

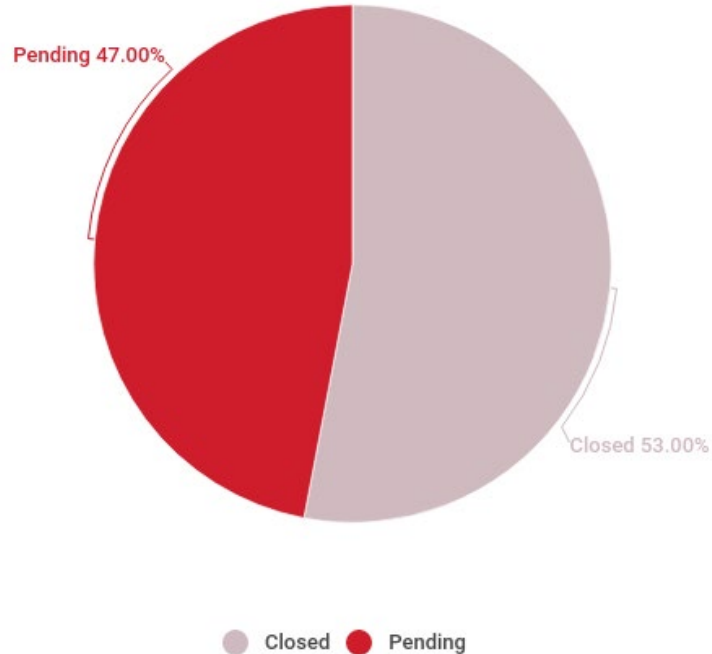
Conference on Systemic Non-
Implementation of
Judgments of the European Court of
Human Rights –
What Can Civil Society Do?

22 – 23 June 2022



The Big Picture

Over **1300** leading judgments pending implementation (06/2022)



More than 4 out of 10 leading cases from the last 10 years still pending

Average time pending: 6 years and 2 months

Session 1: Structures at the national level to systematically promote the implementation of ECtHR judgments: what works best and how can civil society advocate for it?

Wednesday 22nd June, 9.20 - 11.00 CET



Chair: Dr Krassimir Kanev, Director of the Bulgarian Helsinki Committee

An effective structure to promote the implementation of judgments in the Czech Republic

- Mgr Petr Konůpka, Deputy Agent of the Government of the Czech Republic before the European Court of Human Rights



The working group to implement judgments in Slovenia

- Dr. Simona Drenik Bavdek, Counsellor to the Ombudsman of Slovenia and Assistant Head of the Center for Human Rights



Advocating for the creation of a parliamentary monitoring mechanism in Moldova

- Ilie Chirtoaca, Legal Officer, Legal Resources Centre from Moldova



Parliamentary monitoring mechanisms: opportunities, challenges, and lessons-learnt

- Dr. Alice Donald, Associate Professor of Human Rights Law, Middlesex University



Systemic Non-Implementation of Judgments of the European Court of Human Rights – What Can Civil Society Do?

An effective structure to promote the implementation of judgments in the Czech Republic

Petr Konůpka

Deputy Government Agent
of the Czech Republic before the ECtHR



Strasbourg, 22 June 2022

Content of my presentation

- Committee of Experts on the Execution of Judgments of the ECtHR
- improvements
- challenges
- possible elements of inspiration for civil society

Committee of Experts on the Execution of Judgments of the ECtHR

- advisory body of the Government Agent
- composition
 - ministries, MPs, highest courts
 - civil society
 - ombudsperson; academia and independent experts; NGOs specialized in human rights; Czech Bar Association
- working methods
 - leading role: Office of the Government Agent
 - plenary sessions / working groups
 - outputs and their implementation

Enhancement of the execution process

- broader expertise and knowledge of practice
- transparency and visibility of the process
- legitimacy (broad acceptance of the solution)
- weight and prioritization of the execution of judgments
- improvement of cooperation (State actors – civil society)
 - example: *D. H. and Others v. Czech Republic*

Challenges

- lack of political will
 - examples:
 - *Transgender Europe and ILGA Europe v. Czech Republic*
 - *Approach v. Czech Republic*
 - decisions of the ECSR vs. judgments of the ECtHR

Possible inspiration for civil society

- cooperation with national offices of the Government Agents for the representation before the ECtHR
- (advocating for) creation a similar structure to promote the execution of judgments
- creating a positive image (among politicians and public) of the change that a particular judgment could bring

Thank you for your attention.

Petr Konůpka

Deputy Government Agent

e-mail: pkonupka@msp.justice.cz





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Slovenian approach to the enforcement of judgments of the European Court of Human Rights – creating effective administrative capacity at the national level

Assist. Prof. Dr. Simona Drenik Bavdek,
Assistant Head of the Centre for Human Rights at
the Human Rights Ombudsman of the Republic of
Slovenia

EIN Conference on Systematic Non-Implementation
of Judgments of the European Court of Human
Rights – What Can Civil Society Do?, Strasbourg,
22-23 June 2022



State of enforcement of judgments in 2015 and 2022

By the end of 2015:

- the ECtHR delivered **310 judgments against Slovenia (including two pilot judgments (on issues related to the dissolution of the former SFRY) and Lukenda case (a group of 264 cases on lengthy court proceedings),**
- in which it found at least one violation of the Convention, **309 of them were formally NOT executed.**

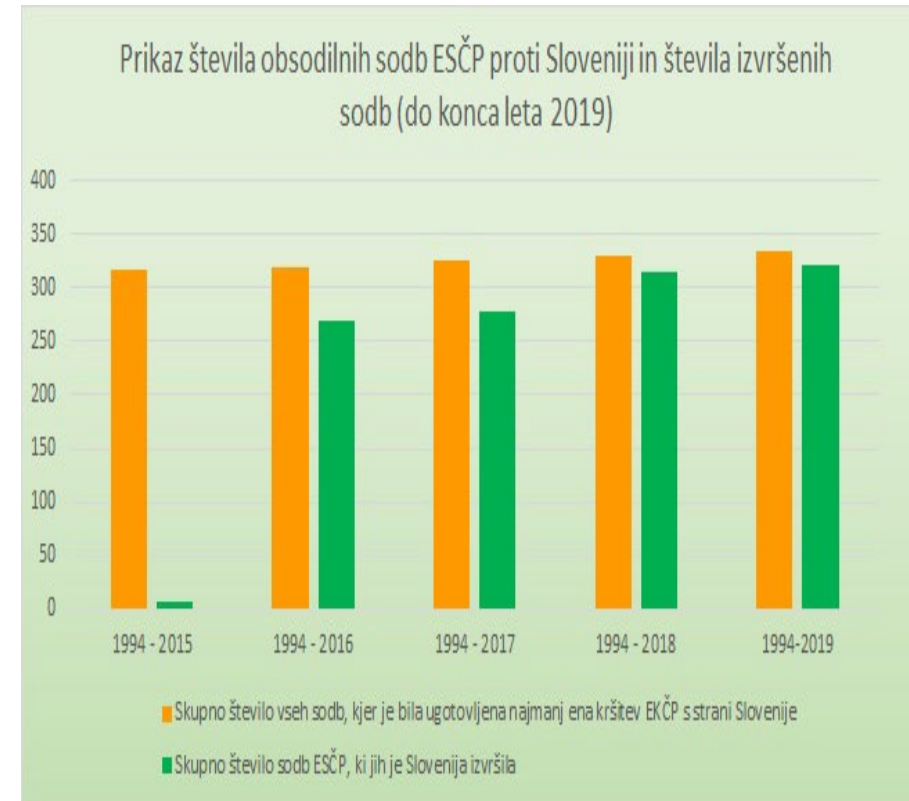
By May 2022:

- the ECtHR delivered **all together 342 judgments against Slovenia,**
- out of which **338 cases are closed** and
- **only 6 final cases are under the execution supervision** (in one case a Revised Action Report has been already prepared and in two cases Action Plan was submitted,).



The dynamics of enforcement

Year\ ECtHR Judgements	Number of unimplemented ECtHR judgments by Slovenia
End of 2015	309
End of 2016	49
End of 2019	12
May 2022 2020	6



Source: <https://www.gov.si teme/izvrsevanje-sodb-evropskega-sodisca-za-clovekove-pravice/>



Political will

General political will

- recognising the importance and the willingness to respect the ECtHR judgments **as a matter of respecting human rights and the rule of law at the national and international level;**
- **In case of Slovenia, Minister of Justice, Mr Klemenčič, politically promoted the importance to implement judgments** of the ECtHR and was decisive to set up legal and institutional framework.

Specific political will regarding every single judgment of the ECtHR - ongoing.

Political will is essential to ensure the execution of “difficult” cases as well as others.

- The adoption of the necessary measures to execute cases like *Kurić* or *Alisić v. Slovenia* was, for example, not simple in view of the scale of economic and political questions involved.



The establishment of an effective administrative capacity

- efficient and professional public administration,
- proactive approach,
- clear responsibility, leadership,
- proper coordination of activities,
- cooperation among various actors,
- education and training,
- knowledge of Strasbourg enforcement procedure – individual and general measures,
- preparation of Action Plans and Action Reports.



I. *Ad-hoc* approach

A concrete political will - under pressure from civil society - to fully implement three publicly exposed ECtHR judgments:

- **In 2005 *Lukenda v. Slovenia case*** (a group of 264 cases) through the adoption of a Protection of Right to Trial without Undue Delay Act in 2006 (with amendments of 2009 and 2012 – Revised Action Report of 2016) ;
- **in 2014 *Kurić and Others v. Slovenia case*** (pilot judgment) through the adoption of an Act Regulating the Compensation for Damage Sustained as a Result of Erasure from the Register of Permanent Residents in 2013 (Last Action Report in 2016);
- **in 2014 *Ališič and Others v Slovenia case*** (pilot judgment) through the adoption of an Act Regulating the Enforcement of the European Court Of Human Rights Judgment in Case No. 60642/08 in 2015 (Action report in 2018).



