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## Implementing Strasbourg Court Judgments: the Parliamentary Dimension

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### Keywords

Parliamentary Assembly, Committee of Ministers, European Court of Human Rights, parliament, scrutiny, supervision, execution, implementation, judgment

### A Introduction

*"[It is necessary] to draw attention to the critical importance of the implementation of the Court's judgments. If the Court's long-term viability is to be ensured, it is essential that Member States take appropriate measures to implement the Court's judgments and prevent repeat violations."*<sup>1</sup>

The European Convention on Human Rights (hereinafter: "the Convention") has been heralded as the most effective system in the world for judicial protection of human rights.<sup>2</sup> Despite the achievements of the Convention, the inundation of applications received by the European Court of Human Rights (hereinafter: "the Court") has raised concerns as to the viability of the current system.<sup>3</sup> While deliberations as to how to ensure the long-term effectiveness of the Convention have primarily focused on the critical case-load of the Court, there has been a tendency

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1 Lord Woolf, Review of the Working Methods of the European Court of Human Rights, December 2005, 66.

2 Alec Stone Sweet and Helen Keller, The Reception of the ECHR in National Legal Orders, in: Alec Stone Sweet and Helen Keller (eds.), A Europe of Rights: The Impact of the ECHR on National Legal Systems, Oxford 2008, 1.

3 Lord Woolf (2005), 7.

to overlook an equally worrying and inter-related problem, namely the failure and/or substantial delay of member states in executing judgments of the Court.

All state parties to the Convention have undertaken to abide by the final judgment of the Court in any case to which they are a party.<sup>4</sup> This obligation is a principal pillar on which the Convention functions, and exemplifies the subsidiary nature of the Strasbourg system, dictating that ultimate responsibility for ensuring the protection of the rights and freedoms enshrined in the Convention rests with member states.<sup>5</sup> There has been an unrelenting increase in the number of judgments pending examination before the Committee of Ministers, which exercises primary responsibility for supervising the implementation of Strasbourg judgments:<sup>6</sup> at the end of 2006 there were 5,636 judgments pending examination before the Committee of Ministers, while the equivalent figure for 2009 was 8,614.<sup>7</sup> Failure or substantial delay in executing judgments undermines the Strasbourg system and simultaneously erodes the credibility of the Court. Not only is individual justice denied, but the failure to implement effective general measures results in the recurrence of similar infringements, producing repetitive applications and distracting the Court from its essential function: “interpretation and application of the Convention and the protocols thereto”.<sup>8</sup>

The effective functioning of the Convention system “rests on the assumption that there are strong and effective protection systems in place at national level”,<sup>9</sup> including procedures for the implementation of Strasbourg Court judgments. The increasing volume of cases pending supervision before the Committee of Ministers and the protracted execution of judgments illustrates that this fundamental precondition has not always been realized. The problem of implementation is aggravated by the limited power exercised by the Committee of Ministers, which can do little when confronted with persistent failure to execute judgments.<sup>10</sup>

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4 Article 46 § 1 of the Convention: “The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.”

5 “The Court points out that the machinery of protection established by the Convention is subsidiary to the national systems safeguarding human rights.” European Court of Human Rights (ECtHR), *Handyside v. the United Kingdom*, judgment of 7 December 1976, Series A no. 24, § 48. Unless otherwise noted all cases cited hereinafter are from the ECtHR.

6 Article 46 § 2 of the Convention: “The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution.”

7 Committee of Ministers, *Supervision of the execution of judgments of the European Court of Human Rights: Second Annual Report (2008)*, Table 1.b of Appendix 1: Statistical data, April 2009, 33, available at [http://www.coe.int/t/DGHL/Monitoring/Execution/Source/Publications/CM\\_annreport2008\\_en.pdf](http://www.coe.int/t/DGHL/Monitoring/Execution/Source/Publications/CM_annreport2008_en.pdf) and Herta Däubler-Gmelin, *The Future of the Strasbourg Court and Enforcement of ECHR Standards: Reflections on the Interlaken Process*, Document AS/Jur (2010)06, § 8. All documents of the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly referred to in this text can be consulted on the Committee’s website: [http://assembly.coe.int/Main.asp?link=/Committee/JUR/role\\_E.htm](http://assembly.coe.int/Main.asp?link=/Committee/JUR/role_E.htm).

