The Urgent Reforms Needed to Improve the Implementation of Judgments of the European Court of Human Rights

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Abstract

The implementation of judgments of the European Court of Human Rights (ECtHR or the court) is a critical problem that has grown worse over the last 30 years. Non-implementation of ECtHR judgments is a primary cause of the backlog and delay at the court. That backlog is growing worse and it has only been kept in check by limiting the ability of applicants to access the court. This threatens the fairness and reputation of the European Convention on Human Rights System as a whole. The only long-term solution to address this backlog is a comprehensive set of measures designed to improve the implementation of ECtHR judgments and the ECHR at national level. The 4th Summit of the Council of Europe is a golden opportunity to enact a range of additional measures, which are set out in this article.

Introduction

The implementation of judgments of the European Court of Human Rights (ECtHR or the court) is a critical problem that has grown worse over the last 30 years. Non-implementation of ECtHR judgments is a primary cause of the backlog and delay at the court. That backlog is growing worse and it has only been kept in check by limiting the ability of applicants to access the court. This threatens the fairness and reputation of the European Convention on Human Rights System (ECHR System) as a whole. The only long-term solution to address this backlog is a comprehensive set of measures designed to improve the implementation of ECtHR judgments and the ECHR at national level. The 4th Summit of the Council of Europe is a golden opportunity to enact a range of additional measures, which are set out in this article.

There is a systemic, mutually reinforcing dynamic between the non-implementation of ECtHR judgments and the ECtHR backlog. These structural issues are beyond the control of any particular person working in the ECHR field. The intention is not to criticise the individual governmental or institutional staff in this area, who are working hard against significant challenges. Instead, the emphasis is on the urgent need for comprehensive reforms to address these structural challenges, following the 4th Summit.

The non-implementation challenge

At the European Implementation Network (EIN), we focus on "leading cases" as a key indicator of whether implementation is full, effective and prompt. "Leading" judgments are those assessed by the Committee

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of Ministers to demonstrate a new structural and/or systemic problem.[1] They require steps to be taken by states to resolve this underlying problem before the implementation monitoring process can be closed.

If leading cases are being implemented, it means that the ECHR System is operating effectively to protect the human rights of entire societies, preventing future human rights violations for issues already identified by the ECtHR, and ensuring that the Strasbourg Court does not face the same types of applications.

EIN uses three types of assessment of leading cases to analyse the efficacy of the implementation of judgments. All three sets of data are concerning. First, as of 31 December 2021, there were 1,300 leading judgments of the ECtHR pending implementation.[2] This indicates that a very high number of structural and/or systemic human rights problems are pending resolution. Furthermore, 47% of the leading ECtHR judgments from the last 10 years are still pending full implementation.[3] This means that around half of the human rights problems identified by the court over the last decade have not been adequately dealt with. Finally, the average length of time that leading ECtHR judgments have been pending full implementation is six years and two months.[4]

The latest available data indicates that there are 5,533 cases pending overall (including leading and repetitive cases).[5] The only reason that this number is not at an all-time high is due to a 2017 rule change that allowed the Council of Europe to close repetitive cases more easily.[6] Despite some claims that the situation is improving, the overall level of ECtHR implementation has been getting increasingly worse over the last 30 years.

Barriers to ECtHR implementation

Barriers to ECtHR judgment implementation can be characterised into three broad categories: political opposition; practical difficulties; and an absence of effective government implementation mechanisms. These barriers are not mutually exclusive—all three can apply at the same time.

The first is high-level political opposition. The current paradigmatic examples of this would be the cases of detained Russian opposition leader Alexeï Navalny,[7] Turkish human rights philanthropist Osman

[1] Council of Europe, *Annual Report on the Supervision of the Execution of Judgments and Decisions of the European Court of Human Rights 2021* (30 March 2022), p.89. Although some cases are initially identified as leading and later shown to be isolated and not revealing a wider number, these cases are relatively low in number and have a negligible effect on the data.

[2] Council of Europe, *Annual Report on the Supervision of the Execution of Judgments and Decisions of the European Court of Human Rights 2021* (30 March 2022), p.43.

[3] Data applicable as of 1 January 2022. Drawn from the Council of Europe database *HUDOC EXEC* and the *Annual Report on the Supervision of the Execution of Judgments and Decisions of the European Court of Human Rights 2021* (30 March 2022).

[4] Data applicable as of 1 January 2022. Drawn from the Council of Europe database *HUDOC EXEC* and the *Annual Report on the Supervision of the Execution of Judgments and Decisions of the European Court of Human Rights 2021* (30 March 2022).

[5] Council of Europe, *Annual Report on the Supervision of the Execution of Judgments and Decisions of the European Court of Human Rights 2021* (30 March 2022), p.43.

