Parliamentary Assembly
Assemblée parlementaire
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COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Declassifed*
AS/Jur (2023) 26
18 October 2023
ajdoc26 2023

Committee on Legal Affairs and Human Rights

Implementation of judgments of the European Court of Human Rights – 12th Report

Introductory memorandum

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1. Introduction

1. For over twenty years the Parliamentary Assembly has taken a close interest in the implementation of the judgments of the European Court of Human Rights (hereinafter "the Court" or "ECtHR").[1] In its latest Resolution 2494 (2023), the Assembly decided to remain seized of this matter and to continue to give it priority.[2] This introductory memorandum is based on a reference from the Bureau dated 28 April 2023. The Committee again appointed me as rapporteur at its meeting in Strasbourg on 20 June 2023.

2. At the May 2023 Reykjavik Summit, the Heads of State and Government of the Council of Europe, adopted the Reykjavik Declaration.[3] This included the "Reykjavik Principles for Democracy" in its Appendix III and its Appendix IV "Recommitting to the Convention system as the cornerstone of the Council of Europe's protection of human rights". Appendix IV, relating to the Convention system, underlines "the fundamental importance of the execution of the Court's judgments and the effective supervision of that process to ensure the long-term sustainability, integrity and credibility of the Convention system" and the States recommitted to "resolving the systemic and structural human rights problems identified by the Court and to ensure the full, effective and prompt execution of the final judgments of the Court, taking into account their binding nature […] while also recalling the importance of involving national parliaments in the execution of judgments".

3. In formulating the focus of this 12th report I have sought to incorporate this renewed focus on respect for the Convention system, for timely and effective implementation of ECtHR judgments, and for strengthened support for democratic principles. I therefore propose that this Report shall focus, in particular, on:

a. The importance of addressing leading cases (section 3);
b. The implementation of judgments protecting democratic principles, including those relating to the freedom of expression, the freedom of assembly and association, the right to free and fair elections, the misuse of the law to violate human rights, and the independence of the judiciary (section 4);
c. The challenges in implementing inter-State cases (section 5); and
d. The role of PACE and national parliamentarians in the implementation of ECtHR judgments (section 6).

* Document declassified by the Committee on 9 October 2023.
[1] The first report was approved by the Committee on Legal Affairs and Human Rights on 27 June 2000; Doc. 8808, rapporteur Mr Erik Jurgens. Since 2000, the Assembly has adopted eleven reports and resolutions and ten recommendations relating to the implementation of the judgments of the European Court of Human Rights.
[2] Paragraph 9 of Resolution 2949 (2023).
[3] Reykjavik Declaration – Uniting around our values

2. 11th Report of the Assembly of 2023 and recent statistics

4. The Assembly's eleventh report on the implementation of the judgments of the Court, for which I was rapporteur ("11th report"),[4] noted a number of areas of progress, whilst nonetheless recalling the recent increase in the number of judgments whose implementation was pending before the Committee of Ministers. The 11th Report focussed, in particular, on the implementation of ECtHR judgments in those States having the highest number of cases pending execution before the Committee of Ministers, and the implementation of the most problematic cases including inter-State cases and article 18 judgments (often referred to as human rights violations which involve a misuse of the law, or abusive limitations of rights and freedoms).

5. Resolution 2949 (2023) noted the increase in judgments pending execution since 2021 and highlighted that over seventy per cent of cases pending implementation related to Ukraine, Romania, Türkiye, Azerbaijan, Hungary and Russia, and expressed concern at the delays in implementing judgments.[5] The Resolution also expressed the Assembly's grave concern at the slow progress towards the implementation of judgments in inter-state cases or those showing inter-State features.[6] The Resolution specifically called on States to implement judgments in good faith and without delay; to provide for effective domestic remedies to address human rights violations; to submit action plans and reports in a timely manner; to establish effective national coordination mechanisms with sufficient hierarchy and resources to implement judgments; to refrain from measures and laws that would hinder implementation; and to respect interim measures indicated by the ECtHR.[7] The Resolution similarly called for increased use of and support to co-operation projects and to the Department for the Execution of Judgments (DEJ) to help facilitate the implementation of ECtHR judgments.[8] It specifically called on States to take immediate action to implement any ECtHR judgments in respect of which a violation of Article 46(4) was found through infringement proceedings and in this light called on Türkiye to immediately release Osman Kavala.[9] The Resolution also called for further action by the Assembly and national parliaments to bolster domestic institutional capacity, including by ensuring that democratically elected representatives can effectively encourage and facilitate the timely and complete implementation of ECtHR judgments, and through the Assembly using thematic reports to tackle long-standing systemic or structural problems identified in the implementation of ECtHR judgments.[10]

6. Recommendation 2252 (2023) called on the Committee of Ministers to further develop a toolkit for encouraging timely implementation of ECtHR judgments by member States; to increase the focus and priority for implementing leading cases; to tackle resistance to implementation; to ensure States have effective national coordination mechanisms to implement judgments; to develop mechanisms to motivate and, if need be, sanction States that fail to take timely action, including through developing options for decisive action following an Article 46(4) judgment; to elaborate its strategy in respect of Russia; to develop better processes for working with the Parliamentary Assembly; to improve the transparency and reasoning given for its decisions; and to develop a process for supervising respect for interim measures.[11] A reply has yet to be received from the Committee of Ministers in response to this Recommendation and I very much hope that it will enable us to advance towards better synergies for prioritising the implementation of ECtHR judgments as a central element of respect for the rule of law and human rights within Europe. I will communicate my analysis of that response to the Committee of Legal Affairs and Human Rights once received.

