

Malta

EXECUTION OF THE EUROPEAN COURT OF HUMAN RIGHTS' JUDGMENTS MAIN ACHIEVEMENTS IN MEMBER STATES

The present survey presents short summaries¹ 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.

➤ *Right to liberty and security*

▢ *Lawfulness of detention*

In 2011, ceilings on detention duration for non-payment of personal guarantee in case of breach of bail conditions were introduced into the Code of Criminal Procedure. The absence of any automatic judicial review on the merits of detention decisions was remedied in 2002 so that such a review can take place and all detainees have thus an effective right to speedy review of the lawfulness of continued detention.

Gatt (28221/08)

[Final Resolution
CM/ResDH\(2014\)165](#)

*Sabeur Ben Ali, Aquilina,
T.W and Kadem
(35892/97+)*

[Final Resolution
CM/ResDH\(2007\)8](#)

▢ *Detention in view of expulsion*

An overall review of the National Immigration Policy was undertaken, and systematic detention of migrants ceased. The Immigration Act of 2015 empowered the Immigration Appeals Board to grant release from custody if the detention is not or no longer required and in cases without prospect of return within a reasonable time, obliging it to provide individualized reasoning. Free legal aid is granted. Detention for the purposes of removal is limited to six months. This period may be extended for a further period of twelve months in the event of lack of cooperation by the third country national concerned and delays in obtaining travel documents from the country in question. If a migrant informs the authorities that they are vulnerable or a minor, they may not be detained but stay in open reception conditions. Conditions of detention were also improved (detainees are granted access to fresh air, information and sanitary facilities; there is less overcrowding, and facilities are provided for families). Furthermore, an effective remedy was set up.

Suso Musa (42337/12+)

[Final Resolution
CM/ResDH\(2016\)277](#)

➤ *Functioning of justice*

▢ *Fairness of proceedings*

According to new regulations adopted in 1995, the power to sanction breaches of the privileges mentioned in the House of Representatives Ordinance was transferred to the Court of Magistrates, thus safeguarding independence and impartiality of proceedings.

Demicoli (13057/87)

[Final Resolution
CM/ResDH\(95\)211](#)

Rules on time-limits for appeals were clarified in 2005. The Code of Organisation and Civil Procedure was amended to allow a judge to be challenged or to abstain from a case if the legal representative pleading before him/her is their son or daughter, spouse, ascendant, brother or sister.

Mercieca (21974/07+)

[Final Resolution
CM/ResDH\(2013\)145](#)

Micaleff (17056/06)

[Final Resolution
CM/ResDH\(2011\)232](#)

Legal amendments of 2010 provided legal assistance to suspects during pre-trial investigations. In 2016, a specific remedy was set up offering the possibility to seek redress for a breach of the right to legal assistance before the court seized and a right of appeal against a decision to grant or deny such assistance before the Court of Criminal Appeal.

Borg (37537/13)

[Final Resolution
CM/ResDH\(2020\)12](#)

▢ *Remedies against excessive length of proceedings*

Monitoring of individual cases and case-management were improved, the number of judges increased and the formalities for the various forms of judicial acts were simplified to reduce the length of proceedings. Domestic case-law

Debono (34539/02)

[Final Resolution
CM/ResDH\(2014\)280](#)

also developed a right to seek compensation in case of excessively lengthy proceedings.

➤ **No punishment without law**

The guidelines on the choice of the competent court in criminal matters were improved as well as the procedural safeguards for the accused through amendments to the Criminal Code in 2014.

Camilleri (42931/10)
[Final Resolution](#)
[CM/ResDH\(2014\)142](#)

➤ **Protection of private and family life**

▢ Filiation / paternity actions

An amendment of the Civil Code in 2007 allowed for, upon authorisation by the courts, the institution of an action for the repudiation of a child born in wedlock beyond the relevant time-limits established by law.

Mizzi (26111/02)
[Final Resolution](#)
[CM/ResDH\(2013\)160](#)

▢ Custody and public care of children

The Parents, guardians and young persons concerned have the right to seek court review of final care orders which had been automatically imposed following conviction for certain criminal offences related to minors.

M.D. and Others (64791/10)
[Final Resolution](#)
[CM/ResDH\(2014\)265](#)

➤ **Freedom of expression**

▢ Defamation

Prior to the new Act on Media and Defamation of 2018, there was no specific definition of the term “defamation”. The new act introduced the notion of “serious harm” to the definition of defamation and decriminalised it so that actions for defamatory libel and slander can only be brought before civil courts. In addition, it provided for the possibility for the court to refer the case to mediation.

Falzon (45791/13)
[Final Resolution](#)
[CM/ResDH\(2019\)122](#)