

DEPARTAMENTUL DE STUDII PARLAMENTARE ȘI POLITICI UE
DIRECȚIA STUDII ȘI DOCUMENTARE LEGISLATIVĂ

ECHR PILOT - JUDGEMENTS

dosar documentar

martie 2022

Lucrările elaborate în cadrul Direcției studii și documentare legislativă au caracter documentar și nu reprezintă punctul de vedere al Camerei Deputaților.

Documentele legislative oficiale au fost consultate în limba de origine, iar traducerea informațiilor relevante selectate nu reprezintă o traducere oficială, fiind furnizată ca un mijloc de înțelegere a unui document original, scris în altă limbă.

Baza de date cuprinzând totalitatea studiilor elaborate de Direcția studii și documentare legislativă poate fi accesată prin intermediul paginii de Intranet a Camerei Deputaților la adresa: <http://www.cdep.ro/infoparl/dip.studii?par1=2021>

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Dosarul documentar a fost întocmit pe baza solicitării **ECPRD Nr.4988/2022 ECHR pilot-judgements**, lansată de Direcția studii și documentare legislativă prin intermediul Centrului European de Cercetare și Documentare Parlamentară (ECPRD)¹, și cuprinde răspunsurile în limba engleză ale diverselor camere parlamentare din state membre ale Uniunii Europene.

Întrebările cuprinse în chestionarul lansat:

- 1. What legislative and/or institutional changes have the ECHR pilot-judgements led to in your country, if any?*
- 2. Have parliamentary (or other) structures been set up to implement the system established by the Convention and to comply with and monitor ECHR judgments? Could you provide details on their establishment, tasks, organization and functioning, inter-institutional relations, etc.?*

Răspunsurile primite până la termenul limită, respective până la data de 25 februarie 2022:

AUSTRIA

1. ECHR pilot-judgements have not led to any legislative or institutional changes in Austria.

2. There are no parliamentary or other structures to monitor compliance with ECHR judgements. However, it should be noted that the Convention has constitutional status in Austria and ECHR judgements are therefore closely considered and observed in law-making procedures, administrative practice and in jurisdiction.

BELGIA

1. In the *W.D. v. Belgium* pilot judgment of 6 September 2016 the ECtHR detected a structural deficiency specific to the Belgian psychiatric detention system.

¹ Centrul European de Cercetare și Documentare Parlamentară (ECPRD) este un organism de cooperare interparlamentară și de promovare a schimbului de informații, idei și experiență între parlamentele naționale ale statelor din Europa (îndeosebi), aflat sub egida Parlamentului European și a Consiliului Europei. Camera Deputaților face parte din această structură europeană.

The new federal legislative act of 5 May 2014² on that topic, as amended by the federal legislative act of 4 May 2016 entered into force on 1 October 2016, only weeks after the *W.D. v. Belgium* judgment.

2. The Belgian Federal Justice Department publishes annual reports on Belgium's litigation before the European Court of Human Rights (examples³). No specific parliamentary structures as mentioned in your request or model reply have been implemented in the Belgian federal House of Representatives or Senate. - In the House of Representatives the traditional parliamentary instruments of legislation (example⁴) and control (questions, interpellations) are used to monitor the respect to pilot judgments. - The Senate organizes hearings with the Minister of Justice on the annual report we have mentioned above and publishes a report on those hearings (examples, see the following Senate documents: 7-212, 6-500, 6-334⁵).

CROATIA

1. The ECtHR has not adopted any pilot judgments against Croatia to date.

In one judgment only, *Statileo v. Croatia* (application no. 12027/10), the Court gave an indication under Article 46 concerning general measures, where the Court identified specific shortcomings in domestic legislation regarding the „protected lease scheme“ and noted that the legislative procedure concerning amendments to the Lease of Flats Act was underway.

2. The legislative process linked to the execution of the *Statileo* group of judgments is currently underway. Drafting of the amendments to the Lease of Flats Act is entrusted to the competent ministry.

As in many other states parties to the Convention in Croatia, the Government Representative before the European Court of Human Rights (hereinafter: the Representative) is designated as a national coordinator for the process of execution of the ECtHR judgments.

The National Council of Experts for the Execution of Judgments and Decisions of the ECtHR (hereinafter: the Council of Experts) has been established under the auspices of the Representative's Office. The Council of Experts is comprised of

² <http://www.ejustice.just.fgov.be/eli/loi/2016/05/04/2016009201/justel>

³

https://justice.belgium.be/fr/themes_et_dossiers/international/institutions_internationales/cour_europeenne_des_droits_de_l_homme

⁴

<https://www.dekamer.be/kvvcr/showpage.cfm?section=flwb&language=fr&cfm=/site/wwwcfm/flwb/flwbn.cfm?legislat=55&dossierID=874>

⁵ https://www.senate.be/www/?Mlval=/index_senate&MENUID=22101&LANG=fr

members which are representatives of the Constitutional Court, the highest judicial authorities (the Supreme Court, the Head State Attorney's Office, the High Misdemeanour Court, the High Administrative Court, the High Commercial Court, the High Criminal Court), all Governmental ministries and certain other national authorities (e.g. the Judicial Academy, the State Office for Reconstruction and Housing, the Office for Human Rights and Rights of National Minorities, Office for Gender Equality etc.). Furthermore, representatives from the Ombudswoman's Office and the Office of the Children's Ombudsman also participate in the work of the Council of Experts.

Members of the Council of Experts cooperate with the Representative in the process of execution of ECtHR judgments: they submit information on measures taken and/or envisaged for the execution of a particular judgment or groups of judgments by their respective authorities and provide information on the progress achieved in the implementation of these measures. They also cooperate with the Representative in the process of drafting action plans/reports for the Committee of Ministers.

Involvement of Parliament in the process of execution of ECtHR judgments on a general level is ensured through examination of and discussion on annual reports on the work of the Representative submitted to the Parliament. Additionally, particular Parliamentary Committees may invite the Representative to take part in their sessions dedicated to discussing specific topics related to the ECtHR judgments and their execution.

DANEMARCA

The Danish Parliament doesn't have a Committee equivalent to the **Sub-committee of the Romanian Parliament on monitoring the execution of ECHR judgments. The pilot-judgment system has not in itself led to structural changes in Denmark with regard to the control and follow-up of judgments from the EMD.**

In addition to enacting legislation, the Parliament must exercise control of the Government and oversee the way it implements laws in practice. Usually, Members of Parliament (MPs) and committees perform this task by putting questions to Ministers. As a possible result of its control, the Parliament may decide to unseat the Government. But in practice, it is extremely rare for the Parliament to resort to this measure.

While the Danish Constitutional Act describes in considerable detail how the Parliament must handle Bills, it does not in the same way outline how the Parliament must carry out its control of the Government. Instead, control is based on the

parliamentary principle, which means that the Government must resign or call a general election if the Parliament adopts a vote of no confidence in the Prime Minister.

The Parliament has a range of instruments at its disposal for scrutinising the Government:

Control through questioning

One method of exercising parliamentary control of the Government is to put questions to Ministers. Collectively, Ministers are asked more than 15,000 questions a year, primarily about current issues and problems. To a certain extent, these questions may promote the questioner's own opinion on a given issue. Parliamentary control can thus be used to express political standpoints and to point out areas of disagreement.

Question Hour and Question Time

Individual MPs have various options for asking questions of Ministers. One option is to submit questions in writing and ask for oral or written replies. In the Chamber a couple of times a year question time with the Prime Minister is held, where the party leaders can ask unprepared oral questions. In addition, there is also a party leader debate a couple of times a year. Further, the committees have launched an experiment with "closed question time with a minister", who in principle can be met with unprepared oral questions. In practice, however, the impression is that ministers often call for and receive questions in advance.