8 Article 32 § 1 of the Convention; Committee of Ministers, *Report of the Group of Wise Persons to the Committee of Ministers*, 15 November 2006 (CM(2006)203), § 35.

9 Costas Paraskeva, *Returning the protection of human rights to where they belong, at home*, *International Journal of Human Rights*, 12 (2008) 3, 438.

10 As Steven Greer writes, “[The execution of Court judgments] is the Achilles heel of the entire Convention system because there is very little the Council of Europe can do with a state persis-

While reform of the Convention so as to increase the efficiency and transparency of the Committee of Ministers would be welcomed, the principle of subsidiarity necessitates that if the implementation process is to function effectively, domestic mechanisms ensuring the execution of Court judgments must be strengthened.

While the Committee of Ministers is attributed primary responsibility for supervising the execution of Strasbourg judgments under Article 46 § 2 of the Convention, this has not prevented the Parliamentary Assembly of the Council of Europe (hereinafter: “the Assembly”) from often exercising an instrumental role in the implementation of judgments.<sup>11</sup> In his most recent working document, Christos Pourgourides, the Assembly’s rapporteur on the implementation of Strasbourg judgments, highlighted the need to reinforce domestic mechanisms for the execution of European Court judgments.<sup>12</sup> The rapporteur, acknowledging the unique position of the Assembly being composed of national parliamentarians, focused on the need to strengthen the role of parliaments in the implementation of Strasbourg judgments. By emphasizing this aspect in his report, the rapporteur has not only highlighted the essential function of national parliaments in the implementation process, but provided an indication as to the future role which the Assembly may adopt in supervising the execution of judgments.

## **B The Evolving Role of the Parliamentary Assembly in Supervising the Implementation of Strasbourg Judgments**

The Parliamentary Assembly, like the Committee of Ministers, is responsible for protecting the values of the Council of Europe and ensuring that member states honour their commitments under the Convention.<sup>13</sup> Yet the Assembly was never intended to be a body for monitoring the implementation of the Court’s judgments. Indeed, the subject was a relatively secondary aspect of the Assembly’s work until the unanimous adoption by the Legal Affairs and Human Rights Committee (hereinafter: “the LAHR Committee”), on 27 June 2000, of the first report on the

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*tently in violation, short of suspending its voting rights on the Committee of Ministers or expelling it from the Council altogether, each of which is likely in all but the most extreme circumstances to prove counterproductive.”*

(Steven Greer, *The European Convention on Human Rights: Achievements, Problems and Prospects*, Cambridge 2006, 155-156). The United Kingdom’s Joint Committee on Human Rights has expressed “concerns about the speed, effectiveness and transparency of the Committee of Ministers process.” (Sixteenth Report of Session 2006-2007, *Monitoring the Government’s response to court judgments finding breaches of human rights*, (HL Paper 128, HC 728), 28 June 2007, § 6).

11 Christos Pourgourides, *Implementation of Judgments of the European Court of Human Rights: Introductory Memorandum*, Document AS/Jur (2008) 24, 26 May 2008 (declassified by the Committee on 2 June 2008), § 2.

12 Christos Pourgourides, *Implementation of Judgments of the European Court of Human Rights: Progress Report*, Document AS/Jur (2009) 36, of 31 August 2009 (declassified by the Committee on 11 September 2009), §§ 22-25.

13 Council of Europe, *Parliamentary Assembly – Practice and Procedure*, 10<sup>th</sup> ed., Strasbourg 2008; Bruno Haller/Hans Christian Krüger/Herbert Petzold (eds.), *Law in Greater Europe: Towards a Common Legal Area*, Studies in Honour of Heinrich Klebes, The Hague 2000.

matter by Erik Jurgens.<sup>14</sup> On the basis of the report, the Assembly adopted Resolution 1226 (2000), highlighting the importance of effective synergy between the Court, the Committee of Ministers and national authorities, and undertaking to play a greater role itself in supervising the execution of judgments.<sup>15</sup> Thereafter, under Resolution 1268 (2002), the LAHR Committee was assigned open-ended terms of reference and instructed “to continue to update the record of the execution of judgments and to report to [the Assembly] when it considers appropriate”.<sup>16</sup> To this extent, the LAHR Committee, in supervising the execution of Court judgments, is not bound by Rule 25 § 3 of the Assembly’s Rules of Procedure, which provides that references to committees lapse after two years. This is a key exemption which underlines the importance of the subject and enables the current rapporteur to supervise the implementation of Strasbourg Court judgments on an open-ended basis, facilitating a sustained dialogue with member states.

