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Non-Governmental Organisations and National Human Rights Institutions monitoring the execution of Strasbourg Judgments: An Empirical Perspective on Rule 9 Communications

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ABSTRACT

This article considers a scarcely explored perspective in relation to the execution of judgments of the ECtHR, notably, the formal involvement of NGOs and NHRIs. Rule 9(2) of the Committee of Minister Rules' allows NGOs and NHRIs to participate in the supervision process for the execution of the Court's judgments by submitting reports (Communications) in which these actors review and assess domestic authorities' performance with respect to judgment execution. On the basis of interviews with important stakeholders, this article provides an all-round user-based perspective of this Rule 9 mechanism and its perceived impact. Doing so elucidates whether the Rule 9 procedure allows NGOs and NHRIs to engage in the important cycle of reporting and pressuring for change, the conclusions of which are important in assessing if and how Rule 9 works to advance the execution of judgments of the ECtHR.

KEYWORDS: European Court of Human Rights, Rule 9 Communications, Committee of Ministers, civil society, National Human Rights Institutions, judgment execution

1. INTRODUCTION

Although typically considered a well-developed and effective system of human rights protection, the European Convention on Human Rights (ECHR or Convention) sys-

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tem[1] has come under 'strain'.[2] Of the various factors accounting for this,[3] inadequate, delayed and partial compliance with the judgments of the European Court of Human Rights (ECtHR or Court) touch the very essence of the system's functioning.[4] Indeed, '[t]he overall human rights situation in Europe depends primarily on States' actions and the basic respect they show for Convention requirements'.[5] Lack of respect for the Court's judgments not only has a bearing on the credibility, legitimacy and authority of the system[6] and on the workload of the Court,[7] it also affects the extent to which ECtHR judgments can trigger or shape reforms that help improve human rights protection on the ground.[8]

Accordingly, various scholars have explored avenues to address the problems of inadequate execution of ECtHR judgments. These avenues range from addressing non-execution by way of applying the infringement procedure as laid down in Article 46(4) of the ECHR, to the promise of introducing a system of punitive damages so as to 'nudge' States into compliance with the Court's judgments.[9] Other authors have, for the execution process more generally, considered the role played by the Court[10] the signatory States (and their institutions),[11] and, to a lesser extent, the Committee of Ministers,

1 Helfer, 'Redesigning the European Court of Human Rights: Embeddedness as a Deep Structural Principle of the European Human Rights Regime' (2008) 19(1) *The European Journal of International Law* 125, at 126.

2 von Staden, *Strategies of Compliance with the European Court of Human Rights. Rational Choice Within Normative Constraints* (2018). See also, more generally, The CDDH—Steering Committee for Human Rights, 'Report on the longer-term future of the system of the European Convention on Human Rights' (2015).

3 See generally The CDDH, supra n 2.

4 von Staden, supra n 2.

5 The CDDH, supra n 2 at 29.

6 See for example, Keller and Marti, 'Reconceptualizing Implementation: The Judicialization of the Execution of the European Court of Human Rights' Judgments' (2016) 26(4) *The European Journal of International Law* 829; Hourigan, 'Implementation of Judgments of the European Court of Human Rights: Opportunities and Challenges for the Rule of Law' (Event Report)' (15 May 2017) University of Leicester; Anagnostou and Mingui-Pippidi, 'Domestic Implementation of Human Rights Judgments in Europe: Legal Infrastructure and Government Effectiveness Matter' (2014) 25(1) *The European Journal of International Law* 205.

7 The 2019 Annual Report of the Committee of Ministers shows that there are 5231 cases awaiting full implementation; of these cases, 3986 are classified as repetitive and thus relate to 'a structural and/or general problem already raised before the Committee in the context of one or more leading cases', see the Council of Europe's Committee of Ministers, 13th Annual Report of the Committee of Ministers, 2019, at 58. Further, for the most recent statistics on the number of cases pending before European Court of Human Rights, see, 'Statistics', available at: https://www.echr.coe.int/Pages/home.aspx?p=reports [last accessed 3 March 2021].

8 This necessitates the execution of general measures (as opposed to individual measures which ensure the termination of the violation in respect of the victim and provide adequate individual redress) which helps to prevent, among other things, the occurrence of violations similar to those identified in a judgment by the Court.

9 See de Londras and Dzehtsiarou, 'Mission Impossible? Addressing Non-Execution Through Infringement Proceedings in the European Court of Human Rights' (2017) 66 *International and Comparative Law Quarterly* 468 and Fikfak, 'Changing State Behaviour: Damages before the European Court of Human Rights' (2019) 29(4) *European Journal of International Law* 1091, respectively.

10 E.g. Donald and Speck, 'The European Court of Human Rights' Remedial Practice and its Impact on the Execution of Judgments' (2019) 19(1) *Human Rights Law Review* 83.

11 As an example, Anagnostou, *The European Court of Human Rights: Implementing Strasbourg's Judgment on Domestic Policy* (2013).

the political arm of the Council of Europe that oversees the execution of the Court's judgments.[12] Positioned against this background, this article takes a scarcely explored yet crucial perspective in this regard: the procedural role played by non-governmental organisations (NGOs) and National Human Rights Institutions (NHRIs) in the supervision process of the execution of the Court's judgments through Rule 9(2) of the Committee of Minister Rules.[13] Rule 9(2) empowers NGOs and NHRIs to formally participate in the supervision process by submitting Communications for the consideration of the Committee of Ministers. In these Communications, NGOs and NHRIs can provide the Committee with their assessment of the execution of judgments and their recommendations on how to proceed with the execution process.[14]

The relevance of a study into this Rule 9 finds support in numerous empirical studies that have demonstrated that, among others things, the presence of an active civil society and regular engagement of that civil society with international human rights monitoring processes is an important condition for the domestic implementation of international human rights.[15] Indeed, the continuous engagement of civil society actors with human rights monitoring processes has appeared to be a 'fairly consistent factor in those states in which a positive correlation between the adoption of treaties and improvements in human rights has been identified'.[16] Interestingly, in the UN context, it has been shown that civil society actors like NGOs, but also NHRIs, share and report their assessment of governments' human rights performance to such international monitoring institutions[17] and follow-up on the outcomes of this reporting process by making recommendations to governments and pressuring them to carry these out. In doing so, these actors engage in a cycle of 'reporting and pressuring', thereby pushing for and promoting change.[18]

12 E.g. Çali and Koch, 'Foxes Guarding the Foxes? The Peer Review of Human Rights Judgments by the Committee of Ministers of the Council of Europe' (2014) 14 *Human Rights Law Review* 301.

13 See the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements, available at https://rm.coe.int/16806eebf0; for a notable exception, see the work by Miara and Prais, 'The role of civil society in the execution of judgments of the European Court of Human Rights' (2012) *European Human Rights Law Review* 1.

14 See e.g. Erken, 'The Participation of Non-Governmental Organisations and National Human Rights Institutions in the Execution of Judgments of the Strasbourg Court: Exploring Rule 9 Communications at the Committee of Ministers' (2020) 1(2) *European Convention on Human Rights Law Review* 248; Donald, Long and Speck, 'Identifying and Assessing the Implementation of Human Rights Decisions' (2020) *Journal of Human Rights Practice* 1. See also Dothan, 'A Virtual Wall of Shame: The New Way of Imposing Reputational Sanctions on Defiant States' (2017) *Duke Journal of Comparative and International Law* 141, at 149.

15 See, most importantly, the works of de Búrca, 'Human Rights Experimentalism' (2017) 111(2) *The American Society of International Law* 277; Krommendijk, 'The domestic effectiveness of international human rights monitoring in established democracies. The case of the UN human rights treaty bodies' (2015) *10 The Review of International Organizations* 489; Simmons, *Mobilizing for Human Rights. International Law in Domestic Politics* (2009) and Neumayer, 'Do international human rights treaties improve respect for human rights?' (2005) 49(6) *Journal of Conflict Resolution* 925.

16 De Búrca, supra n 15 at 304.

17 McGaughey, 'From gatekeepers to GONGOs: A taxonomy of Non-Governmental Organisations engaging with the United Nations human rights mechanism' (2018) 36(2) *Netherlands Quarterly of HumanRights* 111.

18 De Búrca supra n 15 at 289–290; Krommendijk, 'The (in)effectiveness of UN Human Rights Treaty Body Recommendations' (2015) 33(2) *Netherlands Quarterly of Human Rights* 194, at 200.

The authors that have written about Rule 9 attest to its importance. Indeed, the avenues created through Rule 9 are reviewed positively, as it enables relevant ECHR actors to receive information from actors that are 'ideally placed to report on realities "on the ground"', thereby counterbalancing or complementing the State's account on implementation.[19] As scholars have demonstrated the importance of involving NGOs and NHRIs in international monitoring processes, and their contribution to a cycle of 'reporting and pressuring', it is useful to comprehensively uncover the impact of Rule 9(2) Communications in the execution process of the Court's judgments. Understanding the impact of Rule 9(2) on the execution process is important in assessing if and how that Rule works to advance the execution of judgments of the ECtHR.

Accordingly, this article investigates the *perceived* impact of Rule 9(2) Communications in relation to the execution of judgments of the ECtHR. To elicit this impact, interviews have been held with NGO and NHRI representatives who have submitted Rule 9(2) Communications, with government officials working on ECtHR judgment implementation and with staff from the Execution Department who assist and support the States as well as the Committee of Ministers in discharging its tasks.[20] The choice to focus on eliciting perceptions of relevant stakeholders has been made as it is difficult to derive, from sources publicly available, what considerations are given to Rule 9(2) Communications in processes of judgment execution, as well as what actions (if any) NGOs and NHRIs have taken in the wake of this reporting process, and the effects of those actions.[21] Particularly, matters relating to the execution of most ECtHR cases at the Strasbourg level are 'dealt with bilaterally between the [Execution De partment] and domestic authorities' and those selected cases in which the Committee of Ministers is involved are dealt with privately, with only government officials present.[22] By including all relevant actors of the 'reporting and pressuring cycle', the interviews allow for an all-round user-based perspective on Rule 9(2), which constitutes an important qualitative basis for drawing conclusions as to the perceived impact of Rule 9 Communications on the execution process.

