

Justice Delayed and Justice Denied:

Non-Implementation of
European Courts' Judgments
and the Rule of Law



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**Non-Implementation of
European Courts' Judgments
and the Rule of Law**



re:constitution Exchange and Analysis on Democracy
and the Rule of Law in Europe

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Executive Summary

Report Recommendations

1. The EU's Rule of Law report and the EU Justice Scoreboard should contain an analysis of the level of implementation of ECtHR and CJEU judgments in EU countries.
2. The EU should fund Council of Europe activities designed to enhance ECtHR implementation.
3. The EU should fund civil society activities designed to enhance ECtHR and CJEU implementation.

Over the past few years, governments, media and citizens have become increasingly alarmed about backsliding on fundamental European values. The European Union (EU) has introduced a series of policy measures designed to halt and reverse the trend. In 2020, the European Commission adopted a new annual rule of law review cycle. The EU institutions also agreed on targeted measures, such as withholding structural funds from countries with severe infringements of the rule of law.

While targeted measures make sense for the extreme cases where governments destroy institutions of the rule of law in a systematic manner, the annual rule of law review cycle should also capture longer-term problems with the rule of law across all Member States, such as the non-implementation of judgments of two key European courts – the European Court of Human Rights and the Court of Justice of the European Union (hereafter, “the European Courts”). This issue has been widely overlooked.

This report reflects the fact that the non-implementation of judgments of the European Courts has become a systemic problem. Some **38% of the leading judgments of the European Court of Human Rights (ECtHR) relating to EU states from the last ten years have not been implemented**. Each of these judgments relates to a significant or structural problem in the laws or practices of states, often with direct consequences for many citizens. And yet, authorities have not implemented these judgments.

Non-implementation of judgments of the European Court of Human Rights is a problem across the continent. France, Germany, the Netherlands and Sweden all have leading judgments pending implementation for over five years. Over 50% of leading judgments against Italy and Spain are yet to be implemented. Romania and Bulgaria have each failed to implement over 90 leading judgments. Hungary also has a very serious non-implementation problem, with 71% of the leading ECtHR rulings from the last ten years awaiting implementation. Overall, it is notable that the **majority of the highest non-implementing countries are also the ones with much broader and systemic rule of law issues**, including attacks on the independence of the judiciary and of other oversight institutions.

While there are 602 leading ECtHR judgments pending implementation, the European Commission's rule of law report only captures a fraction of these cases and does not assess the overall level of non-implementation in each Member State.

There's also a growing **resistance against the implementation of judgments of the Court of Justice of the European Union (CJEU)**. The rulings from the CJEU, in particular those in infringement cases brought by the European Commission against the EU Member States breaking EU law, have long faced a degree of implementation issues. This included delayed and occasionally failed compliance. However, the high level of respect for the CJEU coupled with its strong enforcement mechanism centred on financial penalties has largely kept the issue in check. In recent years though, the governments and courts in Member States have increasingly challenged the decisions made by the CJEU. In the case of some EU Member States, such as Hungary and Poland, this trend has manifested in outright refusal to implement CJEU judgments or defiance against the primacy of EU law and the authority of CJEU. This dangerous trend of disrespect towards the Court appears to be growing and posing a direct threat to EU legal order, however it is not reflected in the EU's annual rule of law report.

We hope that this report will help put the implementation of European Court judgments by Member States firmly on the EU's rule of law agenda. Our recommendations section (see page 23) outlines a series of appropriate measures to address this threat to European core values.

Introduction

Comparing the Two Courts		
	Court of Justice of the European Union	European Court of Human Rights
Is an institution of...	European Union	Council of Europe
Hears cases concerning...	Interpretation and application of EU law	Violations of human rights enshrined in the European Convention of Human Rights
Is composed of...	Judges representing all EU Member States	Judges representing all Council of Europe members
Cases can be brought to it by...	References from EU Member State courts, by EU institutions , anybody whose interests were harmed by the action of EU institutions	Anybody whose human rights have been violated by Council of Europe members
Seat in...	Luxembourg	Strasbourg
Implementation of judgments overseen by...	The European Commission	The Committee of Ministers of the Council of Europe
Possibility of financial sanctions over non-compliance with judgments?	Yes	No

Why is the Implementation of European Court Judgments a Rule of Law Issue?

There are two reasons why the implementation of the judgments of the European Courts is crucial to protecting the rule of law – and why they should be considered in the EU's rule of law assessments.

First, the judgments often concern issues that are fundamental to safeguarding the rule of law or specific legal guarantees that matter to citizens. In many states, the European Courts have identified serious problems with the executive's control of the judiciary. There are also a **range of judgments concerning the protection of fundamental values** which are necessary for maintaining a democratic way of life in a country governed by the rule of law. They cover core issues like the protection of free speech, the right to peaceful protest, and the need for a pluralistic media environment. Judgments concerning these issues need to be implemented if the underlying freedoms are to be protected.

The second reason why implementing European Court judgments is crucial to protecting the rule of law, is that the **implementation of judgments is intrinsically a rule of law issue**. Court rulings are

emblematic of a state which is run by laws rather than by the absolute power of government. Court judgments are also the operative tool by which governmental power is kept in check by the judiciary. If governments are able to exercise power without the limits placed upon them by courts - for instance, by ignoring court judgments - then the rule of law does not exist.

Judgments of the European Court of Human Rights

A key safeguard against the re-emergence of authoritarianism in Europe is the European Convention on Human Rights (ECHR, or 'the Convention'), as interpreted by the European Court of Human Rights (ECtHR), based in Strasbourg. The Convention and the ECtHR were created in the aftermath of World War II, as an early-warning system to prevent the rise of totalitarianism in European states. By assessing whether states were compliant with the Convention, the ECtHR would provide an objective analysis of whether developing laws and policies violated fundamental values, and European governments would bring pressure on the offending state to change course.

When the ECtHR finds a violation, states are obliged to implement the judgment by changing law and policy, to ensure that similar violations do not happen again. This is reflected in Article 46 of the Convention, setting out the binding force of ECtHR judgments, as well as a procedure to send cases back to the ECtHR if states refuse to implement them – a process which can ultimately lead to states being expelled from the Convention system.

During the second half of the 20th Century, the standing of the ECtHR increased, its rulings covered more diverse issues, and almost every country in Europe volunteered to come under its jurisdiction. States joining the European Union were obliged to be signatories of the Convention (and subject to rulings of the ECtHR). As a result, the European Court of Human Rights became the key guarantor of the continent's human rights, democracy, and the rule of law. The Convention and Court required signatory states to maintain high standards in the protection of fundamental values. In formerly authoritarian states, governments were obliged to amend laws and practices in order to join the Convention, and make further amendments when violations were found by the ECtHR. The Convention and the ECtHR therefore helped new democracies put down roots – as well as protecting and nourishing older democracies. Over the years, the rulings of the Court led to a [huge variety of positive reforms](#) across the continent, such as better protections of [freedom of expression](#), the [right to protest](#) and the [right to a fair trial](#).

However, in the past decades a serious problem has emerged within the ECtHR system: [the non-implementation of the Court's judgments](#). The issues raised by these unimplemented cases are often fundamental, including unlawful restrictions on [whistleblowing](#), [freedom of assembly](#), and [freedom of expression](#). For them to be implemented, governments often need to carry out reforms to law and/or practices, which would prevent repetitions of the same violation. In a vast number of cases, reforms are not being carried out. Such political inaction is a threat to European values.

In Focus: Regional courts' potential – protecting the right to protest in Poland

Background: In 2005, five members of an NGO wanted to organise public protests in Warsaw. Their goal was to raise awareness of discrimination against minorities, women, and the disabled. Warsaw's mayor gave an interview to the press, saying that the assemblies would be banned because they expressed support for homosexual rights. His office then denied permission for the protests, under the pretext of administrative technicalities.