Since 2000, the Assembly has adopted six reports,<sup>17</sup> six resolutions<sup>18</sup> and five

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- 14 Erik Jurgens, Execution of Judgments of the European Court of Human Rights, Committee on Legal Affairs and Human Rights, Assembly Doc. 8808, of 12 July 2000 (prepared on the basis of a motion for a resolution presented by Georges Clerfayt and others, Execution of judgments of the Court and the monitoring of the caselaw of the European Court and Commission of Human Rights, Assembly Doc. 7777, 13 March 1997). Prior to the adoption of this report, the Assembly, exercising its general powers, had taken an interest in the subject, instructing the Committee on Legal Affairs in 1993 to report to the Assembly “when problems arise on the situation of human rights in member states, including their compliance with judgments by the European Court of Human Rights” (Order no. 485 (1993) on the general policy of the Council of Europe, 29 June 1993, § 2). The Assembly’s supervision was stepped up with the introduction of the new monitoring procedure in 1993, which was extended to the honouring of obligations and commitments by all Council of Europe member states in April 1995 (Order no. 488 (1993) on the honouring of commitments entered into by new member states, 29 June 1993, § 3, extended to all member states by Order no. 508 (1995) on the honouring of obligations and commitments by member states of the Council of Europe, 26 April 1995, § 6).
- 15 Resolution 1226 (2000), Execution of Judgments of the European Court of Human Rights, adopted by the Assembly on 28 September 2000; see also Recommendation 1477 (2000), Execution of Judgments of the European Court of Human Rights, adopted by the Assembly on 28 September 2000, and the reply from the Committee of Ministers, adopted at the 779<sup>th</sup> meeting of the Ministers’ Deputies, 9 January 2002, Doc. 9311.
- 16 Resolution 1268 (2002), Implementation of Decisions of the European Court of Human Rights, adopted by the Assembly on 22 January 2002, § 12.
- 17 Reports on the execution/implementation of Judgments of the European Court of Human Rights: PACE Doc 8808, Execution of Judgments of the European Court of Human Rights, LAHR Committee, Erik Jurgens, 12 July 2000; PACE Doc 9307, Implementation of Decisions of the European Court of Human Rights, LAHR Committee, Erik Jurgens, 21 December, 2001; PACE Doc. 9537, Implementation of Decisions of the European Court of Human Rights by Turkey, LAHR Committee, Erik Jurgens, 5 September 2002; PACE Doc. 10192, Implementation of Decisions of the European Court of Human Rights by Turkey, LAHR Committee, Erik Jurgens, 1 June 2004; PACE Doc. 10351, Implementation of Decisions of the European Court of Human Rights, LAHR Committee, Erik Jurgens, 21 October 2004; PACE Doc 11020, Implementation of Judgments of the European Court of Human Rights, LAHR Committee, Erik Jurgens, 18 September 2006.

recommendations<sup>19</sup> on the implementation of the Court's judgments, addressing particularly problematic instances of non-execution. The texts adopted by the Assembly aim to apply pressure on member states to take effective measures with a view to implementing the judgments identified, and to provide greater political transparency with regard to the failure or substantial delay by a significant number of member states in executing judgments of the Court. In performing his mandate, Erik Jurgens adopted several pro-active working methods. The effectiveness of two practices in particular has compelled the current rapporteur, Christos Pourgourides, to continue his predecessor's approach: first, conducting a state-by-state assessment, applying set criteria for identifying judgments, so as to ensure a non-discriminatory approach,<sup>20</sup> and second, conducting a pro-active dialogue with the state parties concerned, including – since 2005 – *in situ* visits to member states with particularly problematic instances of non-implementation.<sup>21</sup>

In a recent working document, Christos Pourgourides revealed that the failure of member states to fully and expeditiously implement judgments of the Court is far graver, and more widespread, than previous reports had disclosed. Applying the same objective criteria employed for the identification of judgments addressed in the sixth report, the rapporteur illustrated the significant increase in the number of judgments pending examination before the Committee of Ministers which can be considered as particularly problematic instances of non-execution.<sup>22</sup> The rapporteur acknowledged that, aside from being outwith the capacity of a single rapporteur, to address all the judgments falling within the criteria would result in unnecessary duplication of the work of the Committee of Ministers.<sup>23</sup>

