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**STEERING COMMITTEE FOR HUMAN RIGHTS
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**COMMITTEE OF EXPERTS ON THE REFORM OF THE COURT
(DH-GDR)**

National Implementation of the Interlaken Declaration

**Perspectives of European civil society on national implementation
of the Interlaken Declaration and Action Plan: Czech Republic, Hungary, Italy,
Poland, Republic of Moldova, Russian Federation and Ukraine**

(Document submitted by Open Society Justice Initiative)

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Executive Summary

The Interlaken Declaration and Action Plan of 2010 (Interlaken) articulated a roadmap for implementing the Convention for the Protection of Human Rights and Fundamental Freedoms (the *Convention*). The subsequent Izmir Declaration of 2011 (which adopted its own Follow-Up Plan) reiterated many of the Interlaken priorities, including the right to individual petition and the need to implement European Court of Human Rights (ECHR) judgments at the national level, and urged States (as did Interlaken) to submit national implementation reports to the Committee of Ministers (CoM) at the end of 2011. This paper reflects civil society perspectives on national implementation in seven countries in which the Open Society Justice Initiative works closely with local partners, and in which the lack of implementation in crucial areas severely impinges upon the promotion and protection of human rights: Czech Republic, Hungary, Italy, Moldova, Poland, Russia, and Ukraine.

As a frequent litigator before the ECHR, and an advocate for the rule of law more generally, the Open Society Justice Initiative has a continuing interest in enhancing the effective implementation of the ECHR's judgments.

States submitted official reports to the CoM containing governmental assessments of their achievements in implementing Interlaken. These submissions contained little if any information from civil society actors—litigators and NGOs alike—whose views on Interlaken implementation may diverge considerably from those of their governments. While some positive examples of action on implementation exist, on balance, civil society actors are disappointed with States' performance in implementing Interlaken. The consequences of this implementation failure are real and devastating for Europeans who depend upon the ECHR to hold their governments accountable.

By polling civil society and including its views in this report, the Open Society Justice Initiative hopes to aid the CoM and Member States in identifying implementation gaps and challenges as well as recommendations for action.

While this paper does not purport to address every aspect of Interlaken implementation addressed in the national reports, it seeks to draw attention to those issues that Open Society Justice Initiative civil society partners identified as priority matters. Specifically, this paper is organized in five parts, which correspond to the five greatest areas of concern for civil society:

- *Failure to execute judgments.* While the CoM plays an important role in supervising the execution of ECHR judgments, States still bear primary responsibility for defining and implementing measures to realize these judgments at the national level. For all those cases under the CoM's supervision, States are obligated to develop and implement action plans or action reports. This paper demonstrates the failure of the States addressed here to consistently execute ECHR judgments against them. In some cases, States simply refuse to enforce judgments due to lack of political will. In others, they deny the existence of

underlying violations despite ECHR pronouncements to the contrary. Many examples demonstrate a conceptual or logistical inability to create action plans, and still others reveal widespread technical incapacity to plan and undertake incremental steps to address complex violations.

- *Failure to address systemic Convention violations.* The pilot-judgment procedure, which clusters together and prioritizes multiple applications stemming from a common cause, seeks to identify the root dysfunction underlying a violation, propose means to address it, and enable the State Party to create a domestic remedy that eliminates the structural problem (and resolves the mass of similar cases). Most States discussed in this report have had difficulty executing pilot judgments and addressing other systemic *Convention* violations identified in ECHR decisions. These States consistently demonstrate serious limitations in their abilities to devise effective implementation measures and to coordinate the complex layers of responsible parties.
- *Lack of domestic remedies.* Often in contrast to official Government reports, civil society reports identify other impediments to the realization of rights under the *Convention*, particularly the lack of available remedies in domestic courts. These include the impossibility of reopening civil proceedings after ECHR judgments, the limited jurisdiction of domestic courts over human rights matters, problems of access to these courts, inadequate compensation, and delayed proceedings.
- *Failure to consider the Convention and case law.* Among the States considered in this paper, judges, prosecutors, and police often are inadequately versed in ECHR jurisprudence, leading to domestic investigations and judicial decisions that frequently contravene human rights norms. National parliaments and judiciaries regularly fail to consider and incorporate ECHR case law into their work. This further impedes human rights protection. When it is even considered, ECHR jurisprudence often is reflected only superficially in domestic legislation. At worst, State organs directly contravene ECHR decisions. As powerful actors, national parliaments should be engaged seriously in promoting human rights standards through implementing Interlaken, but as this report notes, they generally play, at best, a very limited role.
- *Lack of structures and coordination with civil society to implement Interlaken.* The States addressed in this report rely on pre-existing, already overstretched institutions to coordinate implementation of the Interlaken Declaration. Such Governmental structures tend toward weakness, vague mandates, overlapping responsibilities, and a lack of accountability. Furthermore, States often exclude civil society from engaging actively and effectively in implementation efforts, thwarting a much-needed source of support and monitoring for these inadequate governmental structures.

The cumulative effect of the flawed policies, practices, institutions and mandates summarized above creates bureaucratic dysfunction, but more importantly, upends peoples' lives. Roma children in the Czech Republic cannot obtain decent education and are thereby relegated to decades of poverty and disaffection; prisoners in Italy and Moldova regularly suffer ill treatment in detention; Chechen citizens are routinely subject to police abuse in Russia; and unfair trials abound in Hungary and Ukraine. The systematic failure to implement the Interlaken Declaration

and execute thousands of ECHR judgments is, indeed, an administrative debacle, but even more, it represents a human rights catastrophe.

Under the supervision of the Steering Committee for Human Rights (CDDH),¹ which operates under the auspices of the CoM, the Committee of Experts on the Reform of the Court (DH-GDR) will prepare a draft report analyzing responses by States Parties as to their national implementation efforts, and recommending follow-up. The report will be discussed at the plenary DH-GDR meeting 29-31 October 2012, possibly revised, and adopted at the CDDH meeting 27-30 November 2012, and ultimately approved by the CoM as a CoM report.²

Because both the CoM and States Parties share responsibilities to implement Interlaken, the Open Society Justice Initiative makes recommendations to each in this paper. On the one hand, the Justice Initiative urges the CoM to include the following specific recommendations in its report on national implementation, as well as to take actions to strengthen its own efforts to foster enhanced implementation of ECHR decisions. On the other, the Justice Initiative encourages States Parties to take up the ensuing recommendations at the national level.

Recommendations

To the Committee of Ministers

1. Include the following recommendations in the CoM report on national implementation, urging States Parties to:
 - Institute regular reviews of pending legislation to identify possible divergences from *Convention* standards, and inform the Committee of its efforts in this regard.³
 - Extrapolate principles from ECHR case law for their application to national legal systems.
 - Undertake regular consultations with civil society to gain their perspectives regarding States' implementation of ECHR judgments and of the Interlaken declaration.
2. Encourage provision of Council of Europe assistance (including financial assistance from the Human Rights Trust Fund) to institute remedies and structural changes by states for systematic problems already identified and condemned in ECHR judgments.
3. Facilitate the exchange of good practices between member States on the implementation of the Interlaken Declaration and ECHR judgments.
4. Facilitate constructive dialogue and information-sharing between the ECHR and national courts through the development or strengthening of professional networks and visits by domestic judicial authorities to the ECHR.
5. Invite members of civil society on a regular basis to share their perspectives with the CoM regarding States' implementation of the ECHR judgments and of the Interlaken declaration.

To Member States

1. Establish a body tasked specifically with implementation of ECHR judgments, separate from the State's agent, or representative to the ECHR in cases against it, with authority to coordinate the efforts of multiple government branches, where necessary, for effective implementation.
2. Establish a standing parliamentary human rights committee whose powers include to monitor and supervise the implementation of ECHR judgments and to review pending and existing legislation for compliance with *Convention* standards and ECHR case law.
3. Pass legislation identifying the powers and responsibilities of various governmental actors with respect to implementation of ECHR judgments.
4. Adopt detailed action plans on national implementation of *Convention* standards, including ECHR judgments, preferably through a legislative act.
5. Translate and publish action plans on execution of judgments and ensure parliamentary scrutiny of these action plans.
6. Remove any legislative, judicial, technical, or practical impediments that prevent complainants who have obtained ECHR judgments from accessing domestic remedies.
7. Regularly monitor execution of judgments at the national level and make the findings publicly available.
8. Where appropriate, seek financial assistance from the Human Rights Trust Fund to carry out efforts described in recommendations 1-7, above, designed to improve the execution of *Convention* standards and implement ECHR decisions.
9. Undertake regular (at least annual) consultations with civil society regarding ECHR-related matters, including execution of judgments.

