

# NATIONAL PARLIAMENTS, HUMAN RIGHTS AND COUNCIL OF EUROPE SYSTEM

## ULUSAL PARLAMENTOLAR, İNSAN HAKLARI VE AVRUPA KONSEYİ SİSTEMİ\*

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### ABSTRACT

*National parliaments have an important role in the protection and realisation of human rights law. They are in a strong position to promote international human rights standards to implement their shared human rights obligations. They may interpret and apply human rights when holding the executive to account and in the laws, they make. In addition, national parliaments' representative function has an important role in helping to shape views towards human rights. Therefore, they should be seen as a key institutional element of domestic human rights systems. However, they are well placed to evaluate the needs for implementation in their systems; national systems usually lack sufficient and effective engagement of their parliaments in practice. On the other hand, international human rights mechanisms have historically neglected national parliaments' role in realisation and safeguarding of human rights. Nevertheless, there is a global trend and understanding on the importance of national parliaments in the subject in recent years. Especially in the Council of Europe system, their role has started to become the subject of serious consideration. It is clear that there are various challenges but also opportunities to involve national parliaments in the process and make legislation organ more effective.*

**Keywords:** *National parliaments, Human rights, Council of Europe, Parliamentary Assembly of the Council of Europe, Human rights mechanisms*

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## ÖZET

Ulusal parlamentoların insan hakları hukukunun korunmasında ve gerçekleştirilmesinde önemli bir rolü bulunmaktadır. Bu parlamentolar ortak insan hakları yükümlülüklerinin yerine getirilmesi için uluslararası insan hakları standartlarının teşvik edilmesi konusunda güçlü bir konumdadırlar. Ulusal meclisler, yürütme-yi sorumlu tutabildikleri konularla ve yaptıkları yasalarla insan haklarını çeşitli şekillerde yorumlayabilmekte ve uygulayabilmektedirler. Ek olarak, ulusal parlamentoların temsil işlevinin insan haklarına yönelik görüşleri şekillendirmeye yardım etme bakımından da önemli bir işlevi vardır. Tüm bu nedenlerden ötürü, ulusal parlamentolar yurtiçi insan hakları sistemlerinde önemli kurumsal unsurlar olarak görülmelidirler. Fakat ulusal meclisler kendi sistemlerinde, uygulama konusundaki ihtiyaçları değerlendirme konusunda iyi bir konuma sahip olmalarına rağmen, pratikte ulusal sistemler genellikle kendi meclislerinin yeterli ve etkin katılımından yoksun kalmaktadırlar. Diğer taraftan, uluslararası insan hakları mekanizmaları, ulusal parlamentoların insan haklarını gerçekleştirme ve muhafaza etme konusundaki rollerini tarihsel olarak ihmal etmişlerdir. Bununla beraber, yakın zamanlarda bu konuda ulusal meclislerin önemine yönelik küresel bir anlayış ve yönelim bulunmaktadır. Özellikle Avrupa Konseyi sisteminde, ulusal meclislerin rolü ciddi mülahazaların konusu olmaya başlamıştır. Ulusal parlamentoları sürece katma ve yasama organını daha etkin kılma konusunda çeşitli zorlukların ve fakat birçok fırsatın bulunduğu açıktır.

**Anahtar kelimeler:** Ulusal parlamentolar, İnsan hakları, Avrupa Konseyi, Avrupa Konseyi Parlamenter Meclisi, İnsan hakları mekanizmaları

## 1. National Parliaments and Human Rights

National parliaments have an important role in the protection and realisation of human rights. As one of the main organs of the state with the executive and the judiciary, national parliaments share the responsibility with them to respect, protect and fulfil the human rights. However, in contrast to the executive and the judiciary, because of their distinctive functions and roles, national parliaments are uniquely well placed for the realisation and safeguarding of human rights law in a significant way. In their role in making law, national parliaments are the national authorities, which ensure that effective measures are taken to prevent human rights violations and national law provides effective means to remedies, which may be sought for alleged violations of fundamental freedoms. Moreover, in legislation framework, they ratify international human rights treaties to ensure that norms set forth in those treaties are made into national law and applied.

Domesticating human rights by writing them into national law and involving them in the legislative drafting process can play an important role in mitigating the “democratic deficit” in human rights.<sup>1</sup> The legislative process may serve to embed implementation within a more permanent political structure, which is better able to withstand shifts in policy and play an important preventive role. Thus with parliamentary legislative participation, the risks for new human rights violations can be minimized.<sup>2</sup> National parliaments can also provide a national legislative framework and bring together the executive and the judiciary and by adopting legal mechanisms, they ensure adequate compliance. National legislation process can also count out the power and duties of the executive and judiciary and make it clear how the national legislation should apply international human rights law.<sup>3</sup>

Apart from legislation, national parliaments may contribute to the process of creating a human rights culture by using their scrutiny and oversight powers to keep international standards in the minds of executive authorities.<sup>4</sup> With these important functions and powers, national parliaments monitor the executive and its performance with responsibilities to preserve and actualise human rights. National parliaments are the place where government policies are (or should be) debated and policy objectives are balanced to ensure respect for human rights.