Judgment: The European Court of Human Rights ruled that the right to public assembly had been violated. Decisions to ban the marches had either violated Polish law, or had relied on laws unable to effectively safeguard the protestors' rights. The bans risked creating a chilling effect on people taking part in public life.

Impact: The judgment of the Strasbourg Court led to changes in Poland's laws on public assemblies. The Constitutional Court developed its case-law to prevent peaceful protests being banned under administrative laws like those used by the mayor of Warsaw. A new Assemblies Act was passed in 2015, providing further protections for the right to peaceful assembly in Poland.

Judgments of the Court of Justice of the European Union

The Court of Justice of the European Union (CJEU), based in Luxembourg, has been the cornerstone of the EU's legal system since its inception. Unlike the ECtHR, it is not designed as a court where any individual can take their case, but the CJEU has nonetheless played a critical role in furthering and developing EU law, chiefly through referral cases brought before it by Member State courts and through infringement cases brought by the European Commission against Member States which fail to respect EU law.

Another key difference when it comes to conformity with and implementation of CJEU decisions as opposed to the ECtHR is the possibility for the Commission to request financial sanctions against an EU Member State that fails to respect the decisions of the Luxembourg court. The possibility of inflicting direct financial pressure on a Member State in order to encourage the country to respect the court's decision is a unique characteristic of the CJEU compared to other international courts.

Despite these strong guarantees of compliance, the CJEU faces a mounting challenge regarding the lack of respect for its decisions from the EU Member States. The non-implementation of CJEU decisions has occurred repeatedly with regards to a wide array of judgments in various fields of EU law and policy such as [data transfers](#), [nature conservation](#) or the [freedom of movement of same-sex couples](#). However, in recent years, systemic resistance to the CJEU by authorities in the several EU Member States has emerged, threatening the very foundations of the common legal order.

(Non) Implementation of Judgments I: European Court of Human Rights

Perfect ●●●●●●●● Very serious problem



Summary

The non-implementation of European Court of Human Rights (ECtHR) judgments in European Union states is highly concerning.

We have used three key indicators in order to assess the overall state of ECtHR implementation. They are presented in order of their decreasing importance (the most important indicator first, the least important last).

An explanation of each indicator is provided below, along with the data for the European Union as a whole. For information relating to each European Union state, please see the relevant country page. For more information about the methodology used in this report, please see the ‘Methodology’ section below.

Number of unimplemented leading judgments

602

Total number of judgments of the ECtHR concerning European Union states which are pending implementation

“Leading” ECtHR judgments are those that identify a significant or systemic problem in a country, as designated by the Committee of Ministers of the Council of Europe. Each leading judgment which has not been implemented represents a human rights issue that needs to be resolved – usually by changes to laws, policies and practices. For example, a leading judgment finding that a court was not sufficiently independent might reflect an ongoing situation of a lack of judicial independence in a particular country. If that leading judgment is still pending implementation, the problems linked to judicial independence in that country have still not been resolved.

As of 1 January 2022, there were 602 leading ECtHR judgments waiting to be implemented across the European Union. Each of these represents a human rights problem which has not been resolved – and which is therefore likely to recur. Examples of leading judgments that are waiting to be implemented can be found at page 18.

The state with the highest number of leading judgments waiting to be implemented is **Romania**, with **106**. The state with the lowest number of leading judgments waiting to be implemented is **Luxembourg**, with **0**.

Percentage of leading cases from the last ten years awaiting implementation

37,5%

Proportion of leading judgments from the last ten years that have not been implemented

Some states – particularly larger ones – are the subject of a high number of judgments from the European Court of Human Rights. Other states are the subject of very few. In order to assess how well states are implementing, it is therefore helpful to look at the proportion of judgments which remain pending, and the proportion which have been implemented. We assess the proportion of judgments implemented from the last ten years, because this allows the data from each state to be effectively compared (as some states have been signatories to the European Convention on Human Rights for 60 years while others for less than 20).

Some **37.5%** of leading judgments concerning European Union states from the last ten years are yet to be implemented. This means that the systemic human rights issues these judgments identify have not yet been resolved. It indicates that national authorities in Europe are not sufficiently active in dealing with a significant proportion of human rights issues identified by the ECtHR.

As of 1 January 2022, the European Union states with the highest proportion of leading ECtHR judgments pending from the last ten years are Cyprus and Hungary, both with 71%. The state with the lowest proportion is Luxembourg, with 0%.

Average time leading decisions have not been implemented (and the clock is ticking)

4 years, 4 months

Average length of time that leading ECtHR judgments concerning European Union states have been pending implementation

The final metric that we use is the average time that leading cases have been awaiting implementation. Some cases require extensive reforms that can and should take many years. However, it should be possible to implement the majority of leading judgments in a relatively short period of time. The longer leading judgments have been pending, the more we are concerned that implementation is not being carried out.

The average length of time that leading ECtHR judgments concerning European Union states have not been implemented is **four years and four months**.

Countries in the spotlight

This report contains country pages on all 27 European Union states. For each country, there is a breakdown of the key statistics, as well as a short commentary on the overall situation, and some examples of human rights issues that remain unresolved. There are ECtHR implementation problems in almost every state – and the situation is in need of improvement in the majority of countries.

It is also important to note that there are certain states where the implementation record is particularly concerning. There are **six states** with **over 30 leading cases pending**, and where the proportion of leading cases pending from the last ten years is **above 30%**. These states are **Bulgaria, Greece, Hungary, Italy, Poland, and Romania**.

We are particularly concerned by the overall state of ECtHR implementation in these countries. Urgent action is needed to promote human rights reforms on a systematic basis.

Methodology

The data for this report is accurate as of 1 January 2022. The number of pending leading judgments in each country has been taken from the [Council of Europe's 2021 Annual Report for the Supervision of Judgments and Decisions of the European Court of Human Rights](#). The other data points have been calculated using data from the Council of Europe's "Hudoc Exec" website.¹

When reading the report, it is important to bear in mind our methodology. This is summarised below, with full information set out in the Appendix.

- **The data in the report refers to 'leading' ECtHR judgments pending implementation – rather than all ECtHR judgments pending implementation.** Judgments that identify new structural or systemic issues are classified as 'leading' by the Council of Europe. In order to successfully implement a leading case, states must ensure that the underlying problems that caused the ECHR violation have been resolved. The best way to measure whether the ECHR system is leading to substantive changes is by looking at how many leading judgments remain pending implementation.
- **Certain descriptive words are applied in the report according to a classification grid.** The report has a uniform way of describing for each country the number of leading cases pending implementation, the proportion of leading cases pending implementation for the last ten years, and the average length of time that leading cases have been pending implementation.
- **The overall assessment of each country's record is not subject to a uniform formula.** The overall categorisation of countries (as "Excellent", "Good", etc) is not carried out according to a rigid formula, as this would have prevented a sufficiently flexible analysis for the different situations in the 27 EU states. Nevertheless, the rating is based on the three constituent objective indicators.
- **Cases that are pending implementation may be the subject of ongoing reforms.**
- **The report does not quantify the severity of violations nor the complexity of the required reforms.**

The types of data used in this report were chosen not because they are perfect, but because – to our knowledge – they are the best available. Despite certain limitations, this data provides the best assessment about the overall status of ECtHR implementation in different countries.

1. For this purpose, data was extracted from the Hudoc-Exec database in April 2022, and adapted to show the situation at the start of January 2022. Please note that the data in this report differs slightly from the data submitted by EIN to the European Union's Consultation for its Rule of Law Reporting, in January 2022. This is because the data submitted to the consultation process was taken from Hudoc-Exec on 3 January 2022. Since that time, Hudoc-Exec has been updated to show developments at the end of 2021 - mostly notably, to add around 30 leading cases to the database, which became final at the end of the year. The data in the current report is therefore more complete and should be preferred to that contained in EIN's contribution to the consultation process.

