

# National parliaments as guarantors of human rights in Europe



Handbook  
for parliamentarians



COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

# National parliaments as guarantors of human rights in Europe

## **Handbook for parliamentarians**

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” **T**he system established under the European Convention on Human Rights is today subject to various sovereigntist attacks, some of which are voiced by founding members of our Organisation. But whatever the challenges – whether simple mistrust, attempts to limit its scope or even suspending application of the Convention – we must respond firmly but also constructively in order to find solutions together.

By attacking the Council of Europe and its fundamental instruments – the Convention and the Court – it is the citizens of Europe who are being attacked, thereby weakening their rights and their protection in their relationship with the state.

It is the duty of the Parliamentary Assembly and each and every one of its members to defend our Human Rights Convention system and clearly assert its authority, in the interest of the 830 million citizens of Europe.”

**Liliane Maury Pasquier**  
President of the Parliamentary Assembly  
of the Council of Europe  
June 2018





## Foreword

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**P**arliament is at the heart of representative democracy, irrespective of the particularities of different systems of governance: parliamentary, presidential or semi-presidential systems, all of which can be found among the Council of Europe member states. This is why the Parliamentary Assembly (PACE) is at the heart of the institutional framework of the Council of Europe. The European Court of Human Rights (the Court) and the reinforced role of PACE constitute the most interesting specificities of the Council of Europe compared to other regional organisations and give it added value.

However, national parliaments must co-operate actively for the PACE to effectively play its role in the three pillars on which the Council of Europe is based: democracy, human rights and the rule of law. Moreover, the mere existence and operation of a parliament do not make a system of governance democratic if the full protection of human rights and respect for rule of law are not ensured, as codified in a clear and practical manner by the European Commission for Democracy through Law (the Venice Commission) in the recent Rule of Law Check List.

In the sensitive field of human rights, each national parliament operates primarily as a legislator. There is, therefore, always the risk that a national parliament might violate a right or provide, through national law, inadequate protection in relation to international standards, in particular those arising from the European Convention on Human Rights (the Convention) and the case law of the Court. The primary task of each national parliament is thus to ensure the alignment of national legislation with the Convention and the Court's case law. National parliaments are, of course, under an essential obligation to actively contribute to their state's compliance with the Court's decisions concerning it, and more broadly with the *res judicata* of the Court's decisions.



Moreover, national parliaments must not only act as auditors overseeing to what extent executive authority respects human rights, they must exercise constant parliamentary supervision in this field as well, highlighting any problems, applying institutional pressure for them to be dealt with and undertaking the necessary legislative initiatives. If the national parliament participates in the process of selecting members of national supreme and constitutional courts, human rights protection is obviously a fundamental recruitment criterion, and absolute respect must be ensured for the principle of the separation of powers.

The legislative and supervisory functions of national parliaments make them guarantors of human rights operating within the organisational structures (committees, responsibilities, etc.) provided for in national constitutions and through the regulations governing parliament. It is of crucial importance that national parliaments and all their members remain vigilant and actively engaged.

PACE has focused on this issue by adopting relevant resolutions concerning either the overall objectives of the Council of Europe or the implementation of Court judgments.

This Handbook for parliamentarians, prepared by Dr Alice Donald and Ms Anne-Katrin Speck of Middlesex University London, in collaboration with the Secretariat of the Committee on Legal Affairs and Human Rights of PACE, provides an excellent presentation of the institutional framework – both at the Council of Europe level and at national level – within which national parliaments operate when protecting human rights, and in particular when applying the Convention standards, and implementing the Court’s judgments and ensuring compliance with the interpretative principles of its case law. Relevant PACE resolutions reflect interesting parliamentary practices of member States that can be a source of inspiration also for other national parliaments. This useful manual is intended not only for PACE members but for all members of national parliaments of the Council of Europe member states.

After all, the greatest possible vigilance with regard to human rights must come before issues of competences and procedures; vigilance on the part of all citizens, non-governmental organisations and, of course, parliamentarians representing their fellow citizens.

**Evangelos Venizelos**  
PACE Rapporteur on the Implementation of Judgments  
of the European Court of Human Rights

# Abbreviations

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CM	Committee of Ministers
NGO	Non-governmental organisation
NHRI	National human rights institution
PACE	Parliamentary Assembly of the Council of Europe
PPSD	Parliamentary Project Support Division (within the Secretariat of the Parliamentary Assembly)
UN	United Nations

# Glossary of key terms

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## **Action plan and action report**

An action plan sets out the steps that a state intends to take to implement a judgment of the European Court of Human Rights (the Court). An action report describes the measures which have been taken by a state to implement a judgment and/or explains why the state considers that no measures, or no further measures, are necessary. Action plans and action reports are submitted to the Committee of Ministers (CM).

## **Execution**

The term given to the implementation of a judgment, that is, a judgment has been “executed” if the respondent state has taken all the measures required to comply with that judgment. The process of execution is supervised by the CM.

## **Government agent**

The title generally given to the office within the government that represents the state before the European Court of Human Rights, and which frequently also co-ordinates the execution of judgments at the domestic level.

## **Individual and general measures**

Following an adverse judgment of the Court, individual measures may need to be taken to ensure that the violation has ceased and that the injured party is put, as far as possible, in the same situation that he or she enjoyed prior to the violation of the European Convention on Human Rights (the Convention). General measures may also need to be adopted in order to prevent new violations or to put an end to continuing violations, in particular (although not exclusively) where the violation stems from a structural or systemic problem of law or policy.

## **Inter-Parliamentary Union (IPU)**

The international organisation of parliaments, established in 1889, with a view to fostering inter-parliamentary co-ordination and the exchange of knowledge and experience among parliamentarians of all countries. The promotion and protection of human rights are among the key aims of the IPU.

## **Interpretative authority (or *res interpretata*)**

While judgments of the Court are only legally binding on the respondent state, Articles 1, 19 and 32 of the European Convention on Human Rights have been interpreted as requiring states to take into account of the case law of the Court as a whole, including principles developed in judgments and decisions against other states.

## **Margin of appreciation**

The level of deference that the Court accords, in the examination of a case before it, to the assessment of national authorities as to how they discharge their human rights obligations under the Convention. States also enjoy a margin of appreciation in identifying, under the supervision of the Committee of Ministers, the measures to be taken to remedy a violation found by the Court.

## **Negative and positive obligations**

A negative obligation requires states to refrain from interfering in individuals' rights without justification, that is, the state must refrain from doing something. A positive obligation requires states to undertake specific preventive or protective actions to secure Convention rights, even if the violation of rights is threatened or has occurred at the hands of a private individual or entity rather than an agent of the state.

## **Rule of law**

The European Commission for Democracy through Law (Venice Commission) has identified the [core elements of the rule of law](#) to be: (i) legality, including a transparent, accountable and democratic process for enacting law; (ii) legal certainty; (iii) prohibition of arbitrariness; (iv) access to justice before independent and impartial courts, including judicial review of administrative acts; (v) respect for human rights; and (vi) non-discrimination and equality before the law.

## **States parties**

States that have ratified an international treaty, for example the European Convention on Human Rights.

## **Subsidiarity**

In the context of the Convention, the principle that national authorities (governments, parliaments and courts) have the primary responsibility to secure for everyone within their jurisdiction the Convention rights and freedoms, and to provide an effective remedy when those rights are violated.

## **Supervision of the execution of judgments**

Following a judgment of the Court finding one or more violations of the Convention, the Committee of Ministers supervises the measures taken by the respondent state to execute the judgment.



## The Council of Europe in brief

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**T**he Council of Europe has 47 member states, covering virtually the entire continent of Europe. Established after the Second World War with a view to creating “a closer unity between all like-minded countries of Europe” in order to safeguard and realise “the ideals and principles which are their common heritage and facilitating their economic and social progress”,<sup>1</sup> it seeks to uphold and develop common democratic and legal principles based on the European Convention on Human Rights (the Convention) and numerous other treaties negotiated and adopted within the Organisation’s institutional framework.

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1. Statute of the Council of Europe, 5 May 1949, ETS. No. 1.

## Parliamentary Assembly of the Council of Europe

Created in 1949 – as an innovative forum at a time when supranational systems were still in their infancy – the Parliamentary Assembly of the Council of Europe (PACE, the Assembly) is one of the Council of Europe’s two statutory organs and acts as its deliberative body. The Assembly is composed of 648 members (324 representatives and an equal number of substitutes) from the parliaments of the 47 Council of Europe member states. The work of the Assembly is prepared in nine permanent committees, and the overwhelming majority of members belong to one of six political groups. Assembly members meet four times a year for plenary sessions in Strasbourg to discuss topical issues and ask European governments to take initiatives and report back. These parliamentarians speak on behalf of the 800 million Europeans who elected them.

With its primary goal being “to promote debates on emerging and topical European issues, identify trends and best practices and set benchmarks and standards”,<sup>2</sup> the Parliamentary Assembly has been a key “human rights watchdog”, promoting the rule of law and defending human rights across Europe. Its unique model of dialogue has helped build consensus, defuse political conflict, and protect and promote our shared European values. Moreover, the Assembly elects, *inter alia*, the judges of the European Court of Human Rights (the Court) and the Commissioner for Human Rights, as well as the Secretary General and Deputy Secretary General of the Council of Europe.

### Some achievements of the Parliamentary Assembly

In its nearly 70 years of existence, the Assembly has contributed considerably to transforming Europe into a “death-penalty-free zone”, by making the abolishment of capital punishment a condition of accession. The Assembly has supported ex-communist countries in their democratic transition, and has worked tirelessly to uncover human rights violations in Europe wherever they occur. Its decisive influence on Europe’s human rights landscape stretches back as far as 1949, when PACE (then referred to as the “Consultative Assembly of the Council of Europe”) adopted a draft Convention for the collective guarantee of Human Rights and Fundamental Freedoms, which was a precursor of the Convention.

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2. Council of Europe, “Members’ handbook, Parliamentary Assembly of the Council of Europe”, January 2015, page 8.

More recently, a PACE report into the illicit trafficking in human organs culminated in the adoption of the Council of Europe Convention against Trafficking in Human Organs (CETS No. 216), which, once it enters into force, will be the first legally binding international instrument in this field. Moreover, the Assembly's investigations, led by Senator Dick Marty of Switzerland, exposed a global "spider's web" of illegal detention and unlawful secret interstate transfers of detainees in Europe by the United States Central Intelligence Agency (CIA), thus shedding light on this dark chapter in European history in order to help ensure that European governments are never again complicit in torture.

## Committee of Ministers

The Committee of Ministers (CM) is the Council of Europe's statutory decision-making body. It is made up of the ministers for foreign affairs of member states. The Committee meets at ministerial level once a year and weekly at the level of Ministers' Deputies (Permanent Representatives to the Council of Europe). According to the Convention, the CM is the body with the primary responsibility for the supervision of the execution of judgments. For this purpose, the Ministers' Deputies hold so-called Human Rights (DH) meetings four times a year.

## European Convention on Human Rights

The Convention for the Protection of Human Rights and Fundamental Freedoms, or European Convention on Human Rights (the Convention), is an international treaty under which the contracting states undertake to secure fundamental civil and political rights to everyone within their jurisdiction. The Convention, which was signed on 4 November 1950 in Rome, entered into force in 1953. The rights and freedoms secured by the Convention and its protocols include the right to life, the right to a fair hearing, the right to respect for private and family life, freedom of expression, freedom of thought, conscience and religion and the protection of property. The Convention prohibits, in particular, torture and inhuman or degrading treatment or punishment, forced labour, arbitrary and unlawful detention, and discrimination in the enjoyment of the rights and freedoms guaranteed by the Convention.



## European Court of Human Rights

An international court set up in 1959 and based in Strasbourg, France, the European Court of Human Rights (the Court) rules on individual and state applications alleging violations of the rights set out in the European Convention on Human Rights and its protocols. Since 1998, it has sat as a full-time, permanent court to which individuals can apply directly. The Court is made up of 47 full-time professional judges, elected by the Parliamentary Assembly for a non-renewable term of nine years.

### The effect of Strasbourg Court judgments in the national system

The Court rules on individual or state applications alleging violations of the rights set out in the Convention. In almost fifty years the Court has delivered more than 10 000 judgments. While these are only binding between the parties to the proceedings, all states parties should take into account the Court's case law against other countries.

The judgments of the Court are "essentially declaratory in nature", meaning that the Court does not usually prescribe how a respondent state is to give effect to the finding of a violation. Notably, the Court cannot strike down national laws and policies that it has found to be incompatible with the Convention, and it rests on the state to decide how to give effect to a ruling, under the supervision of the Committee of Ministers, by means of individual and/or general measures. The Strasbourg Court's rulings have led states to alter their legislation and administrative and judicial practice in a wide range of areas.<sup>3</sup>

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3. For selected examples of how the Convention and the Court's case law have benefited individuals across (and beyond) Europe, see Council of Europe (2016). *Impact of the European Convention on Human Rights in states parties – Selected examples*, Strasbourg, Council of Europe Publishing (also available as an information document of the Committee on Legal Affairs and Human Rights, Doc. [AS/Jur/Inf \(2016\) 04](#), 8 January 2016.



## Chapter 1

# What is the aim of this guide?

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**T**he aim of this guide is to raise awareness of the duties and opportunities that exist for parliamentarians within the Council of Europe to protect and realise human rights as part of their commitment to the values of democracy, human rights and the rule of law.

The Parliamentary Assembly of the Council of Europe has repeatedly emphasised<sup>4</sup> that, under the principle of subsidiarity, member states are first and foremost responsible for the effective implementation of the international human rights norms they have voluntarily signed up to, particularly those enshrined in the European Convention on Human Rights, and that they should co-operate with Council of Europe bodies to this end.

In its [Resolution 1787 \(2011\)](#) the Assembly, upon proposal of the Committee on Legal Affairs and Human Rights, has gone so far as to stress that unless national parliaments assume a more proactive role in the implementation of Convention standards and judgments of the European Court of Human Rights, the key role of the Convention, its supervisory mechanism and the Council of Europe as a whole, in guaranteeing the effective protection of human rights in Europe, is likely to be put in jeopardy.

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4. See especially, [Resolution 1823 \(2011\)](#), “National parliaments: guarantors of human rights in Europe”, reproduced in Appendix 2 of this handbook.

The obligation to protect and realise human rights rests on all branches of the state, whether executive, judicial or legislative. National parliaments are especially well placed to carry out this shared responsibility due to their three primary roles of representation, legislation and oversight.

As elected representatives, parliamentarians enjoy a special democratic legitimacy. As the principal representative institution of the state, parliaments can and should use their democratic legitimacy to foster a pervasive culture of respect for human rights within a democracy underpinned by the rule of law. This is particularly important where there is a lack of consensus about rights. In all states, there may be reasonable disagreement about the scope of particular rights, how to balance the rights of individuals against those of wider society, and the justification for state interference with human rights. Such debate is legitimate. Yet it must always take place within the framework of respect for the state's human rights obligations under both national and international law – and, crucially, respect for the national, regional and international bodies that exist to monitor states' fulfilment of those obligations.

As lawmakers, parliamentarians can ensure that measures are taken to prevent violations, and that practical and effective remedies are available at the domestic level for alleged violations of human rights. Parliaments may also need to legislate in order to give effect to adverse judgments of the Court, or the decisions of other international human rights bodies, especially where they reveal structural or systemic problems, and allocate an adequate budget for doing so.

Another function of parliaments is to oversee the executive; in the context of the Council of Europe, parliaments can and should press executive bodies to justify their actions or inaction in ensuring compliance with the Convention, including judgments of the Court.

By exercising their representative, legislative and oversight functions at national level, parliamentarians contribute to strengthening both the effectiveness and perceived legitimacy of the European Convention system of human rights protection, of which they are a vital part.

Yet the protection and realisation of human rights is not only an obligation for parliaments within the Council of Europe; it also presents opportunities. By interpreting, applying and monitoring human rights in their own national context, parliamentarians contribute to the development of a shared understanding of human rights standards across the continent of Europe. As explained at 6.3., where national legislation is shaped by well-informed

and bona fide deliberation about its implications for human rights, it is more likely to withstand any future scrutiny for its compatibility with human rights standards; in this sense, parliaments can “earn” deference from regional and international human rights bodies by performing their human rights duties conscientiously. In addition, systems of human rights protection such as the Convention act as a corrective to the mistakes and injustices that even well-functioning democracies may perpetrate; consequently they strengthen, rather than undermine, public trust and confidence in the democratic credentials of national decision makers.

This handbook will equip parliamentarians within the Council of Europe to fulfil the obligations and seize the opportunities outlined above. It synthesises learning from the experience of parliaments in both older and newer member states about how to develop and sustain effective institutional arrangements for the protection and realisation of human rights. In particular, it discusses the structures, functions and working methods that allow parliaments most effectively to verify the compatibility of draft legislation with Convention standards and monitor the implementation of the Strasbourg Court’s judgments.

There is much unfulfilled potential for parliaments to become guarantors of human rights in Europe. This handbook will support parliamentarians to unlock that potential, and in so doing to build societies committed to and capable of upholding the values of human rights, democracy and the rule of law.



## Chapter 2

# What human rights obligations do parliamentarians have?

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**P**arliamentary engagement with human rights issues, undertaken in good faith, fosters the promotion and realisation of human rights. This chapter presents evidence of the increasing recognition of this premise (2.1.), before discussing the three dimensions of human rights obligations (2.2.).

### 2.1. Increased recognition that parliamentarians are guarantors of human rights

” The role of Parliaments in the future of the Court is a pivotal one. . . Your role as legislators is vital.