19 Donald et al., supra n 14 at 2 and 6–8; Miara and Prais, supra n 13; see also, more generally, Leach, 'On Reform of the European Court of Human Rights' (2009) 6 *European Human Rights Law Review* 725, at 732.

20 A total of 24 interviews were conducted for this article, between November 2019 and April 2020, with two NHRI and one Ombudsman representative(s) and eight NGOs (responsible for one or more submissions per organisation), seven lawyers of the Execution Department (one of which was no longer employed there at the time of the interview) and six government representatives. NGO, NHRI and government representatives come from a variety of Council of Europe Member States, and cover States with many judgments pending implementation and those States with fewer cases pending implementation. Five experts were interviewed to inform the background of this article. NGO and NHRI representatives were located through the Council of Europe database that collects all Rule 9(2) submissions and were included in the study on the basis of availability. Access to and permission to conduct interviews with lawyers from the Execution Department was granted by the Execution Department; government representatives have been included on the basis of availability. Transcripts and summaries of the interviews are on file with the author. All interviewees have been granted full anonymity upon agreeing to participate in this research.

21 Erken, supra n 14; Donald et al. supra n 14.

22 Donald et al., supra n 14 at 3; Sandoval, Leach and Murray, 'Monitoring, Cajoling and Promoting Dialogue: What Role for Supranational Human Rights Bodies in the Implementation of Individual Decisions?' (2020) *Journal of Human Rights Practice* 1, at 6.

To achieve the purposes outlined above, this article proceeds as follows. The next section evaluates the relevant literature, thereby discussing the importance of the engagement of civil society with international human rights monitoring processes. In doing so, it provides the chosen theoretical background for the article (section 2). The subsequent section (section 3) focuses on the execution process of the Court's judgments and the Rule 9 procedure. In respect of the latter, it briefly explains how this procedure works, how the relevant actors make use of it and how it fits within the larger supervisory mechanism set up by the ECHR to oversee the execution of the Court's judgments. Section 4 gives an insight into the actual workings of the Rule 9(2) procedure by presenting the empirical findings of this article, which encapsulate the perceptions of all relevant actors as to the impact of Rule 9(2) Communications. From this, it draws broader conclusions about this impact on the execution process of the Court's judgments. The final section (section 5) concludes.

2. INTERNATIONAL MONITORING PROCESSES: THE ROLE OF NGOs AND NHRIs

To ensure that international human rights are not just theoretical aspirations, such rights must be realised in practice.[23] A vast body of scholarship has therefore been devoted to the important question of whether international human rights law can do what it envisages, that is, to improve respect for human rights on the ground. Importantly, those studies that have found positive effects in this respect[24] have in common that they find 'a clear correlation between human rights treaty ratification and improvement in human rights standards where there is a reasonably active civil society within the states in question'.[25] Indeed, a consensus that emerges from these studies appears to be that international human rights treaties can bring about the mobilisation of non-State actors that pressure governments into changing their behaviour.[26] The work of Beth Simmons has, in this respect, been particularly influential. She provides a 'bottom-up' account of UN treaty effects and posits that ratified treaties can influence national agendas, litigation and, in particular, the social mobilisation of domestic actors. As she states,

> [i]f international human rights treaties have an important influence on the rights practices of governments that commit to them, it is because they have predictable and important effects on domestic politics. Like other formal institutions, treaties are causally meaningful to the extent that they empower individuals, groups, or parts of the state with different rights preferences that were not empowered to the same extent in the absence of the treaties [. . .].[27]

23 Fraser, 'Challenging State-centricity and legalism: Promoting the role of social institutions in the domestic implementation of international human rights law (2019) 23(6) *The International Journal of Human Rights* 1, at 1–2.

24 See, e.g. Hafner-Burton, *Making Human Rights a Reality* (2013); Simmons, supra n 15; Neumayer, supra n 15.

25 De Búrca, supra n 15 at 299.

26 Krommendijk, supra n 15 at 494; Simmons, supra n 15.

27 Simmons, supra n 15 at 125.

Using empirical research, she has found that international legal agreements can be used by civil society actors on the ground to hold governments accountable. In this respect, such treaties can be considered a useful way to justify and support civil society's ongoing efforts on the national level to advance human rights.[28] Gráinne de Búrca has provided further case studies of how international treaties can help bring about domestic effects by detailing the way in which civil society actors, like NGOs, engage with international treaty bodies. In doing so, she identifies and traces the exact ways in which international monitoring regimes mobilises such national actors.[29] As also noted by others, NGOs, as well as NHRIs, engage in the reporting process of international human rights regimes like that of the UN treaty bodies, the Human Rights Council and the Universal Periodic Review.[30] These institutions have evolved to allow NGOs and NHRIs to provide information and their input is known to contribute to the formulations of recommendations by the bodies in question.[31] In a sense, as pointed out by Krommendijk, through such a reporting process civil society actors and NHRIs can choose to circumvent the State to approach an international institution, intending for such an institution to take up their claims.[32]

Looking at this reporting process in more detail through case studies of the UN reporting regimes, de Búrca describes the interaction of local NGOs with international treaty bodies as a continuous and repetitive cycle of reporting and review.[33] In doing so, she draws attention to the importance of involving local domestic actors in international review processes, as these actors provide information from the ground that is based on their own expertise and sources, thereby complementing, supplementing or contrasting the information provided by States in their official government reports.[34] As such, involving such actors can allow for a closer, alternative reading of the problems in a particular country, and provide a source of local knowledge of particular issues and challenges in the area. Furthermore, these actors can suggest different measures for addressing and solving human rights problems identified.[35] All in all, as clarified by De Búrca,

> the presence of an active, engaged array of stakeholders with a strong interest in shaping and enforcing the human rights norm, combined with the obligation of regular state reporting alongside stakeholder monitoring and reporting [. . .]

28 Ibid. at 372.

29 De Búrca, supra n 15 at 303; De Búrca uses an experimentalist governance perspective on international human rights treaty regimes, which she posits has the effect of bringing to the fore to the importance of civil society interaction with treaty bodies and government forces. As such, according to de Búrca, this theory of experimentalist governance provides a theoretical underpinning that accounts for the link between an active civil society and the positive impact on the implementation of human rights standards.

30 For the role of NHRIs, see e.g. Cardenas, *Chains of Justice: The Global Rise of State Institutions for Human Rights* (2014).

31 McGaughey, supra n 17 at 112.

32 Krommendijk, supra n 15 at 495.

33 De Búrca, supra n 15 at 303.

34 ibid 309–310; see, for this argument also McIntosh Sundstrom, 'Advocacy beyond litigation: Examining Russian NGO efforts on implementation of the European Court of Human Rights judgments' (2012) 45 *Communist and Post-Communist Studies* 255, at 264.

35 De Búrca, supra n 15 at 309–310.

> provides a reasonably robust safeguard against self-interested interpretation of human rights norms by states that seek to avoid action and accountability.[36]

Finally, and most importantly in light of this article, in addition to making the international monitoring systems more participatory by including a wider range of actors next to the government, this interaction also helps such actors advance human rights *domestically*. Indeed, stakeholders involved in the reporting process are seen to follow-up on the outcomes of the treaty body reporting process by pressuring governments to carry out the recommendations formulated by the monitoring body in question, for instance by advocating for legislative reform and by generating media attention.[37]

It is precisely this iterative dimension that is crucial for the national implementation of human rights norms. An international reporting process allows for arguments and claims to be made locally and enables transmitting those to the international level during a reporting and review process. The outcome of this process, which in the UN context takes the form of concluding observations and recommendations, can then be used domestically and can be followed up through advocacy efforts. This may result in local adaptation and vernacularisation as international human rights norms are translated into domestic advocacy practices. This process then commences again during the next reporting round, thereby creating and facilitating a 'cycle' of reporting and pressuring.[38] It is important that these domestic actors like NGOs are free from repression on the national level; indeed, 'civil society [itself] needs specific human rights', including the freedom of expression and assembly, to fully engage in such a cycle.[39]

In sum, the studies discussed above have found empirical evidence that the domestic implementation of international human rights norms depends, at least in part, on the degree to which international monitoring mechanisms can facilitate an interactive cycle of reporting and pressuring by domestic actors. Turning to the ECHR system, here, it can be seen that the role of civil society[40] as well as NHRIs have been the subject of research. Such research has predominately considered civil society's involvement either from a historical perspective[41] or in the judicial proceedings before the Court itself, in particular as a third-party intervener or as (co-)counsel of applicants[42] or, more generally, as observers in the reform process of the ECHR system or as consultants to

36 Ibid. at 313.

37 Ibid. at 293, 309–311; Krommendijk, supra n 18 at 200. See also, for instance, McIntosh Sundstrom, supra n 34 at 257.

38 De Búrca, supra n 15 at 293.

39 For this argument, see Buyse, 'Why Attacks on Civic Space Matter in Strasbourg: The European Convention on Human Rights, Civil Society and Civic Space' (2019) 4 *Deusto Journal of Human Rights* 13, at 19.

