



Fourth Summit Briefing: On the Need for Reforms to Improve the Implementation of Judgments of the European Court of Human Rights

Strasbourg, February 2022

The Fourth Summit of the Council of Europe is a crucial opportunity to renew an institution that is central to Europe's future.

We are writing because EIN is deeply concerned about the current outlook for a fundamental aspect of the Council of Europe's work: the implementation of judgments of the European Court of Human Rights ("the Court" or "ECtHR").

We believe that the Summit is a vital opportunity to honestly face the challenge of implementation - and to give the Council of Europe the support it needs to ensure that the European Convention of Human Rights system ("the ECHR system") is both fully functional and protected for future generations. This note sets out the following points:

- 1. The implementation of judgments of the European Court of Human Rights has been invaluable for protecting human rights, democracy and the rule of law in Europe.**
- 2. However, there is now a critical problem with the non-implementation of ECtHR judgments.**
- 3. The current state of non-implementation has serious negative effects for the protection of fundamental values – threatening the existence of the ECHR system itself.**
- 4. An outcome of the Fourth Council of Europe Summit must be well-funded reforms to improve the implementation of ECtHR judgments. This should include:**
 - a. *A special representative on the implementation of ECtHR judgments;*
 - b. *A significant increase in technical co-operation projects focused on ECtHR implementation;*
 - c. *Increased funding for the Department for the Execution of Judgments;*
 - d. *Increased participation in CM/DH meetings by relevant government ministers;*
 - e. *Increased frequency of CM/DH meetings;*
 - f. *Ensuring that Infringement Proceedings are used more frequently, speedily, and resolutely;*
 - g. *A new sanction by the Committee of Ministers for continued non-implementation; and*
 - h. *Increased transparency of the implementation monitoring process and engagement with NHRIs/NGOs.*

About the European Implementation Network

EIN is Europe's leading organisation for work on the implementation of judgments of the ECtHR. The network is made up of [39 members](#) from 25 European states, with the [secretariat](#) based in Strasbourg. The network's [board](#) is composed of eleven leading human rights professionals and academics from nine European countries. EIN gives [civil society a platform](#) for [advocacy](#) in Strasbourg, provides capacity-building through [training events](#) across Europe, and [creates resources](#) related to the implementation of judgments. Formed in 2016, it is the only organisation dedicated entirely to the implementation of rulings of the Strasbourg Court.¹

¹ For more information about EIN, please visit www.einnetwork.org



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1. The implementation of judgments of the European Court of Human Rights has been invaluable for protecting human rights, democracy and the rule of law in Europe.

The Court's judgments are full of stories that can make Europeans proud of what is the most effective human rights institution in the world. Rulings have led to the [release of a political leader](#)² jailed for opposing the government; [reinstated a judge](#)³ who had been fired because he fought political corruption; and stopped a 24-year-old woman from being deported to Iran to be stoned to death for [having sex outside of a forced marriage](#)⁴.

However, the true power of the Strasbourg Court is that it can provide justice not only for individuals, but for societies as a whole. This is because the rulings require governments to carry out reforms to protect the rights of everyone affected by the injustice identified in the case.

The list of stories like this is impressive. Judgments have led to progress on the rights of [journalists to criticise politicians](#),⁵ changes to protect the [independence and impartiality](#) of judges,⁶ reforms to [stop police torture](#),⁷ [the legalisation of homosexuality](#),⁸ and laws to [criminalise human trafficking](#).⁹

In this way, judgments of the European Court of Human Rights have helped preserve and enhance freedoms in older democracies, whilst guiding and developing freedoms in new ones.

2. However, there is a critical problem with the non-implementation of ECtHR judgments.

“Leading” judgments of the European Court of Human Rights are those which are classified by the Committee of Ministers of the Council of Europe as revealing a structural and/or systemic problem with human rights in a state. For example, if the European Court of Human Rights finds a systemic/structural problem with judicial independence, freedom of expression, or torture – and this problem has not been already identified in a case pending implementation – then the judgment becomes “leading”. In order for “leading” cases to be implemented, national authorities are required to carry out steps to address the underlying systemic/structural problem.

As of 1 January 2022 (the most recent public Council of Europe data), there were **1300 leading judgments pending full implementation**. Each of these represents a distinct structural and/or systemic human rights problem.