[6] G. Stafford, "The Implementation of Judgments of the European Court of Human Rights: Worse Than You Think—Part 1: Grade Inflation" (8 October 2019), *EJIL:Talk!*, *https://www.ejiltalk.org/the-implementation-of-judgments-of-the-european-court-of-human-rights-worse-than-you-think-part-1-grade-inflation/* [Accessed 25 February 2023]; G. Stafford, "The Implementation of Judgments of the European Court of Human Rights: Worse Than You Think—Part 2: The Hole in the Roof" (8 October 2019), *EJIL:Talk!*, *https://www.ejiltalk.org/the-implementation-of-judgments-of-the-european-court-of-human-rights-worse-than-you-think-part-2-the-hole-in-the-roof/* [Accessed 25 February 2023]. In summary, the rule change was as follows. Prior to 2017, the implementation monitoring procedure for repetitive cases could only be closed after the government took the necessary general measures to resolve the underlying human rights problem identified in the case. However, in 2017 the Council of Europe established a new approach. In order to close repetitive cases, governments would only be required to carry out measures to provide justice to the individual applicant in the case (such as the payment of compensation) and would no longer be required to carry out measures to address the underlying violation. In order to close leading cases, governments would still need to carry out reforms to remedy the human rights problem. However, it became far easier to close the vast majority of cases, which were classified as repetitive. For example, in the *Ceteroni v Italy* group, 1,723 repetitive cases were closed in 2017, with only one "leading" case remaining open (which will only be closed if the authorities resolve the underlying problem). This change in the rules led to a "windfall" of closed cases. Between 2017 and 2019, at least 3,350 cases were closed as a result of the new policy. These reforms have created an impression that implementation significantly improved in 2017. However, the reduction in the number of cases pending execution resulted from a change in the administrative process, not an improvement in implementation.

[7] In particular, *Navalnyye v Russia* (App. No.101/15), judgment of 17 October 2017.

Kavala,[8] or Kurdish politician Selahattin Demirtaş.[9] In all of these cases, implementation of the ECtHR judgment requires the release of the individual concerned. However, the government of the country concerned has chosen not to comply. Release of these applicants would be an individual measure, but this barrier to implementation can concern wider reforms too.

The second barrier to implementation is practical, arising from the high cost or complexity of taking the general measures necessary to implement a judgment. For example, certain violations require rebuilding or expanding national prison systems to address overcrowding, or reforms to an entire court system to address the length of proceedings. The vast majority of ECtHR cases do not require such changes. However, even the implementation of more minor reforms can require deploying resources on an issue which may or may not be a political priority.

A third reason for non-implementation is insufficient structural mechanisms in governments, rather than conscious government decision-making. Certain states have developed effective administrative processes involving high-level decision makers across different departments that encourage the implementation of most cases in a way that is relatively automatic. For example, in 2015 Slovenia created an inter-ministerial working group for ECtHR judgment implementation, along with a unit for coordinating implementation across departments in 2016. As a result, the number of overall cases pending implementation fell from 309 to four within six years.[10]

Most countries do not have an implementation system like this. A typical system would be constituted by a small team of civil servants within one ministry. They are responsible for engaging with the Council of Europe implementation monitoring process and liaising with the rest of government to advance implementation domestically. However, they are a department within a department, with limited power to influence the policy decisions of the ministries that might be necessary to promote implementation in different cases. The team has the capacity to help advance implementation in a small number of cases, but might not have the power to effectively implement the same number of cases as there are new judgments from the ECtHR.

This third issue affects the largest number of cases pending implementation. Furthermore, reforms on this issue are the easiest to enact and have been shown to have a significant impact.

The backlog at the Strasbourg Court

These barriers to implementation have resulted in a level of non-implementation that prevents the ECHR System from operating effectively.

The relationship between ECtHR non-implementation and the ECtHR backlog

It would be simplistic to say that the non-implementation of ECtHR judgments is the sole cause of the backlog at the court. Meritorious application at the court can only be prevented by the effective implementation of the ECHR as a whole at national level, rather than simply the implementation of judgments of the ECtHR that have identified certain violations.

However, 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.

[8] *Kavala v Turkey* (App. No.28749/18), judgment of 10 December 2019; (2021) 72 E.H.R.R. 23.

[9] *Demirtaş v Turkey (No.2)* (App. No.14305/17), judgment of 22 December 2020; (2019) 69 E.H.R.R. 27.

[10] Data taken from the Council of Europe *Annual Reports on the Supervision of the Execution of Judgments and Decisions of the European Court of Human Rights*. Information on the Slovenian system taken from presentation of Assistant Professor Dr Simona Drenik Bavdek (Assistant Head of the Centre for Human Rights at the Human Rights Ombudsman of the Republic of Slovenia), to the EIN Conference on "Systematic Non-Implementation of Judgments of the European Court of Human Rights—What Can Civil Society Do?", Strasbourg, 22 June 2022.