40 Haddad has provided a comprehensive account of NGO participation (their roles, frequency and impact) at, amongst others, the European Court of Human Rights. See Haddad, *The Hidden Hands of Justice. NGOs, Human Rights and International Courts* (2018).

41 Cichowski, 'Civil Society and the European Court of Human Rights', in Christoffersen and Rask Madsen (eds), *The European Court of Human Rights between Law and Politics* (2011). See also Haddad, supra n 40.

42 E.g. Duffy, 'Strategic Human Rights Litigation. Understanding and Maximising Impact (2018); Bürli, *Third-Party Interventions before the European Court of Human Rights* (2017); van den Eynde', An Empirical Look at the Amicus Curiae of Human Rights NGOs before the ECtHR' (2013) 31(3) *Netherlands Quarterly of Human Rights* 271; Loveday Hodson, *NGOs and the Struggle for Human Rights in Europe* (2011).

the Court's registry.[43] Albeit more limited, scholars have also considered (the potential of) NHRI involvement in the Strasbourg system.[44] Although the importance of the involvement of NGOs and NHRIs on the domestic level in implementing the ECHR and the Court's judgments as such has been included in scholarly investigation,[45] the value of the formal participation of these actors in the execution phase of the judgments of the ECtHR for the purposes of implementation has, with a few notable exceptions, not been fully scrutinised.[46]

Consequently, it is useful to find out what the impact is of Rule 9(2) on the execution process and similarly, if this Rule facilitates such an interactive cycle of reporting and pressuring, as outlined above. It is conceivable that such a cycle exists, since the supervisory system of the execution of ECtHR judgments has a mechanism in place that allows for the formal participation of civil society actors like NGOs as well as NHRIs, as is the case within the UN system.[47] A study into the impact of Rule 9(2) is therefore important in coming to an understanding of the perceived effects thereof on the execution of the judgments of the ECtHR. For this purpose, it is first useful to briefly explain the process of ECtHR judgment execution as such. Moreover, it is important to understand how the Rule 9(2) procedure works and how it fits within the larger supervisory mechanism set up to oversee the execution of judgments. The subsequent section attends to these matters.

3. AN *AMICUS* IN THE EXECUTION PROCESS: CHARACTERISING NGO AND NHRI RULE 9 COMMUNICATIONS

A. Executing Judgments of the ECtHR: The Main Institutional Actors in Strasbourg

Once the ECtHR has handed down a final judgment in which a breach of Convention rights has been identified, the case is transferred to the Committee of Ministers—a political body that oversees the execution process of the Court's judgments.[48] In order to execute a judgment, States choose—subject to the supervision of the Committee of

43 Haddad, supra n 40.

44 See for instance Buyse, 'The Court's Ears and Arms: National Human Rights Institutions and the European Court of Human Rights' in Meuwissen and Wouters (eds), *National Human Rights Institutions in Europe: Comparative, European and International Perspectives* (2013); Greer, *The European Convention on Human Rights Achievements, Problems and Prospects* (2006).

45 In this respect, see, for instance, Abdelgawad, 'Dialogue and the implementation of the European Court of Human Rights' Judgments' (2016) 34(4) *Netherlands Quarterly of Human Rights* 340, at 361; Anagnostou and Mingui-Pippidi, supra n 6; van der Vet, 'Transitional Justice in Chechnya: NGO Political Advocacy for Implementing Chechen Judgments of the European Court of Human Rights' (2013) 38 *Review of Central and East European Law* 363 and McIntosh Sundstrom, supra n 34 at 257.

46 For these exceptions, see e.g. Donald et al., supra n 14, referenced throughout this piece; Haddad, who has also included Rule 9(2) into her study and while acknowledging that NGOs may provide useful information to the Committee of Ministers, writes that it is still 'uncertain whether NGO communications have any impact on the execution of judgments' (see Haddad, 'Seeking Voice at the ECtHR' in Haddad, supra n 40 at 79–80). For an exception with regard to the role of NHRIs, see the dissertation of Antoniazzi, *Promoting the Execution of Judgments of the European Court of Human Rights: The (Potential) Role of National Human Rights Institutions* (PhD thesis, University of Trento, Restricted to Repository staff until 14 June 2021).

47 For differences between the reporting system of, for instance the UN Committee and the ECHR, see Donald et al., supra n 14 at 9.

48 Article 46(2) ECHR.

Ministers—the appropriate individual and/or general measures to end the violation(s) found by the Court. These measures are meant to redress, as far as is possible, the effects of the violations identified and to prevent the violations from happening again.[49] The Committee of Ministers is made up of the Ministers of Foreign Affairs of the 47 Member States of the Council of Europe.[50] Four times a year, the Deputies to the Ministers of Foreign Affairs meet during the Human Rights (DH) meeting to discuss, in private sessions, the execution of judgments of the Court.[51] Thus, by means of peer review, States discuss each other's (lack of) progress of judgment execution; a process that has elsewhere been referred to as 'foxes guarding the foxes'.[52] Action plans and reports play an important role in this process. In an action plan, States set out the steps they will take, and when, in order to abide by the judgment rendered against them. In contrast, in action reports States demonstrate to have taken all necessary measures, thereby proposing to close supervision of that case.[53] In the supervision process, put simply, cases are supervised on the basis of the so-called 'twin-track system', meaning that cases are either classified under the headings 'standard' or 'enhanced' supervision.[54] In principle, all cases are examined under the standard procedure unless a case warrants consideration under the enhanced procedure.[55] Only cases classified as enhanced (or those cases which may transfer to this classification) can be discussed during the DH meetings.[56]

49 See, for instance, *Scozzari and Guinta v Italy* application nos 39221/98 and 41963/98, merits and just satisfaction, (13 July 2000) para 249; the Court itself may recommend or prescribe a certain measure it considers a State should adopt in order to execute a judgment, however, such 'prescriptive judgments' have found to feature in only a small portion of the Court's case law, and are as such highly exceptional. For this, see Donald and Speck, supra n 10.

50 Anagnostou and Mingui-Pippidi, supra n 6.

51 In practice, those who attend the quarterly human rights meetings are often legal experts stationed in permanent representations, or government agents located in ministries of justice or foreign affairs; Çali and Koch, supra n 12 at 308.

52 Sandoval, Leach and Murray, supra n 22, referencing Çali and Koch, supra n 12 at 306.

53 The concepts of action plans and reports was introduced in the Committee's working methods in 2004, and its usage was further clarified in a Memorandum prepared by the Department for the Execution of Judgments of the European Court of Human Rights, see Department for the Execution of Judgments of the European Court of Human Rights, Action Plans—Action Reports. Definitions and Objectives, 3 June 2009, CM/Inf/DH(2009)29-rev, available at: https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805adb14.

54 See the document prepared by the Department for the Execution of Judgments of the European Court of Human Rights, Supervision of the execution of judgments and decisions of the European Court of Human Rights: Implementation of the Interlaken Action Plan—Modalities for a twin-track supervision system, 6 September 2010, CM/Inf/DH(2010)37, available at: https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016804a327f/].

55 The criteria for listing a case under the enhanced procedure are if a case discloses urgent individual measures, major structural problem or complex problem or if it is a pilot judgment or interstate case. For see the Department for the Execution of Judgments of the European Court of Human Rights, Supervision of the execution of the judgments and decisions of the European Court of Human Rights: implementation of the Interlaken Action Plan—Outstanding issues concerning the practical modalities of implementation of the new twin-track supervision system, 7 December 2010, CM/Inf/DH(2010)45, available at https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016804a3e07.

56 Ministers' Deputies/Rapporteur Groups, 'Supervision of the execution of judgments of the European Court of Human Rights: procedure and working methods for the Committee of Ministers' Human Rights meetings', 30 March 2016, GR-H(2016)2-final, available at https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016806303a9 at para 1.3.

The Committee of Ministers has several political and diplomatic tools at its disposal to try and make States to comply with their obligations. Such tools include, for instance, the adoption of interim resolutions; a type of Decision 'aimed at overcoming more complex situations requiring special attention'.[57] When the Committee of Ministers determines that a State has fully complied with its obligation to abide by the Court's judgments, it will close the supervision process and affirm this closure in a final resolution.[58] The Committee of Ministers is supported by lawyers working for the Execution Department.[59] The tasks performed by these lawyers are quite extensive. The Execution Department makes proposals as to the mode of supervision for a case (standard or enhanced) and proposes cases to be discussed during the DH meetings. It further supports these meetings by providing draft decisions and draft resolutions, and when adopted by the Committee, it follows up on these. The Execution Department keeps track of States' progress with regard to the execution of judgments, for instance by monitoring the payment of just satisfaction.[60] All in all, the Execution Department, as has been established elsewhere, 'exerts considerable control, both over the process of supervision (including classification and prioritization of cases) and in terms of assessing the adequacy of state's response[s]'.[61] Interestingly, most cases are dealt with bilaterally between the Execution Department and the States concerned, without involvement of the Committee of Ministers.[62] For those cases classified under the enhanced procedure, the Execution Department may engage with the State authorities more directly, for instance 'by providing assistance in the preparation or implementation of action plans, or providing expert assistance as regards the type of measures to be taken . . . '.[63] Thus, it is the staff from the Execution Department who 'carry out much of the "heavy lifting" in terms of liaising with government representatives and other state bodies . . . '.[64] Finally, and importantly, the Execution Department is the formal point of contact for the various actors involved in the execution process, including NHRIs and NGOs.[65]

B. Rule 9 Communications by NGOs and NHRIs

As noted in the introduction, a formal, institutional role has been devised for NGOs and NHRIs in the execution process of the judgments of the ECtHR. By virtue of Rule 9(2) of the Rules of the Committee of Ministers, NGOs and NHRIs can get involved in this process by submitting written Communications for consideration by the Committee of Ministers. In these Communications, NGOs and NHRIs can review and assess domestic authorities' performance with regard to the execution of judgments. Proce-

57 See the Council of Europe's Glossary of Terms, Council of Europe, 'Glossary of Terms' available at https://www.coe.int/en/web/execution/glossary [accessed 12 September 2019].