Moreover, the average time that the 1300 leading judgments have been pending full implementation is over six years. Furthermore, **47% of the leading ECtHR judgments from the last**

² Ilgar Mammadov v. Azerbaijan (15172/13 and 919/15)

³ Oleksandr Volkov v. Ukraine (21722/11)

⁴ Jabari v. Turkey (40035/98)

⁵ e.g. Falzon v. Malta (45791/13)

⁶ Oleksandr Volkov v. Ukraine (21722/11)

⁷ e.g. Kaçiu and Kotorri v. Albania (33192/07 and 33194/07)

⁸ e.g. Norris v. Ireland (10581/83)

⁹ Siliadin v. France (73316/01)



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ten years are still pending full implementation. There is a systemic problem with the implementation of leading judgments of the ECtHR and the situation is not improving.

The latest available data indicates that there are 5533 ECtHR cases pending overall (including both leading and repetitive cases).¹⁰ The reason that this number is not at an all-time high is due to a 2017 rule change that allowed the Committee of Ministers to close repetitive cases more easily.¹¹

3. The non-implementation problem has very serious negative effects for the protection of fundamental values – threatening the existence of the ECHR system itself.

The unimplemented rulings of the European Court of Human Rights involve issues that are of core concern to the protection of democratic life on the continent. For example, numerous reforms to protect the rule of law, as required by judgments of the Strasbourg Court, have not yet been carried out. Another example are the well-known individual cases pending implementation concerning Turkey, where the Court has explicitly ordered the release of a wrongly imprisoned human rights philanthropist ([Osman Kavala](#)) and an opposition leader ([Selahattin Demirtaş](#)). The government [refuses](#) to comply with these rulings, and others that require reforms to protect [free speech](#) and [the right to protest](#).

These cases highlight a problem with the implementation of individual high-profile cases that face political opposition to implementation at national level. They are high on the Committee of Ministers' agenda. However, there is also a significant problem with the implementation of a large number of lower-profile (but still very important) cases.

This is best illustrated by examining the implementation of cases on a particular subject. **There are 105 leading cases pending full implementation concerning violations of the right to freedom of expression.** Each represents an ongoing problem with the right to free speech in the country concerned. They involve many of the issues with democratic backsliding seen in Europe today, including the undermining of media pluralism, strategic lawsuits against public participation (SLAPPs), and even violence against journalists. Nevertheless, **around half of these leading cases have been pending for more than five years.** More than a quarter of the cases are **over 10 years old.**¹² This issue applies across the full spectrum of fundamental rights.¹³

¹⁰ Council of Europe, *Annual Report on the Supervision of the Execution of Judgments and Decisions of the European Court of Human Rights*, March 2022, page 43

¹¹ Stafford, George. 'The Implementation of Judgments of the European Court of Human Rights: Worse Than You Think', Parts 1 and 2, blog of the European Journal of International Law, October 7 and 8, 2019.

¹² Information extracted from Hudoc-Exec, 9 February 2023

¹³ There are notable numbers of leading cases pending implementation concerning, among others, the right to free trial (414); the prohibition of torture/ill-treatment (269); the right to liberty (175); the right to free assembly/association (47); deaths caused by the state (39); and the right to free and fair elections (18). Information extracted from Hudoc-Exec, 9 February 2023

Backlog at the European Court of Human Rights

Non-implementation of leading ECtHR judgments is intimately linked to the backlog at the ECtHR. If a leading judgment is not implemented, it means that the human rights problem that the judgment identifies will continue to affect the wider society. This means that violations will continue to happen and some (or many) of these violations will result in claims at the Court. This relationship is indicated (imperfectly) by the number of ECtHR judgments that are classified as “repetitive” by the Committee of Ministers in the judgment implementation monitoring procedure. By classifying a judgment as “repetitive”, the Committee is recognising that the fundamental problem(s) in the judgment have already been identified in a previous ECtHR judgment.¹⁴

84% of ECtHR judgments from the last five years have been classified as “repetitive”.¹⁵ If these problems had been resolved, then the human rights violation would not have happened and the subsequent repetitive application would not have been brought to the Court.¹⁶ This is causing a serious backlog at the ECtHR that threatens to undermine its efficacy. The Court has carried out a significant administrative reform, which has allowed it to almost completely reduce the backlog of unmeritorious cases. However, the graph for pending Chamber/Committee cases shows that, despite the Court also increasing the number of rulings it issues on more substantive cases, the backlog of potentially meritorious cases remains stubbornly high. The Chamber/Committee cases are the ones that take the longest time to deal with.¹⁷