II. Holistic (systematic and integrated) approach

- **In December 2014: Amendments to Public Administration Act** - MoJ was tasked to guide the implementation of judgments of international courts.
- **In December 2015: The Governmental Decree was adopted, which:**
 - Established **Inter-ministerial working group for coordinating the execution of judgments of the European Court of Human Rights**,
 - **MoJ was tasked to establish a specialised support unit** for human rights and the enforcement of ECtHR judgments,
 - MoJ was tasked **to draft amendments to the Human Rights Ombudsman Act to be in compliance with the 1993 Paris Principles.**
- **2016: New structures became operational** – the **Project Unit for coordinating the execution of judgments of the European Court of Human Rights** was formed in the MoJ
- **2017: Human Rights Ombudsman Act** was amended.



About the new enforcement structure

Inter-Governmental Working Group for the coordination of the enforcement of judgments of the ECtHR

Chair: State Secretary of the Ministry of Justice (MoJ) – political level-

Members: Representatives of the MoJ, Ministry of Foreign Affairs, Ministry of Interior, Ministry of Finance, Ministry of Labour, Family Social Affairs and Equal Opportunities, State Attorney's Office, HRO, Supreme Court of the Republic of Slovenia.

A support Project Unit on the coordination of the enforcement of ECtHR judgments within the Ministry of Justice (MoJ)

- has a chair and approx. 4-5 additional members;
- various tasks, *inter alia*, include legal analyses of each case regarding the needed individual and general measures (after receiving an opinion from the Agent), coordination of work and measures to be taken at different levels, including legislative proposals, drafting Action Plans and Action Reports, cooperation with the CoE Department for the Execution of Judgments of the Court.

State Attorney's Office

- payments of just satisfaction and costs of the proceedings,
- has two representatives in IW-WG,
- translation of the judgments into the Slovene language.

Human Rights Ombudsman

- monitors the implementation process and gives its opinions when necessary,
- has two representatives in IG-WG.



Implementation measures include:

- **Slovenia paid several hundred million Euros** (of just satisfaction, compensations and costs of proceedings, especially to implement **two pilot judgments** and **Lukenda** case).
- **Slovenia went through system reforms and adopted several new laws** (to implement **two pilot judgments** and **Lukenda** case, as well as **Šilih** case (right to life), **Flisar** case (group of 7 cases – minor offences procedure ,etc.).
- **Judicial Training Centre organised several trainings for judges on ECtHR jurisprudence.**
- **MoJ envisages to build a new prison in Ljubljana** to enforce the final ECtHR judgments in case of **Mandić and Jović** (a group of 17 cases).
- **Since the establishment of a strong administrative structure at the end of 2015**, several governments changed, however effective and prompt enforcement of ECtHR judgments has remained one of the priorities of the Ministry of Justice and the Government.



What role for NHRIs, NGOs and CSOs?

I. The promotion of the systematic and specific implementation of ECtHR judgments

- The **Human Rights Ombudsman of the Republic of Slovenia (HRO)** (as Slovenian NHRI and since 2021 with Status A) **has been actively promoting the need for systematic implementation of ECtHR judgments at various occasions, including through the views and recommendations, included in its annual reports.**
- **Also NGOs and CSOs were promoting the need for implementation of the ECtHR judgments, especially regarding specific cases, like the two pilot judgments.**
- **A political will to respect human rights and the rule of law, including regarding the enforcement of judgments of international courts and tribunals, including of ECtHR, needs to be created.**
- **It is a constant task of the HROs, NHRIs and CSOs to further promoting the need for consistent and timely enforcement of the ECtHR judgments.**



II. The calls for transparency and inclusion in the implementation process at the national level

- Recommendation No. 2 in HRO (2019) **on the need to continue with timely implement judgments of the ECtHR.**
- Recommendation no. 9 (2021): **The Ombudsman recommends that the State Attorney's Office and the MoJ ensure that, in addition to the judgments of the ECtHR against Slovenia, also important judgments of the ECtHR against other Member States are available in Slovene language.**
- Recommendation no. 10 (2021): **The Ombudsman recommends that the MoJ ensure that Action Reports and Action Plans on the enforcement of judgments of the ECtHR against Slovenia are available in Slovene language.**
- Recommendation (permanent task) no. 15 (2021): **The Ombudsman recommends that the Insitute for Pension and Disability Insurance, in its work when deciding on the rights of persons with disabilities, consistently take into account the implementation of the judgment in *Krajnc v. Slovenia* case (ECtHR).**



III. Possibilities for improvements

1. Including HRO/NHRI as well as relevant NGOs and CSOs in the work of the national implementation structures at all levels (IWG, trainings, etc.)
2. More transparency in domestic implementation system:
 - Timely inclusion of HRO/NHRI and CSOs at the early stage of the preparation of the action plans /action reports and sharing draft ARs/Aps with them prior to sending them to Strasbourg.
 - Including HRO/NHRI, other relevant independent state institutions and CSOs in the informal exchange of views on hot to best implement/enforce a particular judgment
3. Reviewing/monitoring proper implementation of ECtHR judgments:
 - There should be a system established at the national/European level which would allow for a review of adopted enforcement measures.



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Drafting new Guidelines of the CM on the prevention and remedying of violations of the European Convention on Human Rights

European Network of National Human Rights Institutions (ENNHRI) has a privilege to participate as an observer in the Drafting Group on enhancing the national implementation of the system of the European Convention on Human Rights (**DH-SYSC-V**). This Drafting Group is under the direct supervision of the CDDH's Committee of experts on the system of the European Convention on Human Rights (DH-SYSC).

Draft Guidelines of the Committee of Ministers to member States on the prevention and remedying of violations of the European Convention on Human Rights also include a draft guideline on the promotion stakeholder's participation in the execution process.



Recommendations

1. HROs, NHRIs, NGOs and CSOs as “watchdogs” also regarding implementation of the ECtHR judgments – creating a capacity (understanding the enforcement process).
2. HROs, NHRIs, NGOs and CSOs as promoters of strong national structures and coordination regarding the implementation of ECtHR judgments – contributing to the need for a political will and a culture of human rights, part of which is a need to enforce final judgments of the ECtHR.
3. Calling for the enforcement of concrete final ECtHR judgments as well as for a holistic approach toward the implementation of all ECtHR judgments (regarding individual and general measures).
4. Calling for a proactive approach of the Government and other decision-makers to cope with the implementation issue and to ensure the administrative capacity of a state.



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Thank you for your attention.

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ECtHR parliamentary oversight mechanism – Moldova

Ilie Chirtoaca, Legal Officer

Moldova - Parliamentary oversight mechanism *in brief*

- Subcommittee at the level of the Parliament
- Exercises parliamentary control over the execution of ECtHR judgments
- Lead by the “opposition”, controlled by the majority



Moldova - Parliamentary oversight mechanism

powers



- 1. Monitors** the process of execution of ECtHR decisions
- 2. Promotes** draft normative acts necessary for execution of judgements
- 3. Questions** (through open hearings) authorities responsible for drafting and implementing measures for the enforcement of judgments
- 4. Reports** annually to Parliament on the implementation of ECtHR judgments

Moldova - Parliamentary oversight mechanism

how it was possible?



1. The role and “standing of ECHR/ECHR in Moldova
2. Hard facts & figures
3. Legal & CSO community support
4. Media coverage & media campaign
5. Question of ownership

Lessons learned & recommendations



1. Establish good relations with the authorities
2. Speak their language
3. Be concise and convincing
4. The media can be helpful, but not always
5. Explain the benefits (why and how) institutions will gain from the proposed reform
6. Create alliances with other NGOs
7. Connect development partners to this process

LRCM

Rights and justice for all

THE LEGAL RESOURCES CENTRE FROM MOLDOVA



33, A. Sciusev St. Chisinau, Republic
of Moldova, MD-2001



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Parliamentary monitoring mechanisms: opportunities, challenges, and lessons learnt

Dr Alice Donald, Middlesex University, London

**EIN conference on Systemic Non-Implementation of
Judgments of the European Court of Human Rights –
What Can Civil Society Do?**

Outline

- (Potential) benefits of parliamentary human rights mechanisms
- Key functions and principles
- Limitations in practice
- Recommendations for civil society

Understanding implementation

“...the Convention system may be understood as a complex web of interaction and interdependence between institutional actors, each of which has different functions, expertise, competence, and claims to legitimacy – and none of which can secure the objective of the Convention alone, but only through their inter-relationships, whether of collaboration, coordination, competition or oversight.”

A. Donald and P. Leach, *Parliaments and the European Court of Human Rights* (OUP, 2016) 303



Potential benefits of parliamentary mechanisms

- **Preventative and remedial dimension**
 - **oversight**: holding governments to account for action or inaction
 - acting when the **only remedy available is to change the law**
 - creating space for **civil society engagement**
 - creating **legislative** framework (or framework of **expectations**)
enshrining powers and duties in respect of implementation
- **Legitimacy**
 - **democratic deliberation** of ECHR-compliant remedies - requiring parliamentarians to engage with the practical meaning of rights for law and policy in their national context
 - countering the perception that legislative or policy changes in response to human rights judgments lack **democratic legitimacy**

Civil society should remind MPs of their obligations - and opportunities!