Unexecuted Cases Pending Before the Committee of Ministers⁴
as of 2011

COUNTRY	NUMBER of CASES	NOTES
Czech Republic	109	
Hungary	260	
Italy	2522	Including 1743 concerning excessive length of judicial proceedings
Poland	924	Including 234 concerning excessive length of judicial proceedings
Moldova	202	
Russia	1087	Including 292 on failure or substantial delay by administration to abide by final domestic judicial decisions; 134 on poor conditions of pre-trial detention, including lack of adequate medical care and absence of an effective remedy, and 171 concerning abuses in Chechnya
Ukraine	819	

Introduction

1. In 2010, at the request of the President of the European Court of Human Rights (ECHR), Switzerland convened a high-level conference of States in Interlaken to discuss long-term reform of the Strasbourg system. The outcome of this meeting was the Interlaken Declaration and Action Plan (Interlaken), which articulated a roadmap for implementing the *Convention* for the Protection of Human Rights and Fundamental Freedoms (the *Convention*). Interlaken emphasized the importance of the right of individuals to petition the ECHR, the “obligation of the States Parties to ensure that the rights and freedoms set forth in the *Convention* are fully secured at the national level,” and the “shared responsibility between State Parties and the Court” to implement the *Convention*.

2. Conference participants agreed that States Parties would report back to the Committee of Ministers (CoM) in late 2011 with respect to their efforts to implement Interlaken. Building on the momentum of Interlaken, the Izmir High Level Conference on the Future of the ECHR, held in Turkey on April 26-27, 2011, culminated in the Izmir Declaration (Izmir), and reiterated the need for national reports describing implementation efforts. At a subsequent meeting, Ministers Deputies agreed on the structure of national reports, consisting of responses to a questionnaire composed of five questions inquiring whether, with respect to Interlaken implementation, each State had: 1) created any specific domestic structures; 2) identified national priorities; 3) increased awareness and application of *Convention* standards, including by executing ECHR judgments, integrating ECHR case law into domestic processes, and introducing new legal remedies; 4) planned or carried out any consultations with civil society; and 5) desired any technical or financial assistance from the Council of Europe. While each of the seven countries addressed in this paper submitted official State reports in response to the questionnaire, not every government responded to every question.

3. Although States ultimately are responsible for ensuring human rights protection within their borders, civil society members are key actors in monitoring and holding States accountable for the promotion and protection of these rights. Furthermore, civil society possesses valuable information from the ground, a perspective that often is lacking in the official State reports. Given that few States consulted with civil society in drafting their official submissions—which reflects a generalized failure to engage civil society in discussions about how most effectively to implement the Interlaken Declaration and Action Plan—the Open Society Justice Initiative (Justice Initiative) deemed it essential to fill this critical information gap.

4. This paper, therefore, is intended to augment official State reports on Interlaken implementation. The Justice Initiative works closely with civil society partners in seven Council of Europe Member States—the Czech Republic, Hungary, Italy, Poland, Republic of Moldova, the Russian Federation, and Ukraine⁵—in which the lack of implementation is particularly problematic. To provide a more complete picture of implementation in these countries as of August 2012, the Justice Initiative relied upon academic and public secondary sources, and

conducted its own interviews with attorneys and NGO and other civil society representatives, whom it asked to answer the same questionnaire completed by Member States on measures to implement Interlaken.⁶

5. While this paper does not purport to address every aspect of Interlaken implementation, it draws attention to those issues that civil society identified as priority matters. Specifically, this paper is structured in five parts, which correspond to the five greatest areas of concern for civil society: First, States' systematic and, in many cases, egregious failure to execute ECHR judgments, including selected examples of non-execution; second, States' persistent inability to remedy the structural problems at the origin of repetitive cases through the successful and timely execution of pilot judgments; third, the generalized unavailability of effective national remedies; fourth, the nonexistent or flawed consideration of ECHR case law in domestic legal regimes, including during the legislative process; and fifth, the failure to establish specific, useful domestic structures mandated to implement (or supervise implementation of) Interlaken, and the exclusion of civil society from consultations on how to undertake that implementation effectively.

1. Systematic Failure to Execute Judgments: Specific Examples of Non-Execution⁷

6. The Interlaken Declaration and Action Plan emphasize that, in order to fulfill States Parties' "strong commitment to the *Convention*,"⁸ "States must "fully execut[e] the Court's judgments."⁹ The "extraordinary contribution"¹⁰ of the ECHR to protecting human rights can only be realized, given the "subsidiary nature of the supervisory mechanisms established by the *Convention*," if States carry out their "fundamental role... in guaranteeing and protection human rights at the national level."¹¹

7. Furthermore, the *Convention* itself requires States Parties to "abide by the final judgments of the Court in any case to which they are parties"¹² by undertaking, in the case of an adverse ruling: (1) individual measures (including just satisfaction, if awarded); (2) to stop the subject violation and to place the applicant, as far as possible, into the situation existing before the breach (*restitutio in integrum*),¹³ and (3) general measures to ensure non-repetition of similar violations in the future where the violation is systemic or likely to affect others.¹⁴

8. The Committee of Ministers also plays an important role in supervising execution of judgments.¹⁵ Nonetheless, even with new modalities of supervision as of 2011—the so-called "twin-track approach" of standard and enhanced supervision— States still bear primary responsibility to define and implement measures to realize judgments at the national level. The CoM's oversight is based on the action plans that States develop; States are responsible for creating action plans or action reports for all cases under CoM supervision.¹⁶

9. Information discussed below demonstrates the failure of the States addressed here to consistently execute ECHR judgments against them. In some cases, States simply refuse to enforce judgments due to lack of political will. In others, they deny the existence of underlying violations despite ECHR pronouncements to the contrary. Many examples demonstrate a conceptual or logistical inability to create action plans, and still others demonstrate the widespread technical incapacity to plan and undertake incremental steps to address complex violations.

10. **The Czech Republic.** Czech NGOs note that where the execution of judgments requires more than a single action—but rather, a complex series of steps—the Government has failed to create comprehensive plans. The *D.H. and Others v Czech Republic*¹⁷ case is an apposite example. The Czech government recently informed the CoM that “[t]he Government consider [sic] the securing of equal opportunities in education of Roma children to be a vital task to which they are giving all due attention.”¹⁸ The continuing inability of Roma children in the Czech Republic to access quality education belies this claim. The Commissioner for Human Rights of the Council of Europe reported in March 2011 that there were “hardly any changes on the ground” since the 2007 decision.¹⁹ Later that year, experts reported that the Minister of Education had stopped implementing the plan, and that any ongoing processes were essentially “window-dressing” designed to mask the authorities’ lack of action,²⁰ suggesting an absence of political will. In June 2012, the CoM Deputies expressed regret that information from the Czech Government on implementing D.H. “does not clearly link with the action plan initially provided by the authorities”, lamented “the absence of information to date on the impact of the measures adopted during the current school year”, “underlined the importance of accelerating the implementation of the judgment”, and “called on the authorities to provide a consolidated action plan based on a clear medium- and short-term strategy, with a time-table and budget for the implementation of the measures foreseen.”²¹

11. **Hungary.** NGOs condemn the Government’s poor track record of enforcing ECHR judgments. Although the ECHR has adopted more than 260 decisions establishing a violation against Hungary, only a handful of action plans for executing judgments are available on the CoM’s website. While the Hungarian government indicated that “ambiguous reasoning” in judgments sometimes makes it difficult to implement them in comparable situations, in fact Hungary periodically refuses to enforce judgments and strengthens laws that violate the *Convention*. For example, when the ECHR ruled in 2008 in *Vajnai v Hungary*²² that the automatic criminal sanctioning of wearing a five point red star breached Article 41 of the *Convention*, Hungary failed to amend the relevant provisions of the Hungarian Criminal Code.²³ In the similar 2011 case of *Fratanoló v Hungary*,²⁴ the ECHR found the same violation. Rather than remedy the violation, the Hungarian Parliament adopted a July 2012 Resolution announcing its “disagreement” with the decision and refusal to amend the relevant provisions of the Criminal Code. In fact, a new Criminal Code adopted in June 2012 (after the *Fratanoló* decision) contains provisions similar to the prior Code, sanctioning the use of totalitarian symbols with detention rather than a fine, in clear violation of *Fratanoló*.²⁵

12. **Italy.** Italy has failed to adopt relatively simple yet potentially effective measures to execute judgments. For example, in *Sciacca v Italy*,²⁶ the ECHR found a violation of Article 8 because the Revenue Police divulged an applicant’s photograph at a press conference. The CoM website indicates that Italy has done nothing more than publish and disseminate the decision, and has not changed legislation or practice with regard to the violation. Given its inability to execute even simple judgments, Italy will have even more difficulty giving effect to important recent judgments that call for complex sets of measures, including: *Di Sarno* (waste disposal crisis in the area of Naples, judgment of 10 January 2012); *Hirsi and Others* (deportation of aliens to Libya, judgment of 23 February 2012); and *Centro Europa 7* (television broadcasting, judgment of 7 June 2012).

