Germany

EXECUTION OF THE EUROPEAN COURT OF HUMAN RIGHTS' JUDGMENTS

MAIN ACHIEVEMENTS IN MEMBER STATES

The present survey presents short summaries[1] of a selection of the main reforms and achievements reported in final resolutions since the Convention system was amended in 1998 by Protocol No. 11, with a clear focus on recent reforms referring, however, also to important earlier developments.

In view of the wealth of cases closed, the selection concentrates on those which have led to changes of legislation or government regulations or the adoption of new policies or general guidelines from superior courts. As a rule, the survey does not cover information on measures aiming at providing individual redress to applicants.

The presentation is organised country-by-country and reforms are, in principle, presented in the order corresponding to the thematic domains used in the Council of Europe's specialised database HUDOC EXEC and the Committee of Ministers' Annual Reports on the Supervision of the Execution of the European Court of Human Rights' judgments.

Many reforms address issues which appear to be on-going challenges in the member State. The effects of reforms adopted at one point in time may thus need to be monitored and possibly re-evaluated as conditions change.[2]

[1] The summaries are the sole responsibility of the Department for the execution of the judgments of the European Court of Human Rights.
[2] The presentation is limited to the information provided at the time of the adoption of the final resolution. It is recalled in this context that the Committee of Ministers has issued Recommendation (2004)5 on the verification of the compatibility of draft laws, existing laws and administrative practice with standards laid down in the European Convention on Human Rights.

Foreigners' right to child benefits

The discrimination of foreigners in the enjoyment of the right to child benefits, based on the temporary character of their residence permits, was quashed by the Constitutional Court in 2004 and a new uniform system entered into force retroactively in January 2006.

Niedzwiecki and Okpisz (58453/00 and 59140/00)
Final Resolution CM/Red(2011)111

Detention

A clear right of access to information in the investigation file relevant for the evaluation of the lawfulness of detention on remand was introduced by a new law of 2010.

Mooren (11364/03)
Final Resolution CM/ResDH(2011)216

Conditions of detention – health care

Changes in administrative practise of prisons ensure adequate medical treatment of detainees with drug substitution therapy. Statistical data show significant increase in the number of prisoners receiving medically prescribed and supervised drug substitution therapy. In cases where a medically indicated substitution therapy is not available in a particular prison, the prisoners concerned are transferred to another prison.

Wenner (62303/13)
Final Resolution CM/ResDH(2023)152

Fairness of proceedings

Costs incurred for the assistance by an interpreter of foreigners in proceedings before courts were reimbursed (or not recovered) by the authorities.

Lüdicke, Belkacem, Koç (6210/73+)
Final Resolution CM/ResDH(83)4

The Court Costs Act was amended in 1990 to ensure that in criminal or in court proceedings under the Regulatory Offences Act, interpretation costs will be charged to an accused or interested party only on the ground that they were incurred unnecessarily, through negligence or otherwise.

Öztürk (8544/79)
Final Resolution CM/ResDH(89)8

An accused in detention was granted the right to ask for judicial review of the decision of the Public Prosecutor's Office denying access to the file.

Garcia Alva (23541/94)
Final Resolution CM/ResDH(2003)2

Excessive length of proceedings

A possibility to obtain compensation for excessively long proceedings, following an unsuccessful complaint to the court concerned with a view to accelerating the proceedings, was introduced in December 2011.

Rumpf (46344/06+)
Final Resolution CM/ResDH(2013)244

Retroactive application of criminal law

The possibility to prolong preventive detention of dangerous criminals after these had served their sentences even in situations where such a prolongation could not be foreseen by law at the time of conviction was declared unconstitutional in 2011. Transitional arrangements were put in place by the Constitutional Court and a new Convention-conform system was established in 2013.