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:

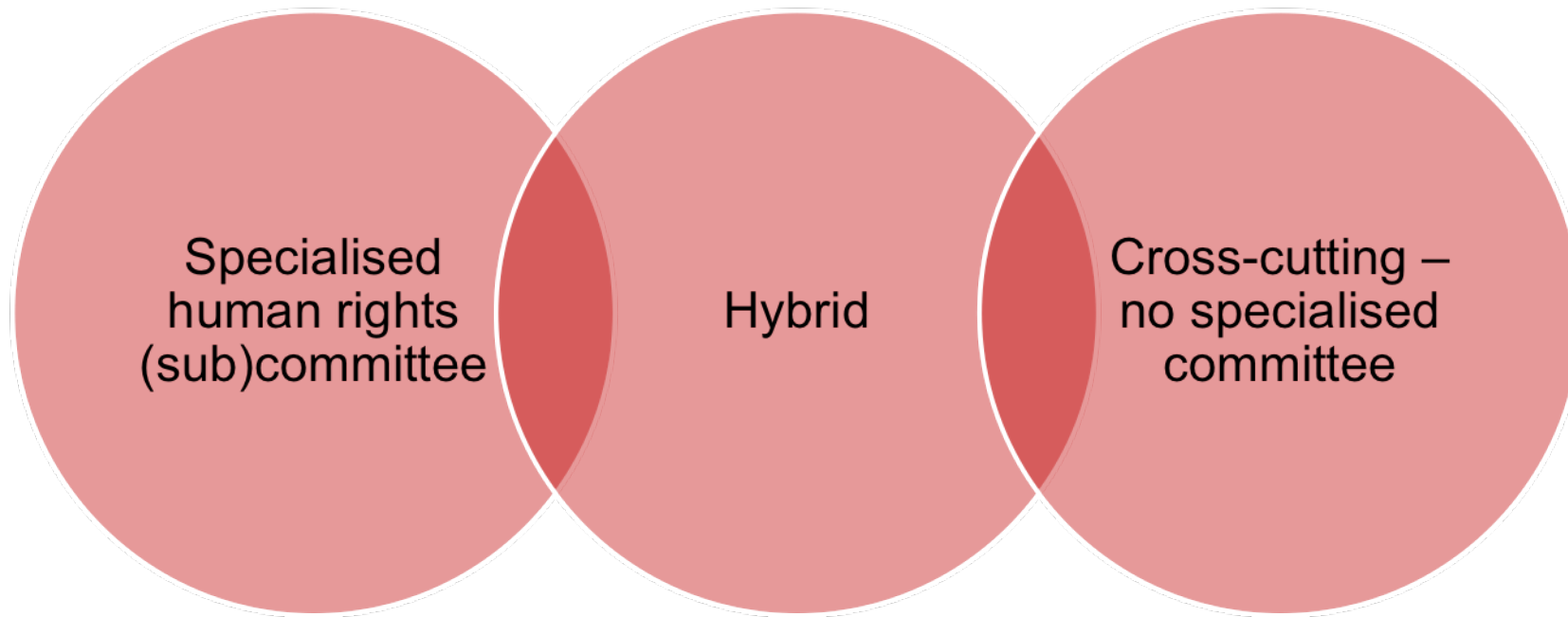
- ▶ scrutinise draft legislation for compatibility with international human rights law, including the provisions of the European Convention on Human Rights (the Convention) and its protocols?
- ▶ legislate to give effect to judgments of the European Court of Human Rights (the Court)?
- ▶ monitor the 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?

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?

Models for parliamentary human rights structures





Pros and cons of different approaches

- **Specialised model**

-  Development of systematic oversight & institutional memory
-  Stable interlocutor with executive, CoE, NHRI
-  Build human rights expertise among members and staff
-  Preferable model if executive coordination is weak or if being created for first time
-  Risk of creating a silo of expertise

- **Cross-cutting model**

-  Oversight and expertise can become integrated across parliament
-  “Everyone’s responsibility is no-one’s responsibility”

Human rights committee should have...

- **permanent status**
- **clearly defined remit**, preferably including legislative scrutiny and monitoring implementation of judgments
- **sufficiently broad remit** to take into account all relevant sources of law; recognise ECtHR's interpretive authority; act on positive obligations
- **sufficient powers**, e.g. to initiate inquiries and hearings; subpoena witnesses; liaise with civil society; report to parliament
- secretariat support and **independent, expert legal advice**
- **transparent** method of appointment and working methods
- **independence from executive**, reflecting balance of power
- **gender balance**
- regular **dialogue** with other actors – e.g. NHRIs, civil society, academics, lawyers, including opportunities for evidence submission

Limitations in practice

- Where principles not met, committees may become **political football** (e.g. Georgia - failure to designate lead committee in rules of procedure)
- Mechanisms may **fall into disuse** (e.g. Georgia - executive reports to Parliament but report is not debated; disbanded Polish sub-committee)
- Parliaments are relatively weak vis-a-vis executives and may have same **deficits of capacity, expertise and political will** – and even if Parliament willing, **executive** is gatekeeper of key information (**parliamentary legal advisers crucial!)
- Human rights committees often regarded by parliamentarians as being of **lower status** (reflected in size, formal powers)
- So... best kept as a technocratic exercise...? Parliamentary involvement may delay or politicise implementation?
- BUT! Avoid counsel of despair... Benefits of longer-term sensitisation, education, normalisation...
- *“Parliamentarians can shoot at [the Convention] without shooting themselves. If they had been more involved, they wouldn’t be so critical”* (Interviewee, Dutch section, ICJ).

Recommendations to civil society

- **educate** parliamentarians about their role and obligations – and opportunities – vis-a-vis CoE and the implementation process
- **inform** parliamentarians about specific cases and their (non)implementation
- **cultivate allies** in Parliament (e.g. PACE delegates, staff) and **intervene selectively** → feed MPs questions; lobby for hearings / enquiries and present evidence; prepare “shadow” reports on execution to correct or supplement the official record; propose ECHR-compliant remedies in specific cases
- use Parliament as a channel to push for strengthening of **executive coordination** (e.g. time limits, reporting, sharing Action Plans and Action Reports, status and resourcing of Government Agent; e.g. Moldova)...
- ... including creation of **working groups** with both Parliamentary and civil society membership – normalise both!
- **persistence and a long view!**

Success story...

Getting MPs to join the cause: an experience from Serbia

“In late 2019, we spearheaded a concerted push by civil society to block the adoption, by parliament, of a draft law that would have failed to ensure that the parents of thousands of babies who disappeared from hospitals in the 1980s finally have the fate of their children established. It was great to see that one of the parliamentarians who attended one of our press conferences immediately took action. She organised another press conference at the Parliament right afterwards, and helped secure the meaningful participation of civil society in a subsequent committee hearing. We were ultimately successful in securing important amendments to the draft law, which was adopted in March 2020.”

Savo Manojlović, President of UZUZ, April 2020

Source: EIN, *Domestic Advocacy for the Implementation of Judgments of the ECtHR: An EIN Guide for Civil Society* (2020) 21

Coffee Break



Session 2: The work of European institutions in the implementation of ECtHR judgments: what should civil society advocate for?

Wednesday 22nd June, 11.15-13.00 CET



Chair: Dr. Ramute Remezaite, EIN Board member and Implementation Lead at the European Human Rights Advocacy Centre



Practical steps to improve the speed and effectiveness of the execution of judgments of the ECtHR

- Piers Gardner, Barrister and Chair of the Permanent Delegation of The Council of Bars and Law Societies of Europe (CBBE) to the European Court of Human Rights

After Russia: reinvigorating the Convention system

- John Dalhuisen, Senior Fellow at the European Stability Initiative



The activities of the Council of Europe relating to the implementation of ECtHR judgments

- Professor Dr. Başak Çalı, Chair of the European Implementation Network, Co-Director of the Centre for Fundamental Rights, Hertie School of Governance

Involving the EU in the implementation of ECtHR judgments

- George Stafford, Director of the European Implementation Network





Practical steps to improve the speed and effectiveness of the execution of judgments of the ECtHR

Piers Gardner, Barrister and Chair of the Permanent Delegation of The Council of Bars and Law Societies of Europe (CCBE) to the European Court of Human Rights



After Russia: Reinvigorating the Convention System

John Dalhuisen, Senior Fellow at the European Stability Initiative

European Implementation Network

Strasbourg, 22 June 2022

“The prospects for the Convention system’s continued contribution to democratic security and good governance in Europe, based on the rule of law and respect for human rights, remain very encouraging.”

Annual Report, Supervision of the Execution of Judgments 2020

“The cessation of the membership of the Russian Federation also has consequences for the Convention system, including the Committee’s supervision work under Article 46. The European Convention of Human Rights has a renewed importance in these very difficult and challenging times.”

Annual Report, Supervision of the Execution of Judgments 2021

What is the European Convention on Human Rights for?