*Sir Nicolas Bratza, former President of the European Court of Human Rights<sup>5</sup>*

By virtue of Article 1 of the European Convention on Human Rights, states parties undertake to secure to everyone within their jurisdiction the rights and freedoms enshrined in the Convention. In ratifying the Convention and its protocols, states commit themselves to ensuring that their domestic law and practice is compatible with the Convention, and to providing for effective remedies to anyone who believes that their Convention rights have been violated. When discussing the duty of “the state” to respect and promote human rights, it is important to stress that “the state” is not a unitary or monolithic entity – it is made up of different players and institutions, which, through their relative power and interactions, determine whether, and to what extent, international human rights standards are upheld. Parliament is one of those

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5. Sir Nicolas Bratza, “Future of the European Court of Human Rights – role of national parliaments”, European Conference of Presidents of Parliament, 20-21 September 2012, [Proceedings/Actes](#), page 12.

institutions and there is increasing recognition – both within and beyond Europe – that parliaments are under a duty, just as the executive and judiciary are, to ensure that a state abides by its human rights obligations.

These past years have seen a concerted push to better exploit parliamentarians' potential to become guarantors of human rights in their domestic context. Various Council of Europe bodies have underscored parliamentarians' shared responsibility to foster the implementation of the Convention – “implementation” being understood as a wide notion encompassing not only the effective execution of adverse rulings handed down against the state, but also an array of measures (including legislation, judicial decisions, administrative action, executive decrees and others) to firmly embed Convention standards in the domestic legal order and in political decision making.

One means of ensuring compliance with the Convention is for states to proactively integrate the case law of the European Court of Human Rights in its entirety into their domestic law, by taking into account the principles developed by the Court, even in cases against other states. While Court judgments are only legally binding between the parties to a given case, states can and should avoid human rights violations from occurring in the first place, by proactively remedying situations similar to those which the Court has found to be in breach of the Convention in respect of other states. Drawing lessons from other states' breaches of the Convention, and thus upholding the interpretative authority (*res interpretata*) of the Court's case law, allows states to avert adverse rulings from Strasbourg.<sup>6</sup>

Within the Council of Europe, the Parliamentary Assembly has been most vocal – for instance in [Resolution 1823 \(2011\)](#) – in calling upon parliamentarians to fulfil their obligation to promote the realisation of human rights.

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6. See, for example, the [Interlaken Declaration](#), High-level conference: “The future of the European Court of Human Rights”, 19 February 2010, Point B., paragraph 4.c); “Strengthening subsidiarity: integrating the Strasbourg Court's case law into national law and judicial practice”, contribution of the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe to the Conference on the Principle of Subsidiarity, Skopje, 1-2 October 2010, Doc. [AS/Jur/Inf \(2010\) 04](#); Steering Committee for Human Rights (CDDH), “Report on the longer-term future of the system of the European Convention on Human Rights” (adopted at the 1246th meeting of the Ministers' Deputies, 3 February 2016), Doc. [CM\(2015\)176-add1final](#), paragraphs 37-39.

” The Constitutional framework, which includes the European Convention on Human Rights, can never be taken for granted. Parliamentarians have enormous responsibilities.

*Anne Brasseur, former President of the Parliamentary Assembly of the Council of Europe<sup>7</sup>*

” [T]he Assembly urges national parliaments to use their potential to oversee the implementation of Convention standards, including by supervising the execution of the Court’s judgments at the national level. It reiterates its previous calls ... that those member States which have not yet done so should devise dedicated mechanisms and procedures for examining whether legislation is compatible with Convention standards, and for ensuring effective oversight of the implementation of the Court’s judgments.

*PACE Resolution 2055 (2015)*

The Assembly’s calls for a more dynamic role of parliaments in the protection and realisation of human rights have been echoed by other Council of Europe bodies, notably the Commissioner for Human Rights and the Court.

” I will continue to try to help governments to forge more human rights-compliant policies, to support human rights defenders and national human rights structures, and to raise awareness about the human rights issues at stake, and I need your help: I need the help of Parliamentarians to spread the human rights message and search for co-operative solutions.

*Nils Muižnieks, former Council of Europe Commissioner for Human Rights<sup>8</sup>*

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7. PACE, “59 presidents of parliament to gather for Oslo Summit”, [press release](#) issued on the occasion of a Conference of the Presidents of Parliament from Council of Europe member states, as well as neighbouring and observer countries, organised by the Parliament of Norway (Storting) in Oslo on 11 and 12 September 2014.

8. PACE, “2016 Ordinary session (second part), verbatim record, eleventh sitting, Monday 18 April 2016 at 3.00 p.m.”, [Doc. AS \(2016\) CR 11](#).



” Through their adoption of legislation, national parliaments have a key responsibility for protecting human rights in the national context. The only role given formally by the Convention to national parliaments is indirect, through the competence of the Parliamentary Assembly, composed of delegations of national parliamentarians, to elect Court judges. However, national parliaments do have other important roles to play in the system, such as scrutinising the compatibility of all governmental actions with Convention standards and their increased involvement in the execution of Court judgments.

*Steering Committee for Human Rights (CDDH)*<sup>9</sup>

Two high-level conferences have, moreover, seen European governments recognise the need for executive bodies to facilitate this aspect of the work of parliaments, as reflected in the [Brighton Declaration](#) of April 2012 and, in particular, the [Brussels Declaration](#) of March 2015.

### **UN calls for greater parliamentary involvement in human rights matters**

At the level of the United Nations (UN), both the General Assembly and some of the bodies that monitor the implementation of UN human rights treaties (known as treaty monitoring bodies), have underscored the importance of democratising the rule of law and human rights by strengthening the role of elected politicians.

The UN Human Rights Council referred in 2015 to the crucial role that parliaments play in, *inter alia*, translating international commitments into national policies and laws, and hence in contributing to the fulfilment by each State Member of the United Nations of its human rights obligations and commitments and to the strengthening of the rule of law<sup>10</sup>

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9. CDDH, “Report on the longer-term future of the system of the European Convention on Human Rights” (note 6), paragraph 52.

10. UN Human Rights Council, “Contribution of parliaments to the work of the Human Rights Council and its universal periodic review”, [A/HRC/30/L.23](#), 29 September 2015.

Similarly, the Committee on the Elimination of all Forms of Discrimination against Women has stressed that:

“Parliament, as an organ representing the population as a whole, reflects the diversity of opinion and interests in the country by reason of its privileged access to the whole population. As such, Parliamentarians can be key players in raising awareness of the Convention [on the Elimination of All Forms of Discrimination against Women] and its Protocol to the population at large and to women in particular.”<sup>11</sup>

## 2.2. Parliamentarians’ obligation to take positive action

Contemporary international law recognises that the responsibility of states – including parliaments – to uphold and implement international human rights has three dimensions:

- ▶ the obligation to respect means that states must refrain from interfering with or curtailing the enjoyment of human rights;
- ▶ the obligation to protect requires states to protect individuals and groups against human rights abuses by entities other than the state itself;
- ▶ the obligation to fulfil means that states must take positive action to facilitate the enjoyment of basic human rights.

The obligation to respect mainly entails negative obligations, requiring states not to interfere in individuals’ rights without justification, that is, the state must refrain from certain acts. A positive obligation, by contrast – encapsulated by the obligations to protect and to fulfil – requires states to undertake specific preventive or protective actions to secure Convention rights. Almost every right enshrined in the Convention may give rise to certain positive obligations.

States must adopt measures to guarantee individuals’ effective enjoyment of their rights, even if the violation is threatened or has occurred at the hands of a private individual or entity, rather than an agent of the state. This will often necessitate legislative (for example enacting provisions criminalising murder and torture), administrative (such as putting in place environmental

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11. For more information, see UN General Assembly, “Report of the Committee on the Elimination of Discrimination against Women”, [A/65/38](#), Annex VI, Statement by the Committee on the Elimination of Discrimination against Women on its relationship with parliamentarians, p.143.

regulations to protect people from serious pollution), and procedural action (notably effective investigations into violations of fundamental rights, and bringing perpetrators of crimes to justice). These positive obligations should be fulfilled by all state authorities – including parliament.<sup>12</sup>

### **Legislating to strengthen protection from gender-based violence**

In order to bring its legislation into conformity with the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (CETS No. 210, the so-called “Istanbul Convention”), Germany reformed its law governing sexual offences. In July 2016, the German Bundestag unanimously adopted a [law](#) codifying what has come to be known as the principle of “No means No”, making every non-consensual sexual act a punishable offence. The new legislation was widely commended as a significant step towards strengthening the protection of women from gender-based violence. Germany ratified the Istanbul Convention on 12 October 2017.

The need for creating a robust legislative framework enabling all state authorities to discharge their positive human rights obligations underscores the importance of determined parliamentary action. Given their primary role in lawmaking, all parliamentarians should add their voices to those who have recognised and reiterated their duty to become guarantors of human rights. The following chapter will explore the tools and functions that parliamentarians can avail themselves of in order to help them live up to their human rights obligations.

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12. For a more detailed classification of the different types of positive obligations that the Court has recognised, see Laurens Lavrysen (2016). *Human rights in a positive state: rethinking the relationship between positive and negative obligations under the European Convention on Human Rights*, Cambridge, Intersentia.



## Chapter 3

# What should parliamentarians do to fulfil their human rights obligations?

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” Parliamentarians can take a much more active role in calling their governments to account on implementation of court judgments by establishing special review commissions, holding hearings, allocating funds for implementation measures and proposing relevant legislation.

*Nils Muižnieks, former Council of Europe Commissioner for Human Rights*<sup>13</sup>

**S**ince parliaments share with the executive and judiciary the obligation to protect and realise human rights, the question arises as to how parliamentarians should fulfil this responsibility. This chapter examines the various human rights functions of parliaments in their role as lawmakers and as the principal body which oversees the executive on matters relating to human rights and the rule of law (3.1.). In addition, it discusses what parliamentarians should require the executive to do in order to ensure that they are able to carry out their legislative and oversight roles effectively (3.2.).

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13. Council of Europe, *Annual activity report 2016* by Nils Muižnieks, Council of Europe Commissioner for Human Rights, Doc. [CommDH\(2017\)3](#), 6 April 2017, page 8.

It should be emphasised that the contents of this chapter are relevant for all parliamentarians, since all have the obligation and opportunity to protect and realise human rights, even though, as discussed in Chapter 4, specific functions may be assigned to a human rights committee or sub-committee within parliament.

### 3.1. The human rights functions of parliamentarians

The Parliamentary Assembly has identified, in [Resolution 1823 \(2011\)](#), a range of functions that parliamentarians need to fulfil as guarantors of human rights. These include functions that may prevent violations of human rights, such as systematically verifying the compatibility of draft legislation with Convention standards, and functions that ensure rigorous oversight of executive and administrative bodies when it comes to the implementation of human rights norms and of judgments of the European Court of Human Rights.

As the Assembly highlighted in [Resolution 2178 \(2017\)](#), given the budgetary implications of upholding human rights, a key means to enable parliaments to fulfil each of these human rights functions is to allocate adequate resources for the adoption of appropriate measures to respect, protect and fulfil the rights that the state has undertaken to secure.

” First and foremost, [parliaments] legislate, meaning they adopt laws that govern society. This includes ratifying or authorising the ratification of international treaties and ensuring that norms set forth in those treaties are translated into national law and implemented. Secondly, they approve the budget and set national policy priorities. Here, they must ensure that sufficient funds are provided for human rights implementation and that these funds are used appropriately. Thirdly, they oversee the action of the executive and keep it under scrutiny, to ensure that the government, administration and other state bodies comply with human rights obligations. Fourthly, members of parliament are opinion leaders and can help to contribute to a human rights culture in their country.

*Christos Pourgourides, former PACE rapporteur on the execution of judgments of the European Court of Human Rights<sup>14</sup>*

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14. “National parliaments: guarantors of human rights in Europe”, [Doc. 12636](#) (rapporteur: Mr Christos Pourgourides, Cyprus), paragraph 20.

## Scrutinising draft legislation for human rights compatibility

A key human rights function of parliamentarians is systematic scrutiny of draft legislation for its compatibility with human rights. This can be a challenging function, especially where legislative proposals are published on a rapidly moving timetable that may leave little time for parliamentary human rights bodies both to consider the human rights implications and report to parliament on any amendments required. The sheer volume of draft legislation may also present a challenge in view of the time and resource constraints on parliamentarians.

There are two main ways of mitigating these problems. First, parliamentarians should require the executive to attach a detailed human rights memorandum to every piece of proposed legislation, explaining why the government considers that it is compatible with human rights or highlighting any potential incompatibility. This is discussed further at 3.2.

Secondly, parliamentarians may choose to prioritise for detailed scrutiny those legislative proposals that they consider to have the most significant implications for human rights and the rule of law.

### **Legislative scrutiny by the Joint Committee on Human Rights in the United Kingdom<sup>15</sup>**

Through its legislative scrutiny, the Joint Committee on Human Rights (JCHR) in the United Kingdom Parliament aims to:

alert both Houses of Parliament to occasions on which there was a risk that they would legislate in a manner incompatible with the Convention rights, or with rights in other international human rights treaties to which the [United Kingdom] is a party, as well as to inform Parliament of other human rights matters raised by legislation, including whether legislation was likely to enhance the promotion and protection of human rights in the United Kingdom, or was missing an opportunity to do so.

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15. Joint Committee on Human Rights (2006), *The committee's future working practices*, Twenty-third report of Session 2005-06, paragraphs 18-49.

In its early years, the JCHR sought to scrutinise all legislative proposals for their human rights implications and compatibility. However, the committee decided in 2006 to prioritise for detailed scrutiny those legislative proposals which are likely to raise significant human rights issues, with the aim of improving the accessibility, timeliness and overall value of its legislative scrutiny work. The JCHR’s legal advisers examine all the measures announced in the government’s annual legislative programme and advise the committee on which of them are likely to raise significant human rights issues, based on the following primary criteria:

- how important is the right affected?
- how serious is the interference?
- how strong is the justification for the interference?
- how many people are likely to be affected by it?
- how vulnerable are the affected people?
- to what extent are the state’s most significant positive obligations engaged?

Members of the JCHR take this advice in account in deciding which legislative proposals they will scrutinise in detail and report on to parliament. The committee then announces its likely legislative scrutiny priorities for the session and issues a call for evidence in relation to those issues.

## Responding to human rights judgments

” National parliaments can and should hold governments to account for inadequate or dilatory implementation of Strasbourg Court judgments, for example, by holding debates and hearings and putting parliamentary questions. Above all, they should influence the direction and priority of legislative initiatives and – where appropriate – authorise the funds needed to ensure the implementation of Convention standards.

*Anne Brasseur, former President of the Parliamentary Assembly of the Council of Europe*<sup>16</sup>

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16. Council of Europe, Directorate General of Human Rights and Rule of Law, “Implementation of the European Convention on Human Rights: our shared responsibility”, High-level conference organised in Brussels, Belgium, 26-27 March 2015 by the Belgian Chairmanship of the Committee of Ministers of the Council of Europe, [opening address](#) by Anne Brasseur, pages 21-22.

## Legislating to give effect to human rights judgments

Where the origin of a human rights violation identified by the Court is a defective law, parliamentarians have an indispensable role in legislating to remedy the violation. This is especially important where the problem with the law in question may give rise to multiple applications to the Court.

### **France: legislating to decriminalise insulting the head of state**

Following *Eon v. France* (Application No. 26118/10, judgment of 14 March 2013), which found a violation of a political activist's right to freedom of expression under Article 10 of the Convention on account of his prosecution for insulting the president by having held up a satirical placard, the French parliament abolished the crime of insulting the head of state. The president today enjoys the same protection against libel and defamation as ministers and MPs. However, proceedings for insult or defamation can only be brought by the person concerned, and not by the prosecutor.<sup>17</sup>

### **Greece: legislating to give legal recognition to same-sex couples**

In December 2015, the Greek parliament adopted a new civil partnership bill, which allows same-sex couples to enter into a civil partnership, thereby providing for legal recognition and extending certain rights, such as inheritance rights, to same-sex couples. This law remedied a situation whereby same-sex couples were excluded from the scope of a previous law, which had established a form of registered partnerships, but reserved it to opposite-sex couples. The Court had concluded that this amounted to discrimination in *Vallianatos and Others v. Greece* [GC] (Application Nos. 29381/09 and 32684/09, Grand Chamber judgment of 7 November 2013).<sup>18</sup>

## Monitoring the executive's response to judgments

Oversight of executive action – or inaction – on human rights matters is a core function of parliaments. The Parliamentary Assembly has, in particular, urged parliamentarians to oversee the steps taken by the competent national authorities to implement adverse judgments of the Court ([Resolution 1823 \(2011\)](#)).

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17. See Council of Europe, *Impact of the European Convention on Human Rights in states parties – Selected examples* (note 3), page 13 of the PACE information document.

18. *Ibid.*, page 17.



Some parliamentary human rights bodies have established systematic methods of monitoring the executive's response to judgments, which may include issuing calls for evidence and reporting to parliament on the adequacy and timeliness of implementation.

Governments should facilitate this important human rights function of parliaments by regularly, and in due time, sharing information with parliament – specifically, through (at least) annual reporting by the executive to parliament on the former's response to human rights judgments, and the sharing of action plans and action reports at the same time as they are submitted to the Committee of Ministers, as discussed at 3.2.

