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National parliaments: guarantors of human rights in Europe

Report[1]
Committee on Legal Affairs and Human Rights
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Summary

All branches of state power (the executive, legislature and judiciary) are bound to ensure respect for human rights. National parliaments are often overlooked in this context. Yet they are key to the effective implementation of international human rights norms at national level and are in an excellent position to protect human rights through legislating, being involved in the ratification of international human rights treaties, holding the executive to account (in particular concerning the swift and effective implementation of judgments of the European Court of Human Rights), liaising with national human rights institutions and fostering the creation of a pervasive human rights culture.

The report examines ways to better exploit parliaments' potential in this respect and proposes basic principles to be respected by the parliaments of the Council of Europe member states.

National parliaments should establish appropriate parliamentary structures to ensure rigorous and regular monitoring of compliance with and supervision of international human rights obligations, where possible through dedicated human rights committees whose remits should be clearly defined and enshrined in law.

1. 2011 - Third part-session

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A. Draft resolution[2]

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.

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 the 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 judgements 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.

2. Draft resolution adopted unanimously by the committee on 6 June 2011.

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

7.1. Appropriate framework and responsibilities

7.1.1. 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.

7.1.2. These remits should include, *inter alia*:

7.1.2.1. the systematic verification of the compatibility of draft legislation with international human rights obligations;

7.1.2.2. the requirement for governments to regularly submit reports on relevant judgments of the European Court of Human Rights and their implementation;

7.1.2.3. the initiation of legislative proposals and amendments to laws;

7.1.2.4. subpoena powers over witnesses and documents concerning their remit.

7.1.3. 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.

7.2. Independent advice

7.2.1. Human rights committees or appropriate analogous structures shall have access to independent expertise in human rights law.

7.2.2. Adequate resources shall also be made available to provide specialised secretariat support.

7.3. Co-operation with other institutions and civil society

7.3.1. 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.

B. Explanatory memorandum by Mr Pourgourides, rapporteur

1. Procedure to date

1. The Committee on Legal Affairs and Human Rights suggested "National parliaments: guarantors of human rights in Europe" as the main topic for the debate on the state of human rights in Europe scheduled for the June 2011 part-session, in line with the priorities defined in Resolution 1547 (2007) and Recommendation 1791 (2007) on the state of human rights and democracy in Europe. The Parliamentary Assembly's Bureau accepted this proposal at its meeting on 8 October 2010. The Committee on Legal Affairs and Human Rights appointed me as rapporteur on this topic on 17 November 2010.

2. At its meeting on 14 April 2011, the committee held a hearing with the following experts:

– Mr Martin Kuijer, Senior counsel on human rights of the Minister of Security and Justice, The Netherlands;

– Ms Almut Wittling-Vogel, Agent for Human Rights at the German Federal Ministry of Justice;

– Mr Alexey Ivanovich Aleksandrov, Chairperson of the Committee on Constitutional Legislation of the Council of the Federation, Russia;

– Mr Murray Hunt, Legal Adviser, Parliamentary Joint Committee on Human Rights, United Kingdom.

3. A questionnaire on "parliamentary scrutiny of European human rights norms"[3] was sent out in English, French, German and Russian to the parliaments of all 47 Council of Europe member states on 30 November 2010. This questionnaire asked which parliamentary structures existed at the national level to ensure the regular monitoring and assessment of the implementation of international human rights norms:

– Which parliamentary structures exist to ensure the regular monitoring and assessment of the implementation of international human rights norms? Are there special (sub-)committees to ensure this regular monitoring and assessment? If such structures do not exist, what steps are being taken to establish such structures?

– Do informal parliamentary groups exist in your parliamentary structure? If so, please specify, including also ad hoc arrangements with non-governmental organisations (NGOs) and national human rights institution.

– What special training is provided for parliamentarians and/or their staff members regarding human rights? Are parliamentarians and their staff supported by independent legal expertise in human rights? Please specify.

4. Thirty-six member states replied to the questionnaire. The main findings are presented in this report.

2. Purpose of the present report

5. Respect for human rights is the prerequisite of effective democracy,[4] and vice versa; this would seem to require parliaments to play an important role in human rights matters.

6. However, despite their central role in any democracy, parliaments are often overlooked in human rights debates. Indeed, it is the judiciary which, day in, day out, has to remedy human rights violations, which is most often named as the guardian of those rights. Moreover, even civil society, through various NGOs and the media, often seems to be more concerned with protecting human rights than parliaments.

7. Upon closer examination, parliaments and their members should be and are indeed placed at the heart of human rights protection. Parliaments, as the representation of the people, set out the legislative framework in which societies operate. This framework must comply with national and international standards on human rights and the rule of law. Laws can serve to guarantee human rights, but they can also be sources of human rights violations. As parliaments pass the laws that are subsequently executed by the administration and interpreted by the courts, they should also control their application by the executive.

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3. European Centre for Parliamentary Research and Documentation (ECPRD), Request No. 1586.
4. Association of Secretaries General of Parliaments (ASGP), "The mechanisms for treatment of human rights issues in national Parliaments", *Const. Parl. Inf.*, Vol. 53 (2003), No. 186, p. 5.

8. Parliaments and their members embody the link between the people as subjects of human rights, and the state authorities. Parliaments have the authority to play a major part in protecting human rights in a democratic society.

9. This report examines the various possibilities at the disposal of parliaments in protecting human rights and stresses their role in this field.

10. The report deals with European national parliaments. However, in view of the unique role of the European Parliament, which has an increasing impact on human rights policy within the European Union's member states, as well as the forthcoming accession of the European Union to the European Convention on Human Rights ("the Convention"), some reference to the mechanisms and practice of the European Parliament will also be made.

11. With the exception of the Council of Europe's Parliamentary Assembly, the report will not address international parliamentary bodies such as the Commonwealth Parliamentary Association or the Parliamentary Assembly of the Organization for Security and Co-operation in Europe (OSCE).

12. In the European human rights protection system, the case law of the European Court of Human Rights ("the Court") is of overriding importance. The primary responsibility for the supervision of the implementation of the judgments of the Strasbourg Court lies with the Committee of Ministers.[5] However, the Assembly has made important contributions since 2000.[6]

13. Less attention has been devoted to the role of national parliaments in the implementation of Court judgments. In my last report on the implementation of judgments of the Court, I stressed the importance of national parliamentary involvement in the implementation of the Court judgments.[7] This report further explores this thesis.

14. Most national parliaments do not yet exercise regular and effective control over the implementation of the Court's judgments. This report identifies examples of good practice in some states which could serve as a model for others.