CLASSIFICATION GRID							
	Very low	Low	Moderately low	Moderate	Significant	High	Very High
Leading judgments pending implementation	Less than 5	Between 5 and 10	Over 10	Over 20	Over 30	Over 40	Over 50
Percentage of leading judgments from the last 10 years unimplemented	Below 10%	10-15%	15-25%	25-30%	30-45%	45-60%	Over 60%
Average time leading judgments have been pending implementation	Less than 1 year	1-2 years	2-3 years	3-4 years	4-6 years	6-7.5 years	More than 7.5 years




























Levels of Implementation across the EU

The nine colour-coded categories below are used to describe the overall implementation record of each country, ranging from “Perfect” to “Very Serious Problem”. States are listed in alphabetical order within each category.

The categorisation is based on an assessment of the three data sets: the number of leading judgments pending implementation, the proportion of the leading judgments from the past ten years pending implementation, and the average time for which these judgments have been pending implementation. However, different weight has been attributed to these categories when determining the overall category that a state falls into.

The difference between categorisations can be quite fine and different analysts might reasonably come to different conclusions. Nevertheless, we believe that our categorisation system is a simple, accurate, and effective way to understand the overall picture of implementation in each state.

For more information on our assessment methodology, please see the Appendix to this report.

Country				
Country	Category	Number of Leading Judgments Pending Implementation	Proportion of Leading Judgments Pending Implementation from the Last Ten Years	Average Time Leading Cases Have Been Pending Implementation
 LU	Perfect	0	0	0
 CZ	Excellent	2 (Very low)	5% (Very Low)	7 years and 8 months (Very High)
 DK	Excellent	3 (Very low)	60% (Very High)	6 months (Very Low)
 EE	Excellent	1 (Very low)	5% (Very Low)	3 months (Very Low)
 LV	Very Good	7 (Low)	12% (Low)	1 year and 5 months (Low)
 SI	Very good	4 (Very low)	12% (Low)	1 year and 10 months (Low)
 SE	Very good	2 (Very low)	13% (Low)	3 years and 1 month (Moderate)
 AT	Good	6 (Low)	26% (Moderate)	4 years and 7 months (Significant)
 IE	Good	2 (Very low)	33% (Significant)	9 years and 7 months (Very High)
 NL	Good	8 (Low)	40% (Significant)	2 years and 10 months (Moderately Low)
 DE	Moderate	13 (Moderately low)	37% (Significant)	3 years and 2 months (Moderate)
 LT	Moderate	16 (Moderately low)	24% (Moderately low)	3 years and 9 months (Moderate)
 HR	Moderate	25 (Moderate)	25% (Moderate)	4 years and 3 months (Significant)
 FR	Moderate	25 (Moderate)	28% (Moderate)	2 years and 11 months (Moderately low)
 PT	Moderate	17 (Moderately low)	41% (Significant)	3 years and 10 months (Moderate)
 SK	Moderate	20 (Moderate)	41% (Significant)	2 years and 10 months (Moderately low)
 BE	Moderately poor	21 (Moderate)	49% (High)	3 years and 3 months (Moderate)
 MT	Moderately poor	13 (Moderately low)	45% (High)	5 years and 1 month (Significant)
 CY	Problematic	10 (Moderately Low)	71% (Very High)	2 years and 7 months (Moderately low)
 FI	Problematic	9 (Low)	60% (Very High)	11 years and 11 months (Very High)
 ES	Problematic	23 (Moderate)	61% (Very High)	3 years and 1 month (Moderate)
 GR	Significant Problem	34 (Significant)	35% (Significant)	6 years and 5 months (High)
 PL	Significant Problem	38 (Significant)	48% (High)	5 years and 10 months (Significant)
 BG	Very Serious Problem	92 (Very High)	55% (High)	6 years and 4 months (High)
 HU	Very Serious Problem	47 (High)	71% (Very High)	6 years and 3 months (High)
 IT	Very Serious Problem	58 (Very High)	58% (High)	5 years and 10 months (Significant)
 RO	Very Serious Problem	106 (Very High)	57% (High)	4 years and 2 months (Significant)

(Non) Implementation of Judgments II: Court of Justice of the European Union

Unlike the European Court of Human Rights, the implementation of CJEU judgments is not tracked at a level that would allow for quantitative analysis. However, some overarching trends and recent developments can be easily traced. Among international courts, the CJEU is widely regarded as extremely effective, providing a model which many other international courts have followed. Its innovative and controversial legal solutions have, until recently, encountered relatively little overt resistance from national policymakers. Overturning CJEU judgments through direct action by EU Member States is extremely rare. Much more common is non-compliance with CJEU judgments in the key category of infringement proceedings.

Resisting compliance with CJEU rulings: States seek to avoid the costs of enforcement

The available data indicate that compliance with CJEU rulings in infringement cases is at least delayed in about half of all cases, with more [serious resistance](#) occurring in about one in ten cases. Non-compliance with CJEU rulings varies across policy areas. The highest degree of non-compliance can be found in the areas broadly related to environmental policy, internal market and competition. This is hardly surprising given that they represent a significant part of EU's regulatory activity. The areas broadly related to foundational values – rule of law, democracy and fundamental rights – have only recently become a focus for the CJEU, with the number of judgments related to the rule of law in particular growing since 2018. While it remains difficult to disentangle the Commission's enforcement priorities from actual cases of non-compliance, the Commission's data indicate that CJEU judgments on the environment and competition policy face particular implementation problems. An analysis by [G. Falkner](#) of all cases in which the Commission has asked the CJEU to impose a penalty for non-compliance with a previous ruling led to the conclusion that the main reason why Member States do not enforce CJEU rulings is the desire of national authorities to protect important constituencies and avoid particularly costly enforcement measures – far more than problems of administrative capacity or problems of interpretation. Cases concerning environmental protection and state aid to an industry clearly fall into this category.

While non-implementation of CJEU judgments in itself is a systemic challenge for the core values of the EU, a particular danger comes from the refusal to implement CJEU rulings in infringement cases concerning the rule of law and fundamental rights. Examples here include the Hungarian government's refusal to implement judgments in cases C-78/18 (transparency of funding NGOs) and C-808/18 (protection of asylum-seekers and migrants) and the Polish government's failure to observe the judgment in the case C-719/19 concerning the Disciplinary Chamber of the Polish Supreme Court. The resistance from the authorities in those two EU Member States is concerning due to the rule of law backsliding in both countries. Poland has also refused to implement a CJEU interim order in another case concerning the Disciplinary Chamber, C-204/21, leading the European Commission to request the CJEU to approve a

financial penalty over non-compliance and the Court subsequently issuing an unprecedented fine of EUR 1 million daily, which Poland has so far refused to pay.

While there is at least some official data on compliance with infringement proceedings, no such information is available for preliminary references that deal with the applicability and interpretation of EU law by the CJEU based on the referrals from national courts. In principle, once a preliminary ruling is made, the national court should then apply the CJEU's interpretation to the facts of the case, but extent to which this is done is unclear, requiring detailed case-by-case analysis.

National courts challenging the CJEU's authority

Beyond non-compliance, another dangerous trend is Member State judiciaries and governments directly challenging the authority of the CJEU. A form of judicial dialogue where Member State courts, in particular top courts – constitutional and supreme courts – disagree with CJEU's interpretation and issue judgments pointing to an alternative interpretation of EU law, has been the staple of the development of EU law. Cases such as the German Federal Constitutional Court's Solange I and II judgments became the cornerstones in the development of the relationship between national law and EU law.