This relationship is indicated (imperfectly) by the number of ECtHR judgments that are classified as "repetitive" by the Council of Europe in the judgment implementation monitoring procedure. By classifying a judgment as "repetitive", the council is recognising that the fundamental problem(s) in the judgment have already been identified in a previous ECtHR judgment.[11]

Of the ECtHR judgments from the last five years, 84% have been classified by the Council of Europe as "repetitive".[12] If these problems had been resolved, the human rights violation would not have happened, and the subsequent repetitive application would not have been brought to the court.[13] For example, the first judgment concerning lack of investigations into police ill-treatment in Georgia was delivered in 2011. Since then, the court has delivered another 30 repetitive judgments on this exact issue.[14] General measures still await full implementation. In Ukraine there have been 87 repetitive cases since a similar judgment became final;[15] in Bulgaria, 36 repetitive cases;[16] 14 each for Hungary[17] and Armenia;[18] the list goes on.

The delays in ECtHR litigation and the delays in ECtHR implementation create a vicious circle with an exponential negative impact on the ECHR System. Non-implementation leads to more applications to the court. The more applications there are, the greater the backlog. The greater the backlog, the longer ECtHR proceedings are. The longer ECtHR proceedings take, the more instances of human rights violations there are, without an ECtHR judgment highlighting the problem which would require reforms (and therefore avoid future violations). The delay in the problem being highlighted and addressed leads to more applications at the court, which in turn increases the backlog and delays for litigation, including in respect of other human rights issues—which go through the same vicious circle.

Analysing the seriousness of the ECtHR backlog[19]

It is necessary to examine the common narrative on this issue, before setting out the current situation.

Below is a graph depicting the overall number of ECtHR applications pending before a judicial formation at the end of each year. Many understand this to demonstrate a growing problem in the 2000s, which was significantly reduced at start of the 2010s—and which is now relatively stable and manageable.

[11] Council of Europe, *Annual Report on the Supervision of the Execution of Judgments and Decisions of the European Court of Human Rights 2021* (30 March 2022), p.89.

[12] 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* 2017–2021. 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.

[13] 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.

[14] *Tsintsabadze v Georgia* (App. No.35403/06), judgment of 15 February 2011; 31 B.H.R.C. 43.

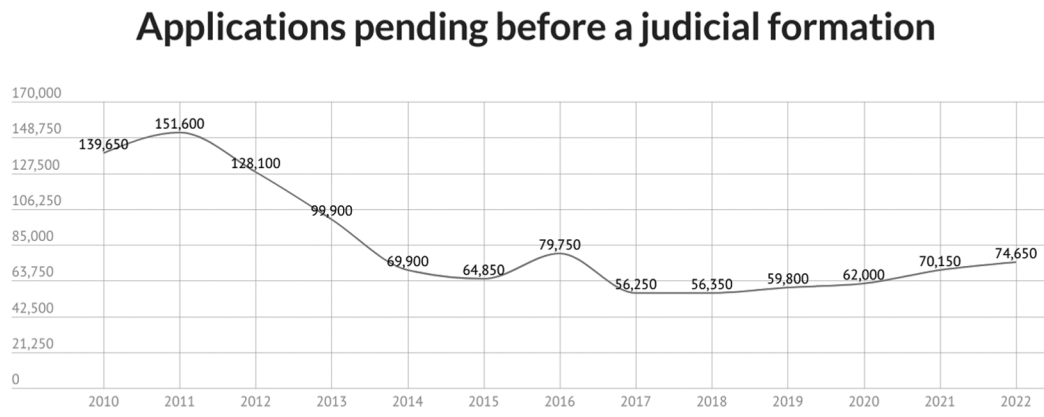
[15] *Afanasyev v Ukraine* (App. No.38722/02), judgment of 5 April 2005; (2006) 42 E.H.R.R. 52.

[16] *Velikova v Bulgaria* (App. No.41488/98), judgment of 18 May 2000.

[17] *Gubacsi v Hungary* (App. No.44686/07), judgment of 28 June 2011.

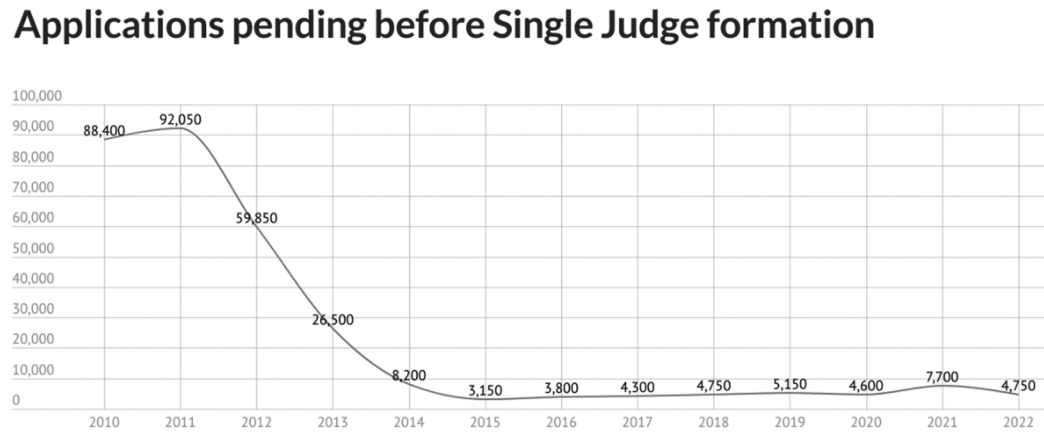
[18] *Virabyan v Armenia* (App. No.40094/05), judgment of 2 October 2020.