3. Definition and function

3.1. Definition of parliament

15. A parliament is a gathering of individuals who represent their people. Deriving from the Latin term *parliamentum* and, derived from this, the French term *parlement*, it describes the act of speaking. It is therefore an assembly of people who speak about and discuss the matters concerning the state.

16. According to the Inter-Parliamentary Union (IPU), a parliament founded on democratic principles needs to fulfil the following characteristics: (1) it needs to be socially and politically representative of the diversity of the people and ensure equal opportunities and protection for all its members (representativity); (2) it needs to be open to the nation through different media, and transparent in the conduct of its business (transparency); (3) it has to be accessible to the public, which includes the involvement of associations and movements of civil society (accessibility); (4) members of parliament must be accountable to the electorate for their performance in office and integrity of conduct, which is guaranteed through parliamentary procedure and periodic elections (accountability); and (5) the parliament has to have an effective organisation of business in accordance with democratic values, and the performance of parliament's legislative and oversight functions in a manner that serves the whole population (effectiveness).[8]

17. Article 3 of the First Protocol of the European Convention on Human Rights stipulates that the high contracting parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.[9]

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5. Article 46, paragraph 2, of the Convention.
6. See footnote 7. See also Drzemczewski A., "The Parliamentary Assembly's involvement in the supervision of the judgments of the Strasbourg Court", *Netherlands Quarterly of Human Rights*, Volume 28/2 (2010), pp. 164-178.
7. See Doc. 12455, paragraphs 195-208.
8. See "Parliament and democracy in the twenty first century – a guide to good practice", IPU (2006), p. 7, www.ipu.org/PDF/publications/democracy_en.pdf.
9. A similar formulation can be found in Article 25 of the International Covenant on Civil and Political Rights.

3.2. Functions of parliament

18. Following the doctrine of the separation of powers, power in a state shall be exercised by three separate institutions independent of one another, in order to avoid a concentration of powers with a single individual or an institution. Under this doctrine, legislative power is exercised by parliament, executive power is exercised by a government responsible for formulating and implementing policies for the common good of society; and judicial power is exercised by the courts, which ensure that laws are implemented properly and that any misconduct is punished appropriately.[10]

19. Parliaments balance executive and judicial powers by debating, adopting and monitoring legislation. It is parliaments which define the framework of the executive's and judiciary's action, not least by approving the state budget.

20. It follows that the functions of parliaments are the following. First and foremost, they 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.

21. I will now examine how human rights policy can be translated into parliamentary structures, having due regard to the functions just outlined.

4. Embedding human rights policy in parliamentary structures

4.1. Freedom of expression and information for parliamentarians

22. To ensure a high-quality debate, which is parliaments' main instrument, freedom of expression and assembly of parliamentarians must be guaranteed. Members of parliament must also be free to seek, receive and report information, as well as to express ideas without fear of reprisal, within the limits of their accountability before the electorate. Their independent and autonomous status, which allows them to act free from any pressure, bar internal party arrangements, must be protected. In this respect, parliamentary privileges and immunities are vital. Parliamentarians are only accountable to the electorate. Moreover, parliamentarians must be inviolable. During their active time, they can only be arrested, detained and subject to (criminal or, rarely, civil) proceedings with the consent of the parliament.[11] Obviously, there are limits to this principle. Inviolability is not the same as impunity. It only entitles parliament to verify that proceedings brought against its members are legally founded.[12] Immunities must therefore under no circumstances be allowed to prevent effective, independent and impartial investigations into serious human rights violations.[13]

4.2. Parliamentary management structures

23. National constitutions identify the basic features of the powers and organisation of parliament, and mostly give parliaments the competence to organise their work and proceedings as they deem appropriate.[14]

24. There is, generally, a two-tier management structure to parliaments.[15] The political structure is responsible for taking decisions on the political issues before the parliament. This structure is representative of the political configuration of the parliament, meaning that both governing and opposition parties are represented. It is headed by a speaker, president or chairperson. The administrative structure supports the political decision-making process. This function is normally performed by a secretariat that works under the authority of the speaker/president/chairperson and provides administrative and other backup services to the

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10. See "A guide to parliamentary practice – a handbook", IPU and UNESCO (2003), p. 4, www.ipu.org/PDF/publications/unesco_en.pdf.
11. For a detailed analysis on parliamentary immunities, see Hulst M. (2000), "The parliamentary mandate: a global overview", pp. 63 *et seq*.
12. "Human rights handbook for parliamentarians", IPU and Office of the United Nations High Commissioner for Human Rights (2005), p. 65.
13. See Resolution 1675 (2009) on the state of human rights in Europe: the need to eradicate impunity, paragraph 9.2.
14. See "Parliamentary Human Rights Committees", National Democratic Institute for International Affairs (2004), p. 11, www.ndi.org/files/parlhrscommittees_080105.pdf.
15. See "A guide to parliamentary practice – a handbook", op. cit., p. 6.

members of parliament. The secretariat is normally staffed by persons recruited on their merits and remunerated by parliament. They are independent of the political authorities and are required to provide services irrespective of the political affiliations of the members concerned.

25. Parliaments perform their work mainly through committees. These are organs of the house. They fulfil legislative and oversight functions, prepare the work of the plenary, and scrutinise proposed legislative texts and submit recommendations. There are standing (permanent) and ad hoc (non-permanent) committees. The former, which operate on a continuing basis from one parliamentary term to the next, carry out the bulk of parliamentary business, whereas the latter are created to inquire into and report on a particular matter.[16] Parliaments composed of two houses often establish joint committees to study and report on questions of joint interest.

4.3. Legislation: human rights committees, cross-cutting or specialised

26. In principle, parliaments are free to legislate according to the ideas of their constituent members. This is, as has been pointed out above, one of their main functions. They shape the ways in which societies operate and set out the legislative framework. However, being part of a state, they must also comply with the constitution as well as with supranational and international obligations. Human rights pertain to all these sectors. The question is, therefore, how parliaments can organise their structures so as to ensure that national, supranational and international human rights obligations are taken into account in the legislative process.

27. There are, broadly speaking, two ways in which to deal with human rights within parliamentary structures and how to deal with them through parliamentary committees.