However, in recent years, a new type of pushback has emerged, one that cannot be described as an attempt to foster a dialogue based on good faith. The trend was set by the 2020 Public Sector Purchase Programme (PSPP) judgment of the German Constitutional Court, which found the CJEU to have acted 'ultra vires' – that is, outside the scope of its competencies – when reviewing the European Central Bank's bond-buying scheme. The German court, a body with an unquestionably stellar history of contribution to the development of not only German law, but EU law and international law as well, challenged the authority of the CJEU directly. The PSPP judgment ultimately led to a resolution that averted any major legal and political fallout, with the German Constitutional Court finding, based on explanations provided by the European Central Bank and the German federal government, that the issues identified had been resolved. However, the resistance displayed by the German court was soon picked up elsewhere, with major consequences for the entire EU.

Poland, which has endured various attempts by the government to weaken checks and balances and remove judicial oversight over its actions, saw its government and other authorities employ a politically captured Constitutional Tribunal as a means of resisting the CJEU. Following a series of CJEU judgments, the Polish Tribunal issued a string of judgements that clearly attempted to counter emerging jurisprudence of the CJEU on the rule of law. The issue at hand was raised both from infringement actions by the Commission and from referrals from other Polish courts, which found elements of changes to the Polish judiciary brought about since 2015 to be contrary to EU law.

In July 2021, the Polish Tribunal, ruling in a case brought about by the Supreme Court of Poland, itself increasingly compromised, found that interim measures issued by the CJEU in cases concerning the judiciary are incompatible with the Polish constitution. A far more alarming move by the Polish government and the Constitutional Tribunal came in October that year, with the Tribunal handing out its judgment in a case brought forward by Poland's Prosecutor General, who happened at the same time to be the Minister of Justice. The Tribunal found that the primacy of EU law does not apply in Poland with regards to laws on the organisation and functioning of the judiciary, thus directly challenging not only the CJEU's interpretation but also a foundational principle of EU law itself.

While presented ostensibly as a clash between EU law and Poland's constitution, this case was widely seen as a sort of "counter" to earlier CJEU judgments, formulated as a review of EU treaties solely due to the fact that the Polish Tribunal doesn't have the competence to review judgments of other courts. A similar pattern emerged in Poland with regards to ECtHR judgments, with the government employing the Constitutional Tribunal to elaborate on the incompatibility of the right to a fair trial enshrined in Art 6 (1) ECHR with the Polish constitution in the context of that right being examined by the ECtHR in landmark rule of law cases.

Poland's outright challenge to the authority of CJEU has since begun metastasising to the other EU Member States. The Hungarian constitutional court ruled in December 2021 on the issue of the primacy of EU law in regard to a national immigration law. On that occasion, the Hungarian court refrained from directly challenging the CJEU by rejecting the earlier case law. The Romanian constitutional court went the opposite way instead. For Romania to implement earlier CJEU rulings regarding its judiciary, the constitutional court ruled the country would need to alter its constitution – this step would allow CJEU law to take effect. However, this move is widely seen as contrary to the principles of the direct effect of EU law.

The European Commission, fulfilling its role as a guardian of EU law, has begun reacting to these developments, launching infringement procedures against both Germany and Poland over their challenges against the CJEU. In the German case, the infringement procedure has since been closed with the Commission finding that the ultimate outcome of the situation following the PSPP judgment led to no lasting damage to EU's legal order and that the conclusions of the German Constitutional Court resolve the issue at hand. With regards to Poland, the procedure was launched in December 2021 and is currently ongoing, with the Commission noting the refusal to implement recent decisions of the CJEU as well as resistance against ECtHR judgments, discussed elsewhere in this report.

The above trends indicate a worrying uptick in resistance against the European Union's top court. In some cases, such as the German example, this can be seen as isolated incidents of the highly unfortunate route taken by a Member State's top court. In other instances, however, such as with Poland and Romania, these developments point to a far more dangerous trend of disregard towards the decisions of CJEU. The Polish case, where the government has practically weaponised the country's constitutional court against EU institutions, is particularly egregious, and holds a particular danger for the EU legal order in case of further pick up from other EU Member States.

Infringement and financial pressure: the Commission's toolkit to foster respect for CJEU rulings

This development is, naturally, a critical wake-up call for the EU institutions to act. The Commission has already launched an infringement procedure against Poland over the October decision by its Constitutional Tribunal and disrespect for EU law. But the infringement procedures are tools aimed to address specific breaches of EU law. Poland and Hungary are both cases of systemic deficiency of the rule of law and disregard for EU values. However, the tool intended to address general issues, namely the procedure of article 7 of the Treaty on European Union, which has been carried out towards both countries for some time, is stalled.

Fortunately, the EU has one more card up its sleeve – the Resilience and Recovery Facility (RRF), the EU's covid-19 recovery fund. The approval – and thus, payout – of the fund to Hungary and Poland has been held back over concerns regarding the rule of law. Both countries' recent disregard for the CJEU has played a role in this decision, and while the RRF was not intended to be a tool to enforce respect for the rule of law, it has been employed in that role. Time will show whether the financial pressure will bring any effect towards ensuring respect for the CJEU.

Recommendations for Actions by the EU

EU rule of law toolbox and Judgments of European Courts

The EU's Rule of Law toolbox should contain an analysis of the level of implementation of ECtHR and CJEU judgments in EU countries

The systemic non-implementation of ECtHR judgments is a profound sign that human rights, democracy and the rule of law are under threat. Therefore, the EU mechanisms relevant to the rule of law should consider this non-implementation to provide a holistic representation of the level at which Member States uphold these values.

Currently, the EU's rule of law toolbox, and in particular its annual rule of law report takes minimal account of the non-implementation of ECtHR judgments. The review covers a tiny fraction of cases, focusing mainly on the independence of the judiciary and the length of judicial proceedings. For example, the 2021 chapter on [Bulgaria](#) refers to only two leading judgments pending implementation against the country. There are 92 pending overall. The [Romanian chapter](#) refers to three pending leading judgments – but there are 106 pending overall.

Most importantly, the EU's new procedures do not include an overall assessment of how well a state implements judgments of the ECtHR. For example, it does not consider the fact that there are six EU countries that each have over 30 leading ECtHR judgments pending implementation; or that Hungary has also failed to implement almost three-quarters of its leading ECtHR judgments from the last ten years. The issues raised by these uncomplained-with rulings are often fundamental to the current crisis of democratic backsliding, including unlawful restrictions on [whistleblowing](#), [freedom of assembly](#), and [freedom of expression](#).

A similar situation persists with regards to judgments of the CJEU. While the rule of law report captures individual instances of non-implementation of CJEU rulings and highlights some of the issues arising from pushback against the court's authority, the report fails to capture the overarching trends. It does not track in any way the overall level of compliance with CJEU judgments from either infringement procedures or referrals. However, far more importantly, it fails to capture the recent uptick in systemic resistance against the CJEU from some Member States. With this trend on a visible rise, the report has so far failed to capture it adequately.

The main recommendation of this report is therefore that the EU should systematically factor the non-implementation of regional courts judgments in its rule of law toolbox and in particular its annual rule of law report and contain an analysis of the overall level of implementation of ECtHR judgments in EU member states, of the kind contained in this report. The report should also take note of crucial cases of non-compliance with CJEU judgments, and capture the trend of systemic pushback against the court coming from Member State authorities.

Council of Europe Co-operation Projects

The EU should fund Council of Europe activities designed to enhance ECtHR implementation.

The Council of Europe is the body responsible for supervising the implementation of judgments of the European Court of Human Rights. For the period of 2021-2024, the Committee of Ministers of the Council of Europe have named the leading strategic priority of the organisation to be the implementation of the ECHR at the national level – including the full implementation of ECtHR judgments.²

This prioritisation is reflected in the Council of Europe's Programme and Budget 2022 to 2025, which sets out the organisation's activities for the coming years. Most notably, there is a new project focused entirely on the effective implementation of ECtHR judgments, "Reducing the backlog of outstanding unexecuted leading judgments of the European Court of Human Rights". The project is worth EUR 6.5 million over a five-year period. However, although the project was meant to start at the beginning of 2021, it is not yet funded at the time of writing. To ensure the implementation of the project, the Council of Europe will need to obtain additional funds from outside of its ordinary budget. In such situations, the Council normally raises funds from one of two sources: individual member states; or the European Union. We recommend that the European Union funds this project as soon as possible, as well as other activities designed to enhance ECtHR implementation.