[19] For this section in general, I have relied on the points made by John Dalhuisen (Senior Fellow at the European Stability Iniative) in the presentation "After Russia: Reinvigorating the Convention System", at the EIN Conference on "Systematic Non-Implementation of Judgments of the European Court of Human Rights—What Can Civil Society Do?", Strasbourg, 22 June 2022.

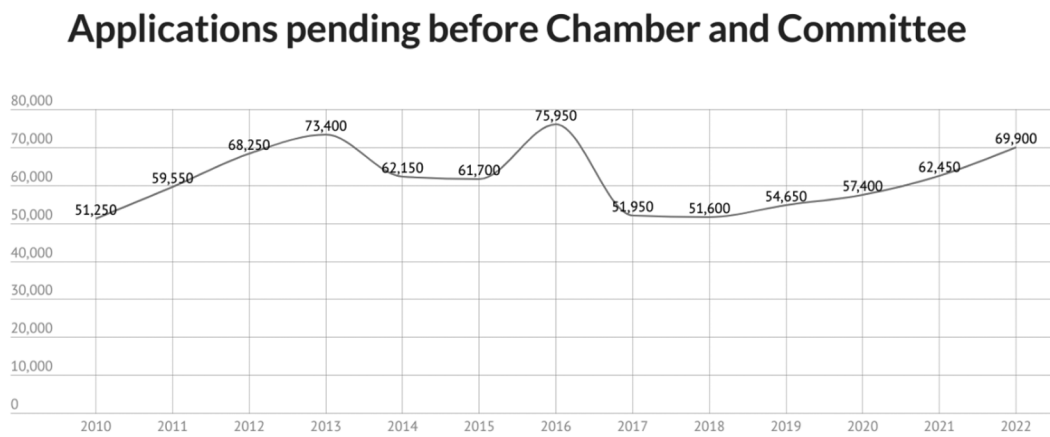


Unfortunately, this is an overly positive analysis of the backlog problem.

The court's judicial formations can be divided into the following. A single judge can analyse a clearly unmeritorious case and rule that it is inadmissible. However, for applications that may result in a violation ruling, the case needs to be examined by a committee of three judges or a chamber of seven.



The graph concerning the number of cases pending before a single judge shows that the court has carried out a significant administrative reform, which has allowed it to significantly reduce the backlog of unmeritorious cases. This is truly impressive and the scale of the achievement should not be minimised.



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. Over the last 10 years, the court has only managed to significantly reduce the number of pending chamber/committee cases on two occasions. On both occasions, the reduction was at least in part facilitated by dismissing potentially meritorious claims.

The first was in 2014, when the new r.47 of the court came into force. This rule significantly increased the strictness with which the court applied its application rules, such that any minor mistakes or omissions in the paperwork would result in the case being dismissed.[20] Application of the new rule from 1 January 2014 led the court to administratively dismiss a significant number of cases without an assessment of the admissibility or merits, that could have resulted in chamber/committee rulings.[21] The second time the court reduced the chamber/committee backlog was 2017, which was the year of the judgment *Burmych v Ukraine*.[22] This involved the court striking out 12,148 applications explicitly on the grounds that the high number of applications on the same issue were a burden on the court.

There are now more cases pending before a chamber formation (35,100), than the total number of judgments that have ever been issued by the ECtHR (25,836).[23] According to the latest ECtHR annual report, in 2022 the court delivered judgments in respect of 4,168 applications (most of which were joined, resulting in 1,163 judgments).[24] Meanwhile, in the same year, "18,800 applications were identified as probable Chamber or Committee cases".[25]

The overall situation is that the court has more meritorious or arguable applications than 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 unpalatable decisions that some applications will simply not be dealt with.

[20] European Court of Human Rights, Press Release, "Stricter conditions for applying to the European Court of Human Rights", 11 December 2013.

[21] European Court of Human Rights, *Analysis of Statistics 2014* (January 2015), p.4. Following the change to r.47, the number of applications allocated to a judicial formation fell by 15%, including a 11% reduction of cases allocated to chamber/committee. As a result of r.47, the court disposed administratively of around an additional 12,550 applications, which as a result were not assigned to a judicial formation.

[22] *Burmych v Ukraine* (App. No.46852/13), judgment of 12 October 2017.

[23] According to the European Court of Human Rights, *HUDOC* Database, there have been 25,836 judgments issued by the court (data extracted 16 February 2023). According to *General Statistics 2022*, published by the European Court of Human Rights there were 35,100 cases pending before a chamber at the court as of 1 January 2023.

[24] European Court of Human Rights, *Analysis of Statistics 2022* (January 2023), p.4.