58 Ministers' Deputies/Rapporteur Groups, supra n 56.

59 Department for the Execution of Judgments of the European Court of Human Rights, 'Presentation of the Department' available at https://www.coe.int/en/web/execution/presentation-of-the-department [accessed 12 September 2019].

60 Glas, *The Theory, Potential and Practice of Procedural Dialogue in the European Convention on Human Rights System* (2016).

61 Sandoval et al., supra n 22 at 5.

62 Donald et al., supra n 14 at 3; Çali and Koch, supra n 12.

63 Sandoval et al., supra n 22 at 5.

64 Ibid.

65 Glas, supra n 60 at 377.

durally speaking, there are limited constraints attached to the submission of such Rule 9 Communications: there is no requirement of registration, for instance, nor is there a requirement for the submitting NGO or NHRI to be based in one of the signatory States to the ECHR.[66] Communications can be submitted throughout the entire supervision process (from when a case is first transmitted to the Committee of Ministers until its closure) and they be submitted for all cases under supervision, that is, those classified under standard and enhanced supervision. Importantly, as Rule 9(2) Communications can be submitted until the closure of a case by the Committee of Ministers, NGOs and NHRIs can choose to be involved continuously, and submit Communications until the Committee of Ministers decides to close the case.[67] There can thus be a cycle of repeated involvement by NGOs and NHRIs—a glance at the database of the Council of Europe that collects all Rule 9(2) Communications shows that organisations have indeed submitted numerous Communications for the same case.[68]

When a Rule 9 Communication by an NGO or NHRI is submitted, it is processed by the Execution Department. The Department sends the Communication to the respondent State to the case concerned, which has five working days to submit a response. If the State responds within this given time frame, the Communication as well as the response of the State are provided to the Committee of Ministers and are similarly put online and thus made public. If there is no response by the State within these five days, the Communication is not published immediately, but is brought to the attention of the Committee of Ministers. The State in question now has another five days to respond to the Communication and after this time has passed, the Communication is published online, irrespective of the (lack of a) response by the State. If the State has responded in the meantime, its reply is included in the publication. If a State chooses to respond to the Communication after these deadlines, its response is circulated and published separately.[69] Finally, in the event that a State has chosen not to respond at all, the Communication is published by itself, thereby effectively 'punishing' States for their non-cooperation in the form of a lacking response, 'with the presumption that civil society reports that remain unrefuted reflect badly on the state'.[70]

Ever since the creation of Rule 9 in 2006, both NGOs and NHRIs have submitted Communications, with 2019 showing an increase compared to previous years. Overall, however, NGO and NHRI participation through Rule 9(2) is limited, and pales in comparison with the number of cases pending execution and the number of action plans and reports submitted by States.[71] When considering the number of Communications

66 For this conclusion, see Miara and Prais, supra n 13.

67 See the handbook from the European Implementation Network for a comprehensive overview of the rules attached to Rule 9(2): Implementation of Judgments of the European Court of Human Rights. A handbook for NGOs injured parties and their legal advisers, July 2018, available at: https://static1.squarespace.com/static/55815c4fe4b077ee5306577f/t/5d1af89d5758020001327f66/1562048743990/EN_Handbook_EIN_2019.pdf at 5.

68 See for instance the repeated Communications submitted by the NGO Open Society Justice Initiative (and others) for the case of *D.H. and Others v Czech Republic* Application no. 57325/00, merits and just satisfaction, 13 November 2017, in the Council of Europe database that collects all Rule 9 Communications at https://www.coe.int/en/web/execution/submissions.

69 Rule 9(6) of the Committee of Ministers Rules.

70 Donald et al., supra n 14.

71 As the 2019 Annual Report by the Committee of Ministers show, there are 5231 cases pending execution, see supra n 7. HUDOC EXEC reveals that, in total, States combined have submitted 2350 action plans

that have been submitted to date, it can be seen that in particular a great variety of NGOs have made use of the opportunity offered by this Rule 9; indeed, international, national and networks of NGOs have submitted Rule 9(2) Communications. NHRIs have similarly discovered Rule 9(2) and have started to make use of it, although their contributions are significantly limited overall, and in particular when compared to the number of NGO submissions.[72]

Elsewhere it has been shown that NGOs and NHRIs, through Rule 9, act as a kind of *amicus* to the Execution Department and the Committee of Ministers. It was found that Rule 9 gives NGOs and NHRIs the opportunity to offer their insights as to what goes on at the national level, and how they appraise this in light of the execution of the judgment in question. In this respect, NGOs and NHRIs may critically evaluate the information provided by the States in their action plans and reports, and they may provide the Execution Department and the Committee of Ministers with their views on the matter, including on how they think the State should proceed with the execution of a judgment as well as what steps the Committee of Ministers itself could take in this respect. They similarly provide information from the domestic context based on their mandate or expertise. By doing so, they can shed light on what goes on at the domestic level, challenge the information provided by the State or fill a lacuna in terms of the information needed to fully determine the status of execution of a particular judgment. Rule 9 thus presents yet another international mechanism through which NGOs as well as NHRIs can engage in monitoring activities on an international level.[73]

As an illustration of Rule 9(2) Communications, one can consider the Communications submitted for the prisoners' voting cases against the UK. In these cases, the Court found violations on account of a blanket voting ban for prisoners in detention in the UK, including for the cases *Hirst* and *Greens and M.T. v the United Kingdom*.[74] Once these latter two cases where transmitted to the execution phase, they drew the

and 4070 action reports. This can be compared to the number of Rule 9(2) Communications. At the time of writing (October 2020), more than 800 Communications by NGO and NHRIs have been submitted. In the years 2011–2018, the number of submissions by NGOs and NHRIs together hoovers between 47 and 80 a year, with 2016 showing a submission rate of 90. 2019 saw a stark increase, however, with a recorded number of submissions of 133. Interviewees included in this study alluded to the work of the European Implementation Network (see further below) for making the Rule 9(2) procedure more widely known. For the statistics see, Council of Europe, supra n 7 at 70. Overall, however, submissions by NGOs to the Committee of Ministers in only five per cent of leading cases (for this, see Donald et al., supra n 14 at 8); leading cases are those cases revealing new structural and system problems that require the adoption of new general measure so as to prevent similar violations from happening in the future cases. Their implementation is thus vital, as 'unimplemented leading judgment represents an ethical problem for Europe (because of the ongoing violation of human rights); and a practical problem for the Court (because they can lead to repeat applications, which increase the backlog and threaten its ongoing viability). For this see Stafford, 'The Implementation of Judgments of the European Court of Human Rights: Worse Than You Think—Part 2: The Hole in the Roof', *EJIL: Talk!*, 8 October 2019 available at: https://www.ejiltalk.org/the-implementation-of-judgments-of-the-european-court-of-human-rights-worse-than-you-think-part-2-the-hole-in-the-roof/ [accessed 30 September 2020].

72 See e.g. the database of the Council of Europe which registers all incoming Rule 9 Communications, available at: https://www.coe.int/en/web/execution/submissions.

73 For this, see previous work by the author at supra n 14.

74 *Hirst v the United Kingdom (No. 2)* (GC) application no 74025/01, merits and just satisfaction, 6 October 2005 and Greens and M.T. v the United Kingdom applications nos 60,041/08 and 60,054/08, merits and just satisfaction, 11 April 2011.

attention of a great variety of NGO. In total, 10 Rule 9(2) Communications were submitted by NGOs; for some Communications, NGOs joined forces and submitted a joint Communication whereas for others, NGOs submitted their Communication individually. Of the NGOs that intervened, some have a more general mandate, such as the AIRE Centre,[75] whereas other organisations have mandates and expertise that relate specifically to the facts of the cases in question, for instance, the NGOs the Prison Reform Trust and UNLOCK.[76]

To highlight one submission for illustrative purposes, the AIRE Centre, which also acted as a third-party intervener in the *Hirst* case submitted a total of two Rule 9(2) Communications in *Hirst* no. 2. It drew—in one of their submissions of May 2010—the Committee of Ministers' attention to the, in their view, lack of execution of this case. Accordingly, AIRE was of the opinion that the UK had failed to abide by its obligations under Article 46 of the Convention. As such, it urged the Committee of Ministers to 'refer back to the Court the question of whether the UK Government has failed to fulfil its obligations under paragraph 1 of that article, by maintaining the blanket disenfranchisement of prisoners despite the judgment of the Grand Chamber in *Hirst v. UK (No. 2)*'.[77] In December 2018, the Committee of Ministers closed the supervision of the prisoners' voting cases, deciding that the UK had abided by all its obligations with regard to the execution of this case.[78] Evidently, the Committee of Ministers did not take the specific recommendation of the AIRE centre into account.

As an another illustration, the submission by the Dutch NHRI (*College voor de Rechten van de Mens* or CRM) in the case of *Corallo v the Netherlands* can serve as an example.[79] In this case, the Court found a violation of Article 3 of the Convention on account of the degrading detention conditions at a Police Station on the island St Maarten, which is in the Caribbean part of the Kingdom of the Netherlands. In the execution phase of the judgment, the CRM drew the Committee of Ministers' attention to the, in its view, insufficient measures taken by St Maarten to prevent the violations identified in *Corallo* from happening again.[80] Consequently, the CRM considered 'an active role for the Kingdom [of the Netherlands] of utmost importance' as the complex

75 For the AIRE Centre, that specialises in in European Human Rights Law, see https://www.airecentre.org/the-aire-centre.