28. In the first model, human rights are seen as a horizontal cross-cutting issue that should be taken into account ("mainstreamed") in the work of all parliamentary committees. Every parliamentary committee is thus considered a "human rights committee". This is the solution adopted in Andorra,[17] Austria,[18] Belgium,[19] Denmark,[20] Estonia,[21] the European Union,[22] Finland, France, Iceland, the Netherlands, Norway, the Russian Federation, the Slovak Republic,[23] Slovenia,[24] Spain,[25] Sweden and Switzerland.[26]

29. The second model implies setting up a parliamentary committee with a specific human rights mandate, or adding such a human rights mandate to an existing committee's remit. Such a committee often has the task of ensuring that all other parliamentary committees act in accordance with human rights. The following countries have such committees: Bosnia and Herzegovina, Croatia,[27] Cyprus,[28] the Czech Republic,[29]

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16. See footnote 14.
17. The Legislative Committee of Interior discusses the annual report of the ombudsman.
18. Although both the Human Rights committee and the Constitutional Committee of the National Council discuss human rights legislation, there is no monitoring and assessment on an ongoing basis.
19. It is the Justice Committee of both assemblies (Chamber of Representatives and Senate) which deals with domestic human rights issues and the Exterior Relations Committee which deals with international human rights issues.
20. Each committee deals with human rights within the sphere of its competence. There are regular contacts between the Legal Affairs Committee and both the Danish Institute for Human rights and the ombudsman. The Committee discusses the reports of those entities.
21. Several standing committees such as the Constitutional Committee and the Legal Affairs Committee deal with human rights issues.
22. There is a sub-committee on human rights which deals with human rights issues outside the European Union.
23. The Committee on Human Rights and Minorities discusses bills, international treaties and certain government programmes with respect to their compliance with national and international human rights. It co-operates with the central bodies of state administration, in particular the Public Defender of Rights, the Nation's Memory Institute, the Office for Personal Data Protection and the National Centre for Human Rights. There are no informal parliamentary groups. However, there is the yearly presentation of reports of the above-mentioned entities in the National Council and its committees.
24. There is no special committee and it is the Committee on domestic policy, public administration and justice which discusses human rights. A Commission for petitions, human rights and equal opportunities deals with citizens' complaints, discusses the regular annual and special reports of the ombudsman and advises the National Assembly on Human Rights matters.
25. Neither the Congress of Deputies nor the Senate disposes of a special structure. Human rights are usually considered in the standing constitutional committees of the Houses of Parliament. A special committee deals with relations with the ombudsman.
26. The standing committees deal, within their sphere of competence, with human rights issues. However, the government keeps parliament informed through its Annual Report on Switzerland's activities in the Council of Europe.

Georgia,[30] Germany, Greece, Hungary,[31] Ireland, Italy,[32] Latvia,[33] Lithuania, Luxembourg,[34] '"the former Yugoslav Republic of Macedonia", Moldova,[35] Poland,[36] Romania, Serbia,[37] Turkey,[38] and the United Kingdom.

30. On the basis of the information gathered and of past experience, the second model, in my view, has clear advantages. It pools competences and provides direction. I shall come back to this point in detail in my specific proposals below.

4.4. Ratification of human rights treaties

31. International human rights treaties are normally negotiated and signed by representatives of the executive of the contracting parties. In order for them to become valid in a given legal order, they must subsequently be ratified in accordance with the specific constitutional requirements of the respective legal orders. For most states this entails an involvement of their parliament. Against the background that members of national parliaments are generally not directly involved in drafting international agreements or in the related decision-making processes,[39] the IPU has called for greater involvement of members of national parliaments in negotiating international human rights instruments, since they must eventually enact relevant legislation and ensure its implementation. They should intervene long before the ratification stage and participate, along with government representatives, in the drafting of new instruments within international deliberative bodies.[40]

32. I cannot but agree with this call and would also like to address it to the member states of the Council of Europe. An inspiration for member states could be a procedure aligned on that set forth in Protocol No. 1 to the Treaty of Lisbon on the role of national parliaments in the European Union,[41] which establishes a mechanism to report to national parliaments on legislative texts under preparation by EU institutions.

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27. The Standing Committee on Human and National Minority Rights establishes and monitors the implementation of policies, including the implementation of ratified international human rights treaties.
28. A Standing Committee on Human Rights is competent to monitor and scrutinise the implementation of national and international human rights norms. Individual cases of human rights violations are discussed. There is close co-operation with the ombudsman who may give opinions.
29. The Committee on Petitions of the parliament discusses legislative provisions concerning human and minority rights, including bills implementing EU law. It discusses the report on the state of human rights in the Czech Republic and monitors the activities of the public defender of rights, as well as the annual summary report on the public defender of rights' activities. In the Senate, there is a Committee on education, science, culture, human rights and petitions.
30. The Human Rights Committee participates in the legislative process concerning the ratification and implementation of international human rights norms.
31. A Committee on Human Rights, Minorities, Civil Affairs and Religion takes initiatives, makes proposals, gives opinions and takes decisions on human rights issues.
32. Chamber of Deputies: In the Italian Parliament there is no special individual body in charge of verifying the compatibility of draft legislation with the Convention because this activity is carried out by each standing committee. These, however, check compatibility with the Convention, which is also an element of the legislative procedure in draft legislation. A Monitoring Centre on Xenophobia and Racism was set up in 2009. Senate: A Special Committee for Human Rights was established in 2001 with an advisory function.
33. The Human Rights and Public Affairs Committee deals with monitoring and scrutinising the implementation of international human rights norms. NGOs are often consulted by committees.
34. There is a consultative committee on human rights at the service of the government.
35. A Committee for Human Rights and Inter-ethical relationships has the task of monitoring and assessing the implementation of human rights norms.
36. The Sejm Committee for Justice and Human Rights is charged with the observance of the rule of law, by all actors in the judicial process and the observance of human rights. The Sejm receives the Commissioner of Citizens' Rights report on an annual basis.
37. The Committee on human and minority rights and freedoms and the rights of the child considers bills and other issues.
38. A Standing Parliamentary Human Rights Committee ensures compliance with international human rights norms.
39. The Assembly constitutes to a certain extent an exception to this in that it gives its opinion – when requested by the Committee of Ministers to do so and usually on the basis of a text prepared by the Committee on Legal Affairs and Human Rights – on draft conventions prior to their final adoption.
40. See "Human rights handbook for parliamentarians", op. cit., p. 65. See also Assembly Doc. 12632, report on the role of parliaments in the consolidation and development of social rights in Europe (rapporteur: Ms Carina Ohlsson, Sweden, SOC), paragraph 9.
41. The protocol is available at the Official Journal of the European Union, C 83/203 of 30 March 2010: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:083:0201:0328:EN:PDF.

33. The drafting process of the Council of Europe Convention on preventing and combating violence against women and domestic violence (CETS No. 210) provides an excellent example of early parliamentary involvement in the elaboration of an international treaty. Here, already the Vienna Declaration of 2008, which requests the Council of Europe to provide a first draft, calls for the involvement of parliaments.[42] In this context, the Ad hoc Committee on preventing and combating violence against women and domestic violence (CAHVIO) regularly took into account contributions from national parliaments via the Assembly's Committee on Equal Opportunities for Women and Men. A specific campaign entitled "Stop violence against women (2006-2008)" included an informal and efficient structure. Contact parliamentarians were nominated with respect to each parliament. This campaign subsequently grew into the Parliamentary Assembly network of contact parliamentarians committed to combating violence against women, the aim of which is to lobby, within their respective parliaments, for the signature and ratification of the convention.[43]

34. Furthermore, this convention is the first 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 European level, the Parliamentary Assembly will be invited to regularly take stock of the convention.