Identifying the extent to which member states are failing to execute judgments of the Court, highlights the urgent need to reinforce domestic mechanisms for the

18 Resolutions on the execution/implementation of judgments of the European Court of Human Rights: PACE Resolution 1226 (2000); PACE Resolution 1268 (2002); PACE Resolution 1297 (2002); PACE Resolution 1381 (2004); PACE Resolution 1411 (2004); PACE Resolution 1516 (2006).

19 Recommendations on the execution/implementation of judgments of the European Court of Human Rights: PACE Recommendation 1477 (2000); PACE Recommendation 1546 (2002); PACE Recommendation 1576 (2002); PACE Recommendation 1684 (2004); PACE Recommendation 1764 (2006).

20 In preparing his sixth report, which was presented in September 2006, Erik Jurgens decided to alter the criteria applied for identifying judgments to be addressed, focusing on "judgments [...] which have not been fully implemented more than five years after their delivery [and] other judgments [...] raising important implementation issues, whether individual or general, as highlighted notably in the Committee of Ministers' Interim Resolutions or other documents." Erik Jurgens, Implementation of judgments of the European Court of Human Rights: Introductory Memorandum, Assembly Doc. 11020, 18 September 2006, § 6.

21 For the sixth report on the implementation of Strasbourg Court judgments Erik Jurgens visited five states: Italy, Russia, Turkey, Ukraine, and the United Kingdom; for the seventh report on the implementation of Strasbourg Court judgments, Christos Pourgourides has to date visited five states, namely Bulgaria, Greece, Italy, the Russian Federation and Ukraine, and is to visit another three (Moldova, Romania and Turkey) before he presents his report in 2010

22 Pourgourides (2009), § 5 and AS/Jur (2009) 36 Addendum, 31 August 2009 (declassified by the Committee on 11 September 2009).

23 Pourgourides (2009), § 8.

implementation of Strasbourg judgments. Parliamentary involvement and oversight is an important aspect in ensuring the prompt and effective execution of the Court's judgments. National parliaments may be able in specific instances, more effectively than the Committee of Ministers, to identify the social or political problems underlying a violation and understand the measures required to prevent the recurrence of similar infringements. Nevertheless, parliaments in very few member states are actively involved in the implementation of judgments of the Court (but see section C). Hence the need to reinforce dialogue with national authorities, and in particular national parliaments, on strengthening the involvement of the legislative branch of state authority in the implementation of Court judgments. The initiative for pursuing this approach appears to be based on four principal convictions. Firstly, prompt and full execution of the Court's judgments is necessary for the effective functioning of the Convention system. Secondly, the principle of subsidiarity dictates that for the Strasbourg system to function effectively, member states must ensure that the rights and freedoms enshrined in the Convention are primarily protected at a domestic level. Thirdly, national parliaments have a crucial role in supervising and contributing to the execution of the Court's judgments. Finally, the Assembly, being composed of national parliamentarians, is uniquely placed in seeking to strengthen the role of national parliaments in the implementation of Strasbourg Court judgments.<sup>24</sup>

The Assembly's Legal Affairs and Human Rights Committee has identified for itself a valuable role in supervising the execution of Strasbourg Court judgments. Monitoring the implementation of specific judgments according to established criteria has become increasingly difficult given the volume of cases which now fall within the mandate of the rapporteur: particularly problematic instances of non-execution.<sup>25</sup> This is not to imply that the Assembly's previous contributions were not of value. The efforts of Erik Jurgens were instrumental in furthering the implementation of certain judgments and providing greater visibility to protracted and negligent execution of judgments.<sup>26</sup> Nevertheless, it has become increasingly apparent that measures have to be implemented 'upstream', domestically, to ensure the effective implementation of Strasbourg judgments and prevent repetitive violations before the Court. Utilizing the Assembly's relationship with national parliaments provides a unique opportunity to strengthen the principle of subsidiarity: the fundamental requirement in guaranteeing the long-term effectiveness of the Convention system.