The original answer: Peace

A collective pact against totalitarianism

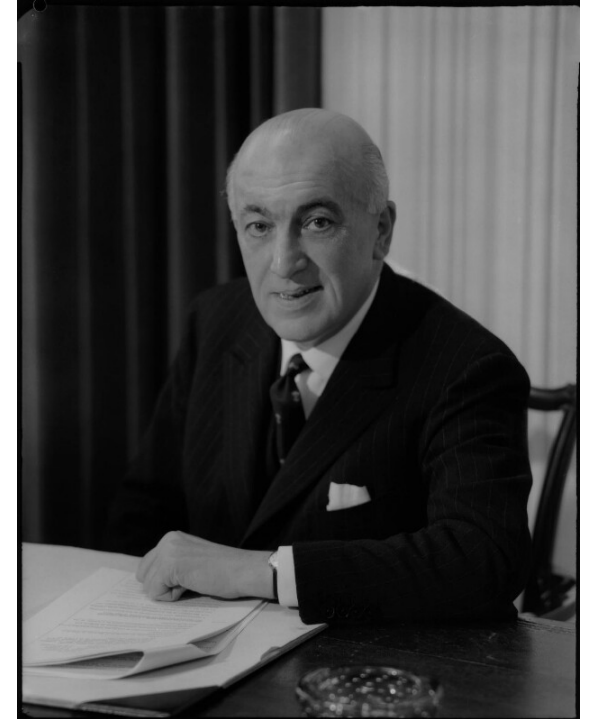
*“A collective guarantee ... would clearly demonstrate the common desire of the Member States to build a European Union in accordance with the principles of natural law, humanism and of democracy, it would contribute to the development of their solidarity; it would **fulfil the longing for security among their peoples**”*

The “Teitgen Report”, September 1949

The rules of a club of democracies

*“There will be no doubt about the **rules of our club**: there will be no misunderstanding about the terms of which the passport of entry to our body will be given and received.”*

David Maxwell-Fyfe, Consultative Assembly, August 1950



An early warning system



*A conscience must exist somewhere which will **sound the alarm** in the minds of a nation ... An international court, within the Council of Europe, and a **system of supervision** and guarantees could be the conscience of which we all have need ... ”*

Pierre-Henri Teitgen, Consultative Assembly, August 1949

For the most serious violations



“What we are going to ask these states, is to undertake to respect these freedoms and they shall not be dragged - if I may use this vulgar expression - before a Commission or a court, unless they have, in an obvious way, broken these fundamental, essential and restricted undertakings”

Pierre-Henri Teitgen, Consultative Assembly, August 1949

... A culture of compliance

68 judgments (finding a violation) before 31 December 1990

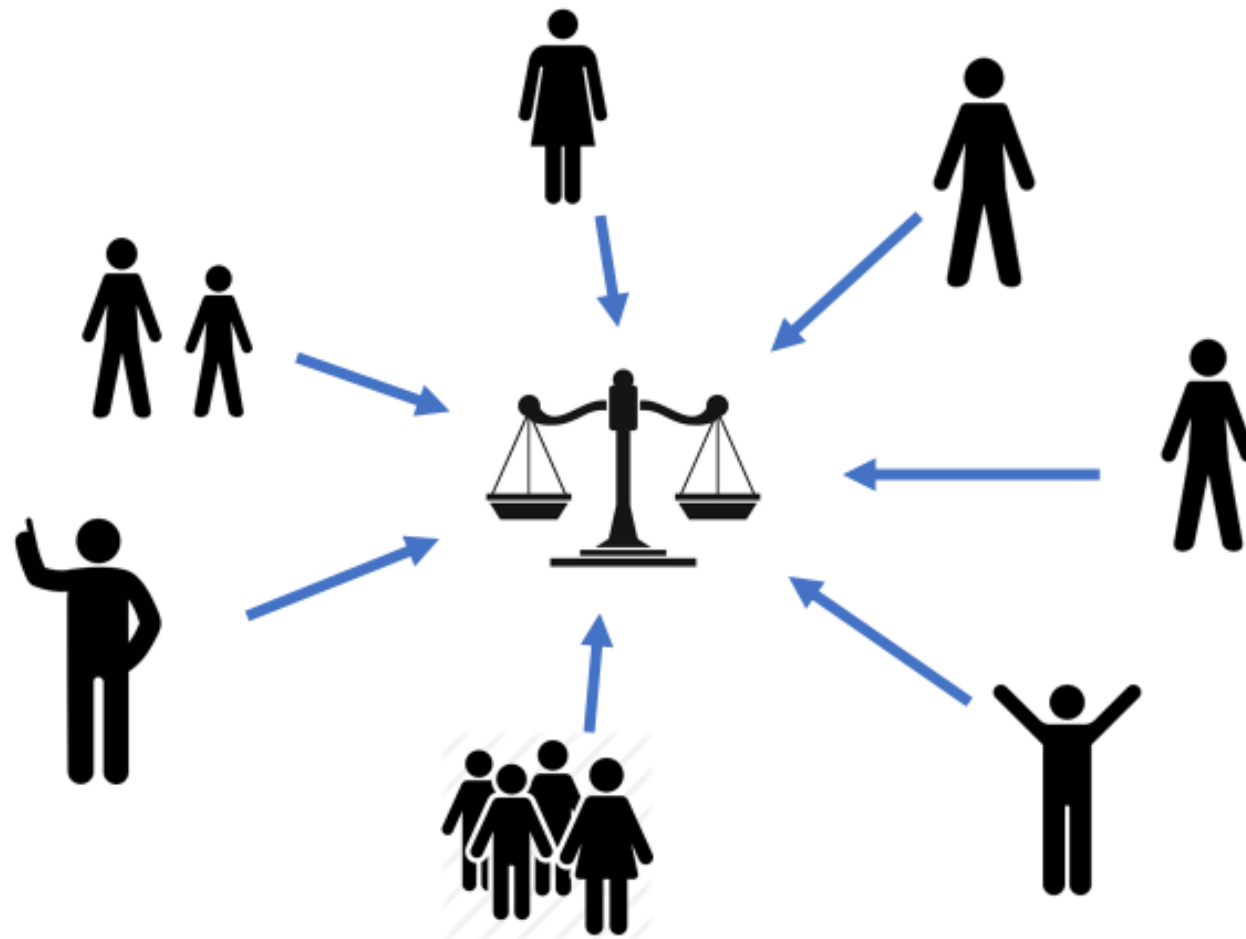
Just 2 unexecuted 5 years later.

Then three things happened ...

1. The court develops a quasi-constitutional function (70's)



2. The idea of individual justice takes root (80's)



3. A wave of new members (90's)



A court with four functions



The four functions of the European Court of Human Rights



1. The watchdog

The four functions of the European Court of Human Rights



2. The rescue dog

The four functions of the European Court of Human Rights



3. The Sheepdog

The four functions of the European Court of Human Rights



4. The Guide dog

Can the court do all these things?



As a watchdog ... failing

AZERBAIJAN

“Persecution and harassment of government critics continued. Peaceful protests were violently broken up. Arbitrary restrictions continued to cripple the work of human rights defenders and NGOs.”

Amnesty International Annual Report 2021



RUSSIA



TURKEY



“Systemic trend of “gagging” dissenting voices”

ECtHR

As a rescue dog ... failing (very often)



24 applications
8 judgments
0 implemented



77 applications
1 judgment
0 implemented

CASE OF BURMYCH AND OTHERS v. UKRAINE

(Applications nos. [46852/13](#) et al.)

JUDGMENT

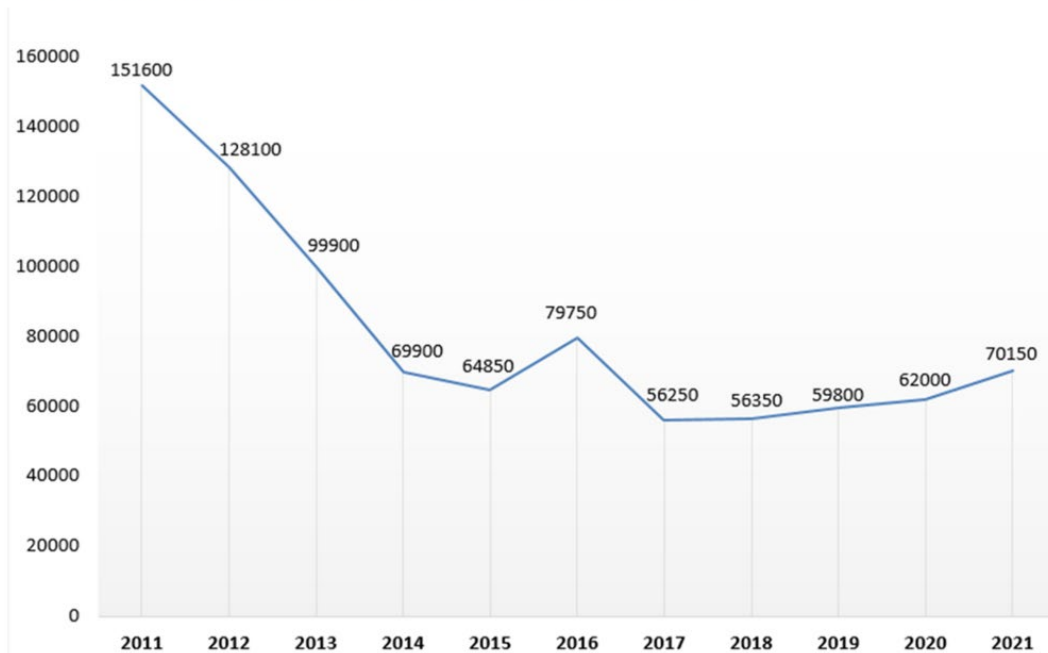
(Striking out)

“The present judgment has nothing to do with the legal interpretation of human rights. It concerns a matter of judicial policy only, and as such completely changes the well-established paradigm of the Convention system. “

As a rescue dog

Applications pending before the Court

Chart 2 Applications pending before a judicial formation per year



Pending Applications by judicial formation

	Chamber	Committee	Single Judge
2010	47,150	4,100	88,400
2011	45,850	13,700	92,050
2012	43,050	25,200	59,850
2013	39,000	34,400	26,500
2014	29,650	32,500	8,200
2015	27,200	34,500	3,150
2016	28,450	47,500	3,800
2017	26,250	25,700	4,300
2018	22,250	29,650	4,750
2019	20,500	34,600	5,150
2020	23,300	34,100	4,600
2021	30,600	31,850	7,700

Total judgments (ever): 24,511

As a sheepdog

Rwanda deportations: Government not ruling out leaving Europe's human rights framework after last-ditch legal rulings halt first flight

Home Secretary Priti Patel told MPs that three of the asylum seekers set to be on the first flight to Rwanda on Tuesday night had their removal blocked by the European court, which interprets the ECHR.