### **Monitoring the implementation of judgments – the Lithuanian example<sup>19</sup>**

In Lithuania, since 2010, the Law and Law Enforcement Committee of the Seimas (parliament) holds extended meetings twice a year to discuss the implementation of judgments of the Court. Such monitoring is also carried out by the Committee on Human Rights of the Seimas, to which the government agent presents an annual report. Since 2016, the involvement of the Seimas in the process of executing the judgments has been institutionalised. The Chairperson of the Law and Law Enforcement Committee registered a law supplementing the Statute of the Seimas with provisions which provide that one of the committee's activities is oversight of the execution of the Court's judgments.

### **Monitoring the implementation of judgments against the United Kingdom<sup>20</sup>**

As part of its regular monitoring of the implementation of Court judgments, the JCHR collaborates with other institutional human rights bodies. A case in point is the liaison between the JCHR and the Independent Reviewer

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19. Steering Committee for Human Rights (CDDH), "Guide to good practice on the implementation of Recommendation (2008)2 of the Committee of Ministers on efficient domestic capacity for rapid execution of judgments of the European Court of Human Rights" (as adopted by the CDDH at its 87th meeting, 6-9 June 2017), [CDDH\(2017\)R87 Addendum I](#), 13 July 2017, paragraph 97 iv.

20. See Alice Donald and Philip Leach (2016). *Parliaments and the European Court of Human Rights*, Oxford, Oxford University Press, pages 234-35.

of Terrorism Legislation (the Independent Reviewer) in their respective scrutiny of the government's response to *Gillan and Quinton v. the United Kingdom* (Application No. 4158/05, 12 January 2010), which concerned the use of powers to stop and search individuals without reasonable suspicion under the Terrorism Act 2000. The Court had found that the law contained insufficient safeguards to act as a curb on the wide powers afforded to the executive, in violation of the right to respect for private life under Article 8 of the Convention. The United Kingdom Government replaced the offending provisions with new, more circumscribed powers; however, both the JCHR and the Independent Reviewer reported to parliament recommending further reforms, since the discretion conferred on officers remained too broad to remove the risk of arbitrariness. In 2012, further changes were made to satisfy the main concerns raised by the JCHR and the Independent Reviewer.

## Monitoring judgments against other states

The Parliamentary Assembly has stated that parliamentarians should monitor not only judgments against their own states, but also judgments against other states, in order that they can identify whether the same problem exists in their own law and policy and take steps to rectify it. In doing so, parliaments are respecting what is known as the interpretative authority of the Court (see 2.1.).

In practice, parliaments tend to rely on the executive to monitor and report on case law against other states, since hard-pressed parliamentarians lack the capacity to invest in an unavoidably complex and time-consuming exercise. The governments of the Netherlands, Germany and Switzerland report regularly to their respective parliaments about judgments against other states that have implications for the domestic legal order (see 3.2.). Nevertheless, at a minimum, the Parliamentary Assembly requires that parliamentary bodies should expressly recognise the Court's interpretative authority – and scrutinise the adequacy of executive systems for monitoring judgments against other states and reporting to parliament on any judgments of significance in their own national context.

## Taking proactive steps to combat human trafficking

An example of parliaments changing their laws in response to a judgment against another state can be found following the cases of *Siliadin v. France* (Application No. 73316/01, 26 July 2005) and *C.N. and V. v. France* (Application No. 67724/09, 11 October 2012). In these cases, the European Court

of Human Rights held that France had failed to discharge its positive obligations and provide tangible and effective protection to the applicants, who were vulnerable foreign minors, from forced labour as domestic servants. In response to these rulings, a number of parliaments of Council of Europe member states – among them the United Kingdom Parliament – passed laws strengthening protection against trafficking in human beings for the purpose of labour exploitation.

## Negotiating, ratifying and implementing other human rights treaties

In most countries, parliamentary approval is indispensable for the state to be able to accede to or ratify a regional or an international human rights treaty. Parliaments are thus critically involved in shaping the human rights obligations that the state undertakes to abide by. The Parliamentary Assembly and the Inter-Parliamentary Union have called for greater involvement by national parliamentarians in negotiating regional and international human rights instruments, since they must eventually enact relevant legislation and ensure its implementation.<sup>21</sup>

Parliamentarians should intervene long before the ratification stage and participate, along with government representatives, in the drafting of new instruments within international deliberative bodies. They should also, in this context, thoroughly scrutinise any (proposed) reservation or interpretive declaration to an international agreement and regularly review whether it is (still) warranted.<sup>22</sup>

Within the Council of Europe, members of the Parliamentary Assembly are directly involved in shaping the substance of new human rights instruments. The Committee on Legal Affairs and Human Rights, effectively the “legal advisor” of the Assembly, is routinely invited by the Committee of Ministers to prepare opinions on draft treaties. The committee thus brings to the negotiating table

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21. Doc. 12636 (note 14), paragraphs 31-32; Inter-Parliamentary Union (2016), *Human Rights – Handbook for parliamentarians No. 26*, Geneva, IPU/UN Office of the High Commissioner for Human Rights, pages 95-96.

22. A reservation is a caveat to a state's acceptance of a treaty: the state makes a unilateral statement when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that state. An interpretive declaration, unlike a reservation, does not purport to exclude or modify the legal effects of a treaty but rather to clarify the meaning of certain provisions or of the entire treaty.

the voice of national parliamentarians, that is, the very people who will be tasked with adopting implementing legislation and, beyond that, with overseeing the state's compliance with the treaty by vetting (draft) legislation for compatibility with the standards enshrined in the treaty; with overseeing government reporting to the bodies that monitor the implementation of the various instruments; and with following up recommendations made by those monitoring bodies.

### **Parliamentary involvement in the drafting and implementation of the Istanbul Convention**

The historical background of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (the "Istanbul Convention") provides an excellent example of close parliamentary involvement in the elaboration and promotion of an international treaty. The Parliamentary Assembly has long been a potent voice for gender equality and against gender-based violence. A "network of contact parliamentarians" made a significant contribution to the Council of Europe campaign Stop Violence against Women (2006-2008), during which the Assembly called expressly (in [Resolution 1635](#) and [Recommendation 1847 \(2008\)](#)) for the adoption of legally binding European standards on violence against women.<sup>23</sup> Parliamentarians have raised awareness of this matter, *inter alia* by organising parliamentary debates and hearings on violence against women, and by issuing public statements. The Assembly was also represented during in the meetings of the Ad Hoc Committee on Preventing and Combating Violence against Women and Domestic Violence (CAHVIO), set up by the Committee of Ministers in 2008 and tasked with drafting the Istanbul Convention. Since the Convention was opened for signature in 2011, members of the Parliamentary Network Women Free from Violence have lobbied, within their respective parliaments, for the signature, ratification and effective implementation of the Istanbul Convention.

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23. See also Council of Europe, "Explanatory report to the Council of Europe Convention on preventing and combating violence against women and domestic violence"; Letizia Seminara (2014). "The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence", in T. Natoli (ed.), *Scritti in memoria di Maria Rita Saulle*, Naples, Editoriale Scientifica, 1487-1503, page 1488; and Dubravka Šimonović (2014). "Global and regional standards on violence against women: the evolution and synergy of the CEDAW and Istanbul Conventions", *Human Rights Quarterly* Volume 36(3), pp. 590-606, page 603.

Furthermore, the Istanbul Convention is the first and only international instrument to establish parliamentary involvement in the monitoring procedure. This involvement is twofold: at national level, parliaments will participate in monitoring the measures taken to implement the convention; at the Council of Europe level, the Parliamentary Assembly will be invited to regularly take stock of the convention.

## Investigating human rights problems

Parliamentarians are well placed to conduct inquiries into topical human rights issues where concern exists about state compliance with national or international human rights obligations. In this way, parliamentarians can “set the agenda” on human rights matters in their state.

Parliamentarians, and especially parliamentary human rights bodies, should develop a methodology for selecting topics for investigation in order to ensure that they only conduct inquiries where they are particularly well positioned to make a significant contribution to gathering evidence or raising public understanding about the issue, taking into account the work of other parliamentary committees and bodies such as national human rights institutions (NHRIs), non-governmental organisations (NGOs) and international organisations.

### Conducting inquiries in the United Kingdom Parliament

The Joint Committee on Human Rights regularly conducts inquiries on topics of its own choosing. The selection of topics is informed by the JCHR’s other work on legislative scrutiny, human rights judgments and treaty monitoring, in addition to consultation with civil society and interested groups. According to the committee’s former chief legal adviser, Murray Hunt, inquiries are “exercises in assessing the extent to which the UK is complying with its relevant human rights obligations in a particular policy area, and identifying what needs to be done in order to comply with the relevant minimum standards or better to fulfil any positive obligations the state is under”.<sup>24</sup>

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24. Murray Hunt (2013). “The Joint Committee on Human Rights”, in A. Horne, G. Drewry and D. Oliver (eds), *Parliament and the law*, Oxford, Hart Publishing, page 241.

During inquiries, the committee gathers evidence by hearing witnesses and undertaking visits. Oral and written evidence is published on the JCHR's website. As an example, in 2015-16, the JCHR conducted an inquiry into the government's policy on the use of drones for targeted killing, assessing its conformity with, *inter alia*, the state's obligations under international human rights law, including the Convention.<sup>25</sup> Among other recommendations, the committee urged the government to clarify the legal basis for its policy of using lethal force abroad against suspected terrorists, even outside of armed conflicts, as a last resort, if certain conditions are satisfied. The timeliness of this inquiry was apparent from the fact that, at around the same time, the use of drones for targeted killing was the subject of a [report](#) by the Assembly (see [Resolution 2051 \(2015\)](#) and [Recommendation 2069 \(2015\)](#)).

### 3.2. How should the executive enable parliamentarians to carry out their human rights functions?

Although human rights obligations rest on all branches of the state, it is governments that represent the state before regional and international human rights bodies. This means that governments, effectively, are the "gatekeepers" of information. Consequently, parliamentarians should issue detailed guidance to the executive as to how they intend to fulfil their obligation to protect and realise human rights – and what specifically they require of the executive in order to be able to perform this oversight role.

The Council of Europe has urged governments to facilitate the human rights work of parliament in various ways.<sup>26</sup> These relate principally to the imperative for governments to facilitate parliamentary scrutiny of the human rights compatibility of proposed legislation and to report regularly to parliament on the implementation of human rights judgments. By these means, governments may involve parliaments in a transparent dialogue about implementation, reflecting their shared responsibility to protect and realise human rights.

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25. Joint Committee on Human Rights (2016), [The Government's policy on the use of drones for targeted killing](#), Second report of session 2015-16.

26. See High-level conference: "Implementation of the European Convention on Human Rights, our shared responsibility", [Brussels Declaration](#), 27 March 2015, paragraphs B.2.a, B.2.h, B.2.f, B.2.j; PACE [Resolution 1823 \(2011\)](#) (note 4), Appendix, paragraph 1.

## Facilitating parliamentary scrutiny of legislation

As noted at 3.1., a core function of parliaments is systematic scrutiny of government bills for their compatibility with human rights. An important factor in the legislative scrutiny process is the quality of information provided by the government, which should explain why it considers that a bill is compatible with human rights – or, in exceptional circumstances, why it acknowledges that a bill may not be compatible with human rights but it wishes to proceed anyway. It has been argued that the quality of information provided by the government is the “single most important factor” determining the effectiveness of the JCHR’s legislative scrutiny work.<sup>27</sup>

Parliaments, and human rights committees in particular, should therefore seek to establish a practice whereby the executive attaches a detailed human rights memorandum to every piece of proposed legislation. This practice has the additional advantage of “mainstreaming” human rights considerations within the executive, as ministers and civil servants are made aware that legislative proposals have to pass detailed parliamentary scrutiny of their human rights compatibility, and hence are more likely to survive judicial scrutiny if challenged in the future.<sup>28</sup>

## Reporting to and sharing information with parliamentarians

### Annual reports

Where systematic reporting by the executive to parliament takes place, this usually consists of an annual report – prepared either by the responsible ministry (usually justice or foreign affairs) or by the government agent – on adverse Court judgments and the steps taken by the executive to implement them.

Some form of reporting takes place in, among other states, Belgium, Bulgaria, Croatia, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Italy, Latvia, Lithuania, Montenegro, the Netherlands, Poland, Romania, the Slovak Republic, Sweden, and the United Kingdom.<sup>29</sup>

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27. Murray Hunt, “The Joint Committee on Human Rights” (note 24), page 229.

28. Brian Chang and Graeme Ramshaw (2016). *Strengthening parliamentary capacity for the protection and realisation of human rights: synthesis report*, London, Westminster Foundation for Democracy, page 16.

29. CDDH, “Guide to good practice” (note 19), paragraph 93; and Parliamentary Project Support Division (PPSD), Parliamentary Assembly of the Council of Europe, “The role of parliaments in implementing ECHR standards: overview of existing structures and mechanisms – Background memorandum”, Doc. [PPSD \(2016\) 19](#), 2 November 2016, Section 2.

## Croatia<sup>30</sup>

In 2013, the government agent was called upon by parliament to submit a report concerning the issue of representing the Republic of Croatia in Court proceedings and on the execution of Court judgments. The parliament received the first report in October 2013 and, according to a new regulation, the government agent must report at least annually to the Croatian Government and to parliament.

## United Kingdom

In 2011, the government initiated the production of an annual report on responding to human rights judgments, as had been requested by the Joint Committee on Human Rights since 2008.<sup>31</sup> In relation to the Court, the report includes sections on the United Kingdom's general approach to the implementation of Strasbourg decisions and updates on the execution of specific judgments. In 2015, the JCHR recommended that it should be turned into a broader annual human rights report to parliament, covering not only responses to human rights judgments, but also the United Kingdom's reporting to UN treaty monitoring bodies and wider human rights developments.<sup>32</sup>

In addition, annual reports should ideally identify judgments against other states that have implications for law or policy in the domestic context, as happens in the Czech Republic, Germany, and the Netherlands.

## Germany

The German Ministry of Justice has reported on Court judgments annually since 2004 to both the Committee on Human Rights and Humanitarian Aid and the Committee on Legal Affairs and Consumer Protection.<sup>33</sup> Initially, the report covered judgments and decisions against Germany.

30. PPSD, "The role of parliaments in implementing ECHR standards" (note 29), page 8.

31. For the latest, see UK Ministry of Justice (2016), *Responding to human rights judgments – Report to the Joint Committee on Human Rights on the government's response to human rights judgments 2014-16*.

32. JCHR, *Responding to human rights judgments* (note 31), 11 March 2015, paragraph 6.8.

33. For the latest, see Bundesministerium der Justiz und für Verbraucherschutz (undated), "Bericht über die Rechtsprechung des Europäischen Gerichtshofs für Menschenrechte und die Umsetzung seiner Urteile in Verfahren gegen die Bundesrepublik Deutschland im Jahr 2016."



Since 2007, it has covered the implementation of judgments. Since 2010, a separate annual report has also been produced covering judgments against other states, which have potential implications for Germany.<sup>34</sup> There is no formalised parliamentary procedure to respond to these reports. Parliamentary committees may put it on their agenda for discussion (although this is not done routinely) and they may summon government representatives for questioning.

## Netherlands

In the Netherlands, a government report on adverse judgments was initiated in 1996 at the request of the Dutch House of Representatives. Since 2006, the report has included information on the implementation of judgments, and since 2009 it has included information about judgments against third countries which have immediate implications for Dutch law or policy. Since 2010, it has included updates about reasoned inadmissibility decisions by the Court in Dutch cases. From 2013, the report has had a broader remit, covering all international human rights proceedings concerning the Netherlands, including the European Committee of Social Rights and United Nations treaty bodies.<sup>35</sup>

Annual reports may be too infrequent to enable parliament to influence the executive response to judgments in “real time”; however, such reporting mechanisms offer several significant benefits:

- ▶ regular reporting by the executive creates a **public record** of the state’s response to human rights judgments, which informs not only parliament but also other bodies such as national human rights institutions (NHRIs) and civil society;
- ▶ reporting mechanisms can prompt governments to **systematise co-ordination within the executive branch**, thereby increasing the efficiency of the execution process. Such a process can also highlight problems that occur, for example where the government agent lacks the “political status” required to influence or obtain information from ministries;

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34. For the latest, see Christoph Grabenwarter with Anna Katharina Struth and Markus Vašek (undated), “Bericht über die Rechtsprechung des Europäischen Gerichtshofs für Menschenrechte in Verfahren gegen andere Staaten als Deutschland im Jahr 2016”.

35. For the latest, see Ministry of Foreign Affairs (International Law Division) (2017), *Rapportage 2016: Internationale Menschenrechtenprocedures*.

- ▶ the **anticipation of scrutiny** can itself mobilise executive bodies to act in order to pre-empt parliamentary or wider public criticism; and
- ▶ in the medium- to long-term, regular executive reporting may have the beneficial effect of normalising the execution process and **preventing it from becoming unduly politicised**.

For these reasons, and in line with calls by the Parliamentary Assembly, national parliaments should request such regular reporting from the executive where it does not presently exist.

## Sharing of action plans and action reports

Action plans and action reports were introduced by the Committee of Ministers in 2004 and have become embedded in the supervision process since 2009. Under both the standard and enhanced supervision procedures of the Committee of Ministers,<sup>36</sup> states are required to submit an action plan or report following an adverse judgment at the latest within six months from the date upon which the judgment becomes final.<sup>37</sup>

The [Brussels Declaration](#) describes action plans and reports as key tools in the dialogue between the Committee of Ministers and states, which can also contribute to enhanced dialogue with other stakeholders, including national parliaments. Once submitted to the Committee of Ministers, action plans and reports are public documents, which are made available on the [HUDOC-EXEC database](#). Moreover, they should be considered as working documents, which may need to be revised or updated as the process of implementation proceeds. Where appropriate, action plans and reports should refer to any parliamentary involvement in the implementation of a judgment, so as to ensure that the Committee of Ministers is aware of the parliamentary dimension.