35. A similar project is the network of contact parliamentarians in the context of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No. 201). Here too, the Assembly has created a network of contact parliamentarians to associate national parliamentarians with the parliamentary dimension of the Council of Europe "One in Five Campaign to stop sexual violence against children", to co-ordinate national, European, and international parliamentary action to combat sexual violence against children, to facilitate the exchange of best practices on the legislative and political action implemented in each member state and to promote the signature and ratification of the convention.[44]

36. Such examples should be followed in the future.

4.5. Overseeing action of the executive

37. Parliaments are responsible for holding the executive to account by overseeing its work and making sure that it does not infringe on the rights of citizens. This can be done by receiving regular reports from the executive on its activities, asking ministers questions, setting up special committees and organising field visits to carry out enquiries into executive conduct and propose remedial action.[45]

38. Such activities are ongoing and require constant vigilance. A recent example in the Swiss parliament is outstanding in this respect: concerning the United Nations Security Council practice of blacklisting, the Swiss Parliament passed a motion, against the advice of the government, requiring Switzerland to no longer apply the relevant sanctions if, after a three-year period, the individual concerned has not been brought before a judicial authority or has not been able to appeal to an independent authority. The motion was approved unanimously by the Council of States (Senate), and by a large majority by the lower chamber. The Swiss government was therefore obliged to notify the United Nations Security Council of the decision.[46]

4.6. Litigation

39. In some legal orders, national parliaments can contribute to the protection of human rights by way of litigation. For instance, under German law, the Federal constitutional court has jurisdiction to rule, on the application of one fourth of the members of the *Bundestag*, in the event of disagreements or doubts concerning the formal or substantive compatibility of federal law or *Land* law with the constitution, or the compatibility of *Land* law with other federal laws.[47] Such an application often concerns fundamental rights as set forth in the constitution.

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42. Vienna Declaration – "Parliaments: act now to stop domestic violence", adopted in Vienna on 30 April 2008: www.coe.int/t/pace/campaign/stopviolence/source/vienna_declaration_en.pdf.
43. For additional information: http://assembly.coe.int/main.asp?link=/Communication/Campaign/DomesticViolence/default_EN.asp.
44. For additional information: www.coe.int/t/dg3/children/1in5/PACE/About_en.asp?expandable=5.
45. See "A guide to parliamentary practice – a handbook", op cit., p. 9.
46. The exchange of letters with the United Nations Security Council and further information can be found at: AS/Jur "Information note: Compatibility of UN Security Council and EU [terrorist] Black Lists with European Convention on Human Rights requirements": http://assembly.coe.int/CommitteeDocs/2010/07122010_blacklists.pdf.
47. See Article 93 of the German constitution (*Grundgesetz*).

40. Parliaments should make use of such procedural possibilities to defend the cause of human rights.

4.7. Liaison with national human rights institutions

41. A number of countries have established independent national human rights institutions,[48] based on the "Paris Principles". These principles,[49] which have been endorsed by the United Nations Commission on Human Rights[50] and the United Nations General Assembly,[51] have become the internationally accepted benchmark setting core minimum standards for the role and functioning of national human rights institutions. They require a national human rights institution to have a clearly defined and broad-based mandate, based on universal human rights standards; independence guaranteed by legislation or the constitution; autonomy from government; pluralism, including membership that broadly reflects the society; adequate powers of investigation; and sufficient resources.

42. Relationships with such institutions should be further explored as they have great potential for human rights protection at the national level. In this context, I would like to draw the Assembly's attention to the "Abuja guidelines" for strengthening co-operation between national human rights institutions and parliaments, drawn up in Abuja (Nigeria) in 2004.[52]

4.8. Training for parliamentarians and their staff

43. 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. Few parliaments provide such training: those of Bosnia and Herzegovina, Denmark,[53] Estonia, the European Union,[54] Finland,[55] Georgia[56] and "the former Yugoslav Republic of Macedonia".[57] For example, in Bosnia and Herzegovina, the German Konrad Adenauer Foundation organises, for both parliamentarians and staff, a series of seminars on human rights, including the implementation of judgments of the European Court of Human Rights.

44. Parliaments should provide more training for both parliamentarians and staff, along the lines of Bosnia and Herzegovina. In addition, new parliamentarians and staff members should be provided with handbooks on human rights.

45. 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.

4.9. Fostering a human rights culture

46. Embedding human rights policy in parliamentary structures can take many other forms.

47. Informal groups which transcend political party affiliation in order to pursue common interests are very useful. While they do not have the powers of formal committees, their informal nature often enables them to be more outspoken, which allows them to act as influential operators in protecting human rights issues. The data collected in the questionnaire is meagre in this respect. It seems that very few parliaments foresee such informal groups. They can be found in the European Union,[58] Poland,[59] Serbia,[60] Sweden,[61] Switzerland,[62] Turkey[63] and the United Kingdom[64].

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48. Council of Europe member states with such institutions are: Albania, Austria, Belgium, Bosnia and Herzegovina, Denmark, France, Germany, Greece, Ireland, Luxembourg, the Netherlands, Norway, Poland, Portugal, the Russian Federation, Slovakia, Slovenia, Spain, Sweden and the United Kingdom.
49. Principles relating to the Status of National Institutions (The Paris Principles): www2.ohchr.org/english/law/parisprinciples.htm
50. Resolution 1992/54 of 3 March 1992.
51. Resolution 48/134 of 20 December 1993, annex.
52. "Human rights handbook for parliamentarians", op. cit. p. 75.
53. Here, MPs and staff are provided with training upon request.
54. Regular training is provided to both MPs and staff.
55. There is an informal "Human Rights Group" which organises training for parliamentarians on human rights.
56. Specific training by external experts is provided with support from international organisations.
57. Here, members of the Standing Inquiry Committee for the protection of civil rights and freedoms receive training on human rights protection by the Westminster Foundation and the Macedonian association of young lawyers.

48. Informal groups are a good tool for fostering an understanding for human rights. They provide parliamentarians with specific information around a common theme. Often, they transcend party-political divisions. I would hope that more such groups will see the light of day in our respective parliaments.