- 1 Open Society Justice Initiative, *From Rights to Remedies: Structures and Strategies for Implementing International Human Rights Decisions*, Open Society Foundations, 2013, p. 56-57.
- 2 *Effective Implementation of the European Court of Human Rights: The Interlaken Process* (2010), Parliamentary Assembly of the Council of Europe, Resolution 1726 (2010), § 5.
- 3 *Supra*, *From Rights to Remedies*, p. 58-59.
- 4 David Feldman, “Can and Should Parliament Protect Human Rights?”, *European Public Law*, Volume 10, Issue 4, 2004, p. 651.

Lastly, national parliaments approve the budget and ensure that adequate funds are provided for human rights implementation and that these resources are used in this direction.<sup>5</sup>

On the other hand, members of the parliament, as being representatives of the people, also can be key actors and help to create a human rights culture in their countries. As elected legislators, parliamentarians have a meaningful role in the interpretation and application of human rights standards and have power to take ownership of human rights values and to consider these universal standards in their work.<sup>6</sup> Parliamentarians have powers to contribute the legislation process of the international human rights law at the national level and have the unique responsibility and various powers to ensure the implementation of decisions made by international human rights bodies.<sup>7</sup> In addition, they may subject executive to a substantial scrutiny and hold the government to account by principal methods such as parliamentary debate, questions or committees. With these channels, members of parliaments can scrutinise the executive to ensure that it acts in line with universal human rights principles.<sup>8</sup>

## **2. The Institutional Structures of Human Rights in National Parliaments**

National parliaments globally have become increasingly aware that they have a special responsibility to promote and protect human rights standards and to work towards the creation of a human rights culture in their countries. However, democratic national parliaments share the key characteristics and functions of representation, legislation and oversight; each of them may have different parliamentary traditions and approaches to roles and functions of national parliaments.<sup>9</sup> In addition, the question of how national parliaments can or should organise their structures to ensure that national, supranational and international human rights

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5 National Democratic Institute for International Affairs, Parliamentary Human Rights Committees, A Rule of Law Series Paper, 2005, p. 8.

6 Brian Chang, Global developments in the role of parliaments in the protection and promotion of human rights and the rule of law: An Emerging Consensus, Arts and Humanities Research Council, p. 5.

7 *Supra*, From Rights to Remedies, p. 71.

8 Andrew Drzemczewski; James Gaughan, “Implementing Strasbourg Court Judgments: The Parliamentary Dimension”, in Wolfgang Benedek, et al (ed), European Yearbook on Human Rights, Antwerp, European Academy Press, 2010, p. 239.

9 Brian Chang; Graeme Ramshaw, Strengthening Parliamentary Capacity for the Protection and Realisation of Human Rights-Synthesis Report, Westminster Foundation for Democracy, p. 3.

obligations are taken into account in the legislative process is an important one.<sup>10</sup>

In today's national parliament structures, parliamentary work is carried out mainly in parliamentary committees. In different parliamentary committees, legislative proposals are studied, government departments are scrutinised and recommendations are made to the Plenary. There are normally two types of parliamentary committees: permanent and non-permanent. The majority of parliamentary business is mostly carried out in permanent (standing) committees that operate on a continuing basis from one parliamentary term to the next and carry out the bulk of parliamentary business. On the other hand, non-permanent (ad hoc/ select/ study or investigative) committees are created to inquire into and report on a particular matter.<sup>11</sup> They may be established at any time by a resolution of parliament and sometimes certain procedural aspects. Such parliamentary committees have a limited time period and usually cease to exist upon the presentation of their final report to the Plenary.

On the other hand, in the context of human rights, there are two main approaches to deal with and integrate human rights. In the first approach, human rights are taken as a horizontal cross-cutting issue that should be taken into account by all parliamentary committees because each parliamentary committee is considered a "human rights committee" in its own specialized area.<sup>12</sup> In the second approach, a parliamentary committee with a specific human rights mandate is set up or such a human rights mandate is added to an existing committee's remit. This model is based on the belief that the establishment of a parliamentary committee with an exclusive human rights mandate sends a strong message, not only to the people but also to the government and other state organs. With this approach, it is considered that such parliamentary committees provide an effective means of ensuring that specific human rights knowledge exists within parliament, which make it more independent from governmental expertise.<sup>13</sup>

In these two approaches, parliamentary human rights committees may have various powers and functions which may have made them instrumental in the promotion and protection of human rights. They may have power to determine their own agendas independently or have legislative and oversight functions. These committees are usually entrusted with the examination of bills and proposals from

10 Report of the Committee on Legal Affairs and Human Rights, National parliaments: Guarantors of Human Rights in Europe, Rapporteur: Mr Christos Pourgourides, Parliamentary Assembly of the Council of Europe, 6 June 2011, § 27-29.

