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Supplemental Submission by the Irish Human Rights and Equality Commission

In Relation to the Independent Assessment of Claims for *Ex Gratia* Payment Arising from the Judgment of the ECtHR in *Louise O'Keeffe v. Ireland*

Coimisiún na hÉireann um Chearta an Duine agus Comhionannas
Irish Human Rights and Equality Commission

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Supplemental Submission in Reply by the Irish Human Rights and Equality Commission (the Commission) in relation to the Independent Assessment of Claims for Ex Gratia Payment Arising from the Judgement of the ECHR in the Case of *Louise O'Keeffe v. Ireland (O'Keeffe)*

Introduction

1. These submissions should be read together with previous submissions delivered on behalf of the Commission by letter dated the 13th of June 2013 and have been produced in supplement to the said submissions by way of special response to the submissions on behalf of the Minister for Education and Science dated the 14th of September 2018 addressing specifically the position of the Committee of Ministers of the Council of Europe.

2. In the submissions filed on behalf of the Minister on the 14th of September 2018, the Independent Assessor is asked to accord a particular status to decisions and determinations of the Committee of Ministers. The Minister adopts this position to the end of seeking to persuade the Independent Assessor that the decision of the European Court of Human Rights (ECtHR) in ***O'Keeffe*** should be understood by the Independent Assessor as meaning that the application of a requirement of prior complaint as a condition of eligibility for payment of compensation under the ex gratia scheme is permissible under that judgment. The submission made begs two important questions: (i) what decision has been taken by the Committee of Ministers, and (ii) what the status and effect of any decision is taken.

The Decision of the Committee of Ministers in the O'Keeffe Case

3. Only one decision has been taken by the Committee of Ministers to date in relation to ***O'Keeffe***. This occurred during its last examination of the case, at the 1259th DH meeting in June 2016. The decision taken was merely one to change the status of supervision from the enhanced supervision procedure to the standard supervision procedure. While it is true that the decision to reduce supervision from enhanced to standard was informed by steps taken by the State, including the remedies under the Scheme administered by the State Claims Agency, no decision was taken that the steps taken constituted compliance with the requirements of the Convention as identified in the judgment. That this is so is clear from the report of the examination by the Committee at that meeting in June 2016 which records as follows:

> *"1. noted, as concerns individual measures, that the just satisfaction awarded by the European Court has been paid; recalled that the Court found no violation of the procedural obligations under Article 3 because, as soon as a complaint had been made to the state authorities, a criminal investigation was commenced which led to the criminal conviction of the teacher involved; considered therefore that no further individual measures were necessary;*
> *2. as concerns the general measures, welcomed the significant developments in child protection mechanisms in the school system since the events in question in 1973, aimed at ensuring the detection and direct*

reporting of child sexual abuse to the police and state authorities, and the fact that those mechanisms will be kept under review;

3. encouraged the authorities to ensure that the recent legislation referred to in the Action Plan, in particular the Children First Act 2015, is brought into force and fully implemented without any delay; also noted with interest that the authorities have signed the Lanzarote Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse and invited them to consider ratifying it;

4. noted with satisfaction that the State Claims' Agency is making settlement offers to those whose claims fall within the terms of the judgment; urged the authorities to ensure that it continues to take a holistic and flexible approach to all such claims and concludes its work without delay;

5. noted moreover the existence of a remedy under the European Convention on Human Rights Act 2003, should a child suffer sexual abuse in the school system today;

6. invited the authorities to keep the Committee informed of all relevant developments and decided, in view of the progress achieved, to continue their supervision of this case under the standard procedure."(emphasis added)

4. No other decisions have been taken to date and the State continues under the supervision of the Committee. Crucially, no decision has been taken that Ireland has fully implemented the ***O'Keeffe*** judgment, and specifically, no decision has been taken regarding whether the criterion of prior complaint comes within the terms of the judgment. Furthermore, no decision has been taken by the Committee of Ministers to refer (or not to refer) the matter to the ECtHR as per Article 46(3). In this regard, it remains open to the Committee of Ministers to refer matter to the ECtHR for interpretation as per Rule 10.1

5. It is not surprising that the Committee of Ministers has made no decision as to whether it considers the State to be in compliance with the judgement of the ECtHR in ***O'Keeffe*** because no final decision has yet been made in any case that it is a condition precedent of eligibility under the Scheme that there have been a prior complaint and no claim has been rejected on this basis. For the time being therefore there is significant ambiguity about the results of the approach taken by the State. This ambiguity arises from the use of language in the Scheme and Scheme documents whereby on the one hand the Minister suggests that a prior complaint is required before compensation will be paid but then says the Scheme is being interpreted

1 **"**When in accordance with Article 46 paragraph 3 of the Convention, the CoM considers that the supervision of the execution of a final judgment is hindered by a problem of interpretation of the judgment, it may refer the matter to the Court for a ruling on the question of interpretation. A referral decision shall require a majority vote of two thirds of the representatives entitled to sit on the Committee. A referral decision may be taken at any time during the Committee of Minister's supervision of the execution of the judgments."