7. The 11th Report was updated to include references to the statistics contained in the Annual Report on the Execution of Judgments 2022.[12] The 2022 Annual report remains the most recent Annual Report and shows over 6000 cases pending execution, and that the following ten member States have the largest number of cases pending implementation (from the highest to the lowest number): Ukraine (716), Romania (509), Türkiye (480), Azerbaijan (285), Hungary (219), Italy (187), Bulgaria (182), Moldova (153), Poland (125) and Serbia (97).[13]

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[4] Implementation of the judgments of the European Court of Human Rights: 11th report
[5] Paragraphs 3-5 of Resolution 2949 (2023).
[6] Paragraph 6 of Resolution 2949 (2023).
[7] Paragraph 7.1-7.8 and 7.14 Resolution 2949 (2023).
[8] Paragraph 7.9-7.11 Resolution 2949 (2023)
[9] Paragraph 7.16 Resolution 2949 (2023)
[10] Paragraph 8,10 and 11 Resolution 2949 (2023). One such recent example is the ongoing work towards the Report "Allegations of systemic torture and inhuman or degrading treatment or punishment in places of detention in Europe", for which I am rapporteur.
[11] Paragraph 2 of Recommendation 2252 (2023).
[12] The Annual Report 2022
[13] The following ten countries closed the largest number of pending cases (from the highest to the lowest number): Hungary (109), Türkiye (107), Ukraine (67), Serbia (57), Moldova (53), Greece (48), Croatia (40), Romania (37), Slovakia (36) and Azerbaijan (35).

3. The importance of addressing leading cases

8. Of the 6,112 cases pending execution in the 2022 Annual report, 1299 were leading cases. Leading cases are those that disclose a problem in law or practice, often requiring general measures to be adopted to prevent a recurrence of the human rights violation.[14] Addressing leading cases is fundamental to any meaningful implementation of human rights as this is what addresses the underlying causes of a similar human rights violations. Addressing leading cases is therefore crucial to preventing an increased backlog of repetitive cases. In light of this, it is alarming that 84% of ECtHR judgments from the last five years concern repetitive cases,[15] meaning that they represent ongoing, well-known human rights violations in the country concerned and result from the continued failure to address the general measures required by leading judgments.

9. It is therefore worth looking in further detail at the numbers of leading cases pending execution as this is an indicator of the types of human rights problems requiring substantive action within a country.[16] The following ten member States have the largest number of leading cases (from the highest to the lowest number): Türkiye (126), Romania (113), Ukraine (99), Bulgaria (93), Italy (59), Azerbaijan (53), Poland (46), Moldova (45), Hungary (43), and France (29).[17]

10. The following member States have the largest number of leading cases pending execution for over 5 years (from the highest to the lowest number): Türkiye (78), Ukraine (66), Bulgaria (54), Romania (43), Azerbaijan (30), Italy (30); Moldova (30), Poland (19), Greece (13), Georgia (10), and Finland (9). This figure is particularly significant as it indicates not only where there are significant issues, but also where those issues are not being resolved within a reasonable period of time.

11. The Annual Report 2022 shows 200 leading cases as having been closed during 2022, of which 18 had been dealt with under the enhanced procedure, and recorded progress in the closure of cases notably relating to effective investigations into war crimes during the Croatian Homeland War (1991–1995), to ensuring the lawfulness of judicial appointments to the Icelandic Court of Appeal, and in eliminating discriminatory provisions relating to children's surnames in Italy. Other recent closures of leading cases include *Kovesi v Romania* relating to the inability of Ms Kovesi, the former Chief Prosecutor of the National Anticorruption Directorate, to challenge effectively the undue, premature termination of her mandate, which occurred because of views and opinions she had expressed on matters of public interest.

12. In another recent development, the EU Rule of Law Report for the first time includes systematic indicators on the implementation of ECtHR leading judgments by EU Member States within its country chapters.[18] This follows on from work in the report "Justice Delayed and Justice Denied: Non-implementation of European courts Judgments and the Rule of Law" that helpfully analyses the implementation of ECHR judgments as a rule of law issue as it concerns EU member states and usefully sets out relevant data relating to the state of implementation of ECtHR judgments by EU member States in a clear and accessible manner, with a helpful focus on leading cases.[19] That Report specifically recommends that the European Commission analyse the level of implementation of ECtHR judgments as part of its annual rule of law report, as well as a better use of EU tools (both punitive and supportive) to tackle failures of implementation, given that these can be indicative of rule of law concerns in EU member States. The report highlights that in Bulgaria, Finland, Hungary, Italy, Poland, Romania, Slovakia and Spain, over 50% of leading judgments from the last ten years are yet to be implemented – with Finland having the longest average length of time that leading ECtHR judgments remain unimplemented of all EU member States. This report has without doubt been helpful in

[14] "Leading case" is defined in the glossary to the 2022 Annual Report (p. 135) as a "case which has been identified as disclosing a problem, in law and/or practice, at national level, often requiring the adoption by the respondent Sate of new or additional general measures to prevent recurrence of similar violations. If this new problem proves to be of an isolated nature, the adoption of general measures, in addition to the publication and dissemination of the judgment, is not in principle required. A leading case may also reveal structural/systemic problems, identified by the Court in its judgment or by the Committee of Ministers in the course of its supervision of execution, requiring the adoption by the respondent State of new general measures to prevent recurrence of similar violations.

[15] 2022 Annual Report on the Supervision of the Execution of Judgments and Decisions of the European Court of Human Rights, page 89, Figure B.1. [2022 – 188 leading, 1271 repetitive; 2021 - 216 leading, 1163 repetitive; 2020 -195 leading, 788 repetitive; 2019 - 178 leading, 982 repetitive; 2018 - 196 leading, 1076 repetitive; Total: 973 leading, 5280 repetitive (6253 cases overall)].

[16] Hereafter I will principally focus on cases relating to member States of the Council of Europe – cases relating to the Russian Federation are specifically mentioned in section 8 of this Memorandum.

[17] The following ten countries closed the largest number of leading cases (from the highest to the lowest number): Türkiye (26), Ukraine (16), Moldova (14), Greece (14), Croatia (13), Bulgaria (10), Spain (9), Romania (8), France (8) and Armenia (7).