13. **Poland.** Since mid-2011, the Polish Ministry of Foreign Affairs has developed some action plans to respond to ECHR judgments. Nonetheless, a number of other cases, namely, *Baczkowski and Others v Poland*²⁷ (freedom of assembly – prohibition of gay pride demonstration), *Alicja Tysiąc v Poland*²⁸ (right to therapeutic abortion), *Grzelak v Poland*²⁹ (freedom to choose religion lessons), *Adamkiewicz v Poland*³⁰ (testimony in pre-trial proceedings without a lawyer), and *Kaprykowski v Poland*³¹ (lack of health care in prison), await proper execution. As an example, in *Baczkowski*, the ECHR found that Polish laws governing approval for public demonstrations failed to require an appropriately prompt final decision by authorities. In February 2012, the government of Poland informed the CoM that impending “legislative changes and publication and dissemination of the judgment” were sufficient to implement it.³² However, new legislation has not been adopted. In June 2012, the lower house of Poland’s parliament, the *Sejm*, debated draft legislation providing a prompt appellate procedure for review of decisions on public demonstrations, but also included a controversial provision doubling the advance notice that groups must give to the Government prior to an assembly from three to six days (ostensibly to give enough time for first and second instance review of the decision before the scheduled date of the demonstration). As a result of the latter provision, more than 160 NGOs protested against the draft when the upper house of Poland’s parliament, the *Senat*, debated it. In response, the *Senat* amended the draft, reducing the notification period back to three days, but also eliminating any new appellate procedure. As of August 2012, the *Sejm* will work on the *Senat*’s amendments, and is likely to adopt the law as amended by the *Senat*. If it does so, the new law will not implement the *Baczkowski* judgment.

14. **Moldova.** ECHR jurisprudence has highlighted a number of outstanding problems in Moldova, including:

- Police abuse: Since the ECHR’s first decision in 2006 finding an Article 3 violation regarding conditions of detention and abuse by the police,³³ the number of similar complaints has not decreased, and judges persist in leveling exceedingly mild sanctions for ill treatment. Despite the ECHR’s criticism of national authorities for failing to suspend police officers accused of torture, no such suspensions have occurred.
- Conditions of detention: Since a 2005 decision finding poor conditions of detention in violation of Article 3,³⁴ the Government has taken no substantial measures to improve the kinds of conditions identified in this and subsequent decisions. The Committee of Minister’s website on the execution of judgments indicates that the Moldovan government has not produced an action plan or report on many issues related to the functioning of the penitentiary system.³⁵
- Poorly reasoned decisions for arrest: Despite substantial judicial training, judges continue to provide poor reasoning in their decisions on arrests. As the ECHR noted, judges fail to provide a proper rationale for arrests, but rather, simply restate the legal provisions on which the arrest is purportedly based.
- Interception of phone correspondence: In 2009 the ECHR found in *Iordachi and Others v Moldova*³⁶ that Moldovan legislation fails to provide sufficient guarantees against arbitrary interception of telephone conversations, and that phone tapping is used excessively in that country. However, in 2010 and 2011, the number of authorized

interceptions of phone conversations increased (despite often weak rationales contained in phone tapping warrants), demonstrating a failure to execute the *Iordachi* decision.

15. **Russia.** Even though Russian authorities draft their action plans for execution of ECHR judgments in English only, it is clear, even to those who do not read English, that many judgments remain unexecuted. Critically, the Russian government has not conducted the investigations required to execute the related judgments in *Isayeva v Russia*³⁷ and *Abuyeva and Others v Russia*.³⁸ These are two out of more than 200 ECHR judgments finding human rights violations in Chechnya and other Republics of the North Caucasus Region. Despite supervision by the CoM since 2005 as well as repeated criticism from the ECHR,³⁹ the CoM,⁴⁰ and other human rights bodies,⁴¹ Russian authorities have simultaneously failed to execute these judgments and claimed that they are taking steps to do so.⁴² In response, the European Human Rights Advocacy Centre (EHRAC) and Memorial Human Rights Centre (Memorial) have asked the CoM to initiate infringement proceedings in relation to *Isayeva*.⁴³ EHRAC and Memorial noted that the failure to execute these cases “contribut[es] to a culture of impunity that is damaging both to the authority of the ECHR and to the protection of the *Convention* system.”⁴⁴

16. **Russia** also has failed to execute judgments finding other violations. For example, the ECHR found in several cases⁴⁵ that transport conditions in certain special prison vans violated Article 3. However, this practice continues, and the Russian Supreme Court refused to condemn the ongoing violation in an April 2012 decision. Similarly, in *Alekseyev v Russia*,⁴⁶ the ECHR found that the prohibition of gay rights marches in Moscow in 2006, 2007 and 2008 violated Article 11 of the *Convention*. Nonetheless, Russian authorities continue to refuse to allow the LGBT community to conduct marches or other public events.

17. **Russia.** The official Government report highlighted the May 2011 decree entrusting the Ministry of Justice with monitoring compliance with ECHR judgments as well as Constitutional Court decisions. However, according to several civil society organisations, in practice it is the Representative of the Russian Federation at the ECHR, operating within the Ministry of Justice, which is responsible for executing judgments. This is problematic because that entity also represents the Government in cases against Russia before the ECHR, casting doubt on its ability to execute ECHR judgments in an independent and objective manner. Additionally, in 2010 a Presidential Decree mandated additional annual monitoring of ECHR judgment implementation, but the first cycle of monitoring will not be complete until 2012.

18. **Ukraine.** The Government’s record of executing judgments is spotty. For example, the Supreme Court of Ukraine initially failed to execute two decisions about fair trial rights, *Shabelnik v Ukraine*⁴⁷ and *Yaromenko v Ukraine*,⁴⁸ and the CoM website on the execution of judgments indicates that it is still awaiting information on measures taken or planned to comply with these judgments.⁴⁹ However, subsequent practice in the Ukraine relating to fair trial rights have improved significantly, and it appears that both the Supreme and High Courts now quash convictions that the ECHR has found to violate fair trial rights. Nevertheless, because the quashed cases have not been retried, it is difficult to assess the full impact.

2. State’s Persistent Inability to Remedy Structural Problems through Effective and Timely Execution of Pilot Judgments⁵⁰

19. The pilot-judgment procedure is intended to address large groups of cases deriving from the same underlying problem. When the ECHR receives multiple applications stemming from a common root cause, it may decide to prioritize one or more of those cases as representative of the cluster. The ensuing “pilot judgment” seeks to identify the root dysfunction, propose means to address it, and thereby enable the State Party to create a domestic remedy that eliminates the structural problem and resolves the mass of similar cases. (Rule 61 of the ECHR Rules of Court, in response to the Interlaken Declaration, establishes a clear, predictable framework for pilot judgments.) Nearly all of the States discussed in this report have had difficulty executing pilot judgments or addressing other systematic *Convention* violations identified in ECHR decisions. These States consistently demonstrate serious limitations in their abilities to devise effective implementation measures and to coordinate complex layers of responsible parties.