"*flexibly and holistically*" and further purports to vest the Independent Assessor with competence to award compensation once the circumstances shown in the application come within the terms of the ECtHR judgment in the ***O'Keeffe*** case.

6. While the Committee of Ministers has not made a decision to the effect that the steps taken by the State, to include the ex gratia scheme, discharge the obligations on the State pursuant to the Convention, the accompanying Note to the Decision of the said Committee in June, 2016, is relied upon by the Minister to suggest a view on the part of the Committee that the criterion of a prior complaint is acceptable because it has "*a reasonable link to the violations found in this case*". Whatever about the legal status and effect of such a view on the part of the Committee, it is the Commission's respectful contention that the Minister has misinterpreted what the Committee is saying here. The difficulty with the approach of the Minister to the prior complaint question is not that it is unreasonable to include it as a consideration. It is accepted that the existence of a prior complaint is a reasonable link to the violations found in the ***O'Keeffe case***, and it is not surprising that the Committee might view such a criterion as an appropriate consideration in determining whether there was a Convention violation. However, it is one such link and it should not be determinative to the exclusion of other considerations.

7. The real difficulty with the Minister's approach is not that the existence of a prior complaint is considered relevant to the question of State liability but rather the inclusion of prior complaint as a requirement of eligibility to the exclusion of consideration of other factors which in themselves also potentially provide a reasonable link to the violations found in the ***O'Keeffe*** case such that a violation may be found even in cases where there is no evidence of a prior complaint. The Commission considers that the proper approach to the administration of the Scheme to ensure compliance with the judgment in the ***O'Keeffe*** case is to weigh the factors in each case on a case by case basis. Such an approach means that the existence or absence of a prior complaint is weighed along with the other factors in the individual case in a manner which is consistent with a "*flexible and holistic*" approach to considering whether a violation of a Convention right can be demonstrated by a complainant.

Legal Status and Effect of the Decisions and Determinations of the Committee of Ministers

8. In view of the question which arises as to the status of decisions of the Committee of Ministers (even though there has been none to the effect that the Scheme would be compliant should it include a prior complaint as a condition precedent to establishing eligibility), it is important to recall the role and function of the Committee of Ministers. The Committee of Ministers is the Council of Europe's statutory decision-making body or its executive arm. Its role and functions are broadly defined in Chapter IV of the Statute of the Council of Europe. It is made up of the Ministers for Foreign Affairs of member States. The Committee meets at ministerial level once a year and at Deputies' level (Permanent Representatives to the Council of Europe) weekly. Under Article 15 of the Statute, either on the recommendation of the Consultative Assembly or on its own initiative, the Committee of Ministers shall consider the action required to further the aim of the Council of Europe, including the

conclusion of conventions or agreements and the adoption by governments of a common policy with regard to particular matters. In appropriate cases, the conclusions of the Committee may take the form of recommendations to the governments of members, and the Committee may request the governments of members to inform it of the action taken by them with regard to such recommendations. Accordingly, there is no disputing the importance and relevance of Committee of Minister decisions and the Commission welcomes the apparent acknowledgement by the State of the significant role of the Committee of Ministers. The Commission is concerned, however, that the Minister appears to misunderstand the parameters of that role as provided for under the Statute of the Council of Europe.

9. The Committee of Ministers is not a judicial body and its role is not to interpret either the provisions of the European Convention on Human Rights or indeed judgments of the ECtHR. Article 46 of the Convention is quoted in full at paragraph 3 of the submissions lodged on behalf of the Minister. The Minister correctly identified Article 46 as setting out the role of the Committee of Ministers insofar as it interacts with the Convention and the ECtHR. What appears to be overlooked in the State's submission, however, is the fact that it is clear from Article 46 that the Statute provides for a clear division of role between the ECtHR and the Committee of Ministers. Shortly stated, that division is that the ECtHR produces judgments and the Committee supervises their execution.