[18] EU Rule of Law report 2022

[19] "Justice Delayed and Justice Denied: Non-implementation of European courts Judgments and the Rule of Law"

ensuring improved synergies between the timely and effective implementation of ECtHR judgments and the EU's rule of law monitoring work in respect of EU member states and I hope that it will stimulate further reflection as to how the EU institutions might best promote and support projects to improve respect for the rule of law, implementation of ECtHR judgments and human rights within EU member States.

4. Protecting democratic principles

13. The "Reykjavik Principles for Democracy", Appendix III to the 2023 Reykjavik Summit Declaration[20], reiterate that democracy is the "only means to ensure that everyone can live in a peaceful, prosperous and free society", and that Council of Europe States endeavour to "prevent and resist democratic back-sliding on our continent". The principles include a renewed focus on democratic participation through free and fair elections, with elections being "grounded in respect for relevant human rights standards, especially freedom of expression, freedom of assembly and association". This expressly includes having free and pluralistic media, as well as an environment in which "civil society, as well as human rights defenders, can operate free from hindrance". The principles also highlighted the importance of the separation of powers, and "independent, impartial and effective judiciaries" for a healthy, functioning democracy. In order to further the Council of Europe priorities agreed in Reykjavik, I therefore propose a specific focus for this 12th Report on protecting democratic principles through the timely and efficient implementation of relevant ECtHR judgments. Moreover this topic accords with themes that continue to preoccupy the Assembly and other Council of Europe organs, such as the abuse or misuse of the law to limit and violate human rights (Article 18) and the independence of the judiciary. In this light, I propose to focus on the importance of implementing ECtHR judgments protecting democratic principles, and specifically relating to:

a. The freedom of expression (Article 10);
b. The freedom of assembly and association (Article 11);
c. The right to free elections (Article 3 of Protocol 1);
d. Abusive limitations of rights and freedoms (Article 18); and
e. The independence of the judiciary.

4.1. Cases relating to the freedom of expression (Article 10 ECHR)

14. As set out in the DEJ's thematic factsheet on Freedom of Expression[21], "according to the established case-law of the European Court, freedom of expression is one of the essential foundations of a democratic society […] it implies pluralism, tolerance and openness, without which there is no "democratic society"". As highlighted in the "Reykjavik Principles for Democracy", free and fair elections are grounded in respect for freedom of expression. Moreover, "free, independent, plural and diverse media constitutes one of the cornerstones of a democratic society and journalists and other media workers should be afforded full protection under the law."[22]

15. In my 11th Report, I mentioned the Demirtas (No. 2) case (*Selhattin Demirtas v. Turkey*) as a case that was typical of a situation of a politically motivated violation of rights, which cannot coincide with democratic principles. The case concerned the politically motivated arrest and detention of Selhattin Demirtas, one of the leaders of the People's Democratic Party (HDP). The Court considered, amongst other violations, that his pre-trial detention violated his rights to freedom of expression protected by Article 10 of the Convention.

16. Moreover, the recent Assembly Resolution 2381(2021) "Should politicians be prosecuted for statements made in the exercise of their mandate?"[23] raises concerns about the prosecution of politicians for exercising free speech in the exercise of their political mandates, in particular in Spain and Türkiye. The Assembly stressed "the crucial importance, in a living democracy, of politicians being able to freely exercise their mandates. This requires a particularly high level of protection of politicians' freedom of speech and freedom of assembly, both in parliament and when speaking to their constituents in public meetings or through the media, including social media."

[20] Reykjavik Declaration – Uniting around our values
[21] Department of Execution of Judgments thematic factsheet on Freedom of Expression
[22] Reykjavik Declaration – Uniting around our values, at principles 2 and 7.
[23] Resolution 2381(2021)

17. The most significant freedom of expression cases for protecting democratic principles are those relating to the safety of journalists,[24] press and journalistic freedom, media pluralism and broadcasting licences,[25] dissemination of information for electoral purposes, and proportionality in the protection of the reputation of others.

18. A number of ECtHR cases, or groups of cases, concern unjustified and disproportionate interferences with freedom of expression on account of criminal proceedings for having expressed opinions that do not incite hatred or violence. The chilling effect on society as a whole of such proceedings and on the freedom of expression in general is of grave concern. There are a significant number of such cases or groups of cases relating to the state of freedom of expression in Türkiye,[26] and legislative changes are necessary to clarify that the exercise of the right to freedom of expression does not constitute an offence. Other examples include, for example, *Eerikainen and Others v Finland*, which relates to fines for journalists writing in the public interest. There is also a suite of cases relating to disproportionate sentences for defamation, including *Mahmudov and Agazade v Azerbaijan* group and *Vedat Sorli v Turkey*. Disproportionate criminal offences and sentences for defamation, as well as disproportionate civil damages, are an unjustified barrier to freedom of expression and can hinder the work of journalists. Legislative reform is often needed in order to address such judgments. In the work on this report, I would like to explore what parliamentarians and PACE can do to facilitate the passing of such legislative reforms in order to implement these judgments.

4.2. Cases relating to freedom of assembly and association (Article 11 ECHR)

19. The right to assembly, and the related right to peaceful protest, is crucial for a functioning democracy.[27] The treatment of anti-war protesters in Russia has shone a particular light on the vital importance of the right to protest and the nefarious effects that a clamp down on such rights can have on a democracy. As set out in the DEJ's thematic factsheet on Freedom of Assembly and Association, "the right to freedom of peaceful assembly, enshrined in article 11 […] is a fundamental right in a democratic society and, like the right to freedom of expression, one of its foundations. Of similar importance is the freedom of association, and the Court has underlined its direct relationship with democracy and pluralism, noting that the state of democracy in a country can be measured by the way in which this freedom is secured under national legislation and in which the authorities apply it in practice".[28]

20. Article 11 cases that are significant for protecting democratic principles include those relating to holding and policing peaceful demonstrations and protests; the freedom to create and participate in associations (including civil society) and the freedom to create and participate in political parties. However, 54% of all ECtHR leading judgments finding a violation of the freedom of peaceful assembly have yet to be implemented, including cases relating to Azerbaijan, Georgia, Hungary, Romania, Russia, Türkiye and Ukraine.[29]

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[24] Cases relating to the safety of journalists include *Gongadze v Ukraine,* Application No. 34056/02, judgment of 8 November 2005. Cases may also relate to ineffective investigations in response to criminal offences committed against journalists, which impacts on the ability of journalists to do their jobs and thus freedom of the press. Such cases include, for example, *Khadija Ismayilova v Azerbaijan group,* Application No. 65286/13 and 57270/14, judgement of 10 January 2019; Application No.30778/15, judgment of 27 February 2020; Application No. 35283/14, judgment of 7 May 2020.