76 For the Prison Reform Trust, a UK Charity that works 'to create a just, humane and effective penal system' see http://www.prisonreformtrust.org.uk/WhoWeAre; for UNLOCK, a UK charity 'thatProvides a voice and support for people who are facing stigma and obstacles because of their criminal record, often long after they have served their sentence' see https://www.unlock.org.uk/.

77 See the Rule 9 Communication by the AIRE Centre in *Hirst No. 2*, supra n 75, DH—DD(2010)299E, available at https://hudoc.exec.coe.int/eng#\protect\LY1\textbraceleft%22EXECIdentifier%22:[%22DH-DD(2010)299E%22]\protect\LY1\textbracerightat 2.

78 Ministers' Deputies, Resolution Execution of the judgments of the European Court of Human Rights Five cases against the United Kingdom, 6 December 2018, CM/ResDH(2018)467, available at https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016808feca9; for an assessment of these cases, and critique of the Decision of the Committee of Ministers to close this case, see for instance Celiksoy, 'Execution of Judgments of the European Court of Human Rights in Prisoners' Right to Vote Cases' (2020) 20 (3) *Human Rights Law Review* 555, at 575.

79 *Corallo v The Netherlands* application no 29593/17, merits and just satisfaction, 9 October 2018.

80 Het College voor de Rechten van de Mens in *Corallo v The Netherlands*, supra n 76, DH-DD(2019)194 available at: https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680932f11 at 3.

problems persisted.[81] It advised the Committee of Ministers to call upon the Kingdom of the Netherlands 'to step up and ensure implementation of the judgment of the Court'.[82] It accordingly recommended the Committee of Ministers to supervise this case under its enhanced procedure as by doing so, the 'seriousness of the matter' would be recognised.[83] The *Corallo* case is currently being considered under the enhanced procedure.[84]

As noted in the introduction, it is difficult to derive from public sources (e.g. the Rule 9 submission by the CRM and documents relating to the execution of ECtHR judgments held in the HUDOC EXEC database) if the Rule 9 submission played a (decisive) role in, for instance, the initial classification of *Corallo.* Nonetheless, it has been established elsewhere that the information provided by NGOs and NHRIs at times seems to feed into the decision-making of the Committee of Ministers, not in the least because the Execution Department directly relies on this information in preparing the necessary documents for the Committee of Ministers. Moreover, the Committee of Ministers appears to be prepared—though not always—to include visible references to information submitted through Rule 9 submissions in a number of its documents. Such visible referencing ranges from explicit reliance upon the information provided to calling upon the authorities to respond to a Communication or to simply making mention of the existence of the Communication—though there may also be no references at all. Nonetheless, this gives the impression that Rule 9 Communications form a (useful) part of the execution process of ECtHR judgments.[85]

The present study builds on these findings with the aim of more fully establishing the role played by Rule 9(2) Communications in the execution process and if, and to what extent the Rule 9(2) procedure works to advance the execution of judgments of the ECtHR. To that end, it investigates how relevant actors perceive the impact of this Rule 9.

4. EMPIRICAL FINDINGS: RULE 9 AND ITS PERCEIVED IMPACT ON THE EXECUTION OF THE JUDGMENTS OF THE EUROPEAN COURT OF HUMAN RIGHTS

This section gives insight into the data obtained through conducting interviews with users and actors to which the Rule 9 procedure is relevant. As all relevant actors in relation to Rule 9 have been included in the empirical study, the results of the interviews can be used to construe an all-round user-based perspective, allowing for an empirical rather than merely theoretical description of the perceived impact of the Rule 9 procedure. In turn, this method enables fitting the findings of this research into wider debates—albeit specifically tailored to the ECHR context—on civil society engagement with international human rights bodies for the purposes of implementation.

81 Ibid.

82 Ibid 4.

83 Ibid 4.

84 For this, see the HUDOX Exec page at https://hudoc.exec.coe.int/eng#\protect\LY1\textbraceleft%22fulltext%22:[%22corallo%22],%22EXECDocumentTypeCollection%22:[%22CEC%22],%22EXECIdentifier%22:[%22004--50579%22]\protect\LY1\textbraceright.

85 Erken, supra n 14.

The findings show that overall, in respect of Rule 9(2), two levels of impact can be discerned. First, Rule 9 Communications are perceived to have an impact at the level of the ECHR, that is, at the level of the Execution Department and the Committee of Ministers. Secondly, they are perceived to impact the national level. In respect of the latter, two distinct impact levels can be identified, that is, Rule 9 Communications can have an impact on a State's governmental machinery and, although to a lesser degree, on a more societal level. Drawing on the empirical findings, these two levels of impact are discussed below.

A. Rule 9 at the European Convention Level: The Execution Department

As has been noted in section 3, most of the ECtHR cases awaiting full execution are dealt with bilaterally between the Execution Department and the State concerned. The impact Rule 9(2) Communications have at the Execution Department is therefore of particular interest. This section thus elucidates the role played by Rule 9(2) Communications in cases dealt with by the Execution Department, that is, cases under standard supervision as well as those under enhanced supervision, some scheduled for examination at a DH meeting. In this regard, as the interviews reveal, Rule 9(2) Communications form part of the regular working practices at the level of the Execution Department. Rule 9(2) is regarded as a valuable procedure and a useful addition to the execution process. Indeed, interviewees at the Execution Department were unanimous in their recognition of the important role of Rule 9(2) Communications. The interviewees confirmed that incoming Rule 9 Communications are read and considered to be part of the case file. What is more, it was specifically noted that they are used by the lawyers in their assessment of the status of execution of judgments. The Communications are thereby perceived as strengthening the analysis of the progress of the execution process as they help to ensure that information from various sources is received.[86]

In this regard, it was observed that, as an international institution, the Execution Department finds itself geographically removed from the States it supervises; something that is difficult to compensate for. Moreover, as each lawyer is responsible for the supervision of a great number of cases, the Execution Department cannot undertake its own 'detailed fact-finding, let alone regular country visits, for all cases under follow-up'.[87] Rule 9 Communications by NGOs and NHRIs are perceived to remedy this to some extent.[88] Therefore, perhaps surprisingly so, the increase in the number of Rule 9 Communications submitted—which does add to the already heavy workload of the lawyers at the Execution Department—was not regarded as burdensome, provided that the submitted Communications are of sufficient quality (see further below on this point).[89] Indeed, the Communications are seen to provide the lawyers with a separate source of information, that is, information from the ground, which supplements and may shed a different light on the information provided by the States in their action plans and reports.[90] Interviewees pointed out that States often provide theoretical submissions on particular existing legislation and the information provided through

86 E.g. lawyers 1, 2 and 3 Execution Department. See also Donald et al., supra n 14.
87 Donald et al., supra n 14 at 4.
88 Lawyer 3 of the Execution Department; this finding finds support in Donald et al., supra n 14.
89 Lawyer 2, 3 and 6 of the Execution Department.
90 Lawyers 2 and 5 of the Execution Department.

Rule 9 complements this. In particular, it was emphasised that Rule 9 Communications by NGOs and NHRIs often include more practical implications of a certain law, policy or measure.[91]

As an illustration, one can consider the *Gubacsi group of cases v Hungary*—a group of cases that relate to ill-treatment of applicants at the hands of the police, and in some cases, lack of adequate investigation into that treatment.[92] In *Gubasci,* for instance, the Court determined that the applicants' rights had been infringed upon due to ill-treatment by the police, and accordingly, it found a violation of Article 3.[93] In the execution process of this judgment, among other actors, the Hungarian Helsinki Committee (HHC) submitted a Rule 9(2) Communication. The HHC, 'an independent human rights watchdog organisation' had also represented a number of applicants from this group of cases before the Court.[94] In their Communication the HHC noted, among other things, that the action report by the government informed the Committee of Ministers that over a 1000 image recording devices were installed in police cars. In responding to this information, HHC remarked that, as there are well over 9000 police vehicles, this meant that only 12.2 per cent of police cars were equipped with such devices. Continuing on this, the organisation further submitted that recent data provided by the National Police Headquarters showed that only 494 of those devices were actually operational and that even fewer devices were capable of recording both imagine and sound.[95] Such attention to the practical effects of new measures in Rule 9(2) Communications can thus help put matters into perspective, especially those matters that may look adequate on paper, but may not necessarily be so in practice.

Thus, the information provided through Rule 9 submissions can show how Rule 9 submissions can complement information provided by States or show diverging success of measures adopted. In such a scenario, the Execution Department can compare the Rule 9 Communication to the information submitted by the State and make its own assessment. As another example, one interviewee mentioned a case concerning the degrading treatment of an unaccompanied foreign minor in which the NHRI of the country in question requested, prior to the classification of this case, for this case to be considered under the enhanced procedure. Also against the background of this request, and despite the State's initial opposition to this classification, the case was classified as enhanced.[96] This thus shows the importance of having actors other than the States involved in the ECHR reporting process, early on in the process of classification and in the supervision process itself. As some interviewees noted, States could be willing to paint a positive picture of the situation at hand.[97] After all, as one interviewee noted,

91 Lawyer 5 of the Execution Department.

92 See, CM/Notes/1383/H46–9, *Gubacsi group v. Hungary* Application No. 44686/07, 'Notes on the Agenda' available at: https://hudoc.exec.coe.int/eng#\protect\LY1\textbraceleft%22EXECIdentifier%22:[%22CM/Notes/1383/H46-9E%22]\protect\LY1\textbraceright.

93 *Gubacsi group of cases v Hungary* Application no. 44686/07, merits and just satisfaction, 28 September 2011 at paras 3 and 42.