10. It is beyond question that under the structure of Article 46 it is for the ECtHR to interpret and the Committee of Ministers to supervise the execution of the judgment by member states. What is more, the Rules for supervision of judgments acknowledge that the supervisory role is high level and not prescriptive. In this regard, the Commission respectfully refers the Independent Assessor to the Rules of Committee of Ministers for the Supervision of the execution of judgments and of the terms of friendly settlements a hard copy of which are appended at **Appendix A** hereto. These rules, in relevant part, provide that when supervising the execution of a judgment by the High Contracting Party concerned following a finding of a breach by the ECtHR, pursuant to Article 46(2) of the Convention, the Committee of Ministers shall invite the High Contracting Party concerned to inform it of the measures which the High Contracting Party has taken or intends to take in consequence of the judgment, having regard to its obligation to abide by it under Article 46, paragraph 1, of the Convention. In particular, Rule 6(2) provides that:

> *"When supervising the execution of a judgment by the High Contracting Party concerned, pursuant to Article 46, paragraph 2, of the Convention, the Committee of Ministers shall examine:*
>
> *a. whether any just satisfaction awarded by the Court has been paid, including as the case may be, default interest; and*
>
> *b. if required, and taking into account the discretion of the High Contracting Party concerned to choose the means necessary to comply with the judgment, whether:*

i. individual measures have been taken to ensure that the violation has ceased and that the injured party is put, as far as possible, in the same situation as that party enjoyed prior to the violation of the Convention;

ii. general measures have been adopted, preventing new violations similar to that or those found or putting an end to continuing violations."

11. While the Committee has the power to refer a matter to the ECtHR for ruling in relation to a question of interpretation arising from a judgment under the Convention, it is theECtHR's role to interpret, not the Committee's (Article 46 (3)). The referral power provided for in Article 46(3) is a power which falls to be exercised in accordance with the Rules of the Committee of Ministers for the Supervision of judgments which provides at Article 10 for referral where a two thirds majority of the Committee of Ministers considers that the supervision of the execution of a final judgment is hindered by a problem of interpretation of the judgment. A referral decision may be taken at any time during the Committee of Ministers' supervision of the execution of the judgments.

12. The Committee has a further power under Article 46(4) to refer a question to the ECtHR to determine whether a party has failed to fulfil an obligation under paragraph 46(1) by failing to abide by the final judgment of the ECtHR. Under Rule 11 of the Rules, this referral power may be used when, in accordance with Article 46(4) of the Convention, the Committee of Ministers considers that a High Contracting Party refuses to abide by a final judgment in a case to which it is party, it may, after serving formal notice on that Party and by decision adopted by a majority vote of two thirds of the representatives entitled to sit on the Committee, refer to the ECtHR the question whether that Party has failed to fulfil its obligation. The Rules envisage, however, that infringement proceedings of this nature should be brought only in exceptional circumstances.

13. In the Minister's submissions it is acknowledged that the views of the Committee of Ministers are not strictly binding but through the submissions the Minister seeks to suggest that special deference is due to such decisions by according persuasive authority to those views. In this way, the Minister seeks to suggest that because the Committee of Ministers has not referred a question to the ECtHR under Article 46, this must mean that the Committee considers the measures taken, including the requirement for the existence of a prior complaint as a condition of eligibility under the ex gratia scheme, to adequately remedy the Convention breach identified by the ECtHR in ***O'Keeffe***.

14. The Minister's contention that this is the meaning to be drawn from the Committee's action or inaction to date is, with respect, misguided because (i) it is not within the Committee's role or competence to interpret the requirements of the Convention; and (ii) the Committee has given no signal that it considers the Scheme as operated by the State Claims Agency represents compliance by the State with the requirements of the ECtHR's judgment. Indeed, it would be impossible for the Committee to give such a signal in circumstances where it remains unclear as to whether the Scheme is being interpreted as requiring a prior complaint as a condition

precedent to the payment of any compensation under the Scheme as this is the very issue with which the Independent Assessor is now grappling and no concluded position has yet been taken. It would be premature for the Committee of Ministers to take a view on the question until it becomes clear whether the Scheme requires a prior complaint to be shown as a condition precedent to eligibility or instead, taking a "*flexible and holistic view*", the existence of a prior complaint is a factor to be taken into account in determining whether there is State liability under the Convention for the failure to protect and safeguard the children concerned against abuse whilst attending schools in the State. The language of "*flexible and holistic*" is entirely incompatible with the imposition of conditions precedent in the nature of a prior complaint and it remains unclear as to how the Scheme is being operated.