20. **The Czech Republic.** The ECHR has not issued to date any pilot judgments against the Czech Republic. Nonetheless, the Government claims it has prepared necessary implementation tools in anticipation.⁵¹ The Government’s failure to execute the *D.H.* judgment properly or effectively (discussed above at paragraph 10), as well as the filing of hundreds of cases before the ECHR alleging systemic problems, give rise to serious questions about the Government’s current ability to execute pilot judgments.⁵²

21. **Hungary.** The ECHR has not yet delivered any pilot judgments against Hungary, but there is still reason for concern about its ability to remedy structural problems. For example, of the 260 decisions that the ECHR has rendered against Hungary, 189 of those concerned the length of domestic court proceedings and ten related to the right to a fair trial.⁵³ Despite several legislative acts and amendments on point, the CoM found no improvement in the excessive length of proceedings as of March 2012. The CoM found that compensatory remedies were nonexistent and acceleratory remedies ineffective, and recommended that effective measures be introduced.⁵⁴ The CoM finally decided to examine related cases under the enhanced procedure, given the clear structural nature of the problems.

22. **Italy.** Italy, responsible for about one-fourth of the total number of cases pending before the CoM at the end of 2011, suffers from chronic, unsolved problems. In *Sulejmanovic v Italy*⁵⁵ (not a pilot judgment), the ECHR found violations of Article 3 relating to degrading treatment from overcrowded conditions of detention in prison. Italy has failed to remedy the structural problems leading to this finding, even though the ECHR has communicated approximately 80 similar cases to the Italian Government. In 2011, the number of detainees in some facilities exceeded capacity by between 250-300%, only 20% of detainees were in good health, and 66 detainees committed suicide.⁵⁶ While the Italian Government has proposed an action plan to address problematic prison conditions, the CoM rightly pointed out that its impact has yet to be demonstrated.

23. Another chronic problem in **Italy** is the length of proceedings in Italian courts. The ECHR found in 1,155⁵⁷ cases that Italy had violated Article 6 due to the excessive length of proceedings. Despite successive attempts by the Italian Government to reform the justice system, about 15 million Italians still await judgments. In a July 2012 visit to Italy, the Council of Europe Commissioner for Human Rights encouraged Italian judges to adopt an active case management

approach, as promoted by Council of Europe bodies.⁵⁸ However, this alone was insufficient to address extreme delays in Italian proceedings, because:

- Italian judges lack incentives (pecuniary rewards or career benefits) to manage their cases in a timely manner;
- Judges are allowed to undertake extra-judicial commitments (which they are tacitly encouraged to do by the above-mentioned lack of incentives);
- Inconsistent judgments by the Court of Cassation lead to more cases;
- The disproportionately large number of lawyers in Italy contributes to clogged courts; and
- Italy has failed to rapidly adopt electronic/digital tools and processes to expedite proceedings.

24. **Poland.** Poland was the first country to receive a pilot judgment in the *Broniowski* case in 2004, and the Ministry of Foreign Affairs and the State Agent's Office promote implementation of this judgment as a success. Less positively, the actual impact of the *Orchowski v Poland*⁵⁹ quasi-pilot judgment (overcrowding in detention) continues to be weak, with no substantial effort to properly implement it nearly three years later, according to NGOs. While Polish prisons supposedly are not overcrowded currently, detention standards have not significantly changed, and it is difficult to accurately evaluate prison populations because many prison sentences are not yet enforced. Similar delays affected the execution of the *Hutten-Czapska v Poland*⁶⁰ pilot judgment, which took three years to negotiate.

25. **Moldova.** The only pilot judgment against Moldova, *Olaru and Others v Moldova*,⁶¹ found that Moldova violated Article 6 of the *Convention* and Article 1 of Protocol No. 1 by failing to execute hundreds of domestic judgments allocating social housing to entitled recipients. The Government report claims success in carrying out *Olaru*, even though it does not address the structural problems that caused these repetitive cases. In contrast, Moldovan NGOs report that local authorities have not successfully executed *Olaru* with respect to several hundred beneficiaries. Moreover, although the Government passed a law providing a compensatory remedy for excessively long proceedings following the *Olaru* judgment (Law no. 87), compensation proceedings themselves are attenuated and can last more than 12 months, while the amount of compensation remains substantially lower than that awarded by the ECHR in comparable cases. In a positive development from June 2012, the President of the Supreme Court of Justice and the Government Agent sent a joint letter to judges with guidance for adequate compensation.

26. **Russia.** NGOs report that Russia does not effectively execute pilot judgments, and that systemic violations persist. For example, violations relating to pre-trial detention continue despite ECHR judgments criticizing these practices.⁶² While the Russian criminal justice system has instituted rules intended to improve pre-trial detention, these rules, in practice, have eroded the quality of criminal investigations of torture, as investigators prioritize procedure above investigative thoroughness.

27. Moreover, implementation priorities and measures are established by the **Russian** central federal government with insufficient input from local and regional authorities, who are then unable to execute them. The pilot judgment issued in *Ananyev and Others v Russian Federation*⁶³ illustrates this conundrum. Federal authorities initially asked officials of regional departments of the Federal Penitentiary Service for advice on executing the decision, as they would eventually be tasked with discharging those recommendations. However, federal authorities did not wait for, and later rejected some of, this advice when deciding how to implement the decision.

28. **Ukraine.** Positively, Ukrainian NGOs report that Ukrainian State agencies, especially the Ministry of Justice, prioritize the execution of pilot judgments. Additionally, Ukraine's Office of Ombudsman is in the midst of reform intended to incorporate national prevention mechanisms.

3. Unavailability of Effective National Remedies⁶⁴

29. Under Interlaken, to give true effect to the *Convention*, States Parties are obligated to ensure that individual petitioners with arguable claims have “available to them an effective remedy before a national authority providing adequate redress where appropriate.”⁶⁵ This obligation requires States to ensure that existing remedial mechanisms are effective and available and, where necessary, to create new domestic legal remedies. In the States under consideration in this paper, various barriers impede the ability of complainants to access effective national remedies, ranging from statutory prohibitions against reopening domestic proceedings to overly stringent jurisdictional requirements, limited available remedies, and practical impediments to accessing courts.

A. Inability to Reopen Certain Domestic Proceedings

30. Civil society reports indicate that in several States (Hungary, Italy, Russia⁶⁶), it is impossible to reopen civil proceedings after ECHR judgments. (This prohibition against reopening proceedings does not apply to ECHR judgments related to administrative, commercial and criminal proceedings). In some cases, this makes national implementation impossible as a practical matter.

31. **The Czech Republic.** Current Czech law does permit reopening proceedings in criminal cases, but not in other matters. For instance, where the ECHR has found violations of Article 6 regarding proceedings before the Constitutional Court, these proceedings cannot be reopened. The Czech Government is considering extending the option to reopen proceedings beyond criminal cases.

32. **Poland.** The Criminal Procedure Code allows for cases to be reopened following ECHR decisions, while the Civil Procedure Code does not. The Polish *Senat* prepared a draft law that would have allowed for civil cases to be opened after ECHR decisions, but the Ministry of Justice, the Supreme Court, and the Office for Court Representation of the State Treasury opposed it. In June 2012, following debate, the *Senat* decided to withdraw the draft law, and NGOs note the lack of political willingness to adopt necessary changes.

B. Limited Availability of Effective Domestic Remedies

33. Typical domestic remedies include the ability to appeal or make a complaint to an appellate or Constitutional court, and compensation for violations. These remedies, however, are often flawed, as appellate courts often have limited jurisdiction, applicants may have limited access to them, and courts award lower levels of compensation than deemed appropriate by the ECHR. Civil society organizations from Italy and Poland did not provide information about the availability of domestic remedies.