49. Parliamentarians can have a strong impact on human rights awareness due to their status and the public nature of their function. In the political environment, the United Kingdom "early-day motions" are an effective means of drawing the media's attention to an issue by tabling it in the order of the day.[65] By including human rights in their party manifestos, parliamentarians oblige themselves to work towards a stronger human rights culture. Joint motions of the leading party or leading coalition together with the opposition demonstrate the importance of the matter to the general public, who are thus able to see that all politicians work hand in hand towards the protection and promotion of human rights. At the same time, the public perception of parliamentarians can also benefit from their human rights activities, which provide manifold opportunities to demonstrate a politician's principled, humanist stance.

50. Finally, the award of human rights prizes considerably increases awareness for human rights. Since 1988, the European Union has awarded the *Sakharov Prize for Freedom of Thought* to personalities or organisations for their outstanding dedication to the fight for human rights. The prize is awarded by the European Parliament whose members have the power to turn the spotlight on human rights by nominating and discussing possible recipients.[66] Similar prizes are awarded by national parliaments such as the French, Dutch or Portuguese parliament. And, last but not least, the Parliamentary Assembly's own Human Rights Prize rewards outstanding civil society action in the defence of human rights in Europe.[67]

5. The supervision of human rights obligations

5.1. The role of the Assembly at the European level

51. In the European human rights protection system, the crown jewel is undeniably the European Convention on Human Rights, as interpreted by the Strasbourg Court. Its case law fleshes out and adds life to the concise articles of the Convention. The careful, vigilant and conscientious execution of judgments by member states is a precondition for allowing people to benefit from the Court's action.

52. Although the supervision of execution of the Court's judgments is primarily the responsibility of the Committee of Ministers under Article 46, paragraph 2, of the Convention, the Assembly has contributed for several years to the effective implementation of the Court judgments, by bringing political pressure to bear on governments where particularly long delays in complying with judgments have arisen. This is a way for the Assembly to show that it takes seriously its responsibility for protecting the values upheld by the Council of Europe and ensuring member states' compliance with the Convention standards.

53. Without going into detail, I should like to point out that the Assembly, since 2000, has adopted seven resolutions and six recommendations aimed at helping states to overcome structural deficiencies and at accelerating the process of fully complying with the Court's judgments.[68]

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58. Several informal parliamentary groups, such as the Tibet Intergroup exist.
59. A parliamentary team for co-operation with NGOs monitors legislation on NGOs and has as its task to support civil dialogue. A parliamentary team for the promotion of democracy in the countries of the former communist bloc monitors and analyses the political situation in those countries with respect to democratic standards, takes policy initiatives to support democratic changes, and co-operates with Polish and external organisations and citizen initiatives.
60. There are some informal groups such as a group for the protection of children's rights and on the prevention and social care for HIV patients.
61. There are a number of informal groups such as a group against anti-semitism, a human rights group and a Tibet committee.
62. An informal parliamentary group dealing with human rights maintains close links to NGOs.
63. There are informal groups: the Child Rights Monitoring Committee and Civil Society Joint Working Groups (called TGNA).
64. The United Kingdom Parliament has a system of unofficial All-Party Parliamentary Groups, such as on anti-semitism, the death penalty, extraordinary rendition, genocide and crimes against humanity and refugees. These groupings have no official mandate, formal powers or, usually, access to independent experts.
65. IPU/UNDP (2004), Seminar for Chairpersons and Members of Parliamentary Human Rights Bodies, p. 41: www.ipu.org/pdf/publications/hr04_en.pdf.
66. For more information on the Prize see: www.europarl.europa.eu/parliament/archive/staticDisplay.do?language=EN&id=1003.
67. See http://assembly.coe.int/Committee/JUR/HumanRightsPrize/Regulations_E.pdf.

5.2. The crucial role of national parliaments

54. Less attention has, however, been paid to national parliaments, whose vital role in this area must not be overlooked.

55. National authorities are under an obligation to guarantee the rights and freedoms enshrined in the European Convention on Human Rights and its Protocols. Article 1 of the Convention expressly states that "[t]he High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention". It is therefore the responsibility of all state bodies – executive, judicial and legislative – to prevent or remedy human rights violations at the national level.

56. National parliamentarians, as democratically elected representatives of the people, are well placed to scrutinise the actions of government so as to ensure the swift and effective implementation of the Court's judgments. They should ensure that the competent authorities adopt the required measures to execute an adverse judgment of the Court and then scrutinise the actual content of these measures.

57. In my last report on the implementation of judgments of the European Court of Human Rights, in January 2011, having noted that in states with strong implementation records parliamentary actors are strongly involved in the implementation process,[69] I stressed that national parliamentary involvement is a vital tool in the implementation of the Court judgments.[70] I also regretted that at present very few states actively engage in this process.[71]

58. Similarly, the Interlaken Declaration of 19 February 2010[72] calls for a strengthening of the principle of subsidiarity and for enhancing the efficiency of the system of supervising the execution of the Court's judgments. In its preamble, it explicitly refers to the role of [national] parliaments in guaranteeing and protecting human rights at the national level. The specific reference to parliaments was added to the Declaration just before the conference took place and it can be said with a fair degree of certainty that this is due to the work of the Assembly's Committee on Legal Affairs and Human rights under the chairmanship of my predecessor, Ms Herta Däubler-Gmelin.[73] My colleague, Ms Marie-Louise Bemelmans-Videc, has equally regretted "the somewhat puzzling feature of the documents adopted in Interlaken which make no mention of the Assembly and contain scarcely a word on the role of national parliaments".[74]

59. In particular, it is disappointing to see that the current debate on the future of the Convention system does not seem to take into account the role played by national parliaments in the supervision of the execution of Court judgments. To this effect, the declaration adopted at the end of the last conference on this subject, held in Izmir on 26 and 27 April 2011,[75] addresses the supervision of the execution of judgments, albeit only with respect to the role of the Committee of Ministers.[76]

60. Progress in establishing pertinent parliamentary structures is slow. Nevertheless, there is some ground for hope, as I would like to illustrate with the few examples of good practices that exist.

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68. See Resolution 1226 (2000), Recommendation 1477 (2000), Resolution 1268 (2002), Recommendation 1546 (2002), Resolution 1297 (2002), Recommendation 1576 (2002), Resolution 1381 (2004), Resolution 1411 (2004), Recommendation 1685 (2004), Resolution 1516 (2006), Recommendation 1764 (2006), Resolution 1787 (2011) and Recommendation 1955 (2011).

69. See comparative study by the JURISTRAS Project, "Why do states implement differently the European Court of Human Rights judgments? The case law on civil liberties and the rights of minorities", April 2009, p. 23: www.juristras.eliamep.gr/wp-content/uploads/2009/05/why-do-states-implement-differently-the-european-court-of-human.pdf.

