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Padua-Strasbourg, 19 March 2009

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### **Workshop**

### **The role of national human rights structures in case of non execution of domestic judgments**

Padua, 24 - 26 March 2009

### **Draft Outline of the Workshop**

#### Description of the «Peer-to-Peer Project»

The Peer-to-Peer Project, co-funded by the Council of Europe and the European Union, consists in a work programme to be implemented by the Office of the Commissioner for human rights in 2008 and 2009. It aims at setting up an active network of independent non-judicial national human rights structures ("NHRs") compliant with the Paris Principles, with special focus on non EU member and non EU candidate States. In this context, workshops for specialised staff members of the NHRs are organised in order to convey select information on the legal norms governing priority areas for NHRs action and to proceed to a peer review of relevant practices used or envisaged in Europe.

The topic of the second workshop in 2009 is "The role of national human rights structures in case of non execution of domestic judgments" and it will be organised on 24-26 March 2009 in Padua (Italy).

#### General context

The non execution of judgments of domestic courts by the authorities of their own country constitutes not only a breach of domestic law and legal principles, but also a breach of Article 6 of the European Convention on Human Rights (right to a fair trial).

In its judgment in the case of *Horsnby v. Greece* of 19 March 1997, the Court affirmed that the "right to a court" "would be illusory if a Contracting State's domestic legal system allowed a final, binding judicial decision to remain inoperative to the detriment of one party. It would be inconceivable that Article 6 para. 1 (art. 6-1) should describe in detail procedural guarantees afforded to litigants - proceedings that are fair, public and expeditious - without protecting the implementation of judicial decisions; to construe Article 6 (art. 6) as being concerned exclusively

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*with access to a court and the conduct of proceedings would be likely to lead to situations incompatible with the principle of the rule of law which the Contracting States undertook to respect when they ratified the Convention” (§40). Furthermore the Court observed that the administrative authorities form one element of a State subject to the rule of law and their interests accordingly coincide with the need for the proper administration of justice. Where administrative authorities refuse or fail to comply, or even delay doing so, the guarantees under Article 6, enjoyed by a litigant during the judicial phase of the proceedings, are rendered devoid of purpose (§41).*

Many structural problems are revealed by non execution of domestic judgment cases, as was demonstrated during a round table entitled “*Non-enforcement of domestic court decisions in Council of Europe member states : General measures to comply with European Court of Human Rights judgments*” that was organised by the Council of Europe (see the documents prepared by the Department for the execution of judgments the European Court of Human Rights and the 2007 Annual Report at [http://www.coe.int/T/E/Human\\_Rights/execution/](http://www.coe.int/T/E/Human_Rights/execution/)).

These structural problems resulted in a high number of violations of the European Convention of Human Rights in certain States revealing a problem of non-compliance by the State and its entities with domestic court decisions and causing the steady influx of new complaints to the Court in this respect. Therefore, already a great number of judgments of the European Court concern the non execution of domestic judgments in several Council of Europe member States. Recently, the Court delivered its first pilot judgment concerning Russia on the non-enforcement or delayed enforcement of final domestic judgments in [Burdov v. Russia](#) (no. 2) (no. 33509/04, 19 January 2009; not final yet).

In a more general perspective, the lack of proper enforcement of judicial decisions severely affects the efficiency of the State structures, frustrates the citizens’ legitimate expectations and their confidence in the judicial system, the rule of law as well as the effective implementation of human rights in general. This topic therefore seems to lie in the heart of the competencies of ombudsmen and national human rights institutions.

### Aims and themes of the workshop

The workshop aims at informing participants on Council of Europe standards and practice on the relevant aspects of this topic. Each presentation will be followed by discussions to exchange information among NHRs on their potential involvement in aiding best their own States to ensure that binding judgments of their courts are effectively executed.

Following an introductory session, each of the three working sessions of the workshop is dedicated to a specific aspect of the non – execution, namely:

- Non execution of domestic court judgments delivered against public entities or against private persons or entities but where public authorities fail to ensure execution;
- Non execution of domestic court judgments that annul a decision taken by public authorities and oblige them to make new one;
- The existence of effective remedies in case of non execution of domestic judgments by public authorities.

### Follow up

All good practices / actions which will surface during the workshop’s presentations, discussion and conclusions will be summarised in a debriefing paper to be distributed to participants in due time.