By Sophie Morris and John-Paul Ford Rojas, political reporters

© Wednesday 15 June 2022 18:07, UK



Polish court finds European human rights convention 'incompatible' with constitution [COMMENTS](#)

By AFP • Updated: 10/03/2022



As a guide-dog ... some successes

*Leading cases under enhanced supervision
15 June 2021.*

No cases (12)

Andorra	0
Austria	0
Denmark	0
Estonia	0
Germany	0
Latvia	0
Liechtenstein	0
Luxembourg	0
Monaco	0
Montenegro	0
San Marino	0
Iceland	0

5 or less (23)

Bosnia	1
Czech Republic	1
Finland	1
Ireland	1
Netherlands	1
Norway	1
Slovenia	1
Switzerland	1
Slovak Republic	2
Croatia	2
Cyprus	2
Spain	2
Sweden	2
Albania	3
Lithuania	3
North Macedonia	3
Portugal	3
France	4
Serbia	4
UK	4
Armenia	5
Belgium	5
Malta	5

... and some failures

Leading cases under enhanced supervision

(as of 7 June 2022)

	Total	Closed	% closed
Azerbaijan	22	1	4
Hungary	15	1	7
Ukraine	62	10	16
Romania	46	10	22
Russia	82	21	26
Bulgaria	39	13	33
Turkey	74	36	48
North Macedonia	6	3	50
Poland	28	14	50
Belgium	11	6	55
United Kingdom	12	7	58
Croatia	5	3	60
France	12	8	66
Bosnia	9	6	66
Greece	24	16	66
Italy	45	31	69
Albania	12	8	75
Serbia	17	13	76
Germany	3	3	100
Sweden	2	2	100
Denmark	0	0	-
Montenegro	0	0	-

Conclusions ...

1. The system works as a club of democracies ... this is essential for a culture of compliance

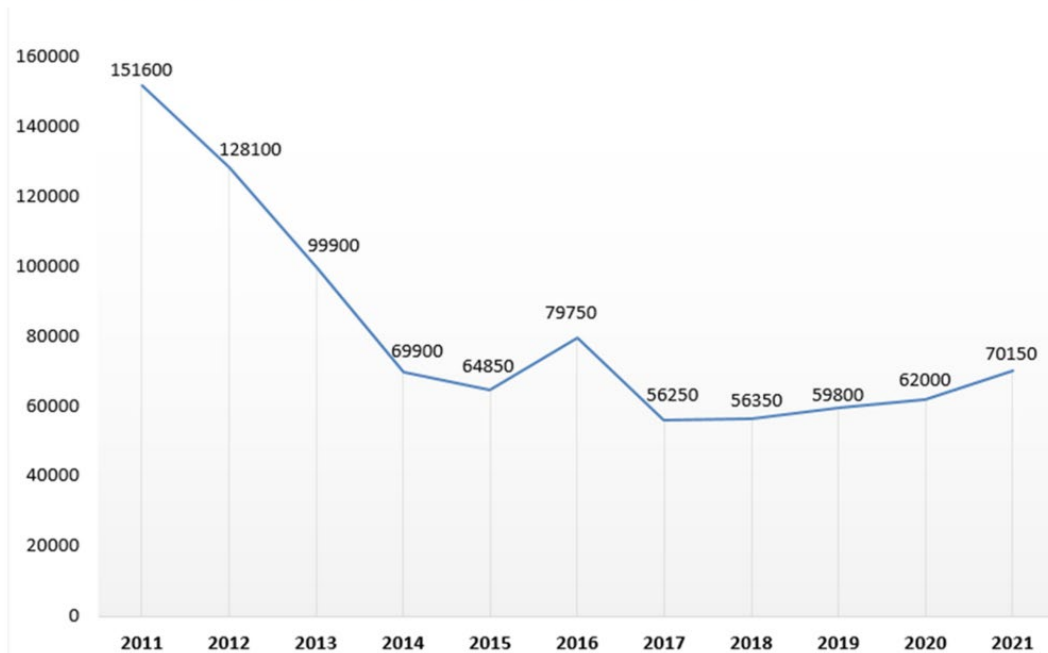
Conclusions ...

1. The system works as a club of democracies ... this is essential for a culture of compliance
2. The watchdog function is the **primary** function ... all the others depend on it.

Without it, the Court is overwhelmed ...

Applications pending before the Court

Chart 2 Applications pending before a judicial formation per year



Pending Applications by judicial formation

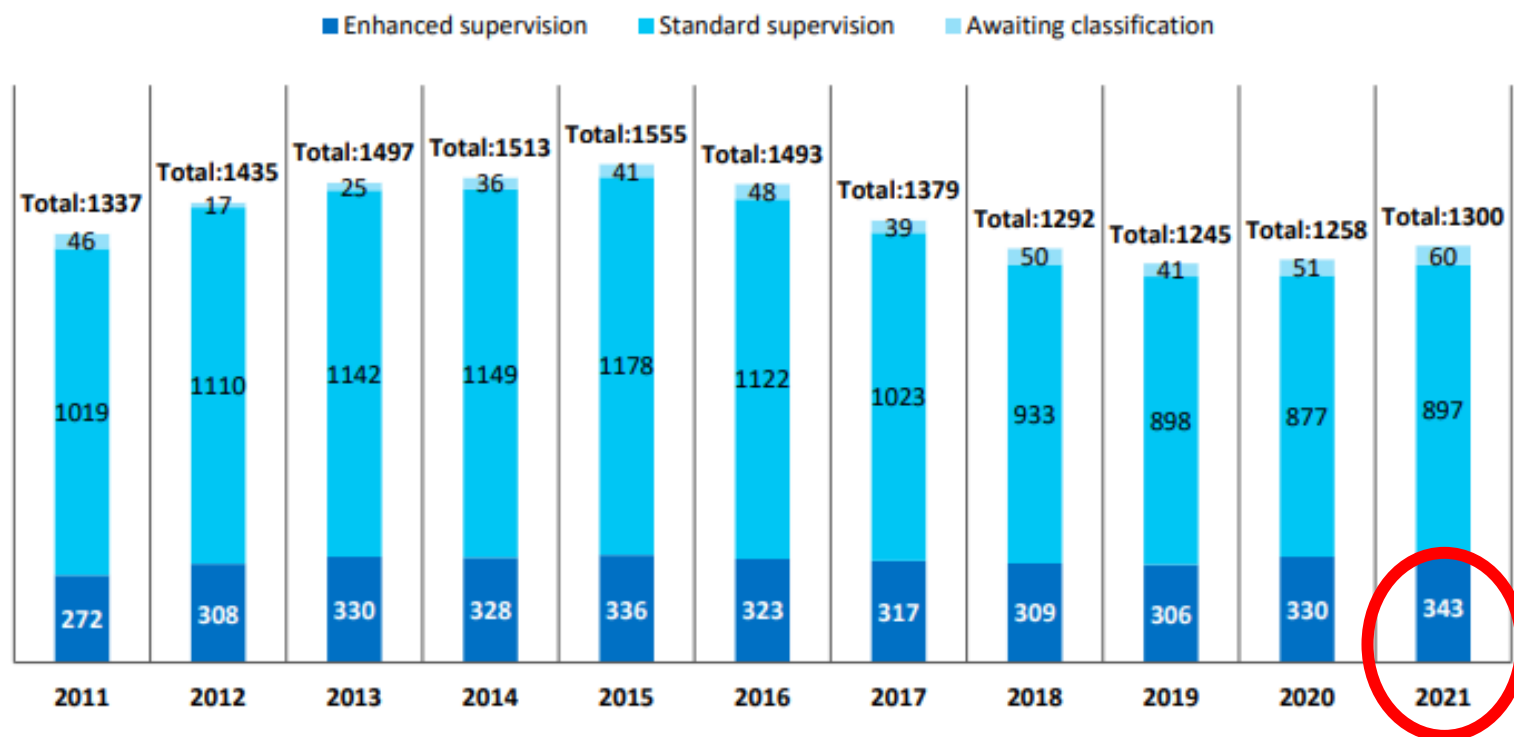
	Chamber	Committee	Single Judge
2010	47,150	4,100	88,400
2011	45,850	13,700	92,050
2012	43,050	25,200	59,850
2013	39,000	34,400	26,500
2014	29,650	32,500	8,200
2015	27,200	34,500	3,150
2016	28,450	47,500	3,800
2017	26,250	25,700	4,300
2018	22,250	29,650	4,750
2019	20,500	34,600	5,150
2020	23,300	34,100	4,600
2021	30,600	31,850	7,700

Total judgments (ever): 24,511

... and loses credibility (and legitimacy)

C.2. Enhanced or standard supervision

Leading cases pending



Non compliance is contagious

Leading cases under enhanced supervision still open after 5 years

	<u>2016</u>	<u>2022</u>
Poland	6	9
Hungary	3	10
Romania	8	17
Bulgaria	17	23

What does this mean?

Shoring up the Convention system

1. How we talk and think about the Convention matters



From this ...

To this ...



What are the Council of Europe's red-lines?

- Political prisoners?
- Free elections?
- Independent judiciaries?