[25] European Court of Human Rights, *Analysis of Statistics 2022* (January 2023), p.3.

The time taken to issue an ECtHR judgment

A key question is what effect the continuation of the backlog has on the length of proceedings before the ECtHR for substantive cases. The court does not publish statistics on the average time taken to deal with the cases before it. However, given that the backlog of potentially meritorious cases has been rising every year for five years—and these cases take up the most judicial time—it seems likely that the ECtHR is taking longer to deliver judgments in arguable cases.

This delay is far longer than many realise. 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.[26] These are the cases that identify important systemic problems, or require immediate remedies for individuals at risk.

This delay has disastrous results on both a human level and on a strategic level.

On a human level, all readers of this piece will know that justice delayed is justice denied. There are a high number of cases where, following lengthy ECtHR proceedings, justice becomes impossible or comes too late: parents do not regain rightful custody of their children after an ECtHR ruling in their favour, because the children are now integrated into a different family;[27] police violence identified by the ECtHR will never be investigated, because the statute of limitations has passed by the time the court's judgment is given;[28] or innocent people spend years in unjustified detention for a crime they did not commit, and the ECtHR ruling in their favour comes after they have already been released.[29]

On a strategic level, a key function of the ECtHR is to highlight systemic attacks on human rights, democracy and the rule of law, and help reverse them. If the court takes too long to issue rulings, these attacks on our core values become entrenched and can be far harder to address. For example, the key ECtHR case concerning the rule of law in Hungary[30] highlights how the President of the Hungarian Supreme Court was removed from office for publicly criticising the 2011 reforms of the judiciary. These reforms took effect on 1 January 2012. The applicant was removed from office on the same date and submitted an application to the ECtHR in March 2012. A chamber of the ECtHR gave judgment in May 2014 and the Grand Chamber gave final judgment in June 2016.[31] By this time, the constitutional reforms in Hungary were firmly entrenched. Although the Committee of Ministers continues to monitor the implementation of the case on a regular basis, there has been no progress at all in reversing the problems highlighted with the independence of the judiciary.

Options to address the backlog

The backlog problem puts the court in a very difficult position. There are five ways in which it has taken legal and administrative steps which have limited the backlog (either intentionally or unintentionally). Some of these steps have had serious negative effects; others are financially costly. None have been successful for long. Meanwhile, there is a sixth alternative to limit the backlog: improvements to the implementation of ECtHR judgments.

The five steps the court has taken are as follows. First, dismissing more cases based on administrative technicalities, regardless of the merits of the case. This is what was achieved through the new r.47 in 2014.

[26] This includes 29 cases classified as leading and seven repetitive cases requiring individual measures according to the *HUDOC EXEC* database, *https://hudoc.exec.coe.int/* [Accessed 25 February 2023].

[27] e.g. *Wallová v Czech Republic* (App. No.23848/04), judgment of 26 October 2006. For implementation information, see the government action report in the case, DH-DD(2013)542, 17 May 2013.

[28] e.g. *Jasar v North Macedonia* (App. No.69908/01), judgment of 15 February 2007. For implementation information, see the government action report in the case, DH-DD(2017)717, 16 June 2017.

[29] e.g. *Leszczak v Poland* (App. No.36576/03), judgment of 7 March 2006.

[30] *Baka v Hungary* [GC] (App. No.20261/12), judgment of 23 June 2016; (2017) 64 E.H.R.R. 6.

[31] *Baka* [GC] (App. No.20261/12), judgment of 23 June 2016.

Second, through the striking out of applications purely on the grounds that they are a burden on the court, as was explicitly carried out for 12,148 applications in the *Burmych* case. Third, limiting the scope of the rights under the ECHR, or their territorial applicability. This is what has effectively been done in *Georgia v Russia II*, where the court made clear that it will no longer examine complaints about violations which took place during active hostilities in a conflict.[32] Rulings like this may not have been explicitly designed to limit the growth of the backlog, but that is a side-effect.

All three of these steps have received a great deal of criticism in the human rights community. Supporters of the steps must acknowledge that they have serious negative effects, including an arbitrary impact on victims of human rights violations who would have meritorious claims dismissed. Meanwhile, critics of these measures cannot ignore the fact that cutting the court's backlog decreases the instances of other meritorious cases being delayed for so long that justice is denied. In human terms, such measures help to avoid situations where parents win at the ECtHR but are still unable to reunite with children who have been taken away—or similar injustices in hundreds or thousands of delayed cases. In other words, the level of non-implementation of ECtHR judgments has forced the court into the unenviable position of choosing between (a) limiting access to the court for new applicants, and (b) having such a long delay in its proceedings that the eventual rulings for applicants may no longer be effective.

