity for your Strasbourg advocacy

The experience of EIN members and partners is that developments in the Council of Europe lend themselves well to generating media coverage of (non-) implementation stories. Thus, a starting point in this regard, and a way to 'pick the low-hanging fruit', is for NGOs who wrote a Rule 9 submission to make sure, on a routine basis, that there is media reporting of any decision or Interim Resolution adopted by the Committee of Ministers in their cases. NGOs put a lot of work and effort into writing Rule 9s, and often manage to get a strong decision from the CM as a result of it. Ensuring that people know about these successes is an important step in translating recognition from the Committee of Ministers into change on the ground.

We therefore encourage you to **use CM decisions** – but also, as appropriate, other Strasbourg-related developments such as the submission of a government Action Plan and your own Rule 9 submissions – **to bring public attention to the issue**, engage other voices, and advocate for real reforms.

OC MEDIA

News Stories Feature Stories Analysis Opinion Editorial Voices In Pictu

Council of Europe 'concerned' over Georgia's queer rights record

26 September 2019 OC Media

Support Us

The Council of Europe Committee of Ministers. Official picture.

The Committee of Ministers of the Council of Europe has expressed 'concern' over Georgia's failure to uphold the rights of queer people, including the lack of protection for this year's aborted Tbilisi Pride march.

The committee made the comments while considering Georgia's progress in implementing the 2015 European Court of Human Rights (ECHR) ruling on the case of Identoba v Georgia.

Screenshot of OC Media article (26 September 2019)
Council of Europe 'concerned' over Georgia's queer rights record

Again, you will be best placed to know how to do this in your own country and in relation to the specific case at stake, but among the influential activities carried out by EIN members and partners are the following:

Communicate details of your Rule 9s and any CM Decision in your **social media output, newsletter and reporting**.

EIN can re-tweet your case updates if you link our Twitter handle, @EI_Network.

Organise a **press conference** or roundtable to discuss the implications of the CM Decision, to which you invite civil society actors, government representatives, and the media.

Share the decision with selected embassies in your capital, alongside brief recommendations as to how it should be used in diplomatic contacts between 'friendly' embassies and state authorities.

Forming allies in the media: the value of building long-lasting relationships

Securing effective media coverage of Strasbourg advocacy may be easiest to realise where there exist long-standing relations with journalists who understand the basics of the judgment execution process, according to EIN's Moldovan member, the Legal Resource Centre from Moldova (LRCM). Daniel Goinic, Legal Officer at LRCM, underscored the benefits of cultivating close relationships with journalists:

"We can today reap the rewards of our long-standing engagement with a range of media actors. Thanks to the relationships we have established over many years, our Communications Coordinator can today routinely disseminate our Romanian translations of the key insights and recommendations made in LRCM's Rule 9 submissions to a wide network of media contacts. ***Most journalists need no further explanation to be able to report on our Strasbourg advocacy, and others would just ring us to request additional information.*** *Many even follow us actively on social media, and approach us on their own motion to receive input for their reporting. That's how we secure publicity for what we do in Strasbourg. Our last Rule 9 submission, for instance, on the Sarban group of cases concerning the lack of alternatives to remand detention, was picked up by five media portals and subject to a big interview. This is really helpful because* ***we see that greater media coverage helps increase the pressure on the government to adopt reforms****."*

☑ Bring the human stories behind a case to the fore

Any efforts by civil society actors to get the judgments of the ECtHR fully implemented are geared towards a two-fold goal: to achieve justice for the victims of human rights violations and prevent others from suffering the same violations. Non-implementation has substantial consequences for the victims. In Azerbaijan, lawyer and human rights activist Intigam Aliyev, who was arrested in 2014 and spent nearly two years behind bars, has still not been exonerated and his professional bank account remains frozen. It continues to be unsafe for

the people in Turkey and the LGBTI community in Georgia to assemble peacefully. In Armenia, police ill-treatment continues to be all too common and often goes unpunished because the authorities have not thus far adopted all necessary measure to implement a series of cases grouped together under *Virabyan v. Armenia*. And the list goes on and on.

