

**HOLDING GOVERNMENTS TO ACCOUNT FOR THEIR RECORD IN
IMPLEMENTING JUDGMENTS OF THE EUROPEAN COURT OF
HUMAN RIGHTS**

© European Implementation Network, 2 Allée René Cassin, F-67000 STRASBOURG, FRANCE

contact@einnetwork.org

Authors: George Stafford and Ioana Iliescu

The European Implementation Network works with NGOs and others across Europe to promote the full and timely implementation of judgments of the European Court of Human Rights ("ECtHR"). The most successful work on implementation of ECtHR judgments combines advocacy at the national level with engagement with the supervision process at the Committee of Ministers of the Council of Europe. EIN supports work at both levels through advocacy, training, and resources.

I. Introduction

Judgments of the European Court of Human Rights are rightly celebrated for bringing justice to victims of human rights violations. However, they are only a first step towards human rights protections. Unfortunately, judgments can remain pending implementation for very long periods. This can mean that the human rights violations continue to happen.

Factors that influence the length of the implementation process can include passivity or lack of engagement by state authorities, the high complexity of necessary reforms, the level of collaboration between relevant state authorities or between state authorities and civil society, and the level of political will and administrative capacity.

There are currently more than 1200 leading judgments pending implementation before the Committee of Ministers.¹ Every pending leading judgment represents an unresolved human rights problem. From all leading judgments pronounced in the last 10 years, 45% are still pending implementation. The average time for which a leading judgment has been pending implementation is over 6 years.

Of course, this statistic varies from country to country. This guide approaches the best way to make use of the available data regarding ECHR implementation in order to prompt governments to engage in a positive manner with the implementation process.

¹ <http://www.einnetwork.org/countries-overview>

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II. Statistics and qualitative information

Putting relevant government authorities face to face with data that accurately reflects the record of implementation is the primary starting point for holding them accountable. The relevant data can be supplemented by additional information, such as qualitative assessments about pending and implemented judgments.

However, determining which categories of data should be used in order to offer the most accurate picture of national implementation records, and how, is not a straightforward matter. Below is an explanation of some of the key terms, followed by a list of what the EIN Secretariat considers to be the key figures.

What are leading and repetitive judgments?

After the European Court of Human Rights issues a final judgment that identifies a violation of the ECHR, the case is passed to the Council of Europe's Department for the Execution of Judgments ("DEJ"). The DEJ's first step is to assess whether it is 'leading' or 'repetitive'.

Judgments that identify new structural or systemic issues are classified as leading. Subsequent judgments which concern the same issue already identified in a leading case are classified as repetitive. Leading cases are joined with repetitive cases, to form a 'group', which bears the name of the leading case.

For example, the *Khanamirova v. Russia* judgment, which concerns the non-enforcement of domestic decisions concerning child custody, was rendered in 2011 and designated as a leading. Since then, the ECtHR issued eight more judgments concerning the same issue. These were considered repetitive and joined under the *Khanamirova* leading case in order to form the *Khanamirova group*.

In order to successfully implement a group of cases, states must implement 'general measures' and 'individual measures'. General measures are the reforms necessary to ensure that the underlying problems that caused the ECHR violation have been resolved. This often requires changes to laws or government practices. Meanwhile, individual measures are the steps necessary to provide justice to the individual applicants in the cases. This normally requires the payment of compensation, along with other steps such as proper investigations, retrials, etc.

For example, in order to implement the general measures of the *Khanamirova group* the local authorities need to reform their enforcement bodies to ensure that they take the actions necessary so that court orders are obeyed in reality. In order to implement individual measures in each *Khanamirova* group case, the authorities need to take all reasonable steps necessary so that

the parents who won their cases have custody of the particular children in accordance with the particular court orders.

EIN Map: EIN has created an interactive online map assessing the state of implementation in all Council of Europe member states, based on the first three statistics presented below. The map is available [here](#).

What are the key indicators?

- Overall number of leading cases pending
- Proportion of leading cases pending
- Average time leading cases have been pending
- Proportion of cases which have not been subject to an Action Plan/Report; and/or average time since the last action plan/report
- Comparisons with other countries
- Qualitative assessments of individual cases
- Framing data and cases as human stories
- Mixing and matching

1. Overall number of leading cases pending

The key representation of a country's implementation record is given by **the number of leading judgments that are pending**. For example, Russia currently has the highest number of leading cases pending implementation: 217, while the Czech Republic has the only 2 leading cases pending implementation.

The reason why leading judgments are the key indicator of implementation is because each one represents a systemic human rights issue that needs to be addressed. This is due to the way in which cases are monitored and closed.