Interpellations - the broad political debate

Interpellations are used when one or more MPs wish to discuss a societal problem and have one or several Ministers explain or elaborate their viewpoints. Interpellations are primarily used to create a debate on broad political issues of a more general character. An interpellation debate usually lasts for several hours, depending on the MPs' eagerness to discuss the subject. There are typically between 40-60 interpellations a year.

From mild criticism to a vote of no confidence

After an interpellation debate, the Parliament may adopt a resolution on the subject that has been debated. This could take the form of anything from a request or an expression of criticism to the passing of a vote of no confidence in the Minister in question or the Government as a whole, in which case the Government must resign. However, the latter course of action has very rarely been chosen. If criticism is in the offing, the Government parties can react with a "counter motion" that expresses satisfaction or only very mild criticism.

Ministers in consultation

Finally, parliamentary control of the Government can also be exercised in the Parliament's 27 standing committees. In addition to their work on Bills and proposals for parliamentary resolution, the committees can also put questions to Ministers to

be answered orally or in writing. Such questions could deal with concrete issues or more general subjects within the committee's area of responsibility. Questions from committees are asked on behalf of the committee as a whole and are therefore generally more neutral in tone than questions asked by MPs on their own initiative.

The rules on parliamentary work are laid down in the Standing Orders. Link to the Standing Orders:

https://www.thedanishparliament.dk/~media/pdf/publikationer/english/standing_orders_of_the_danish_parliament.ashx

The Danish Ministry of Justice has issued a Guideline on Quality of Law (Lovkvalitetsvejledningen). According to the guideline in the practical legislative work, bills must be considered in relationship to the ECHR. Link to the relevant chapter of the guideline (in Danish): <https://lovkvalitet.dk/lovkvalitetsvejledningen/retlige-graenser-og-almindelige-principper/3-1-retlige-graenser/3-1-3-internationale-menneskerettighedskonventioner/>

Furthermore, I can inform you that human rights are being monitored and enforced on several levels in Denmark. The international agreements ratified by Denmark may be invoked with the administrative authorities or in the Danish courts, if one or more rules of the legislative measures in the agreements are believed to have been violated. Of course, this also applies to any human rights violations according to current Danish legislation etc. The ECHR is incorporated into Danish law.

All Danish courts, i.e. the city courts, the Court of Appeal of Eastern Denmark Court of Appeal of Western Denmark, the Maritime and Commercial Court, and the Supreme Court of Denmark, try cases involving questions of human rights compatibility.

Denmark has different bodies governed by public law that process complaints involving human rights violations. The Danish Parliamentary Ombudsman investigates complaints from citizens over decisions made by the administrative authorities and the case handling and treatment of the citizens by said authority. The Danish Parliamentary Ombudsman has been appointed by the Danish Parliament to serve as a national preventative mechanism (*national forebyggelsesmekanisme* or NFM) in compliance with the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). This means that the Ombudsman must visit and inspect places where people are imprisoned in order to prevent torture. The OPCAT inspections differ from the typical inspections of the Ombudsman by including medical evaluations and may take place in private institutions too.

The Ombudsman functions as national preventative mechanism with the Danish Institute for Human Rights contributing expertise on human rights and DIGNITY (Danish Institute Against Torture) contributing medical expertise. Furthermore, the Danish Parliamentary Ombudsman is entrusted with the task of promoting the equal treatment of people with disabilities. The Ombudsman visits public buildings to inspect their accessibility and publishes an annual report of the progress in terms of the equal treatment of people with disabilities. On November 1st 2012, the Danish Parliamentary Ombudsman established a special children's bureau charged with the task of handling complaints related to children, of mounting cases on their own initiative, and of make supervisory visits to public and private institutions, where children are presents. The children's bureau must also work to ensure that the public administration complies with the UN Convention on the Rights of the Child and other international children's human rights obligation.

Within the labour market, the Board of Equal Treatment handles complaints about discrimination because of age, skin colour, handicap, religion, or faith, country of origin, social background, political views, sexual orientation, gender, or ethnicity. Outside the labour market, the board has the authority to handle complaints about discrimination because of gender or ethnicity. The decisions of the Board of Equal Treatments are legally binding for the parties involved, and the board has the option of awarding the injured party financial compensation.

In addition to this, there are several other administrative bodies dealing with complaints that may contain human rights issues, including the Danish Data Protection Agency, the Press Council, the Danish Radio and Television Board, the Independent Police Complaints Authority, the Municipal Citizen's Advice, the Consumer Ombudsman, and the Appeals Board.

THE NATIONAL DANISH HUMAN RIGHTS INSTITUTION

The General Assembly of the UN has adopted the so-called Paris principles that regulate status and function of independent national human rights institution. The Paris principles stipulate that national human rights institutions must contribute to the effective implementation of international standards for human rights and must work to ensure the compliance of national legislation and practice with basic human rights principles. National human rights institutions must protect and promote general respect for and compliance with human rights and fundamental freedoms. The Paris principles stipulate that the composition of a national human rights institution and the appointment of its members must take place in accordance with a procedure involving the necessary guarantees to ensure pluralistic representation of the civil society, whose members are involved in promoting and protecting the human rights. The national institution must furthermore rest on a foundation that sufficiently supports the institutional activities, including sufficient financial support. The institution must have adequate funding and have its own staff and offices in order to be truly independent from the government and not be subject to any kind of financial control that may influence independency.

Established by law in accordance with the Paris principles, the Danish Institute for Human Rights is Denmark's national human rights institution. The institute is an independent institution with authority in Denmark and Greenland. The institute has wide powers to promote and protect human rights in accordance with the international principles to which national human rights institutions are subject, and the institute also has a mandate to contribute to the implementation of human rights both nationally and internationally. The Danish Institute for Human Rights must base its work on the internationally established human rights at the time in question, including the individual rights laid down in UN's Universal Declaration of Human Rights, in the conventions of both UN and the Council of Europe and in the rights of freedom in the Constitutional Act of the Kingdom of Denmark. The institute has been assigned a number of special fields of responsibilities under different international conventions and European directives. For example, the institute has been selected by the EU as the special agency for the promotion of equality and effective safeguarding against discrimination on the basis of race, ethnicity, or gender.

Moreover, the institute has been selected as an independent agency to protect and supervise the implementation of the Convention on the Rights of Persons with Disabilities. Under the umbrella of OPCAT and in accordance with a decision by the Danish Parliament, the institute participates, with the Danish Parliamentary Ombudsman and DIGNITY (the Danish Institute Against Torture), in the surveillance of the convention.

Established in 1994, the National Council for Children is an independent institution that serves to promote the rights of Danish children. The members of the National Council for Children have different professional backgrounds and is made up of a chairperson and six members. Together they represent a strong knowledge of childhood and children's development. As patrons of children, the council must inform and advise Government and the Danish Parliament on the about living conditions for children as well as work to ensure the rights of children. In addition, the council is tasked with assessing and inform about the living conditions for children in Denmark. The council must include the views of children in its work, and as an advocate for children may request to visit institutions that house children.

THE INSTITUTION OF MEDIATION AND APPEAL FOR CORPORATE RESPONSIBILITY

The Organisation for Economic Co-operation and Development (OECD) has devised guidelines for multinational corporate responsibility, which Denmark and the other member states of the OECD have ratified. The guidelines for corporations contain a number of ethical standards for human rights, the environment, and anti-corruption. The member states are bound by the guidelines to establish the so-called National Contact Points in order to popularize the knowledge of the guidelines and promote compliance with the guidelines. The institution of mediation and appeal for corporate responsibility reviews cases on the violation of the OECD guidelines by corporations and other organisations.