34. **Czech Republic.** The Constitutional Court is empowered to hear complaints after exhaustion of other available remedies. While the ECHR has recognized the effectiveness of this general domestic remedy in some circumstances, it has been found inadequate in others. For example, the Constitutional Court has held that it lacks the power to review prosecutorial authorities' substantive reasons and justifications for bringing charges, and can only review complaints claiming arbitrariness by prosecutorial authorities. This limited jurisdiction does not provide adequate protection in cases where prosecutors have declined to bring charges against authorities for alleged violations of Articles 2 or 3. Thus, in *Eremiášova and Pechová v the Czech Republic*,⁶⁷ the ECHR found that a complaint to the Constitutional Court would not have been an effective domestic remedy where the applicants claimed that prosecuting authorities failed to independently, impartially or adequately investigate a death in custody in violation of Article 2.⁶⁸

35. **Hungary.** Pursuant to recently enacted laws,⁶⁹ victims of rights violations may, through the vehicle of a “constitutional complaint,” access the Constitutional Court directly, which is, in turn, empowered to annul prior court decisions and legal provisions. However, petitioners face obstacles, which have the practical effect of limiting their access, particularly: (1) legal representation is mandatory in processes before the Constitutional Court but no legal aid is ensured; and (2) petitioners found to have initiated procedures “abusively” are threatened with a high procedural fine, which may deter complainants. Furthermore, the Constitutional Court is granted wide discretion in admitting Constitutional complaints, and *res iudicata* provisions weaken individual fundamental rights protection.⁷⁰ The slow pace and inadequate reasoning of Constitutional decisions further undermine the effectiveness of the Constitutional complaint process. Furthermore, the Constitutional Court appears to take a very restrictive approach to admissibility (i.e. what qualifies as a “significant Constitutional issue,” or whether a request for review indicating alternative grounds is sufficiently clear). Whether the new Constitutional complaint procedure will be an effective domestic remedy under the *Convention* remains to be seen.

36. **Russia.** Appellate review also is available as a domestic remedy in Russia. Specifically, changes to the Code of Civil Procedure that came into effect in January 2012, and to the Code of Criminal Procedure that will come into effect in January 2013, introduce a new level of appeal and change the cassational appeal and supervisory review proceedings (*nadzor*). These remedies were introduced in response to the pilot judgment *Burdov (no. 2) v Russia*,⁷¹ to address the excessive length of judicial and enforcement proceedings. The CoM and the ECHR have taken a positive view of these amendments. However, it remains to be seen whether court-awarded compensation for excessively long judicial or enforcement proceedings will be adequate. Moreover, the new appellate procedures may violate the principle of legal certainty. According to

the new procedural codes, the Head of the Supreme Court and his deputy retain the power to quash decisions preventing the cassational or supervisory review procedure, and to open such proceedings wherever necessary. These powers are not limited temporally, thus rendering any case susceptible to reopening into the indefinite future. The ECHR has repeatedly criticized this open-ended power in its judgments.⁷²

C. Limited Compensation or Other Practical Impediments to Accessing Domestic Remedies

37. **The Czech Republic.** In 2006, the Government introduced compensation with retroactive effect as a remedy for excessively long judicial proceedings. This resulted in a purported repatriation of applications already lodged with the Court, and a reduction of the number of cases communicated to the Czech Government. However, the effectiveness of this remedy may be undermined by the levels of compensation awarded, even though the Supreme Court provided guidance to lower courts on this matter in a decision of April 2011. Further, while the possibility of administrative appeal exists in cases of “incorrect conduct” by authorities, the definition of such conduct by the courts remains unclear and is probably too narrow. Moreover, in cases of “incorrect conduct”, including delays in court proceedings, the victim is obliged to complain to the responsible body within a six month period, and if necessary, to resort to a court within the same period. NGOs consider the six month period to be insufficient to guarantee the right to an effective remedy.

38. **Moldova.** Moldovan courts award moral compensation only where expressly provided by domestic law, limited to two situations of relevance to the ECHR.⁷³ First, moral compensation is available for an illegal act committed against an accused within a criminal trial, but only if the accused is acquitted.⁷⁴ Second, following the *Olaru* judgment,⁷⁵ a July 2011 law requires the State to compensate for damages caused as a result of a violation of the reasonable time requirement for judicial proceedings or execution of court decisions.⁷⁶ However, the moral damages awarded for the breach of rights guaranteed by the *Convention* remain substantially lower than the moral damages awarded by the ECHR in comparable cases. Furthermore, compensation proceedings can be excessively lengthy.

39. **Ukraine.** The Constitution allows for any dispute to be brought before Ukrainian courts, which are obliged to adjudicate them. However, many remedies are unavailable or essentially ineffective. For example, prisoners, as a practical matter, are often unable to apply to a court or participate in hearings. Additionally, ECHR decisions have highlighted the ineffectiveness of some domestic Ukrainian remedies. For example, in *Kaverzin v Ukraine*, the ECHR identified significant shortcomings regarding prosecutors’ investigations into allegations of custodial torture by police in violation of Article 3.⁷⁷ Thus, even if cases get to the courts, they yield flawed results.

4. Failure to Take Into Account ECHR Case Law⁷⁸

A. In Drafting Legislation

40. Parliaments and judiciaries in the countries at issue often fail to incorporate ECHR case law into their work. Review of *Convention* standards by national parliaments when undertaking

lawmaking varies from State to State. When considered, ECHR jurisprudence often is reflected only superficially in domestic legislation. At worst, State organs directly contravene ECHR decisions.

41. **The Czech Republic.** Article 4(4) of the Government Legislative Rules provides that the author of a draft should prove its conformity with international treaties, but in practice neither the *Convention* nor ECHR case law are regularly considered. For example, the explanatory report to the Criminal Code does not reference the *Convention*.

42. **Hungary.** Civil society disputes Government claims that case law is taken into account in the course of preparing draft legislation. The Parliament continues to enact laws that violate ECHR jurisprudence, resulting in mass applications to the Court. For example, laws allowing discriminatory and retroactive curtailment of Government pensions inspired at least 8,000 applications to the ECHR, and laws drastically reducing the mandatory retirement age for judges similarly flooded the ECHR with cases.⁷⁹ On occasion, the Constitutional Court has found draft laws to be unconstitutional, sometimes based on ECHR case law.⁸⁰

43. **Poland.** The official Government report states that difficulties in fully integrating *Convention* standards and ECHR case law into legislation “may result from the huge number of the Court’s judgments and, thus, the selection of relevant decisions concerning other countries.” However, according to civil society, Government officials and parliamentarians often fail to either consider ECHR judgments in drafting or to perform this check prior to adoption. Furthermore, while Poland’s *Senat* is empowered to initiate legislation to comply with a judgment of its Constitutional Court, it lacks a similar competence regarding ECHR judgments. In a positive development, the Committee on the Codification of the Penal Law prepared extensive amendments to the Code of Criminal Procedure, some of which stem directly from ECHR jurisprudence in criminal defense cases.

44. **Russia.** While the official report cites examples where Russian authorities take account of judgments against other countries, these examples demonstrate that Russian authorities do so on an *ad hoc* basis and only where the ECHR has explicitly identified a similar problem in Russia. NGOs confirm that there is little if any systematic, ongoing monitoring of ECHR case law against other countries, either by the parliament, the judiciary, or the executive, including the office of the Government Agent and other Ministry of Justice departments.

45. **Ukraine.** The official Government report indicates that ECHR judgments have become the basis of legislative amendments to the Code of Criminal Procedure, as well as other procedural codes and current legislation. However, NGOs note official inconsistency in ensuring legislative compliance with ECHR decisions, and complain that ECHR standards are frequently sacrificed for political expediency.

B. In Judicial Decisions

46. Judiciaries in some of the States addressed in this report are similarly inconsistent in incorporating *Convention* standards.

47. **Moldova.** According to civil society, the Supreme Court of Justice (SCJ) long failed to insist upon compliance with *Convention* standards in lower courts, emboldening judges,

prosecutors and lawyers’ in their efforts to resist such standards; as well, at best, judicial references often suggest only a partial understanding of the ECHR ruling. However, some improvements in the application of the *Convention* and case law commenced in mid-2012, when the former Moldovan judge at the ECHR became the President of the Moldovan SCJ. Since then, the SCJ is taking considerable steps to apply ECHR law properly, and is providing guidance to lower courts in this respect as well.

48. **Russia.** Although judges from the three highest Russian courts (the Supreme Court, the Constitutional Court and the Highest Commercial Court) periodically refer to ECHR judgments delivered against other countries in their decisions, this fails to prevent *Convention* violations at the national level.

49. **Ukraine.** The “*Law on Enforcement of Judgments and Application of the European Court of Human Rights Case-law*” requires domestic courts to apply the *Convention* and ECHR case law when considering a case.⁸¹ The law also mandates the high courts of Ukraine to prepare summaries of ECHR case law for the lower courts. While the State report notes that “the Government Agent shall conduct an analysis of the Court’s case law,” NGOs want more, arguing that examples of domestic courts referring to ECHR judgments concerning other States are increasingly rare.