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24 A key point to be noted is the composition of each member state's parliamentary delegation: national delegations are always composed in such a way as to ensure fair representation of the political parties or groups in their respective parliaments.

25 Pourgourides (2009), § 7.

26 According to Philip Leach, "[t]he work carried out by PACE in recent years has ensured, to a certain extent, a stronger public and democratic aspect to the [implementation] process." (Philip Leach, *The Effectiveness of the Committee of Ministers in Supervising the Enforcement of Judgments of the European Court of Human Rights*, Public Law (2006) 443, 455). See also Philip Leach, *Opinion. On Reform of the European Court of Human Rights*, *European Human Rights Law Review* 2009, 725, 735.

## C The Role of National Parliaments in the Implementation of Strasbourg Judgments

The obligation arising under Article 46 § 1 of the Convention is a collective responsibility for all state organs, including national parliaments.<sup>27</sup> A recent comparative report disclosed that state parties with strong implementation records are regularly characterized by active involvement of parliamentary actors in the execution process.<sup>28</sup> Organs of the Council of Europe have acknowledged that the implementation of Strasbourg judgments greatly benefits from enhanced involvement of national parliaments.<sup>29</sup> Despite such observations, an analysis presented by the Assembly's LAHR Committee in May 2008, revealed that "parliaments in very few states exercise regular control over the effective implementation of Strasbourg Court judgments."<sup>30</sup>

Being composed of democratically elected representatives, parliament exercises an essential constitutional responsibility in holding the government to account. Its power of maintaining the government, which must regularly come before parliament in order to obtain support for policies, combined with its representative function, dictates that parliament subjects executive practice to substantial scrutiny.<sup>31</sup> There are three principal means by which a parliament holds the government to account: debate, parliamentary questions, and committees.<sup>32</sup> Through such channels "Parliament, more effectively than the Committee of Ministers, can scrutinise the Government's response to ensure that it acts swiftly to fulfil the [obligation under Article 46 § 1 of the Convention], and that it does so adequately."<sup>33</sup>

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27 "It is thus at national level that the most effective and direct protection of the rights and freedoms guaranteed in the Convention should be ensured. This requirement concerns all state authorities, in particular the courts, the administration and the legislature." (Appendix to Recommendation Rec(2004)5 of the Committee of Ministers to member states on the verification of the compatibility of draft laws, existing laws and administrative practice with the standards laid down in the European Convention on Human Rights, § 2).

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

29 Ministers' Deputies, Implementation of judgments of the European Court of Human Rights, Parliamentary Assembly Recommendation 1764 (2006), Doc. CM/AS(2007) Rec1764 final 30 March 2007, Reply adopted by the Committee of Ministers on 28 March 2007 at the 991<sup>st</sup> meeting of the Ministers' Deputies, § 1; Resolution 1516 (2006), Implementation of Judgments of the European Court of Human Rights, adopted by the Assembly on 2 October 2006, § 2.

30 Secretariat of the LAHR Committee, The role of national parliaments in verifying state obligations to comply with the European Convention on Human Rights, including Strasbourg Court judgments: an overview, 23 May 2008, in: LAHR Committee, Stockholm Colloquy: "Towards stronger implementation of the European Convention on Human Rights at national level", 9-10 June 2008, Doc. AS/Jur (2008) 32 rev., of 23 June 2008, § 11.

31 Adam Tomkins, *Public Law*, Oxford 2003, 92.

32 *Ibid.*, 160.

33 Joint Committee on Human Rights, Monitoring the Government's response to Court judgments finding breaches of human rights, Sixteenth Report of Session 2006-2007