2. Procedural implications:

Stream-line procedures for suspension



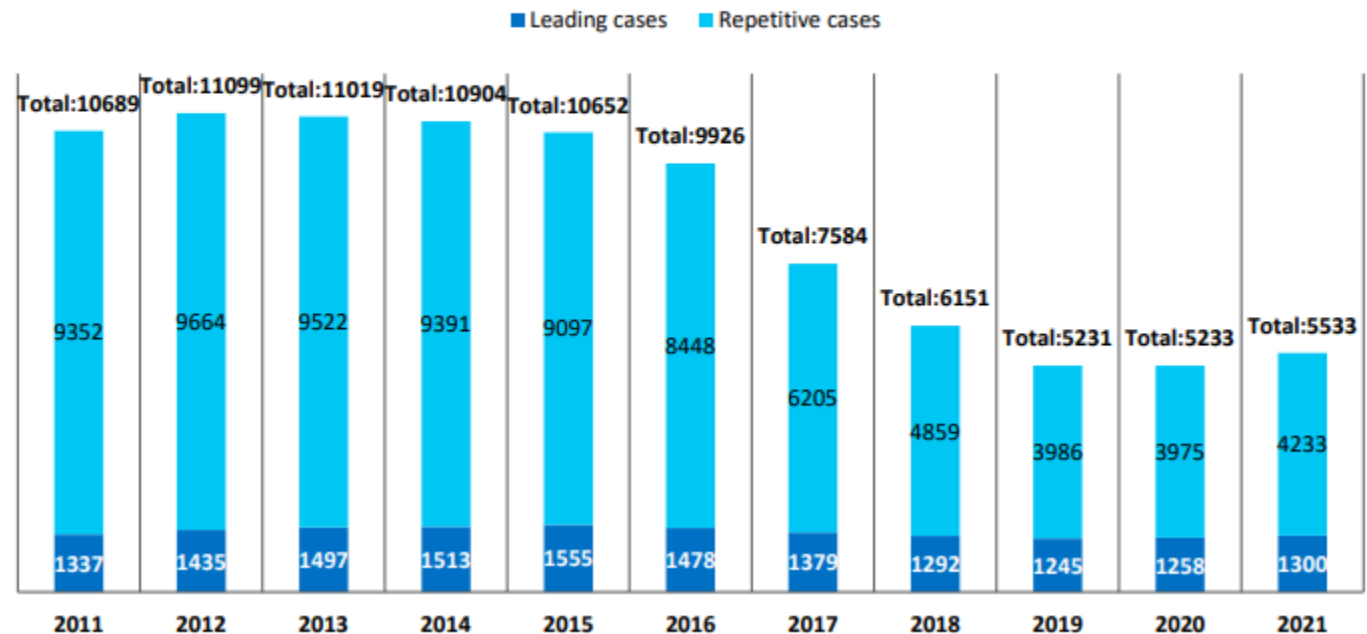
Within 12 months

3. More focus and more transparency on the cases that matter ...

“Notwithstanding, at the end of the year, the number of judgments pending before the Committee of Ministers was one of the lowest since 2007 (5,533)”

Annual Report on the Supervision of the Execution of Judgments 2021

C.1. Leading or repetitive cases



The Court is an Alsatian ...



EIN Conference

“The activities of the Council of Europe
relating to the implementation of ECtHR
judgments”

Professor Dr. Başak Çalı

22-23 June 2022





Proposals for the work of the Council of Europe on the Implementation of Judgments of the European Court of Human Rights

1. Increased transparency of the implementation monitoring process and engagement with NHRIs/NGOs
2. Increased funding for Council of Europe activities related to implementation
3. A special representative on the implementation of ECtHR judgments
4. Annual country-by-country assessments of the state of ECtHR implementation and national capacity in each state to implement judgments
5. A new sanction by the Committee of Ministers for continued non-implementation

1. Increased transparency of the implementation monitoring process and engagement with NHRIs/NGOs



The Frequency and Transparency of CM/DH Hearings

Issue:

- Limited opportunity for governments to be held accountable for non-implementation, because its deliberations are not public
- CM issues decisions on less than 12% of the leading judgments each year

Proposals:

- In exceptional cases, make CM/DH hearings entirely public.
- For all CM/DH hearings, allow NGOs/NHRIs to attend.
- Develop a practice of calling for ministers or other senior government officials to attend CM/DH sessions.
- Double the number of CM/DH sessions held each year.

1. Increased transparency of the implementation monitoring process and engagement with NHRIs/NGOs



Handling of Information in the Implementation Monitoring Process

Issues:

- Litigants, NGOs and NHRIs are not informed when important events occur in the monitoring process
- Lack of any direct communication means that these groups regularly miss important developments in the implementation monitoring process

Proposals:

Information listed under (a) is communicated to groups falling under (b):

- (a) A case is classified as coming under either standard or enhanced supervision; submission of government communications, action plans, and reports; the scheduling of the case for consideration by the Committee of Ministers; CM Decisions and Interim Resolutions; and Final Resolutions.
- (b) Parties who have won the relevant case at the European Court of Human Rights; parties who have intervened in the relevant case at the European Court of Human Rights; parties who have previously made a Rule 9 submission in the relevant case; and NHRIs.

1. Increased transparency of the implementation monitoring process and engagement with NHRIs/NGOs



Handling of Information in the Implementation Monitoring Process

Issues:

- Lack of publicly available information on cases examined under standard procedure
- Indicative calendar detailing when such cases will be considered is made available to the CM well before it is made public.

Proposals:

- For standard cases, when the DEJ agrees with the government what steps will be necessary to implement a judgment, a summary of this is made public on the HUDOC-Exec website, and communicated to Litigants, NGOs and NHRIs
- For enhanced cases, the indicative timetable for when cases will be considered by the Committee of Ministers is made public at the earliest possible opportunity, and communicated to Litigants, NGOs and NHRIs

1. Increased transparency of the implementation monitoring process and engagement with NHRIs/NGOs

Forum for Exchange on the Implementation Process

Issue:

- Lack of forum in which NGOs can communicate about the execution process with those who administer it

Proposals:

- A biennial meeting for litigators, NGOs, and NHRIs that engage in the implementation monitoring process.

Engagement with Civil Society on Country Visits

Issues:

- In some country visits, DEJ does not engage with civil society
- Civil society groups are often not provided with advance warning about which judgments are to be under discussion with the government

Proposals:

- During country visits by the DEJ, there should be an established practice that there is an exchange with members of civil society.
- Civil society is to be informed in advance about which the cases which are scheduled for discussion during the country visit.



2. Increased funding for Council of Europe activities



Issues:

- Large number of leading cases pending implementation require a huge amount of general measures reforms
- Not enough public info on which leading cases benefit from a co-operation project
- Limited capacity for DEJ

Proposals:

- Significant increase in the number of CoE technical co-operation projects focused on the implementation of particular ECtHR judgments, including work on similar judgments pending across different states.
- Significant increase in the number of CoE technical co-operation projects focused on national structural solutions to promote the implementation of judgments overall, including funding for the work of civil society in this area.
- Publishing of a list of the pending leading cases that benefit from a CoE technical co-operation project.
- Adding information to case profiles on HUDOC-Exec about CoE technical cooperation projects.
- Significant increases in funds for the Department for the Execution of Judgments

3. A special representative on the implementation of ECtHR judgments



Issue:

- Lack of national capacity is the root cause of the high number of pending leading cases
- Improvements to this national capacity needs to happen as a matter of priority

Proposal:

- The appointment of a Special Representative on the Implementation of ECtHR Judgments, with a mandate to promote capacity for implementation at the national level through structural solutions

4. Annual country-by-country assessments of the state of ECtHR implementation and national capacity in each state

Reporting on the Overall State of Implementation

- Huge variety of statistical data on implementation in each country, but no written assessment about what this means
- How well is implementation going overall in each state?
- No analysis of the national capacity to promote the implementation of ECtHR judgments

Proposals:

- Annual Reports on the Implementation of ECtHR Judgments to contain a written analysis of the overall state of ECtHR implementation in each CoE country
- Reporting on the existence and effectiveness of mechanisms at the national level for the implementation of ECtHR judgments



5. A new sanction by the Committee of Ministers for continued non-implementation



An Alternative to Infringement Proceedings

Issue:

- Use for a sanctioning measure that lies between Interim Resolutions and infringement proceedings

Proposal:

- Develop a procedure that lies between Interim Resolutions and the infringement procedure, which can create real and credible pressure to implement.

Conclusions

1. Need for **increased transparency** of the implementation monitoring process and **engagement with NHRIs/NGOs**, with regard to:
 - The Frequency and Transparency of CM/DH Hearings
 - Handling of Information in the Implementation Monitoring Process
 - Forum for Exchange on the Implementation Process
 - Engagement with civil society on country visits
2. **Increased funding** for Council of Europe activities: both for technical cooperation projects and the DEJ
3. A **special representative** on the implementation of ECtHR judgments
4. **Annual country-by-country assessments** of the state of ECtHR implementation and national capacity in each state
5. A **new sanction** by the Committee of Ministers for continued non-implementation



The EU and the implementation of ECtHR judgments

EIN Director George Stafford



EU Rule of Law Procedures

- Annual **Rule of Law Reviews**
- Article 7 TFEU
- Justice Scoreboard
- Mechanism for Co-operation & Verification
- **Budget Conditionality Mechanism**



Why Take ECtHR Implementation into Account in EU RoL Procedures?