5. Failure to Establish Specific Domestic Structures or to Consult with Civil Society to Implement the Interlaken Declaration⁸²

50. According to their official reports, most States have delegated the task of implementing Interlaken to existing bodies that are already responsible for the national implementation of *Convention* standards. NGOs note that none of the member States included in this report have created specific new domestic structures to realize the promise of Interlaken at the national level.

51. Existing structures are, in many cases, ill-equipped to handle the continuous flow of ECHR-related tasks. Notwithstanding some improvements in Poland and Ukraine, overall the governmental entities that delegate the execution of judgments and implementation of standards to other existing bodies are too weak to properly supervise them. Furthermore, governments often omit Parliaments as key actors in implementation.

52. Additionally, the Interlaken Declaration explicitly calls on both the CoM and States Parties “to consult with civil society on effective means to implement the [Interlaken] Action Plan.”⁸³ However, NGOs complain that the States discussed here, to the extent they seek to implement Interlaken, do not consult with civil society, and in fact fail to share or make public their efforts to implement Interlaken.

A. Limitations of Existing Governmental Structures

53. At the national level, governmental infrastructure to address Interlaken is characterized by weakness, vague mandates, or overlapping responsibilities and a lack of accountability.

54. **The Czech Republic.** The Office of the Government Agent before the Court, part of the Ministry of Justice, handles Interlaken implementation. However, civil society reports that the Government Agent is too busy to execute its Interlaken responsibilities.

55. **Hungary.** There is no separate ministerial office for a government agent to the ECHR. A department within the Ministry of Justice, staffed by only three lawyers and one secretary, is incapable of doing more than responding to communicated cases on time.

56. **Italy.** Civil society organizations report confusion about which government entity is charged with implementing Interlaken. Furthermore, NGOs identify the absence of an independent national human rights institution as a significant impediment to the promotion and application of *Convention* standards.

57. **Moldova.** The Government report names ten specific governmental entities with some responsibility for implementing Interlaken. According to representatives of civil society, however, each of these entities is troubled by lack of a clear mandate, inadequate resources, or apathy.

58. **Poland.** While the Inter-Ministerial Committee for Matters Concerning the European Court of Human Rights (headed by the Ministry of Foreign Affairs, with representatives from several ministries and the General State Treasury Representative Organ) is charged with Interlaken implementation, civil society expresses concern about the decentralization of power and lack of accountability.

59. **Russia.** Although an office in the Ministry of Justice is charged with implementing Interlaken, Russian NGOs report that it is deficient in the necessary political weight to pressure agencies that are “unwilling to cooperate.”⁸⁴

B. Limited Engagement of Parliaments

60. As crucial agents in national implementation of the *Convention* and of ECHR judgments,⁸⁵ national parliaments should be involved in supervision of Interlaken implementation. Nonetheless, parliaments in the **Czech Republic, Hungary, Italy, Russia** and **Ukraine** have played, at best, a very limited role in national implementation.⁸⁶ In **Moldova** and **Poland**, promising parliamentary action in supervising the execution of judgments—a key component of implementing Interlaken—has yielded few results. Specifically, in **Moldova**, the parliament adopted a decision in 2008 on the execution of ECHR judgments which noted that an annual parliamentary hearing on this theme should be held. Since 2008, no such hearings have occurred. In **Poland**, representatives of the *Sejm* and the *Senat* participate in the work of the Inter-Ministerial Committee on ECHR matters.

C. Exclusion of Civil Society from Consultations on Interlaken Implementation

61. Few of the States considered in this report have engaged actively with civil society as they implement *Convention* standards and ECHR judgments. Only one of the States addressed in this report, Ukraine, even responded to question 4 of the questionnaire about whether national authorities have held, or plan to hold, consultations with civil society on how to implement Interlaken effectively. Civil society affirms this exclusion. According to civil society reports, only two States, **the Czech Republic** and **Poland**, have consulted with NGOs about implementation. In **Hungary**, NGOs’ efforts to engage the Hungarian Ministry of Foreign Affairs by submitting a joint civil society declaration before the 2012 Brighton Conference were ignored.⁸⁷ In **Italy** and **Ukraine**, the Governments have not engaged with civil society on Interlaken implementation. In

March 2009, the Italian Senate's Extraordinary Committee met with 86 NGOs, where the latter pressed unsuccessfully for the establishment of a national human rights institution. And in **Poland**, while the Government consulted with NGOs in preparation for the Interlaken and Brighton conferences, engagement with civil society has been limited since then.

Conclusions and Recommendations

The Member States addressed in this report are, for the most part, fully implementing few of the judgments against them. They are failing to correct systematic human rights violations, or to integrate the *Convention* and ECHR case law into regular parliamentary or judicial practices.

The negative impact of this implementation failure on the enjoyment of fundamental human rights in Europe cannot be minimized. As a consequence of this implementation gap, Roma children in the Czech Republic cannot obtain a decent education; prisoners in Italy and Moldova regularly suffer ill treatment in detention; Chechen citizens are routinely subject to police abuse in Russia; and unfair trials in Hungary and Ukraine abound. The lack of implementation of the Interlaken Declaration and the failure to execute European Court on Human Rights decisions are not only bureaucratic debacles; they constitute a grave human rights problem. Civil society responses in this report indicate that NGOs and litigators before the ECHR and national courts want to engage and assist in crafting solutions that give ECHR decisions their intended effect. The unwillingness of Member States to develop meaningful collaborations with civil society thus far on the implementation of Interlaken must change in order to realize the promise of the European Convention on Human Rights.

Under the supervision of the Steering Committee for Human Rights (CDDH),⁸⁸ which operates under the auspices of the CoM, the Committee of Experts on the Reform of the Court (DH-GDR) will prepare a draft report analyzing responses by States Parties as to their national implementation efforts, and recommending follow-up. The report will be discussed at the plenary DH-GDR meeting 29-31 October 2012, adopted at the CDDH meeting 27-30 November 2012, and ultimately approved by the CoM as a CoM report.⁸⁹

Because both the CoM and States Parties share responsibilities to implement Interlaken, the Open Society Justice Initiative makes recommendations to each in this paper. On the one hand, the Justice Initiative urges the CoM to include the following specific recommendations in its report on national implementation, as well as to take actions to strengthen its own efforts to urge implementation of ECHR decisions. On the other, the Justice Initiative encourages States Parties to take up the ensuing recommendations at the national level.

Recommendations

To the Committee of Ministers

1. Include the following recommendations in the CoM report on national implementation, urging States Parties to:
 - Institute regular reviews of pending legislation to identify possible divergences from *Convention* standards, and inform the Committee of its efforts in this regard.⁹⁰
 - Extrapolate principles from ECHR case law for their application to national legal systems.
 - Undertake regular consultations with civil society to gain their perspectives regarding States' implementation of ECHR judgments and of the Interlaken declaration.
2. Encourage provision of Council of Europe assistance (including financial assistance from the Human Rights Trust Fund) to institute remedies and structural changes by states for systematic problems already identified and condemned in ECHR judgments.
3. Facilitate the exchange of good practices between member States on the implementation of the Interlaken Declaration and ECHR judgments.
4. Facilitate constructive dialogue and information-sharing between ECHR and national courts through the development or strengthening of professional networks and visits by domestic judicial authorities to the ECHR.
5. Invite members of civil society to share their perspectives with the CoM regarding States' implementation of the ECHR judgments and of the Interlaken declaration.

To Member States

1. Establish a body tasked specifically with implementation of ECHR judgments, separate from the State's agent, or representative to the ECHR in cases against it, with authority to coordinate the efforts of multiple government branches, where necessary, for effective implementation.
2. Establish a standing parliamentary human rights committee whose powers include to monitor and supervise the implementation of ECHR judgments and to review pending and existing legislation for compliance with *Convention* standards and ECHR case law.
3. Pass legislation identifying the powers and responsibilities of various governmental actors with respect to implementation of ECHR judgments.
4. Adopt detailed action plans on national implementation of *Convention* standards, including ECHR judgments, preferably through a legislative act.
5. Translate and publish action plans on execution of judgments and ensure parliamentary scrutiny of these action plans.