Applications pending before Chamber and Committee



¹⁴ Council of Europe, Annual Report on the Supervision of the Execution of Judgments and Decisions of the European Court of Human Rights, March 2022, page 89

¹⁵ Statistic based on data taken from Council of Europe, *Annual Reports on the Supervision of the Execution of Judgments and Decisions of the European Court of Human Rights 2017 to 2021*. The data is as follows: 2021 - 216 leading, 1163 repetitive; 2020 - 195 leading, 788 repetitive; 2019 - 178 leading, 982 repetitive; 2018 - 196 leading, 1072 repetitive; 2017 - 179 leading, 1154 repetitive. Total: 964 leading, 5159 repetitive.

¹⁶ It is not correct to say that all of these violations could have been avoided if there had been effective implementation of ECtHR judgments. Due to the delays in ECtHR proceedings, which often take many years, some of the violations identified in repetitive judgments will have occurred before the leading ECtHR judgment was handed down that first highlighted the problem - and thus it cannot be said that the violation could have been avoided through ECtHR implementation. Nobody knows the true proportion of violations identified in ECtHR judgments that could have been averted by the implementation of previous judgments. However, given that 84% of ECtHR cases are classified as repetitive, we know that the figure is high.

¹⁷ European Court of Human Rights, *Analysis of Statistics 2020 and 2022*, January 2021 and January 2023



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The overall situation is that the Court has more meritorious or arguable applications that it can deal with. Most years it receives more substantive applications than the number of substantive applications that it can rule on. This creates an ever-increasing backlog that can only be kept in check by decisions that some applications will simply not be dealt with.¹⁸

As a result, the delay at the Court is not improving. It is now far longer than many realise, with even very important cases often taking over five years.¹⁹

It also appears that the backlog cannot be dealt with by further reforms at the Court. In her latest speech at the opening of the judicial year, the President of the Court indicated that “*there is no leeway for further improvement*” in further organisational reforms to improve the Court’s efficacy.

The only long-term effective way to reduce the backlog is to significantly improve the implementation of ECtHR judgments and the ECHR at national level. This will lead to less problems at national level and less applications being brought to the Court.

4. An outcome of the Fourth Council of Europe Summit must be well-funded reforms to improve the implementation of ECtHR judgments.

The Council of Europe has started a welcome series of reforms to help promote judgment implementation. However, given the scale of the problem, the institution needs more support in addressing the issue.

The best approach would be to put in place a latticework of systematic reforms, involving the full range of stakeholders of the ECHR system. The Fourth Summit is the perfect opportunity to do this. Our proposals for the improvement of ECtHR implementation are as follows:

a. A special representative on the implementation of ECtHR judgments

One of the reasons why there is a systemic problem with ECtHR implementation in many states is because of a lack of effective government machinery dedicated to executing Strasbourg judgments. Resolving this problem in numerous countries could drastically reduce the number of unimplemented judgments, by establishing a long-term effective solution. An effective way to promote this would be a Council of Europe special representative, who is dedicated to visiting governments and advocating for the creation of effective implementation machinery. The special representative would also be responsible for visiting states to conduct dialogue on difficult/important cases, pushing implementation forward when it is blocked.

¹⁸ For example, in *Burmych v. Ukraine* (46852/13), judgment of 12 October 2017, the Court struck out 12,148 applications explicitly on the grounds that the high number of applications on the same issue were a burden on the Court.

¹⁹ For example, of the judgments that became final in 2021 that the Committee of Ministers assigned to enhanced supervision, and which were classified as either leading or requiring urgent individual measures, 86% had previously been pending at the ECtHR for over three years – and almost half had been pending for over five years.

b. A significant increase in technical co-operation projects focused on ECtHR implementation.

Technical co-operation projects involve the Council of Europe collaborating with states on a series of activities, which are designed to achieve specific human rights reforms. In order to improve ECtHR implementation, there should be a significant increase in such projects dedicated to executing the Court's judgments.

c. Increased Funding for the Department for the Execution of Judgments ("DEJ").