ESTONIA

1. No legislative nor institutional changes has been made in Estonia in light of ECHR pilot-judgments.

2. In the Estonian parliament there aren't any structures monitoring ECHR judgments. The ECHR matter belongs to the competences of the Ministry of Foreign Affairs. However, it can be said that Foreign Minister gives an overview of the rulings of the European Court of Human Rights (ECHR) made against Estonia in 2021. For example, on 10th of February at the government session the Foreign Minister gave an overview of the rulings of the European Court of Human Rights (ECHR) made against Estonia in 2021.

Furthermore, Foreign Affairs Committee of the Riigikogu regularly meets with the representatives of the Ministry of Foreign Affairs and other institutions and non-governmental organisations dealing with foreign policy. The Foreign Affairs Committee of the Riigikogu shall regularly discuss the foreign policy and discuss the report from the Government of the Republic on the foreign policy of the state and present its report at the corresponding plenary sitting of the Riigikogu.

FINLANDA

1. The European Court of Human Rights (ECtHR) has not delivered any pilot judgments where the respondent state has been Finland.

2. In Finland, the execution of the judgments of the ECtHR is monitored and coordinated by the Government Agent before the ECtHR, who is the head of the Unit for Human Rights Courts and Conventions at the Ministry for Foreign Affairs. The measures to execute the judgments (apart from payment of compensation and distribution of judgment) are assessed by the sectoral ministries in cooperation with the Government Agent, who also prepares all action plans and reports. The underlying legislative basis comes from the following: According to the Government Rules of Procedure (262/2003), the competence of the Ministry for Foreign Affairs covers matters relating to international judicial and investigative bodies. The Government Decree on the Ministry for Foreign Affairs (1171/2005) stipulates that the competence of the Ministry for Foreign Affairs covers questions relating to international human rights and the representation of the Government of Finland before international judicial and investigative bodies and other questions relating to these bodies. According to the Rules of Procedure of the Ministry for Foreign Affairs (550/2008), the Legal Service is responsible for questions relating to human rights courts and conventions and other legal questions relating to human rights. The

Director of the Unit for Human Rights Courts and Conventions acts as the Government Agent before the European Court of Human Rights.

According to the Rules of Procedure of the Legal Service, the Unit for Human Rights Courts and Conventions is responsible for, inter alia, the representation of the Government of Finland before international judicial and investigative bodies examining human rights complaints and other legal questions relating to these bodies as well as the supervision of execution measures relating to human rights complaints.

FRANȚA

Depuis l'apparition des arrêts pilotes de la CEDH en 2004, la France n'a encore jamais fait l'objet de cette procédure. Il ne semble pas non plus y avoir eu d'influence notable d'un arrêt pilote rendu à l'égard d'un autre Etat sur le système législatif ou le système institutionnel français.

1 - Comme de nombreux autres Etats, la France comporte une Institution Nationale de promotion et de protection des Droits de l'Homme (INDH) : la Commission Nationale Consultative des Droits de l'Homme (CNCDH).

La CNCDH a été créée en 1947. Au même titre que toutes les INDH, elle est un organe national indépendant. Au sens du droit français, il s'agit plus précisément d'une autorité administrative indépendante. Il ne s'agit pas spécifiquement d'une structure parlementaire, bien qu'elle ait des liens avec le Parlement français.

Elle est chargée de promouvoir et protéger les droits de l'homme et, à ce titre, elle est investie d'un devoir de conseil auprès des autorités publiques en matière de droits de l'homme et a également une mission de contrôle du respect des engagements internationaux de la France en la matière. Elle est, entre autres, en relation avec la Cour européenne des droits de l'homme et est chargée d'assurer un suivi continu de la jurisprudence de la Cour mais également d'examiner la bonne exécution des arrêts rendus par la Cour par les autorités nationales.

Ses membres sont nommés par décret du Premier Ministre. Elle est composée de membres de la société civile (associations, syndicats), de personnalités qualifiées (experts dans des institutions internationales de protection des droits de l'Homme, universitaires, professionnels du droit), et de personnalités issues d'institutions nationales (un député désigné par l'assemblée nationale, un sénateur), d'un membre du Conseil économique, social et environnemental et enfin, du défenseur des droits.

La CNCDH rend des avis et recommandations, ou bien sur saisine du Premier Ministre ou de tout autre membre du Gouvernement, ou bien de son propre chef. Ses avis peuvent notamment être sollicités ou émis lorsqu'il est question d'un projet de loi ou d'une proposition de loi, mais également de règlements. Elle peut

également réagir de sa propre initiative à toute action engagée ou envisagée par le Gouvernement qu'elle estime avoir un impact dans le domaine des droits de l'homme. Les travaux parlementaires se réfèrent souvent aux avis de la CNCDH

Ses avis sont débattus, amendés et adoptés en assemblée plénière puis publiés au Journal officiel de la République française et largement diffusés.

Site internet : <https://www.cncdh.fr/>

2 – Le suivi de l'application des arrêts de la Cour est confiée au ministère des affaires étrangères (Direction des affaires juridiques)

<https://www.diplomatie.gouv.fr/fr/politique-etrangere-de-la-france/justice-internationale/la-france-et-la-cour-europeenne-des-droits-de-l-homme/>

GERMANIA

1. ECHR pilot-judgement in respect of Germany So far only one pilot judgment has been issued against Germany (R. v. Germany No. 46344/06)⁶, which concerned the excessive length of proceedings before the domestic courts, a recurring problem underlying the most frequent violations of the Convention found by the Court in respect of Germany. More than half of its judgments against Germany finding a violation concerned this issue. The Court unanimously held that Germany had to introduce without delay, and at the latest within one year from the date on which the judgment became final, an effective domestic remedy against excessively long court proceedings. In December 2011, following this pilot judgment, the Act on Protracted Court Proceedings and Criminal Investigations (the “Remedy Act”) entered into force in Germany, which combines an instrument to expedite the proceedings and an objection to delay with a subsequent compensation claim to be lodged with the appeal court⁷.

There is only a very small number of judgments in which the ECHR has found a violation of the Convention by Germany (2021: 2, 2020: 4; 2019: 0). Only in a fraction of these cases a legislative amendment to implement the judgment was necessary. In the predominant majority of cases, implementation took place through an interpretation of the relevant statutory provision in compliance with the Convention by the judiciary.

⁶ Press Release, Rumpf v. Germany, No. 46344/06, 2. September 2010 - <https://hudoc.echr.coe.int/eng-press#%7B%22itemid%22:%5B%22003-3245235-3615893%22%5D%7D>

⁷ ECHR, Pilot judgements, Fact Sheet, December 2021, - https://www.echr.coe.int/documents/fs_pilot_judgments_eng.pdf

2. Relevant (parliamentary) activity on monitoring the execution of ECHR judgments The responsibility for monitoring ECHR judgments falls within the domain of the Federal Ministry of Justice [Bundesministerium der Justiz (BMJ)]. The commissioner for human rights issues and the human rights department in the BMJ represent Germany in proceedings before the ECHR. In addition, they also have the task to coordinate the implementation of ECHR judgements in which the court finds violations of the Convention in respect of Germany. This task includes:

- Informing the authorities involved in the proceedings as well as the other institutions concerned with the respective issue (Ministries, German Federal States, Federal Courts, Federal Constitutional Court) about the judgment of the ECHR
- Translation of the judgement
- Monitoring the necessary measures for the implementation of the judgments in coordination with the authorities affected by the judgment - the implementation itself is carried out by the competent authority
- Report on the status of implementation to the Committee of Ministers of the Council of Europe responsible for the supervision of execution of judgments of the ECHR
- Monitoring of statutory implementation measures with regard to their conformity with the Convention
- Provide information to the public (via BMJ website). The BMJ publishes an annual report on the case law of the ECHR and the implementation of its judgments in proceedings against Germany.