6. Remove any legislative, judicial, technical or practical impediments that prevent complainants who have obtained ECHR judgments from accessing domestic remedies.
7. Regularly monitor execution of judgments at the national level and make the findings publicly available.
8. Where appropriate, seek financial assistance from the Human Rights Trust Fund to carry out efforts described in recommendations 1-7, above, designed to improve the execution of *Convention* standards and implement ECHR decisions.
9. Undertake consultations on a regular basis with civil society regarding ECHR-related matters, including execution of judgments.

¹ The CDDH, composed of representatives of the forty-seven Member States of the Council of Europe, defines policy and co-operation with regard to human rights and fundamental freedoms. The CDDH holds plenary as well as specialized and smaller sub-committee meetings, which may be comprised of experts or ad hoc working groups.

² Per Drafting Group “A” on the reform of the Court, Draft Annotated Agenda, Item 2, 21 August 2012, document GT-GDR-A(2012)OJ002, available at http://www.coe.int/t/dghl/standardsetting/cddh/GT_GDR_A/GT-GDR-A%282012%29OJ002_DRAFT%20Annotated%20agenda_2nd%20meeting%20GT-GDR-A_5-7_Sept.%20%2712.asp.

³ Article 15 b) provides that “In appropriate cases, the conclusions of the Committee may take the form of recommendations to the governments of members, and the Committee may request the governments of members to inform it of the action taken by them with regard to such recommendations. Statute of the Council of Europe, London, 5.V.1949.

⁴ Per The Committee of Ministers’ Annual Report on the *Supervision of the execution of judgments and decisions of the European Court of Human Rights*, available at http://www.coe.int/t/dghl/monitoring/execution/Source/Publications/CM_annreport2011_en.pdf.

⁵ The following NGOs provided responses: The League of Human Rights and the Czech Centre for Human Rights and Democratisation (the Czech Republic), the Hungarian Helsinki Committee (Hungary), Unione Forense per la Tutela dei Diritti Dell’Uomo (Italy), Polish Helsinki Foundation for Human Rights (Poland), the Moldova Center for Legal Resources (Moldova), the Public Verdict Foundation (Russia), and the Ukrainian Helsinki Human Rights Union (Ukraine). The Justice Initiative sought to include civil society perspectives from Romania in this report, but was unable to do so due to political developments in that country. The Justice Initiative sought to include civil society perspectives from Romania as well, but was unable to do so due to political developments in that country.

⁶ See questionnaire in Annex.

⁷ This relates to Question 3, part 2 (full execution of the Court’s judgments) of the questionnaire States responded to as the basis for their national implementation reports.

⁸ Interlaken Declaration, PP1.

⁹ Interlaken Action Plan, ¶B..b).

¹⁰ Interlaken Declaration, PP 2.

¹¹ Interlaken Declaration, PP6.

¹² Article 46(1).

¹³ *Akdivar v. Turkey* (Article 50), 1998, para. 47)

¹⁴ *Broniowski v. Poland*, 2004, para. 193).

¹⁵ Izmir Declaration, para. H.1.

¹⁶ Recommendation [CM/Rec\(2008\)2](#) of the CoM to member states on efficient domestic capacity for rapid execution of judgments of the European Court of Human Rights, adopted on 6 February 2008 ; *see also* Action Plans-Action Reports, Memorandum prepared by the Department for the Execution of Judgments of the European Court of Human Rights, document CM/Inf/DH(2009)29rev, available at https://wcd.coe.int/ViewDoc.jsp?id=1450969&Site=CM#P23_1707.

¹⁷ Judgment of 13 November 2007.

¹⁸ Government of the Czech Republic, *Report on the execution of the judgment of the European Court of Human Rights in the case of D.H. and Others v the Czech Republic*, 15 May 2012, available at <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2087410&SecMode=1&DocId=1890262&Usage=2>, p. 1.

¹⁹ *Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to the Czech Republic from 17 to 19 November 2010*, 3 March 2011, available at <https://wcd.coe.int/ViewDoc.jsp?id=1754217>, introduction and paras. 60-61.

²⁰ Amnesty International, *Submission to the Committee of Ministers of the Council of Europe on D.H. and Others v the Czech Republic (Application No. 77325/00)*, 28 October 2011, available at <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=1980586&SecMode=1&DocId=1818226&Usage=2>, p. 4; *see also* p. 6 (concluding that measures adopted by the Ministry of Education were “not sufficient to end the illegal practices” and did not “tackle the underlying causes of the violations of the *Convention* consistently or effectively”, and that “the government lacks political will to ensure that measures are adopted as a matter of urgency to eliminate discrimination against Romani children within the Czech education system”).

²¹ *Case against the Czech Republic : D.H. and Others v Czech Republic*, 1144DH meeting of the Ministers' Deputies, 06 June 2012, available at [https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/Dec\(2011\)1144/9&Language=lanFrench&Ver=original&Site=&BackColorInternet=B9BDEE&BackColorIntranet=FFCD4F&BackColorLogged=FFC679](https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/Dec(2011)1144/9&Language=lanFrench&Ver=original&Site=&BackColorInternet=B9BDEE&BackColorIntranet=FFCD4F&BackColorLogged=FFC679), paras. 2-3.

²² Judgment of 8 July 2008.

²³ Act IV of 1978 on the Criminal Code, Article 269/B.

²⁴ Judgment of 3 November 2011.

²⁵ Act C of 2012 on the Criminal Code [a a *Büntető Törvénykönyvről szóló 2012. évi C. törvény*], Article 335.

²⁶ Judgment of 11 January 2005.

²⁷ Judgment of 3 May 2007.

²⁸ Judgment of 20 March 2007.

²⁹ Judgment of 15 June 2010.

³⁰ Judgment of 2 March 2010.

³¹ Judgment of 3 February 2009.

³² Government of Poland, *Information about the measures to comply with the judgment in the case of Baczkowski against Poland*, 17 February 2012, available at <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2066767&SecMode=1&DocId=1877910&Usage=2>, p. 4.

³³ *Corsacov v Moldova*, ECHR, Judgment of 4 April 2006.

³⁴ *Ostrovar v Moldova*, ECHR, Judgment of 13 September 2005.

³⁵ *See* Committee of Minister website at http://www.coe.int/t/dghl/monitoring/execution/Reports/pendingCases_en.asp?CaseTitleOrNumber=Ostrovar+&StateCode=&SectionCode=.

³⁶ Judgment of 10 February 2009.

³⁷ Judgment of 24 February 2005.

³⁸ Judgment of 2 December 2010.

³⁹ *Ibid.* paras. 238-241 (expressing “great dismay” with respect to *Isayeva* that “the respondent Government manifestly disregarded the specific findings of a binding judgment concerning the ineffectiveness of the investigation”).

⁴⁰ E.g. Committee of Ministers, *Execution of the judgments of the European Court of Human Rights in 154 cases against the Russian Federation concerning actions of the security forces in the Chechen Republic of the Russian Federation*, Interim Resolution CM/ResDH(2011)292140, 2 December 2011 (“more than six years after the first

judgments of the Court, in the vast majority of cases, it has not yet been possible to achieve conclusive results and to identify and to ensure the accountability of those responsible, even in cases where key elements have been established with sufficient clarity in the course of domestic investigations, including evidence implicating particular servicemen or military units in the events”).

⁴¹ E.g. *Human rights chief calls for accountability on her mission to Russia*, 23 February 2011, available at: <http://www.ohchr.org/EN/NewsEvents/Pages/HCMissionToRussia.aspx> (following a February 2011 Mission to Russia, UN High Commissioner for Human Rights Navi Pillay said that the lack of accountability and respect for the rule of law was particularly acute in relation to the North Caucasus); *Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant: Concluding observations of the Human Rights Committee – Russian Federation*, UN doc. CCPR/C/RUS/CO/6, 24 November 2009, para. 14 (“The Committee is concerned about ongoing reports of [numerous human rights violations] in Chechnya and other parts of the North Caucasus committed by the military, security services and other State agents, and that the authors of such violations appear to enjoy widespread impunity due to a systematic lack of effective investigation and prosecution. ... the Committee regrets that the State party has yet to bring to justice the perpetrators of the human rights violations in the [ECtHR] cases concerned, even though the identity of these individuals is often known.”).

