

EIN and LRCM Online Training

Examples of successful advocacy in Strasbourg for the
implementation of ECtHR judgments

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25th February 2021



Mammadli group: Implementing individual measures for human rights defenders in Azerbaijan



Mammadli v. Azerbaijan group: Violation of Article 18 on account of the misuse of criminal law against government critics and human rights defenders.

Azerbaijan: 93% leading judgments from the past 10 years still pending.

Implementing individual measures for human rights defenders in Azerbaijan

- Inadequate GVT approach: indicated that all victims have been released from imprisonment following presidential pardons and that the government had proceeded with payment of just satisfaction for all of them.

- In fact: no acquittals, criminal convictions remained and compensation was being paid only partially, in instalments, in random amounts.

- Series of R9 submissions from applicants and representatives detailing issues regarding compensation and acquittal, calling for greater CM pressure on authorities and for acquittals of applicants => **subsequent payments.**

- March 2020 => CM interim decision => April 2020, the Supreme Court quashed the convictions of two victims of unjust political persecution: Ilgar Mammadov and Rasul Jafarov.

- Still no justice for the other victims => **new series of R9.1 submissions**

Welcome acquittals in Azerbaijan – but huge problems remain

July 02, 2020

On 23 April 2020, Azerbaijan's Supreme Court granted full acquittal to the politician Ilgar Mammadov and the human rights defender Rasul Jafarov.



Implementing individual measures for human rights defenders in Azerbaijan

- NGOs Joint Rule 9.2 submission => Request that the Secretariat prepare an Interim Resolution, unless the criminal convictions of all applicants in this group are overturned by next meeting.
- AZ authorities invoked the Covid-19 pandemic and the state of war as reasons for having been unable to quash the convictions.

Judgments of the Court on Mammadli, Rashad Hasanov and Aliyev cases are under the review of the Supreme Court of Azerbaijan. Regrettably, ongoing sanitary crisis and the current state of war in the country hindered the conduction of hearings in the Supreme Court.

- Latest CM decision December 2020: *“deep concern” for failures => to “ensure that individual measures are taken without further delay”.*
- *Results: Just satisfaction has paid in full to all but two applicants, for whom it remains outstanding.*
- Mammadli group on agenda of CM–DH meetings since Joint R9.2

Implementing *N. v. Romania*: Getting the right CM decisions



Constantin Cojocariu (left) and 'Mr. N.'

- *N. v. Romania*: unlawful psychiatric detention
- Implementation: Deinstitutionalization, but legal guardianship
- Legal guardianship hindered the execution process.
- Joint detailed R9 submission outlining the scope of the general measures required with respect to the detention in the forensic psychiatry system and on access to justice for people with psychosocial disabilities.
- Domestic litigation to lift Mr. N's guardianship, and also applied to the Constitutional Court to declare guardianship for persons with disabilities as unconstitutional – as it is contrary to international human rights law.

Implementing *N. v. Romania*: Ending legal guardianship for persons with mental disabilities

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News

Romania: Constitutional Court rules unconstitutional civil code provisions concerning persons with psychosocial disabilities