The Domestic Situation and the Role of the European Convention on Human Rights Act, 2003

15. The Minister's submissions refer to sections 2, 3 and 4 of the European Convention on Human Rights Act, 2003 [hereinafter "the 2003 Act"]. The Minister acknowledges that the administration of the ex gratia scheme is an exercise of the power of the State and is subject to the 2003 Act. The significance of this, of course, is that while the Committee of Ministers has no role in interpreting the Convention and the ECtHR is the final arbiter of what is required to ensure Convention compliance, the Irish Courts may have an intermediary role to the extent that they are required to ensure compliance with the requirements of section 3 of the 2003 Act by ensuring that the Scheme is administered, to the extent possible within the parameters of its terms of reference, in a manner which provides an effective remedy for Convention breaches. Where the Scheme is the means by which the State seeks to bring itself into compliance with the Convention, it would appear to follow that should the Scheme be inadequate to secure compliance in individual cases, an Irish Court seized of the question may well be persuaded to exercise jurisdiction under the 2003 Act. Where it is not possible to interpret the Scheme in a manner which provides such a remedy in individual cases, this may include an order under section 5 of the 2003 Act finding the Scheme incompatible with the Convention.

16. The Minister refers to section 4 of the 2003 Act and its requirement to judicial notice being taken of any decision of the Committee of Ministers established under the Statute of the Council of Europe on any question of which it has jurisdiction (section 4(c)). The crucial element of section 4(c) of course which is not addressed in the Minister's submission is its reference to decisions in respect of question over which the Committee has "*jurisdiction*". As we have seen above, the Committee has no jurisdiction to interpret the Convention or to find violations of the Convention. At Council of Europe level, this jurisdiction vests in the ECtHR. The Irish Courts have certainly recognised the important role of the Committee of Ministers in cases such as ***Rettinger*** and ***J McD v. P.L.*** cited by the Minister, but it is submitted by the Commission that the submissions are flawed to the extent that the Minister seeks to suggest that the Irish courts thereby recognise a jurisdiction on the part of the Committee to interpret the requirements of the Convention.

17. The statement at paragraph 30 of the Minister's submissions that the Supreme Court recognised that when interpreting the Convention, the views of the Committee

of Ministers shall be taken into account in the same way as those of the ECtHR is overly broad and fails to reflect that what the Court has said is that regard must be had to decisions in relation to matters in respect of which the Committee of Ministers has "*jurisdiction*".

18. The submission at paragraph 36 to the effect that the State should construe its obligations under the ***O'Keeffe*** judgment narrowly as being confined to those cases in which evidence of a prior complaint can be demonstrated on the asserted basis that the Committee of Ministers has so indicated and the State must therefore have regard to this view is clearly flawed and incorrect in law. Even if it were the case that the Committee of Ministers had expressed satisfaction, as the Minister incorrectly seeks to suggest, there is absolutely no requirement on the State to limit the remedy it provides to the minimum required for Convention compliance. After all, the Minister in its own submissions refers to the fact that the Committee of Ministers has commended the extension of the Scheme to secondary schools even though the ***O'Keeffe*** case related to abuse perpetrated against a primary school student.

The Scheme

19. Under the heading "*the Scheme*" at paragraphs 37 to 44 of the Submissions, the Minister's submissions contend that the Independent Assessor's jurisdiction is confined under its Terms of Reference to the "*express premise of the Scheme*" that cases "*come within the terms of the O'Keeffe judgment only where there has been a prior complaint of sexual abuse*". With respect, this appears to be an attempt by the Minister to curtail the jurisdiction of the Independent Assessor. The implication of this submission is that the Minister considers the Independent Assessor has not been vested with jurisdiction to determine whether the case comes within the terms of the judgment of ***O'Keeffe*** but rather is bound to interpret the Scheme as limited to cases where there has been a prior complaint because this was an express premise of the Scheme. It is of the first importance that the Independent Assessor clearly establish the scope of his jurisdiction under his Terms of Reference. In this respect, the State should not be permitted on the one hand argue before the Committee of Ministers that the Scheme is "*flexible and holistic*" while at the same time precluding the Independent Assessor from finding a violation and awarding compensation under the Scheme, no matter what other evidence of a State violation is shown, in any case where evidence of a prior complaint cannot be demonstrated.

20. Either the Independent Assessor has been vested with jurisdiction under his Terms of Reference to determine for himself whether the case comes within the terms of the ***O'Keeffe*** judgment or he has not.

21. The Commission submits that for the Scheme to be Convention compliant, the Independent Assessor must be vested with competence to make an award where he decides a case comes within the terms of the ***O'Keeffe*** judgment. If it is accepted by the Independent Assessor that he is precluded by his Terms of Reference from deciding that any case where a prior complaint is not shown comes within the terms of the ***O'Keeffe*** judgment, then an issue arises as to whether the Scheme is Convention compliant and persons who are refused compensation under the Scheme

on this basis may have an action against the State pursuant to sections 3 and/or 5 of the 2003 Act.