M. (19359/04+)
Final Resolution CM/ResDH(2014)290

Protection of private life - End of life	
With regard to the domestic courts' refusal to examine the merits of a request lodged by the husband of a woman suffering from total sensorimotor quadriplegia with a view to assessing the lawfulness of the rejection of her request to be prescribed a lethal dose of a substance allowing her to end her life at home, the Federal Administrative Court granted the reopening of the procedure and held that the domestic courts had failed to carry out an evaluation on whether the applicant's late wife had found herself in "extreme distress", a situation which, under strict conditions, could make the acquisition of substances for assisted suicide exceptionally compatible with the purpose of the Narcotics Act.	***Koch*** (497/09) **Final Resolution CM/ResDH(2018)32**
Rights of children/fathers	
A child is entitled to have access to both parents and each parent is obliged to have contact with, and entitled to have access to, the child. Family courts can determine the scope of the right of access and prescribe more specific rules for its exercise.	***Elsholz*** (25735/94) **Final Resolution CM/ResDH(2001)155**
Parents of a minor child born out of wedlock jointly exercise custody if they make a declaration to that effect or if they marry. In 2013 a new law came into force to strengthen the legal position of biological fathers of children born out of wedlock in the field of access and information rights.	***Zaunegger*** (22028/04) **Final Resolution CM/ResDH(2014)163**
A new preventive remedy applicable to access and custody proceedings was introduced in October 2016, allowing a party to such proceedings to lodge a claim to expedite the proceedings, which has to be examined within a month.	***Kuppinger*** (62198/11) **Final Resolution CM/ResDH(2018)447**
Freedom of expression	
Confirmation that the lodging of a criminal complaint against an employer (e.g. alleging shortcomings in the care provided to patients) cannot justify a dismissal without notice, unless the employee (a nurse) has knowingly or frivolously reported incorrect information.	***Heinisch*** (28274/08) **Final Resolution CM/ResDH(2017)62**
Discrimination on the ground of sex	
In 1995, the Federal Constitutional Court held, that the impugned legal provisions, which imposed only on men the duty of performing fire service or of paying fire service levy, amounted to a discrimination based on sex and declared them null and void. Prior to that, the authorities of the three Länder concerned, Baden-Württemberg, Bayern and Sachsen, had already stopped requesting the payment of outstanding fire service levies and imposing new obligations to pay these levies.	***Karlheinz Schmidt*** (13580/88) **Final Resolution CM/ResDH(96)100**
Discrimination (racial profiling) - private life	
Following changes in the domestic administrative courts' case law and a judgment of the Federal Administrative Court of April 2024, arguable allegations of racial profiling during identity checks by the police will be effectively investigated through an independent body since administrative courts are obliged to hear such claims on the merits. In addition, a Parliamentary Commissioner for the Federal Police Authorities has been created in March 2024. This fully independent body is entitled to investigate arguable allegations of racial profiling during identity checks.	***Basu*** (215/19) **Final Resolution CM/ResDH(2024)332**

Discrimination against children born out of wedlock	
Following the *Brauer* case, German legislature passed the Second Inheritance Rights Equalisation Act of 12 April 2011. The first sentence of section 12(10)(2) of the Children Born outside Marriage (Legal Status) Act of 19 August 1969 was changed retroactively to the effect that the difference in treatment between children born outside wedlock before and after 1 July 1949 was set aside in cases where the deceased had died on or after 28 May 2009. In cases where the deceased had died before 28 May 2009 the difference remained in force.	***Brauer*** (3545/04) **Final Resolution CM/ResDH(2012)83** ***Mitzinger*** (29762/10) **Final Resolution CM/ResDH(2024)302**
Following the case of *Wolter and Sarfert*, the Federal Court of Justice decision of 12 July 2017 changed the application of the amended legislation. Through its teleological interpretation of the domestic legislation, it stated that, following a Convention compliant proportionality assessment, children born outside marriage before 1 July 1949 can be granted inheritance claims even where the deceased has died before 28 May 2009. The main elements to be taken into account are the knowledge of the persons concerned, the status of the inheritance rights involved, and the passage of time in bringing complaints.	***Wolter and Sarfert*** (59752/13) **Final Resolution CM/ResDH(2024)302**
Protection of property	
Since 2013, property owners with ethical objections to hunting may withdraw from hunting associations (owners of land belonging to a common hunting district were previously *de jure* members of such associations).	***Herrmann*** (9300/07) **Final Resolution CM/ResDH(2016)188**