11 *Ibid*, § 25.

12 *Supra*, National parliaments: Guarantors of Human Rights in Europe, Rapporteur: Mr Christos Pourgourides, § 27-29.

13 *Supra*, Parliamentary Human Rights Committees, p. 10.

a human rights angle, and sometimes are specifically mandated to exercise their scrutiny with due regard to the international human rights obligations of their countries. They may examine and discuss the human rights situation at national and/or international levels if they entrusted with an oversight function and they can ensure the implementation of legislation.<sup>14</sup> They may also undertake inquiries into a given subject, ask for written evidence from people and organizations with an interest in or the necessary expertise and the government department or institution concerned to provide specific information on the subject in question. Additionally, these committees and their members may visit people and places in the country and abroad to observe how things work in practice, as well as how other countries handle similar problems. Thus they can study human rights issues and ensure government compliance with human rights norms. These power also enables committee members to travel abroad to meet with international or regional human rights bodies and to inquire into human rights problems elsewhere.

Parliamentary human rights committees may also establish sub-committees either to study specific issues or focus on one aspect of a committee's remit. These sub-committees can pool competences and provide direction<sup>15</sup> and can also send a strong political message, not only to the people but also to the government and other state bodies.<sup>16</sup> Moreover, parliamentary human rights committees may enjoy a relatively close relationship with executive bodies, such as ministries or departments within ministries and regular meetings with executive bodies may also be organised. They may also have a mandate to review reports produced by national human rights institutions, enjoy good relations with non-governmental organizations<sup>17</sup> and consult with NGOs as witnesses, seek to engage in dialogue and obtain information and cooperate with them on a permanent basis.<sup>18</sup>

Nonetheless, there exists no blueprint for the ideal configuration of parliamentary structures and mechanisms for ensuring compliance with human rights standards in between these two main approaches. In a weak parliamentary system, which is characterised by a strong party discipline and dominance by a single political party, mainstreaming human rights might have little effect and run the risk of thin commitment to implementation.<sup>19</sup> In countries dominated by one political

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14 *Ibid*, p. 14.

15 *Supra*, National parliaments: Guarantors of Human Rights in Europe, Rapporteur: Mr Christos Pourgourides, § 29.

16 *Supra*, Parliamentary Human Rights Committees, p. 9.

17 Hereinafter, NGOs.

18 *Supra*, Parliamentary Human Rights Committees, p. 29-30.

19 *Supra*, From Rights to Remedies, p. 68.

party, a special human rights committee may have to give up independence or risk being marginalized politically. On the other side, in countries where the execution of judgments and the verification of legislation for human rights compatibility is poorly coordinated within the executive, there may be advantages to have a specialised human rights committee which is independent of the executive and can develop both systematic oversight mechanisms and human rights expertise among its members and staff.

It is true that there are potential advantages of having a specialised human rights committee, leaving human rights scrutiny to a single specialised body might discourage the integration of human rights into the work of other parliamentary committees and the existence of such a specialised committee does not always guarantee effective implementation. The effectiveness of such structures is usually dependent upon factors such as political will and the availability of expert legal advice.<sup>20</sup> For such committees to function effectively, a country needs to support the idea that the executive has accountability to the parliament and the parliament should exercise parliamentary supervision of the execution process.<sup>21</sup>

It should be noted that human rights are not and should not be a partisan issue. Therefore the members of opposition parties should be represented in parliamentary human rights committees. No matter how its mandate, working methods and powers are conceived, the effectiveness of a human rights committee mainly depends on the will of the committee and its members. A strong mandate and strong powers might be useless if a committee remains inactive. Yet even when a parliamentary human rights committee does little, its existence is still a sign of political commitment and this should encourage to bring forward human rights concerns and remind committee members of their responsibility.<sup>22</sup>

### 3. National Parliaments and the Council of Europe System

International human rights mechanisms have historically neglected national parliaments' role in protection and realisation of human rights. However, lately, there is a global trend and understanding on the importance of national parliaments in this subject. Especially in the Council of Europe<sup>23</sup> system, the role and importance of national parliaments has started to become the topic of serious

20 Alice Donald, The role of parliaments in implementing ECHR standards: overview of existing structures and mechanisms, Parliamentary Assembly of the Council of Europe, Strasbourg, 2014, § 12-14.

21 *Supra*, From Rights to Remedies, p. 65.