These cases are representative of numerous other human stories, which NGOs and other civil society actors can help bring to the fore by highlighting their stories in the media – by creating webpages showing the human stories behind the issue (much like EIN does on its own website), social media campaigns, or through other means of communication. These personal stories can help make the importance of effective judgment implementation more tangible for both conscientious state actors as well as the public, and thus allow for creating stronger coalitions who can work together to push for reforms.

Using TV appearances to shed light on non-implementation: common practice for the BHC

The Bulgarian Helsinki Committee (BHC) is used to talking to the media about the implementation of key judgments, including on TV. Whenever the BHC is invited to speak on a certain theme, they raise the issue of non-implementation of relevant judgments. In the summer of 2019, for instance, the BHC spoke on Evropa TV. The 20-minute interview was dedicated almost entirely to a discussion about outstanding issues and challenges in the implementation of the *UMO Ilinden* group of cases concerning freedom of association for minority associations and of the *Velikova* group concerning ill-treatment or lack of timely medical assistance during arrest or detention.

On other occasions, the BHC facilitated TV appearances of clients they had represented in cases before the Court, who shared their stories of how Bulgaria's failure to implement the cases they had won in Strasbourg was affecting them personally.

K. Kanev speaking on TV Evropa in July 2019
video available on YouTube.

Raising awareness among rights-holders and increasing pressure for reform on the government

An example from Georgia shows how civil society advocacy can lead to progress regarding legislative changes even where there is resistance from the government, while simultaneously educating individuals about their Convention rights. In June 2009, a peaceful demonstration held in front of the Ministry of Internal Affairs was forcefully dispersed. The police charged several protesters with administrative offences. In 2015, the case resulted in a friendly settlement. The government acknowledged a violation of three applicants' fair trial rights with respect to the judicial determination of the administrative offences with which they had been charged.

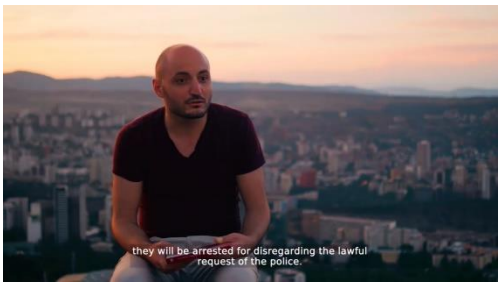
EIN's member GYLA has used this case to advocate for the amendment of the Code of Administrative Offences, which dates back to Soviet times. The NGO published reports, recommendations, statements and press releases. In 2018, they also shot a series of short videos in which they interviewed individuals who had been fined or detained in unfair administrative trials on the basis of this outdated law.

This video campaign gained new impetus with another incident of unfair administrative proceedings against protesters, which GYLA knew could spark the interest of wide segments of the public: in June 2019, nearly 350 people protesting the visit of a Russian legislator to the Georgian parliament were detained.

GYLA 209, video published on Facebook

121 of them were jailed, and 70 more received administrative fines in court proceedings lasting just two to three minutes. GYLA published a video on Facebook featuring interviews with protesters, which reached more than 50,000 citizens.

As a result of this continuous pressure from civil society, the government has elaborated a new draft Code of Administrative Offences. Through monitoring administrative proceedings before the domestic courts, GYLA has also observed greater awareness on the part of the public of their fair trial rights: today, GYLA reports, protesters charged with administrative offences in the context of peaceful protests would often address the courts by stating that they knew what rights they had under the Convention.



©GYLA 2018, video published on Facebook GYLA 2018, video published on Facebook GYLA 2018, video published on Facebook

☑ Uncovering the scale of non-implementation

Notwithstanding the importance of showcasing the real and harmful effects that failures to implement judgments have on individuals, context matters, and civil society can play an important role in **making information about the magnitude of the implementation crisis accessible** to wider audiences. We underscored above (at 2.1) the importance of civil society sounding the alarm on poor levels of implementation in their engagement with the authorities, and discussed how EIN's statistics can serve as a basis for highlighting the scope of non-implementation. Suffice it to note here that a number of EIN members and partners have indeed successfully used this methodology, alongside dedicated country pages on EIN's website, in large-scale public relations efforts, leading to media coverage in newspapers (for example in Bulgaria, Hungary, Italy, Poland, and Romania), on Facebook and Twitter, radio and television (including prime-time TV debates in Moldova and Serbia). **We encourage you to browse through these hyperlinked materials, and create your own media strategy to spread the word that low levels of implementation threaten the effective protection of human rights in Europe.**