The fourth way of attempting to decrease the backlog has been through internal reforms to the court, which allow it to deal with cases more efficiently (for example, reorganising teams or introducing innovations in IT). The limits of these organisational reforms are likely to have been reached, with the President of the Court noting this year that "[t]hroughout the Interlaken reform process and even beyond, the court has worked relentlessly to improve its efficiency. It will continue to do so [under my presidency]. In terms of organisation, however, there is no leeway for further improvement".[33]

The President went on to request further financial assistance from states in order for the court to effectively carry out its work. This is the fifth way in which the court has tried to reduce the backlog: by increasing the resources it receives from Member States, in order to employ more lawyers and process applications. To this end, it has been receiving voluntary contributions of various sizes from various Member States. This has no doubt been effective in preventing the backlog from increasing further. Funding on a sustainable basis (as opposed to ad hoc arrangements) would improve the ability of the court to respond even more effectively to the huge challenges it faces. However, the sheer scale of the task would require a consistent staffing uplift for the long term, beyond the financial commitments that Member States have been able to previously agree to.

All five of these solutions have been and will continue to be employed by the court to varying degrees, depending on the leadership in place and the prevailing view among judges and registry staff at different times. These options have the capacity to mitigate the backlog problem, but not resolve it. Unless the court dismisses meritorious cases covering a huge range of Convention rights, such methods cannot effectively bring down the backlog. Meanwhile, due to the relationship between non-implementation and the backlog, increases to the effectiveness or resources of the court are unlikely to empower it to deal with more applications than it receives, in the absence of improved execution.

The best way forward would be to employ all five of the above methods in the least damaging way possible, in order to mitigate the backlog problem over the short to medium term, whilst pouring attention and resources into a sixth method to solve it over the long term.

The sixth method is improving the implementation of ECtHR judgments and the ECHR at national level. This is beyond the power of the court, as responsibility for it lies with the Council of Europe. It is the only fair and effective long-term solution. It improves human rights protections, avoiding substantive

[32] *Georgia v Russia (II)* (App. No.38263/08), judgment of 21 January 2021; (2021) 73 E.H.R.R. 6.

[33] Speech by Síofra O'Leary, President of the European Court of Human Rights, at the opening of the judicial year in Strasbourg, 27 January 2023. The full text is available on the website of the ECtHR.

applications being made to the court, thereby reducing the annual influx of cases and allowing the ECtHR to bring down the number of applications pending before it by processing more cases every year than it receives. Rather than limiting opportunities for human rights claims, it improves human rights protections; and rather than creating an ever-increasing judicial bureaucracy, it invests in reforms that will bring down the burden on the bureaucracy over the longer term.

How ECtHR implementation can be improved

There is no magic bullet solution to the ECtHR implementation challenge. Given the different barriers to implementation—and the enormous range of issues and countries involved—measures to promote implementation must be multi-faceted.

The best approach would be to put in place a latticework of systematic reforms, capable of addressing all of the different barriers to implementation set out above, and involving the full range of stakeholders of the ECHR system. The Council of Europe has already begun a strategy to improve ECtHR implementation, but it needs reinforcement. The 4th Summit of the Council of Europe is a once-in-a-generation opportunity to put in place systemic reforms to improve the implementation of the judgments of the Strasbourg Court.

Below I set out the reforms that are already underway and additional measures that could be taken up at the 4th Summit.

Upcoming reforms of the Council of Europe

In May 2021, the Committee of Ministers adopted the implementation of the ECHR at national level and the implementation of ECtHR judgments as the number one priority in the strategic framework of the Council of Europe for 2021–2024.[34] Recently the Council of Europe began a new strategy to promote implementation, which includes the following:

- **Project to improve capacity to implement ECtHR judgments at national level.**

  As set out above, in my view the most important cause of ECtHR non-implementation is the prevalence of ineffective mechanisms to push implementation forward within national governments. The Council of Europe has begun an expansive project to address precisely this issue. Preliminary indications have suggested that the first stage will be to conduct a comprehensive analysis of the most effective governmental structures for promoting ECtHR implementation (like the one in Slovenia), depending on the size of the non-implementation problem being faced in the country concerned (e.g. if a state has X leading judgments pending, it needs Y staff, with Z relationship to the rest of government). The project will then convene regular intergovernmental meetings of the government personnel involved in implementation, to provide the results of the research, share ongoing experiences, and work collectively on improvements in this area.

- **Changes to the Council of Europe's annual reporting.**

  In order to improve states' implementation of ECtHR judgments, it is important to hold them to account about their implementation record overall. The Council of Europe publishes an annual report on the implementation of ECtHR judgments, made public at the end of every March.[35] Previous versions of the report have provided an extensive range of statistics

[34] Secretary General Information Document SG/Inf(2020)34 on the Strategic Framework of the Council of Europe.

[35] At the time of writing, the latest iteration of this was Council of Europe, *Annual Report on the Supervision of the Execution of Judgments and Decisions of the European Court of Human Rights 2021* (30 March 2022). The report is normally published at the end of every March.

about ECtHR implementation. However, the data is presented in a complex way that requires further analysis to identify trends and state performance. The reports have not contained a written analysis of what the data means, by stating how well implementation is going in each state.