22 *Supra*, Parliamentary Human Rights Committees, p. 40-41.

23 Hereinafter CoE.

consideration. CoE and the European Convention of Human Rights<sup>24</sup> are widely recognised as one of the world's most relatively successful regional system and document for the protection of human rights in the world. Yet it is also relatively recent that the role of national parliaments in this system has become the subject of serious consideration. With the work of the Parliamentary Assembly of the Council of Europe<sup>25</sup> and in particular the PACE's Committee on Legal Affairs and Human Rights, it has been worked to draw attention to the importance of the parliamentary dimension of human rights protection and to increase the role of national parliaments in relation to the ECHR. The initiatives have been designed to encourage national parliaments to take a more active role in supervising the implementation of judgments of the European Court on Human Rights<sup>26</sup>, but they have also sought to encourage national parliaments to scrutinise systematically all draft legislation to ensure it is compatible with the ECHR.

However, progress towards recognising the importance of the role of national parliaments in the CoE system has been slow and until recently, national parliaments have generally not been mentioned in the outcome documents of the high-level conferences held to consider reform of the ECHR system.<sup>27</sup> The Convention is being amended in a way, which makes the role of national parliaments more important, and the case-law of the Court has developed to require courts throughout the CoE member states to pay closer attention to parliamentary consideration of human rights. The PACE has also worked assiduously to encourage national parliaments to take a more active role in supervising the implementation of judgments of the Court, and systematically scrutinise all draft legislation to ensure their compatibility with the Convention.<sup>28</sup>

The PACE, since 2000, has placed great emphasis on the role of national parliaments in implementing the ECHR standards and the ECtHR judgments. In 2000, there was an upsurge of cases pending before the Council of Ministers,<sup>29</sup> many involving severe structural or systemic dysfunctions. The CoM was indolent and was not always able to agree on what approach to take. The entire Convention system was stagnating and cases remained unexecuted for many years. The PACE began to intervene and the Committee on Legal Affairs and Human

24 Hereinafter, the ECHR or the Convention.

25 Hereinafter, PACE.

26 Hereinafter, the ECtHR or the Court.

27 Background Paper on the Role of Parliaments in the Realisation and Protection of the Rule of Law and Human Rights, including the Contribution of Parliaments to the Work of the Human Rights Council and its Universal Periodic Review, p. 16.

28 *Ibid*, p. 3.

29 Hereinafter, CoM.



Rights appointed a rapporteur on the execution of judgments in 2000. In 2006, the Committee on Legal Affairs and Human Rights began to undertake in situ visits to meet parliamentarians and other actors. As of January 2015, the Committee on Legal Affairs and Human Rights had a new Sub-Committee on the implementation of ECtHR judgments.<sup>30</sup> Since 2000, the PACE has adopted many reports and resolutions on the subject to help states overcome structural deficiencies and fully comply with the Court's judgments.<sup>31</sup>

For example, PACE Resolution 1516 underlined the importance of national governments's response to an adverse judgment of the Court. It is stated that national parliaments should exercise oversight in ensuring that the competent authorities promptly adopt adequate measures to execute a judgment of the Court. According to the PACE, national parliaments places an expectation upon the governments to uphold their commitments under the Convention and increases the political transparency of the implementation process. To this extent the PACE has invited all national parliaments to introduce specific mechanisms and procedures for effective parliamentary oversight of the implementation of the Court's judgments. The PACE has also called upon member states to set up domestic mechanisms for the rapid implementation of the Court's judgments and enable national parliaments to effectively supervise the governments's response to an adverse decision of the Court.<sup>32</sup>

Later, PACE Resolution 1823 has called for national parliaments to create adequate procedures to verify the compatibility of draft legislation with ECHR standards and monitor the implementation of the Court's judgments. PACE urged parliamentarians to exercise their responsibility carefully, to scrutinise the executive in their countries when it comes to the implementation of international human rights norms and called on governments to involve national parliaments in the negotiation process of international human rights agreements and in the process of implementation of judgments of the Court. PACE also urged national 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 and called on national parliaments to set up and/or to reinforce structures

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30 Alice Donald; Dominika Bychawska-Siniarska, *Parliaments and the European Court of Human Rights*, Parliamentary Assembly of the Council of Europe, 12 May 2015, Senate, Warsaw, p. 13.

31 Andrew Drzemczewski, "The Parliamentary Assembly's Involvement in the Supervision of the Judgments of the Strasbourg Court", *Netherlands Quarterly of Human Rights*, Vol. 28/2, 2010, p. 170.