1. Particular ECtHR judgments are **central to RoL**
2. Overall ECtHR implementation is **inherently a RoL issue**



Current Consideration of ECtHR Implementation in Annual EU RoL Reports

✓ References to
some ECtHR
judgments on ad
hoc basis

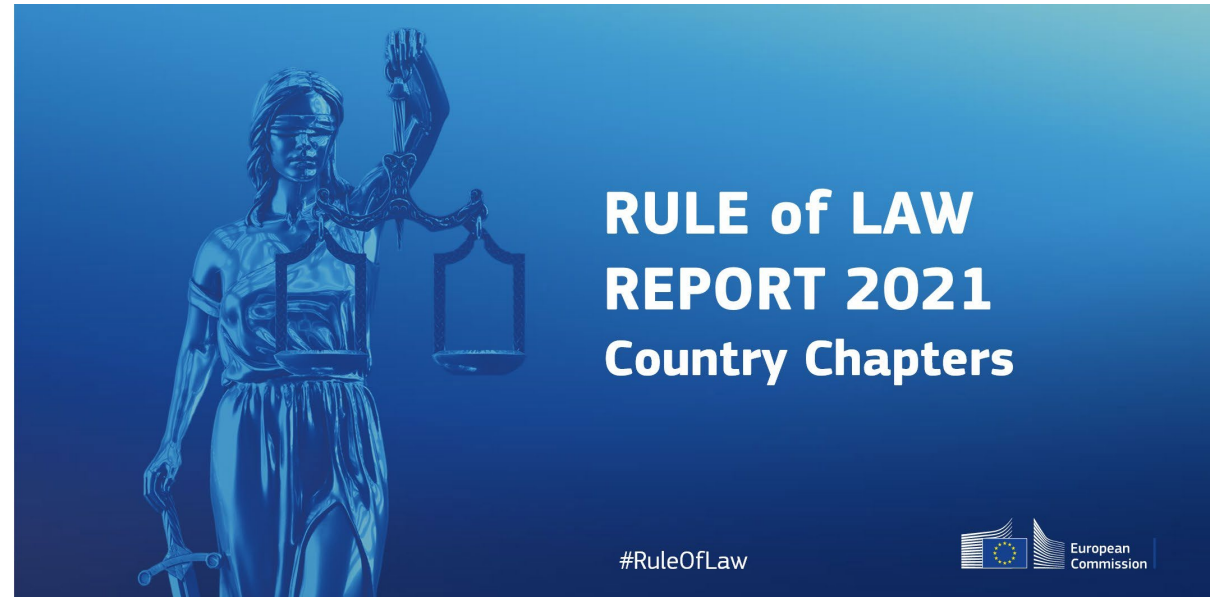
X No analysis of
overall ECtHR
implementation

X Only minority of
judgments included



A vision for ECtHR implementation and EU RoL reports

- ✓ Comprehensive analysis of unimplemented **judgments** central to RoL
- ✓ **Overall analysis** of implementation of leading judgments



Benefits of Taking ECtHR Implementation Into Account

- ✓ Strengthens EU RoL reporting
- ✓ Strengthens the implementation of ECtHR judgments



Work to date

- Widespread **NGO submissions** to EU RoL consultation process
- **Report + Events** by EIN & Democracy Reporting International

Recommendation: keep this work going



Civil Society Work to Promote Structural Solutions

1. **Communications**
2. **Advocacy** for structural mechanisms
3. **Monitoring** effectiveness





Project funding

Recommendation:

- ✓ Call for EU funds nationally
- ✓ Call for EU funds internationally

Ways of Engaging the European Union

1. Rule of Law Procedures
2. Funding Civil Society Projects





The EU and the implementation of ECtHR judgments

EIN Director George Stafford



Buffet Lunch



Session 3: Strategies for promoting judgment implementation

Wednesday 22nd June, 14.15 – 15.30 CET



Chair: Simon Papuashvili, Programme Director at International Partnership for Human Rights

How to Nudge States Towards Implementing ECtHR Judgments

- Ula Aleksandra Kos and Aysel Eybil Kucuksu, University of Copenhagen



Implementing Judgments Concerning Grievous Human Rights Violations During the Troubles

- Daniel Holder, Deputy Director of the Committee on the Administration of Justice (CAJ)

World Café: breakout discussions on civil society strategies to promote the implementation of ECtHR judgments

- Creating structural solutions at national level to systematically promote implementation
- Communications strategies to develop political will for implementation
- The work of European institutions to promote implementation of ECtHR judgments

How to Nudge States Into Implementing ECtHR Judgments

ERC Human Rights Nudge project, No.
803891

Aysel Küçüksu and Ula Aleksandra Kos

iCourts, Faculty of Law, University of Copenhagen

Strasbourg, 22-23 June 2022

KØBENHAVNS UNIVERSITET



**Human
Rights
Nudge**

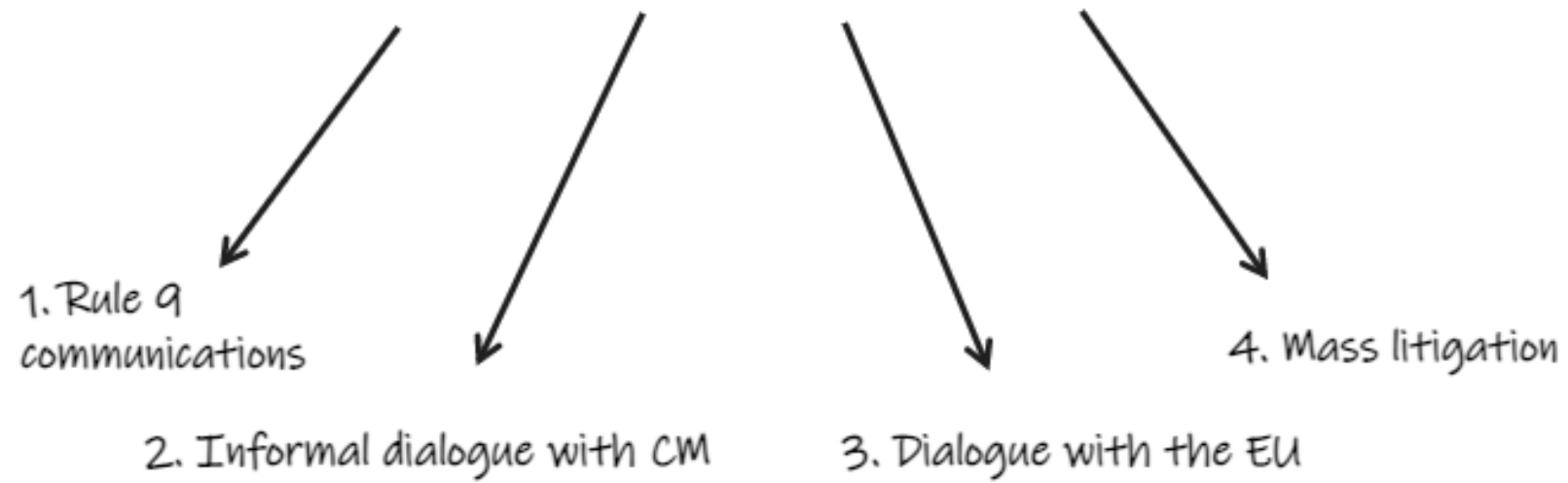


erc
European Research Council
Established by the European Commission

NGOs and NHRIs play a crucial role in the execution process before the Committee of Ministers. Your input can importantly contribute to a better and faster execution of judgments of the ECtHR.

HOW?

Actions to Consider



As an NGO or an NHRI, you can use the Rule the 9 procedure to:

1. **Start** a genuine dialogue
2. **Contextualise** the measures proposed by a state
3. Offer **pragmatic solutions** to the biggest implementation issues
4. Request **escalation** of the supervision

Overarching Result: Keeping the international supervision of a case ongoing.

- 1) prevents the premature closure of a case,
- 2) gives you NGOs/NHRIs the space to articulate a vision for the direction and scope of implementation.

Are your voices relevant in jurisdictions with "exemplary" compliance?

- Yes, very much so.
- Committee of Ministers practices of establishing compliance might be entrenching state reputations.
- The case of Denmark.

State action and NGO strategies of reaction: Comparison of Slovenia and Hungary

1. Findings of our analysis (quantitative)
2. Current NGO strategies in these countries (qualitative)
3. Key lessons

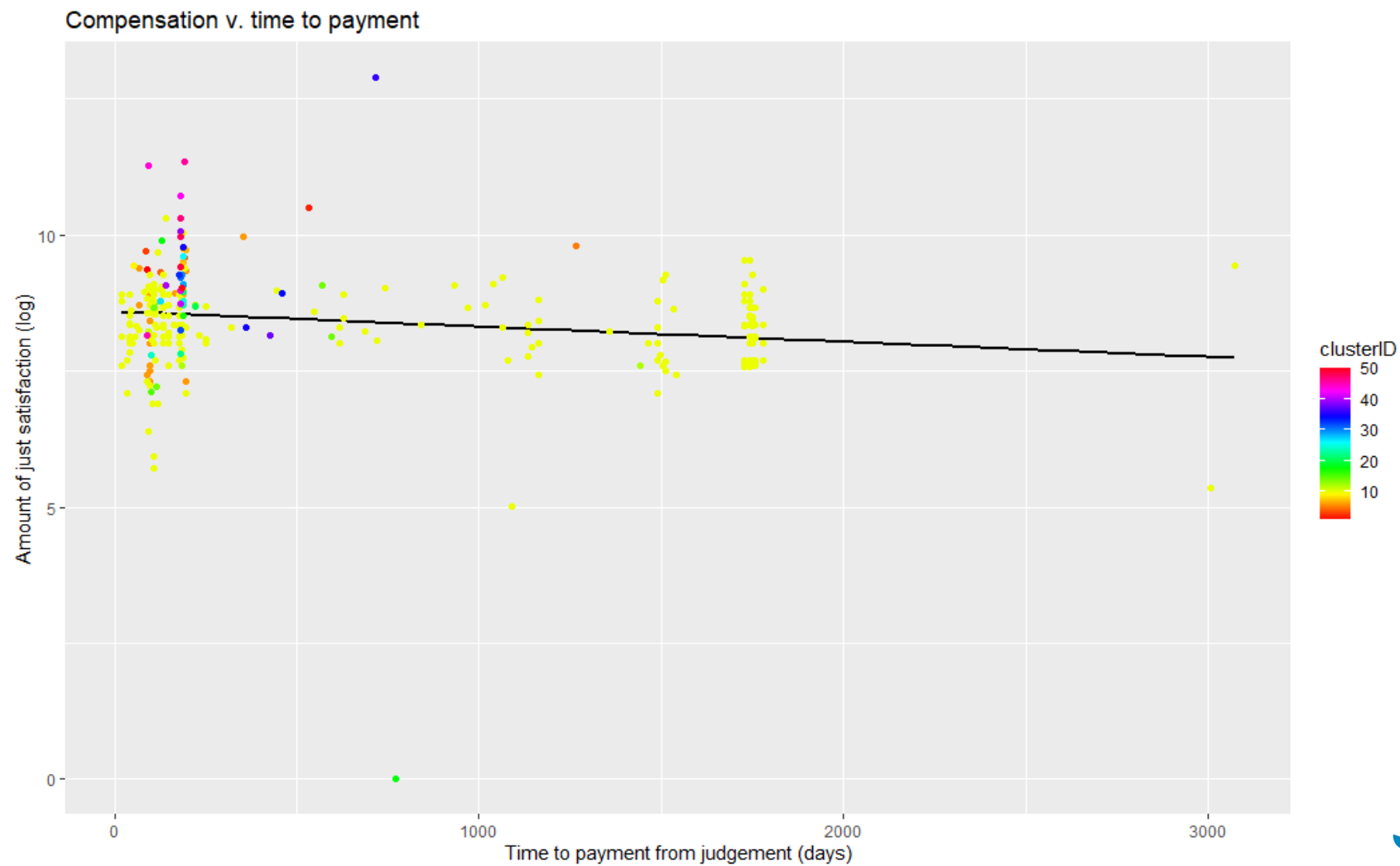
Is civil society involved?