94 The Hungarian Helsinki Committee in the *Gubacsi group v. Hungary*, DH-DD(2020)394, available at: https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016809e4ad2 at 1.

95 Ibid at 2.

96 Lawyer 4 of the Execution Department.

97 Lawyer 2 and 3 of the Execution Department.

States have to think about their 'human rights PR'.[98] Yet, the lawyers at the Execution Department are similarly mindful of the fact that NGOs may, in turn, present a situation more grim.[99]

In addition, and on a different note, Rule 9(2) Communications were regarded particularly valuable for those lawyers at the Execution Department who do not have the nationality of the countries they supervise, which may hamper them in their own efforts of verifying information submitted to them.[100] This does not mean that Rule 9 Communications are not useful for those lawyers who do work on States of which they are a national, to the contrary; as one interviewee mentioned, it is certainly possible to check local NGO reports, the media, and country reports of, for instance, the Venice Commission etc. for the human rights situation in a particular country. However, as the interviewee emphasised, this is not the same as receiving a Rule 9 Communication, since the latter contains information that is specifically tailored to a judgment of the ECtHR, and thereby addresses the specific domestic human rights problem that was at the heart of the ECtHR judgment.[101] In addition this, interviewees pointed out that by the time they are assigned to supervise the execution of a case, the facts of that case have occurred quite some time ago. The value of Rule 9 Communications is that they can provide updated information on the specific human rights context, and can help to show and illustrate, for example, that 10 years after a judgment a certain problem still persists.[102]

Finally, the interviews disclosed that the extent to which weight is given to a submission, or the extent to which the Rule 9 Communication has an impact on the process at the Execution Department, depends particularly on the focus, quality and tone of the submission. In this sense, the weight given to submissions does not, for instance, depend on whether the submission was submitted by an NGO or NHRI,[103] though some noted that NHRI submissions could be regarded as more constructive, neutral and objective,[104] at least—they thought—in the perception of government representatives.[105] What is of influence on a submission being deemed a 'quality' submission is whether it is concise and focusses on the judgment and is thus not overbroad or beyond the scope of judgment.[106] Further, those Communications that use abusive terms are considered to be less credible.[107] If they are perceived to be of this nature, references to the contents of the Communications may not be included in the documents brought before the Committee of Ministers.[108]

98 Lawyers 2 of the Execution Department.
99 Lawyer 3 of the Execution Department.
100 Lawyers 3 and 4 of the Execution Department.
101 Lawyer 6 of the Execution Department.
102 Lawyer 3 of the Execution Department.
103 Lawyer 2 of the Execution Department.
104 Lawyer 4 of the Execution Department; one lawyer, however, remarked that not all NHRIs can be regarded as independent, thereby referencing one particular NHRI that was seen as being on the hand of the government. A submission from this institution would not be regarded as credible.
105 Lawyer 2 of the Execution Department.
106 Lawyers 3 and 5, 6 of the Execution Department.
107 Lawyers 6 and 7 of the Execution Department.
108 Lawyer 6 of the Execution Department.

Important to remark here is that one interviewee pointed out that in order for both NGOs and NHRIs to submit Communications considered helpful to the Execution Department, it is important for NGOs and NHRIs to be well-informed of the workings of the Rule 9 procedure, so that they understand what sort of information and submissions are helpful and appreciated.[109] Therefore, in 2019, the Execution Department has made the Rule 9 procedure more visible by the launch of a webpage on Communications by NGOs and NHRIs.[110] Further, lawyers from the Execution Department thereby applauded the work of the European Implementation Network (EIN). EIN 'serves as a hub and a resource for a broader network of European NGOs who seek to engage constructively with every part of the Council of Europe that can contribute to better implementation of judgments, while also pursuing vigorous national-level implementation advocacy'. According to the Execution Department lawyers, EIN has been instrumental in not only in getting the Rule 9 Procedure to be more widely known with NGOs, but also advising NGOs on how to achieve quality submissions.[111]

B. Rule 9 at the European Convention Level: The Committee of Ministers

Only few cases are discussed by the Committee of Ministers in the context of the DH meetings, in which government representatives take part.[112] As the interviews reveal, also here there is a place for Rule 9(2) Communications. In this context, government representatives consider Rule 9 Communications to be part of the execution process and see a role of Rule 9 Communications the preparation of the DH meetings and at the DH meetings themselves. In preparation for the DH meetings, time permitting, government representatives find reading the Rule 9 Communications submitted for those cases that are discussed for that meeting helpful. Mostly, the Communications are seen to provide the representatives with more background information on the particular issue at stake.[113] In that sense, in having to assess the execution status of judgments against other States, a Rule 9 Communication can provide yet another source of information and a different perspective in that regard.[114]

Yet, whilst appreciating input through Rule 9(2), representatives noted to be mindful of where this content comes from. Indeed, it was put forward that NGOs are, overall, critical of States and that even though there may have been positive developments,[115] not all NGOs will make mention of this. Although NGOs are not necessarily criticised for this (being critical is accepted to be part of their 'mandate'), it does require that NGO input is balanced with other sources.[116] In line with this, one representative noted that he may treat submissions that come from NHRIs, as opposed to NGOs, differently. If the submitting NHRI has been A-status accredited, a submission by it can get more starting credit, and the benefit of the doubt. According to this representative,

109 Lawyer 5 of the Execution Department.

110 Department for the Execution of Judgments of the European Court of Human Rights, Communications by NHRIs/NGOs, available at: https://www.coe.int/en/web/execution/nhri-ngo [accessed 6 July 2020].

111 Lawyers 2, 3, 5 and 6 of the Execution Department; For more information about the European Implementation Network, see their website, available at: http://www.einnetwork.org/.

112 Government representative 1 noted that about 15 cases are discussed in the context of DH meetings.

113 Government representative 2.

114 Government representative 2, 4.

115 Government representative 2 and 3.

116 Government representative 2 and 6.

NHRIs have the advantage of being pragmatic and being more realistic in their requests when compared to NGOs. It was thought that this could come from their deeper understanding of the State and the domestic execution process, partly due to their establishment in close proximity to the State.[117] This close proximity to the State was also positively noted by another representative who stipulated that because of the special relationship between the NHRI and the State, the NHRI notified the State that they were preparing a Communication, as a sort of heads up, without sharing its content.[118]

The information received through Rule 9(2), if deemed reliable (for instance because the submitting organisation is considered 'reputable'[119]) and meeting other conditions (e.g. not too long[120]), can further be used to strengthen their interventions towards other States, for instance by asking questions or making statements about matters raised in a Communication.[121] As an illustration, one representative referred to a Rule 9 Communication by an NHRI in which that Institution asked for more resources to address a particular issue, which resulted in interventions along the lines of: 'even your *own* Institution is recommending you need to spend more resources on this'.[122] As an another example, in one Communication, the intervening actor had drawn attention to the fact that in assessing a certain issue, the State had been using a wrong baseline in its statistics. In the DH meeting, this mistake was acknowledged by the government in question.[123] Important for Rule 9(2) Communications to play a role in the DH meetings, however, is that Communications are submitted in time, that is, well ahead of the DH-meeting, so that the documents can be included in the preparatory materials for that meeting.[124]

When receiving a Communication that relates to a case against their own State, the government representatives' perception of a Rule 9 Communication may be less positive. Of course, as was pointed out by one representative: if you are prepared to use Communications in your interventions towards other States, you must also be prepared to receive them for your own cases.[125] Nevertheless, representatives sometimes consider such submissions bothersome as it needs to be determined whether they should receive a response, which results in extra work (see further section 4.2 on this).[126] Yet also in these scenarios, Rule 9 Communications are considered part of the working practices. Moreover, as one representative mentioned, the Communications that have been submitted in relation to their own State can be helpful, as they prepare government representatives for potential questions that can be asked by other States in their interventions. As this representative put it: in a way, the Rule 9 Communications

117 Government representative 6.
118 Government representative 4.
119 Government representative 2.
120 Government representative 6.
121 Government representatives 1, 2 and 6; in some interviews, positive references were made to briefings organised by EIN (see supra n 110), that bring together NGOs and government representatives to discuss cases scheduled for the DH meeting.
122 Government representative 2.
123 Government representative 6.
124 Government representative 4 and 5.
125 Government representative 6.
126 Government representatives 1 and 3.

show what sort of criticism may be expected during the DH meeting or may shed light on things the government has omitted in its own reports in the execution process.[127]

In respect of the decision-making during the DH process itself, when considering a case, the Committee makes an overall assessment of it, based on all available information. This also means that although Rule 9 Communications may not be discussed individually, they are taken into account.[128] As noted by one representative, in doing so, Rule 9 Communications can enrich the discussions the government representatives have during the Committee meetings. As noted previously, the inclusion of Rule 9 Communications in the materials can strengthen the debate in the DH meeting as it allows States to ask each other informed and meaningful questions.[129] However, at least for one government representative, in the actual decision-making (e.g. in the adoption of Decisions and Interim Resolutions), recommendations made by Rule 9(2) Communications appear to play a limited, rather illustrative, role. As noted by this representative, recommendations contained in Communications are used or referenced if it confirms an idea or decision that the Committee already had envisioned.[130] Still, it is thought that such a reference to a Rule 9 strengthens the decision or interim resolution reached by the Committee of Ministers.[131] As was noted, it can be considered more 'relevant' to follow-up on a recommendation if it is supported by both the Committee of Ministers and the NGO.[132]