It has not yet become common practice for executive bodies to send action plans or reports to parliament at the same time as they are submitted to the Committee of Ministers, in order that parliamentary staff may review them and selectively draw the attention of members of parliament to action plans or

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36. The Committee of Ministers, when supervising the execution of Court judgments, adopts a “twin-track- procedure”, based on their level of priority, see <https://goo.gl/fG4fgk>.

37. A judgment becomes final three months after it has been issued by a seven-judge chamber of the Court unless, exceptionally, it is referred to the Grand Chamber, whose judgments are automatically final. The Grand Chamber, comprising 17 judges, hears cases involving a serious question affecting the interpretation or application of the Convention or of general importance.

reports which merit greater scrutiny. France and the United Kingdom provide rare instances of where this generally happens.<sup>38</sup> This practice is to be encouraged, since regular parliamentary scrutiny of action plans and reports would not only facilitate timely monitoring of executive action, but could also have the additional advantage of galvanising executives to improve the quality and timeliness of action plans and action reports from the outset.

## Summarising, translating and disseminating judgments and other key documents

The [Brussels Declaration](#) urges governments to promote accessibility to the Court's judgments, action plans and reports, and Committee of Ministers' decisions and resolutions, by:

- ▶ developing their publication and dissemination to the stakeholders concerned (in particular, the executive, parliaments and courts, and also, where appropriate, NHRIs and representatives of civil society), so as to involve them further in the process of executing judgments; and
- ▶ translating or summarising relevant documents, including significant judgments of the Court, as required.

In addition, the publication and dissemination of judgments is, in the overwhelming majority of cases, a requirement of general measures indicated by the Court.

Respect for the interpretative authority of the Court (see 2.1.) also implies that governments should selectively summarise and/or translate judgments against other states which have implications for their own legal orders.

Parliaments should exercise scrutiny to ensure that the executive acts on these imperatives.

### Disseminating judgments of the Court

Some national systems also stipulate how judgments of the Court are to be disseminated; for example, in Ukraine, there is a legal requirement for the government agent to provide a summary of judgments against Ukraine for publication in two official newspapers, and to provide full translations of judgments to the ombudsman (parliamentary commissioner for human rights), state bodies, and other people directly affected. Several states

38. CDDH, "Guide to good practice" (note 19), paragraph 99.

make (translations of) Court judgments available online, for instance on the website of the government agent or the relevant ministry, on the judicial intranet, or on the website of the highest court(s). Belgium, the Czech Republic and Spain have created online databases with a search engine, permitting targeted case-law research.<sup>39</sup> A number of judgments have been translated into non-official languages, and are available on the [HUDOC database](#).<sup>40</sup>

### 3.3. Making shared responsibility for human rights a reality

As noted in Chapter 1, the responsibility to protect and realise human rights rests on all branches of the state – executive, legislative and judicial. States have developed various ways of giving legal or institutional form to these responsibilities in order to ensure that the different bodies recognise and are able to live up to them, and that the structures and processes for human rights implementation are not vulnerable to being weakened or challenged.

#### Enshrining parliamentarians' human rights role in law

Parliaments may contribute to the implementation of human rights standards by passing legislation which enshrines the powers and duties of all branches of the state – the executive, legislature and the judiciary – with responsibility for ensuring compliance with Court judgments. Such legislation may also clarify how regional and international human rights conventions should be applied within the domestic legal order. Such legislation exists in Italy, “the former Yugoslav Republic of Macedonia”, Romania and Ukraine.<sup>41</sup>

The mere existence of a legislative framework does not necessarily guarantee smooth implementation of human rights judgments. Neither the Parliamentary Assembly nor the Committee of Ministers has made it a priority to recommend that states should enact legislation setting out how judgments are to be implemented, suggesting that this is deemed to be neither a necessary

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39. CDDH, “Guide to good practice” (note 19), paragraph 105. The Czech database is available at <https://goo.gl/a3UUjA>.

40. The website of the Court provides a series of links to external collections of translations of Convention case law.

41. See PPSD, “The role of parliaments in implementing ECHR standards” (note 29), pages 10-11.

nor sufficient condition for strengthening implementation in the absence of genuine political commitment.<sup>42</sup>

That said, formal regulation of the implementation process may bring several advantages. For example, it may:

- ▶ enshrine the role of parliament in the execution process, for example by ensuring timely and systematic reporting on the implementation of judgments by the executive to parliament (see 3.2.);
- ▶ stipulate time frames within which judgments are to be implemented;
- ▶ ensure that the government agent has the necessary power and authority to acquire relevant information; liaise with those responsible at the national level for deciding on the measures required to execute a judgment; and take necessary measures to accelerate the execution process – as required by Committee of Ministers' Recommendation [CM/Rec\(2008\)2](#); and
- ▶ ensure that domestic processes for ensuring Convention compliance are not vulnerable to being weakened from one administration to the next.

### **Implementation law in “the former Yugoslav Republic of Macedonia”**

A law on the execution of Court judgments was adopted by the Parliament of “the former Yugoslav Republic of Macedonia” in 2009 (and amended in 2014).<sup>43</sup> Under the law, an interdepartmental commission was established, which meets at least every three months. It comprises senior officials from the ministries of justice, the interior, foreign affairs and finance. *Ex officio* members include the presidents of the judicial council, the Supreme Court, the Constitutional Court, and the higher administrative court; the Public Prosecutors' Council; the ombudsman; and the government agent, in addition to the presidents of the appeal courts in Skopje and three other cities.

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42. For example, [Resolution 1787 \(2011\)](#) recommends, at paragraph 10.2, that parliaments create “effective domestic mechanisms” for the implementation of Court judgments “either by legislation or otherwise”.

43. Law on the Enforcement of the Decisions of the European Court of Human Rights, No. 07–2328/1, 21 May 2009.

The commission drafts analyses of Court judgments; recommends individual and/or general measures to remedy violations; proposes legislative reform; and monitors the enforcement of Court judgments, in line with various deadlines set out in the law on enforcement. The commission reports annually to the Standing Inquiry Committee on Civil Freedoms and Rights, one of two parliamentary committees with a human rights-related remit.

## An innovative model to co-ordinate human rights implementation

A promising innovation is the creation of a dedicated group bringing together multiple institutions and individuals – including parliamentarians – who are tasked with ensuring the effective and full implementation of Court judgments. Working groups may be created to co-ordinate the implementation of particular judgments that require action from multiple agencies.

There are several potential advantages to such an arrangement:

- ▶ It reflects the **shared obligation** on all branches of the state to implement Court judgments and helps to raise awareness among all responsible domestic stakeholders about those obligations.
- ▶ At a practical level, multilateral discussion has the potential to **foster effective co-ordination and collective “ownership” of the implementation process**. This may in turn help to identify and overcome points of obstruction, such as agencies that are either unwilling or unable to take the required action, and facilitate the design of feasible and sustainable legal and policy reform. This is particularly important for complex judgments that require a combination of legislative, administrative and/or judicial action and judgments that have remained unimplemented for a long period and require an injection of momentum.
- ▶ Such a multilateral forum provides a **useful interlocutor** for the Council of Europe Department for the Execution of Judgments when it visits a state to monitor the implementation of judgments, allowing it to understand the position of all relevant stakeholders.
- ▶ Such a forum also provides an efficient way of **seeking evidence and advice** from NHRIs, civil society, academics and legal professionals. This can help to ensure that the institutions charged with implementation are made aware of the perspective of groups whose rights are at stake in a particular case.

Moreover, it provides an opportunity for civil society to contribute creative legal and policy solutions to the implementation process.

- ▶ A dedicated working group, which regularly brings public authorities together may have a **preventive effect**, since it can help ensure the correct application of the Convention in the day-to-day practice of those authorities, thus contributing to a firm embedding of Convention rights in national law and practice.

In order for these advantages to come to fruition, the mere creation of a working group is not sufficient. It is important that the group meets regularly, is routinely attended by suitably senior and experienced delegates; benefits from liaison between agencies in the period between meetings; and is well serviced so that, for example, meetings result in clear action points which are followed up at regular intervals.

### **The Committee of Experts in the Czech Republic**

In 2015, the Office of the Czech Government Agent established a Committee of Experts on the Execution of Judgments of the European Court of Human Rights (*Kolegium expertů k výkonu rozsudků ESLP*). This is a consultative body composed of senior focal points of all relevant institutions – ministries, parliament, the Constitutional Court, the Supreme Court, the Supreme Administrative Court, the Supreme Public Prosecutor's Office, the public defender of rights (ombudsman), the Czech Bar Association, academia and NGOs. The committee's role is to discuss and recommend possible (general) measures with a view to implementing adverse judgments of the Court against the Czech Republic. The committee also selectively discusses judgments against other states where the same problem of principle exists in the Czech legal order.

This chapter has examined the various human rights functions that all parliamentarians may have the opportunity to carry out so as to ensure that human rights are effectively protected and realised. Parliaments have chosen to develop different institutional structures to ensure that these functions are fulfilled systematically, and it is to these institutional models that the next chapter turns.



## Chapter 4

# How should parliamentarians organise themselves to fulfil their human rights obligations?

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**H**ow best can national parliaments uphold and further strengthen the values of human rights, democracy and the rule of law – values shared by parliaments all across the continent and embodied in the European Convention on Human Rights? The Parliamentary Assembly of the Council of Europe has called upon parliaments to establish adequate internal structures to enable them to fulfil their obligation to protect and realise human rights and uphold the rule of law through their primary functions of representation, legislation and oversight. Yet, in practice, many parliaments in the Council of Europe have not to date set up any structures or processes for ensuring compliance with Convention standards and judgments of the European Court of Human Rights. Others have mechanisms which are still in their infancy, and whose effectiveness is hampered by a lack of expertise, resources or political will.



Where some degree of parliamentary oversight of human rights occurs, the institutional arrangements adopted vary between three main models. These may be categorised as:

- ▶ the **specialised** model, in which a single standing committee exists with a remit which is mainly or exclusively concerned with human rights;
- ▶ the **cross-cutting** model, in which no single committee has a remit covering human rights matters, which are instead dealt with as they arise by different committees within their respective mandates; and
- ▶ the **hybrid** model, in which more than one committee exists which has an identified interest in human rights, and/or a specialised human rights sub-committee is established within an otherwise mainstreamed system.

These categories are not intended to be rigid; for example, the existence of a specialised committee does not – and should not – preclude consideration of human rights matters by other committees. Rather, this typology captures the range of models that have been developed by parliaments, from a single focal committee to a partly or wholly decentralised approach.

Before this chapter turns to presenting these different models (4.1.) and ways in which all parliamentarians can become guarantors of human rights (4.2.), some general observations may be made:

- ▶ PACE has refrained from prescribing a single institutional model of parliamentary human rights work, and has instead adopted a flexible approach in order to ensure that the structures set up are appropriate for the particular national context.
- ▶ The Assembly's "Basic principles for parliamentary supervision of international human rights standards" (appended to [Resolution 1823 \(2011\)](#)) make explicit mention of "dedicated human rights committees or appropriate analogous structures";<sup>44</sup> while also calling on parliaments "to set up and/or to reinforce structures that would permit the mainstreaming and rigorous supervision of their international human rights obligations". Indeed, the setting up of dedicated committees in and of itself is likely to be insufficient to ensure the effectiveness of parliamentary human rights mechanisms.

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44. Even more explicitly, the UN High Commissioner for Human Rights recommends that "[w]ithin Parliaments, appropriate standing committees or similar bodies should be established and involved in monitoring and assessing the level of domestic implementation of the recommendations, particularly those related to legislative reform"; see Navanethem Pillay (2012). *Strengthening the United Nations human rights treaty body system. A report by the United Nations High Commissioner for Human Rights*, June 2012, page 85.

## 4.1. Different ways to organise parliamentary human rights work

### The specialised committee model

Among the structures aimed at guaranteeing “follow-up to and monitoring of international obligations in the human rights field, and in particular of the obligations stemming from the Convention”<sup>45</sup> that some Council of Europe member states have set up are specialised human rights committees. The remit of such a specialised committee (or sub-committee) may expressly include – or be interpreted by the committee to include – specific functions, such as the vetting of legislation for compliance with domestic, regional or international commitments, and oversight of the execution of Court judgments. However, not all do so and therefore the existence of a specialised committee does not necessarily indicate that these functions are carried out systematically.

States that adopt the specialised model include: Albania, Finland, Greece, Hungary, Latvia, Montenegro, and the United Kingdom.

#### The Joint Committee on Human Rights in the United Kingdom

The Joint Committee on Human Rights epitomises the specialised human rights committee model. It began work in 2001 and has 12 members, drawn equally from the elected House of Commons and the largely appointed House of Lords. The JCHR has tended to have two or three dedicated legal advisers with human rights expertise who provide services to its members. The committee’s formal remit is extremely broad, covering “matters relating to human rights” in the United Kingdom, excluding individual cases.<sup>46</sup> The committee has interpreted its mandate expansively. Among other activities, it:

- scrutinises government bills (and, where possible, draft bills) for human rights compatibility, and proposes amendments to bills in order to remove any incompatibility identified in its reports. The JCHR’s legislative (or pre-legislative) scrutiny is assisted by a “human rights memorandum” prepared by the relevant government department, detailing the bill’s compatibility with the Convention and other international human rights obligations (see 3.1.);

45. [Resolution 2178 \(2017\)](#), “The implementation of judgments of the European Court of Human Rights”, paragraph 10.1, and [Doc. 14340](#) (rapporteur: Mr Pierre-Yves Le Borgn’), 12 June 2017.

46. See the JCHR’s website at [goo.gl/3js6mB](http://goo.gl/3js6mB).

- conducts scrutiny of the executive response to adverse Court judgments on the basis of criteria set out by the JCHR; for example a requirement that the government should provide detailed plans as to its response within four months and make a final decision as to how the incompatibility will be remedied within six months;
- conducts thematic inquiries into issues where there is cause for concern about human rights, seeking evidence from a wide range of groups and individuals with relevant experience and interest; and
- selectively monitors the United Kingdom’s compliance with its international human rights obligations under UN human rights treaties.

Existing practice reveals a number of potential benefits of the specialised model:

- ▶ The specialised model is likely to be preferable for parliaments that are instigating human rights oversight for the first time, or in states where the execution of judgments and the verification of legislation for human rights compatibility is poorly co-ordinated by the executive.
- ▶ Creating a dedicated human rights committee sends a signal that parliament recognises and intends to act upon its human rights obligations.
- ▶ Such a committee plays a crucial role in informing parliamentary debate about human rights. This includes advising parliament about the human rights obligations and frameworks which are relevant to any issue before it, and pressing the executive to justify its action or inaction on matters relating to human rights and the rule of law.
- ▶ A human rights committee that is independent of the executive can, over time, develop both systematic oversight mechanisms and human rights expertise among its members and staff. As the former Parliamentary Assembly rapporteur, Christos Pourgourides, argues, the specialised model has “clear advantages” since it “pools competences and provides direction”.<sup>47</sup>
- ▶ A dedicated human rights body within parliament creates an interlocutor with the executive and a body which can perform specialised functions such as “real time” scrutiny of action plans and action reports and consideration of reports by the executive on Court judgments and their state of execution (see 3.2.).

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47. [Doc. 12636](#) (note 14), paragraph 30.

- ▶ A further advantage to having a focal human rights body within parliament is the potential for it to develop understanding of, and independent contact with, the Court, the Committee of Ministers, the Parliamentary Assembly, and possibly other Council of Europe bodies such as the Commissioner for Human Rights.
- ▶ Moreover, a specialised committee may be more likely to attract and retain high quality professional legal and policy advisers with human rights expertise, who are a lynchpin of effective parliamentary human rights work (see 4.2.).

### **The Constitutional Law Committee in Finland**

The principal function of the Constitutional Law Committee in Finland is to issue statements on bills (or other matters) sent to it for consideration regarding their constitutionality and their bearing on international human rights instruments, including the Convention. Once a legislative proposal has been submitted, the committee elicits the views of the relevant civil servants and external constitutional law experts at a closed, formal hearing, before adopting a reasoned opinion or report. If incompatibilities are identified, the committee explains which provisions it deems to be incompatible with the constitution or the Convention.

Opinions of the committee are, as a matter of constitutional custom, treated as formally binding on parliament. The committee often refers to judgments of the Court.<sup>48</sup> The foreign ministry sends all Court rulings against Finland to the secretariat of the committee for information; they are not circulated unless requested. The parliamentary ombudsman submits an annual report to the parliament, including a short section on Finnish cases at the Court. The report is scrutinised by the Constitutional Law Committee; however, the committee has never taken a position on that (rather technical) section of the report.

### **The cross-cutting model**

Where there is no specialised human rights committee, human rights matters must instead be dealt with by different parliamentary committees insofar as human rights are relevant to their respective mandates, often including, but not limited to, committees with broader remits covering justice, legal affairs, and/or the constitution.

<sup>48</sup>. See PPSD, “The role of parliaments in implementing ECHR standards” (note 29), page 3 (with further references).

The term “mainstreamed” is also often used; this term implies that human rights oversight is, in practice, embedded in the work of all committees. However, this is frequently not the case in the parliaments of Council of Europe member states that have a cross-cutting committee structure. In that sense, mainstreaming may be understood in many parliaments as more of an aspiration than a description of actual practice.