Scrutiny of the government's response to an adverse judgment of the Court takes two broad forms. First, parliament should exercise oversight in ensuring that the competent authorities promptly adopt adequate measures to execute a judgment of the European Court. Parliament, in exercising a supervisory function, places an expectation upon the Government to uphold their commitments under the Convention and increases the political transparency of the implementation process. To this extent the Assembly has invited "all national parliaments to introduce specific mechanisms and procedures for effective parliamentary oversight of the implementation of the Court's judgments."<sup>34</sup> In the United Kingdom, the parliamentary Joint Committee on Human Rights (hereinafter: "the Joint Committee") produces an annual report monitoring the Government's response to adverse judgments of the European Court and declarations of incompatibility by domestic courts.<sup>35</sup> In a recent monitoring report, the Joint Committee identified obstacles to effective implementation in certain cases and judgments in respect of which execution has been particularly protracted. Recognising such problems not only highlights the urgent need to implement effective general measures in respect of such cases, but indicates deficiencies in the existing domestic mechanism for the execution of Strasbourg Court judgments. In respect of the latter, the Assembly has called upon member states to "set up, either through legislation or otherwise, domestic mechanisms for the rapid implementation of the Court's judgments."<sup>36</sup> To enable parliament to effectively supervise the government's response to an adverse decision of the Court, there must exist a procedure through which parliament is promptly and systematically informed of such judgments and the measures implemented in the execution thereof. Despite the practical importance of such a mechanism, an assessment conducted by the LAHR Committee revealed that such a procedure existed in a surprisingly small number of member states.<sup>37</sup> In his recent working document, Christos

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(HL Paper 128, HC 728), 28 June 2007, § 7; "Parliament has an important role to play in scrutinising, at national level, the Government's performance of the obligations which arise following a judgment in which the ECtHR has found the UK to be in breach of the ECHR" (*ibid.*).

34 Resolution 1516 (2006), Implementation of judgments of the European Court of Human Rights, adopted by the Assembly on 2 October 2006, § 22.1.

35 Joint Committee on Human Rights, Enhancing Parliament's role in relation to [Strasbourg Court] human rights judgments, Fifteenth Report of Session 2009-10 (HL Paper 85, HC 455), 26 March 2010, <http://www.publications.parliament.uk/pa/jt200910/jtselect/jtrights/85/85.pdf> (see, in particular, §§ 1 to 17 & 195-196, and Annex: Guidance for Departments on Responding to Court Judgments on Human Rights, at pp. 69-76); Joint Committee on Human Rights, Monitoring the Government's response to human rights judgments: Annual report 2008, Thirty-first Report of Session 2007-08 (HL Paper 173, HC 1078), 31 October 2008; Joint Committee on Human Rights, Monitoring the Government's response to Court judgments finding breaches of human rights, Sixteenth Report of Session 2006-07 (HL Paper 128, HC 728), 28 June 2007; Joint Committee on Human Rights, Implementation of Strasbourg judgments: First progress report, Thirteenth Report of Session 2005-06 (HL Paper 133, HC 954), 8 March 2006.

36 Resolution 1516 (2006), Implementation of Judgments of the European Court of Human Rights, adopted by the Assembly on 2 October 2006, § 22.2.

37 Secretariat of the LAHR Committee (2008), § 10.



Pourgourides identified the Netherlands as providing a model mechanism in this respect.<sup>38</sup>

The second form of scrutiny to which parliament should subject the government's response, concerns the actual content of the measures proposed to execute a judgment of the Court. Scrutiny in this respect is most evident in parliament's verification of the compliance of draft legislation with Convention standards. The Committee of Ministers has recommended that member states "ensure that there are appropriate and effective mechanisms for systematically verifying the compatibility of draft laws with the Convention in the light of the case-law of the Court."<sup>39</sup> Therefore, 'Strasbourg vetting' of draft legislation is necessary, irrelevant of whether the bill has been introduced in response to an adverse judgment of the Court. Verification of draft legislation is a principal preventative measure in seeking to avoid unjustified infringement of the Convention guarantees.

The importance of this preventative measure is particularly evident in the context of legislation drafted in response to an adverse finding of the Court, where the adoption of new, Convention-compliant, legislation, is necessary to prevent similar future infringements. Again, despite the importance of 'Strasbourg vetting' of draft legislation, an assessment conducted by the Secretariat of the LAHR Committee revealed that "very few parliamentary mechanisms exist with a specific mandate to verify compliance [of draft legislation] with ECHR requirements."<sup>40</sup> Parliamentary scrutiny of legislation is not restricted to that drafted in response to a judgment of the Court. The Committee of Ministers has recommended that member states "ensure that there are such mechanisms for verifying, *whenever necessary*, the compatibility of existing laws and administrative practice" (emphasis added).<sup>41</sup> The delivery of a final judgment of the Court finding a violation of the Convention, would constitute the *necessary* circumstances in which parliament should examine the relevant law and practice to determine whether amendments are required to execute the judgment.