[25] Such as *Manole and Others v Republic of Moldova*, Application No. 13936/02, judgment of 17 September 2009.

[26] This includes the *Öner and Türk v Turkey* group*, Application No. 51962/12, judgment of 31 March 2015*, the *Işıkırık v Turkey* group, Application No. 41226/09, judgment of 14 November 2017, the *Altuğ Taner Akçam v Turkey* group, Application No. 27520/07, judgment of 25 October 2011, the *Artun and Güvener v Turkey* group, Application No. 75510/01, judgment of 26 June 2007, and the *Nedim Şener v Turkey* group, Application No. 38270/11, judgment of 8 July 2014.

[27] As highlighted in the "Reykjavik Principles for Democracy", "civil society is a prerequisite for a functioning democracy" and States committed to "supporting and maintaining a safe and enabling environment in which civil society, as well as human rights defenders, can operate free from hindrance, insecurity and violence". Reykjavik Declaration – Uniting around our values, at principles 2 and 9.

[28] Department of Execution of Judgments thematic factsheet on Freedom of Assembly and Association

[29] HUDOC website. *Isikirik v Turkey,* Application No. 41226/09, judgment of 14 November 2017; *Akarsubasi v Turkey,* Application No. 70396/11, judgment of 21 July 2015*; Dilek and Others v Turkey,* Application No. 74611/01 et 26876/02 et 27628/02, judgment of 17 July 2007; *Cetinkaya v Turkey,* Application No. 75569/01, judgment of 27 June 2006*; Patyi and Others v Hungary,* Application No. 5529/05, judgment of 7 October 2008*; Lashmankin and Other v Russia*, Application No. 57818/09, judgment of 7 February 2017; *Karpyuk and LYakhovych v Ukraine,* Application No30582/04 and 32152/04, judgment of 6 October 2015; *Association Accept and others v Romania,* Application No. 19237/16, judgment of 1 June 2021; *Identoba and Others v Georgia,* Application No. 73235/12, judgment of 12 May 2015; *Emin Huseynov v Azerbaijan,* Application No. 59135/09 and 1/16, judgments of 7 May 2015 and 13 July 2023; *Shmorgunov and Others v Ukraine,* Application No. 15367/14 and 13 others, judgment of 21 January 2021; *Oya Ataman v Turkey,* Application No. 74552/01, judgment of 5 December 2006; *Yaroslav Belousov v Russia,* Application No. 2653/13 and 60980/14, judgment of 4 October 2016; *Navalnyy v Russia,* Application No. 29580/12 and 4 others, judgment of 2 February 2017; Application No. 29580/12 and 4 others, judgment of 15 November 2018, Application No. 43734/14, judgment of 9 April 2019; *Alekseyev v Russia,*

21. Cases relating to the right to peaceful political protest include, for example, *Mushegh Saghatelyan v Armenia*, which concerns the disproportionate and unnecessary dispersal of peaceful political protests, *Gafgaz Mammadov v Azerbaijan*, which concerns the dispersal of unauthorised peaceful demonstrations posing no threat to public order, the *Oya Ataman v Turkey* group concerning the prosecution of participants in peaceful protest as well as the use of excessive force to disperse peaceful demonstrations, and the *Lashmankin and others v Russia* group relating to the prohibition on participating in public gatherings and protests.

22. Notably, the judgment of the European Court of Human Rights in *Ecodefence and Others v. Russia* remains unimplemented. The ruling concerned the violation of 73 NGO's right to freedom of association arising from the Law on Foreign Agents Act, which had resulted in administrative fines, criminal proceedings, and the dissolution of some organisations. In order to protect civil society, member States must ensure that their NGO legislation is consistent with the *Ecodefence* ruling, and expeditiously implement any similar rulings provided by the Court.

23. The Annual Report 2022 highlighted the long-standing failure to implement certain cases relating to the registration of certain associations in violation of Article 11 ECHR. This has included the routine refusal for over 16 years to register associations whose aim is to seek the recognition of the Macedonian minority in Bulgaria *(UMO Ilinden and Others v Bulgaria)*, in which notwithstanding various steps taken, the Registration Agency and the Courts still fail to comply with the requirements of the Convention. Similarly, the Greek Courts, including the Court of Cassation, have consistently and repeatedly violated the right of association of the organisations in the *Bekir Ousta v Greece* group of judgments, in clear violation of the rulings of the ECtHR and the Convention and these remain unimplemented for 15 years. Despite the legislative amendment adopted by Greece in 2017, the organisations have still not received *restitutio in integrum*, largely due to the judgments of the Greek Court of Cassation in 2021 and 2022 which considered the violations to be lawful on grounds most of which were expressly impugned by the ECtHR. Similarly, the Russian Courts decisions have also proved to be an obstacle to the right to freedom of association in relation to the dissolution of Jehovah's witness organisations, and their refusal to comply with the ECtHR's judgments in the group *Taganrog LRO and Others v Russia* (concerning the dissolution of Jehovah's Witness associations in Russia, a ban on all their activities and detention of some of their members).