Among the potential advantages of a cross-cutting or mainstreamed approach is that it reduces the risk that leaving human rights scrutiny to a single, specialised body may create a “silo” of human rights expertise and engagement within parliament and discourage the integration of human rights and related rule of law issues into the work of other committees. There is a limit to what can be achieved by a single committee (often with a relatively small membership), and mainstreaming can help ensure that human rights are not dismissed or ignored by parliamentarians who are not members of a specialised committee.

Parliaments which adopt the cross-cutting approach include those in Estonia, Iceland, Luxembourg, the Netherlands, Norway and Switzerland.

### **The Netherlands**

In the Netherlands, no parliamentary committee has an explicit remit to scrutinise legislation for compliance with the Convention or to conduct oversight of the execution of Court judgments. Nor is there a specialised human rights unit at the disposal of members of parliament. However, each house of parliament (the Dutch House of Representatives and the Senate) has both a permanent justice committee and a legal service, which place emphasis on verifying legislation for compliance with the Convention.

Proposed legislation introduced by the government is accompanied by an explanatory memorandum, which identifies any issues of conformity with the Convention or other international human rights standards. In addition, every draft law, before it is submitted to parliament, must pass before the Dutch Council of State (a constitutionally established advisory body to the government) for an opinion on matters including human rights compliance, to which the government in turn responds. This material informs subsequent legislative scrutiny by the relevant parliamentary committee(s). Parliamentarians may also seek advice from the council of state or from civil servants within the ministry of justice, who receive training in human rights. The government also reports annually to parliament on the execution of judgments (see 3.2.).

The obvious risk with the cross-cutting approach to oversight of human rights is that it may become a euphemism for sporadic (or, indeed, non-existent) oversight – where “everyone’s responsibility is no-one’s responsibility”.

## The hybrid committee model

Hybrid models combine elements of both specialisation and the cross-cutting approach. In such instances, more than one parliamentary committee or sub-committee has human rights within its mandate, which may or may not include specific functions such as monitoring the execution of Court judgments.

Examples of hybrid committee models can be found in the parliaments of, among other states, Armenia, Cyprus, Georgia, Germany, Italy and Lithuania.

### Germany

The two committees of the Bundestag (the lower house) which primarily deal with human rights questions are the Committee on Human Rights and Humanitarian Aid, and the Committee on Legal Affairs and Consumer Protection. The Petitions Committee may also consider human rights matters in the course of its review of individual complaints concerning the public impact of legislation.

The Committee on Legal Affairs and Consumer Protection leads on all matters relating to the ministry of justice. The Committee on Human Rights and Humanitarian Aid is rarely the lead committee on a particular issue, as it is not aligned with a specific ministry. Instead, it discusses human rights issues from a broad perspective – both on an international basis and in relation to Germany. Neither committee has an explicit mandate to consider the implementation of Court judgments; their involvement (or that of other parliamentary committees) will depend on the particular matter of law or policy raised by a judgment. Independent, expert advice is provided to parliamentarians by the research service within parliament, including on matters of international human rights law.

Where new or revised legislation is required to implement a judgment, the issue will be considered by the Committee on Legal Affairs and Consumer Protection. In those circumstances it is common for the committee to summon representatives of the ministry of justice to attend to explain why they consider it is necessary, and why the draft law is considered to be sufficient to implement the judgment. The ministry of justice reports annually to parliament on Court judgments and their state of execution (see 3.2.).

A variant of the hybrid model is where a specialised sub-committee with a human rights remit is formed under a standing committee with a wider mandate.

### **Sub-committees in the Chamber of Deputies of the Czech Republic**

The Constitutional and Legal Affairs Committee in the Chamber of Deputies (lower house) of the Czech Parliament has established a Sub-committee on Legislative Initiatives of the Ombudsman and the European Court of Human Rights.<sup>49</sup> In addition, the Committee on Petitions has a sub-committee on human rights. The sub-committees are effectively working groups of their parent committee, and meet in private. The Sub-committee on Legislative Initiatives of the Ombudsman and the European Court of Human Rights discusses the annual report prepared by the government agent on judgments against the Czech Republic and their state of execution. The Constitutional and Legal Affairs Committee and Committee on Petitions play the leading role in vetting the conformity of government and non-government bills with international human rights treaties, including the Convention.

## **4.2. Supporting all parliamentarians to become guarantors of human rights**

The foregoing section showed that each model has its advantages and disadvantages. Moreover, it became apparent that it is important not to focus on structures alone. Committees that bear the label “human rights”, for example, may create the illusion of activity where none actually exists. Rather, the effectiveness of such structures is dependent upon factors such as political commitment and the availability of expert legal and policy advice and secretariat support. This section will examine how each of the models for parliamentary human rights work identified above can be made effective.

### **Ensuring that all parliamentarians know when human rights are at stake**

A prerequisite for effective parliamentary engagement with human rights is that parliamentarians are aware when human rights are at stake. Thus, fostering parliamentarians’ knowledge and expertise is key to the creation of a human

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49. Among other activities, the ombudsman, also known as the public defender of rights, mediates between complainants and public bodies and contributes to the promotion of the right to equal treatment and protection against discrimination.

rights culture within parliament, one in which human rights issues are moved from the fringes into the very centre of mainstream parliamentary debate.

This may be achieved, first and foremost, by ensuring that reports of a human rights committee – or another part of the national human rights machinery – are brought to the attention of other parliamentarians in advance of any proceeding which will include debate about human rights.

Another method is to devise mechanisms so that the president of the parliament (or equivalent) is always informed in advance when a parliamentary proceeding engages parliament's obligation to protect and realise human rights, so that the speaker of the parliament (or equivalent) may see to it that the obligation is fulfilled – for example, by ensuring that a legislative proposal that has implications for human rights is scrutinised by the most appropriate committee(s).<sup>50</sup>

## Ensuring that all parliamentarians can access independent advice on human rights

The importance of developing within national parliaments a permanent body of professional staff capable of providing independent and expert advice on human rights and the rule of law has been repeatedly underscored by the Parliamentary Assembly, for example in [Resolution 1823 \(2011\)](#), and is reflected in its own capacity-building work with parliamentary staff.<sup>51</sup>

Access to politically neutral advice helps to ensure both the independence – and the appearance of independence – of human rights committees and parliament at large. This benefit is much less likely to occur where advisers are transient appointees of either individual parliamentarians or political party groups, or where they are seconded either from government or non-governmental organisations (NGOs).

Developing a body of professional parliamentary staff also provides continuity between parliaments and ensures the creation of an “institutional memory”, both in relation to substantive issues and working methods. By providing legal and policy expertise in an accessible style, advisers can support parliamentarians by (among other activities) scrutinising legislation and monitoring the executive response to human rights judgments and decisions in a way which takes into account the nature of the obligation on the state and the full range of human rights-compliant options open to parliament.

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50. Chang and Ramshaw (note 28), page 8.

51. PACE, Parliamentary Project Support Division (PPSD), *Projects in co-operation with the Committee on Legal Affairs and Human Rights* (undated).



In brief, it is crucial that parliamentary advisers are politically independent, sufficiently numerous and well-resourced, and afforded ample opportunities to develop their own capacity in relation to their knowledge and understanding of human rights and the rule of law. Further, the centrality of the advisory role implies the need to ensure that human rights expertise is not confined to a single committee in parliament but is, as far as possible, mainstreamed across the full range of parliamentary activity.

The same principle of mainstreaming applies to professional research and information services within parliament, which provide a valuable supplement to the work of legal advisers. The parliamentary research service should include in its briefings issues relevant to human rights and the rule of law and could also proactively provide updates to parliamentarians on significant human rights developments, in anticipation of the human rights issues likely to be at stake in parliamentary business.

### **Three lessons for organising parliamentary human rights work**

While the Parliamentary Assembly has declined to prescribe a blueprint for institutionalising parliamentary human rights work, three general conclusions can be drawn.

First, specialised human rights (sub-)committees, where they have an appropriate remit, powers and membership, are a valuable tool to strengthen the capacity of parliaments to protect and realise human rights at the domestic level, especially in states with no or little experience in meaningful parliamentary engagement with human rights matters.

Second, and notwithstanding these potential benefits, these structures will not be effective in and of themselves unless they are underpinned by the political commitment of both their members and parliament as a whole.

Third, in order to ensure that all parliamentarians acquire greater expertise on human rights matters and assume their shared responsibility for strengthening the protection of human rights, specialisation and the cross-cutting approach should not be viewed as mutually exclusive options; rather, a specialised human rights committee should be an “engine” of mainstreaming.<sup>52</sup> Thus, it is important to ensure that consideration of human rights and related rule of law issues is integrated across the entire range of a parliament’s functions and activities, including both committees and legal and research services.

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52. As argued by Murray Hunt, former Chief Legal Adviser to the JCHR. See Donald and Leach (note 20), page 80.

This chapter has explored the institutional and legislative arrangements that parliaments can make to ensure compliance with the state's human rights obligations and the importance of supporting parliamentarians through the provision of independent legal and policy advice. In the next chapter, we discuss how parliamentary human rights structures work in practice and the principles underpinning their work.



## Chapter 5

# How can parliamentarians make human rights structures work effectively?

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If the decision is taken to create a parliamentary human rights committee,<sup>53</sup> how should the latter be formally constituted and how should it conduct its day-to-day work? This chapter examines these questions in respect of a human rights committee's status and remit (5.1.); membership (5.2.); powers (5.3.); working practices (5.4.); and relationships with other branches of the state and with organisations at the domestic, regional and international levels (5.5.). In addition, consideration should be given to training and technical assistance on human rights provided to parliamentarians (5.6.) and how parliamentary human rights bodies can assess their effectiveness (5.7.).

This chapter draws on existing sources of information and guidance for parliamentarians issued by the Parliamentary Assembly of the Council of Europe<sup>54</sup> and the Inter-Parliamentary Union (IPU),<sup>55</sup> as well as the "Draft principles

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53. In this chapter, the term "human rights committee" is used to refer to a specialised human rights committee or any committee which expressly includes human rights within its remit (within the hybrid model described in 4.1.).

54. See, especially, [Resolution 1823 \(2011\)](#) (note 4); PPSD, "The role of parliaments in implementing ECHR standards" (note 29).

55. IPU/UN, *Human Rights – Handbook for parliamentarians No. 26* (note 21).

and guidelines on the protection and realisation of the rule of law and human rights” (hereafter, Draft Principles and Guidelines), which have been drafted by the former Chief Legal Adviser to the Joint Committee on Human Rights in the United Kingdom Parliament, Murray Hunt,<sup>56</sup> and endorsed by the UN.<sup>57</sup>

## 5.1. Status and remit

The Parliamentary Assembly recommends, in the “Basic principles for parliamentary supervision of international human rights standards” appended to [Resolution 1823 \(2011\)](#), that parliamentary human rights committees should have a remit that is clearly defined and enshrined in law. The Draft Principles and Guidelines further recommend that a human rights committee should be established by parliament itself, and not by the executive. In addition, it should have a permanent status. These guarantees of independence and autonomy are important to ensure that parliamentary human rights mechanisms are not weakened or destabilised between administrations and that parliamentarians are able to act free from political pressure and to express ideas without fear of reprisal.<sup>58</sup>

The remit of the human rights committee, namely the tasks or areas of activity formally assigned to it, should be sufficiently broad so as to reflect the imperative for parliament both to protect and realise human rights in the state concerned and to take into account all relevant sources of human rights standards in both national and international law.

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56. For the full text, see “Parliaments and the European Court of Human Rights”, [report](#) of conference held at the Senate in Warsaw, 12 May 2015, Appendix: Draft principles and guidelines on the protection and realisation of the rule of law and human rights, pages 25-34. See also Chang and Ramshaw (note 28), who use the Draft Principles and Guidelines as the basis for a practical tool to assess parliamentary capacity to ensure the protection and realisation of human rights in six countries: Georgia, “the former Yugoslav Republic of Macedonia”, Serbia, Tunisia, Uganda and Ukraine.

57. See UN General Assembly, “Strengthening United Nations action in the field of human rights through the promotion of international cooperation and the importance of non-selectivity, impartiality and objectivity: Report of the Secretary-General”, Doc. A/72/351, 21 August 2017, paragraph 36: “The Secretary-General encourages a more proactive engagement of parliamentarians in the work of international human rights mechanisms, including through the development of a set of principles and guidelines that would assist and guide them.”

58. [Doc. 12636](#) (note 14), paragraph 22.

It is desirable for the remit to be limited to human rights in the domestic context. Where it does include portfolios such as foreign affairs, it is important to avoid the risk that parliamentarians focus their attention solely or primarily on the human rights situation in other states, at the expense of overseeing domestic human rights.

## 5.2. Membership

The Draft Principles and Guidelines recommend that the method of appointment of the human rights committee should be transparent and command public confidence, and should ensure that it is independent of both the government and non-state bodies. Specifically, it is recommended that the composition of the committee should ideally be defined in such a way as to exclude the possibility of a government majority and to ensure that members of the government are ineligible to be members of the committee. A mechanism should exist for potential conflicts of interest to be declared by members of the committee.

In addition, it is recommended that membership of the committee should be as inclusive as possible of political parties within parliament and reflect the principles of pluralism and gender balance. The chair of the committee should ideally be elected by members of parliament and should be a senior parliamentarian with a proven record of independence and commitment to human rights.

These formal guarantees of independence and pluralism are especially important in parliaments which do not have a strong tradition of using committees to hold the government to account. Given that human rights often protect minorities (who may be marginalised or unpopular), the rules governing specialised human rights committees should contain particularly robust guarantees against undue politicisation. Consideration should, for instance, be given to whether the chair should be reserved for a member of the opposition. In bicameral parliaments, if the decision is taken to have a specialised human rights committee, consideration should be given to making it a joint committee of both chambers in order to maximise the potential for both detailed scrutiny and political influence.

### 5.3. Powers

A human rights committee needs to have sufficiently broad powers to enable it to fulfil its remit effectively, including fact-finding powers to obtain information about human rights violations. The Parliamentary Assembly recommends that human rights committees should have:

- ▶ subpoena powers in order to be able to compel witnesses to attend and to require the production of documents by the government,<sup>59</sup> as relevant to the committee's remit, and
- ▶ the power to initiate legislative proposals and amendments to laws.<sup>60</sup>

The Draft Principles and Guidelines further recommend that the committee should have the power to:

- ▶ initiate inquiries of its own choosing;
- ▶ hold oral evidence hearings;
- ▶ conduct visits, including visits abroad;
- ▶ access places of detention without notice;<sup>61</sup>
- ▶ report to parliament; and
- ▶ make recommendations to the government.

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59. [Resolution 1823 \(2011\)](#) (note 4), Appendix, paragraph 1. At the same time, the Assembly, by endorsing the “Global Principles on National Security and the Right to Information” (*Tshwane Principles*; launched on 12 June 2013), acknowledged that an appropriate balance ought to be struck between legitimate national security concerns and the public's right to access information held by public authorities. PACE has stressed that, “[a]s a general rule, all information held by public authorities should be freely accessible” and, “[a]s a safeguard against overly broad exceptions, access to information should be granted even in cases normally covered by a legitimate exception, where public interest in the information in question outweighs the authorities' interest in keeping it secret”, including when such information “would make an important contribution to an ongoing public debate”. PACE [Resolution 1954 \(2013\)](#), “National security and access to information”, paragraphs 9.1, 9.5 and 9.5.1.

60. [Resolution 1823 \(2011\)](#) (note 4), Appendix, paragraph 1.

61. Parliamentary human rights committees should be aware of and ensure non-interference with visits to places of deprivation of liberty carried out by other entities such as (among others) NHRIs, NGOs, national preventive mechanisms (NPMs) under the Optional Protocol to the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). See, e.g. PACE and the Association for the Prevention of Torture (APT) (2013). *Visiting immigration detention centres – A guide for parliamentarians*, Strasbourg, Council of Europe Publishing, pages 18-19.

## 5.4. Working practices

### Maintaining an up-to-date website

A key requirement of transparency is that a human rights committee should maintain an up-to-date website on which all relevant materials are easily accessible. These could include:

- ▶ the committee's reports to parliament and any government responses to those reports;
- ▶ written evidence submissions and transcripts and/or recordings of oral evidence (with the exception of narrowly defined limitations on the disclosure of certain sensitive information, as may be required, for example in the interest of protecting witnesses);
- ▶ selected correspondence with ministers, government officials and other external bodies;
- ▶ news releases; and
- ▶ any documents relating to the committee's remit and working practices.

### Publication of working methods and a prioritised work programme

Transparency also requires that, as recommended by the Draft Principles and Guidelines, a human rights committee should publish a statement of its working practices and keep them under regular review. Specifically, it should publish the issues it proposes to prioritise in its work programme – for example, in respect of legislative scrutiny or thematic inquiries – and explain the means by which these priorities have been established. This practice is important in order to both to strengthen parliamentary and wider public understanding of, and confidence in, the committee's work and to create a permanent record of the committee's work that will outlast individual committee members and staff.

### Reporting to parliament

It is further recommended that the committee report regularly – and at least annually – to parliament as a whole on its activities and the performance of its functions. In addition, every opportunity should be seized to follow up on the committee's previous reports or recommendations, in order to track whether the executive responded in a timely and adequate way.



## How the committee makes decisions

It is recommended in the Draft Principles and Guidelines that the committee should strive to reach consensus on the issues on which it reports, insofar as it is possible to do so. This principle reflects the fact that members of committees may hold different political and philosophical conceptions of human rights, and must negotiate these differences in deciding on the committee's overall priorities and in its response to specific legislative proposals or judgments and decisions of international human rights bodies.

Where consensus cannot be reached, it is essential that members of the committee strive to overcome partisan or ideological considerations by focusing on positions that are clearly justified in terms of principle. It is their responsibility not to evince a lack of respect for the human rights standards that the state has undertaken to abide by, but to contribute to fulfilling these duties.