⁴² E.g. Government of the Russian Federation, *Information concerning measures taken by the authorities of the Russian Federation in the course of execution of the European Court of Human Rights judgments regarding issues of violation of human rights during the crisis settlement in the Chechen Republic*, 25 February 2011, available at <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=1802959&SecMode=1&DocId=1703650&Usage=2>; Government of the Russian Federation, *Additional Report concerning general measures taken by the Russian authorities on enforcement of the judgments of the European Court of Human Rights in the cases related to violations of citizens rights during settlement of the crisis in the Chechen Republic (Kashieva group of cases)*, 14 May 2012, available at <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2126245&SecMode=1&DocId=1889686&Usage=2>.

⁴³ European Human Rights Advocacy Centre and Memorial Human Rights Centre, *Request for the initiation of Infringement Proceedings by the Committee of Ministers in relation to the judgment of the European Court of Human Rights in Isayeva v Russia (No. 57950/00, 24 February 2005)*, 30 July 2012, available at <http://www.londonmet.ac.uk/fms/MRSite/Research/HRSJ/EHRAC/Advocacy/Infringement%20Proceedings%20Request.pdf>.

⁴⁴ *Ibid.* para. 6.

⁴⁵ *Khudoyorov v Russia*, Judgment of 08 November 2005; *Guliyev v Russia*, Judgment of 19 June 2008; *Idalov v Russia*, Judgment of 22 May 2012.

⁴⁶ Judgment of 21 October 2010.

⁴⁷ Judgment of 19 February 2009.

⁴⁸ Judgment of 12 June 2008.

⁴⁹ See

http://www.coe.int/t/dghl/monitoring/execution/Reports/pendingCases_en.asp?CaseTitleOrNumber=Shabelnik&StateCode=&SectionCode=.

⁵⁰ This relates to Question 3, part 9 (cooperating with CoM after final pilot judgment to implement general measures) of the questionnaire States responded to as the basis for their national implementation reports.

⁵¹ These are set out in Act no. 186/2011 and in the Statute of the Government Agent [need cite].

⁵² E.g. *Vomočil v. Czech Republic*, no. 38817/04, discussed in Registry of the European Court of Human Rights, *Section activity reports: 2007*, available at http://www.echr.coe.int/NR/rdonlyres/96443711-4133-4043-8FB6-331AEC510FCA/0/2007_section_activity_reports.pdf; *Hutten-Czapska v Poland*, ECHR, Judgment (GC) of 19 June 2006.

⁵³ See ECHR, *Violation by Article and by State: 1959-2011*, available at http://www.echr.coe.int/NR/rdonlyres/2B783BFF-39C9-455C-B7C7-F821056BF32A/0/TABLEAU_VIOLATIONS_EN_2011.pdf.

⁵⁴ See Committee of Ministers, *Pending cases: current state of execution – Hungary*, available at http://www.coe.int/t/dghl/monitoring/execution/Reports/pendingCases_en.asp?CaseTitleOrNumber=&StateCode=HUN&SectionCode=, with respect to *Tímár v Hungary*, ECHR, Judgment of 25 February 2003 as leading case.

⁵⁵ Judgment of 16 July 2009.

⁵⁶ Statistics gathered by the Italian Radicals.

⁵⁷ See ECHR, *Violation by Article and by State: 1959-2011*, available at http://www.echr.coe.int/NR/ronlyres/2B783BFF-39C9-455C-B7C7F821056BF32A/0/TABLEAU_VIOLATIONS_EN_2011.pdf

⁵⁸ See Council of Europe Commissioner of Human Rights, *For human rights protection, Italy needs a clear break with past practices*, 9 July 2012, available at http://www.coe.int/t/commissioner/News/2012/120709Italy_en.asp.

⁵⁹ Judgment of 22 October 2009.

⁶⁰ Judgment of 19 June 2006 (GC).

⁶¹ Judgment of 28 July 2009.

⁶² See, e.g. xxx. *Ananyev and Others v. Russian Federation*, ECHR, Judgment of 10 January 2012.

⁶³ Judgment of 10 January 2012.

⁶⁴ This relates to Question 3, part 4(availability of effective remedies before national authority) of the questionnaire States responded to as the basis for their national implementation reports.

⁶⁵ Interlaken Action Plan, b.d).

⁶⁶ Maria Issaeva, Irina Sergeeva and Maria Suchkova, *Enforcement of the Judgments of the European Court of Human Rights in Russia: Recent developments and current challenges*, SUR, v.8. N.5, December 2011, p.72.

⁶⁷ Judgment of 16 February 2012.

⁶⁸ Judgment of 16 February 2012, paras. 88-101.

⁶⁹ *Az Alkotmánybíróságról szóló 2011. évi CL. Törvény* (2011).

⁷⁰ For a detailed analysis in this regard, see Eötvös Károly Institute, Hungarian Civil Liberties Union, Hungarian Helsinki Committee, *Opinion on the new Constitutional Court Act of Hungary, January 2012*, available at http://helsinki.hu/wp-content/uploads/Analysis_of_the_new_Constitutional_Court_Act_of_Hungary_January2012.pdf.

⁷¹ Judgment of 15 January 2009.

⁷² E.g. *Zasurtsev v Russia*, ECHR, Judgment of 27 April 2006; *Ryabykh v Russia*, ECHR, Judgment of 24 July 2003.

⁷³ There are more than ten Moldovan laws providing for the right to moral compensation, but only two are relevant for ECHR purposes.

⁷⁴ Law no. 1545-XIII.

⁷⁵ Discussed above at para. Xxx..

⁷⁶ Law no. 87.

⁷⁷ Judgment of 15 May 2012, paras. 110-118.

⁷⁸ This relates to Question 3, part 3 (taking into account Court's developing case law) of the questionnaire States responded to as the basis for their national implementation reports.

⁷⁹ According to NGOs, despite having been found unconstitutional by the Hungarian Constitutional Court, the laws are still in force.

⁸⁰ See, for example, Decision 166/2011 (XII.20) of the Constitutional Court of Hungary regarding amendments to the Criminal Procedure Code allowing the Chief Public Prosecutor to bring changes before a court other than those established by law. The Constitutional Court quoted ECHR case law regarding Article 6 as a basis for its decision.

⁸¹ Article 17 (2006).

⁸² This relates to Question 1 of the questionnaire States responded to as the basis for their national implementation reports.

⁸³ Interlaken Implementation, para (3).

⁸⁴ Alexei Trochev, "All Appeals Lead to Strasbourg? Unpacking the Impact of the European Court of Human Rights on Russia," *Demokratizatsiya*, 151. And Maria Issaeva, Irina Sergeeva and Maria Suchkova, *Enforcement of the Judgments of the European Court of Human Rights in Russia: Recent developments and current challenges*, SUR, v.8. N.5, December 2011, p.74.

⁸⁵ See, for example, Drzemczewski, A. and Gaughan, J., 'Implementing Strasbourg Court Judgments: the Parliamentary Dimension' in Benedek, W., Karl, W., Mihr, A. *et al.*, *European Yearbook on Human Rights* (Vienna: European Academic Press, 2010), 239.

⁸⁶ The role of national parliament in reviewing draft legislation in the light of Convention standards is analysed under the Chapter II Awareness of *Convention* Standards.

⁸⁷ The declaration is available at http://tasz.hu/files/tasz/imce/2011/az_emberi_jogok_vedelmenek_megerositese_europaban_nyilt_level.pdf.

⁸⁸The CDDH, composed of representatives of the forty-seven Member States of the Council of Europe, defines policy and co-operation with regard to human rights and fundamental freedoms. The CDDH holds plenary as well as specialized and smaller sub-committee meetings, which may be comprised of experts or ad hoc working groups.

⁸⁹ Per Drafting Group “A” on the reform of the Court, Draft Annotated Agenda, Item 2, 21 August 2012, document GT-GDR-A(2012)OJ002, available at http://www.coe.int/t/dghl/standardsetting/cddh/GT_GDR_A/GT-GDR-A%282012%29OJ002_DRAFT%20Annotated%20agenda_2nd%20meeting%20GT-GDR-A_5-7_Sept.%20%2712.asp.

⁹⁰ Article 15 b) provides that “In appropriate cases, the conclusions of the Committee may take the form of recommendations to the governments of members, and the Committee may request the governments of members to inform it of the action taken by them with regard to such recommendations. Statute of the Council of Europe, London, 5.V.1949.

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