24. The Committee of Ministers expressed their "most profound regret" for the judgment of the Court of Cassation. What comes out of the seeming wilful refusal of the various authorities to accord these organisations their rights under article 11 clearly violates the freedom of association and constitutes non-respect of the ECHR and the final binding judgments of the Strasbourg Court. Such an approach could indicate a wider risk for the respect of the rule of law in these countries.

4.3. Cases relating to the right to free elections (Article 3 of Protocol 1 ECHR and related cases)

25. The right to free and fair elections is obviously central to a functioning democracy.[30] As set out in the DEJ's thematic factsheet on the Right to Free Elections, "the European Court has underlined that democracy constitutes a fundamental element of the 'European public order'. The right to free elections guaranteed under Article 3 of Protocol No. 1… is crucial to establishing and maintaining the foundations of an effective and meaningful democracy governed by the rule of law and is accordingly of prime importance to the Convention system. The Convention does not lay down an obligation of abstention or non-interference, as with most civil and political rights, but one of adoption by the state, as the ultimate guarantor of pluralism, of positive measures to guarantee democratic legislative elections. The Court has established that the right to free elections also implies individual rights, including the right to vote and to stand for election." [31] Moreover, in order to guarantee these rights, there should be effective remedies for the regulation of electoral disputes. However, 52% of all ECtHR leading judgments finding a violation of the right to free elections have yet to be implemented, including cases relating to Belgium, Bulgaria, Italy, Romania, Russia, Türkiye and Ukraine.[32]

Application No. 4916/07 and 14599/09, judgment of 21 October 2010; *Gafgaz Mammadov v Azerbaijan,* Application No. 60259/11, judgment of 15 October 2015; *Vyerentsov v Ukraine,* Application No. 20372/11, judgment of 11 April 2013.

[30] As highlighted in the "Reykjavik Principles for Democracy", the States committed to "actively enable and encourage democratic participation at national, regional and local levels through free and fair elections" and to "hold elections and referenda in accordance with international standards and take all appropriate measures against any interference in electoral systems and processes". Reykjavik Declaration – Uniting around our values, at principles 1 and 2.

[31] Department of Execution of Judgments thematic factsheet on Right to Free Elections.

[32] HUDOC website. *Anatiloy Marinov v Bulgaria*, Application No. 26081/17, judgment of 15 February 2022, *Bilotserkivska v Ukraine,* Application No. 17313/13, judgment of 3 February 2022*, Markov v Ukraine,* Application No. 66811/13, judgment of 3 February 2022*, Davydov and Others v Russia,* Application No. 75947/11, judgment of 30 May 2017, *Yabloko Russian United Democratic Party and Others v Russia,* Application No. 18860/07, judgment of 8 November 2016*, Kulinski and Sabev v Bulgaria,* Application No. 6384/09, judgment of 21 July 2016*, Riza and Others v Bulgaria,* Application No. 48555/10 and 48377/10, judgment of 13 October 2015*, G.K. v Belgium,* Application No. 58302/10, judgment of 21 May 2019*, Nenciu*

26. Relevant cases include the *Namat Aliyev v Azerbaijan* group, which concerns the arbitrary application of electoral legislation and the absence of procedures affording adequate safeguards against arbitrariness, including the arbitrary rejection of complaints regarding irregularities or breaches of electoral law, the arbitrary cancelation of registration of candidates and the erroneous application of electoral law. Other cases of note include *Mugemangango v Belgium* which concerns procedural guarantees in post-election disputes and the right to an effective remedy, and *Cegolea v Romania*, which relates to an arbitrary eligibility requirement which disadvantages national minority organisations not yet represented in Parliament.

27. Whilst Article 3 of Protocol 1 only applies to elections relating to the "choice of the legislature" other provisions can also be applicable to, for example, discriminatory provisions in other elections, such as presidential elections. In this way, Article 1 of Protocol 12 (the principle of non-discrimination) has also been found to apply and to have been violated in discriminatory provisions of electoral law relating to, for example, presidential elections in Bosnia and Herzegovina. The judgments in the *Sejdić and Finci v. Bosnia and Herzegovina*[33] group concern discrimination against persons belonging to groups other than the "constituent peoples" of Bosnia and Herzegovina (i.e. Bosniaks, Croats and Serbs) as regards their right to stand for election to the House of Peoples and the Presidency of Bosnia and Herzegovina. Notwithstanding the Committee of Ministers' interventions and the extensive support offered to the national authorities by both the Council of Europe and the European Union[34], the elections of 2010, 2014, 2018 and 2022 were based on what has been described as a "discriminatory electoral system in clear violation of the requirements" of the Convention.[35] The Venice Commission has produced numerous Opinions on the subject, notably calling on the people and politicians of Bosnia and Herzegovina to gradually replace ethnic representation mechanisms with representation based on the citizenship system.[36] Most recently, the judgment of *Kovačević v. Bosnia and Herzegovina*, issued on 29/8/2023, found a violation in respect of the inability of a person to vote for their preferred candidate in elections in Bosnia and Herzegovina due to ethnic and territorial representation rules on voting. The inherently discriminatory requirements for voting in certain elections under the constitution of Bosnia and Herzegovina continue to be a significant concern.

4.4. Cases relating to abusive limitation of rights and freedoms (Article 18 ECHR)

28. Article 18 violations have a very specific nature in that these are human rights violations in pursuit of an unlawful ulterior purpose involving a misuse of power. They concern primarily the arrest, detention, and/or conviction of government critics, civil society activists, human-rights defenders and politicians – in many cases involving criminal prosecutions for charges unsupported by evidence and where the ulterior motive is to silence of punish the applicant and discourage other activists or critics. As I highlighted in the 2023 11th Report, "violations of Article 18 of the Convention deny *par excellence* the very gist of democracy and are regarded as particularly serious given that they relate to the purposive misuse of power".[37] They often indicate pervasive and systemic malfunctioning within a constitutional system, such that the separation of power is eroded and thus the system is open to the misuse and abuse of power for ulterior motives. As highlighted in the "Reykjavik Principles for Democracy", the States committed to "uphold the separation of powers with appropriate checks and balances between different State institutions, at all levels, to prevent any excessive concentration of power", as well as to fight corruption, 'including through prevention and by holding accountable those exercising public power".[38] However, shockingly 86% of all ECtHR leading judgments finding a violation of Article 18 have yet to be implemented, including cases relating to Azerbaijan, Bulgaria, Georgia, Poland, Russia and Ukraine.[39]

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v Romania, Application No. 65980/13, judgment of 17 December 2015*, Dicle and Sadak v Turkey*, Application No. 4862/07, judgment of 16 June 2015*, Mugemangango v Belgium,* Application No. 310/15, judgment of 10 July 2020*, Collarile v Italy,* Application No. 10644/02, judgment of 8 June 2006 .