16 JULY 2020

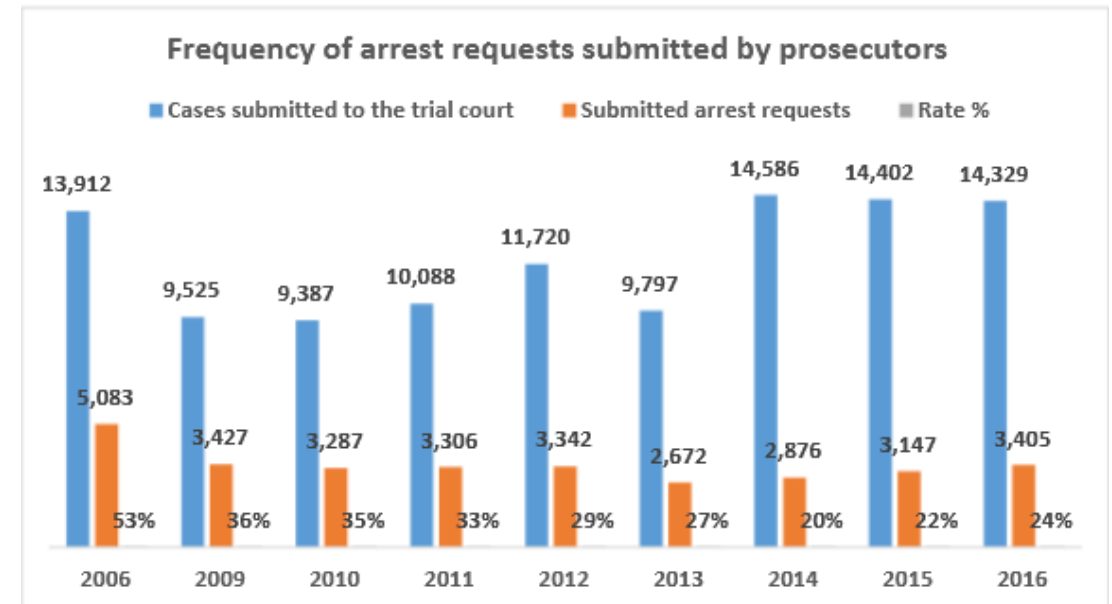


On 16 July, the Constitutional Court of Romania ruled unconstitutional Article 164, paragraph 1, of the Civil Code, which enables courts to assign incapacity to adults with psychosocial and intellectual disabilities.

- December 2018 CM decision: the “*deficiencies in the current system of legal protection for adults left the domestic courts with no option but to place the applicant under guardianship and thus deprive him of the exercise of his civil and political rights.*”
- The CoM went on to emphasize that Romania must adopt “legislation establishing a new system of independent and effective legal protection, tailored to the specific needs of adults with mental disabilities”.
- July 2020 > Following CM decision, Romanian Constitutional Court rules that plenary guardianship is unconstitutional.

Sarban v. the Republic of Moldova: Keeping the CM informed with statistics

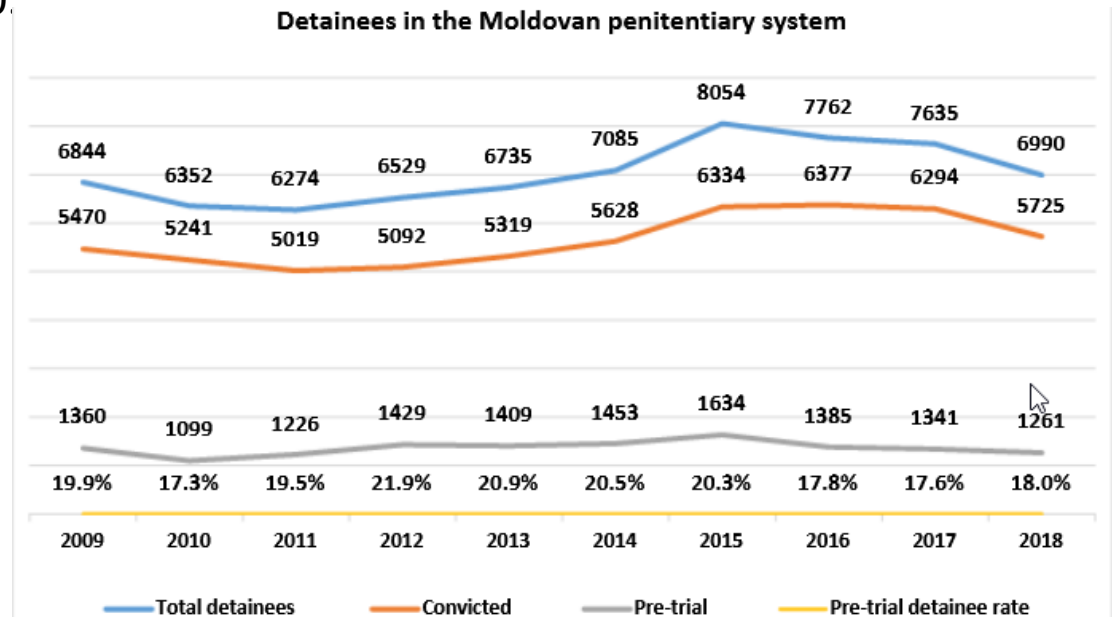
- *Sarban* case: Various violations mainly arising from pre-trial detention
- GVT Action Report 2017: legislative improvements adopted by the Government in 2016 and training on the subject provided to judges and prosecutors and called the Committee of Ministers to close the supervision of these cases. The Action Report did not contain any information about the impact of these changes on the judicial practice.
- LRCM Rule 9.2 submission 2017: the practice of Moldovan courts in this respect did not change.
- LRCM provided data on frequency of arrest requests provided by prosecutors and examination of arrest request by investigative judges
- **Results:** CM decision 2019 => incorporated LRCM'S Arguments Successfully asked CM not to close the supervision of execution