Support for Civil Society

The EU should fund civil society activities designed to enhance ECtHR implementation

There are a wide variety of organisations across Europe that are working on the implementation of judgments of the European Court of Human Rights. Their work demonstrates that civil society has a vital role to play in the implementation of ECtHR judgments. Civil society activities include calling for the formation of institutional structures to systematically promote the implementation of ECtHR judgments; calling for the implementation of individual judgments in the media and through advocacy with the national executive, parliament and/or judiciary; monitoring of the implementation plans published by governments, to assess whether they are sufficient to ensure timely and effective execution of ECtHR judgments; and engaging with the implementation supervision process at the Council of Europe's Committee of Ministers.

The work of civil society in this area is therefore crucial. However, it is not well supported. A survey of European human rights NGOs indicated that the most common reason why civil society organisations did not do more to promote the implementation of ECtHR judgments in their country was a lack of funding

2. See Committee of Ministers Decision CM/Del/Dec(2021)131/2a, "The Strategic Framework of the Council of Europe and forthcoming activities", 21 May 2021, Hamburg

for this work.³ To the knowledge of the authors of this report, there is no large-scale funding mechanism devoted to supporting civil society's work to promote the implementation of ECtHR judgments.

The EU's Citizens, Equality, Rights and Values Programme (CERV) has been provided with a significant grant-making budget to assist civil society in its activities to protect human rights, democracy and the rule of law. However, the CERV calls for tender published to date focus on the EU Charter of Fundamental Rights⁴ or citizen's participation in democracy – it is not clear that projects pursuing the implementation of judgments of the European Court of Human Rights would be eligible for such calls.

We therefore recommend that the CERV programme, or other EU grant-making programmes, initiate calls for proposals that are specifically designed to support European civil society in its work to promote the implementation of judgments of the European Court of Human Rights.


3. External Evaluation of the European Implementation Network, July 2019. The respondents to the survey were 27 human rights organisations from across Europe which engage in work to promote the implementation of ECtHR judgments. They were asked the question, 'what are the main barriers and limitations (if any) that prevent you/your organisation from engaging in advocacy to advance the implementation of ECtHR judgments?' The majority of organisations identified a lack of funding for this work.

4. For example, the call "Promote capacity building and awareness on the EU Charter of Fundamental Rights and activities on strategic litigation relating to democracy, the rule of law and fundamental rights breaches (CERV-2022-CHAR-LI-TI)", open October 2021 to February 2022.

Annex

Overview of European Union Member States and Their Implementation Record of ECtHR Judgments

Austria



Implementation record:
Good

Two Examples of ECtHR Judgments Pending Implementation in Austria

1. **Administrative courts' refusal to hold oral hearings in social security disputes** (Pagitsch GMBH v. Austria), pending implementation since 2021.
2. **Excessive length of proceedings concerning visiting rights** (Schrader v. Austria), pending implementation since 2021

Austria's overall record is good. The country has a low number of pending leading judgments and a moderate proportion of leading cases which are still pending implementation. The average time that these judgments have been pending is significant, because at the time the data was collected two judgments had been pending implementation for over ten years. With the exception of these two cases, Austria's record of ECtHR implementation is excellent.

6 ● Leading judgments pending implementation

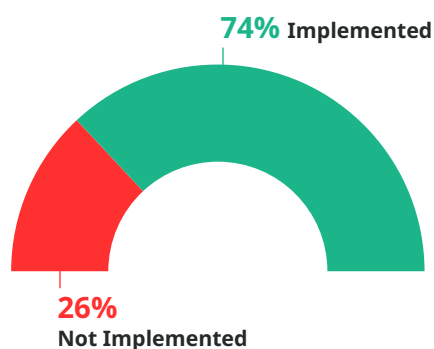
There were six leading judgments pending implementation in Austria, as of January 2022. The Austrian authorities are under an obligation to address the implementation of these judgments through general measures.

Two of these pending leading judgments concern the right to a fair trial, in particular the right to access justice and efficient functioning of justice.

4 years, 7 months ● Average time that leading judgments have been pending

Leading cases concerning Austria have been pending for an average of four years and seven months, which is a long time in comparison with neighbouring European Union states Germany and Slovakia. This figure is heavily influenced by the two fair trial cases which – as of January 2022 - had been pending for 11 and 14 years, respectively.

Percentage of the leading ECtHR cases from the last 10 years pending implementation in **Austria**



Austria has a moderate percentage of leading judgments from the last decade which are pending implementation: 26%, around four times lower than the European Union average of 39.5%. Meanwhile, it should be noted that Austria has implemented 17 ECtHR judgments in the past ten years.

Belgium



Implementation record:

Moderately poor

Four Examples of ECtHR Judgments Pending Implementation in Belgium

1. **Criminal investigations that last for over a decade** (*Abboud v. Belgium*), pending implementation since 2019.
2. **Failure to properly review unfair election claims** (*Mugemangango v. Belgium*), pending implementation since 2020.
3. **Unfounded refusal to deport murder suspect to face justice under a European arrest warrant** (*Romeo Castaño v. Belgium*), pending implementation since 2019.
4. **Lack of a court review for judges when they are suspended** (*Loquifer v. Belgium*), judgment final in October 2021.

Belgium's overall record of implementing ECtHR judgments is moderately poor. This record is determined by a moderate number of pending leading judgments and a high proportion of leading cases from the past ten years which are still pending implementation. Meanwhile, the average amount of time for which these judgments have been pending is not excessive.

21

Leading judgments pending implementation

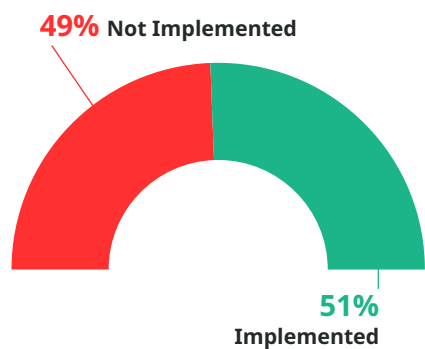
As of January 2022, there were 21 leading judgments pending implementation in Belgium. This is a moderate number of pending leading judgments: the figure stands lower than that of neighbouring France, but higher than Germany and the Netherlands. Four of these pending leading are listed in the box above. Inadequate conditions of detention in prison, inadequate care of persons with mental health problems in prison and excessive length of criminal proceedings are three of the structural human rights problems which Belgium must address by carrying out reforms.

3 years, 3 months

Average time that leading judgments have been pending

On average, leading cases have been pending in Belgium for three years and three months, which is a moderate amount of time, very similar to the same figures for neighboring Germany, the Netherlands and France. The oldest pending leading case is [Bell v. Belgium](#), which has been unimplemented since 2009. It concerns the excessive length of civil proceedings at first instance level. Close to half of the pending leading judgments against Belgium have become final in the past two years, which means they are relatively recent.

Percentage of the leading ECtHR cases from the last 10 years pending implementation in **Belgium**



Belgium has a high percentage of leading judgments from the last decade which are pending implementation: 49%, which is higher than the European Union 37.5% average. Furthermore, as of January 2022, Belgium has implemented eight ECtHR judgments in the past two years.