22. It is respectfully submitted that the wrongs perpetrated as a result of the State's past failings when claimants were children would be seriously perpetuated were this the approach adopted because they would be obliged to litigate before the Courts yet again in pursuit of a remedy for what is now historic abuse. The Commission is concerned that victims of historic abuse within the education system could be re-victimised by the State's actions in causing the power of the Independent Assessor to consider whether there has been a breach of the Convention or not to be improperly fettered.

23. The Commission contends that the better approach is for the Independent Assessor to construe his Terms of Reference in a manner compatible with the Convention (under section 2 and 4 of the 2003 Act) and as permitting him to award compensation where he is satisfied that a case comes within the terms of the ECtHR judgment in the ***O'Keeffe*** case following an independent assessment of all of the factors in the case unfettered by what the Minister contends this means.

O'Keeffe Judgment

24. In relation to the position set out at paragraphs 45-66 of the Minister's submissions, the Commission refers to our previous submissions generally and specifically paragraph 50 thereof. Suffice to say that the Minister's contention that the existence of a reporting mechanism alone would not have protected children from abuse and a complaint would have been necessary to trigger the mechanism and therefore State liability is not established in the absence of a complaint is not accepted. This is unduly simplistic. It hardly needs to be stated that where a mechanism is provided, a culture of reporting is supported and awareness of the possibility of reporting exists, the likelihood is that there will be a greater number of complaints.

25. The Commission respectfully suggests that there may well be cases where it can be shown that were children properly supported in making complaints, complaints would have been pursued either by them or on their behalf by their parents. There may also be cases where it would be reasonable to conclude, taking a "*flexible and holistic*" approach that abuse would have been either detected or prevented were adequate systems of inspection, State control or supervision in place and required by law at the material times. The Independent Assessor, in order to be in a position to provide an effective remedy under the Convention, ought to be in a position to consider whether there is evidence of Convention violation in a range of circumstances without it always being necessary to demonstrate that a complaint was made.

Strict liability

26. At para 66 – 72 of State's submission, it is argued by the Minister that the Commission contends for strict State liability on the basis of the judgment of the ECtHR in O'Keeffe. This is not the Commission's position and we would repeat paragraph 61 of our previous submissions where the following was stated:

> *61 "The Commission does not object to the existence of a prior complaint being weighed by an Independent Assessor as a relevant consideration together with other considerations, however, that one consideration (among others which are capable of establishing the requisite degree of knowledge on the part of the State) should not become determinative to the exclusion of other relevant considerations arising in particular circumstances of each individual case."*

27. The Commission's position is that the Independent Assessor is at large under his Terms of Reference to decide whether an applicant can demonstrate, taking a "*flexible and holistic*" approach, that there has been a violation of the applicant's rights under the Convention, specifically Articles 3 and 13.

Conclusion

28. In conclusion, for the reasons set out above, the Commission repeats that the Committee of Ministers has no role or jurisdiction in interpreting the requirements of the Convention thereby usurping the role of the ECtHR. The fact that the Committee has not taken any action in respect of the State's Scheme does not indicate a binding view that a requirement of prior complaint is compatible with the Convention because:

> i) It is for the ECtHR and not the Committee of Minister to interpret judgments of the ECtHR; and
> ii) the process of supervision has not yet concluded and it therefore remains unclear as to how the Scheme is being implemented such that the Committee would be very unlikely at this stage express a view on whether the Scheme meets the requirements of the Convention or, not.

29. The Independent Assessor has been vested with jurisdiction under his Terms of Reference to make an award under the Scheme where he is satisfied that a case comes within the terms of the ECtHR judgment in the ***O'Keeffe*** case. The Commission urges the Independent Assessor to construe this jurisdiction as permitting him to conclude on the evidence adduced that a violation of the Convention has been demonstrated having regard to all of the circumstances of the particular case and to exercise a power to award compensation under the Scheme in such circumstances.

30. Should the Independent Assessor take the view that he is constrained by his Terms of Reference in the manner contended by the Minister such that he is precluded from considering the award of compensation in any case where no evidence of a prior complaint is demonstrated, then the Independent Assessor should so specify so that victims of abuse may be pursue alternative remedies against the State for non-compliance with the Convention under the 2003 Act.

APPENDIX A

Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements

(adopted by the Committee of Ministers on 10 May 2006 at the 964th meeting of the Ministers' Deputies
and amended on 18 January 2017 at the 1275th meeting of the Ministers' Deputies)

General provisions

Rule 1

1. The exercise of the powers of the Committee of Ministers under Article 46, paragraphs 2 to 5, and Article 39, paragraph 4, of the European Convention on Human Rights, is governed by the present Rules.
2. Unless otherwise provided in the present Rules, the general rules of procedure of the meetings of the Committee of Ministers and of the Ministers' Deputies shall apply when exercising these powers.