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38 The Minister of Foreign Affairs, also on behalf of the Minister of Justice, presents an annual report to Parliament concerning Strasbourg judgments delivered against the Netherlands. In 2006, the Senate requested that the annual report also contain an overview of the implementation of judgments emanating from Strasbourg. Consequently, the report now contains information concerning the measures adopted to implement adverse Court judgments against the Netherlands; Pourgourides (2009), §§ 28-29. See also, in this connection, minutes from a hearing the LAHR held on Parliamentary Scrutiny of ECHR Standards in Paris, on 16 November 2009, Document AS/Jur (2010) 7 (available on the Committee's website) and Martin Kuijer, *De betekenis van het Europees verdrag voor de rechten van de mens voor de nationale wetgever* [The significance of the ECHR for the national legislator], in H. R. Schouter (ed.), *Wetgever en constitutie* [The legislator and the Constitution], proceedings of symposium of the Netherlands Association on Legislation and Legislative Policy, 23 April 2009, Nijmegen 2009, 44-86.

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

40 Secretariat of the LAHR Committee (2008), § 6.

41 Recommendation Rec(2004)5, 39.

Arguably of equal value to the direct effect which parliamentary supervision and scrutiny has on the implementation of judgments, is the impact which such involvement has on human rights discourse at a domestic level. Article 46 § 1 entrusts an essentially quasi-judicial function to an inter-governmental body, and is thus dependent on the will of sovereign states.<sup>42</sup> The political nature of the Committee of Ministers reveals limitations of the collective enforcement mechanism.<sup>43</sup> The strengthening of human rights culture at national level, reinforcing the principal of subsidiarity, is essential for ensuring the long-term effectiveness of the Convention system. National parliaments have an essential function to fulfil in this respect.

*“The main contribution of Parliament to the process of protecting rights and creating a culture of human rights, apart from legislation, consists of using its influence and its scrutiny powers to keep human rights standards at the forefront of the minds of ministers and departments, regulators, and other public authorities. In this way Parliament can influence and encourage (or discourage) developments [...]”*<sup>44</sup>

Scepticism may be expressed concerning the extent to which parliament is able to facilitate human rights discourse at a domestic level, particularly in political systems where the legislative branch is dominated by the executive. Emphasis on executive government, in political systems characterised by strict party discipline, can promote a political culture hostile to human rights considerations, which are perceived as an obstruction to government policy.<sup>45</sup> Despite the dominant role of the executive in Westminster, the United Kingdom’s parliamentary Joint Committee on Human Rights has been instrumental in facilitating a political culture of rights.<sup>46</sup> Producing reports primarily motivated by principle, rather than partisan deliberations, the Joint Committee has increased parliamentary awareness of human rights standards, and created an expectation that government must account for its actions and justify proposals from a Convention perspective. The composition of the Joint Committee, equally constituted from both Houses of Parliament preventing government dominance, enables an approach independent of executive influence, which is essential if its observations are to exert any credible influence on parliamentarians.<sup>47</sup> The work of the Joint Committee has enabled greater transparency of parliamentary deliberation on Convention issues and has facilitated a human rights discourse between the legislature and executive. Such products of parliamentary scrutiny are essential for facilitating a human rights culture at the domestic level and ensuring adherence to the principle of subsidiarity as enshrined in the Convention system.

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42 David Harris/Michael O’Boyle/Ed Bates/Carla Buckley, Harris, O’Boyle and Warbrick, *Law of the European Convention on Human Rights*, 2<sup>nd</sup> ed., Oxford 2009, 885.

43 *Ibid.*, 886.

44 David Feldman, *Can and Should Parliament Protect Human Rights?*, *European Public Law* 10 (2004) 4, 651.

45 Janet L. Hiebert, *Parliament and the Human Rights Act: Can the JCHR help facilitate a Culture of Rights?*, *International Journal of Constitutional Law* (2006) 1, 11.

46 See generally Lord Lester of Herne Hill/Lord Pannick/Javan Herberg, *Human Rights Law and Practice*, London 2009, 871-886.

47 Hiebert (2006), 16.

Experience also suggests that national parliaments must possess an efficient “legal service” with specific Convention competence. Without such expertise at their disposal, parliamentarians cannot carry out this important work properly.

