



FAQ: How to advocate for the implementation of ‘standard’ cases

Introduction

Last week (23-25 September), the Committee of Ministers (CM) held its [third Human Rights \(‘DH’\) meeting](#) this year. The [quarterly DH meetings](#) mark important points in the EIN calendar. Many of our members and partners plan their Strasbourg advocacy for judgment implementation around these crucial dates. And rightly so: the [case-by-case](#) decisions on the implementation of judgments and decisions from the European Court of Human Rights (ECtHR) are authoritative assessments, by the body tasked with supervising the implementation of judgments, of the progress made by states (or the lack thereof) in the implementation process.

What many don’t know, however, is that **three quarters of the more than 1,200 [leading cases pending implementation](#) currently have no prospect of coming on the agenda of a CM-DH meeting.** This is because they have been classified as ‘standard’ cases under the Committee’s [twin-track supervision procedure](#).

Does this mean these cases do not deserve attention by civil society actors? Are NGOs and others better advised to focus exclusively on cases under enhanced supervision? Does advocacy for the implementation of ‘standard’ cases have lesser prospect of being effective?

The answer to these questions is a clear ‘no’. But there still revolves a lot of uncertainty around why and how best to advocate for the implementation of ‘standard’ cases. EIN has compiled a series of questions we have received over time on how to push for the implementation of these cases. We present below our FAQ.

But before we begin, here is...

You will see that, in most respects, advocacy for the implementation of cases under standard supervision does not differ from advocacy for the implementation of cases pending under the enhanced supervision procedure. For general tips about how to make your voices heard in Strasbourg, we therefore refer to EIN’s [Handbook](#) on making effective Rule 9 submissions, which contains extensive information and valuable tips for NGOs.

... A brief recap: grouping and classification of cases & Action Plans vs. Action Reports

Leading vs. repetitive cases

Once a judgment becomes final, it is transmitted from the Court to the CM. In practice, this means that it lands on the desk of a lawyer within the Council of Europe’s Department for the Execution of Judgments of the ECtHR (DEJ). The DEJ consists of lawyers who work closely with the member states to determine the specific actions required to give full effect to the ECtHR’s judgments and provides advice to the CM in respect of implementation in individual cases. It is the DEJ’s task to decide, within two to three months of a judgment becoming final, whether the case is a ‘leading’ or a ‘repetitive’ case.

- A **leading case** is a case which has been identified as revealing new, and often structural or systemic, problems.
- A **repetitive case** relates to a general problem already raised before the CM in the context of one or several leading cases; repetitive cases are usually grouped together with the leading case(s).

Besides, some cases are classified as 'isolated', but we don't need to get into that here.

Classification of cases: standard vs. enhanced supervision cases

For each leading case, the CM determines whether it should be reviewed under 'standard supervision' or 'enhanced supervision'. The classification decision is taken based on advice by the DEJ. The classification of a cases has important implications for which body will do the 'heavy lifting' in the supervision process, as you will see below. Importantly, **cases can 'move' between the two supervision tracks**: they can be 'bumped up' from standard to enhanced, or moved down from enhanced to standard supervision.

Action Plans vs. Action Reports

Finally, you may recall that the two most important types of documents that states will submit to the CM for leading cases (regardless of whether they are under standard or enhanced supervision) are Action Plans and Action Reports. Put simply, the key difference between the two is as follows:

- In an **Action Plan**, a state sets out the measures it *envisages* taking to implement a judgment.
- By means of an **Action Report**, a state lists the measures it has *taken* to give full effect of a ruling and invites the CM to 'close' the case, i.e. to end its supervision of it.

A state is expected to submit an initial Action Plan at the latest within six months of a leading judgment becoming final.

With this in mind, let's jump right into our FAQ!

FAQ about cases pending implementation under the standard supervision procedure



Q	When will a case be classified as a ‘standard’ case?
A	Put bluntly, classification as a ‘standard’ case is the default. Unless a case (a) is a pilot judgment, (b) requires the adoption of urgent individual measures, or (c) discloses major structural and/or complex problems (we are ignoring (d), inter-state cases, which are also subject to enhanced supervision), it will (initially) be put under standard supervision. But it can be transferred to the enhanced supervision track later, for instance if the state fails to submit an Action Plan without explanation.
Q	What’s the practical difference between a ‘standard’ case and an ‘enhanced’ case in terms of how their implementation is supervised?
A	A key difference between cases under standard and cases under enhanced supervision concerns the role of the CM: under the standard procedure, the CM limits its intervention to ensuring that adequate Action Plans/Reports have been presented and verifies the adequacy of the measures taken before closing the case. Importantly, this does not mean implementation is not properly monitored. Developments in the execution of cases under standard procedure are followed by the DEJ. The DEJ engages bilaterally with the authorities, assesses the information obtained, and submits proposals for action if developments in the implementation process require specific intervention by the CM.
Q	Is it even worth working on standard cases, if these won’t ever make it onto the CM’s agenda?
A	<p>Absolutely. Three quarters of the cases pending implementation are ‘standard’ cases. This does not mean they are not important. Leading cases under standard supervision will, as a rule, require that the state adopt general measures to remedy the underlying problem. NGO interventions will often be vital to set the agenda for reforms, help set these reforms in motion, and prevent the early closure of the case. Rule 9 submissions also help counterbalance the CM’s dependence on information provided by the state. These are just some key reasons for why you should submit your views on the implementation of general measures. Needless to add that any important information regarding the individual measures owed to the victim(s) should always be brought to the DEJ’s attention. In all of this, submissions in ‘standard’ cases have the same benefits as submissions on cases under enhanced supervision.</p> <p>TIP: Bear in mind that your Rule 9 submission need not be limited to substantive points. You can address procedural questions, too, which specifically includes the possibility to call for a case to be transferred to the enhanced supervision track, as a way to eventually push it onto the CM’s Human Rights meeting agenda.</p>
Q	How do I know when a case under standard supervision will be examined?
A	For cases under standard supervision, there is no timetable, with supervision being conducted behind the scenes between the DEJ and the state. The DEJ will request information from the state and assess any such information provided. From time to time the DEJ publishes an update