32 *Implementation of judgments of the European Court of Human Rights (2006)*, Parliamentary Assembly of the Council of Europe, Resolution 1516 (2006), § 22.

that would permit the mainstreaming and rigorous supervision of their international human rights obligations.<sup>33</sup>

PACE Resolution 1787 has urged national parliaments which have not yet done so to introduce specific mechanisms and procedures for effective parliamentary oversight of the implementation of the Court's judgments. PACE also called upon the chairpersons of national parliamentary delegations of states to present the results achieved in solving substantial problems highlighted, reserved the right to take appropriate action should the state concerned continuously fail to take appropriate measures required by a judgment of the Court or should the national parliament fail to exert appropriate pressure on the government to implement the judgments of the Court.<sup>34</sup>

In the previous work of the PACE has shown the need for an increased role of national parliaments in monitoring the effective implementation of the Convention standards at national level. Therefore, PACE Resolution 1914 reiterated its call on States Parties to put into practice the basic principles for parliamentary supervision in this field, invited national parliaments to ensure that their committees monitoring compliance with human rights obligations are actively involved in the execution of the Court's judgments revealing structural problems and invited the members of the PACE, in their capacity as national parliamentarians, to question regularly their governments regarding execution of the Court's judgments.<sup>35</sup>

PACE Resolution 2178 has called on the national parliaments to establish parliamentary structures guaranteeing follow-up to and monitoring of international obligations in the human rights field, in particular of the obligations stemming from the Convention and devote parliamentary debates to the implementation of the Court's judgments. PACE also urged to national parliaments to question governments on progress in implementing Court judgments and demand them to present annual reports on the subject.<sup>36</sup>

Beside from these PACE Resolutions, the role and importance of national parliaments in the human rights field has been underlined in various the PACE's Committee on Legal Affairs and Human Rights reports. In these reports, it is

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33 National parliaments: guarantors of human rights in Europe (2011), Parliamentary Assembly of the Council of Europe, Resolution 1823 (2011), § 6.

34 Implementation of judgments of the European Court of Human Rights (2011), Parliamentary Assembly of the Council of Europe, Resolution 1787 (2011), § 10.

35 Ensuring the viability of the Strasbourg Court: structural deficiencies in States Parties (2013), Parliamentary Assembly of the Council of Europe, Resolution 1914 (2013), § 8.

36 The implementation of judgments of the European Court of Human Rights (2017), Parliamentary Assembly of the Council of Europe, Resolution 2178 (2017), § 10.

highlighted that, national parliaments should be actively involved in the implementation of the Court's judgments, in particular of those revealing structural deficiencies; a comprehensive strategy should be set up in order to facilitate the execution of the Court's judgments, which would be subject to close monitoring by national parliaments that should have appropriate means to compel governments to solve these issues as a matter of priority; an efficient national parliamentary oversight mechanism should be established which include regular information supplied by the government to the national parliament as prescribed by law, the parliament's assessment of the effectiveness of implementation measures taken by the executive, and the utilisation of both sources of information in legislative activity aimed at remedying and removing structural deficiencies.<sup>37</sup> It is also stressed that, the authorities concerned should show strong political commitment in order to resolve all the problems arising in connection with the implementation of the Court's judgments process and deploy all available means to arrive at constructive solutions. That commitment must be forthcoming not only from the executive authorities but also from the legislative branch. Therefore, national parliaments must take a stronger interest in this matter, create structures to ensure that draft legislation is compatible with the Convention as interpreted by the Court, and encourage the executive authorities to keep them regularly informed of the progress achieved in this area.<sup>38</sup>

The importance of national parliaments has also been recognised at the inter-governmental level in the Brighton Declaration<sup>39</sup> and the Brussels Declaration,<sup>40</sup> which urged states to facilitate the role of national parliaments. In the Brighton Declaration, the CoE agreed to take a number of practical measures designed to achieve better national implementation of the ECHR, including by providing national parliaments with information about the compatibility with the Convention of draft legislation, which should facilitate better parliamentary scrutiny of laws for ECHR compatibility.<sup>41</sup> This High-level

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37 Report of the Committee on Legal Affairs and Human Rights, Ensuring the viability of the Strasbourg Court: structural deficiencies in States Parties, Rapporteur: Mr Serhii Kivalov, Parliamentary Assembly of the Council of Europe, 7 January 2013, § 49-52.

38 Report of the Committee on Legal Affairs and Human Rights, The implementation of judgments of the European Court of Human Rights, Rapporteur: Mr Pierre-Yves Le Borgn, Parliamentary Assembly of the Council of Europe, 12 June 2017, § 54.

39 Brighton Declaration (2012), adopted at the High Level Conference on the Future of the European Court of Human Rights.

40 Brussels Declaration (2015), adopted at the High-level Conference on the Implementation of the European Convention on Human Rights, our shared responsibility.

41 *Supra*, Background Paper on the Role of Parliaments in the Realisation and Protection of the Rule of Law and Human Rights, p. 16.