To illustrate in what way Rule 9(2) input finds its way into the Committee of Ministers decision making, and what references to civil society involvement may look like, one can consider the *Gubacsi* group of cases, discussed above. Based on the information provided by the NGO on the (lack of) video equipment of police cars, the Committee was able to encourage the authorities to increase their efforts towards equipping a maximum number of police vehicles with operating sound and image recording devices and to extend the use of body cameras within the police force.[133]

As a further example, the outcome of the March 2020 DH meeting can serve as an illustration, where the cases of *Tysiac* and *R.R. v Poland* were discussed. Both cases concerned lack of access to procedural mechanisms to enable women to effectively access lawful abortion on grounds of maternal or foetal health. *Tysiac* concerned the refusal to perform a therapeutic abortion, despite serious risk of deterioration of the mother's eyesight and in *R.R.*, the Court found a violation on account of lack of access to prenatal genetic tests, which resulted in the applicant's inability to have an abortion on grounds of foetal abnormality.[134] In supervising the execution of these cases, the Committee of Ministers explicitly referenced and relied on information submitted through Rule 9. It issued the following Decision:

127 Government representatives 2, 5.
128 Government representative 5.
129 Government representative 6.
130 Government representative 5.
131 Government representative 5.
132 Government representative 5.
133 See, CM/Notes/1383/H46–9 in the *Gubacsi group v. Hungary* Application no. 44686/07, Notes on the Agenda, available at: https://hudoc.exec.coe.int/eng#\protect\LY1\textbraceleft%22EXECIdentifier%22:[%22CM/Notes/1383/H46-9E%22]\protect\LY1\textbraceright at 5.
134 *Tysiac v Poland* Application no 5410/03, merits and just satisfaction, 24 September 2007; *R.R. v Poland* application no 27617/04, merits and just satisfaction, 28 November 2011.

> [i]n light of the lack of the reform of the objection procedure and the continuing concerns as to its effectiveness, expressed by the Council of Europe Commissioner for Human Rights, the Polish Commissioner for Human Rights and civil society, strongly urged the authorities to adopt the necessary reforms without further delay.[135]

The following excerpt, taken from the Decision by the Committee of Ministers in the case of *P. and S. v Poland*, which also concerned access to legal abortion, may similarly serve as an illustration of this, since the Committee mentioned that it had

> noted with interest the intention of the authorities to amend the Medical Professions Act [and] strongly encouraged the adoption of [an amendment to the Medical Professions Act] without further delay, taking into account comments made in this respect by the Council of Europe Commissioner for Human Rights, the Polish Commissioner for Human Rights and civil society.[136]

Thus, to briefly conclude, Rule 9 Communications have a role to play at the Committee of Ministers, in the preparations of the DH meetings as well as during the DH meetings themselves, though this may depend on whether the recommendations in Communications are perceived as strengthening the argumentation of the Committee itself. Important overall is that the role Rule 9 can play also depends on whether Communications are submitted in time before the DH-meeting and on their perceived quality and credibility.

C. Rule 9 at the National Level

A further important finding of the interviews is that the submission of a single Rule 9 Communication can bring about considerable mobilisation of the government machinery on the domestic level. One of the government representatives explained that for governments, replying to a Communication can be important, for instance to refute allegations made in the Communication regarding a lack of execution.[137] Lack of time is therefore an explanation for why certain Communications do not receive State response.[138] Yet, if a response is given, as several government representatives explained, various governmental actors are engaged to discuss the contents of the Communication to decide if it requires a response from the State and if so, what the appropriate response

135 1369 meeting (DH) March 2020—H46–20 *P. and S. v. Poland* (Application No. 57375/08), available at: https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016809cc898; this example is the authors own selection. As this example shows, the Council of Europe Commissioner for Human Rights is similarly empowered to submit Communications, as are other international institutions, like the UNHCR. As this article focuses on NGO and NHRI submission, a further elaboration on submissions by these actors is beyond the scope of this paper.

136 1369th meeting, 3–5 March 2020 (DH); H46–20 *P. and S. v. Poland* (Application No. 57375/08) https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016809cc898.

137 Government representative 3; on the 'punitive' character of Rule 9 Communications that go unanswered, see Donald et al., supra n 14.

138 E.g. Government representative 3.

should be.[139] Such a discussion can take place on an interdepartmental level and may thus include various ministries, depending on the human rights issues at stake (e.g. the Ministry of Justice or the Ministry of Education).

This was confirmed by one of the NGO representatives, who stipulated that, in his experience 'a Rule 9 submission forces an interdepartmental exchange between domestic ministries; in order to respond to a submission, or to an intervention based on a submission, ministries need to get in touch with each other and report on what is going on'.[140] He assumed that after his organisation submitted a Rule 9 Communication, diplomats in Strasbourg of the country in question had to reach out to their colleagues at Foreign Affairs who, in turn, had to contact the Ministry of Justice to request information on the status of execution in order to respond to the Communication and to update the Committee of Ministers.[141] As no developments had taken place with regard to the execution of the particular judgment before the NGO submitted the Rule 9 Communication, the NGO representative assumed that the governmental exchange and the ensuing investigation into the issues raised were related to the action the NGO had taken.[142] Similarly, when governments are taking steps that go against earlier recommendations of the Committee of Ministers, NGOs can feel empowered by the Committee of Ministers in their communication with the State where they advocate against such reforms. As one NGO representative explained, they can rely upon recommendations of the Committee of Ministers and remind the State of these, and accordingly advise the State on what it cannot do, thereby using the opinion of the Committee of Ministers in their arguments to advocate for reform.[143]

The obligation for the States to submit information to the Committee of Ministers is further perceived to have another advantage, as pointed out by one of the NGOs: Rule 9 can be an 'important ... communication tool ... to get information from the government ... when they stop providing [such] information' on the national level.[144] Indeed, as an example, the NGO mentioned that when statistical information was no longer available on the national level, it knew that the government would still have to provide such information to Strasbourg. Consequently, they 'waited until the government submitted [it] to Strasbourg and we used the submission from [the government] as an important information source that we ourselves were not provided with'.[145] In addition to this, the interviewed representatives of NGOs and NHRIs perceived the Rule 9 procedure to operate as a tool of pressure, which they can use to achieve an impact in terms of judgment execution. One of them explained this by stating that Rule 9 can be seen as a means to push the State, which forms part of the international law toolbox of naming and shaming.[146] In this respect, Rule 9 Communications were considered to be particularly helpful when there was a perceived

139 Government representatives 1, 2, 4 and 5.
140 NGO representative 1.
141 NGO representative 1.
142 NGO representative 1.
143 NGO representative 2.
144 NGO representative 2; this use of Rule 9(2) finds support in the research findings by Dothan, supra n 14 at 176.
145 NGO representative 2.
146 NGO representative 3, 8; NHRI representative 2.

lack of will to execute certain measures needed to execute a particular judgment.[147] By making use of Rule 9, according to one representative, governments are made aware of the fact that 'somebody is watching what [the States] are doing'.[148] As demonstrated by an another NGO representative, governments may indeed feel pressured by a Rule 9 submission

> [I know] directly from the people at the ministry that they are taking it seriously, and they note . . . what we are writing and I think for the last year, our relationship with the government deteriorated because they are unhappy about what we are writing to Strasbourg.[149]

Yet, in spite of this deteriorating relationship, the NGO representative confirmed that he still considered it useful to submit Rule 9(2) Communications.[150]

Further, as was noted, for a Rule 9 Communication to have an actual impact on the execution process domestically it needs 'to find its way into the domestic processes'.[151] Accordingly, resources allowing, NGO representatives showed awareness of the importance of engaging with the government regarding a follow-up, in one way or another. However, interviewees also mentioned that the true impact on the national level that can be achieved through Rule 9 depends on the national attitude towards Strasbourg. In those countries not prone to international criticism of an institution like the Committee of Ministers, a raised finger of the Committee of Ministers may not have much of an impact.[152]

As expressed by some NGO and NHRI representatives, there were also instances where NGO and NHRI representatives were approached by the media, for instance, after the submission of a Communication; [153] as one of them noted:

> I got interviewed for . . . a national paper . . . they referred to the submission . . . and asked me more about how the data gathering is going . . . . So, indirectly yes . . . we got this media attention because of the DH meeting[154]

Overall, it was noted that it is difficult for Rule 9 Communications to have any sort of public resonance.[155] As noted by another NGO representative, '[the Rule 9 procedure] is something that only people who are . . . somehow directly involved in this issue pay attention to . . . it is mostly the people of civil society, sometimes academia, public officials . . .'.[156] Further important factors that were considered to account for this is that cases pending implementation often involve complex execution matters and that

147 NHRI representative 1; NGO representative 3.
148 NGO representative 4.
149 NGO representative 2.
150 Ibid.
151 NGO representative 1.
152 State representative 6.
153 NHRI representative 1; NGO representative 2 and 4.
154 NGO representative 2.
155 E.g. NGO representative 2, 6, 7.
156 NGO representative 2.

it may be hard to make a human interest story out of law reform.[157] Further, it may be so that the case in question and the Court's decision is unpopular in a country and that any sort of follow-up would therefore result in negative comments.[158] Finally, it was considered that overall, the execution process as such is not well-known. One of the government representatives illustrated this by expressing that he had had to explain his work in the Committee of Ministers and the execution process more generally to one of the senior judges of his country.[159] Similar observations were made by NGO representatives, one of whom noted that,

> when the ECtHR brings the decision, the [public] think it is . . . over. They do not realize that there is another [part] that comes to life . . . . But people do not think about it, because probably they do not know about it, so we try to raise awareness about the execution process.[160]