A leading judgment can only be closed if the general measures required by the cases in the group have been carried out. Meanwhile, repetitive cases can be closed after only the individual measures have been carried out. For example, several individual cases in the *Khanamirova group* have been closed, after steps were taken to re-unite parents with their children in particular cases. However, the leading *Khanamirova* case remains open, because the underlying problem of non-enforcement of child custody orders remains highly pervasive. Although the authorities may have

taken steps to enforce court orders in a few cases, the same problem is affecting hundreds of other parents, and hundreds more in future.

If the ECHR system is to produce real human rights protections, states have to carry out substantive changes as a result of the Strasbourg Court's judgments. The best way to measure whether this is happening or not is by looking at how many leading judgments remain pending implementation. A state can bring down the number of overall pending judgments, simply by carrying out individual measures in repetitive cases (perhaps just paying compensation). Meanwhile, if a state is to bring down the number of pending *leading* judgments, it has to carry out reforms that benefit everyone in a society.

There is a secondary reason why leading judgments are preferred to repetitive judgments. This is due to a recent change in the implementation process carried out by the Council of Europe, which allowed states to rapidly close large numbers of repetitive cases. This has allowed a number of states to exaggerate their progress in the implementation of judgments. A longer explanation of this can be found in two online articles written by the EIN Director.²

[OBJ:OBJ]

2. Proportion of leading cases pending

In addition to the overall number of leading judgments which are pending, it is also useful to look at the proportion of leading judgments that are being implemented. For instance, a state might have a low number of leading judgments pending overall – yet its implementation record may still be concerning, because it is failing to implement the majority of the judgments that do exist. For example, Finland has 10 leading judgments pending implementation – but it has failed to implement 80% of its leading judgments from the last ten years.

Since some states are earlier signatories to the Convention than others, they have had scrutiny through the lens of the Convention system applied to them for a longer period of time. For the purpose of fairness, assessing **the proportion of pending leading judgments in the past ten years** can grant an accurate representation when comparing implementation records of different countries. The proportion of pending leading judgments from the past ten years ranges from 3% in the Czech Republic to 89% in Russia. The variation is quite high: in Germany, 26% of leading judgments from the last ten years are pending implementation, while in Hungary 81% of cases from the last ten years are still pending.

² Stafford, G. “The Implementation of Judgments of the European Court of Human Rights”, Parts 1 and 2, Blog of the *European Journal of International Law*, October 7 and October 8 2019, <https://www.ejiltalk.org/the-implementation-of-judgments-of-the-european-court-of-human-rights-worse-than-you-think-part-1-grade-inflation/> ; <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/>

3. Average time leading cases have been pending

Furthermore, one other important marker that should be used in order to assess the level of engagement by authorities in the implementation process is **the average period of time for which leading judgments have been pending.**

For example, the average time leading cases have been pending in the Republic in Moldova is 8 years 2 months, while in Iceland it is 1 year and 5 months.

4. Proportion of cases which have not been subject to an Action Plan/Report; and/or average time since the last action plan/report

States are under the obligation to submit action plans and action reports to inform the Committee of Ministers about the progress in the implementation of a case. Action plans must be first submitted six months after a judgment becomes final. They indicate what kind of individual and general measures the government is planning to take, and what measures have been taken so far. Through action reports, states indicate what measures have been taken and request that the supervision of the case is ended.

Therefore, action plans and action reports can be used to identify failures of government to engage in the implementation process. **The percentage of cases with overdue action plans and action reports, as well as the average time passed since the last action plan/report can serve indicators for the overall record of implementation.** For example, in Russia, 61% of the pending leading cases have never been the subject of a government Action Plan or Action Report.

It should be noted, however, that whilst **a low level of action plans / reports can indicate a poor level of engagement in the implementation process, a high number of action plans and reports does not necessarily reflect a good quality of government engagement.** This is because governments may make submissions as mere formality, or may call for the closure of supervision of cases in the absence of proper measures. One example is Turkey, which has submitted Action Reports for a majority of its 146 pending leading cases, but (according to local human rights groups) is not carrying out substantive reforms.

5. Comparisons with other countries

Another method in which data can be used to hold governments accountable for their implementation records is to carry out a comparative analysis of the implementation record with neighboring countries, creating incentives for improving implementation records by appealing to the competitiveness spirit of states.

For example, Slovakia has 26% leading judgments from the last ten years pending implementation. Its neighbors Croatia, Poland, Hungary and Ukraine have poorer implementation records ranging from 24% to 81 % unimplemented judgments from the last ten years, while Slovenia, Austria and the Czech Republic have better implementation records, namely 20%, 10% and respectively 3% of pending leading judgments from the last 10 years.