Șarban v. the Republic of Moldova

Keeping the CM informed with statistics

- CM decision 2019: expressed deep concern that the measures adopted so far have not yet resulted in any clear and tangible improvements in judicial practice as concerns the giving of reasons for detention on remand;
- GVT Action Reports asking for closure: 2018; 2019; 2020.
- LRCM Rule 9.2 submissions 2019 and 2020: Data on Detainees in the Moldovan penitentiary system; Examination of arrest requests; Frequency of arrest requests submitted by prosecutors; House arrests; length of examination of habeas corpus requests; access of defense to the case file and hearing of witnesses and compensation.
- **Results:** CM decision 2020 => agreed with LRCM => strongly urged the authorities to intensify efforts to ensure that prosecutorial and judicial practice is brought into line with Convention.



M.C. and A.C. v. Romania: Strengthening the arm of the CM in rejecting action plans

- Authorities' claimed that sufficient general measures were already in hand to (in due course) ensure proper investigation of hate crimes
- NGO ACCEPT: Rule 9 submissions in 2017 and 2019
- Factual submissions by NGOs were able to demonstrate the vacuity of these claims, providing detailed evidence.
- By providing critical evidence that was not otherwise available, ACCEPT significantly **strengthened the arm of the CoE in rejecting the initial Action Plan.**
- **Results:** A Revised Action Plan was submitted in 2018: increased engagement from the authorities and cooperation with ACCEPT.



[MC & AC v Romania](#)

M.C. and A.C. v. Romania:

Effective investigations into homophobic crimes

- Recommendations on implementation of judgments directly to relevant authorities (Ministry of Justice , Public Prosecution Office, Government Agent, etc.);
- Organized meetings with Ombudsman, Government Agent, secured meetings with a range of ministries and the police.
- Inter-ministerial working group: ACCEPT was invited to join and they facilitated a meeting between victims and government officials (2017)
- **Result:** Judgment was incorporated into police training
- 2018 Revised AP, the authorities envisaged further cooperation with this NGO notably in the drafting of the common methodology for the investigation of hate crimes, in view of its useful contribution to that process so far.
- 2019 Rule 9.2: Ongoing systemic failures and ceased cooperation with the working group = >
- **Result:** Successful advocacy for the cases to be moved from the standard to the enhanced supervision track.

Serbian missing babies' case: Pushing against the authorities' eagerness for closure

- The Court gave Serbia one year to *'take all appropriate measures, preferably by means of a lex specialis ... to secure the establishment of a mechanism aimed at providing individual redress to all parents in a situation such as, or sufficiently similar to, the applicants'*
- *The Serbian authorities' push to close the case* = Serbian Government keen to see the CM's supervision end => GVT proposed flawed law



Decisions

The Deputies

1. deeply deplored that, despite the Committee's repeated calls, the authorities have failed to
2. reiterated with insistence their call on the authorities to take all necessary measures to in
3. invited furthermore the authorities to provide information by 1 October 2018 on the measur

- *Stopping the passing of a flawed law: the immediate aim of civil society advocacy => Rule 9.2 => The shortcomings in the Government's response to Zorica Jovanović*
- *Deadline had expired five years before: Increasing frustration within the CM => CM has passed two interim resolutions in 2017 and 2018*

Serbian missing babies' case: Pushing against the authorities' eagerness for closure



- *Civil society alliance: decisive parliamentary action to ensure investigation of the fate of thousands of 'missing babies'*
- [A series of Rule 9.2 communications](#) => 3 CM decisions in 2019