70. See Doc. 12455, paragraphs 195-208.

71. See also Drzemczewski A., op. cit., pp. 174-175.

72. www.coe.int/t/dghl/standardsetting/conferenceizmir/INTERLAKEN%20DECLARATION%20final_en.pdf

73. For an extensive analysis, see Drzemczewski A., op. cit., p. 165, note 2.

74. See Doc. 12221 and Resolution 1726 (2010) "The effective implementation of the European Convention on Human Rights: the Interlaken process".

75. For further information, see www.coe.int/izmir.

76. See point B.1.*b* of the declaration: "The Conference … invites the States Parties to … co-operate fully with the Committee of Ministers in the framework of the new methods of supervision of execution of judgments of the Court". See also section H of the follow-up plan: www.coe.int/t/dghl/standardsetting/conferenceizmir/Declaration%20Izmir%20E.pdf.

5.3. Examples of good practices

5.3.1. The United Kingdom

61. In the United Kingdom Parliament the main mechanism for parliamentary oversight is the Joint Committee on Human Rights (JCHR), a Select Committee of 12 members, six from the House of Commons and six from the House of Lords.[77] Its remit is widely defined: it is empowered "to consider matters relating to human rights in the UK" (but not individual cases). Its secretariat includes two independent experts in human rights law. Other parliamentary committees occasionally consider human rights issues when they are relevant to their remit, but human rights are not the focus of their oversight and they do not have the assistance of independent human rights experts.

62. Since being established in 2001, the JCHR has developed a number of different methods of assisting parliament to supervise the implementation of human rights norms in the United Kingdom. The most important have been: systematically scrutinising all government legislation for compatibility with the United Kingdom's human rights obligations, including the European Convention on Human Rights; regularly monitoring the government's response to court judgments concerning human rights, both from the European Court of Human Rights and from the United Kingdom courts; conducting thematic inquiries into particular human rights issues (for example deaths in custody, business and human rights, the right of disabled people to independent living); following up the recommendations of international human rights monitoring bodies, such as the United Nations compliance committees.

63. In the new parliament following the 2010 elections the new Committee has continued most of this work, although its capacity to do so has been reduced by a cut in its resources.[78]

64. The JCHR's approach to monitoring the United Kingdom Government's response to human rights judgments is set out in the Committee's *Guidance for Departments on Responding to Court Judgments on Human Rights*, published by the previous JCHR in March 2010 but adopted by the current Committee.[79] The JCHR expects a swift and full response by the government to judgments finding United Kingdom law or policy to be incompatible with human rights. It has established a target timetable for remedial action and expects to be given reasons for any departure from that timetable. In particular:

– The JCHR expects to be notified promptly by the government of all relevant judgments.

– Within four months of the judgment, the Committee expects to be informed of the government's detailed plans for responding to the judgment, including the proposed general measures, if any, and an indicative timetable.

– Within six months of the judgment, the Committee expects the government to have made a final decision about how to remedy the incompatibility. It scrutinises the government's reasons for not respecting the target timetable.

– The Committee may call for evidence on the government's proposed response to the judgment, write to the government about it, question the minister orally, and report to parliament on the substance of the remedial measure in question, including whether it remedies the incompatibility in question and any other concerns about the way in which the law or policy has been changed in response to the judgment. The Committee may hear oral evidence on the issues raised by particular judgments.

– The government responds in relation to particular queries and has now agreed to report annually in July of each year.

– The JCHR reports about once a year to parliament on the government's response to its queries.

– The Committee may propose amendments to legislation to give effect to judgments.

65. The main way in which the JCHR oversees the implementation of international human rights norms, including the European Convention on Human Rights, is by scrutinising government legislation for human rights compatibility. All government bills are scrutinised and the Committee aims to report early enough in a bill's passage through parliament to inform debates about the bill's possible amendment to meet any human rights concerns. The Committee has become increasingly proactive in its legislative scrutiny work. The Committee identifies the bills likely to raise human rights issues and puts out calls for evidence in advance of

77. JCHR website: www.parliament.uk/business/committees/committees-archive/joint-committee-on-human-rights.
78. The number of human rights experts working for the Committee has been reduced from three to two.
79. Fifteenth Report of Session 2009-10, *Enhancing Parliament's role in relation to human rights judgments*, HL Paper 85/HC 455 (Annex).

the bill's publication. Where possible, the Committee's human rights experts meet the government officials preparing the bill to identify the human rights issues likely to be raised by the bill's subject-matter. Departments now frequently provide a detailed "Human Rights Memorandum" to the Committee, setting out in detail the government's reasoned justification for its view that the bill is compatible with the United Kingdom's human rights obligations. The Committee writes to the government asking for more information or for clarification of the explanation, or querying the legal basis of the government's view. The Committee reports to parliament in the light of the government's response and its exchange of correspondence with the government is published to inform the debate. The Committee's reports may recommend amendments to the bill in order to give effect to the Committee's recommendations. Members of the Committee may table the amendments in their own name (the Committee itself is not empowered to move amendments to bills).

5.3.2. The Netherlands

66. The Netherlands – like most other member states of the Council of Europe – does not have a specific parliamentary procedure for the verification of compatibility of draft laws with the European Convention on Human Rights. However, civil servants drafting legislation have to consider specific "Instructions" on legislation which oblige them to specify why draft legislation is deemed compatible with international human rights norms. This often leads to the human rights section of the Ministry of Justice checking compatibility with the Convention.[80]

67. Furthermore, when parliament expresses doubts concerning the human rights compatibility of draft legislation, an evaluation clause is added, by means of which the legislation has to be evaluated after a number of years.

68. Concerning the supervision of the execution of judgments of the European Court of Human Rights, the government agent before the Court presents an annual report to parliament concerning the Court judgments delivered against the Netherlands. Following a request from the Senate in 2006, this report now includes information concerning measures adopted to implement adverse Court judgments. Moreover, the report contains judgments against other state parties which could have a direct or indirect effect on the Dutch legal system.[81]

69. The results of this practice are tangible: there are numerous examples where judgments of the Court in cases in which Dutch legislation or its implementation was at issue have led to changes to national legislation or policy. For example, there have been major changes to various sections of the criminal code and the law on criminal procedure, administrative law and administrative procedural law, aliens law, family law, social security law, the law on civil procedure, military disciplinary law and the law on committal to psychiatric hospitals.

70. Furthermore, Court judgments against other High Contracting Parties may also lead to changes in national legislation. To give just one recent example: following the *Salduz* judgment,[82] the necessary changes to Dutch law were initiated following a debate within parliament immediately after the date of the Court's judgment.