Indeed, as noted by another NGO representative: 'it is easier to bring media attention to Court rulings. Whereas the Committee of Ministers . . . it is very difficult to give it any attention'.[161] Nonetheless, as stated by another representative, 'we always publish the decisions, and make [a] press release and we of course explain what the decision means to the public in very simple words, [but] we do not cite the whole decision [as] there is very little interest in that'.[162] This also goes for those who are affected by human rights violations: '[w]hen I have [someone who is suffering] I cannot say to her, do not worry, I will send a report to the Committee', since the Committee of Ministers is hardly known to the citizens in the States.[163] In this respect, as noted by one of the NGO representatives, it is important to keep in mind that 'every decision-maker . . . has certain limits in terms of what they can do . . . I just think that we should not perceive the Committee of Ministers as someone who can solve our problems. No, the primary battle is here, in [our State]. And sometimes Strasbourg can help'.[164]

Still, NGO and NHRI representatives see submitting Rule 9 Communications as part of a strategic package and of a sophisticated advocacy campaign. All NGOs and NHRIs confirmed that they would be willing to submit another Rule 9 Communication for a next reporting cycle, resources and strategic considerations permitting. As was pointed out by one NGO representative, a successful advocacy campaign entails that multiple bodies to pressure States on the same point. The State should get 'hassled' in Geneva in relation to obligations under the UN and then again in Strasbourg so as to keep the issue on the agenda and submitting a Rule 9 Communication is part of this process.[165] Indeed, although this 'does not mean that the Ministry is always doing

157 NGO representative 1.
158 NGO representative 2; NHRI representative 3.
159 Government representative 4 and 6.
160 NGO representative 4.
161 NGO representative 6.
162 NGO representative 7.
163 NGO representative 7.
164 NGO representative 2
165 NGO representative 1.

everything . . . the Committee says but at least they are trying to be perceived like that and . . . in advocacy, the first step towards success is to put the issue on the agenda'.[166]

Moreover, despite limitations identified above, use is made of the Rule 9 procedure domestically. Following up on the outcomes of the reporting practice forms part of the toolbox of these organisations, with at times, success. Indeed, the outcome of the reporting process can be used in national advocacy efforts, such as a Decision, which 'creates a source of, advocacy tools, proofs for us, for some obligations of the institutions'.[167] As done by one NGO, they print and distribute the decision and include it in their advocacy efforts to those institutions that need to reform.[168] Another way of using submissions as an advocacy tool can be that they are used to approach national parliamentarians. In turn, these parliamentarians can take up the issues identified by the NGO in national parliament, or, in the case of some NHRIs whose mandate is also to inform parliament of their activities, they can refer to their Communications in their annual briefings.[169]

As a final note, it is important to note here, as one NGO representative explained, that in order to use the follow-up documents of the Committee of Ministers for the purposes of national advocacy, they need to have 'precise and direct recommendations from the Committee, because it is easier for us to communicate to the public: look, the Committee told the government to introduce [legislation] and we can just show it, rather than a recommendation being like: "provide effective measures and remedies . . . to enforce [rights]"; this means nothing, because they can interpret this in every way they like to'.[170]

D. Concluding Remarks on Findings

In brief, the findings above have elucidated the role played by Rule 9 Communications in the eyes of its users. Doing so has revealed that Rule 9 Communications are seen to have various functions, that range from Rule 9 being an important source of information, a tool of pressure, being a source of government mobilisation and, for NGOs and NHRIs, a tool of advocacy. Yet, the Rule 9 procedure is also perceived to have certain limitations, which are owed to the execution process as such, which is not well-known, and the authority and influence of the Committee of Ministers.

5. CONCLUSION

This study has empirically examined the impact of Rule 9(2) of the Committee of Minister Rules on the execution of judgments of the ECtHR. It has done so within a framework of earlier empirical studies that have established the importance of the participation of civil society actors like NGOs but also NHRIs in international human rights monitoring processes. Indeed, NGO and NHRI participation in the UN system has been reviewed positively, as these actors bring valuable information to the international level through the reporting processes on States' human rights performance.

166 NGO representative 2.
167 NGO representative 7.
168 NGO representative 7.
169 NGO representative 3, 5; NHRI representative 2.
170 NGO representative 7.

Importantly for the implementation for human rights, these actors are known to further utilise and follow-up on the outcomes of this reporting process, thereby pressuring for better human rights compliance. Understanding the impact of Rule 9 on the execution process and whether Rule 9 facilitates a cycle of reporting and pressuring for change is important in light of assessing if and how that Rule works to advance the execution of judgments of the ECtHR.

Many of the empirical findings of this study fit well with this established body of literature on human rights implementation, reporting mechanisms and civil society mobilisation. Indeed, like those studies have shown for other mechanisms, the Rule 9 procedure created within the ECHR system allows NGOs and NHRIs to submit reports—Communications—for the consideration of the Committee of Ministers. This mechanism thus permits them to formally engage in the process of judgment execution, which can theoretically start-off a cycle of 'reporting' and pressuring. The present research adds to the existing body of literature by empirically mapping and outlining the reporting procedure under Rule 9 for the ECHR system and its perceived impact.

First, this research has made clear how the Rule 9 procedure is perceived to have an impact on the process of execution of judgments, both at the ECHR level (the Execution Department and the Committee of Ministers) and at the national (governmental) level. On the ECHR level, Rule 9 Communications inform the work of the lawyers at the Execution Department and are seen as an important source of information that can complement or contradict information provided by States. Thus, Communications can help paint a more complete picture of the status of the execution of a particular judgment. According to those involved, the Communications can further feed into the decision-making process by the Committee of Ministers for the purposes of the preparation for DH meetings and, when aligned with earlier determinations of the Committee of Ministers, they can be included in its formal documents as an illustration from the ground or as a way to strengthen and legitimise the output of the Committee of Ministers. On the domestic level, the findings show that the submission of a Rule 9 Communication has the potential of mobilising domestic governmental actors, such as the relevant ministries, that need to decide on a consolidated State response (if any) to the Communication in question. Yet, the degree to which Rule 9 Communications have an influence on this aspect of judgment execution appears to depend on the perceived quality and credibility of Communications and, practically speaking, on whether they are submitted ahead of the DH meetings so that they can be included in the preparatory materials for that meeting.

Second, in addition to shedding light on the impact of Rule 9 at the Execution Department, Committee of Ministers and on the national governmental level, this article also offered insight into the extent to which the Rule 9 procedure can enable NGOs and NHRIs to engage in a reporting and pressure cycle in relation to ECtHR judgments. It has been shown in particular that NGOs and NHRIs perceive Rule 9 to function as a tool of pressure. In that sense, Rule 9 is perceived to fit within their larger international advocacy toolbox, and it is accepted that the procedure can be used to show the government that other (domestic) actors remain vigilant as regards States' performance with respect to judgment execution. As with other international reporting mechanisms, it can be derived from the data obtained from the interviews that

NGOs and NHRIs can use the Rule 9 procedure to add their discourse to the debate on judgment execution and seek international support for their stance in this respect. Bypassing their own State, they can use Rule 9 to seek support from the Committee of Ministers with the aim of having the latter bring outside pressure on their State.[171]

In addition, the importance of being able to exert pressure on States in the wake of an international reporting process is something that NGOs and NHRIs are keenly aware of, also in relation to Rule 9. Indeed, the interviewed NGO representatives reported the inclusion of their Rule 9 Communications—strategic considerations allowing—in their national advocacy efforts and their activities related to the following up on outcomes of the supervision process at the Committee of Ministers. For instance, they may rely upon such outcomes to support their arguments in favour of making legislative or policy changes. This is done, for instance, by pointing out that certain steps a State intends to take are not in conformity with decisions of the Committee of Ministers and by including the Decisions of the Committee of Ministers in discussions with those domestic institutions that need to carry through reforms.

Nevertheless, the question remains as to whether the Rule 9 procedure suffices to fully trigger the reporting and pressuring cycle as it has been stipulated in the literature. In this regard, the interviews have shown that some improvements can be made, since there are a number of perceived constraints that can be seen to limit the degree to which Rule 9 facilitates such a cycle. Most importantly in this respect, the execution process of the Court's judgments is relatively unknown and it can be rather difficult to use the outcome of the reporting process at the Committee of Ministers as a source for advocacy. Importantly in this respect is that the perceived authority and influence of the Committee of Ministers make that the Rule 9 procedure does neither lend itself for 'hard pressuring', partly because of the broad statements and recommendations issued by the Committee, nor for seeking and generating media attention in the wake of a DH meeting. In that sense, the Rule 9 procedure appears to mainly form part of an institutionalised 'expert game', with those focused on or charged with judgment execution acting as the main players. Finally, although the interviewed NGO and NHRI representatives noted examples of how Rule 9 Communications could resonate beyond (governmental) institutions, for instance in the media, these situations were often anecdotal in nature and it is not clear to what extent they reflect that structural changes are made in national law and policy.

The findings and limitations above have been identified on the basis of interviews with important stakeholders, from which qualitative conclusions have been drawn. Indeed, a red thread throughout this study has been the *perceptions* of the stakeholders. This means that there is still scope for future research. Such research could, for example, attempt to trace the quantifiable impact of Rule 9 Communications (what do statistics say about cases in which Rule 9 Communications have been submitted?) and uncover whether there is any relation to be discovered in patterns of execution and Rule 9(2) submissions. Such important questions notwithstanding, it can be concluded on the basis of the present research that the Rule 9 procedure has a useful and important function at the level of the ECHR and at the national level, to the extent that a Rule 9 Communication mobilises government actors for the appropriate response to that

171 Krommendijk, supra n 15 at 495.

Communication. The procedure can be seen to contribute to, in part, the existence of a 'reporting and pressuring cycle', that could help increase the effectiveness of the execution procedure, though, changes and further developments are needed to fully optimise its functionality.