The department is integrated into the organisational structure of the BMJ. The two heads of the department and the commissioner for human rights issues are accredited representatives before the ECHR. Unlike in other countries, Germany's parliament is not involved in the implementation of ECHR judgments. However, the implementation of ECHR rulings has already been discussed several times in the plenary session of the German Bundestag. Members of the German Bundestag and parliamentary groups have submitted questions to the German government, which have prompted debates on whether and to what extent there was a need for legislative reform in the wake of certain ECHR rulings. The Federal Government also reports annually to the German Bundestag on the activities of the Council of Europe. The report contains extensive comments on the case law of the ECHR and lists selected decisions in proceedings against Germany and against other states.

LITHUANIA

1. There have been no legislative or institutional changes in Lithuania related to the ECHR pilot-judgements.

2. Various state institutions - national courts, executive authorities and officials, the legislature - may have to participate in the process related to the

enforcement of the ECHR judgments. Which institutions are involved depends largely on the content of the specific judgement. Agent of the Government of the Republic of Lithuania to the European Court of Human Rights, *inter alia*, coordinates implementation of the ECHR judgments in Lithuania.

It is worth to mention that Committee on Human Rights operates in the Seimas as standing parliamentary committee. However, its activities are not specifically aimed at monitoring the execution of ECHR judgments concerning Lithuania.

POLONIA

1. Poland has been given the utmost attention. Poland was the first country against which the ECHR issued a pilot judgment in 2004. The Polish authorities undertook great legislative and implementation work. Appropriate laws and executive acts were adopted and considerable forces were deployed to implement them. In this way, Poland perfected its national system of human rights protection.

Poland has developed a unique model for the execution of judgments of the European Court of Human Rights. To give a legal framework to the national process of execution of judgments, on 17 May 2007. The Council of Ministers adopted the Program of Government Activities for the Execution of Judgments of the ECHR against the Republic of Poland. Shortly thereafter, in July 2007, the Prime Minister appointed an inter-ministerial Team for the European Court of Human Rights as its consultative and advisory body.

The program not only contained a list of specific actions to be taken by Ministers in relation to particular judgments of the ECHR, but also drew attention for the first time to the need for better dissemination of the Court's case law and training on the Convention among the judiciary, police, prison service and government administration.

Poland was able to propose quickly effective measures at the national level. On the one hand, they ensured respect for the rights of individuals and, on the other hand, they were budget feasible and pursued the public interest in respecting the rights of others, such as tenants. Poland was the first country to successfully complete two pilot procedures before the Court. This prevented the Tribunal from being inundated with perhaps thousands of similar complaints.

In the case of the oldest of the judgments, the Broniowski case, legislation was passed that allowed for the creation of a special compensation mechanism for property abandoned after World War II in areas to the East from today's Polish borders. The Committee closed its oversight of this case in 2009.

In the Hutten-Czapska case, closed in 2016, the relevant legal framework was amended by introducing the possibility of rent increases, a rent monitoring system, and a compensation mechanism to compensate for the functioning of the rent regulation system in the past. Funding for social housing has also been increased.

In the Orchowski case, which was also closed in 2016, the authorities introduced a preventive remedy to challenge conditions of detention. In parallel, measures were taken to improve conditions in prisons and to monitor the prison population rate. In addition, national authorities have begun to make greater use of alternative methods to imprisonment, including the system of electronic surveillance.

2. On July 19, 2007 the Polish Prime Minister appointed an advisory body, the Interdepartmental Team for the European Court of Human Rights. The works of the Team are supervised by the Ministry of Foreign Affairs.

The Team's task is to develop the Government's position with regard to the complaints submitted and the judgments handed down by the Court, to analyze the compatibility of the most important drafts of legal acts with the Convention, and to present appropriate proposals.

The Team monitors the implementation by ministers of judgments and decisions of the Court, and may formulate proposals for appropriate actions. The ministers in charge, depending on the subject of the violation of the Convention found by the Court, are obliged to translate and disseminate the Court's judgment, as well as to prepare an action plan and a report on its implementation within the deadlines specified in the order (algorithm for the implementation of the Court's judgments). The team meets in working groups and once a quarter in plenary sessions, and prepares reports on its work.

Since 2013, public scrutiny of the execution process has been facilitated by the introduction of an obligation for the Plenipotentiary of the Minister of Foreign Affairs for proceedings before the European Court of Human Rights to prepare an annual report on the execution of sentences each year by 31 March. This report, after being adopted by the Polish Council of Ministers, is presented to the Committee on Justice and Human Rights of the Sejm and to the Committee on Human Rights, the Rule of Law and Petitions of the Senate, where it is the subject of debate with the participation of members of the Government, but also representatives of civil society, which undoubtedly affects the transparency of public life in Poland and ensures Parliamentary control over the process of execution of ECHR judgments.

PORTUGALIA

1. Over the years, several reforms have been introduced in the context of the execution of ECHR decisions, such amendments to legislation concerning judicial proceedings, as detailed in this [document](#)⁸ of the Department for the Execution of Judgments of the European Court of Human Rights of the Council of Europe.

2. No parliamentary structures have been set up to comply with ECHR judgements. The scrutiny of government or public administration responsibilities is carried out in the context of the normal political scrutiny powers of the Parliament, via hearings, written questions, debates, etc.

SLOVACIA

2. There are no parliamentary structures to monitor compliance with ECHR judgements. However, Human Rights and Ethnic Minorities Committee of the National Council monitors the implementation of governmental agenda on the basis of its mandate.

The Representative of the Slovak Republic before the ECHR works as a department / office under the Ministry of Justice of the Slovak Republic and informs the Government of the Slovak Republic about the obligations arising from ECHR decisions and annually submits a report on its activities, provides information on the development of the legal order in the field of human rights and freedoms in the Slovak Republic to the relevant bodies of the Council of Europe.⁹

Translations of case law elaborated by the ECHR according to topics are also published in cooperation with the Office of the Representative of the Slovak Republic before the ECHR by the Office of the Supreme Court of the Slovak Republic in the [Bulletin](#), which is available on the Supreme Court website. The reports are thematically selected according to current needs and the degree of usability in Slovak practice.

Also, the Slovak National Center for Human Rights with NHRI mandate and Equality Body mandate (established on the basis of agreement between the UN and government) ensures, that international human rights obligations are adequately

⁸ <https://rm.coe.int/168070975e>

⁹ Scope of work the Representative of the Slovak Republic before the ECHR, online - available in Slovak <https://www.justice.gov.sk/Stranky/Ministerstvo/Zastupovanie-SR/Zastupca-SR-pred-ESLP/Zakladne-informacie.aspx> [cited 25.february 2022].

reflected in the Slovak legislative system and also provides information about possible obligations from ECHR judgements.¹⁰

Based on [the report](#) for 2020 of the Representative of the Slovak Republic before the ECHR there were no legislative or institutional changes. Complaints against the Slovak Republic were resolved by granting sums of fair compensation.

SLOVENIA

Judgments of the European Court of Human Rights (hereinafter: ECtHR) are direct obligations for the Contracting States to implement them and secure their execution in their national legal orders. The European Convention on Human Rights¹¹ (hereinafter: ECHR) provides in Article 46(1) that "the High Contracting Parties ... undertake to abide by the final judgment of the Court in any case to which they are parties. The final judgment of the Court shall be transmitted to the Committee of Ministers, **which shall supervise its execution**".