NGO/NHRI Communications

- 1383rd meeting (29 September - 1 October 2020) (DH) - Rule 9.2 - Communication from an NGO (Association of parents of missing babies of Vojvodina) (13/08/2020) concerning the case of ZORICA JOVANOVIĆ v. Serbia (Application No. 21794/08) [Anglais uniquement] [DH-DD(2020)254]
- 1377th meeting (June 2020) (DH) - Rule 9.2 - Communication from an NGO (Association for parents of the stolen babies of the Vojvodina region) (12/03/2020) in the case of ZORICA JOVANOVIĆ v. Serbia (Application No. 21794/08) [Anglais uniquement] [DH-DD(2020)1377]
- 1377th meeting (June 2020) (DH) - Rule 9.2 - Communication from an NGO (25/02/2020) in the case of ZORICA JOVANOVIĆ v. Serbia (Application No. 21794/08) [Anglais uniquement] [DH-DD(2020)1377]
- 1369th meeting (March 2020) (DH) - Rule 9.2 - Communication from an NGO (21/01/2020) in the case of ZORICA JOVANOVIĆ v. Serbia (Application No. 21794/08) [Anglais uniquement] [DH-DD(2020)1369]
- 1362nd meeting (December 2019) (DH) - Rule 9.2 - Communication from a NGO (Association for parents of the stolen babies of the Vojvodina region) (20/11/2019) in the case of ZORICA JOVANOVIĆ v. Serbia (Application No. 21794/08) [Anglais uniquement] [DH-DD(2019)1362]
- 1355th meeting (September 2019) (DH) - Rule 9.2 - Communication from a NGO (Belgrade Group of Parents of Missing Babies) (12/09/2019) in the case of ZORICA JOVANOVIĆ v. Serbia (Application No. 21794/08) [Anglais uniquement] [DH-DD(2019)1355]
- 1355th meeting (September 2019) (DH) - Rule 9.2 - Communication from a NGO (Committee of the parents of the stolen babies of the Vojvodina region in Serbia) (01/08/2019) in the case of ZORICA JOVANOVIĆ v. Serbia (Application No. 21794/08) [Anglais uniquement] [DH-DD(2019)1355]
- 1348th meeting (June 2019) (DH) - Rule 9.2 Communication from a NGO (Lawyers' Committee for Human Rights and Astras anti-trafficking action) (14/05/2019) in the case of ZORICA JOVANOVIĆ v. Serbia (Application No. 21794/08) [Anglais uniquement] [DH-DD(2019)1348]
- 1348th meeting (June 2019) (DH) - Rule 9.2 Communication from a NGO (Association for parents of the stolen babies of the Vojvodina region) (30/04/2019) in the case of ZORICA JOVANOVIĆ v. Serbia (Application No. 21794/08) [Anglais uniquement] [DH-DD(2019)1348]
- 1331st meeting (December 2018) (DH) - Rule 9.2 Communication from a NGO (Lost Babies of Belgrade) (23/11/2018) in the case of ZORICA JOVANOVIĆ v. Serbia (Application No. 21794/08) [Anglais uniquement] [DH-DD(2018)1331]
- 1331st meeting (December 2018) (DH) - Rule 9.2 Communication from a NGO (Parents of Missing Babies of Vojvodina) (16/11/2018) in the case of ZORICA JOVANOVIĆ v. Serbia (Application No. 21794/08) [Anglais uniquement] [DH-DD(2018)1331]
- 1331st meeting (December 2018) (DH) - Rule 9.2 Communication from NGOs (YUCOM and ASTRA) (05/11/2018) in the case of ZORICA JOVANOVIĆ v. Serbia (Application No. 21794/08) [Anglais uniquement] [DH-DD(2018)1331]
- 1331st meeting (December 2018) (DH) - Rule 9.2 Communication from NGOs ("Parents of Missing Babies of Serbia" and "Parents of Missing Babies of Vojvodina") (19/09/2018) in the case of ZORICA JOVANOVIĆ v. Serbia (Application No. 21794/08) [Anglais uniquement] [DH-DD(2018)1331]
- 1324th meeting (September 2018) (DH) - Communication from a NGO (YUCOM Lawyers' Committee for Human Rights) (31/05/2018) in the case of ZORICA JOVANOVIĆ v. Serbia (Application No. 21794/08) [Anglais uniquement] [DH-DD(2018)1324]
- 1310th meeting (March 2018) (DH) - Rules 9.2 and 9.6 Communication from a NGO (YUCOM Lawyers' Committee for Human Rights and Astra - Anti trafficking action) in the case of ZORICA JOVANOVIĆ v. Serbia (Application No. 21794/08) [Anglais uniquement] [DH-DD(2018)1310]
- 1294th meeting (September 2017) (DH) - Rule 9.2 Communication from NGOs (YUCOM) - the Lawyers' Committee for Human Rights and (Astra) Anti trafficking action) (04/09/2017) in the case of ZORICA JOVANOVIĆ v. Serbia (Application No. 21794/08) [Anglais uniquement] [DH-DD(2017)1294]
- 1250 meeting (8-10 March 2016) (DH) - Communication from the Mediator (Ombudsman) (29/02/2016) and reply from the authorities (04/03/2016) in the case of ZORICA JOVANOVIĆ v. Serbia (Application No. 21794/08) [Anglais uniquement] [DH-DD(2016)1250]
- 1250 meeting (8-10 March 2016) (DH) - Communication from a NGO (YUCOM Lawyers' Committee for Human Rights and Astra-Anti trafficking action) (18/02/2016) in the case of ZORICA JOVANOVIĆ v. Serbia (Application No. 21794/08) [Anglais uniquement] [DH-DD(2016)1250]
- 1250 meeting (8-10 March 2016) (DH) - Communication from a NGO (Anti-trafficking action (ASTRA)) (04/12/2015) and reply from the authorities (14/12/2015) in the case of ZORICA JOVANOVIĆ v. Serbia (Application No. 21794/08) [Anglais uniquement] [DH-DD(2015)1250]
- 1214 meeting (2-4 December 2014) (DH) - Communication from a NGO (20/11/2014) in the case of ZORICA JOVANOVIĆ v. Serbia (Application No. 21794/08) and reply from the authorities - Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements [Anglais uniquement] [DH-DD(2014)1214]
- 1214 meeting (2-4 December 2014) (DH) - Communication from a NGO (Astra-Anti Trafficking) (05/11/2014) in the case of ZORICA JOVANOVIĆ v. Serbia (Application No. 21794/08) and reply from the authorities - Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements [Anglais uniquement] [DH-DD(2014)1214]



