



National parliaments as guarantors of human rights

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*Capacity Building Webinar
for the staff of the Parliament of Serbia
on the role of national parliaments in implementing
the Convention and judgments of the European Court of Human Rights (ECtHR)*

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Outline

- Why does parliamentary engagement with human rights matter?
- Key functions of parliamentary human rights bodies
- Different ways of organising parliamentary human rights work
- The importance of independent legal advice

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Why are parliaments “guarantors” of human rights?

- Preventative and remedial dimension
 - robust **legislative** framework
 - **Oversight**: holding government to account for its action or inaction in protecting human rights
 - creating space for **civil society engagement**
 - defending the **rule of law**
- Legitimacy
 - raising the **political visibility** of human rights issues
 - countering perception that legislative or policy changes in response to human rights judgments lack **democratic legitimacy**

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Functions of parliamentary human rights bodies

■ Does your parliament carry out the following human rights functions, whether through a specialised committee or a different arrangement? Does it:

- ▶ scrutinise draft legislation for compatibility with international human rights law, including the provisions of the European Convention on Human Rights (the Convention) and its protocols?
- ▶ legislate to give effect to judgments of the European Court of Human Rights (the Court)?
- ▶ monitor the executive's implementation of Court judgments, and its response to judgments against other states which have implications for the domestic legal order?
- ▶ get involved in the drafting and ratification of international human rights treaties?
- ▶ conduct thematic inquiries into human rights problems?

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Parliamentary oversight of the executive

■ Has your parliament given detailed guidance to the executive as to what you need in order to perform your oversight role, including requiring it to:

- ▶ attach human rights memoranda to all legislative proposals?
- ▶ report at least annually to parliament on, *inter alia*, the implementation of Court judgments?
- ▶ share action plans and action reports at the same time as they are submitted to the Committee of Ministers of the Council of Europe?
- ▶ share summaries and translations of pertinent Court judgments?
- ▶ involve parliamentarians, as far as possible, in any working group created to co-ordinate implementation of Court judgments?

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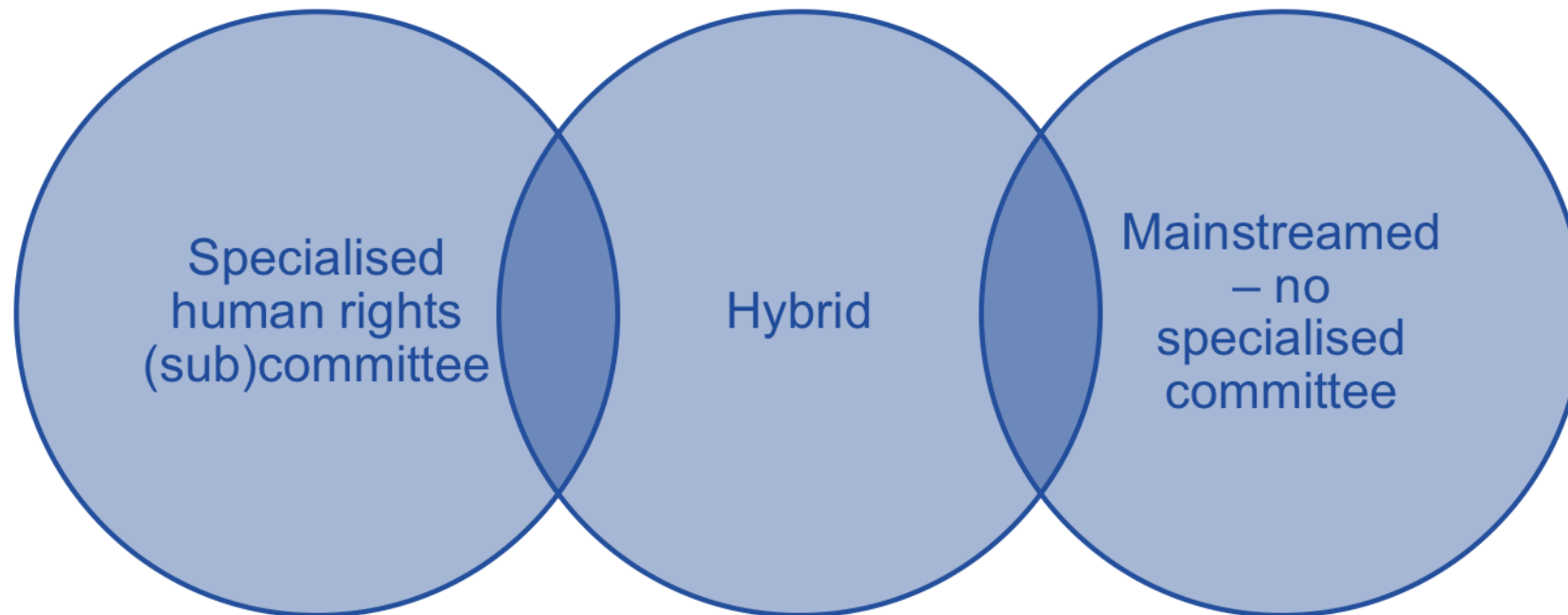


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Parliamentary human rights structures



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The pros and cons of different approaches

- Specialised model

- 👍 Development of systematic oversight mechanisms
- 👍 Interlocutor with the executive
- 👍 Human rights expertise among members and staff
- 👎 Risk of creating a silo of human rights expertise in a specialised committee

- Mainstreamed model

- 👍 Human rights oversight and expertise becomes integrated across parliament
- 👎 “Everyone’s responsibility is no-one’s responsibility”?





The importance of independent legal advice

- Legal advisers as ‘mediators’, their functions including
 - Screening ECtHR judgments and other relevant ‘outputs’ of international human rights bodies
 - Analysing the meaning and significance of these outputs in the domestic context
 - Selectively drawing parliamentarians’ attention to them
 - Briefing parliamentarians as to the range of Convention-compliant options available to them
 - Facilitating democratic deliberation on human rights questions and empowering parliamentarians to fulfil their interpretive role
 - Maintaining contact with and gathering evidence from, civil society

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