Conference also strongly encouraged the States Parties to continue to take full account of the recommendations of the CoM on the implementation of the ECHR at national level in their development of legislation, policies and practices to give effect to the Convention; expressed the determination of the States Parties to ensure effective implementation of the ECHR at national level by taking the specific measures, so far as relevant by implementing practical measures to ensure that policies and legislation comply fully with the ECHR, including by offering to national parliaments information on the compatibility with the Convention of draft primary legislation proposed by the Government.<sup>42</sup>

In the Brussels Declaration, the importance of further promoting knowledge of and compliance with the Convention within all the institutions of the states parties was stressed and recalled in this context that the execution of the Court's judgments may require the involvement of the judiciary and parliaments.<sup>43</sup> The High-level Conference also called upon the states parties to increase efforts at national level to raise awareness among members of parliament and take appropriate action to improve the verification of the compatibility of draft laws, existing laws and internal administrative practice with the Convention, in the light of the Court's case law.<sup>44</sup> Furthermore, it was stressed that after the Court's judgments, to continue to increase their efforts to submit comprehensive action plans, reports and key tools in the dialogue within the CoM, which can contribute also to enhanced dialogue with other stakeholders, such as the Court, national parliaments or national human rights institutions; to encourage the involvement of national parliaments in the judgment execution process, where appropriate and to consider, in conformity with the principle of subsidiarity, the holding of regular debates at national level on the execution of judgments involving executive and judicial authorities as well as members of parliament.<sup>45</sup>

However, even within the CoE, national parliaments are still thinly engaged in implementation.<sup>46</sup> A survey of parliamentary involvement in human rights implementation carried out by the PACE noted the lack of pre-established and systematic parliamentary procedures and the urgent need to build national parliaments capacity to provide effective oversight of human rights implementation.<sup>47</sup>

42 *Supra*, Brighton Declaration, § 9.

43 *Supra*, Brussels Declaration, p .

44 *Ibid*, p. 5.

45 *Ibid*, p. 6-7.

46 Report of the Committee on Legal Affairs and Human Rights, Implementation of Judgments of the European Court of Human Rights, Rapporteur: Mr Christos Pourgourides, Parliamentary Assembly of the Council of Europe, 31 August 2009, § 36.

47 *Supra*, National parliaments: Guarantors of Human Rights in Europe, Rapporteur: Mr Ch-

Moreover, in its survey, in the majority of survey countries, domestic structures for execution of ECtHR judgments generally had minimal or no parliamentary involvement in monitoring judgments or assessing their implications for national laws and policies.<sup>48</sup> However, fortunately, attention has increasingly turned to national parliaments as implementation agents and the readiness of an increasing number of national parliaments to take a more pro-active approach to help ensure that appropriate and rapid following-up is given after an adverse finding by the Court.<sup>49</sup>

#### 4. Challenges, Opportunities and Suggestions

According to the CoE system mentioned, there are various challenges but also opportunities to involve national parliaments in the process and make legislation organ more effective. As a starting point, it should be laid emphasis on the existence of a specialised parliamentary human rights committee. By this way, it may send a strong political message that human rights are to be taken seriously by legislation organ as well as ensure that human rights concerns are mainstreamed prominently and regularly in parliamentary discussions. However, the existence of a parliamentary human rights committee is not enough to success for making national parliaments an important actor on human rights issues and there is no one single model for institutionalising parliamentary human rights work, different approaches suit different national contexts.

These parliamentary human rights committees should also have powers and resources. First of all, the parliamentary human rights committee must be established by parliament with their permanent existence enshrined in the parliament's Standing Orders or laws. By this way, the parliamentary human rights committee's independence can be protected from the executive and it cannot be easily discontinued without deliberate actions being taken to do. The parliamentary human rights committee should also have a mandate and powers that is broadly defined, which concerns human rights especially in the domestic context and allows the committee to take into account all relevant sources of human rights standards in both national and international law. A broad mandate helps to enable the com-

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ristos Pourgourides, § 91.

48 Philip Leach, *Responding to Systematic Human Rights Violations: An Analysis of Pilot Judgements of the European Court of Human Rights and Their Impact at National Level*, Antwerp: Intersentia, 2010, p. 179.

