

Serbia

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.

► *Actions of security forces and effective investigations*

Victims' participation in investigations was further developed. Moreover, in 2017, the Chief Public Prosecutor issued a Methodology for Investigating Cases of Ill-Treatment by the Police and detailed Guidelines for the Prosecution of Hate Crimes as the authorities' positive obligation. The Penal Code included the offence of hate crime and hatred as a motivation, including religious hatred, was introduced therein as an aggravating circumstance of criminal offences.

With regard to ill-treatment of prisoners, the Law on the Execution of Criminal Sanctions of 2014 included measures to monitor and prevent violence in detention. In 2015, the Rulebook on the Supervision of the Penal Institutions' Work laid down procedural requirements and possible sanctions. Employment of prison staff can be terminated, *inter alia*, as a result of the failure to declare violations of the institution's house rules (including inter-prisoner violence). Moreover, the medical personnel must keep special records of injuries sustained by detainees and notify the institution's warden of any sign that violence has been inflicted. Furthermore, allegations of ill-treatment should be prosecuted *ex officio* while public authorities are obliged to report to prosecutors all alleged criminal offences including those related to inter-prisoner violence.

Milanović (44614/07)
Final Resolution
CM/ResDH(2019)365

Gjini (1128/16)
Final Resolution
CM/ResDH(2020)79

► *Right to liberty and security*

The right to be brought before a judge within 48 hours has been guaranteed at the constitutional level since 2006 and was enshrined in the Criminal Procedure Code of 2011. The Constitutional Court developed its case-law to prevent excessive length of pre-trial detention in the light of the special circumstances of the cases and their complexity.

It is no longer possible to detain individuals on the basis of foreign courts' judgments that had not been previously recognised by Serbian authorities in line with the appropriate procedure for recognition of a foreign decisions in criminal matters. Under recommendations issued in 2015 by the Ombudsman, the Administration for the Execution of Criminal Sanctions should release all such individuals and inform them of the possibility to claim compensation for unlawful imprisonment.

Vrenčev (2361/05+)
Final Resolution
CM/ResDH(2018)52

Mitrović (52142/12)
Final Resolution
CM/ResDH(2020)78

► *Functioning of justice*

▢ *Fairness of proceedings*

The 2009 Court Rules enabled civil law courts to harmonise domestic case-law in order to avoid inconsistencies in respect of claims brought in identical situations. To this effect, the Presidents of Appellate courts held joint sessions to discuss relevant civil-law topics in view of a general harmonisation of case-law.

▢ *Access to court*

The 2009 Cadastre Act ensured that judicial review be available against administrative decisions concerning real property registration.

▢ *Remedies against excessive length of criminal proceedings*

Criminal proceedings were accelerated through a number of legislative amendments in 2013, notably by introducing the prosecutor's obligation to

Vinčić and Others (44698/06+)
Final Resolution
CM/ResDH(2017)107

Backović (47997/06)
Final Resolution
CM/ResDH(2013)44

Ristić (32181/08)
Final Resolution
CM/ResDH(2014)18

establish the grounds for indictment already before the trial. A special law of 2005 gives priority to criminal proceedings concerning victims who are minors.

In 2011, the Law on the Constitutional Court was amended to ensure a more effective conduct of proceedings in chambers composed of eight or three judges respectively, instead of 15. In 2013, Rules of Procedure allowed for the creation of the judge-rapporteur function, the revision of periodical work-plans and the strengthening of IT support. In 2018, an extensive survey identified cases pending longer than three years to ensure their rapid completion.

▢ Enforcement of final judicial decisions against State enterprises

Enforcement proceedings concerning debts of socially-owned companies were improved by a change of practice of the relevant local authorities as well as by the introduction, in 2012, of an effective remedy for the non-enforcement of final court decisions.

Milovanovic (56065/10)
 Final Resolution
 CM/ResDH(2021)20

EVT company (3102/05+)
 Final Resolution
 CM/ResDH(2017)183

➤ **Protection of private life**

▢ Protection of correspondence

In 2009, prisoners were granted an unlimited right to correspondence, which could only be limited by judicial decision.

▢ Protection from dismissal during criminal proceedings

The European Court found that the applicants' right to respect for their private life had been violated and that they had suffered from a lack of foreseeability of the law following their dismissal from the police because of criminal proceedings brought against them. Consequently, the 2005/2016 Police Act was amended and provided that a police officer can only be suspended pending criminal proceedings but not dismissed.

Stojanović, Jovančić and Milošević (34425/04+)
 Final Resolution
 CM/ResDH(2011)77

Milojević and Others (43519/07)
 Final Resolution
 CM/ResDH(2018)93

➤ **Protection against religious discrimination**

The Law on the Prohibition of Discrimination of 2009 became a key instrument in ensuring efficient protection against discrimination, including on religious grounds, introducing the victim's right to seek protection in civil courts. A Commissioner for Equality was established as an independent institution vested with the competence to investigate cases of discrimination and to propose solutions. These measures were accompanied by the Anti-Discrimination Strategy (2013-2018), the Strategy for the Social Inclusion of Roma (2016-2020) and the National Judicial Reform Strategy (2013-2018).

Milanović (44614/07)
 Final Resolution
 CM/ResDH(2019)365

➤ **Protection of property rights**

▢ Payment of pensions earned in Kosovo³

The necessary procedures to ensure the payment of pensions earned in Kosovo have been put in place as from 2013. Pensions have been paid.

Grudić (31925/08)
 Final Resolution
 CM/ResDH(2017)427

³ All reference to Kosovo, whether the territory, institutions or population, in this text shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.

➤ Repayment of “old foreign currency savings”

In 2016, a law introduced a repayment scheme for the “old foreign currency savings” (estimated at 310 million euros) held by nationals of successor States to the SFRY in branches of Serbian banks inside or outside Serbia or held by the Serbian nationals in Serbian branches of the banks with head offices in other former Yugoslav Republics. Furthermore, administrative arrangements have been set up to receive and handle applications.

Alisić and Others
(60642/08)

Final Resolution
CM/ResDH(2020)184

➤ **Electoral rights**

Following the facts of this case in which the termination of the applicant’s mandate as MP was in breach of the applicable law and parliamentary rules requiring that the intention to resign be submitted by the MP in person, in accordance with his *genuine* will, the 2011 Act on Election of Members of Parliament abolished the “party-administered mandates” and the “blank resignations” of MPs.

Paunović and Milivojević
(41683/06)

Final Resolution
CM/ResDH(2017)193