☑ Taking to the streets: protests, street performances and more

Last, but not least, messaging about (non-)implementation can take less conventional forms as well. Poster campaigns and large-scale social media campaigns can be used to reach large segments of society. Publicity can also be generated through peaceful parades or protests, leafletting, or art protests. These forms of advocacy do not lend themselves to supporting any kind of case, but they can be very effective in raising awareness among the public. We present just one example here – but **there are really no creative boundaries to how you can use communications to push implementation forward!**

Street performance to protest illegal buildings in Serbia

Illegal construction of buildings is a problem in Serbia, and the Court criticised that demolition orders were not being enforced (*Kostić v. Serbia*). To protest the non-enforcement of a demolition order rendered in respect of an illegally constructed mini hydro plant on the Balkan Mountains, a local EIN member, UZUZ, organised a street performance in the centre of Belgrade in September 2019, which was reported on in the media. Demolition of the hydro plant has yet to begin, but another notorious example of the illegal construction problem, a hotel on Pančić's Peak (one of the highest mountains in Serbia), was torn down a month after the street performance. UZUZ attributes this success, in part, to its own advocacy, which is built on "a mix of legal knowledge, public pressure and citizens' support".

© Radio Slobodna Evropa, Performans protiv izgradnje mini hidroelektrana (27 September 2019)

Conclusion

Winning a judgment before the European Court of Human Right puts an end to an often years-long litigation process. It also marks the beginning of a new process that can be just as long and tedious: the process of implementation. After the Judges in Strasbourg find that a state violated an individual's human rights, the case returns to where it began: the national level. It is here where the victims of human rights violation, having been denied justice in their own state before, are supposed to finally get redress. The state concerned must also adopt wider reforms to ensure that others do not suffer the same violation.

Civil society plays a crucial role in ensuring that the judgments of the Strasbourg Court are effectively implemented. Their advocacy can help change laws, jurisprudence, police practice, and even the very attitudes at the root of many human rights violations. And because implementation is, first and foremost, a *domestic* process, it is at the national level where their advocacy can lead to real change.

This toolkit is based on the collective experience of EIN's members and partners from across Europe. The examples compiled in this guide show that, **where NGOs have sought, identified and pursued opportunities for engaging with the authorities, where they have formed alliances with other civil society actors and used the media to drive implementation forward, they have managed to secure important human rights gains.** At present, however, overall levels of civil society engagement with the implementation process at the national level seem lower than those of advocacy with the Council of Europe. Thus, while domestic advocacy is not an option for civil society in all countries and in all cases, there is untapped potential to promote effective implementation though domestic channels, and thereby help ensure that "judgments lead to justice".[9]

We hope that civil society actors in Europe will **draw inspiration from the best practices and lessons learned presented in this toolkit**. Because the conditions for effective implementation vary from country to country, from time to time and even from case to case, this guide does not provide a blueprint, one-size-fits-all approach to domestic advocacy for judgment implementation. Instead, it is conceived as a 'menu' of potential strategies, tools and actions that NGOs may take at the national level to push for the execution of judgments. The readers are encouraged to pick and choose those elements of this guide that are most relevant to them.

This guide is also very much a 'living document'. It seeks to spark a wider conversation among civil society about how to use advocacy at the domestic level to push for the implementation of judgments. Given that the battle for implementation is ultimately won (or lost) at the national level, the importance of having this conversation, and enhancing peer-to-peer learning, can barely be overstated.

We therefore invite our readers to get in touch with EIN and **provide feedback** on this first-of-its-kind resource. EIN is keen to collect more experiences, more best practices that can serve as inspiration for others seeking to expand their domestic advocacy for the implementation of judgments, or to venture into domestic advocacy for the first time. Your comments and criticism will allow us to revise this toolkit with a view to producing an enriched version by the end of this year.

Did you come across an example in this guide about which you want to learn more?