Rule 2

1. The Committee of Ministers' supervision of the execution of judgments and of the terms of friendly settlements shall in principle take place at special human rights meetings, the agenda of which is public.
2. If the chairmanship of the Committee of Ministers is held by the representative of a High Contracting Party which is a party to a case under examination, that representative shall relinquish the chairmanship during any discussion of that case.

Rule 3

When a judgment or a decision is transmitted to the Committee of Ministers in accordance with Article 46, paragraph 2, or Article 39, paragraph4, of the Convention, the case shall be inscribed on the agenda of the Committee without delay.

Rule 4

1. The Committee of Ministers shall give priority to supervision of the execution of judgments in which the Court has identified what it considers a systemic problem in accordance with Resolution Res(2004)3 of the Committee of Ministers on judgments revealing an underlying systemic problem.
2. The priority given to cases under the first paragraph of this Rule shall not be to the detriment of the priority to be given to other important cases, notably cases where the violation established has caused grave consequences for the injured party.

Rule 5

The Committee of Ministers shall adopt an annual report on its activities under Article 46, para-graphs2 to 5, and Article 39, paragraph 4, of the Convention, which shall be made public and transmitted to the Court and to the Secretary General, the Parliamentary Assembly and the Commissioner for Human Rights of the Council of Europe.

I. Supervision of the execution of judgments

Rule 6 - Information to the Committee of Ministers on the execution of the judgment

1. When, in a judgment transmitted to the Committee of Ministers in accordance with Article 46, paragraph 2, of the Convention, the Court has decided that there has been a violation of the Convention or its protocols and/or has awarded just satisfaction to the injured party under Article41 of the Convention, the Committee shall invite the High Contracting Party concerned to inform it of the measures which the High Contracting Party has taken or intends to take in consequence of the judgment, having regard to its obligation to abide by it under Article 46, paragraph 1, of the Convention.
2. When supervising the execution of a judgment by the High Contracting Party concerned, pursuant to Article 46, paragraph 2, of the Convention, the Committee of Ministers shall examine:
   a. whether any just satisfaction awarded by the Court has been paid, including as the case may be, default interest; and

b. if required, and taking into account the discretion of the High Contracting Party concerned to choose the means necessary to comply with the judgment, whether:

i. individual measures[1] have been taken to ensure that the violation has ceased and that the injured party is put, as far as possible, in the same situation as that party enjoyed prior to the violation of the Convention;

ii. general measures[2] have been adopted, preventing new violations similar to that or those found or putting an end to continuing violations.

Rule 7 - Control intervals

1. Until the High Contracting Party concerned has provided information on the payment of the just satisfaction awarded by the Court or concerning possible individual measures, the case shall be placed on the agenda of each human rights meeting of the Committee of Ministers, unless the Committee decides otherwise.

2. If the High Contracting Party concerned informs the Committee of Ministers that it is not yet in a position to inform the Committee that the general measures necessary to ensure compliance with the judgment have been taken, the case shall be placed again on the agenda of a meeting of the Committee of Ministers taking place no more than six months later, unless the Committee decides otherwise; the same rule shall apply when this period expires and for each subsequent period.

This rule was clarified by the Ministers' Deputies at 1100th meeting of the Committee of Ministers, as follows:

"decided that, as from that date, all cases will be placed on the agenda of each DH meeting of the Deputies until the supervision of their execution is closed, unless the Committee were to decide otherwise in the light of the development of the execution process;"

Rule 8 - Access to information

1. The provisions of this Rule are without prejudice to the confidential nature of the Committee of Ministers' deliberations in accordance with Article 21 of the Statute of the Council of Europe.

2. The following information shall be accessible to the public unless the Committee decides otherwise in order to protect legitimate public or private interests:

a. information and documents relating thereto provided by a High Contracting Party to the Committee of Ministers pursuant to Article 46, paragraph 2, of the Convention;

b. information and documents relating thereto provided to the Committee of Ministers, in accordance with the present Rules, by the injured party, by non-governmental organisations or by national institutions for the promotion and protection of human rights.

3. In reaching its decision under paragraph 2 of this Rule, the Committee shall take, inter alia, into account:

a. reasoned requests for confidentiality made, at the time the information is submitted, by the High Contracting Party, by the injured party, by non-governmental organisations or by national institutions for the promotion and protection of human rights submitting the information;

b. reasoned requests for confidentiality made by any other High Contracting Party concerned by the information without delay, or at the latest in time for the Committee's first examination of the information concerned;

c. the interest of an injured party or a third party not to have their identity, or anything allowing their identification, disclosed.