The 2022 version of the report is due to be published in March 2023 and is unavailable at the time of writing. It is foreseen to contain a much more detailed breakdown of how each state is carrying out ECtHR implementation, both in terms of leading cases and cases pending overall. If the reports are indeed developed to contain an effective country-by-country analysis,[36] this will make it far easier for stakeholders in the ECHR system to understand how well a state is implementing overall and to hold the state to account.

Additional proposals to promote ECtHR implementation

Given the scale of the ECtHR implementation challenge, the two measures outlined above will not be sufficient. A range of additional reforms have been set out by a variety of different stakeholders in the ECHR system. Notably, these include the European Implementation Network, the European Network of National Human Rights Institutions, the Campaign to Uphold Rights in Europe, and the High-Level Reflection Group of the Council of Europe. The key proposals are set out below.[37]

- **A special representative on the implementation of ECtHR judgments.**

  The most common proposal for a special representative's role would be high-level advocacy to promote implementation in difficult cases. This should be one responsibility of the representative, but a second responsibility would be equally important. A special representative could visit governments and advocate for the creation of effective government machinery that promotes implementation systematically, drawing on the research and proposals of the project to improve national capacity for ECtHR implementation.

- **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. For example, a project might focus on improving the laws on defamation so that they appropriately balance the right to reputation with the right to freedom of expression. The number of such projects focusing on the implementation of ECtHR judgments is relatively low. A significant increase in such projects would help improve ECtHR implementation.

[36] To be as effective as possible, the report would have a short section on every country that is or has been a signatory to the ECHR, with detailed data and narrative explanation concerning the following: number of overall judgments pending; number of leading judgments pending; average time that leading judgments have been pending; trends for this data since 2020; the proportion of cases which have been implemented; the proportion of leading judgments that have been implemented; a written analysis of what all of the above means for the state of implementation in each country; and an analysis of the state and functioning of the mechanisms at national level for promoting the implementation of ECtHR judgments.

[37] Most of the proposed reforms listed here originated in the European Implementation Network's document, *Proposals for the work of the Council of Europe on the Implementation of Judgments of the European Court of Human Rights*, disseminated to the Council of Europe in December 2021 and published as an attachment in an open letter from the EIN board to the Council of Europe's Secretary General and Committee of Ministers in May 2022. A number of these proposals are also contained in the submissions made to the High Level Reflection Group of the Council of Europe regarding the future priorities of the Council of Europe, by the European Network of National Human Rights Institutions (Section 3, August 2022) and the Campaign to Uphold Rights in Europe (Section 1, July 2022). Furthermore, *The Report of the High Level Reflection Group of the Council of Europe* contained a very wide range of proposals (October 2024), pp.20–24.

- **Increased participation in CM/DH[38] meetings by relevant government ministers.**

  CM/DH meetings are the quarterly meetings where the Committee of Ministers of the Council of Europe debates the implementation of ECtHR judgments and issues formal decisions concerning the cases. 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.

- **Ensure that infringement proceedings are used more frequently, speedily and resolutely.**

  Infringement proceedings under art.46 of the ECHR were established in 2010 under Protocol 14. The explicit purpose of the reform 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 two years and five months. Added to the existing delays in the litigation at the ECtHR, this delay cripples the effectiveness of the process. Furthermore, infringement proceedings have only been initiated in response to failures to implement measures to provide justice for individual applicants, rather than conduct reforms to prevent similar violations affecting the country as a whole. In order to address the problems outlined in this article, states must be subjected to pressure to implement measures to prevent the human rights violations identified in individual judgments from happening on a wider scale.
  At the 4th Summit states could agree to initiate infringement proceedings far more frequently and speedily—and initiated in response to failures to protect freedoms that are essential to the protection of democratic life. States could also explicitly confirm that the consequence for non-implementation after infringement proceedings should be suspension from the Council of Europe.

- **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.[39] This proposal could be revisited. The introduction of a new sanctioning tool, agreed by all Member States, would be both a powerful signal that states are ready to take

[38] "CM/DH" stands for "Comité des Ministres/Droits de l'homme. CM/DH meetings are meetings of the Committee of Ministers specifically devoted to the supervision of the execution of judgments and decisions of the European Court.
[39] 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.

their obligations seriously, and a bold step towards creating real and credible pressure on a non-implementing state while moving away from the brinkmanship that shadows the current infringement proceedings.

- **Increased transparency of the implementation monitoring process.**

  The CM/DH meetings of the Committee of Ministers on ECtHR judgment implementation are currently closed to civil society and the public as a whole. This decreases the communication and impact of the committee's proceedings, minimising the pressure on states to implement. NGOs and NHRIs should be allowed to attend the committee's meetings on judgment implementation in the majority of cases; and such hearings should be made completely public when possible.

- **Programmes to support civil society work at national level.**

  There is a great deal of potential in this area. The European Implementation Network started a programme to facilitate civil society engagement with the implementation monitoring process in January 2019. The number of written submissions from NGOs/NHRIs concerning the implementation of judgments then tripled within two years.[40] This increase was also facilitated by the Council of Europe's Department for the Execution of Judgments, which carried out a series of highly welcome ongoing measures to make the implementation process more transparent and accessible.