- **Results:** Passing the alternative draft law

Serbian missing babies' case: *Implementing effective general measures*



News

Meeting with Serbian State Secretary regarding the "missing babies" case

STRASBOURG | 10 MARCH 2020



On 5 March, the Human Rights Director of the Council of Europe, Mr Christophe Poiré, received the State Secretary of the

➤ March 2020: CoE Meeting with Serbian State Secretary regarding the "missing babies" case => positive developments => Parliament adopted the law setting up an investigation mechanism to establish the fate of "missing babies"

➤ CoE Human Rights Director *called for*:

- the efficient implementation of the new fact-finding mechanism, in particular through conducting an awareness-raising campaign to alert possible victims about that mechanism and the 6-month deadline;
- the setting-up of the DNA database to facilitate the truth-seeking process;
- the training of investigating judges and police who would deal with cases of "missing babies"

➤ CM decision March 2020 welcomed the recent efforts: *no new interim resolution*

Kim v. Russia: detention of stateless persons

Совет Европы просят вступить за лиц без гражданства

"Мемориал" считает, что Россия не выполняет решение Страсбургского суда



Газета "Коммерсантъ" №168 от 13.09.2016, стр. 3



- Rule 9.2 Communication from NGOs (Human Rights Centre "Memorial" and Anti-Discrimination Centre "Memorial") => recommendations for general measures
- 2017 CM decision addressed the issue of conditions of detention in detention centres for aliens
- **Publicization by court reporter** => A. Pushkarskaya's [article](#) in *Kommersant*, 13 September 2013
- **Constitutional Court's response:** prohibition of detention of stateless persons
- CM decision 2018: welcomed CC decision, encouraged the authorities to continue the ongoing reforms

Tips: Securing publicity for your Strasbourg advocacy



Communicate details of your Rule 9s and any CM Decision in your **social media output, newsletter and reporting.**

EIN can re-tweet your case updates if you link our Twitter handle, @EI_Network.



Organise a **press conference** or roundtable to discuss the implications of the CM Decision, to which you invite civil society actors, government representatives, and the media.



Share the decision with selected embassies in your capital, alongside brief recommendations as to how it should be used in diplomatic contacts between 'friendly' embassies and state authorities.

Thank you for your participation.

Don't hesitate to get in touch:

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