### 5.5. Developing external relationships

As the Parliamentary Assembly has recognised (in the Appendix to [Resolution 1823 \(2011\)](#)) a human rights committee cannot work effectively in isolation. Rather, its impact and effectiveness depend upon both members of parliament and parliamentary staff developing and maintaining effective working relationships with a range of key interlocutors, both nationally and internationally. It is only through such relationships that a committee can acquire and transmit information, enrich and impart its own understanding of human rights, and fulfil its shared obligation to protect and promote human rights.

A key relationship is that with the **executive**. It is crucial that government ministers and officials receive detailed guidance from parliament about what they need to do to enable parliamentarians to fulfil their obligations to protect and realise human rights. The relationship between parliament and the executive is discussed in more detail at 3.2.

The Draft Principles and Guidelines also refer to parliament's relationship with the domestic **courts**, which is governed by the important principle of the separation of powers. It may at times be necessary for parliament to seek representative judicial views in order to assist its scrutiny of laws or policies which affect the exercise of the judicial function or the rule of law more broadly. Likewise, according to the Draft Principles and Guidelines, where a court wishes to take into account what parliamentary consideration has been given to a human rights issue on which the court has to make a determination,

parliaments should facilitate such judicial consideration. For example, as explained at 6.3., the European Court of Human Rights may wish to establish whether a parliament conscientiously considered the human rights implications of legislation when the Court decides on the validity of any subsequent human rights-based challenge to that legislation.

As the Parliamentary Assembly has underlined,<sup>62</sup> another crucial relationship for parliament to foster is with **national human rights institutions (NHRIs)**. In establishing effective co-operation with NHRIs, parliament and its human rights committee should be guided by the Belgrade Principles on the Relationship between National Human Rights Institutions and Parliaments.<sup>63</sup> These cover parliament's role in establishing an NHRI and securing its functioning, independence and accountability; co-operation between parliament and the NHRI with respect to legislation, international human rights mechanisms, and education, training and awareness-raising about human rights; and monitoring the executive response to human rights judgments and decisions issued by national and international bodies.

Parliaments may also have the opportunity to develop working relationships with other parts of the **national human rights "machinery"**, such as public defenders or ombudsmen, commissioners for the rights of particular groups, and independent reviewers. Such relationships are important to ensure coherence and co-ordination between all institutions concerned with the protection and realisation of human rights.

A human rights committee is also ideally placed to develop direct relationships with **regional and international human rights bodies**, including the Council of Europe, as discussed at 6.2.

A human rights committee – and parliament as a whole – should be closely connected to **civil society** stakeholders and provide regular opportunities for them to submit evidence and thereby inform its scrutiny of policy and legislation. This should include civil society groups that are able to represent the experience of particular groups or individuals, and assist parliamentarians to hear evidence directly from individuals whose rights may be affected by legislation and policy, in line with the principle of inclusivity.

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62. [Doc. 12636](#) (note 14), paragraphs 41–42.

63. [Belgrade principles on the relationship between national human rights institutions and parliaments](#), Belgrade, Serbia, 22–23 February 2012.

## Hearing evidence from those whose rights are at stake

When the Joint Committee on Human Rights in the United Kingdom Parliament conducted an inquiry into the human rights of adults with learning disabilities, it wished to hear evidence not only from professionals and civil society groups, but also from people with learning disabilities.<sup>64</sup> In order to achieve inclusivity, the JCHR:

- issued an Easy Read<sup>65</sup> version of its press notice, inviting people with learning disabilities to tell the committee about their experiences;
- extended the usual three-month deadline to respond to the call for evidence to make it easier for people with learning disabilities to take part;
- commenced the inquiry by taking advice from the British Institute for Learning Disabilities on how to make the oral evidence sessions more accessible for witnesses with learning disabilities;
- met adults with learning disabilities, including adults with complex and profound learning disabilities, together with their supporters and families, in a number of different educational and residential settings.

Submissions from members of the public, including people with learning disabilities and their families or carers and professionals working in the field of learning disabilities, were published as part of a separate volume of evidence. Audio and Easy Read summaries of the JCHR's inquiry report are published on its [website](#).

Close contact should also be maintained with **academic institutions**, including human rights institutes, and with the **legal profession** and its representative bodies. It is also recommended that a human rights committee should develop contact with the **media** and be especially vigilant about the importance of free and independent media for the protection of human rights in a democracy.

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64. Joint Committee on Human Rights (2008), *A life like any other? Human rights of adults with learning disabilities*, Seventh Report of Session 2007-08.

65. Easy Read is a way of making information accessible by using, among other techniques, easy words, short sentences and images to support text.

## 5.6. Training and technical assistance

The Parliamentary Assembly recommends that parliaments provide or arrange induction training on human rights and the rule of law for all new members and staff, in addition to periodical training thereafter (see [Resolution 1823 \(2011\)](#), Appendix).

” Human rights can only sufficiently be protected where their existence and scope is known and understood by parliamentarians and their support staff. As parliamentarians are opinion leaders whose examples matter, the development of a parliamentary human rights culture to effectively integrate human rights concerns in all aspects of parliamentary work is of utmost importance.

*Christos Pourgourides, former PACE rapporteur on the execution of judgments of the European Court of Human Rights<sup>66</sup>*

Training should be designed so as to enable parliamentarians to identify when human rights and rule of law issues arise in the course of their work and understand the nature and scope of their human rights obligations. Such training should also enhance parliamentarians’ understanding of and engagement with regional and international human rights mechanisms (in respect of the Council of Europe, see 6.2. and 6.3. on PACE and the Court respectively).

Parliaments may seek to access the technical assistance which is available from regional and international organisations to assist them to build their capacity to protect and realise human rights. As explained in 6.2., such assistance is provided by the Parliamentary Assembly through its Parliamentary Project Support Division.

## 5.7. Assessing the effectiveness of a human rights committee

The Draft Principles and Guidelines recommend that human rights committees should develop a methodology for assessing their effectiveness in the protection and realisation of human rights. This is a laudable aim, but one that can be difficult to achieve in practice.

One challenge is that parliaments and human rights committees do not work in isolation or exercise control over all aspects of their work; for example, they

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66. [Doc. 12636](#) (note 14), paragraph 43.

may depend upon civil society organisations and NHRIs to bring human rights problems to their attention, and on the executive to implement human rights measures or to provide the necessary information to allow parliament to perform its oversight role (see 3.2.). Moreover, they must work within the limits of the resources available as regards committee membership, advisers and other staff.

A further challenge is that much parliamentary influence is subtle and immeasurable. Indeed, the impact of parliamentary work has been likened to an iceberg, with a visible tip and a large, hidden base.<sup>67</sup>

At the tip of the iceberg are tangible impacts such as:

- ▶ changes to legislation or policy that result directly from parliamentary recommendations;
- ▶ direct influence on the executive response to human rights judgments or decisions; for example, by securing revisions to action plans or legislative amendments; and
- ▶ securing changes to the executive system of implementation, including mechanisms and deadlines for reporting to and sharing information with parliament.

At the base of the iceberg are less easily quantifiable impacts which may, for example, result from informal, undocumented activity that takes place in the corridors rather than committee rooms or chambers of parliament. Examples of influence that are hard to measure include gathering and synthesising evidence about human rights issues; “spotlighting” issues that might otherwise be neglected; and improving the quality of government decision making through oversight and accountability<sup>68</sup> – in other words, influencing governmental behaviour in anticipation of parliamentary scrutiny. This type of impact captures the preventive influence of parliamentary human rights oversight, which may be among the most important but also the most difficult to identify.

With these challenges in mind, how can a human rights committee seek to assess its effectiveness? Setting overarching goals can help to determine the benchmarks of success in any future evaluation.<sup>69</sup> Goals will vary between parliaments and human rights committees and should be attuned to the

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67. Philippa Webb and Kirsten Roberts (2014). *Effective parliamentary oversight of human rights – A framework for designing and determining effectiveness*, King’s College London, page 4.

68. Meg Russell and Meghan Benton (2011). *Selective influence: the policy impact of House of Commons Select Committees*, The Constitution Unit, University College London, page 8.

69. Webb and Roberts (note 67), pages 7-8.

national context. It has been proposed that the goals of parliamentary human rights work could include:

- ▶ **increasing the visibility** of human rights issues in the work of parliament, the government and in the eyes of the public;
- ▶ **increasing accountability** for unlawful human rights practices by creating another venue before which issues relating to human rights issues can be discussed and monitored, with a view to using parliamentary tools for influencing law, policy and public opinion;
- ▶ **improving co-ordination** of human rights policies within and between parliament, government and civil society, by constituting a hub for interaction between those involved in human rights issues;
- ▶ **identifying opportunities** for making concrete the norms to which the state has committed itself in national law or policy, in accordance with the principle of subsidiarity; and
- ▶ **conferring a degree of democratic legitimacy** on human rights norms, by requiring parliamentarians to engage with the practical meaning of those norms for the content of law and policy.<sup>70</sup>

If a parliament decides to assess its effectiveness in achieving its goals, attention should also be paid to the process of evaluation. The process is likely to have greater credibility if it:

- ▶ is undertaken by an external consultant with proven independence and expertise;
- ▶ has a clear remit and methodology;
- ▶ affords opportunities for participation by, or representation of, a variety of perspectives, including the experience of groups whose rights are particularly vulnerable to abuse;
- ▶ publishes its outcome and any recommendations or follow-up.

### **Reviewing – and adapting – working practices**

After around five years of operation, the Joint Committee on Human Rights decided to assess the effectiveness of its working practices.<sup>71</sup> As a result of the review, the JCHR changed several of its working practices. For

<sup>70</sup>. Ibid., page 7.

<sup>71</sup>. Joint Committee on Human Rights (2006), *The committee's future working practices*, Twenty-third report of session 2005-06, pages 3-4.

example, it decided to focus its scrutiny on the most significant human rights issues raised by legislative proposals, and produce shorter and more focused legislative scrutiny reports, in order to enhance its ability to alert parliament to them in a timely way (see 3.1.).

Using the resources released by this more selective approach, the committee decided to expand other areas of its work, including:

- monitoring the implementation of judgments of the Court;
- scrutinising human rights treaties entered into by the United Kingdom before they are ratified, if they raise significant issues of which parliament should be made aware;
- conducting inquiries on human rights issues of national concern, with priority given to subjects where the JCHR can make an important and useful contribution to parliamentary and public debate (see 3.1.).

This chapter has examined the essential features and working practices of an effective parliamentary human rights body. Key principles underpinning the creation and operation of a human rights committee include independence, political pluralism, gender balance, transparency and inclusivity. If parliamentarians are to become effective guarantors of human rights, it is also important that they enjoy opportunities for training and keep their goals and working practices under review. Also critical is the extent to which parliamentary human rights bodies are connected to other national stakeholders who are concerned with protecting and realising human rights. Connections should also be forged with Council of Europe bodies in Strasbourg, as the next chapter explores.



## Chapter 6

# How can parliamentarians work more closely with the Council of Europe?

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**N**ational parliaments and the Council of Europe are strong allies in their common endeavour to protect and realise human rights as part of their commitment to the values of democracy, human rights and the rule of law. By devising mechanisms to interpret, apply and monitor human rights in their own national context, parliamentarians contribute to the development of a shared understanding of human rights standards across the continent of Europe. Understood in these terms, parliamentary human rights work provides an excellent opportunity for parliamentarians to shape the agenda in Strasbourg.

This chapter looks at the special role of delegates of the Parliamentary Assembly of the Council of Europe (6.1.), and different ways in which all parliamentarians can intensify contact with the various Council of Europe institutions (6.2.). A further incentive for parliamentarians to engage with human rights in their deliberations is the potential to “earn” deference from the European Court of Human Rights should laws that they have passed later be challenged in Strasbourg (6.3.).



” [T]he Assembly remains first and foremost a human network of committed Parliamentarians and officials motivated to defend humanistic values.

*Wojciech Sawicki, Secretary General of the Parliamentary Assembly*<sup>72</sup>

## 6.1. The special role and responsibility of Parliamentary Assembly delegates

A special responsibility to “bring home” European human rights standards falls on those parliamentarians who are also members of their country’s parliamentary delegation to the Parliamentary Assembly of the Council of Europe,<sup>73</sup> who can act as multipliers of the latter’s activities.

Members of the Assembly make their voices – and the voices of their constituents – heard in Strasbourg by, *inter alia*, taking on rapporteurships; contributing to plenary debates; participating in committee meetings; proposing motions for Assembly resolutions or recommendations; taking part in elections by the Assembly; becoming members of election observation missions; and putting questions to the Committee of Ministers. In their work, they must embrace and be committed to promoting to the principles and values upon which the Council of Europe is based.<sup>74</sup>

At the same time, the Assembly has repeatedly emphasised that PACE delegates have a particular duty to contribute to the effective implementation of international human rights norms.

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72. Council of Europe, “Members’ handbook, Parliamentary Assembly of the Council of Europe” (note 2), page 5.

73. To find out who the PACE representatives of your parliament are, consult the Assembly’s website, at [www.assembly.coe.int/nw/Home-EN.asp](http://www.assembly.coe.int/nw/Home-EN.asp).

74. See PACE, “Rules of Procedure of the Assembly”, Resolution 1202 (1999) adopted on 4 November 1999, as last modified by Resolutions 2169 and 2182 (2017); and also Council of Europe, “Members’ handbook of the Parliamentary Assembly of the Council of Europe” (note 2). In a case of serious misconduct, the Assembly may dismiss members holding elective offices within PACE (namely the president and vice-presidents, and committee chairpersons and vice-chairpersons); Rules 54 and 55 of the [Rules of Procedure of the Assembly](#).

” In this respect, the double mandate of members of the Assembly – as both members of the Assembly and of their national parliaments – is of particular importance for raising the awareness of their colleagues for human rights issues. I consider it the duty of all of us to contribute to such a process at every possible level. We have a special responsibility here.

*Christos Pourgourides, former PACE rapporteur on the implementation of judgments of the European Court of Human Rights<sup>75</sup>*

As the Assembly is composed of delegates from all 47 member states, its achievements are ultimately the achievements of national parliamentarians who, as PACE members, speak and act on behalf of 800 million Europeans. Members of the Parliamentary Assembly are ideally placed to fulfil the dual mandate which they possess by virtue of belonging both to PACE and their national parliament; for example, by elevating the conversation around human rights issues and PACE activities, and by promoting understanding and application of Convention standards at the domestic level.

” I emphasise the need for this Assembly, which is made up of national parliamentarians, to get involved in this area. We must move this debate forward, especially in countries where this issue is not discussed, to ensure that both governments and the courts play their part in implementing the judgments of the European Court of Human Rights. [...] We must wage this fight in our national parliaments to ensure the necessary supervision of our own countries’ implementation of these judgments. It is our duty and responsibility to do so.

*Pierre-Yves Le Borgn’, former PACE rapporteur on the execution of judgments of the European Court of Human Rights<sup>76</sup>*

In practice, the dual role of the Assembly delegates has been instrumental in creating unifying pan-European human rights standards: PACE members who were involved in the elaboration of new Council of Europe human rights treaties – many of which are innovative instruments relating, for instance, to trafficking

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75. Doc. 12636 (note 14), paragraph 45.

76. PACE, “2017 Ordinary session (third part), verbatim record, twenty-sixth sitting, Thursday 29 June 2017 at 3.30 p.m.”, Doc. AS (2017) CR 26.

in human organs<sup>77</sup> or the protection of children against sexual violence<sup>78</sup> – have used their close ties to Strasbourg to push for the adoption of implementing legislation within their parliaments. This is to ensure swift ratification and spear-head reforms at the domestic level with the aim of ensuring that the citizens of their countries can effectively enjoy the rights and freedoms set out in the European Convention on Human Rights and other Council of Europe instruments.

### **Consultations between government agents and the PACE delegation**

Some Council of Europe member states have devised practices to foster dialogue between parliament and the co-ordinator of execution of the Court's judgments – most frequently the government agent and his or her office – which may take the form of regular or ad hoc meetings dealing with the execution of the Court's judgments. The Swiss PACE delegation, for example, holds quarterly consultations with the national government agent in order to discuss problematic issues concerning applications pending before the Court, delivered judgments, or cases for which political support is necessary in order to advance, if need be, a legislative project.

*Council of Europe, Steering Committee for Human Rights<sup>79</sup>*

Proactive human rights engagement of the PACE members “at their home base” is crucial in order to strengthen subsidiarity and ensure that human rights protection is effective. Parliamentarians who are also members of the Assembly have the capacity and responsibility to:

- ▶ inform their colleagues in the national parliament of PACE activities and ensure appropriate follow-up to Assembly resolutions and recommendations;
- ▶ establish and enhance a reasoned and well-informed human rights discourse based on the values of tolerance, pluralism, democracy, and non-discrimination shared by member states of the Council of Europe;
- ▶ correct erroneous and ill-informed criticism of the Strasbourg system where it surfaces in their national context; and
- ▶ create and defend the structures and procedures necessary to make parliamentary human rights engagement effective in practice.

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77. Council of Europe Convention against Trafficking in Human Organs (adopted 25 March 2015, entry into force 1 March 2018), [CETS No. 216](#).

78. Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (adopted 25 October 2007, entry into force 1 July 2010), [CETS No. 201](#).

79. CDDH, “Guide to good practice” (note 19), paragraph 97.

” I call on [PACE members] to relate to your colleagues back home the seriousness of the challenges to the human rights system in Europe overall and the seriousness of the backsliding in various countries, and to convey to them that it is not business as usual for human rights in Europe. I also urge you [...] to take an active role at national level in the implementation of European Court of Human Rights judgments, to hold your government’s feet to the fire, to allocate money, to change laws, and to push your governments to do more to implement human rights judgments in a full and timely manner.