Slovenia

Hungary

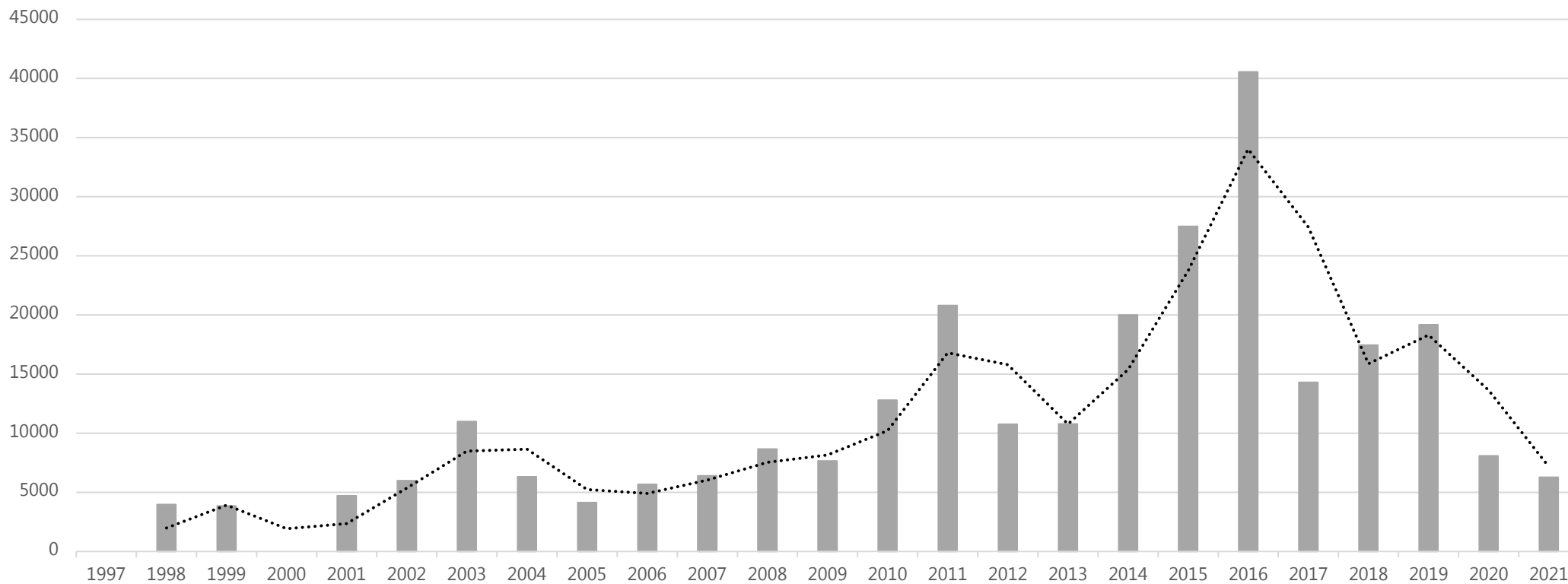


Slovenia



Hungary

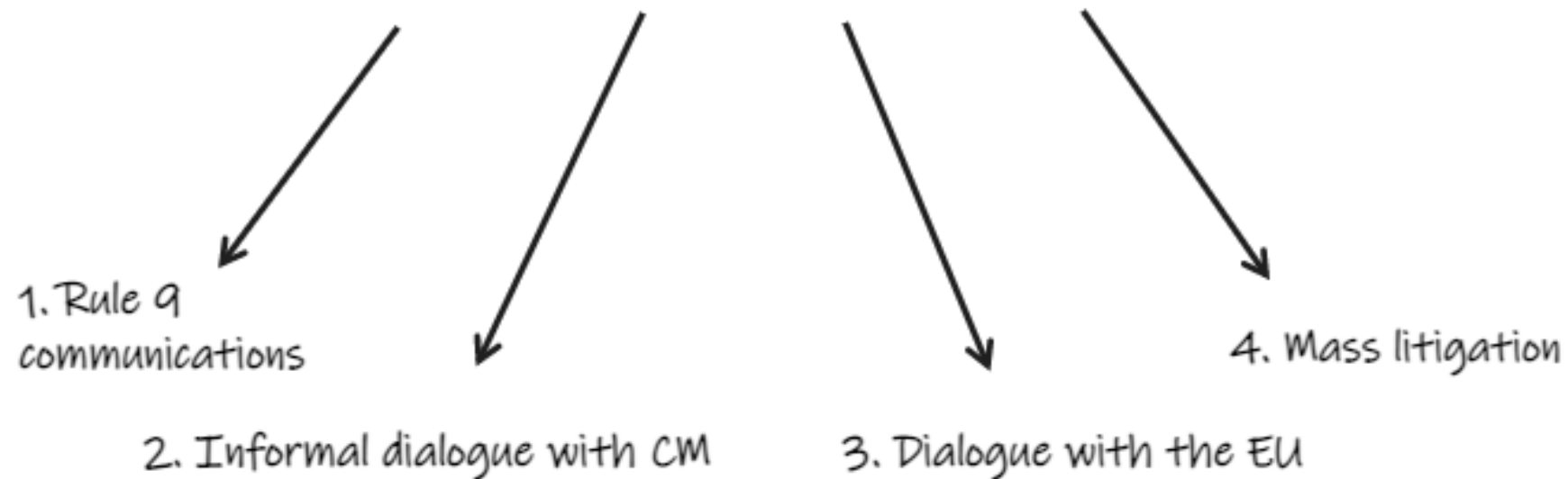
Average compensation award per judgment year (EUR)



NGOs: current strategies and key nudges

- Slovenia: formal and informal dialogue with CoE
- Hungary:
 1. Pressure through mass litigation
 2. Rule 9 dialogue with CoE
 3. Dialogue with EU Commission under RoL mechanisms

Key lessons





Implementing Judgments Concerning Grievous Human Rights Violations During the Troubles

Daniel Holder, Deputy Director of the Committee on
the Administration of Justice (CAJ)



World Café:

breakout discussions on civil society strategies to promote the implementation of ECtHR judgments

- o Creating structural solutions at national level to systematically promote implementation
- o Communications strategies to develop political will for implementation
- o The work of European institutions to promote implementation of ECtHR judgments



Coffee Break



Session 4: Implementation of ECtHR judgments in challenging states: lessons-learnt from Azerbaijan, Russia and Turkey

Wednesday 22nd June, 15.45 – 17.15 CET



Chair: Jessica Gavron, Legal Director at the European Human Rights Advocacy Centre

Panel discussion including:



- Kerem Altiparmak, International Commission of Jurists, Lawyer (Turkey)
- Elba Bendo, Lawyer at the European Human Rights Advocacy Centre
- Dmitry Gurin, Senior Lawyer at Memorial (Russia)
- Anar Mammadli, Chair of Election Monitoring and Democracy Studies Centre (Azerbaijan)
- Dr. Ramute Remezaite, EIN Board member and Implementation Lead at the European Human Rights Advocacy Centre

Introduction to Day 2

Session 5: Workshop on communications strategies to promote structural solutions for the implementation of ECtHR judgments

Thursday 23rd June, 9.05 – 10.45



Chair: EIN Chair Prof. Dr. Başak Çalı



Gesine Schmidt-Schmiedbauer and Philip Doyle
One Step Beyond Communications

Coffee Break





Closing session: Looking forward: what can civil society do?

Thursday 23rd June, 11.00 – 13.00

Chair: Prof. Dr. Başak Çalı

Discussion on how civil society can organise to promote the systemic implementation of ECtHR judgments, in three areas:

- At the national level
- At the horizontal level – civil society from across Europe working together
- At the international level

The discussions will be led by the conference's Keynote Listeners:



- Philip Leach, Professor of Human Rights Law at Middlesex University
- Nóra Novoszádek, Senior Legal Officer at the Hungarian Helsinki Committee
- Dr. Ramute Remezaite, EIN Board member and Implementation Lead at the European Human Rights Advocacy Centre
- George Stafford, Director of the European Implementation Network