ECHR judgments are executed in three ways: by means of just satisfaction, individual, specific and general measures. Article 41 of the European Convention on Human Rights provides that "if the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party allows only partial reparation to be made, the Court shall, if necessary, award just satisfaction to the injured party."

In practice, just satisfaction involves compensation for pecuniary and non-pecuniary damage.

Individual measures refer to measures taken in specific proceedings to enable the complainant to seek redress or retrial where the ECtHR has found a violation. Individual measures can also mean, for example, reinstatement of a judge who has been wrongly removed from office (specific measure).

The ECtHR has ruled against Slovenia in the following cases¹²:

- Q and R vs. Slovenia, No. 19938/20, 8 February 2022;
- A. vs. Slovenia, No. 878/12, 9 April 2019;

¹⁰ Website of the Slovak National Center for Human Rights, online - available in English <https://www.snslp.sk/en/> [cited 25. February 2022]. See the [final report](#) for 2020, online - available in English.

¹¹ Available at: https://www.echr.coe.int/documents/convention_slv.pdf

¹² Hudoc database can be accessed here: [https://hudoc.echr.coe.int/eng#{%22documentcollectionid2%22:\[%22GRANDCHAMBER%22,%22CHAMBER%22\]}](https://hudoc.echr.coe.int/eng#{%22documentcollectionid2%22:[%22GRANDCHAMBER%22,%22CHAMBER%22]})

- Čeferin vs. Slovenia, No. 40975/08, 16 January 2018.
- Frančiška Štefančič vs. Slovenia, No. 58349/09, 24 October 2017.
- Koprivnikar vs. Slovenia, No. 67503/13, 24 January 2017.
- Ališić and Others vs. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and the former Yugoslav Republic of Macedonia, No. 60642/08, 16 July 2014;
- L.M. vs. Slovenia, No. 32863/05, 6 December 2014.
- Kurić and Others vs. Slovenia, No. 26828/06, 12 March 2014.
- Lukenda vs. Slovenia, No. 23032/02, 6 October 2005.
- Mladina, d.d. Ljubljana vs. Slovenia, No. 20981/10, 17 April 2014;
- Šilih vs. Slovenia, No. 71463/01, 9 April 2009;
- Eberhard and M. vs. Slovenia, Nos. 8673/05 and 9733/05, 1 December 2009;
- Lukenda vs. Slovenia, No. 23032/02, 6 October 2005.

The ECtHR decisions were implemented in the Slovenian legal order, except for the last one adopted by the Court on 8 February 2022.

We present in detail how the Republic of Slovenia transposes the ECtHR judgments into its legal order in the reply to question No. 2.

2. No. The Republic of Slovenia has not established any specific system for the implementation of ECtHR judgments, since the ECHR is **directly applied** in the constitutional order of the Republic of Slovenia, and ECtHR judgments must therefore be **taken into account directly**.

The provisions of the ECHR are directly applicable in the Slovenian legal order, as they allow individuals to rely on them before the ordinary Slovenian courts and before the Constitutional Court of the Republic of Slovenia (hereinafter: Constitutional Court). This is provided by the Constitution of the Republic of Slovenia (hereinafter: Constitution), which clearly stipulates in Article 8 that:

” Article 8

Laws and other regulations must comply with generally accepted principles of international law and with treaties that are binding on Slovenia. Ratified and published treaties shall be applied directly.”

Ratified and published treaties are **applied directly** in Slovenia, which is made possible by paragraph five of Article 15 of the Constitution.

” Article 15

(Exercise and Limitation of Rights)

(1) Human rights and fundamental freedoms shall be exercised directly on the basis of the Constitution.

(2) The manner in which human rights and fundamental freedoms are exercised may be regulated by law whenever the Constitution so provides or where this is necessary due to the particular nature of an individual right or freedom.

(3) Human rights and fundamental freedoms shall be limited only by the rights of others and in such cases as are provided by this Constitution.

(4) Judicial protection of human rights and fundamental freedoms, and the right to obtain redress for the violation of such rights and freedoms, shall be guaranteed.

(5) No human right or fundamental freedom regulated by legal acts in force in Slovenia may be restricted on the grounds that this Constitution does not recognise that right or freedom or recognises it to a lesser extent.”

With regard to **Article 15(5) of the Constitution**, the Constitutional Court noted that “the Constitutional Court must comply with Article 15(5) of the Constitution which stipulates that no human right or fundamental freedom regulated by legal acts in force in Slovenia (the ECHR also being such act) may be restricted on the grounds that this Constitution does not recognise that right or freedom or recognises it to a lesser extent.

In the light of the above-mentioned case-law of the ECtHR, **Article 15(4) of the Constitution**, which guarantees judicial protection of human rights and the right to obtain redress for the violation of such rights, must therefore in the spirit of the ECHR be interpreted as entailing a requirement that, in the context of the right to judicial protection, the possibility of seeking just satisfaction in cases where violation has already ended must also be guaranteed. In this respect, the ECtHR criteria for assessing whether there was a failure to adjudicate within a reasonable time must be taken into account¹³.”

The institutions of all three branches of government in the Republic of Slovenia are therefore already obliged by constitutional provisions to enforce the ECtHR judgments against Slovenia. In all other cases, however, the courts must follow the ECtHR's case law on individual human rights and fundamental freedoms.

In addition to the Constitution, certain procedural laws provide a direct basis for the implementation of ECtHR judgments. For example, the Criminal Procedure Act provides in Article 416 that “the provisions of this Chapter on the reopening of criminal proceedings (Articles 406 - 415)) shall apply *mutatis mutandis* to a request to change a final court decision on the basis of a decision rendered by the constitutional court setting aside or abolishing the regulation pursuant to which the final judgment of conviction was issued, or on the basis of a decision of the ECtHR that relates to any reason for reopening criminal proceedings.”

Criminal Procedure Act (ZKP)¹⁴:

“Article 416

The provisions of this Chapter on the reopening of criminal proceedings (Articles 406 to 415) shall apply *mutatis mutandis* to a request to change a final court decision on the basis of a decision rendered by the constitutional court setting aside or abolishing the regulation pursuant to which the final judgment of conviction was issued.”

Civil Procedure Act (ZPP)¹⁵ and Administrative Dispute Act (ZUS)¹⁶ do not provide a direct basis for the enforcement of ECtHR judgments, so the courts must enforce them directly on the basis of the Constitution.

¹³ Decision of the Constitutional Court of the Republic of Slovenia, No. U-I-65/05-15, as of 29 September 2005 (paragraph twelve.).

¹⁴ Criminal Procedure Act (ZKP) available at: <http://www.pisrs.si/Pis.web/cm?idStrani=prevodi>

¹⁵ Official Gazette of the Republic of Slovenia, No. 73/2007 et seq.

¹⁶ Official Gazette of the Republic of Slovenia, No. 105/2006 et seq.

Enforcement and Security Act (ZIZ) lays down in Article 17 (indent 3 of paragraph 2) that **“an enforceable instruments shall be** another enforceable decision or document designated as an enforceable instrument by an Act, ratified and published international treaty, or legal act of the European Union that is applied directly in the Republic of Slovenia” but does not mention that ECtHR judgment is also an enforceable instrument. ECtHR judgments must therefore be **directly enforced in enforcement proceedings based on constitutional provisions**.

Enforcement and Security Act (ZIZ)¹⁷:

“Article 17 (Enforceable instrument)

The court shall permit enforcement on the basis of an enforceable instrument.