*Nils Muižnieks, former Council of Europe Commissioner for Human Rights<sup>80</sup>*

## 6.2. How all parliamentarians can build a closer relationship with the Council of Europe

All parliamentarians can benefit from learning more about the “Strasbourg system”, and specifically the respective functions, powers and achievements of the European Court of Human Rights and the Parliamentary Assembly. By establishing closer ties with Council of Europe institutions, parliamentarians can benefit from the technical assistance available to help enhance their capacity to safeguard human rights in the domestic context, while ensuring that their voices get heard in Strasbourg. At the same time, all national parliamentarians should hold their Assembly delegates to account, urge them to stay abreast of developments in Strasbourg, and bring this knowledge back to their national parliament.

This section explores different ways in which parliamentarians can engage with the Parliamentary Assembly and the Court.

### Getting support from the Parliamentary Assembly

The Assembly brings together 324 elected politicians and an equal number of substitutes from all 47 Council of Europe member states, who meet four times a year in Strasbourg to discuss topical issues falling within its broad remit.

Being a key forum for political debate in Europe, the Assembly wields significant influence: it has the power to propose multilateral treaties, monitor elections

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80. PACE, Annual activity report 2016 by the Council of Europe Commissioner for Human Rights, “2017 Ordinary session (second part), verbatim record, fifteenth sitting, Wednesday 26 April 2017”, Doc. AS (2017) CR 15.

and states' compliance with the obligations they signed up to when acceding to the Council of Europe,<sup>81</sup> conduct probes into human rights violations, request legal opinions on the laws and constitutions of member states, propose sanctions against member states, and suspend certain rights of parliamentary delegations that violate the principles of the Council of Europe. The Assembly has often acted as a "motor" for strengthening the shared values of democracy, human rights and the rule of law upon which the Council of Europe was built, notably by demanding action from the Committee of Ministers.<sup>82</sup>

In recent years, the Assembly has moreover assumed an increasingly active role in monitoring and promoting the implementation of Court judgments. Pursuant to Article 46(2) of the Convention, the primary responsibility for supervising the implementation of the Court's judgments rests with the Committee of Ministers (CM), yet the Assembly has adopted a number of reports<sup>83</sup> and resolutions<sup>84</sup> on the issue since 2000, as well as recommendations<sup>85</sup> addressed to the Committee of Ministers. Its contribution to the supervision of the implementation of judgments of the Court has been repeatedly praised by European governments, notably in the [Brighton](#) and [Brussels](#) declarations.

” [T]he implementation of the judgments of the European Court of Human Rights has greatly benefited in the past and continues to benefit from the Parliamentary Assembly's and national Parliaments' greater involvement.

*Committee of Ministers' Reply to PACE Recommendation 1764 (2006)*

In this connection, the Assembly has established itself as a fervent advocate for a greater role for parliamentarians in ensuring the swift and full execution of judgments and in other human rights-related matters. The Assembly's efforts to enhance the role of parliaments in relation to human rights were

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81. For an overview of the monitoring functions of the Council of Europe, including those of the Assembly, see the PACE Committee on Legal Affairs and Human Rights, "Overview of core Council of Europe human rights monitoring mechanisms and related activities", Doc. AS/Jur/Inf (2018) 03, 18 January 2018.

82. For more information on the Assembly's powers, see the PACE website, at <http://website-pace.net/en> (with links to the relevant documents).

83. Doc. 8808 of 12 July 2000; Doc. 9307 of 21 December 2001; Doc. 9537 of 5 September 2002; Doc. 10192 of 1 June 2004; Doc. 10351 of 21 October 2004; Doc. 11020 of 18 September 2006; Doc. 12455 of 20 December 2010.

84. See, especially, Resolution 1226 (2000); Resolution 1516 (2006); Resolution 1787 (2011); Resolution 2075 (2015); and Resolution 2178 (2017).

85. See, especially, Recommendation 1955 (2011); Recommendation 2079 (2015); and Recommendation 2110 (2017).

given additional impetus in 2012, with the creation of a specialised division within the PACE Secretariat, the Parliamentary Project Support Division (PPSD). Through targeted co-operation programmes and training courses involving parliamentarians and staff of national parliaments, the PPSD has been working to raise awareness among these stakeholders of Council of Europe standards in various thematic fields, such as freedom of expression, equality and non-discrimination, social rights and electoral matters. It has placed renewed emphasis on enhancing the capacity of parliaments to safeguard the effective domestic implementation of Convention standards and the execution of the Strasbourg Court judgments. To further this aim, the division has organised a series of training courses in Strasbourg and member states.

## Getting involved in selecting candidates for your national judge

Interaction between Strasbourg and national parliaments works in both directions, and parliamentarians can make their voices heard in Strasbourg through various avenues. They can notably take it upon themselves to help ensure that key positions in the Council of Europe are filled with individuals of the highest quality, authority, integrity and independence. One such way is for them to proactively become engaged in the selection of candidates for their national judge at the European Court of Human Rights.

The 47 judges to the Court are elected by the Parliamentary Assembly for a single term of nine years from lists of three candidates proposed by each state.<sup>86</sup> Every year, many thousands of applicants lodge applications with the Strasbourg Court, seeking redress for alleged violations of their Convention rights. For these applicants, the Strasbourg Court, as the final arbiter as to the scope and meaning of these rights, is often the last beacon of hope. Against this background, and given the considerable impact that the case law of the Court has had in shaping the human rights landscape on the European continent,<sup>87</sup> the importance of having judges of the highest calibre serving in Strasbourg can hardly be overstated. The primary responsibility for ensuring that the Assembly can choose from only the most suitable candidates is borne by the states.

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86. The Assembly also elects the Council of Europe Commissioner for Human Rights, the Secretary General and Deputy Secretary General of the Council of Europe, in addition to the PACE Secretary General.

87. See Council of Europe, *Impact of the European Convention on Human Rights in states parties – Selected examples* (note 3).

## How are Court judges elected?<sup>88</sup>

There are two phases to the election process:

### 1. National selection procedures

States select three candidates who must have appropriate legal qualifications and experience in addition to an active knowledge of either English or French. States are to put forward candidates of both sexes (single-sex lists will only be considered if the sex is under-represented or in exceptional circumstances). An international panel of experts appointed by the Committee of Ministers offers governments confidential advice on the suitability of potential candidates for the post before the list of candidates is submitted to the Parliamentary Assembly.

### 2. Election by the Parliamentary Assembly

The list is then scrutinised by the Committee on the Election of Judges to the European Court of Human Rights, whose members interview all three candidates before giving a recommendation on which of them they believe are the strongest. If it finds that all three candidates do not possess the necessary qualifications to sit as judge at the Court, the committee will reject the list and request that the state submit a fresh one. It may also send the list back to the state if the national selection procedure lacked fairness and transparency.

Once the committee has accepted a list and made its recommendation, the plenary Assembly will vote on the candidates in a secret ballot. An absolute majority of votes cast is required in the first round. If this is not achieved, a second round is held and the candidate with the most votes is duly elected to serve on the Court.

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88. For a detailed account of how judges to the Court are elected, see PACE Committee on the Election of Judges to the European Court of Human Rights, *Procedure for electing judges to the European Court of Human Rights*, Information document prepared by the Secretariat, [AS/Cdh/Inf\(2018\)01 rev 8](#), 7 September 2018. See also Andrew Drzemczewski (2015). "The Parliamentary Assembly's Committee on the Election of Judges to the European Court of Human Rights, Council of Europe", *Human Rights Law Journal*, Volume 35, pp. 269-274.

National selection procedures vary across states<sup>89</sup> and parliamentarians are not routinely involved in this process. Yet, parliamentary involvement in the selection and nomination of candidates can be vital to help ensure that the process “reflect[s] the principles of democratic procedure, the rule of law, non-discrimination, accountability and transparency.”<sup>90</sup> Against this backdrop, the Assembly has recommended, in [Recommendation 1429 \(1999\)](#), that the Committee of Ministers invite the governments of member states to “consult their national parliaments when drawing up the lists so as to ensure the transparency of the national selection procedure.” This will necessitate that, crucially, governments “notify their parliaments and their appropriate committees of their procedures and timetables when drawing up lists of candidates for the Court.”<sup>91</sup>

Parliamentarians can insist that they be involved in the selection procedure. They can enact legislation to devise fair and transparent selection mechanisms, and establish criteria for a merit-based selection of three qualified candidates.

Thus, by getting involved in the process of shortlisting candidates for the post of judge at the Court, parliaments can assume their share of responsibility to ensure that candidates are “of high moral character and possess the qualifications required for appointment to high judicial office or be jurisconsults of recognised competence”, as required by the Convention. By so doing, parliamentarians also contribute to reinforcing the quality and authority of the Court.

## Meeting your national judge and other Council of Europe officials

The most direct, although to date still underexplored, form of contact is for members of parliament – especially, but not exclusively, members of specialised committees with a human rights remit – to carry out a study visit to Strasbourg and meet with judges (notably with their national judge) and lawyers from the Court’s Registry, as well as with staff of other Council of Europe bodies.

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89. See PACE [Resolution 1646 \(2009\)](#), “Nomination of candidates and election of judges to the European Court of Human Rights”, paragraph 2 (also [Doc. 11767](#), rapporteur: Mr Christopher Chope, United Kingdom). See also Open Society Justice Initiative/International Commission of Jurists (ICJ) (2017). *Strengthening from within: law and practice in the selection of human rights judges and commissioners*, New York, Open Society Foundations.

90. PACE [Recommendation 1649 \(2004\)](#), “Candidates for the European Court of Human Rights”, paragraph 3. See also PACE [Resolution 1646 \(2009\)](#) (note 89), paragraph 2.

91. PACE [Recommendation 1649 \(2004\)](#) (note 90), paragraph 20.



The Legal Affairs Committee has to date organised two visits to the Court for its members, which comprised meetings with the (then) president, registrar and deputy registrar of the Court, in addition to several heads of division, thus providing delegates with an opportunity to learn about and discuss the organisation and work of the Court. Similarly, the training courses for parliamentarians and parliamentary staff delivered by the PPSD (see above, 6.2.) involve bilateral meetings between participants and members of the registry in the relevant divisions.

Conversely, specialised human rights structures or interested parliamentarians may also consider inviting Council of Europe staff or the judge of the European Court of Human Rights elected in respect of their country to an exchange of views in the parliament – on the understanding that any such meeting must not become a way for elected politicians to discuss pending cases or seek to “hold judges to account”.

### **Exchanging views with your national judge at the Court**

The then judge in respect of the United Kingdom and President of the Court, Sir Nicolas Bratza, together with the then registrar of the Court, held an exchange of views in March 2012 with members of the Joint Committee on Human Rights in the United Kingdom Parliament. The hearing provided a forum for debate about the relationship between the Strasbourg Court and domestic institutions, including parliament. President Bratza also pointed to good examples of “judicial dialogue” between the Strasbourg and the highest domestic courts, and explained a number of mechanisms the Court had devised – including the pilot judgment procedure, the prioritisation policy and single-judge decisions – to tackle what was, back in 2012, a substantial backlog of cases pending before it.

” I think it is entirely appropriate that parliamentarians should be able and encouraged to follow developments and understand the work and problems that our Court faces.

*Sir Nicolas Bratza, former President of the European Court of Human Rights<sup>92</sup>*

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92. See Joint Committee on Human Rights, *Uncorrected transcript of oral evidence from Sir Nicolas Bratza and Erik Fribergh on human rights judgments*, 13 March 2012.

Where there are safeguards in place against undue politicisation of such oral hearings or attempts to undercut the independence of the international human rights judiciary, direct involvement of parliamentarians with their national judge at the Court can be a valuable means to enhance the human rights expertise of parliamentarians. Open dialogue fosters mutual understanding, helps refute myths about the Strasbourg system, and ultimately assists the legislature in exploiting its potential to be a galvanising force in the protection and realisation of human rights.

## Securing adequate funding for the Council of Europe

The availability and quality of capacity-building and other co-operation programmes with the Assembly and other Council of Europe bodies from which parliamentarians can benefit is contingent on the Organisation being provided with adequate funds to carry out its various functions. Under-financing adversely affects how the Council of Europe can tackle the challenges facing the Organisation itself and its member states, including parliaments.

### The budget of the Council of Europe

The budget of the Council of Europe is made up mainly by member states' contributions. National contributions to this "ordinary budget" are calculated on the basis of population and gross domestic product. The remainder of the Council of Europe's funds – the extraordinary budget – is made up of the budgets of the partial agreements (who have budgets of their own), of the joint programmes with the European Union, and of voluntary contributions by states. The biennial programme and budget is approved by the Committee of Ministers, on the basis of a proposal by the Secretary General.<sup>93</sup>

It has been a long-standing tradition for the Parliamentary Assembly to provide comments on the budget and submit ideas, "with a view to placing the Council of Europe in a position to assume its unique role of guarantor of the democratic values shared throughout the European continent."<sup>94</sup> The Assembly

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93. The Council of Europe's total budget for 2018 is € 466 045 100. *Council of Europe programme and budget 2018-2019*, 1300 (Budget) Meeting, 21-23 November 2017, *Doc. CM(2018)1*. See also the information on the website of the Committee of Ministers, at <https://goo.gl/GcngR4>.

94. PACE *Resolution 1575 (2007)*, "Political dimension of the Council of Europe budget", paragraph 2.

has voiced concern about the Council of Europe’s budgetary situation for a number of years, following the member states’ decision to apply the principle of zero growth (first in real terms and, since 2014, in nominal terms<sup>95</sup>) in respect of member states’ obligatory contributions to the ordinary budget.<sup>96</sup>

Parliamentarians have a role to play in reminding their governments of their commitment to the common European values of democracy, human rights and the rule of law, which the Council of Europe protects and promotes. They can send a strong message that the Council of Europe’s capacity to continue to be a guardian of human rights throughout the continent of Europe depends on it having the resources at hand to keep up its work. The Assembly has invited PACE delegates, in [Resolution 1575 \(2007\)](#), to “pay particular attention during budgetary discussions to their state’s commitment vis-à-vis the Council of Europe and, if necessary, defend the national contribution to the Council of Europe’s budgets”. Parliamentarians can also insist, vis-à-vis the executive, that budgetary contributions must never be used as an instrument of political leverage, and that states return to a real growth policy in terms of the Council of Europe’s ordinary budget, in accordance with the Assembly’s call in [Opinion 294 \(2017\)](#).

” The effectiveness of the Pan-European system of the protection of human rights established by the Convention depends on our ability to deliver the results expected from us, that is addressing serious and systematic human rights violations as well as providing appropriate support to our member States in order to prevent these violations from being repeated. We need appropriate means and resources to fulfil this task and in all my official visits to member States I raise the question of the budgetary situation of our Organisation. We should not overlook this issue in our discussions and I count on your support.

*Anne Brasseur, former President of the Parliamentary Assembly of the Council of Europe<sup>97</sup>*

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95. See, e.g., PACE [Resolution 2186 \(2017\)](#), “Call for a Council of Europe summit to reaffirm European unity and to defend and promote democratic security in Europe”, paragraph 12.

96. See, among others, PACE [Opinion 294 \(2017\)](#), “Budget and priorities of the Council of Europe for the biennium 2018-2019”, paragraphs 16-17, 20.

97. High-level conference organised in Brussels, [opening address](#) by Anne Brasseur (note 16), pages 21-22.

### 6.3. Earning deference from the European Court of Human Rights: how the Court respects good parliamentary practice

While strengthening their ties with Strasbourg will help to unlock the full potential of parliamentarians to become guarantors of human rights, there are also other benefits when parliaments fulfil their human rights obligations, such as the strengthening of the principle of subsidiarity and ultimately the Convention system as a whole.

The Court has demonstrated that it is attuned to the relevance of domestic democratic deliberation to its own judicial determinations. Good faith, democratic debates in parliament on human rights issues are nowadays seen in Strasbourg as a tool to help uphold and reinforce the principle of subsidiarity upon which the Convention system was built, thereby making parliamentary human rights work key to safeguarding the effectiveness of the Strasbourg system.

Hence, when parliaments faithfully assume their share of responsibility for respecting and realising human rights in the domestic context, this does not go unnoticed by the Strasbourg Court. The Court is conscious of parliaments' pivotal role as lawmakers, their direct democratic legitimation, and the fact that they are "better placed than an international court to evaluate local needs and conditions".<sup>98</sup> It is respectful of parliamentary processes and even incentivises the development of parliamentary structures and processes that facilitate well-informed deliberation about the human rights implications of proposed legislative and policy measures.<sup>99</sup>

” [T]he fact that the parliamentary record indicates that there was in-depth consideration of the human rights implications of an enactment can be of significance in certain types of case, i.e. in which the margin of appreciation arises.

*European Court of Human Rights, Contribution of the Court to the Brussels conference*

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98. *Hatton and Others v. the United Kingdom* Application No. 36022/97, judgment of 8 July 2003, paragraph 97.

99. Matthew Saul (2017). "How does, could, and should the international human rights judiciary interact with national parliaments?", in M. Saul, A. Føllesdal and G. Ulfstein (eds), *The international human rights judiciary and national parliaments: Europe and beyond*, Cambridge, Cambridge University Press, Chapter 14.

” The ... judgment in *Animal Defenders*, as well as others, thus stand for the important proposition that when examining whether and to what extent the Court should grant a Member State a margin of appreciation, as to the latter’s assessment of the necessity and proportionality of a restriction on human rights, the quality of decision making, both at the legislative stage and before the courts, is crucial and may ultimately be decisive in borderline cases.