The DEJ administers the ECtHR implementation monitoring process, by processing the reporting documents submitted by governments, litigants, NGOs and NHRIs for at least 5,533 pending cases; analysing the state of their implementation based on the reporting documents and other sources; liaising with governments; and preparing the quarterly monitoring meetings of the Committee of Ministers. In addition to this monitoring role, the DEJ also aims to promote the implementation of particular ECtHR judgments by visiting states and conducting high-level meetings. The DEJ has only around 25 permanent lawyers and this is not enough to carry out all of the administrative tasks, as well as country visits that are sufficiently regular to promote change. An increase to the DEJ's resources would help it advocate more intensively for judgment implementation.

d. Increased participation in CM/DH meetings by relevant government ministers.

National governments could agree that the government ministers who are responsible for the implementation of cases would attend Committee debates on a fixed periodic basis. It could also be agreed that these visits could be used to discuss with the minister not only the implementation of particular cases, but also the country's implementation record as a whole.

e. Increased frequency of CM/DH meetings.

Although the Committee of Ministers is responsible for supervising the implementation of ECtHR, it only meets to do so in four sessions per year, lasting three days each. This means that it only considers the implementation of a tiny fraction of leading cases each year. For example, in 2022 it considered 116 leading cases, meaning that 91% of leading cases pending implementation were not on the agenda.²⁰ The number of annual CM/DH meetings could be doubled from four to eight, which would increase the frequency with which states could apply pressure for implementation, as well as increase the number of cases where such pressure is applied.

f. Ensuring that Infringement Proceedings are used more frequently, speedily, and resolutely.

Infringement proceedings under Article 46 of the ECHR were established in 2010 under Protocol 14. The explicit purpose was to increase pressure on states to implement ECtHR judgments. However, an increase in pressure to implement can only be achieved by the procedure if the Committee of Ministers chooses to initiate it. In the 13 years since the procedure was established, it has only been used twice. Furthermore, the average length of time it took between the final judgment of the ECtHR and the initiation of the procedure has been 2 years and 5 months. Added to the existing delays in the litigation at the ECtHR, this delay cripples the effectiveness of the process. At the Fourth Summit states could agree to initiate infringement proceedings more frequently and far more speedily.

²⁰ Based on a review of CM/DH Decisions for 2022, available on the website of the Department for the Execution of Judgments (<https://www.coe.int/en/web/execution>)



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

Even if states increase their use of infringement proceedings, they cannot be used in the vast majority of cases which are pending implementation. Meanwhile, the only other enforcement tools at the Committee of Ministers' disposal are declaratory (including Decisions and Interim Resolutions) or relatively modest diplomatic measures (such as the writing of a letter from the Chair of the Committee to the relevant minister in the state concerned). What the system lacks is a sanctioning tool that creates real and credible pressure on a non-implementing state, but which would not lead to the suspension of the state from the Council of Europe (which is generally viewed as the consequence of failing to implement after infringement proceedings).

In 2000 the Parliamentary Assembly of the Council of Europe proposed fines for non-implementation and in 2002 the Venice Commission recommended a feasibility study on this issue.²¹ A more detailed proposal on this is included in the annex to this paper.

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

Decisions by the Committee of Ministers highlighting the non-implementation of ECtHR judgments generate very little public attention and insufficient pressure on governments. We believe that NGOs and NHRIs should be allowed to attend the Committee's meetings on judgment implementation; that such hearings should be made completely public when possible; and that NGOs, NHRIs and litigants must be directly provided with much more information about the implementation process.

We believe that the proposals set out above should form the core of an effective implementation strategy, following the Fourth Summit. They would also require the political will and financial resources commensurate with the scale of the problem.

More effective implementation of the European Court's judgments would help preserve and strengthen the common European legal space - and ultimately protect European security by preventing the rise of authoritarianism. Meanwhile, continued systemic non-implementation presents grave challenges to Europe's core values. For evidence of the dangers of non-implementation, we only have to look to the country with the very worst record of executing the Court's rulings: Russia.²²

The European Court of Human Rights is often described as the "jewel in the crown" of the Council of Europe and its protections for human rights, democracy, and the rule of law.

It is time for the Council of Europe to protect this jewel, if it is to be preserved for future generations.