## D Concluding Observations

*“Faced with a structural situation, the Court is in effect saying to the respondent state and to the Committee of Ministers that they too must play their role and assume their responsibilities.”<sup>48</sup>*

Debate concerning reform of the Convention system, and indeed proposals in this respect, have focused on increasing the effectiveness of the Court and the efficiency of the Committee of Ministers, as both bodies seek to reduce their backlog of applications and appropriate compliance with judgments, respectively. However, as already observed, the reforms proposed in Protocol No. 14 (which will at long-last enter into force on 1 June 2010) will not in themselves be sufficient to guarantee the long-term effectiveness of the Convention system.<sup>49</sup> Hence, the Swiss Government’s initiative to discuss, at a special ministerial conference in Interlaken, on 18 and 19 February 2010, the future of the Convention system. Whether the Interlaken Declaration, together with an eight-point Action Plan adopted by ministers in Interlaken on 19 February 2010,<sup>50</sup> will provide sufficient political impetus to address domestic (non-)implementation of Convention standards and find solutions to ensure prompt and full compliance with Strasbourg Court judgments is difficult to foretell. Hence, the need for closely involving both the Parliamentary Assembly and national parliaments in the follow-up to the “Interlaken process”.

Importantly, while the reforms may reduce worrying statistics, they will not guarantee substantially greater protection of human rights in Europe, the *raison d’être* of the Convention. An adverse judgment of the Court against a member state does not *per se* ensure justice for the victim or the prevention of future violations. Increased productivity on behalf of the Court will not necessarily translate into an equivalent rise in the number of judgments implemented within a reasonable period of time by member states. For the Convention system to func-

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48 Luzius Wildhaber, Consequences for the European Court of Human Rights of Protocol No. 14 and the Resolution on Judgments Revealing an Underlying Systemic Problem – Practical Steps of Implementation and Challenges, in: Council of Europe, Applying and Supervising the ECHR: Reform of the European Human Rights System (2004), 26, [http://www.coe.int/t/e/human\\_rights/1reformeurhrsystem\\_e.pdf](http://www.coe.int/t/e/human_rights/1reformeurhrsystem_e.pdf).

49 Committee of Ministers (CM(2006)203), § 32;  
*“Measures required to ensure the long-term effectiveness of the control system established by the ECHR in the broad sense are not restricted to Protocol No. 14. Measures must also be taken to prevent violations at national level and to improve domestic remedies, and also to enhance and execution of the ECtHR’s judgments.”* (Explanatory Report to Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the Control System of the Convention, § 14).

50 High Level Conference on the Future of the European Court of Human Rights, Interlaken Declaration, 19 February 2010, [http://www.eda.admin.ch/etc/medialib/downloads/edazen/topics/europa/euroc.Par.0133.File.tmp/final\\_en.pdf](http://www.eda.admin.ch/etc/medialib/downloads/edazen/topics/europa/euroc.Par.0133.File.tmp/final_en.pdf).

tion effectively a balance must be struck between national protection and international supervision: at present Strasbourg is bearing a disproportionate burden. The Convention's subsidiary nature necessitates that if the long-term viability of its system is to be ensured, member states must strengthen domestic mechanisms for the protection of human rights.

While the emphasis for ensuring the effectiveness of the Convention must shift on to member states in accordance with the principle of subsidiarity, the Council of Europe is not helpless in securing its own future. Acknowledging that the problem of late and non-implementation is far graver and more widespread than previous reports of the Assembly have disclosed, Christos Pourgourides has committed to strengthening national parliamentary involvement in the execution of Court judgments. To this end the rapporteur is utilizing the double-mandate of his peers, as members of both the Assembly and their respective national parliament. Reinforcing parliamentary involvement in the execution process will require time. However, the rapporteur is uniquely placed in having an open-ended mandate. Parliamentary oversight of the implementation of judgments, and scrutiny of measures proposed for this purpose, is an important aspect in any mechanism for the effective execution of Strasbourg Court judgments. This obligation derives not only from Article 46 § 1 of the Convention, but from the constitutional responsibility of parliament, being composed of democratically elected representatives, to hold the executive to account. Strengthening the role of national parliaments in the execution process, will not only enhance the implementation of individual judgments, but will reinforce human rights culture in domestic politics. This is necessary if member states are to ensure the effective domestic protection of the rights and freedoms enshrined in the Convention and its protocols.