*Judge Robert Spano, European Court of Human Rights*<sup>100</sup>

Specifically, the quality of parliamentary human rights scrutiny has come to the fore as the Court has, on several occasions, taken it into account in assessing the proportionality of restrictions on an applicant’s rights, and used it as a ground for according a wider margin of appreciation to respondent states in proceedings before it. The margin of appreciation, as a corollary of the subsidiarity principle, refers to the discretion that contracting states enjoy in deciding how to discharge their obligations under the European Convention on Human Rights. Where an impugned law or policy is the result of reasoned participatory deliberations within a parliament working conscientiously to review and ensure the compatibility of the proposed measure with Convention and other international human rights standards, it is more likely to be defensible in a democratic society and hence the Court is less likely to find a violation.<sup>101</sup>

### **Earning deference from the Court (I) – political advertising**

A prominent example of a case in which the quality of the parliamentary process had a significant impact on the Court’s findings and conclusions is *Animal Defenders International v. the United Kingdom* [GC] (Application No. 48876/08, 22 April 2013). The Grand Chamber was called upon to determine whether the UK’s prohibition of political advertising – which had prevented the applicant, an advocacy group for the protection of animals, from placing a television advertisement – had amounted to a disproportionate interference with the NGO’s right to freedom of expression. The Court attached considerable weight to the fact that

100. Robert Spano (2014). “Universality or diversity of human rights? Strasbourg in the age of subsidiarity”, 14 *Human Rights Law Review* Volume 14, pp. 487 ff., page 498.

101. See the Grand Chamber judgments in *Animal Defenders International v. the United Kingdom* [GC] (Application No. 48876/08, 22 April 2013); *S.A.S. v. France* [GC] (Application No. 43835/11, 1 July 2014); *Lambert and Others v. France* [GC] (Application No. 46043/14, 5 June 2015); and *Parrillo v. Italy* [GC] (Application No. 46470/11, 27 August 2015).

there had been an “exceptional examination by parliamentary bodies of the cultural, political and legal aspects of the prohibition” on political advertising in the United Kingdom: before its adoption, the relevant draft legislation had been the subject of a detailed review process by various parliamentary bodies, consultation with experts, and it had involved a detailed review of the relevant case law of the Court. The quality of the parliamentary (as well as judicial) review of the necessity of the ban on political advertising led the Court to conclude that the interference in the applicant NGO’s right to freedom of expression had been justified.

### **Earning deference from the Court (II) – reproductive rights**

States enjoy a wide margin of appreciation in regulating issues relating to reproductive rights, an area where there is no settled European consensus, and one which gives rise to complex and delicate moral and ethical questions against a background of rapid medical and scientific change. In the case of *Parrillo v. Italy* [GC] (Application No. 46470/11, 27 August 2015), for example, the Court upheld a ban on donating embryos obtained from an *in vitro* fertilisation to scientific research. In concluding that the ban had constituted a permissible interference with the applicant’s right to respect for her private life (Article 8 of the Convention), the Court had regard to the fact that the drafting process of the relevant law had been inclusive of different scientific and ethical opinions, on the basis of which the Italian legislature had carried out a thorough and balanced examination of the different interests at stake.

In other words, judges in Strasbourg will be more inclined to “reward” genuine, bona fide parliamentary engagement with human rights issues by granting greater deference to the state when assessing whether a limitation of an applicant’s human rights was “necessary in a democratic society”.

This chapter set out several opportunities for all parliamentarians to get involved with the work of the Council of Europe – by assuming an active role in the selection of candidates for judges of the Court, by seeking technical support from the Council of Europe, and by meeting their national judge or other judges. Doing so allows parliamentarians to benefit from the unique expertise of the “Strasbourg system”, while at the same time shaping the European human rights agenda.





# Conclusion

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**T**he importance of national parliaments as guarantors of human rights has been described as “an idea whose time has come”.<sup>102</sup> Parliaments, with their three roles of representation, legislation and oversight, have a unique and indispensable role to play in protecting and realising human rights and upholding the rule of law.

This handbook is based on the developing practice of parliaments across the Council of Europe to establish effective institutional arrangements to protect and realise human rights – in particular, to verify the compatibility of domestic legislation with the standards laid down in the European Convention on Human Rights and to ensure full and timely implementation of judgments of the European Court of Human Rights.

Upholding human rights is not only an obligation for parliamentarians but also an opportunity. When parliamentarians interpret and apply human rights standards in their own national context, they contribute to the development of a common understanding about the meaning and scope of rights across Europe. Moreover, laws and policies which have been designed on the basis of well-informed and conscientious deliberation about their implications for human rights are more likely to withstand any future judicial scrutiny.

At present, the potential of parliaments to seize these opportunities is largely unfulfilled. We invite parliamentarians to use this handbook to unlock that potential in order to become truly effective guarantors of human rights.

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102. Hywel Francis MP, Welcoming remarks to a seminar organised by the Parliamentary Assembly of the Council of Europe on The Role of National Parliaments in the Implementation of Judgments of the European Court of Human Rights, Portcullis House, Westminster, 14 October 2013.





# Appendix 1 – Checklist for parliamentarians

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■ Does your parliament carry out the following human rights functions, whether through a specialised committee or a different arrangement? Does it:

- ▶ scrutinise draft legislation for compatibility with international human rights law, including the provisions of the European Convention on Human Rights (the Convention) and its protocols?
- ▶ legislate to give effect to judgments of the European Court of Human Rights (the Court)?
- ▶ monitor the executive's implementation of Court judgments, and its response to judgments against other states which have implications for the domestic legal order?
- ▶ get involved in the drafting and ratification of international human rights treaties?
- ▶ conduct thematic inquiries into human rights problems?

■ Has your parliament given detailed guidance to the executive as to what you need in order to perform your oversight role, including requiring it to:

- ▶ attach human rights memoranda to all legislative proposals?
- ▶ report at least annually to parliament on, *inter alia*, the implementation of Court judgments?
- ▶ share action plans and action reports at the same time as they are submitted to the Committee of Ministers of the Council of Europe?
- ▶ share summaries and translations of pertinent Court judgments?
- ▶ involve parliamentarians, as far as possible, in any working group created to co-ordinate implementation of Court judgments?

**■ If your parliament assigns human rights functions to a specific committee:**

- ▶ does the committee have a permanent status?
- ▶ is the remit of the committee clearly defined and enshrined in the parliament's standing orders (or equivalent)?
- ▶ is the remit of the committee sufficiently broad so as to reflect the obligation for parliamentarians to:
  - protect and realise human rights in the state concerned by taking into account all relevant sources of national and international law?
  - recognise the interpretative authority of the European Court of Human Rights, by taking into account all of its case law?
  - recognise and act upon the state's positive obligation?
- ▶ does the remit of the committee expressly include, or could it be interpreted by its members as including:
  - systematic verification of the compatibility of draft legislation with the European Convention on Human Rights and other international human rights instruments?
  - systematic monitoring of the implementation of judgments of the European Court of Human Rights, including the requirement for governments to submit regular (and at least annual) reports to parliament on human rights judgments and their implementation?
- ▶ does the committee have the power or remit to:
  - initiate legislative proposals and amendments to laws?
  - subpoena witnesses and documents relevant to its remit?
  - initiate inquiries of its own choosing?
  - hold oral evidence hearings?
  - liaise with civil society?
  - conduct visits, including visits abroad?
  - access places of detention without notice?
  - report to parliament?
  - make recommendations to the government?
- ▶ does the committee have access to independent advisers with expertise in human rights?

- ▶ is the committee adequately resourced to carry out its functions, including dedicated secretariat support?
- ▶ is the method of appointment of the members of the committee transparent and does it ensure that the committee:
  - is independent from the executive, for example by excluding ministers from being members of the committee?
  - conforms to the principles of gender balance?
  - reflects the balance of power between political groups within the parliament?
  - is chaired by a senior parliamentarian with a proven record of independence and commitment to human rights?

**■ Do you mainstream human rights matters across parliamentary structures/committees?**

- ▶ Can you access professional research and information services within parliament?
- ▶ Is legal advice available to all parliamentarians who might need it in their work, and not only to a specialised human rights committee?

**■ Does your parliament ensure that it is effective in carrying out its human rights functions, by:**

- ▶ maintaining an up-to-date website on which information on parliamentary human rights activities and all relevant materials are easily accessible?
- ▶ publishing the working methods and a prioritised work programme of your parliament's human rights committee?
- ▶ maintaining regular dialogue and effective working relationships with other national stakeholders, including national human rights institutions or ombudsmen, the judiciary, academics and legal practitioners, and civil society representatives?
- ▶ inviting non-governmental organisations to contribute to its work, for example by submitting evidence to thematic inquiries, helping to determine priorities for topical human rights inquiries, or providing evidence about the impact of legislation on the enjoyment of human rights?
- ▶ providing or arranging regular training for parliamentarians and parliamentary staff on human rights and the rule of law?
- ▶ reviewing working practices and reforming them where they can be made more effective?

## ■ Does your parliament establish and maintain close contact with the Council of Europe?

- ▶ Is there a procedure in place, within your parliament, by which delegates to the Parliamentary Assembly of the Council of Europe (PACE) inform all parliamentarians about their activities and ensure appropriate follow-up to Assembly resolutions and recommendations?
- ▶ Does your parliament play any role in ensuring that candidates to be the national judge at the Court are of the highest calibre, including by devising fair and transparent selection processes and merit-based appointment criteria?
- ▶ Have members of your parliament visited Strasbourg to meet your national judge or other officials of the Court, the Parliamentary Assembly or other officials of the Council of Europe?
- ▶ Does your parliament question the government about the financing of the Council of Europe, and, if necessary, defend the national contribution to its budget?

# Appendix 2 – PACE Resolution 1823 (2011)<sup>103</sup>

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Adopted by the Parliamentary Assembly  
of the Council of Europe on 23 June 2011

## **National Parliaments: guarantors of human rights in Europe**

1. The Parliamentary Assembly recalls that Council of Europe member states are responsible for the effective implementation of international human rights norms they have signed up to, in particular those of the European Convention on Human Rights (ETS No. 5, hereafter “the Convention”). This obligation concerns all state organs, whether executive, judicial or legislative.

2. National parliaments are often overlooked in this context. Their potential needs to be further explored. They are key to the effective implementation of international human rights norms at national level and fulfil their duty to protect human rights through legislating (including the vetting of draft legislation), involvement in the ratification of international human rights treaties, holding the executive to account, liaising with national human rights institutions and fostering the creation of a pervasive human rights culture.

3. The members of the Assembly, having a double mandate – as members of the Assembly and of their respective national parliaments – are under a particular duty to contribute to such action.

4. The Assembly notes that the United Nations “Paris Principles” of 1993 have become the internationally accepted benchmark for core minimum standards for the role and functioning of independent national human rights institutions; similar benchmarks should be drawn up for parliamentary bodies.

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103. Assembly debate on 23 June 2011 (25th Sitting) (see Doc. 12636, report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Pourgourides). Text adopted by the Assembly on 23 June 2011 (25th Sitting).

5. With respect to the implementation of judgments of the European Court of Human Rights (hereafter “the Court”), the Assembly:

5.1. believes that national parliaments are uniquely placed to hold governments to account for swift and effective implementation of the Court’s judgments, as well as to swiftly adopt the necessary legislative amendments;

5.2. regrets that the post-Interlaken debate on the future of the Convention system does not sufficiently take into account the potentially important role of parliaments and deplores the silence of the Izmir Declaration in this respect;

5.3. points to the positive examples in several member states, notably the United Kingdom, the Netherlands, Germany, Finland and Romania, which have set up parliamentary structures to monitor the implementation of the Court’s judgments.

6. Furthermore, the Assembly:

6.1. encourages parliamentarians to monitor the determination and enforcement of human rights standards by the domestic judicial and administrative authorities;

6.2. urges parliamentarians to exercise their responsibility to carefully scrutinise the executive in their countries when it comes to the implementation of, in particular, international human rights norms;

6.3. calls on governments to involve national parliaments in the negotiation process of international human rights agreements and in the process of implementation of judgments of the European Court of Human Rights;

6.4. calls on all member states to provide for adequate parliamentary procedures to systematically verify the compatibility of draft legislation with Convention standards and avoid future violations of the Convention, including regular monitoring of all judgments which could potentially affect the respective legal orders;

6.5. urges parliaments to step up their efforts in contributing to the supervision of the Court’s judgments by overseeing steps taken by the competent authorities to execute adverse judgments, including scrutiny of the actual measures taken;

6.6. calls on parliaments to set up and/or to reinforce structures that would permit the mainstreaming and rigorous supervision of their international human rights obligations, on the basis of the principles below.

7. The Assembly therefore invites parliaments to implement the following basic principles for parliamentary supervision of international human rights standards.

## **Appendix – Basic principles for parliamentary supervision of international human rights standards**

### **1. Appropriate framework and responsibilities**

National parliaments shall establish appropriate parliamentary structures to ensure rigorous and regular monitoring of compliance with and supervision of international human rights obligations, such as dedicated human rights committees or appropriate analogous structures, whose remits shall be clearly defined and enshrined in law.

These remits should include, *inter alia*:

- ▶ the systematic verification of the compatibility of draft legislation with international human rights obligations;
- ▶ the requirement for governments to regularly submit reports on relevant judgments of the European Court of Human Rights and their implementation;
- ▶ the initiation of legislative proposals and amendments to laws;
- ▶ subpoena powers over witnesses and documents concerning their remit.

Such committees shall have the responsibility to ensure that parliaments are properly advised and informed on human rights issues. Human rights training should also be provided for parliamentarians and their staff.

### **2. Independent advice**

Human rights committees or appropriate analogous structures shall have access to independent expertise in human rights law. Adequate resources shall also be made available to provide specialised secretariat support.

### **3. Co-operation with other institutions and civil society**

Co-operation and regular dialogue shall be maintained, as appropriate, with relevant national (for example, national human rights institutions, parliamentary commissioners) and international bodies (for example, the Parliamentary Assembly, the Council of Europe Commissioner for Human Rights, European and other international human rights monitoring bodies), as well as with representatives of well-established non-governmental organisations which have significant and relevant experience.



## Appendix 3 – Additional reading and resources

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Chang B. and Ramshaw G. (2016), *Strengthening parliamentary capacity for the protection and realisation of human rights: synthesis report*, London, Westminster Foundation for Democracy, <https://goo.gl/D2p15y>.

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## Selected Council of Europe sources

■ Council of Europe, Committee of Ministers, *Supervision of the execution of judgments of the European Court of Human Rights, 10th Annual Report 2016 (March 2017)*. All annual reports available at: <https://goo.gl/16X29q>.

■ European Court of Human Rights, thematic factsheets and country profiles, <https://goo.gl/nhCNkt>.

■ The HUDOC database provides access to the case law of the Court (Grand Chamber, chamber and committee judgments and decisions, communicated cases, advisory opinions, press releases and legal summaries from the “Case-Law Information Note” (which is published monthly)), the European Commission of Human Rights (decisions and reports) and the Committee of Ministers (resolutions). The HUDOC search screen is available in English, French, Russian, Spanish and Turkish; and the database contains more than 21 000 texts in 31 languages other than the official languages (English and French); <https://goo.gl/Jc2LHc>.

■ The HUDOC-EXEC database gives access to the documents relating to the execution of judgments of the European Court of Human Rights (status of execution of cases, government action plans/reports, other communications, Committee of Ministers’ decisions (from 1 January 2011 onwards) and final resolutions). The HUDOC-EXEC search screen is available in English and French; <https://goo.gl/4WoSQM>.

■ Parliamentary Assembly of the Council of Europe, “The implementation of judgments of the European Court of Human Rights”, Doc. 14340 of 12 June 2017 (rapporteur: Mr Pierre-Yves Le Borgn’, France), <https://goo.gl/bLM7JE>.

■ “Strengthening subsidiarity: integrating the Strasbourg Court’s case law into national law and judicial practice”, Contribution of the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe to the Conference on the Principle of Subsidiarity, Skopje, 1-2 October 2010, Doc. AS/Jur/Inf (2010) 04, <https://goo.gl/JXY7SS>.



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Over nearly 70 years, the Parliamentary Assembly of the Council of Europe has been inspiring parliamentarians to make use of their democratic mandates to foster a pervasive culture of respect for human rights within a democracy underpinned by the rule of law.

As legislators and representatives of European citizens, parliamentarians have a responsibility, shared with the executive and judicial branches of their states to prevent and denounce human rights violations. They can do this by ensuring that international human rights norms are effectively implemented, norms which their countries have voluntarily signed up to, particularly those enshrined in the European Convention on Human Rights.

The purpose of this handbook is to equip parliamentarians from all over Europe to fulfil their responsibilities and seize opportunities to protect and implement human rights. For this purpose, the handbook reviews the structures, functions and working methods that allow parliaments to verify most effectively the compatibility of legislation, including draft legislation, and administrative practices in their countries with European human rights standards. These emanate from the Convention but also from the case law of the Strasbourg Court, and the work of other Council of Europe bodies. As an inspiration, the handbook includes examples of best practices from a number of European parliaments.

[www.assembly.coe.int](http://www.assembly.coe.int)

The Council of Europe is the continent's leading human rights organisation. It comprises 47 member states, including all members of the European Union. The Parliamentary Assembly, consisting of representatives from the 47 national parliaments, provides a forum for debate and proposals on Europe's social and political issues. Many Council of Europe conventions originate from the Assembly, including the European Convention on Human Rights.

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