49 Marie-Louise Bemelmans-Videc, "The Effectiveness of the European Convention on Human Rights at National Level: The Parliamentary Dimension", in *Reforming the European Convention on Human Rights: A Work in Progress*, Council of Europe Publishing, April 2009, p. 492.

mittee to consider all human rights issues in the domestic context to function effectively. Broad powers are also important to carry out committee's mandate effectively. The parliamentary human rights committee and its members should have powers, such as, to initiate inquiries of its own choosing, to compel witnesses to attend, including ministers, to compel the production of papers, to hold oral evidence hearings, to conduct visits, to access places of detention without notice, to report to Parliament, to make recommendations to the government. Where it is possible, the parliamentary human rights committee should also have powers of initiative and fact-finding powers, such as, to initiate parliamentary debates on its reports or on subjects of its choosing, to propose amendments to legislation, to introduce bills into parliament concerning matters within its remit, to scrutinize bills and proposals for their compatibility with international human rights standards, taking into account the relevant jurisprudence of international courts and treaty bodies to compel the production of documents by the government.<sup>50</sup>

The parliamentary human rights committee should also be composed in such a way as to guarantee their independence and pluralism, which is vital to the committee's credibility and give legitimacy to its findings, enable it to be more effective in protecting human rights. Furthermore, the parliamentary human rights committee should be supported by specialised staff with expertise in human rights law and policy, who are independent from government and NGOs. By this way, the parliamentary human rights committees would make authoritative and impartial reports and findings that are consistent with domestic and international human rights standards. The parliamentary human rights committee staff should also be employed directly by parliament, and not be on secondment from the government or NGOs, so that the reports and findings of the parliamentary human rights committee are seen to be independent from both.<sup>51</sup>

However, parliamentary human rights committees can be poorly resourced, badly staffed and politically feeble in practice. The existence of formal structures, such as parliamentary human rights committees alone does not immunise implementation from political considerations and it does not guarantee the execution of judgments.<sup>52</sup> Moreover, given a limited amount of time, finances and expertise, it is difficult for parliamentary human rights committees to fulfil their responsibilities of making good legislation and overseeing the executive. Given their resource constraints, challenging legislative schedules and competing demands on their members', parliamentary human rights committees may not scrutinise legislation to ensure that it is compatible with and promotes human rights in a

50 *Supra*, Chang; Ramshaw, p. 8-12.

51 *Ibid*, p. 10-13.

52 *Supra*, Donald; Bychawska-Siniarska, p. 4.

timely manner and hold urgent inquiries in pressing human rights issues in the country. Moreover, a common feature in many developing national parliaments is that priority is given to the legislative function and more time is spent in passing legislation than conducting oversight of the executive and public agencies. With this background, national parliaments with limited resources often have little time or money to develop and sustain effective and respected structures for the conduct of oversight, including for compliance with domestic and international human rights standards.<sup>53</sup>

Another point that need to be considered may be the urgency and importance to develop an internationally agreed set of principles and guidelines on the role of parliaments on the role of parliaments in the protection and realisation of the rule of law and human rights. There is a striking gap which demonstrates the international human rights machinery has begun to appreciate the importance of the role of national parliaments. However, there is no internationally agreed set of principles and guidelines despite the steadily growing interest in the subject. Notwithstanding the increasing amount of interest and discussion, there has been no attempt to date to create a set of principles or guidelines that might assist national parliaments everywhere to devise the appropriate structures, mechanisms and practices which are required in order for them to discharge their important obligations and responsibilities in relation to human rights.<sup>54</sup> Bolder steps must be taken for national parliaments to become genuine guarantors of human rights and a set of basic principles should be established.<sup>55</sup>

Any such set of principles and guidelines could have a number of purposes. They could be intended to include a set of minimum core standards which should apply to any national parliament and any parliamentary human rights organ. They could also contain guidance to national parliaments about how they can increase their capacity to protect and realise human rights and the rule of law, including how parliaments can contribute. They could prescribe some minimum requirements if national parliaments are to be able to fulfil their responsibility to protect and promote human rights with the rule of law and provide some helpful suggestions about ways in which national parliaments can increase their capacity to do so.

These set of principles and guidelines may face the real difficulty that the in-

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53 *Supra* Chang; Ramshaw, p. 3.

54 *Supra*, Background Paper on the Role of Parliaments in the Realisation and Protection of the Rule of Law and Human Rights, p. 26.

55 *Supra*, National parliaments: Guarantors of Human Rights in Europe, Rapporteur: Mr Christos Pourgourides, § 90-91.

stitutional arrangements which underpin human rights vary enormously from country to country. But this diversity of practice should not deter to seek to identify some principles and guidelines which are capable of being relevant to every country. As a matter of course, there is no one perfect size set of institutional arrangements. Human rights machinery should be developed with great sensitivity to national legal and political traditions. Not all of the principles and guidelines will be relevant to every country and some will be more relevant than others for particular countries but this does not render the exercise redundant. The universal commitment to human rights and the rule of law requires to take the responsibility to devise arrangements in every country which makes it more likely that those abstract ideals can be made into a concrete reality.<sup>56</sup>

Last point that need to be emphasised may be the importance of developing and maintaining new relationships and cooperation with other institutions. Maintaining regular dialogue with other human rights-related institutions as well as with civil society organisations, communication between the executive and legislative branches and international parliamentary bodies can and should play an important part on the role of national parliaments on human rights.<sup>57</sup> National parliaments and national parliamentary human rights committees should help the executive to understand how parliaments will fulfil its responsibilities to protect and realise human rights by developing, in close consultation with the executive. This will not just aid parliaments and the parliamentary human rights committees in their work, but also encourage lawmakers and policymakers in the executive to internalise human rights considerations in their work.