5.3.3. Germany

71. The German *Bundestag* has several useful reporting mechanisms. Firstly, since 2007, as a direct result of the work of the Assembly,[83] the Ministry of Justice provides annual written reports to parliament on judgments and decisions of the European Court of Human Rights and their implementation in Germany. Since last year, another report presents relevant cases against states other than Germany. Secondly, the

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80. For example: in 2008, approximately 95 requests for information were received from civil servants working at the Legislation Department of the Ministry of Justice, 195 requests were received from other departments within the Ministry of Justice, and some 75 requests were received from other ministries.

81. Parliament's role with regard to the implementation of human rights standards is not limited to judgments of the European Court of Human Rights: (1) Debate with the government following concluding observations of United Nations committees. The government sends those observations to parliament accompanied by its own response, which is usually followed by a parliamentary debate; (2) Debate with the government following a report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) – again, the report and the observations by the government will be shared with parliament, which may give rise to parliamentary debate; (3) Debate with the government following critical comments by the Council of Europe Human Rights Commissioner.

82. *Salduz v. Turkey*, Application No. 36391/02, judgment of 27 November 2008.

83. See Resolution 1516 (2006) and Recommendation 1764 (2006) on the implementation of judgments of the European Court of Human Rights.

Committee on Human Rights and Humanitarian Aid is involved in drawing up reports to various United Nations bodies.[84] Thirdly, the government submits a general human rights report to parliament every two years and submits an action plan for improvement.[85] Lastly, the government often submits, on an ad hoc basis, oral and written reports on human rights issues to the parliamentary Committee on Human Rights and Humanitarian Aid.

72. The two annual reports on the case law of the Strasbourg Court deal with three aspects: (1) all judgments and decisions in a given year in proceedings against Germany; (2) the measures undertaken to implement the judgments against Germany; and (3) judgments and decisions in proceedings against other states that could potentially be of significance for Germany. These reports are sent not only to parliament, but also to other interested offices and individuals. They are published on the website of the Federal Ministry of Justice.[86]

73. It should be noted that these are fairly recent developments. While reports on judgments and decisions in proceedings against Germany had been prepared since 2004, it was only in 2007 that measures to implement the Court's judgments were included, at the parliament's request.

74. These reports are particularly important when a judgment finds a German statute incompatible with the European Convention for Human Rights. In such cases, a legislative amendment is normally necessary. This is where the responsibility taken on by the parliament in monitoring implementation of judgments by the government, and the responsibility for legislation, which is the core of parliamentary work, come together.

75. Last year Germany began to report on the Court's case law with respect to human rights in cases against states other than Germany. This report, produced by a University institute, is funded by the Federal Ministry of Justice and published on the ministry's website.[87]

76. Furthermore, the Federal Ministry of Justice assesses all draft bills' compatibility with human rights, European Union law and the existing German constitutional order. When significant human rights issues are involved, the results of the assessment are stated in the official rationale/explanatory memorandum, which is

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84. These are state reports which Germany is obliged to submit under the Human Rights Conventions of the United Nations, namely those on the International Covenant on Civil and Political Rights (ICCPR), on the International Convention on the Elimination of All forms of Racial Discrimination (ICERD), on the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), and the initial report on the International Convention for the Protection of All Persons from Enforced Disappearance (ICED) as well as the core document. When the Federal Ministry of Justice begins work on one of these reports, it informs the Committee on Human Rights and Humanitarian Aid of the German *Bundestag*, and provides it with the opportunity to give its input. It is a government report, and the parliament retains its independent position. But it has indeed happened that the Human Rights Committee has had an influence on the portrayal of its own work in the report, or has given its opinion on the topics it is intended to report on. When a state report is finished and is adopted by the federal government, it is forwarded both to the United Nations and to the German *Bundestag*. At certain intervals, the Human Rights Committee places these state reports on its agenda and requests the federal government to report on them. In contrast to the reports on the Court judgments, there is the opportunity for the Committee to take a more comprehensive look at the government's work on certain human rights issues, such as combating racism or the prevention of torture.

85. This report has a very wide focus. Here, the federal government reports about its human rights policies. It is prepared especially for the parliament and includes both foreign and domestic policy. For the past several years, this report has also included a National Action Plan on Human Rights. All ministries that deal with human rights issues contribute to the report. The Foreign Office carries the overall responsibility for its compilation. The parliament has had a decisive influence on that report, which originally addressed only issues of foreign policy. The Human Rights Committee and – pursuant to its initiative – the *Bundestag* assessed and, in various resolutions, criticised the composition of the report. This obliged the government to increasingly portray the human rights situation inside the country as well. The *Bundestag* also expressly called for a Human Rights National Action Plan. That portion of the report would also probably not exist without the parliamentary initiative. See the last report, covering the period from 1 March 2008 to 28 February 2010, "9. Bericht der Bundesregierung über ihre Menschenrechtspolitik",
www.bmj.de/SharedDocs/Downloads/DE/pdfs/9_Bericht_der_Bundesregierung_ueber_ihre_Menschenrechtspolitik.pdf?__blob=publicationFile.

86. See the report of 20 June 2010, "Bericht über die Rechtsprechung des Europäischen Gerichtshofs für Menschenrechte und die Umsetzung seiner Urteile in Verfahren gegen die Bundesrepublik Deutschland im Jahr 2009",
www.bmj.de/SharedDocs/Downloads/DE/pdfs/Bericht_ueber_die_Rechtsprechung_des_Europaeischen_Gerichtshofs_fuer_Menschenrechte_und_die_Umsetzung_seiner_Urteile_in_Verfahren_gegen_die_Bundesrepublik_Deutschland_im_Jahr_2009.pdf?__blob=publicationFile.

87. See the report of 13 January 2011, "Bericht über die Rechtsprechung des Europäischen Gerichtshofs für Menschenrechte in Fällen gegen andere Staaten als Deutschland im Jahr 2009",
www.bmj.de/SharedDocs/Downloads/DE/pdfs/Bericht_ueber_die_Rechtsprechung_des_Europaeischen_Gerichtshofs_fuer_Menschenrechte_in_Faellen_gegen_andere_Staaten_als_Deutschland_2009.html.

submitted to parliament along with the draft bill. The Federal Government must report about that assessment during the deliberations on the drafts in the respective parliamentary committees, and answer parliamentarians' questions.

77. I particularly welcome the reporting system concerning Court judgments, including findings of violations concerning other states, but which could have a bearing on the national legal order. Such a practice correctly recognises the interpretative authority (*res interpretata*) of Court judgments. I already advocated such a practice at the Conference on the Principle of Subsidiarity in Skopje on 1 and 2 October 2010.[88] Such reports are extremely useful, given that judgments finding violations in one state can be of major help in preventing new human rights violations, which would give rise to a large number of new applications to the Court from other states.