²¹ Parliamentary Assembly Recommendation to the Committee of Ministers 1477 (2000) and Venice Commission Opinion on the Implementation of the Judgments of the European Court of Human Rights (Opinion No. 209/2002), 18 December 2002

²² Russia has the highest number of unimplemented leading ECtHR judgments out of any state. 224 leading judgments against Russia have never been implemented. This includes 90% of the leading judgments against Russia from the last ten years. Information extracted from Hudoc-Exec, 9 February 2023.



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Annex: A new sanction for the non-implementation of judgments of the European Court of Human Rights

The overall level of non-implementation of judgments threatens not only human rights protections across the continent, but also the continued functioning of the ECtHR. In order to address the non-implementation problem and the ECtHR backlog, there has to be a steady reduction of the overall number of leading ECtHR cases pending implementation.

At the Fourth Summit, states are likely to recommit to the values of the European Convention on Human Rights - and commit to improving the implementation of ECtHR judgments. States should be given time to do this, through establishing effective mechanisms at national level to promote ECtHR judgment execution systematically. They should also be given support: indeed, the Council of Europe has initiated a project to provide technical support for the creation of these mechanisms.

The current lack of powers at the Committee of Ministers

However, if states do not improve ECtHR implementation, the Committee of Ministers faces a capacity gap in its ability to respond. The strongest measure it has at its disposal are infringement proceedings. These may lead to a state being suspended from the Council of Europe, a situation that many have wished to avoid. Infringement can therefore only be used in exceptional cases. Meanwhile, the only other enforcement tools at the Committee of Ministers' disposal are declaratory (including Decisions and Interim Resolutions) or relatively modest diplomatic measures (such as the writing of a letter from the Chair of the Committee to the relevant minister in the state concerned).

What the system lacks is a sanctioning tool that creates real and credible pressure on a non-implementing state for the majority of cases, but which would not lead to the state's departure from the Council (and would therefore actually be used). There is only one sanction that fits this description.

Targeted fines for non-implementation

In 2000, PACE issued a [Recommendation](#) asking that the Committee of Ministers introduce a system of fines to be imposed on states that persistently fail to execute a Court judgment.²³ In 2002 the Venice Commission issued an [Opinion](#), stating that it was insufficiently clear whether a system of fines would work, and that it could carry out a further study on the issue.²⁴ It appears that no further study was ever conducted.

This paper resurrects the idea of fines for the non-implementation of ECtHR judgments.

²³ Parliamentary Assembly of the Council of Europe: Recommendation 1477(2000) on "Execution of judgments of the European Court of Human Rights", September 2000. [Link](#).

²⁴ Opinion On the Implementation of the Judgments of the European Court of Human Rights, 18 December 2002, CDL-AD (2002) 34. [Link](#), see paragraphs 78 to 85

The Council of Europe should introduce a sanction against states that systematically fail to implement ECtHR judgments, providing an additional incentive to bring down their overall level of leading unimplemented judgments in a generous amount of time.

The table establishes a target for the number of leading judgments pending for each state for over two years, corresponding to the start of a certain year. If the target is not met, the state would automatically be subject to a fine. In exceptional circumstances, the Committee of Ministers could vote to waive the fine (e.g. Ukraine under present circumstances).

These targets should not present a problem for states, given the time delay, technical support from the Council of Europe, and the current starting point for the number of leading judgments that are pending.

Year	Target of leading judgments pending for over two years
2025	100
2026	90
2027	80
2028	70
2029	60
2030	50
2031	40
2032	30
2033	20
2034	10

How the fines could work in practice

The fine system could be administered in the following way. Every year, states pay a set sum to the Council of Europe - for example, 1 million euros.²⁵ If they are not fined, the sum is returned.

An optional addition could be that the interest accrued on the deposits over the course of a year could be used to fund Council of Europe activities to promote ECtHR implementation, such as technical co-operation projects, or a Special Representative on the Implementation of Judgments.

Other proposals for administering the fines could also be explored.

Conclusion

The introduction of a new sanctioning tool would be both a powerful signal that states are ready to take their obligations seriously, and a bold step towards creating real, credible pressure on a non-implementing state - while moving away from the brinkmanship that shadows the current infringement proceedings.

²⁵ The set sum should be raised annually for inflation.