Bulgaria



Implementation record:
Very Serious Problem

Six Examples of ECtHR Judgments Pending Implementation in Bulgaria

1. **Excessive fines and convictions for journalists as a result of their work** (*Bozhkov v. Bulgaria*), pending implementation since 2011.
2. **Criminal conviction and fine for harmless act of peaceful political protest** (*Handzhiyski v. Bulgaria*), pending since 2021.
3. **Systemic failures to investigate rapes, murders, and other serious crimes** (*S.Z. v. Bulgaria*, *Kolevi v. Bulgaria*), pending implementation since 2009.
4. **Deaths of institutionalised children with disabilities resulting from government failures and lack of effective investigations into their deaths** (*Nencheva and others v. Bulgaria*), pending implementation since 2013.
5. **Unjustified refusals to register associations that represent a minority** (*Umo Ilinden and others v. Bulgaria*), pending implementation since 2006.
6. **Excessive use of force by law enforcement agents; ineffective investigations** (*Velikova v. Bulgaria*), pending implementation since 2000.

Bulgaria has a very serious problem regarding the implementation of ECtHR judgments. Statistics indicate a very high number of leading judgments pending implementation, second only to Romania in the EU. These judgments have been pending implementation for a long time. Finally, Bulgaria is failing to implement a high proportion of the leading judgments handed down by the Strasbourg Court.

92

● **Leading judgments pending implementation**

As of January 2022, there were **92 leading judgments pending implementation** concerning Bulgaria. This very high number of unimplemented judgments can only be effectively addressed by implementing individual or/and general measures. A small list of examples is provided in the box above.

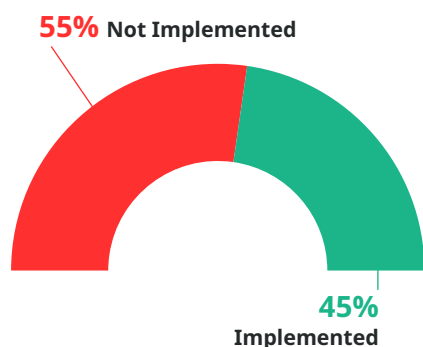
6 years, 4 months

● **Average time that leading judgments have been pending**

On average, leading cases concerning Bulgaria have been pending for **six years and four months**, which is significantly longer than the average time in neighbouring Romania and similar to Greece. One of the oldest pending leading judgments in Bulgaria is the Velikova case, which has been pending implementation since 2000. The group of cases concerns torture, ill-treatment and excessive use of firearms by law-enforcement officials, which, in a number of cases, resulted in loss of life. The implementation of this group of judgments affects a large group of vulnerable people.

The failure to implement these ECtHR judgments creates an ongoing risk that similar human rights violations continue to take place.

Percentage of the leading ECtHR cases from the last 10 years pending implementation in **Bulgaria**



Bulgaria also has a high percentage of **leading judgments from the last decade which are pending implementation: 55%**, higher than the 37.5% EU average. In the past two years, the Committee of Ministers has ended supervision for eighteen leading judgments in Bulgaria, considering that all necessary measures have been taken. These judgments cover subjects such as the right to access to and efficient functioning of justice and protection of property.

Case study: Excessive fines and criminal convictions for journalists as a result of their work

Mr Bozhkov was a journalist at the Sega national daily newspaper, working as a correspondent in his hometown of Burgas. He published an article under the headline “Bribes scandal in Burgas secondary schools,” regarding an investigation into four employees of the local education inspectorate accused of having taken bribes for admitting children to elite schools. The employees concerned lodged a criminal complaint against Mr Bozhkov. Domestic courts found Mr Bozhkov guilty of having disseminated injurious statements in printed press. He was ordered to pay fines, damages and costs totalling over 50 minimum monthly salaries.

The ECtHR delivered its judgment in 2011, ruling that Mr Bozhkov’s freedom of expression had been disproportionately interfered with. The Court considered that the applicant had acted as a responsible journalist, accurately reporting on the existing allegations. The sum which Mr Bozhkov had been required to pay had a potential chilling effect on his work and that of other journalists.

Since the judgment in Mr Bozhkov’s case, three other similar judgments were delivered by the Court in 2011, 2013 and 2017. These indicated a widespread problem of disproportionate sanctions against journalists working in the public interest. In 2016, the Bulgarian Ministry of Justice initiated a working group to discuss general measures for the implementation of this case. However, the Council of Europe is still awaiting information on relevant reforms.



“Implementation of the ECtHR judgments is one of the most serious problems with the rule of law in Bulgaria. For many years there have not been serious efforts at the national level to implement measures for the execution of most of the judgments under the enhanced procedure. Although the Committee of Ministers issued several interim resolutions on some of those groups of judgments, the Bulgarian authorities continue to turn a blind eye to their recommendations. This situation of inaction is intolerable. The Committee of Ministers and the EU institutions concerned with the rule of law should step up their efforts to address implementation by Bulgaria of the ECtHR judgments.”
Krassimir Kanev, Director of the Bulgarian Helsinki Committee

Croatia



Implementation record:

Moderate

Four Examples of ECtHR Judgments Pending Implementation in Croatia

1. **Journalists forced to pay crippling and unjustified damages after defamation claims** (*Stojanovic v. Croatia*), pending implementation since 2014.
2. **Police brutality and failures to investigate it** (*V.D. v. Croatia*), pending implementation since 2012.
3. **Failures to reunite parents with their children after custody proceedings** (*Karadžić v. Croatia*), pending implementation since 2006.
4. **Lack of protection against unlawful state surveillance** (*Dragojevic v. Croatia*), pending implementation since 2015.

Croatia has a moderate record of ECtHR implementation. The country has a moderate number of leading judgments pending implementation, which have been pending for a significant amount of time. The proportion of leading cases from the past ten years which are still pending implementation is moderate.

25

Leading judgments pending implementation

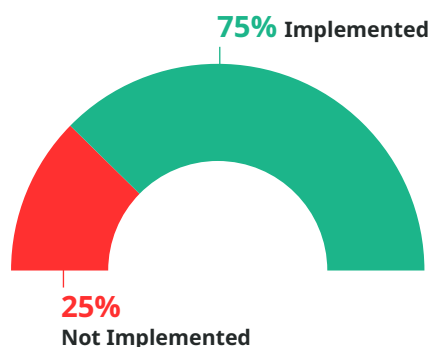
As of January 2022, there were **25 leading ECtHR judgments pending implementation** in relation to Croatia. More than half of these have been delivered by the Court in the past two years, and are therefore quite recent. Several examples of systemic human rights problems in Croatia, which have been identified by the ECtHR, are listed in the box above. National authorities are under the obligation to address the implementation of these judgments by taking general measures. For example, Croatia must align its case-law on defamation with the freedom of expression principles and the criteria laid down in the Court's case-law (*Stojanovic v. Croatia*). The authorities are also required to take measures to prevent police ill-treatment and to ensure effective investigations into police ill-treatment, in order to implement the *V.D. v. Croatia* judgment.

4 years, 3 months

Average time that leading judgments have been pending


On average, leading cases concerning Croatia have been pending for an average of **four years and three months** which is a significant period of time in comparison with neighbouring Slovenia, but shorter than Hungary. Many of the judgments have not been pending for a long time. However, a series of judgments have been pending much longer – such as the *Karadžić* case concerning the failure to reunite parents with their children, which has been pending since 2006.

Percentage of the leading ECtHR cases from the last 10 years pending implementation in **Croatia**



Croatia has a moderate percentage **of leading judgments from the last decade which are still pending implementation: 25%**. The Committee of Ministers has ended the supervision of 33 leading cases in the last two years. The Committee of Ministers agreed that the authorities have taken all necessary measures to implement them. These closures indicate that the Croatian authorities have been active in addressing some implementation issues. The government has also requested case closure of six other leading cases pending implementation. In December 2021, the authorities requested closure of the *Skendzic and Krznaric v. Croatia* case, which concerns a lack of effective and independent investigations into crimes committed during the Croatian Homeland War, and the *Secic v. Croatia* case, which concerned the failure to carry out an effective investigation into a racist attack on a Roma person.