4. After each meeting of the Committee of Ministers, the annotated agenda presented for the Committee's supervision of execution shall also be accessible to the public and shall be published, together with the decisions taken, unless the Committee decides otherwise. As far as possible, other documents presented to the Committee which are accessible to the public shall be published, unless the Committee decides otherwise.

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[1]For instance, the striking out of an unjustified criminal conviction from the criminal records, the granting of a residence permit or the reopening of impugned domestic proceedings (see on this latter point Recommendation Rec(2000)2 of the Committee of Ministers to member states on the re-examination or reopening of certain cases at domestic level following judgments of the European Court of Human Rights, adopted on 19 January 2000 at the 694th meeting of the Ministers' Deputies).

[2]For instance, legislative or regulatory amendments, changes of case-law or administrative practice or publication of the Court's judgment in the language of the respondent state and its dissemination to the authorities concerned.

5. In all cases, where an injured party has been granted anonymity in accordance with Rule 47, paragraph 3 of the Rules of Court; his/her anonymity shall be preserved during the execution process unless he/she expressly requests that anonymity be waived.

This rule was clarified by the Ministers' Deputies at 1100th meeting of the Committee of Ministers, as follows:

"decided that action plans and action reports, together with relevant information provided by applicants, non-governmental organisations and national human rights institutions under rules 9 and 15 of the Rules for the supervision of execution judgments and of the terms of friendly settlements will be promptly made public (taking into account Rule 9§ 3 of the Rules of supervision) and put on line except where a motivated request for confidentiality is made at the time of submitting the information;"

Rule 9 - Communications to the Committee of Ministers

This rule was amended by the Ministers' Deputies at 1275th meeting of the Committee of Ministers. Paragraphs that have been added or modified are highlighted.

1. The Committee of Ministers shall consider any communication from the injured party with regard to payment of the just satisfaction or the taking of individual measures.
2. The Committee of Ministers shall be entitled to consider any communication from non-governmental organisations, as well as national institutions for the promotion and protection of human rights, with regard to the execution of judgments under Article 46, paragraph 2, of the Convention.
3. The Committee of Ministers shall also be entitled to consider any communication from an international intergovernmental organisation or its bodies or agencies whose aims and activities include the protection or the promotion of human rights, as defined in the Universal Declaration of Human Rights, with regard to the issues relating to the execution of judgments under Article 46, paragraph 2, of the Convention which fall within their competence.
4. The Committee of Ministers shall likewise be entitled to consider any communication from an institution or body allowed, whether as a matter of right or upon special invitation from the Court, to intervene in the procedure before the Court, with regard to the execution under Article 46, paragraph 2, of the Convention of the judgment either in all cases (in respect of the Council of Europe Commissioner for Human Rights) or in all those concerned by the Court's authorisation (in respect of any other institution or body).
5. The Secretariat shall bring, in an appropriate way, any communication received in reference to paragraph 1 of this Rule, to the attention of the Committee of Ministers.
6. The Secretariat shall bring any communication received under paragraphs 2, 3 or 4 of this Rule to the attention of the State concerned. When the State responds within five working days, both the communication and the response shall be brought to the attention of the Committee of Ministers and made public. If there has been no response within this time limit, the communication shall be transmitted to the Committee of Ministers but shall not be made public. It shall be published ten working days after notification, together with any response received within this time limit. A State response received after these ten working days shall be circulated and published separately upon receipt.

Rule 10 - Referral to the Court for interpretation of a judgment

1. When, in accordance with Article 46, paragraph 3, of the Convention, the Committee of Ministers considers that the supervision of the execution of a final judgment is hindered by a problem of interpretation of the judgment, it may refer the matter to the Court for a ruling on the question of interpretation. A referral decision shall require a majority vote of two thirds of the representatives entitled to sit on the Committee.
2. A referral decision may be taken at any time during the Committee of Ministers' supervision of the execution of the judgments.
3. A referral decision shall take the form of an interim resolution. It shall be reasoned and reflect the different views within the Committee of Ministers, in particular that of the High Contracting Party concerned.
4. If need be, the Committee of Ministers shall be represented before the Court by its Chair, unless the Committee decides upon another form of representation. This decision shall be taken by a two-thirds majority of the representatives casting a vote and a majority of the representatives entitled to sit on the Committee.