Let EIN know, and we will be happy to link you up with the relevant experts on the case or issue.

[9] David C. Baluarte and Christian M. De Vos (2014), *From Judgment to Justice: Implementing international and Regional Human Rights Decisions*, Open Society Justice Initiative report.

Annex 1: Checklist for civil society

Have you created an implementation advocacy strategy?

- Do you **start thinking about implementation at the litigation stage**, while framing your arguments?
- Have you **identified case priorities** based on a systematic analysis of all leading cases pending implementation in respect of your country or pertaining to your thematic focus area?
- Have you **informed EIN about your case priorities**, so that the Secretariat can update you on important case developments in Strasbourg?
- **For each of your priority cases**, have you:
    - analysed what (general) measures are needed to implement the case?
    - gained clarity about the current state of implementation?
    - carried out a mapping of the actors who need to adopt these measures?
    - analysed (potential) obstacles to effective implementation?
    - decided on what strategies and tools to use in advocating for implementation?
    - created an internal system for tracking your advocacy steps and impact?
- Are you **setting realistic** short-, medium- and long-term **goals** in terms of:
    - seeking the authorities' engagement, consultation or cooperation with civil society?
    - getting the authorities to adopt your recommendations?
    - the timing and effects of the implementation of your proposed measures?
- Do you have a system in place to **monitor new cases** in which your involvement early on could help define the scope of implementation and the Council of Europe's corresponding supervision?
- Do you **streamline advocacy** for judgment implementation across your organisation's activities?
- Do you regularly take stock of the impact of your advocacy, and **adapt your strategy** as needed?

Do you engage constructively with the government?

- D**o you call the government out on its overall implementation record**, highlighting the real scope of non-implementation (using EIN's methodology)?
- **Do you call the government out on serious delays** in submitting Action Plans/Action Reports to the Committee of Ministers?
- Do you try, where possible, to maintain **regular contacts** with the government to 'normalise' civil society involvement, or create opportunities for regular exchange about judgment implementation?
- Do you strive to **intervene as early as possible** after a judgment becomes final? For example:
    - Do you proactively reach out to the government with a view to **contributing to the drafting of the Action Plan** by suggesting what measures are needed to implement a new final judgment?
    - Have you considered **organising a stakeholders' meeting** after a new judgment becomes final, to present your views on implementation?

- Do you **offer to contribute actively to both the design and the adoption of implementation measures**, for instance by taking part in working groups set up to draft new laws or by cooperating with the government in the elaboration of administrative guidelines?
- Do you **monitor the adoption and effect of reforms**, including by using research and freedom of information requests to obtain relevant data and information?
- Do you create opportunities to **facilitate direct exchanges between the government and victims**, communities or individuals affected by non-implementation to sensitise the government to the needs of the intended beneficiaries of reform?
- Have you considered **using indirect channels of communication** with the government, for example through diplomatic representations in your capital or through the media?
- Do you think strategically about when and how to use different **tools of diplomacy, pressure, cajoling or nudging**?

Do you engage constructively with parliamentarians?

- Do you **remind parliamentarians of their shared responsibility** for the effective implementation of judgments, based on their oversight, legislative and budgetary functions?
- Do you **provide relevant information to parliamentarians** about the implementation process generally and outstanding challenges in the implementation of specific measures?
- Do you actively seek to **identify potential allies** within parliament (who may include members of your national delegation to the Parliamentary Assembly of the Council of Europe)?
- Do you use your contacts to **promote the use of parliamentary questions** as a tool to hold the government to account for its record of implementing judgments?
- Do you **lobby for or participate in hearings** before parliamentary committees about the implementation of specific judgments and the overall state of implementation?
- Do you **publish and disseminate shadow reports** to reports about the implementation of judgments submitted to parliament by the executive, and lobby for them to be discussed?

Do you engage constructively with judicial and law enforcement officers?

- Do you use ongoing domestic litigation to **draw judges' attention to relevant case law** of the Strasbourg Court?
- Do you **monitor judicial, prosecutorial and investigatory practices** with a view to identifying prevailing incompatibilities with Convention standards and the Strasbourg Court's case law?
- Do you contribute to the **elaboration of guidelines** or methodologies to be used by, for example, investigative and prosecutorial services?
- Do you **design and deliver training** to police or other law enforcement officers?