Cyprus



Implementation record:
Problematic

Three Examples of ECtHR Judgments Pending Implementation in Cyprus

1. **Unfair procedures for the removal of judges** (*Kamenos v. Cyprus*), pending implementation since 2017.
2. **Failure to ensure impartiality of judges** (*Koulias v. Cyprus*), pending implementation since 2020.
3. **Police brutality and failure to investigate it** (*Khani Kabbara v. Cyprus*), pending implementation since 2018.

Cyprus has a problematic ECtHR implementation record. It is the subject of a low number of judgments from the European Court of Human Rights. However, the judgments it does have are not well implemented. This is reflected by the data: there are a moderately low number of leading judgments pending, which have been pending for a moderately low amount of time. However, of the leading cases which have been passed down by the ECtHR, a very high proportion are still pending implementation.

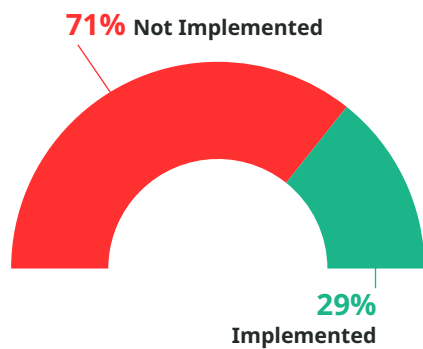
10 ● **Leading judgments pending implementation**

There were **ten leading judgments pending implementation** in Cyprus, as of January 2022. Three examples of systemic human rights problems in Cyprus, which have been identified by the ECtHR, are listed in the box above. Cypriot authorities are under the obligation to address the implementation of these judgments by taking general measures addressing the conditions of detention in prison, the effectiveness of investigations into police violence and safeguards in deportation proceedings.

2 years, 7 months ● **Average time that leading judgments have been pending**

On average, leading cases have been pending in Cyprus for an average of two years and seven months, which is a moderately low amount of time in comparison with other European Union states. The oldest pending leading judgment is *M.A. v. Cyprus*, which has been pending implementation since 2013. It concerns the lack of a remedy with automatic suspensive effect in deportation proceedings and the absence of speedy review of lawfulness of detention.

Percentage of the leading ECtHR cases from the last 10 years pending implementation in **Cyprus**



Cyprus has a very high percentage of leading judgments from the last decade which are pending implementation at 71%, much higher than the 37.5% European Union average. Over the last two years, it has implemented only one leading case.

Czech Republic



Implementation record:

Excellent

Two ECtHR judgments Pending Implementation in the Czech Republic

1. **Discriminatory segregation of Roma children in special schools based on their ethnicity** (*D.H. and others v. the Czech Republic*), pending implementation since 2007.
2. **Lack of fairness in a particular criminal procedure** (*Tempel v. the Czech Republic*), pending implementation since 2020.

The Czech Republic has an excellent ECtHR implementation record. The country has a very low number of leading judgments pending implementation, as well as one of the lowest proportions of leading cases which are still pending implementation in the European Union. There is, however, one case that has been pending for a very long time (concerning segregation in schools of children from a Roma background). This makes the average time that leading judgments have been pending very high. With the exception of this case, the ECtHR implementation record of the Czech Republic is exemplary.

2

Leading judgments pending implementation

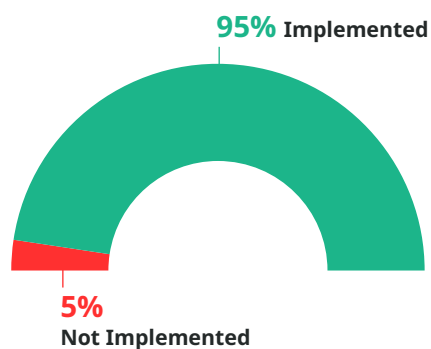
As of January 2022, there were only **two leading ECtHR judgments pending implementation** regarding the Czech Republic. These judgments are listed in the box above. The Czech government has been a good example of leadership and good practice on implementation, having achieved this result through concerted efforts directed towards ECtHR implementation. In the past ten years, the Czech authorities have implemented over 40 leading judgments.

7 years, 8 months

Average time that leading judgments have been pending

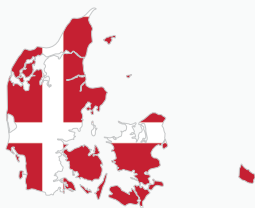
On average, the two leading ECtHR cases which are pending in relation to the Czech Republic have been unimplemented for **seven years and eight months**. This number can be explained by the fact that the *D.H. and others v. the Czech Republic* judgment, which concerns discrimination in education of Roma children, has been pending implementation for 14 years. A range of measures have been taken by the authorities aiming to address this over the years, but they are not yet sufficient. Until December 2021, the Czech authorities have submitted nine action plans in this case, but they have never requested case closure.

Percentage of the leading ECtHR cases from the last 10 years pending implementation in **the Czech Republic**



The efforts of Czech authorities directed towards ECtHR implementation have also led to a very low percentage of leading judgments from the last decade which are pending implementation: 5%. This is one of the best implementation records in the European Union.

Denmark



Implementation record:

Excellent

One Example of an ECtHR Judgment Pending Implementation in Denmark

1. Degrading treatment of a psychiatric patient (*Aggerholm v. Denmark*), pending implementation since 2020.

Denmark has one of the best implementation records in the European Union. The country has a very low number of leading judgments pending implementation. The average time for which these leading judgments have been pending is very low. The percentage of leading cases from the last ten years which are still pending implementation is very high, but only because the judgments have been delivered very recently.

3

Leading judgments pending implementation

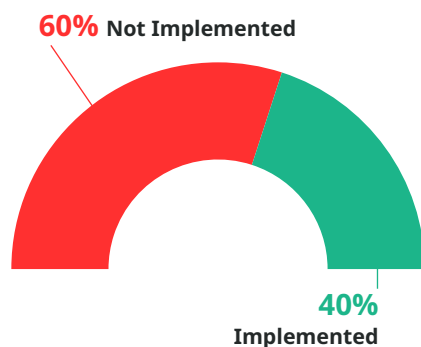
As of January 2022, there were only **three leading judgments pending implementation** in Denmark. One of them is presented in the box above.

6 months

Average time that leading judgments have been pending

The three unimplemented leading cases have been pending in Denmark for an average of **six months**, which is one of the shortest amounts of time that leading cases have been pending in the whole European Union.

Percentage of the leading ECtHR cases from the last 10 years pending implementation in the **Denmark**



Denmark has a **very high percentage of leading judgments from the last decade which are pending implementation: 60%**. However, this is because since 2012, only five leading judgments have been delivered by the ECtHR against Denmark. Two of these judgments, which concern protection of rights in detention and protection of private and family life of migrants, have been closed. The other three were made final in 2020 and 2021. They remain pending implementation.

Estonia



Implementation record:

Excellent

One ECtHR Judgment Pending Implementation in Estonia

1. **Failure to conduct an effective criminal investigation into sexual abuse allegations** (*R.B. v. Estonia*), pending implementation since September 2021.

Estonia has one of the best ECtHR implementation records in the European Union. It has a very low number of pending leading judgments, a very low percentage of pending leading judgments from the last decade, and a very low average pending time. This is because there is only one leading ECtHR judgment pending in relation to the country – which is only a few months old.