Enforceable instruments shall be:

- an enforceable court decision or court settlement;
- an enforceable notarial deed;
- **another enforceable decision or document designated as an enforceable instrument by an Act, ratified and published international treaty, or legal act of the European Union that is applied directly in the Republic of Slovenia.**

The provisions of this Act relating to settlement shall also apply to a notarial deed unless otherwise provided by an Act.”

There are only a few sectoral procedural laws that provide a direct basis for the enforcement of an ECtHR judgment, as the Constitution of the Republic of Slovenia directly requires them to do so.

In this regard, the Commentary to Article 8 of the Constitution¹⁸ states that “regulatory framework which is not of constitutional nature must be in conformity with the generally applicable principles of international law as well as with the international treaties binding on Slovenia.«. Article 153 (2) of the Constitution clearly stipulates that “laws must be in conformity with generally accepted principles of international law and with valid treaties ratified by the National Assembly, ...«.

“Article 153 (Conformity of Legal Acts)

(1) Laws, regulations, and other general acts must be in conformity with the Constitution.

(2) Laws must be in conformity with generally accepted principles of international law and with valid treaties ratified by the National Assembly,

¹⁷ Enforcement and Security Act (ZIZ) available at: <http://www.pisrs.si/Pis.web/cm?idStrani=prevodi>

¹⁸ Commentary to Article 8 of the Constitution of the Republic of Slovenia, Grasselli v. Šturm, Commentary of the Constitution of the Republic of Slovenia, Ljubljana: Faculty of Government and European Studies.

whereas regulations and other general acts must also be in conformity with other ratified treaties.

(3) Regulations and other general acts must be in conformity with the Constitution and laws.

(4) Individual acts and actions of state authorities, local community authorities, and bearers of public authority must be based on a law or regulation adopted pursuant to law.”

In the absence of a statutory or specific basis, **the courts in the Republic of Slovenia must directly apply the provisions of Article 8 and other articles of the Constitution of the Republic of Slovenia.**

SPANIA

Firstly, in Spain an ECHR judgment against Spain have lead during the actual Parliamentary Term in the Congress of Deputies to [hearings](#) of a Minister until a committee (according to Section 44 of the Standing Orders of the Congress of Deputies), to [oral question](#) to the Government in a Committee, or in some cases to written questions submitted to the Government ([I](#), [II](#), [III](#)). The cases hyperlinked are those regarding the current Parliamentary Term.

In addition, direct access for victims, the reform imposed by Protocol 14 and the Court’s consistent jurisprudence have reinforced the binding force of its judgements and the State’s commitment to comply with the decisions and to abide by them in good faith. Article 46 (1) ECHR recognises the binding force and provides that States undertake to abide by and comply with its judgements and to implement them, and the Committee of Ministers must ensure their implementation (paragraph 2) by monitoring them. Then, the judgments of a treaty shall be interpreted as a binding interpretation. Even so, it should be remembered that judgements are declaratory in its nature, and that the Convention does not confer jurisdiction on the ECHR to order a State to amend its legislation. This doctrine has not been totally surpassed.

Even though, a good example of efficient “consistent interpretation” (*res interpretata*) is the decision of the Plenary of the Criminal Chamber of the National High Court in Order 62/2013, of 25 October, handed down in the Parot Case. Here it was recalled that the ECHR “is law” and is part of the legal system and that “subjection to the law means subjection to the Convention”. It was thus agreed that the declaratory value of the judgments of the ECtHR had been superseded by case law and by Protocol 14, which reinforced the obligation to comply ex art. 46 ECHR and to execute the judgements. It was added that the lack of legal enforcement mechanisms “does not imply that the international obligation lapses due to unenforceability”, and it was concluded that there was “consistent interpretation”,

extending the effects of this decision of the *Río Prada v. Spain* judgement of 21 October 2013 to other prisoners in the same situation. In this case, it went on to immediately release some ETA prisoners in a similar situation to the appellant, as a retroactive interpretation of the criminal law had been applied to all of them by the Supreme Court (*Tribunal Supremo*), which had been declared contrary to the Convention.

It is true that the ECtHR sometimes carries its indications directly in the judgement, in order to strengthen its binding effect, especially in pilot judgements. Even so, this binding effect is strong for the national judicial bodies, because of their function to apply rights in concurrence with the ECHR. The linkage becomes more complex for the legislator, who has a wider margin of appreciation at national level. Notwithstanding, even pilot-judgements of the ECtHR are highly taken into consideration by Spanish judges and by the legislator, actually there is no direct mechanism to apply that decision.

Anyway, according to Article 5 bis of the [Organic Law 6/1985 of 1 July 1985 on the Judiciary](#), “an appeal for review may be brought before the Supreme Court against a final judicial decision, in accordance with the procedural rules of each court, where the European Court of Human Rights has held that the decision was given in violation of any of the rights recognised in the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols, provided that the violation, by its nature and gravity, has effects which persist and cannot be terminated otherwise than by such review”.

The legal standing to bring the appeal is attributed to the person who acted as plaintiff before the ECtHR, and a period of one year is set for bringing the appeal, to be counted from the date on which the European judgment became final.

In the case of final judgments of a civil nature, it is specified that such a review may not prejudice “the rights acquired in good faith by third parties” (Article 510.2 of the [Civil Procedure Act](#)).

SUEDIA

I. Noteworthy ECHR judgments concerning Sweden

The Convention for the Protection of Human Rights and Fundamental Freedoms entered into force on the 3 September 1953 in Sweden. Since then, 72 judgments and decisions from the European Court of Human Rights concerning Sweden have been implemented.¹⁹

¹⁹ Council of Europe, *Sweden and the Council of Europe*.

Nowadays, most complaints brought against Sweden relate to issues on asylum and family reunification. However, traditionally complaints and cases have mostly focused on other legal matters, such as the right to protection of private and family life according to Article 8, for example in matters of compulsory care of young people and children's right to contact with guardians. Many cases have concerned the right to a fair trial under Article 6 regarding the length of criminal and civil proceedings. Judgments against Sweden have in several cases led to the payment of compensation to the complainant.

The pilot-judgment procedure has been applied by the European Court of Human Rights as a means of dealing with large groups of identical cases that derive from the same underlying problem. This procedure has not been frequently used with regard to cases concerning Sweden. Nevertheless, there are a number of judgments from the European Court of Human Rights that have resulted in reforms and changes in Swedish legislation. Below you will find some examples of this.²⁰ While most of the developments mentioned have occurred in recent years, a few of the judgments date back to the 1980s.

1. Fairness of proceedings

According to a legislative change in 1984, a party not satisfied with an arbitration decision could lodge an appeal before an ordinary civil court.

Case: Lars Bramelid and Anne-Marie Malmström (8588/79+) - Final Resolution DH(84)04

2. Administrative proceedings

Judicial review of certain administrative decisions by the Supreme Administrative Court was widened in 1988.

Cases: Boden (10930/84) - Final Resolution CM/ResDH(88)15 and Hakansson and Sturesson (11855/85) - Final Resolution CM/ResDH(90)32

In 1995, legislative amendments restricted the above Court's role to review decisions taken by the government and referred other administrative decisions to the administrative courts of appeal, before which oral hearings shall be held if a party so requests, and no special reasons militating against it exist.

Case: Fredin No. 2 (18928/91) - Final Resolution CM/ResDH(95)94

3. Criminal proceedings

Following an amendment in 1984, the Code of Judicial Procedure concerning hearings at appellate level stipulated that, if a party has requested a hearing, this shall take place unless it be deemed manifestly unnecessary.

Case: Ekbatani (10563/83) - Final Resolution CM/ResDH(88)21

²⁰ The examples are collected from Council of Europe, *Sweden- Execution of The European Court of Human Rights' Judgments Main Achievements in Member States*.