[33] Application No. 27996/06, judgment of 22 December 2009 (Grand Chamber), and three other judgments: *Zornić v. Bosnia and Herzegovina,* application No. 3681/06*,* judgment of 15 July 2014; *Šlaku v. Bosnia and Herzegovina,* application No. 56666/12, judgment of 26 May 2016 and *Pilav v. Bosnia and Herzegovina,* application No. 41939/07, judgment of 9 June 2016.

[34] Addressing the judgment is one of the 14 priorities for the accession of Bosnia and Herzegovina to the European Union - European Commission, Commission Opinion on Bosnia and Herzegovina's membership of the European Union, SWD(2019)222, 29 May 2019.

[35] Decision adopted at 1324th (DH) meeting, 20 September 2018, CM/Del/Dec(2018)1324/4, paragraph 1.

[36] CDL-AD(2005)004-e Opinion on the Constitutional Situation in Bosnia and Herzegovina and the Powers of the High Representative adopted by the Venice Commission at its 62nd plenary session (Venice, 11-12 March 2005.

[37] Implementation of the judgments of the European Court of Human Rights: 11th report, at paragraph 44.

[38] Reykjavik Declaration – Uniting around our values, at principles 4 and 6.

[39] HUDOC website. *Miroslava Todorova v Bulgaria,* Application No. 40072/13, judgment of 19 October 2021*, Navalnyy v Russia,* Application No. 29580/12 and 4 others, judgment of 15 November 2018*, Merabishvili v Georgia,* Application No. 72508/13, judgment of 28 November 2017, *Juszczyszyn v Poland,* Application No. 35599/20, judgment of 6 October 2022,

29. The most prominent such case at the moment is that of *Osman Kavala v Turkey*. Mr Kavala is a human rights defender and civil activist in Türkiye. A 2019 ECtHR judgment found that the arrest and pre-trial detention of Mr Kavala in 2017 (within the context of Gezi Park events of 2013 and the attempted coup of 2016) violated his human rights and took place in the absence of evidence to support a reasonable suspicion that he had committed an offence. Moreover, in the absence of sufficient evidence to support a reasonable suspicion that Mr Kavala had committed an offence, there was obviously insufficient evidence to convict him of any such an offence. Notwithstanding this, Mr Kavala has continued to be detained since 2017 in breach of the ECtHR's judgment. Given Türkiye's persistent refusal to implement the Court's judgment in this case, the Committee of Ministers referred the matter to the Court under article 46(4). The ensuing 2022 ECtHR Article 46(4) judgment found that Türkiye had failed to fulfil its obligation to comply with final judgment of the ECtHR, including through failing and refusing to release Mr Kavala. This is only the second time that the ECtHR has made such a significant finding. The continued refusal of Türkiye to release Mr Kavala, as ordered by the Strasbourg Court, presents a clear risk to the rule of law and the Convention system and is therefore a grave concern to all actors within the Council of Europe system. This will necessarily continue to be a stark focus and area of concern to the credibility of the Council of Europe and the Convention system for so long as Mr Kavala continues to be arbitrarily detained in Türkiye. Given the importance of these issues to the credibility of the Convention system, one of the hearings relating to this Report will focus on the challenge of implementing ECtHR judgments in the face of a refusal by a member State of the Council of Europe and will examine different options that could be available in such a situation. I will consider that debate carefully when I come to draft my report, and in particular, I shall consider whether better tools are needed to encourage and secure the implementation of ECtHR judgments in the face of such a refusal by a member State.

30. Other notable cases relating to Article 18 include the politically motivated arbitrary detention of Selhattin Demirtaş, the former leader of the People's Democratic Party (HDP), a pro-Kurdish opposition party and a member of the Turkish National Assembly (see also paragraph 15). In *Selhattin Demirtaş v Turkey,* the ECtHR found that the domestic courts had failed to indicate specific facts or information that could give rise to a reasonable suspicion that the applicant had committed the offences such that this would justify his arrest and pre-trial detention. The *Mammadli v Azerbaijan* group similarly concerns politically motivated arrests and prosecutions of human rights defenders, civil society activists and a journalist. All in this group have been pardoned and released; however they have yet to have their convictions quashed by the Supreme Court, which is required for restitutio in integrum.

4.5. Cases relating to the independence of the judiciary

31. It goes without saying that cases relating to the independence of the judiciary and other oversight mechanisms are crucial to avoiding an abuse or misuse of power and to upholding a functioning democracy.[40] This includes cases relating to the adequacy of procedural safeguards around the removal of judges from office or other measures to sanction or discipline judges, especially where the abuse of such sanctions might constitute a restriction on a judge's freedom of expression.[41]

32. It also includes cases concerning the adequacy and independence of procedures for appointing judges, such as *Xero Flor v Poland*[42] and *Reczkowicz v Poland*[43]. The recent Polish judicial reforms have

Mammadli v Azerbaijan, Application No. 47145/14, judgment of 19 April 2018, *Lutsenko v Ukraine,* Application No. 6492/11, judgment of 3 July 2012.

[40] As highlighted in the "Reykjavik Principles for Democracy", the States committed to "ensure independent, impartial and effective judiciaries. Judges must be independent and impartial in the exercise of their functions and free from external interference, including from the executive". Reykjavik Declaration – Uniting around our values, at principle 5.