6. Qualitative assessments of individual cases

Qualitative assessments of individual cases can also be used to hold governments accountable for their implementation engagement. This can be done in several ways. Identifying which are the oldest cases that have been pending and calling for attention upon them and for government engagement is one method. When looking holistically at implementation, NGOs can start by identifying old judgments where there has been no engagement in the implementation process. This will include cases where there have been no action plans or action reports submitted despite the passage of a long period of time since the judgment became final; cases where the payment of just satisfaction is overdue or where the state refuses to implement individual measures; or cases where no general measures have been taken.

For example, in the Republic of Moldova there have been four cases regarding freedom of expression or media freedom which have been pending for at least 10 years, without almost any engagement from authorities. These were the subject of a recent [statement](#) by EIN.

7. Framing data and cases as human stories

As all the key information on statistics can be perceived as dry, opening with a human story can stimulate more interest from the public and engagement from the authorities. This will require using case examples to provide an image of how implementation is progressing, while placing emphasis on the human story behind that process and on what is at stake. This allows the presentation to go beyond the statistics.

Relevant guidance on how to frame human rights information in the context of personal stories is available in the European Union Fundamental Rights Agency Report on '[How to better communicate common values, fundamental rights and freedoms](#)'.

8. Mixing and matching

Strong advocacy campaigns for the implementation of ECHR judgments will mix and match information from the categories above. While statistics are the heart of the implementation

record, different approaches can help put emphasis on implementation shortcomings which differ from one country to another.

For example, EIN's report on the implementation status in Moldova (Annex 1) demonstrates the long average period for which pending leading judgments have been pending (8 years and 2 months) and the percentage of leading judgments with overdue action plans or action reports (49%), while also presenting how implementation has progressed in two case studies.

Other states might require emphasis to be placed on different aspects. For example, Poland's implementation record is average compared to Council of Europe states as a whole – but it has a worse record compared to most of its neighbours. Therefore, one way to frame the record of Poland is by comparing its record with that of its' neighboring states. In particular, Poland has 43% pending leading judgments from the past ten years, while the Czech Republic, Lithuania, Germany and Slovakia range between 3% and 26% in this respect. At the same time, Ukraine and Russia have 63% and 89% pending leading judgments from the past ten years (Annex 2).

The implementation record of Serbia may not seem poor if only looking at the statistics, as only 12 leading judgments remain unimplemented. However, several of these leading judgments have been pending for more than ten years. In this situation, the focus should be on the non-implementation of older cases.

Maintaining a portrayal of a full and fair picture of implementation is also important. Credit must be given where it is due, where authorities have taken effective measures for implementations, be they individual or general. Such an approach is necessary to provide a balanced image of the implementation status; acknowledging good practices or positive steps on the part of authorities should encourage them to continue their efforts to implement a particular ECHR judgment and to apply good practices in similar cases as well.

III. Holding the Government accountable for its' implementation record

Different types of advocacy activities and resources have been used to raise awareness regarding ECHR implementation records, as well as to inform the creation and efforts of domestic implementation oversight mechanisms.

1. Using the data in advocacy activities for overall implementation

i) Short guides

One way to raise awareness about the implementation record is by preparing short guides or reports on the status of implementation of a certain state, which can be used as an advocacy tool.

In September 2020, the Legal Resources Center Moldova (LRCM) published a report entitled ["Moldova at the European Court of Human Rights: Over 600 violations in 23 years"](#), covering the entirety of the state's ECHR history. The report focuses on a substantial assessment of the implementation record, presenting statistics regarding the most violated rights and the most frequent types of human rights violations. The information is presented by setting out a table that synthesizes the articles breached, the number and types of violation in relation to all judgments pronounced against Moldova. Using this tool and other activities, LRCM successfully advocated for the creation of a Parliamentary oversight mechanism for ECHR implementation.

In addition to the interactive map on country statistics on implementation, EIN has prepared reports on the status of ECHR implementation in several countries: Moldova, Russia, Armenia, Georgia, Azerbaijan and Ukraine. At the time of writing, the reports are being published on EIN's website.

ii) Events and reporting

Holding governments accountable for their implementation record can also be carried out by bringing together relevant government authorities with victims and/or civil society in a setting favorable to cooperation. Such settings may take the form of roundtable events or conferences. These can focus either on holistic implementation or the implementation of a particular group of cases.