4. *Ne bis in idem*

Due to a legislative change in 2016, the Tax Agency is not allowed to decide on tax surcharges if a prosecutor has already initiated criminal proceedings for tax offences concerning the same individual relating to the same error or omission.

Case: Lucky Dev (7356/10) - Final Resolution CM/ResDH(2016)141

5. *Protection of private life - Security services and protection of privacy*

In January 2008, a new State agency, the Commission on Security and Integrity Protection, began supervising all personal data processing by the Swedish Security Service, as well as receiving complaints lodged by individuals. In cases where irregularities are found, the Commission shall cooperate with the competent authorities, notably the State Prosecution Service, the Chancellor of Justice and the Data Inspection Board so that necessary remedial action may be taken. The Data Inspection Board may order the Security Service to stop processing data, apply financial sanctions, or, in last resort, apply to the administrative courts to have the data erased.

Case: Segerstedt-Wiberg and Others (62332/00) - Final Resolution CM/ResDH(2012)222

A new provision prohibiting intrusive photography (covert filming in private places) was introduced in 2013.

Case: Söderman (5786/08) - Final Resolution CM/ResDH(2014)106

6. *Protection of property rights*

Time-limits for the validity of real property expropriation permits were introduced in 1972. All building bans in the context of expropriation proceedings expired in 1987 and no new similar bans could legally be issued thereafter.

Case: Sporrang and Lönnroth (7151/75) - Final Resolution CM/ResDH(85)17

The 1987 Plan and Building Act provided that some decisions on building permits may be examined by administrative courts except for certain cases in which the Government remains the appeal instance. However, its decisions may be appealed before the Supreme Administrative Court.

Case: Allan Jacobsson (10842/84) - Final Resolution CM/ResDH(90)2

For more information on the execution of judgments of the European Court of Human Rights, see Sweden's Country Factsheet via the web link below.

<https://www.coe.int/en/web/execution/sweden>

II. *Implementation of ECHR judgments*

In Sweden, the task of following up on the judgments of the ECHR is placed with the Government Offices. Therefore, there is no Swedish equivalent to the parliamentary sub-committee that has been set up in Romania.

According to the European Convention, member states have a legal obligation to remedy the violations found by the Court. When fulfilling this obligation, the member states enjoy a margin of appreciation to determine how to proceed to implement a specific judgment where a violation of the convention is found.

As you know, enforcement is supervised by the Committee of Ministers, which in turn is assisted by the Department for the Execution of Judgments of the European Court of Human Rights of the Council of Europe Secretariat. It is the experience of the Government Offices, that most judgments under supervision are of a purely routine nature and only lead to an exchange of letters between the defendant state and the unit for the execution of judgments at the Council of Europe Secretariat.²¹ However, a number of judgments are discussed annually in the Committee of Ministers. This, so called enhanced procedure, is mostly applied in types of cases that require urgent individual action, in pilot cases and cases that involve structural or complex problems. There are currently two open cases concerning Sweden before the Committee of Ministers that are processed in the enhanced procedure: *Arlewin v. Sweden* and *Centrum for rättvisa v. Sweden*.

More information on these two cases, see the HUDOC EXEC database: [https://hudoc.exec.coe.int/eng#{%22fulltext%22:\[%22Sweden%22\],%22EXECDocumentTypeCollection%22:\[%22CEC%22\],%22EXECState%22:\[%22SWE%22\]}](https://hudoc.exec.coe.int/eng#{%22fulltext%22:[%22Sweden%22],%22EXECDocumentTypeCollection%22:[%22CEC%22],%22EXECState%22:[%22SWE%22]})

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Council of Europe, *Sweden and the Council of Europe*, <https://www.coe.int/en/web/execution/sweden>.

Council of Europe, *Sweden- Execution of The European Court of Human Rights' Judgments. Main Achievements in Member States*, <https://rm.coe.int/ma-sweden-eng/1680a186c7>.

Ministry of Foreign Affairs, written information.

UNGARIA

1. In recent years there were two ECHR pilot-judgements which had effect to the legislation in Hungary.

- [Gazsó v. Hungary \(48322/12.\)](#)

16.07.2015 Pilot judgment: The case concerned Mr Gazsó's complaint about the excessive length of litigation in a labour dispute. The ECHR requested Hungary

²¹ Information from the Ministry of Foreign Affairs.

to introduce an effective domestic remedy or combination of remedies capable of addressing the issue.

The [Act CXXX of 2016 on the Code of Civil Procedure](#), the [Act I of 2017 on the Code of Administrative Litigation](#), and the [Act XC of 2017 on Criminal Proceedings](#) (available only in Hungarian) are intended to prevent delays in procedures at the judiciary system level. For example, the Civil Procedure Act the principle of litigation efficiency has been identified as its main regulatory objective (Section 3: Principle of concentration of actions).

From 1 January 2022 a new legal remedy is introduced to enforce financial compensation from the state in case of excessively long civil litigations, so the injured parties will not need to apply to the Strasbourg court for redress, based on the [Act XCIV of 2021](#) on the compensation for excessively lengthy civil proceedings.

- [Varga and Others v. Hungary \(14097/12.\)](#)
10.03.2015 Pilot judgment: The case concerned widespread overcrowding in Hungarian detention facilities.

In 2016 the Court examined the situation of the pending applications (more than 6,800) brought before it concerning conditions of detention in Hungary.

Having regard to the ensuing legislation adopted by the Hungarian National Assembly (passed the Act CX of 2016 which entered into force on 1 January 2017, to put in place a new preventive and compensatory system) as well as to the examination by the Committee of Ministers of the Council of Europe of the Hungarian Government's related Action Plan, the Court noted that new domestic remedies are being introduced in Hungary concerning this problem which may be capable of redressing the grievances of the applicants in the cases pending before it.

In an inadmissibility decision of 14 November 2017 ([Domján v. Hungary](#)), the Court took note of the new Act, following the Court's pilot judgment in the case of Varga and Others. The Court was satisfied that the 2016 Act had provided a combination of remedies, both preventive and compensatory in nature, guaranteeing in principle genuine redress for Convention violations originating in prison overcrowding and other unsuitable conditions of detention in Hungary.

As a result of the pilot judgment, Hungary introduced a compensatory remedy and significantly reduced overcrowding by building new prisons. To cease the overcrowding was successfully which has been the legal basis of compensation complaints. The occupancy rate of prisons has fallen below 100%, according to the [Prison Service](#), in 2020 it was 96%.

2. Based on the [Parliamentary Resolution 23/2007. \(III. 20.\)](#) on the *Implementation of the Judgments of the European Court of Human Rights and the Activities of the Office of the Agent for the Government* (point 2.), the Minister of

Justice shall inform the Committee on Justice of the Hungarian National Assembly once every year about the implementation of the ECHR judgments by national authorities and about the activities of the Office of the Agent for the Government.

ROMANIA

In November 2009, following PACE's Resolution no.1516/2006 and Recommendation no.1764/2006, it has been set up the *Sub-committee on monitoring the execution of ECHR judgments establishing the Romanian State's violations of European Convention on Human Rights*, as special institutional structure of the Chamber of Deputies' Committee for legal affairs, discipline and immunities.

The sub-committee is made up of 7 MPs representing all parliamentary groups.