[41] This includes the cases of *Miroslava Todorova v Bulgaria,* Application No. 40072/13, judgment of 19 October 2021, *Baka v Hungary,* Application No. 2026/12, judgment of 23 June 2016, *Broda and Bojara v Poland,* Application No. 26691/18 and 27367/18, judgment of 29 June 2021*, Grzeda v Poland,* Application No. 43572/18, judgment of 15 March 2022*, Brisc v Romania,* Application No. 26238/10, judgment of 11 December 2018, and *Camelia Bogdan v Romania,* Application No. 36889/18, judgment of 20 October 2020.

[42] In *Xero Flor v. Poland,* Application No. 4907/18 judgment of 7 August 2021, the ECtHR found a violation of Article 6 of the Convention due to the composition of the Polish Constitutional Tribunal. The ECtHR found that the election of certain judges to the Constitutional Tribunal was irregular as it was not in conformity with the Polish constitutional provisions relating to the election of judges to the Constitutional Court. Judges had already been elected by the previous Sejm (but not approved by the President) therefore it was inappropriate for the new Sejm to seek to re-elect different judges in their place. These irregularities infringed the applicant company's right to a tribunal established by law, contrary to Article 6 ECHR, given the participation in judicial deliberations of irregularly appointed judges.

[43] In the Reczkowicz v Poland, group of cases, the ECHR found violations of the right to a tribunal established by law, contrary to Article 6 ECHR, due to the participation in domestic proceedings of the Polish Supreme Court judges that were appointed in an inherently deficient procedure on the motion of the National Council of the Judiciary, lacking independence

incited controversy, not least given the apparent refusal of the Polish authorities – including the top level of the newly reformed judiciary – to abide by the final judgments of the ECtHR on this topic. In response to the ECtHR judgments, the Polish Constitutional Tribunal delivered two judgments declaring that Article 6(1) of the Convention was incompatible with the constitution.[44] Moreover, Poland has informed the ECtHR Court Registry that it will not comply with an interim measure issued under Rule 39 of the Rules of Court in cases relating to judicial reform.[45] Contrary to the clear, unconditional obligation on Poland to comply with binding final judgments of the ECtHR in line with Article 46(1) ECHR, this has not occurred to date, notwithstanding the exceptional procedure of an inquiry under Article 52 ECHR launched by the Secretary General.

5. Inter-State cases and individual cases with inter-State features

33. Inter-State cases and individual cases with an inter-State angle were a focus of the 11th Report. That Report noted the difficulties with ensuring the timely and effective implementation of inter-State cases, not least given the lack of political will, which is always necessary to resolve such cases. Many of the inter-State cases and individual applications related to inter-state issues pending implementation are linked to post-conflict situations or unresolved or frozen conflicts. Key examples are *Cyprus v. Turkey*; *Georgia v. Russia*; individual applications relating to the situation in Transdniestria;[46] and cases relating to the situation in Nagorno-Karabakh.

34. The 11th Report also noted the likelihood that such cases will pose a challenge for years to come given the number of inter-State applications currently pending before the ECtHR.[47] There are currently 19 interstate applications pending before the Court relating to 15 cases. Many of these involve Russia and either Ukraine or Georgia. Many others concern the conflict between Armenia and Azerbaijan. Whilst pending applications will not necessarily result in judgments requiring implementation by a State, or supervision by the Committee of Ministers, one can nevertheless surmise that given the growth in such cases it would be prudent for the Council of Europe to develop tools for dealing with interstate cases and for facilitating the implementation of relevant judgments. In this context the work of this Committee towards a report on "Reparation and reconciliation processes to overcome conflicts and build a common peaceful future – the question of just and equal redress" (rapporteur: Lord Richard Keen, UK/EC) may add an interesting perspective as to how the Council of Europe might best address these issues.

35. Since the 11th report, the Committee held useful exchanges during its meeting in Larnaca on 22-23 May 2023, focussing notably on the Cyprus v Turkey interstate case as well as the individual applications relating to the consequences of the Turkish military intervention in Cyprus of 1974. Speakers included Ms Anna Koukkides-Procopiou, Minister of Justice and Public Order of the Republic of Cyprus; Dr Costas Paraskeva, Associate Professor of Public and Human Rights Law, University of Cyprus, Advocate and former member of the Committee for the Prevention of Torture; Mr Polyvios G. Polyviou, Lawyer; and Mr Achilleas Demetriades, Lawyer. The hearing also focussed on the Georgia v Russia inter-State case with the participation of Mr Levan Meskhoradze, Georgia and Azerbaijan Unit, Directorate General Human Rights and Rule of Law, Council of Europe. Speakers highlighted the need for there to be consequences for aggression – to do otherwise would merely encourage tolerance for further war and aggression in Europe. The speakers acknowledged the role that politics played in seeking to enforce inter-State judgments, but also highlighted the role of accountability and the rule of law (and not only power politics) in securing a peaceful and safe European continent. The Committee's earlier and ongoing work on the "Legal and Human Rights Consequences of the Russian War of Aggression against Ukraine" (rapporteurs: Damien Cottier, Switzerland/ALDE and Davor Stier, Croatia/EPP) sheds further light on the need for accountability for aggression.

36. The exchange fully highlighted the challenges in securing the timely and effective implementation of the Court's judgments in inter-State cases, as well as the frustration felt by the individuals whose rights are ignored and seriously affected through the continued delays in implementing the judgments of the Court due to politics and extrajudicial reasons. The importance of political will to resolving such cases was underlined, as well as the complex interplay between the political solutions necessary to reconciliation and to resolving complex post-conflict situations, and the individual rights upheld by a given ECtHR judgment. Notwithstanding the award of

from the legislature and the executive, and noting the wider context of reforms aimed at weakening judicial independence. The cases in this group include the 2021 judmgents of *Broda and Bojara v. Poland,* Application No. 26691/18 and 27367/18, judgment of 29 June 2021; *Reczkowicz v. Poland,* Application No. 43447/19, judgment of 22 July 2021; and *Dolińska-Ficek and Ozimek v. Poland,* Application No. 49868/19 and 57511/19, judgment of 8 November 2021, as well as the 2022 judgment *Advance Pharma Sp. z o.o.*.