Rule 11 - Infringement proceedings

1. When, in accordance with Article 46, paragraph 4, of the Convention, the Committee of Ministers considers that a High Contracting Party refuses to abide by a final judgment in a case to which it is party, it may, after serving formal notice on that Party and by decision adopted by a majority vote of two-thirds of the representatives entitled to sit on the Committee, refer to the Court the question whether that Party has failed to fulfil its obligation.
2. Infringement proceedings should be brought only in exceptional circumstances. They shall not be initiated unless formal notice of the Committee's intention to bring such proceedings has been given to the High Contracting Party concerned. Such formal notice shall be given ultimately six months before the lodging of proceedings, unless the Committee decides otherwise, and shall take the form of an interim resolution. This Resolution shall be adopted by a majority vote of two-thirds of the representatives entitled to sit on the Committee.
3. The referral decision of the matter to the Court shall take the form of an interim resolution. It shall be reasoned and concisely reflect the views of the High Contracting Party concerned.
4. The Committee of Ministers shall be represented before the Court by its Chair unless the Committee decides upon another form of representation. This decision shall be taken by a two-thirds majority of the representatives casting a vote and a majority of the representatives entitled to sit on the Committee.

II. Supervision of the execution of the terms of friendly settlements

Rule 12 - Information to the Committee of Ministers on the execution of the terms of the friendly settlement

1. When a decision is transmitted to the Committee of Ministers in accordance with Article 39, paragraph 4, of the Convention, the Committee shall invite the High Contracting Party concerned to inform it on the execution of the terms of the friendly settlement.
2. The Committee of Ministers shall examine whether the terms of the friendly settlement, as set out in the Court's decision, have been executed.

Rule 13 - Control intervals

Until the High Contracting Party concerned has provided information on the execution of the terms of the friendly settlement as set out in the decision of the Court, the case shall be placed on the agenda of each human rights meeting of the Committee of Ministers, or, where appropriate,[3] on the agenda of a meeting of the Committee of Ministers taking place no more than six months later, unless the Committee decides otherwise.

Rule 14 - Access to information

1. The provisions of this Rule are without prejudice to the confidential nature of the Committee of Ministers' deliberations in accordance with Article 21 of the Statute of the Council of Europe.
2. The following information shall be accessible to the public unless the Committee decides otherwise in order to protect legitimate public or private interests:
   a. information and documents relating thereto provided by a High Contracting Party to the Committee of Ministers pursuant to Article 39, paragraph 4, of the Convention;
   b. information and documents relating thereto provided to the Committee of Ministers in accordance with the present Rules by the applicant, by non-governmental organisations or by national institutions for the promotion and protection of human rights.
3. In reaching its decision under paragraph 2 of this Rule, the Committee shall take, inter alia, into account:
   a. reasoned requests for confidentiality made, at the time the information is submitted, by the High Contracting Party, by the applicant, by non-governmental organisations or by national institutions for the promotion and protection of human rights submitting the information;

[3] In particular where the terms of the friendly settlement include undertakings which, by their nature, cannot be fulfilled within a short time span, such as the adoption of new legislation.

b. reasoned requests for confidentiality made by any other High Contracting Party concerned by the information without delay, or at the latest in time for the Committee's first examination of the information concerned;

c. the interest of an applicant or a third party not to have their identity, or anything allowing their identification, disclosed.

4. After each meeting of the Committee of Ministers, the annotated agenda presented for the Committee's supervision of execution shall also be accessible to the public and shall be published, together with the decisions taken, unless the Committee decides otherwise. As far as possible, other documents presented to the Committee which are accessible to the public shall be published, unless the Committee decides otherwise.

5. In all cases, where an applicant has been granted anonymity in accordance with Rule 47, paragraph 3 of the Rules of Court; his/her anonymity shall be preserved during the execution process unless he/she expressly requests that anonymity be waived.

Rule 15 - Communications to the Committee of Ministers

1. The Committee of Ministers shall consider any communication from the applicant with regard to the execution of the terms of friendly settlements.

2. The Committee of Ministers shall be entitled to consider any communication from non-governmental organisations, as well as national institutions for the promotion and protection of human rights, with regard to the execution of the terms of friendly settlements.

3. The Secretariat shall bring, in an appropriate way, any communication received in reference to paragraph 1 of this Rule, to the attention of the Committee of Ministers. It shall do so in respect of any communication received in reference to paragraph 2 of this Rule, together with any observations of the delegation(s) concerned provided that the latter are transmitted to the Secretariat within five working days of having been notified of such communication.

III. Resolutions

Rule 16 - Interim resolutions

In the course of its supervision of the execution of a judgment or of the terms of a friendly settlement, the Committee of Ministers may adopt interim resolutions, notably in order to provide information on the state of progress of the execution or, where appropriate, to express concern and/or to make suggestions with respect to the execution.

Rule 17 - Final resolution

After having established that the High Contracting Party concerned has taken all the necessary measures to abide by the judgment or that the terms of the friendly settlement have been executed, the Committee of Ministers shall adopt a Resolution concluding that its functions under Article 46, paragraph 2, or Article 39 paragraph 4, of the Convention have been exercised.