Created within the parliamentary control prerogative over the Executive, stipulated by Articles no.111 and 112 of the Romanian Constitution, the *ECHR Sub-committee* monitors the activity of the Romanian Government in terms of the execution of judgments of the European Court and compliance with the high standards of protection, promotion and awareness of the rights required by the European Convention on Human Rights. Constitution of Romania:

“Art. 111 (1) *The Government and the other bodies of public administration shall be obliged, within the parliamentary control over their activity, to present the information and documents requested by the Chamber of Deputies, the Senate, or parliamentary committees, through their respective presidents. (...)*

(2) *Members of the Government are entitled to attend the proceedings of Parliament. If they are requested to be present, participation shall be compulsory.*

Art. 112 (1) *The Government and each of its members shall be bound to answer the questions or interpellations raised by the deputies or senators, under the terms stipulated by the regulations of the two Chambers of the Parliament.”*

On October 12th, 2010, the European Court of Human Rights pronounced the first pilot decision against Romania, in the case “*Maria Atanasiu and others*”, which obliged the Romanian State to take the necessary measures to optimize the property restitution mechanism within eighteen months as of the date the decision becomes enforceable. The reasons for applying the pilot judgment procedure were the ascertainment by the Court of the systemic problem leading to inefficiency of the restitution/compensation mechanism and to endless litigations.

In December 2010, by Decision of the Prime Minister, it has been set up the interministerial committee on reforming the laws and procedures in the field of property restitution.

The interministerial committee was made up of the following authorities' representatives: the National Authority for the Restitution of Properties; the Ministry of

Justice, the Ministry of Public Finances; the Ministry of Administration and Interior; the Ministry of Agriculture and Rural Development; the Ministry of Environment and Forests; the Ministry of Foreign Affairs; the Office of the Prime Minister and the Authority for State Assets Recovery.

The interministerial committee's attribution was to amend the legislation on restitution of – or compensation for - nationalised property, by simplifying the procedure and making it more effective, according to the above mentioned European Court's pilot judgment.

The parliamentary *Sub-committee on monitoring the execution of ECHR judgments establishing the Romanian State's violations of European Convention on Human Rights* had regular public hearings and consultations with the interministerial committee, as well as several meetings with members of Government, within the framework of parliamentary control of the execution of ECHR judgments.

Whenever needed, the parliamentary Sub-committee has also meetings with Government's representatives on specific subjects (i.e excessive length of judicial proceedings and lack of an effective remedy in that regard; non-enforcement of domestic judicial decisions; poor conditions of detention).

The Subcommittee on monitoring the execution of ECHR judgments ***has held hearings and working meetings with the authorities responsible for carrying out the execution of the ECHR judgments, for speeding up the procedures for the adoption and amendment of legislation and for reforming the deficiencies in terms of compliance with Convention's high standards.***

Interpellations and questions addressed to the Governmental Agent of Romania for ECHR, to the members of the Government and State authorities have been constantly used as specific and effective parliamentary tools of the ECHR Sub-Committee.

According to Art.112 of the Romanian Constitution, the Sub-committee addresses demands, questions and interpellations to the Government's members, to the National Authority for Property Restitution's President, to the Romania's Governmental Agent for ECHR and other public authorities with competences in the field. The ECHR Governmental Agent must present to the ECHR Sub-committee regular information on the judgments to be executed, including the exchange of information with the Execution Department of the CM of the CE.

Certain MPs legislative proposals (passed as laws) have led to the harmonization of the national legislation with the provisions and principles of the Convention and the case-law of the European Court. For example, Law no. 29/2011 amending the Law no. 24/2000 regarding the legislative technique norms for the elaboration of normative acts, initiated by the Chairman of the Sub-committee for monitoring the execution of ECHR' judgments establishing the Romanian State's

violations of European Convention on Human Rights. This law stipulates the obligation of verifying, on the one hand, the compatibility of bills, of legislative proposals, of other normative acts and procedures with the standards laid down by the European Convention on Human Rights and its Protocols and, on the other hand, their compatibility with the European Court of Human Rights' jurisprudence. Moreover, within three months from the European Court judgment's date of communication, the Government must submit to the Parliament the bill regarding the modification, completion or repeal of the normative act or of a part of this which violates the European Convention on Human Rights and its Protocol's provisions.

Working meetings with members of the Service for the Execution of ECHR judgments, with representatives of the Committee of Ministers of the Council of Europe and members of the Parliamentary Assembly have reinforced from double perspective - national and European - the experience of Romanian authorities in the field, also strengthening the relationship with PACE institutions. They have really improved the internal tools and practices used in the execution of ECHR judgments.

Whenever needed, the parliamentary Sub-committee invites the Government's representatives to meetings and regular public hearings and consultations on specific subjects: i.e the excessive length of judicial proceedings and lack of an effective remedy in that regard; the non-enforcement of domestic judicial decisions; the poor conditions of detention.

The parliamentary Sub-committee is supported by 2 parliamentary public civil servants (with legal background and postgraduate studies in the field of human rights). The secretariat is unique, both for ECHR Sub-committee and the Committee for Legal Matters, Discipline and Immunities.

The Sub-committee priorities were:

- regular meetings with the Governmental Agent of Romania for ECHR dedicated to the judgments to be executed, including the presentation of the information transmitted by the Governmental Agent to the Execution Department of the CM of the CE;

- adoption of appropriate legal provisions in the field; since September 2014 a legislative proposal submitted by members of the *ECHR Sub-committee* and other MPs is under the debate of the Committee for legal matters, discipline and immunities and of the Committee for human rights, cults and national minorities of the Chamber of Deputies. This proposal stipulates the obligation of the **Governmental Agent of Romania for ECHR** to annually submit to the Parliament, an activity report and a progress report, covering pending cases before the European Court of Human Rights in which Romania is part. Debated then in the plenum of the Chamber of Deputies, this legislative proposal has been returned to the specified Committees for being completed with an amendment according to which the **Governmental Agent of Romania for ECHR** has the obligation of also submitting the above mentioned report, separately and officially, to the Committee

for legal matters, discipline and immunities and of the Committee for human rights, cults and national minorities of both Chambers.

This proposal was passed by the Chamber of Deputies, but rejected by the Senate, the decisional Chamber, in February 2015.

However, within the parliamentary control prerogative over the Executive, stipulated by Articles no.111 and 112 of the Romanian Constitution, in particular under the “**Art. 111 (1)** *The Government and the other bodies of public administration shall be obliged, within the parliamentary control over their activity, to present the information and documents requested by the Chamber of Deputies, the Senate, or parliamentary committees, through their respective presidents. (...)*”, ECHR Sub-committee may request to the **Governmental Agent of Romania** for ECHR to submit this activity report and a progress report, covering pending cases before the European Court of Human Rights in which Romania is part.

Since 2011, on the basis of Decision of the Committee for legal affairs, discipline and immunities, the ECHR Sub-committee must inform the Committee for legal affairs, discipline and immunities with the results of its work. Annually or whenever deemed necessary, the Sub-committee must present to the Standing Bureau of the Chamber of Deputies and, on the decision of the Standing Bureau, to the plenum, a report on the execution of judgments of the ECHR in which it has found a violation, by the Romanian State, of the European Convention on Human Rights.

Whenever necessary, the Sub-committee cooperates with other parliamentary standing Committees with competences in monitoring the execution of ECHR judgments against Romania.

The project of setting up a *Joint parliamentary standing committee of the two Chambers of the Romanian Parliament* for strengthening and extending the control over the Government in matters of ECHR judgments’ enforcement and the respect of human rights standards is still its early stages (discussions have been started on its organization and functioning).

Considering the persistence of the litigations submitted by the Romanian citizens before the European Court of Human Rights and respectively, the large number of judgments pronounced against Romania, the parliamentary Sub-committee appreciates as strongly necessary the setting up of a *Joint parliamentary standing committee of the two Chambers of the Romanian Parliament* for exercising a more efficient control over the Government in matters of ECHR judgments’ enforcement.