[44] K 6/21 and K 7/21.

[45] *Leszczyńska-Furtak v. Poland*, *Gregajtys v. Poland* and *Piekarska-Drążek v. Poland.* Press release from the ECtHR

[46] For example, *Catan and Others v. Moldova and Russia* Application No. 43370/04 and 18454/06, judgment of 19 October 2012; *Mozer v. Moldova and Russia,* Application No. 11138/10, judgment of 23 February 2016

[47] For further information, see the Q & A on inter-State cases.

just satisfaction in 2014 in the 4th *Cyprus v Turkey* interstate case, this has still not been paid nearly 10 years later, seriously questioning the right to an effective remedy for human rights violations.[48]

37. The *Georgia v. Russia* cases involve (i) the deportation of Georgians from Russia in 2006, and (ii) the violation of the right to life, freedom from torture, arbitrary detentions, right to property etc during the invasion of Abkhazia and South Ossetia in 2008. The Court awarded just satisfaction claims of €10 million in the first case and €130 million in the second case, but these have still not been paid. Just satisfaction (compensation), however, is just one of many measures required from the Russian authorities in order to implement these cases – for example, thousands of internally displaced persons in Georgia want to return home, but Russia continues to create obstacles for internally displaced persons. Fundamentally this requires political will and effective measures to ensure judgment implementation. Discussions explored ideas around seizing state assets overseas to pay just satisfaction awarded by the ECtHR, as well as more frequent examination of inter-State cases by the Committee of Ministers.

6. The role of PACE in the implementation of judgments

38. PACE Resolution 2949 (2023) highlighted the role to be played by national parliaments in supervising international human rights standards and "to monitor compliance with international human rights obligations and to ensure that democratically elected representatives are in a position to effectively encourage and facilitate the timely and complete implementation of ECtHR judgments".[49] The Resolution also committed the Assembly to remaining seized of the matter and giving it priority, and suggested work that the Assembly would undertake through targeted events, conferences, dialogue and thematic reports.[50]

39. Recommendation 2252 (2023) set out specific actions for the Committee of Ministers to ensure better communications with, and involvement of, the Assembly in the implementation of ECtHR judgments.[51] Once I receive the reply of the Committee of Ministers to this recommendation I will analyse it and consider what further steps might be taken to improve cooperation between the Assembly and the Committee of Ministers in working towards the timely and efficient implementation of ECtHR judgments.

40. I therefore propose to look for opportunities to improve the contribution of the Assembly, and its parliamentarians, to the implementation of judgments. To this end I look forward to working closely with the Chair of the Sub-Committee on the implementation of judgments of the European Court of Human Rights to develop improved tools for facilitating the implementation of ECtHR judgments, including through exploring the idea of a Network of National Representatives. My hope is that the sub-Committee will be able to develop thinking as to how the Assembly might best implement the Summit conclusions and support the full, effective and rapid implementation of ECtHR judgments.

41. Such work and thinking might result in actions for the Assembly to help to improve the "full, effective and rapid execution of ECtHR judgments", to facilitate the "involvement of national parliaments in the execution of judgments", and to help to improve the "political dialogue" in relation to the implementation of ECtHR judgments.[52] In particular, more might be done to look at synergies for improving the Assembly's impact on the implementation of judgments and in particular in encouraging national parliaments and their Members to encourage compliance with the ECHR and the Court's judgments. A number of different tools could be used to this end, depending on the country context and specific challenges. Such ideas include better use of the Sub-Committee on the Implementation of ECtHR judgments; rapporteur visits; compatibility studies; collaboration with national parliamentarians and their staff through briefings, training and conferences; as well as potential ideas relating to liaison group visits, or the appointment of Assembly representatives for the implementation of judgments in respect of a given country who could champion the implementation of ECtHR judgments both nationally and within the Assembly, perhaps as part of a network.

7. Russian Federation

42. Given Russia's expulsion from the Council of Europe, I will deal with the continued challenges around respect for human rights in Russia separately from current Council of Europe member States. According to

[48] *Cyprus v Turkey* (just satisfaction) judgment of 2014, which followed on from the merits judgment of 2001. In the just satisfaction judgment, the ECtHR awarded 30 million euros for non-pecuniary damage suffered by the relatives of missing persons, and 60 million euros in respect of non-pecuniary damage suffered by enclaved Greek-Cypriot residents of the Karpasia-Karpas peninsula (to be distributed by the Cypriot Government to individual victims).
[49] Paragraph 8 of Resolution 2949 (2023).
[50] Paragraphs 9 - 11 of Resolution 2949 (2023).
[51] Paragraph 2 of Recommendation 2252 (2023).
[52] Reykjavik Summit Declaration.

the Annual report 2022, the Russian Federation has the largest number of cases pending implementation, at 2,352 – meaning that 38.5% of all cases pending execution relate to Russia. Moreover, Russia has the largest number of leading cases pending implementation, with 228 recorded in the Annual Report 2022. Russia similarly has the largest number of leading cases pending execution for over 5 years (159). Russia only closed 3 cases (of which, one leading case) in 2022. The Committee of Ministers and the DEJ have been developing carefully thought-through strategies in relation to Russian cases including initiatives for linking these issues with work in other international organisations such as the UN.

8. Proposals for further work

43. In order to continue my work on the report, I would like to seek the committee's authorisation to organise at least two hearings with up to three experts each. I would also like the Committee's authorisation for two country visits. The details will be determined in due course. I also propose to work carefully with the Chair of the Sub-Committee on the Implementation of ECtHR judgments and would encourage this sub-Committee to be contribute to the fullest to the timely and effective implementation of ECtHR judmgents.