Do you work towards strengthening domestic structures and mechanisms for implementation?

- Where effective implementation is hampered by poor coordination among the government, have you **advocated for the adoption of laws or regulations** that specify the mandate, powers and duties of the Government Agent?
- Have you considered **lobbying for** regular (at least annual) **government reporting** to parliament on the implementation of judgments?
- Have you sought to work towards **strengthening inter-agency coordination** of the implementation of judgments, for example by lobbying for the setting up of a multi-stakeholder platform for implementation that ensures meaningful involvement of civil society in the process?
- Have you advocated for **strengthening parliamentary mechanisms**, for example by lobbying for the creation of a parliamentary committee or sub-committee with a remit for overseeing and promoting the implementation of judgments?
- Where you have done so, have you called for this **(sub-)committee to have a permanent status** and a remit that is clearly defined and enshrined in the parliament's standing orders?

Do you form alliances with other civil society actors?

- Do you seek to **coordinate and cooperate** with other NGOs, human rights defenders, activists and campaigners, bar associations, media actors, victims' organisations, affected communities and others, including (where they operate effectively and independently) national human rights institutions (NHRIs) – both in your case-level advocacy and in your advocacy aimed at strengthening domestic structures and procedures for the implementation of judgments?
- Have you considered **reaching out to EIN**, and ask to be put in contact with others who might be able to share good practices and their experiences with you?
- As an EIN member organisation, have you explored ways to work with EIN to **enhance your capacity to act as an 'implementation hub'** in your country? Have you communicated any training or other needs to the EIN Secretariat and sought their support?

Do you communicate effectively about (non-)implementation?

- Does advocacy for the implementation of judgments form part of your **communication strategy**?
- Do you routinely use mass media (print, radio, TV, social media) to **call for reforms** in specific cases?
- Have you used communications to **expose how well or poorly your state is implementing judgments**, by reference to information available on EIN's dedicated webpages?
- Have you **established relationships with journalists** that permit you to use the media to raise public awareness of, and generate public support for, reforms aimed at guaranteeing the implementation of judgments?
    - Have you considered **training journalists** on the basics of the Convention and the judgment implementation process?

- Have you created brief, easy-to-access **resources** explaining the implementation process, and used them to enhance journalists' knowledge of the system?

- Do you routinely **secure publicity for your Strasbourg advocacy**, including your Rule 9 submissions and the Committee of Ministers' decisions or interim resolutions?
    - Do you **communicate details of your Rule 9** submissions and the Committee of Ministers' decisions **in your social media output and newsletter**?
    - Have you considered **organising a press conference** or roundtable to draw attention to and discuss the implications of a new decision from the Committee of Ministers in one of your priority cases?
    - Do you **share the Committee of Ministers' decisions with relevant actors** in your country, including selected diplomatic representations, alongside brief recommendations regarding necessary steps to resolve outstanding implementation issues?
- Have you sought to **bring the human stories behind unimplemented cases to the fore**, through TV interviews, video campaigns or other means?
- Have you used communications to **raise awareness among the intended beneficiaries of reforms** of their Convention rights and ways in which they might want to push for the implementation of cases that have repercussions for them?
- Have you considered **other ways of garnering public support** for your advocacy for the implementation of judgments, for example through peaceful parades or protests, street performances, leafletting, or art protests?

Annex 2: Thank you to those who have contributed to this toolkit

We would like to thank all those organisations and persons who have shared their insights with us for their useful input. The production of this guide would not have been possible without their contributions.

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European Human Rights Advocacy Centre (EHRAC), UK
European Roma Rights Centre (ERRC), Hungary
Fair Trials, Belgium
Greek Helsinki Monitor (GHM), Greece
Georgian Young Lawyers' Association (GYLA), Georgia
Helsinki Citizens Assembly Vanadzor Office, Armenia
Helsinki Foundation for Human Rights (HFHR), Poland
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Human Rights Monitoring Institute (HRMI), Lithuania
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Lawyers' Committee for Human Rights (YUCOM), Serbia
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