  However, beyond the monitoring process in Strasbourg, there is an equally important role for civil society to conduct advocacy at national level to promote mechanisms in national governments to effectively implement ECtHR judgments on a systematic basis. There are impressive examples of this, such as the recent creation of a parliamentary monitoring mechanism in Moldova as a result of advocacy from the Legal Resources Centre; and ongoing monitoring of a similar mechanism in Georgia by the Georgian Young Lawyers Association. Nevertheless, work by civil society to produce systemic solutions at national level has been less widespread than its engagement in the Council of Europe monitoring procedure. This is a missed opportunity: civil society could be an important additional source of pressure to promote the all-important implementation mechanisms at national level. In a survey of civil society organisations engaged in ECtHR implementation, respondents stated that the main reason that they do not do more work on this issue is a lack of specific funding for it.[41]

  In 2023 the EU Citizens, Equalities, Rights and Values programme is making €17 million available to civil society groups working to promote the implementation of the EU Charter for Fundamental Rights (the same funding scheme was available last year and will be available next year). There are no pan-European funding programmes designed to promote civil society work on the implementation of ECtHR judgments. At the 4th Summit of the Council of Europe, states could agree on the need to support civil society work to promote systematic solutions to the implementation of ECtHR judgments at national level, and pursue the creation of funding programmes for this work through national budgets, the Council of Europe, and the EU. This would build on the commitments made to civil society already made in the Helsinki Decisions.

[40] See Council of Europe, *Annual Report on the Supervision of the Execution of Judgments and Decisions of the European Court of Human Rights 2021* (30 March 2022). The annual figures for "Rule 9" submissions to the implementation monitoring process by NGOs/NHRIs are: 64 in 2018, 133 in 2019, 176 in 2020, 207 in 2021.

[41] Survey of EIN members carried out in the context of an External Evaluation of the European Implementation Network, finalised (July 2020).

- **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 which is not enough to carry out all of the administrative tasks, as well as country visits with sufficient regularity to promote change. An increase to the DEJ's resources would help it advocate more intensively for judgment implementation.

- **Increased frequency of CM/DH meetings.**

  Although the Council of Europe's 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 only considered 116 different cases, meaning that 91% of leading cases pending implementation were not on the agenda.[42] 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.

Conclusion

Behind the data and the graphs is a bigger picture, about how the ECHR system protects our way of life. The court's 25,836 judgments have led to the release of a political leader jailed for opposing the government;[43] the reinstatement of a judge who had been fired because he fought political corruption;[44] and the prevention of a 24-year-old woman from being deported to Iran to be stoned to death for having sex outside of a marriage that she did not choose.[45] Records of the implementation of ECtHR judgments are full of stories that can make Europeans proud of this unique institution.

More effective implementation of the court's judgments will reap huge benefits for the protection of human rights, democracy and the rule of law; and the preservation and strengthening of a common European legal space. Failing to address the implementation challenge will result in continued threats to the efficacy of the ECtHR, which may feel compelled to take further measures to restrict individuals from accessing its protection. Furthermore, continued systemic non-implementation presents grave challenges to Europe's values and to our common security. Implementation of the ECtHR's acquis ultimately protects Europe by preventing the rise of authoritarianism. 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.[46]

[42] 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* [Accessed 25 February 2023].

[43] *Mammadov v Azerbaijan* (App. Nos 15172/13 and 15172/13), judgments of 22 May 2014 and 29 May 2019; (2020) 70 E.H.R.R. 8. For implementation information, see Resolution CM/ResDH(2020)178 adopted by the Committee of Ministers on 3 September 2020 at the 1377 *bis* meeting of the Ministers' Deputies.

[44] *Volkov v Ukraine* (App. No.21722/11), judgment of 9 January 2013; (2013) 57 E.H.R.R. 1. For implementation information, see the case summary on the *HUDOC EXEC* website, *https://hudoc.exec.coe.int/eng?i=004-31281* [Accessed 25 February 2023].

[45] *Jabari v Turkey* (App. No.40035/98), judgment of 11 July 2000; [2001] I.N.L.R. 136. For implementation information, see Resolution CM/ResDH(2011)311, adopted by the Committee of Ministers by tacit procedure in accordance with the decision taken at the 1128th meeting (December 2011).

[46] As of 1 January 2022, Russia had 217 leading judgments pending, which had been pending implementation for an average of eight years. 90% of the leading judgments from the last 10 years concerning Russia have not been implemented. Data drawn from the Council of Europe database

The European Court of Human Rights is a gift bestowed on us by the post-war generation, in the hope that it would safeguard our democratic way of life. If European leaders are to pass this gift on to future generations, they must act at the 4th Summit to protect the impact of the court's judgments.

HUDOC EXEC and the *Annual Report on the Supervision of the Execution of Judgments and Decisions of the European Court of Human Rights 2021* (30 March 2022).