5.3.4. Finland

78. In Finland, the Constitutional Law Committee issues a statement on the constitutionality of legislative proposals and other matters brought to its consideration, as well as on their relation to international human rights treaties, the Convention being the most central international document against which legislative acts are judged. In addition to this, once a year, the government submits a report to parliament on human rights policy in Finland. In this context, the Foreign Affairs Committee hears experts from different organisations and NGOs and prepares a committee report to the plenary.

5.3.5. Romania

79. There are also promising developments in Romania. Here, following an impetus from the Assembly,[89] the Romanian Chamber of Deputies set up in 2007 a sub-committee of its Legal Affairs Committee specifically mandated to monitor the implementation of Court judgments. This sub-committee is made up of seven members of parliament representing all political groups. At a meeting of the Assembly's Committee on Legal Affairs and Human Rights held in April 2011, Mr Tudor Panţiru – elected Chair of the new sub-committee and a former judge on the European Court of Human Rights – indicated that the sub-committee had started its work, holding hearings with respect to specific questions.

5.3.6. "The former Yugoslav Republic of Macedonia"

80. According to written information received by the secretariat in the context of the preparation of this report, the parliament of "the former Yugoslav Republic of Macedonia" has a standing inquiry committee for the protection of civil rights and freedoms, which checks, *ex officio*, the compliance of legislation with international law, including the Convention. Furthermore, the government agent before the Strasbourg Court reports to this Committee on an annual basis.

5.3.7. Italy

81. In Italy, the "Azzolini law"[90] of 2006 created a legislative basis for a special procedure for supervision of the implementation of judgments by the government and parliament. Here, the Prime Minister is under an obligation to immediately communicate judgments of the European Court of Human Rights in respect of Italy to the houses of parliament so that they can be examined by the competent parliamentary standing committees, and submit an annual report to parliament on the position as regards the execution of such judgments. In addition, the presidents of the houses of parliament issued circulars insisting on the importance of systematic verification of the compatibility of draft laws with the Convention, with a view to anticipating and more effectively preventing violations.

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88. This principle, which is based on Articles 1 and 19 of the Convention, is of great importance for guaranteeing the effectiveness of the Convention. It is not to be confused with an "erga omnes" effect of judgments, which they clearly do not have, since Article 46 of the Convention clearly stipulates an "inter partes" effect. For a more profound analysis, see my contribution on "Strengthening Subsidiarity: Integrating the Strasbourg Court's case law into National Law and Judicial Practice, http://assembly.coe.int/CommitteeDocs/2010/20101125_skopje.pdf.

89. See Resolution 1516 (2006) and Recommendation 1764 (2006) on the implementation of judgments of the European Court of Human Rights.

90. Act No. 12 of 2006. The law is named after its initiator, the then Chairperson of the Italian Delegation to the Assembly, Mr Claudio Azzolini.

5.3.8. Ukraine

82. During a visit to Ukraine in the context of the preparation of a previous report, a memorandum of understanding on Ukraine's Performance with regard to Final Judgments of the European Court of Human Rights was signed on 9 July 2009 between myself and Mr Kivalov, Chairperson of the Committee on Justice of the Verkhovna Rada and a member of the Assembly's Committee on Legal Affairs and Human Rights. This document states that it is desirable that the Committee on Justice and any of its sub-committees monitor the enforcement of the Court's judgments concerning Ukraine, as well as any other relevant case law of the Court. More specifically, Mr Kivalov indicated that the Committee's new sub-committee on the implementation of international standards will soon undertake a thorough overview of the state of implementation of Court judgments in Ukraine.

83. Although this appears to be encouraging, I have not as yet been informed of any subsequent developments.

5.3.9. Other good practices

84. In the Belgian Chamber of Representatives, the Commission on Justice has been entrusted by the Conference of presidents with the implementation of judgments of the European Court of Human Rights. In Bosnia and Herzegovina, the Constitutional and Legal Committee systematically checks the constitutionality of laws. This includes compatibility with the European Convention on Human Rights, given the Convention's constitutional status there.

85. In Greece, compatibility of draft legislation with the Convention is examined by the scientific service of parliament which drafts a non-binding report that is distributed to members of parliament before a debate on the bill.

86. In Lithuania, the Committee on Legal Affairs checks the constitutionality of draft laws and their compliance with international treaties, among them the European Convention on Human Rights.

87. In the Russian Federation, the Council of the Federation has set up a law monitoring centre in order to minimise infringements with respect to human rights. The Committee on Constitutional Legislation of the Council of the Federation carries out monitoring of Russian constitutional court decisions which have not been implemented. I would expect that this monitoring will be extended to the supervision of the execution of judgments of the European Court of Human Rights.

88. Mention should also be made of Norway, where an informal committee, established in 2009, has been mandated to propose a revision of the constitution with a view to strengthening the position of human rights therein.[91] I hope that these reflections will include parliamentary supervisory mechanisms.

89. In Ireland, a Human Rights Commission, charged with promoting and protecting human rights in law, policy and practice, reviews draft legislation, publishes policy statements on human rights issues and makes recommendations to the government. However, it is linked to a government department and not to parliament. This regrettably reduces parliament's influence in shaping policy in accordance with human rights norms.

6. Conclusion and proposals

90. The good practices just described show that when it comes to establishing, within national parliaments, specific procedures to supervise human rights obligations some progress has been made in recent years, in particular as regards supervisory mechanisms for the implementation of judgments of the European Court of Human Rights. They reflect a positive trend and give ground for hope.

91. Nevertheless, the situation is still far from satisfactory. Most national parliaments are far from exploiting their full potential in this process. There is an urgent need to build national parliaments' capacity to provide effective oversight of human rights implementation.

92. Bolder steps must be taken for national parliaments to become genuine guarantors of human rights. It is time to co-ordinate efforts and to establish clear and guiding principles. We have witnessed the impact of the "Paris principles" on the emergence and streamlining of independent national human rights institutions. A set of basic principles comparable to these should be established. I therefore suggest the adoption of such basic principles:

91. A report by this informal committee is due on 1 January 2012.

Basic principles for parliamentary supervision of international human rights standards

1. Appropriate framework and responsibilitiesNational parliaments shall establish appropriate parliamentary structures to ensure rigorous and regular monitoring of compliance with and supervision of international human rights obligations. These structures should, where possible, be dedicated human rights committees, or appropriate analogous structures, whose remits shall be clearly defined and enshrined in law. They 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.

93. I would like to encourage all of us to work towards the implementation of such basic principles in order for our parliaments to become genuine guarantors of human rights in Europe.