In March 2020, EIN and the Helsinki Citizen's Assembly Vanadzor organized a conference in Armenia, presenting both positive examples of implementation in Armenia, as well as overdue general measures for the implementation of certain cases. This was followed by side meetings with government officials. Government representatives responded positively and expressed their

willingness to work together with civil society to advance implementation. Since March 2020, the Armenian government has submitted a number of 6 action plans and 7 action reports in pending cases that had been ‘inactive’ before.

iii) Diplomatic pressure

In some cases, governments respond better to diplomatic pressure from foreign embassies rather than to pressure from civil society. Sharing information regarding a state’s implementation record with foreign embassies or friendly delegations to the Council of Europe could be more effective if engaging with government authorities proves to be difficult. Foreign embassies and friendly delegations with a keen interest in human rights can be asked to raise issues regarding the overall implementation record or concerns about individual cases. They can also be invited to participate in events on the topic of non-implementation where key government officials and civil society are present.

While advocating for the implementation of *D.H. and others v. Czech Republic* – a judgment concerning school segregation of Roma children which has been pending since 2007 - OSF Prague reached out to a foreign embassy sympathetic to the cause and asked for support to organize an event. State officials, civil society experts and activists were present at the event. Civil society gave short presentations about the issue, accompanied by recommendations for attending diplomats to raise with the Czech colleagues on future occasions.

2. Advancing implementation through alliances and structures

Building concerted national alliance and structures aimed at overseeing and advancing implementation of ECHR judgments can also be an effective way to increase the engagement of government authorities with the implementation process.

i) NGO alliances

It can be difficult for a single NGO to exerting sufficient pressure on the Government for the purpose of prompting their engagement in ECHR implementation. However, when civil society joins forces, the message transmitted to the authorities is stronger; it shows that there is already a consensus among civil society actors about how things should be done and that not just one NGO is monitoring the certain issue. Some NGO coalitions can even function ‘implementation hubs’, acting as a contact point for the Committee of Ministers to receive updates, keeping local NGOs informed about developments in the implementation process and coordinating advocacy efforts.

In addition to NGO alliances, the involvement of academia, media and specialised journalists can also strengthen joint actions.

An NGO coalition was formed in Serbia to advocate for the implementation of the *Zorica Jovanović v. Serbia judgment* (the ‘missing babies’ case). This collaborated with parliamentarians and journalists to exert pressure on Serbian authorities. The four NGOs organized a joint press conference which was covered extensively in the media, conveying concerns about the legislative measures that the government was planning, and proposing an alternative law which would enable investigations into the babies’ disappearances. They invited Parliament members to support their cause and to call for the rejection of the draft law proposed by the government, who, in their turn, ensured that parents from the Belgrade Group of Parents of Missing Babies were given an opportunity to speak at a public hearing regarding the draft law and share their stories. The advocacy efforts made by this alliance changed the course of implementation in this case.

ii) National structures with a high level of NGO involvement

Structures to promote the implementation of ECtHR judgments can be organized within the executive or the legislative. They can take different forms, including inter-ministerial committees, parliamentary committees, expert committees and working groups. They can address implementation as a whole or a certain judgment or group of judgments. When relevant government actors (the Government Agent, the Ministry of Justice and other ministries, depending on the case) are joined at the negotiation table by expertise from civil society, academia and professional groups, this can improve the quality of action plans, as well as promote government action to advance the reform process. Civil society’s contribution to the scope, direction, detail and depth of measures can make important differences for the outcome of implementation.

One example is the Expert Committee for the execution of judgments of the Court and the implementation of the Convention, which was set up by the Czech Government Agent in 2015. The Committee includes representatives from civil society and academia, as well as ministries, Parliament, the Ombudsman’s Office, the Bar Association and the highest judicial authorities. Since the Committee has been set up, the supervision of several ECHR judgments has been ended. For example, in the Cervenka case, which concerned the involuntary institutionalization of a man with psychosocial disabilities, the general measures envisaged complied not only with the ECHR, but also with the UN Convention on the Rights of Persons with Disabilities, thus going further in scope and detail. Currently, there are only 2 leading judgments against the Czech Republic still pending implementation – the country has one of the best implementation records in Europe.

IV. Conclusions

The implementation of ECHR judgments is a long-term process. For some judgments, the process is stagnant; for others, it is not engaged with sufficiently or seriously, or promptly enough. 45% of current leading judgments are still pending implementation, and the average length of time that leading cases have been pending is over 6 years. The German Presidency of Committee of Ministers of the Council of Europe has expressed recently that ECtHR implementation is a priority for its' programme, noting its intention to explore ways to further improve the Court's human rights protection mechanisms. The time to shine the light on the problem of non-implementation, to hold governments accountable for their implementation records and to push for holistic implementation has never been better. We hope the tools and methods presented in this guide will serve to inform and motivate the work of civil society and governments alike to move the dial in the right direction and help turn ECtHR judgments into rights.