	of developments on the ‘status of execution’ page for the case on the HUDOC-EXEC website. TIP: NGOs should monitor cases regularly, to identify and respond to action plans/reports.
Q	What’s the best timing for a Rule 9 submission, then?
A	Because cases under the standard procedure are not reviewed by the CM (unless the DEJ sees a need for the CM to intervene), the CM’s review schedule should not determine the timing of submissions. Instead, NGOs should make submissions as and when needed. In particular, you may want to respond to (initial or updated) Action Plans or to an Action Report. Because it is often difficult to predict when the state will submit an Action Plan or Action Report, NGOs should be proactive, and submit Rule 9s whenever there are noteworthy developments that need to be communicated to the CM. For many cases, a good rule of thumb is to make a submission roughly once a year.
Q	But how do I know when the government will submit a new Action Plan that I should react to?
A	The short answer is: you often won’t. For some NGOs, it may be possible to approach the Government Agent’s office directly to seek and obtain information on the timetable for the implementation of a case, though we realise this is not an option in all countries and all cases. It’s worth checking in with the EIN Secretariat; sometimes we have additional information on a case that might appear to be ‘dormant’. TIP: Also, if you are interested in a particular case under standard supervision, let the EIN Secretariat know. We can inform you about important developments in this case, such as the submission of an Action Plan or Action Report.
Q	Staying on the matter of Action Plans: it has been more than a year since my government submitted an Action Plan. How do I get them to update the information they have provided?
A	Where writing directly to the Government Agent is not possible or has proven futile, it may be worth making a Rule 9 submission to remind the DEJ that no Action Plan has been submitted for a protracted period of time, and invite it to request information from the state. Cases under standard procedure often need a little ‘nudge’ from civil society. Rule 9 submissions can be effective tools to give new impetus to a case that might have slipped under the radar.
Q	When should I push for a standard case to be moved to the enhanced supervision procedure?
A	There are three grounds on which a case can be transferred from the standard to enhanced supervision procedure: <ul style="list-style-type: none"> • Continuous failure to present an Action Plan or Action Report without explanation • Disagreement between the state and the DEJ on the content of an Action Plan • Serious delay in the implementation of the measures announced in the Action Plan

	If you consider that one of these conditions is met, you can call for a change from standard to enhanced supervision procedure. Any such argument needs to be substantiated with appropriate evidence.
Q	The government submitted an Action Report. We disagree with its claim that the judgment has been satisfactorily implemented. Should we make a Rule 9 submission?
A	Yes! And it is important that you do so ASAP. If the DEJ is in agreement with the state on the content of the Action Report, it will present the case to the CM with a proposal for closure. This proposal can be examined at any ordinary meeting of the CM, not just its quarterly Human Rights meetings. To prevent a case from being closed prematurely, it is therefore crucial that any information that would indicate ongoing shortcomings be sent to the DEJ straight away.

Checklist: a step-by-step guide to supporting the implementation of ‘standard’ cases

Let’s recap, then: The classification of a case under the standard supervision procedure does not imply that the case is of minor importance. Many of the more than 900 leading cases that are currently pending under standard supervision would benefit from civil society advocacy. If you are wondering where to start, here is our proposed step-by-step guide to promoting the implementation of ‘standard’ cases:

1. Review, if you have not yet done so, all leading cases pending execution in respect of your country, and **identify your priority cases** that you want to support. When doing so, you may want to look out for cases (i) that you think should be transferred to the enhanced procedure, and (ii) (other) cases which seem to be ‘dormant’, i.e. in which no submission has been made in a long time.
2. **Let the EIN Secretariat know** what cases you are focusing on. We will try and obtain additional information from the DEJ on those.
3. **Monitor submissions** from the government. The EIN Secretariat will be pleased to inform you about important developments in ‘your’ cases, specifically the submission of Action Plans and Action Reports.
4. **Make submissions:**
 - *early on*: in cases where the government has not yet made a submission, you can submit a Rule 9 to make arguments about what measures are necessary to implement the case. This can have a strong influence on what the DEJ requires a government to do, right from the very start.
 - *as and when* you have noteworthy information that needs to be brought to the DEJ’s attention;
 - *to help push the government to submit an updated Action Plan/Report*: in cases where the government has submitted a communication but a long time ago, you can make a submission when you think this could give new impetus into a stalled or protracted process;
 - *in response to Action Plans*, where you want to comment on the government’s submission. If the government’s proposed reforms are not sufficient to deal with the problem at hand, it is vital that you point this out at this early stage, if sufficient measures are to be included in the implementation agenda;
 - *in response to Action Reports*, in order to avoid premature closure of a case. This is perhaps the most important type of submission, because without it, the DEJ might propose to the

CM that the case be closed at one of its ordinary meetings. You should make your submission as soon as possible following the submission of an Action Report. **TIP: Notify the EIN secretariat about your intention to write a Rule 9 submission that would call for a case to remain open.**

5. Keep in mind: Implementation is, first and foremost, a domestic process. Form advocacy alliances with other actors and engage in domestic advocacy to push for the implementation of your cases!

Let us know if you have any additional questions, and tell us about any problems you may have encountered when working on cases under standard procedure. You can contact us at director@einnetwork.org.