Cooperation and regular dialogue shall be maintained, as appropriate, with relevant national and international bodies as well as with representatives of well-established NGOs that have significant and relevant experience. National human rights institutions are an important part of the national human rights machinery. So, national parliaments and parliamentary human rights committees should establish an effective cooperation with national human rights institutions, develop working relationships with other parts of the national human rights machinery with a view to ensuring the coherence and coordination of that machinery. They should also be well connected with relevant civil society networks and conduct their work in such a way as to provide opportunities for civil society to have a direct input into parliamentary consideration of human rights issues.<sup>58</sup>

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56 Murray Hunt, “Enhancing Parliaments’ Role in the Protection and Realisation of Human Rights”, in Murray Hunt, Hayley Hooper, Paul Yowell (ed), *Parliaments and Human Rights*, OUP, 2015, p. 482.

57 *Supra*, Donald; Bychawska-Siniarska, p. 4.

58 *Supra*, Chang; Ramshaw, p. 29-30.



Furthermore, national parliaments and parliamentary human rights committees must ensure that they remain in close contact with relevant regional and international human rights machinery and maintain a close relationship with them. The development of a formal network of relevant parliamentarians, lawyers and academics to facilitate the exchange of relevant information and to provide a forum for sharing good practices may be a good way to enhance national parliaments' contribution to the work.<sup>59</sup>

## 5. Closing Remarks

National parliaments are in fact in a strong position to promote international human rights standards to better implement their shared human rights obligations. They may interpret, apply and respect human rights in the laws they make, and when holding the executive to account. Therefore, they should be seen as a key institutional element of domestic human rights systems. Although national parliaments are well-placed to evaluate the needs for implementation in their systems, in many cases, national systems lack sufficient and effective engagement of their parliaments. Domestic political pressures, lack of independence from the executive, and lack of sufficient resources and knowledge as the some key reasons for the weak involvement of national parliaments in implementation. Also, parliamentarians often mistakenly think that it is solely for the judiciary and lawyers to interpret human rights law, therefore, they do not seize the opportunity to play an interpretative role. As democratically elected representatives, members of parliament hold governments to account concerning the implementation of legislation, approval of ratify treaties, and are involved in passing budgets. Above all, parliamentarians can influence the direction and priority of legislative initiatives and channel the funds needed to ensure the implementation of human rights principles.

It is true that implementation is an inherently political process. Greater parliamentary engagement can sometimes complicate or delay implementation because of problems of politicisation, opportunism, and lack of knowledge about human rights among parliamentarians. This can provoke scepticism about the pragmatic benefits of involving parliaments. However, it is neither feasible nor desirable to seek to shield human rights questions from political debate. Reinforcing parliamentary involvement in the execution and implementation process will require time. Parliamentary oversight of the implementation of human rights law, and scrutiny of measures proposed for this purpose, is an important aspect in any ef-

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<sup>59</sup> *Supra*, Background Paper on the Role of Parliaments in the Realisation and Protection of the Rule of Law and Human Rights, p. 26.

fective mechanism. Strengthening the role of national parliaments, as being composed of democratically elected representatives, in the execution process will not only enhance the implementation of individual judgments but will also reinforce human rights culture in domestic politics. Nevertheless, for that aim, national parliaments need to have necessary information and expertise, combined with sufficient powers, structures and processes in order to enable them to interact with other national and international institutional actors at key stages in the implementation process.

Lastly, in the context of the CoE system, parliamentary involvement and oversight is an important aspect in ensuring the prompt and effective implementation of human rights principles. Member states should ensure that there are appropriate and effective mechanisms for systematically verifying the compatibility of draft laws with the Convention in the light of the case-law of the Court. National parliaments should examine the relevant law and practice to determine whether amendments are required to realize human rights. To bring national law into line with the international standards, it is the national parliament that must introduce amendments modifying legislation and making it. For this reason, mechanisms should be set up in the national parliaments, so as to react as quickly and as effectively as possible. It might be true that legislative bodies rarely monitor international human rights law and feel that implementation of it falls outside their scope. But this should not mean that a national parliament has no role in implementation of international human rights standards.<sup>60</sup> Moreover, national parliaments may have ability to identify the social or political problems underlying a human rights violation and understand the measures required to prevent similar recurrences more effectually than international or regional mechanisms.

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60 *Supra*, From Rights to Remedies, p. 55.

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