1

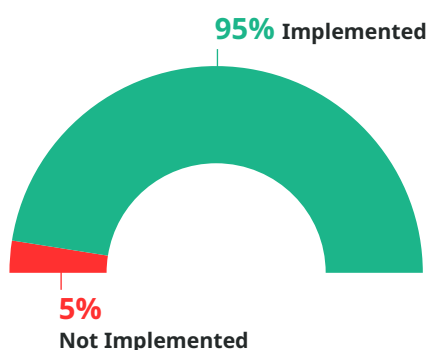
Leading judgments pending implementation

As of January 2022, only one ECtHR judgment was pending implementation, and this judgment became final very recently in September 2021: *R.B. v. Estonia*. The case concerns the failure to conduct an effective criminal investigation, in 2012, into the applicant's allegations of sexual abuse by her father.

3 months

Average time that leading judgments have been pending

Percentage of the leading ECtHR cases from the last 10 years pending implementation in **Estonia**



Estonia has a **very low percentage of leading judgments from the last decade which are pending implementation: 5%.**

Overall, to date, the supervision of 33 leading ECtHR judgments have been ended by the Committee of Ministers in respect of Estonia. Three of these cases were implemented in the past two years.

Finland



Implementation record:

Problematic

Four Examples of ECtHR Judgments Pending Implementation in Finland

1. **Fines for journalists writing in the public interest** (*Eerikainen and others v. Finland*), pending implementation since 2009.
2. **Failure to properly regulate police powers of search and seizure** (*Petri Sallinen and others v. Finland*), pending implementation since 2005.
3. **Unfair criminal procedures due to the non-disclosure of critical information** (*V. v. Finland*), pending implementation since 2007.
4. **Lack of safeguards for involuntary confinement of persons with mental disabilities** (*X. v. Finland*), pending implementation since 2012.

Finland's ECtHR implementation record is quite problematic. There are only a small number of violations found against Finland by the ECtHR, but the majority of the few cases that do exist are not being implemented by the Finnish authorities. This is reflected in the three key pieces of data. Finland is not the subject of a high number of judgments, so the overall number of leading judgments pending is low. However, there are a very high proportion of leading cases which are still pending implementation (one of the highest among all European Union Member States). This also correlates with a very long average length of time that these cases have been pending.

9

● Leading judgments pending implementation

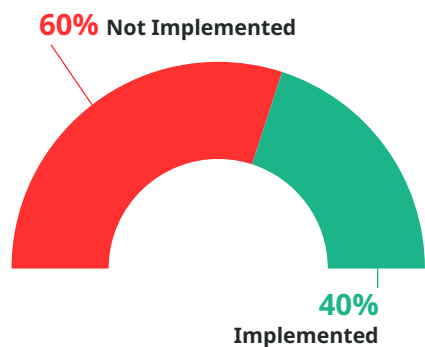
As of January 2022, there were **9 leading judgments pending implementation in Finland**. These **can only be effectively addressed by the Finnish authorities through individual and/or general measures**. Four examples of systemic human rights problems in Finland are listed in the box above.

11 years, 11 months

● Average time that leading judgments have been pending

On average, leading cases have been pending in Finland for an average of **11 years and 11 months**, which is by far the longest average length of time in any of the 27 states of the European Union, as well as in the 47 states of the Council of Europe. This excessive length of time is due to the inactivity of Finnish authorities when it comes to ECtHR implementation. Six of the leading judgments have been pending implementation for over twelve years. The oldest pending case in Finland is the [*Petri Sallinen and others*](#) case, which concerns search and seizure measures that were not in accordance with the law. It has been pending implementation for 17 years.

Percentage of the leading ECtHR cases from the last 10 years pending implementation in **Finland**

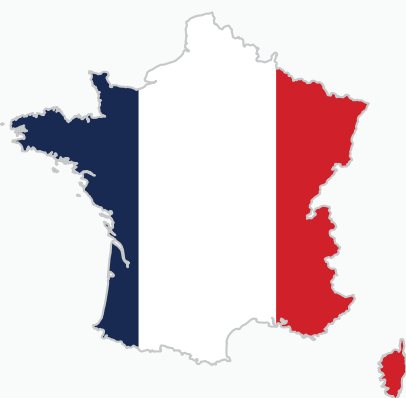


The passivity of the authorities with regard to ECtHR implementation contributes to the risk that similar human rights violations will re-occur. Of all European Union states, Finland has one of the highest percentages **of leading judgments from the last decade which are pending implementation: 60%, being surpassed by only Cyprus, Hungary and Spain**. Only one leading judgment has been implemented in Finland in the past two years ([Kotilainen and others v. Finland](#))

Regarding the authorities' reporting obligations to the Committee of Ministers, as of January 2022, Finnish authorities had submitted three action reports and seven action plans in leading cases currently pending implementation. Over half of these documents concern

the [X. v. Finland case](#), which concerns unlawful psychiatric confinement, as well as the [Nykänen group](#), which concerns the right not to be punished twice for the same offence. This means that for most of the leading cases pending, Finland is not engaging with the Council of Europe about their implementation.

France



Implementation record:

Moderate

Five Examples of ECtHR Judgments Pending Implementation in France

1. **Excessive use of force by police** (*Boukrourou and others v. France*), pending implementation since 2018.
2. **Failure to protect child from lethal abuse** (*Association Innocence en Danger and Association Enfance et Partage v. France*), pending since 2020.
3. **Unfair criminal convictions for boycott campaign** (*Baldassi and others v. France*), pending implementation since 2020.
4. **Unfair criminal proceedings** (*M.D. and A.D. v. France, Dumenil v. France, Garcia y Rodriguez v. France*), pending since 2021.
5. **Disproportionate convictions for publishing open letter** (*Tête v. France*), pending since 2020.

While the figures set out below leave room for progress, France has an overall moderate ECtHR implementation record. The overall number of pending leading judgments and the proportion of leading cases which are still pending implementation are both moderate. Meanwhile, the average length of time that the leading cases have been pending implementation is moderately low.

25

Leading judgments pending implementation

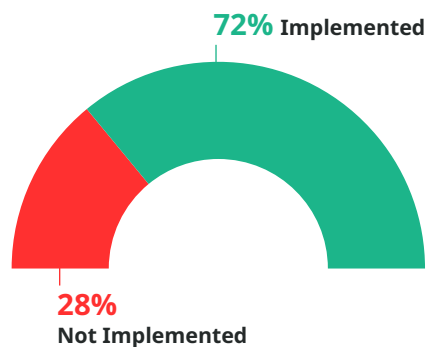
As of January 2022, there were **25 leading judgments pending implementation in France**. Examples of systemic human rights problems in France are listed in the box above. French authorities must now take specific general measures to address a series of issues, including police brutality, child abuse, and the right to a fair trial.

2 years, 11 months

Average time that leading judgments have been pending

On average, leading cases have been pending in France for **two years and eleven months**, which is a moderately low length of time, comparable with the same figure for neighbouring Spain, Germany and Belgium. More than half of the pending leading judgments against France became final in the past two years. However, the oldest pending leading group of judgments against France has been pending implementation since 2010: it concerns the inaction of the authorities in the execution of judiciary measures of expulsion regarding illegally occupied lands (*Barret and Sirjean v. France* group of cases).

Percentage of the leading ECtHR cases from the last 10 years pending implementation in **France**



The percentage of leading judgments from the last decade which are pending implementation in France is lower than the European Union average, standing at 28%. This figure is significantly better than those for neighbouring Germany, Spain, Italy, and Belgium, which all have a much higher percentage of unimplemented judgments. In the past two years, France has finalised the implementation process of 11 leading ECtHR judgments.

Germany



Implementation record:

Moderate

Three Examples of ECtHR Judgments Pending Implementation in Germany

1. **Lack of procedural safeguards when investigating lawyers' bank accounts** (*Sommer v. Germany*), pending implementation since 2017.
2. **Failure to investigate allegations of police brutality** (*Hentschel and Stark v. Germany*), pending implementation since 2018.
3. **Unjustified and repeated strip searches in prison** (*Roth v. Germany*), pending since 2021.

Germany has a moderate record in implementing judgments of the ECtHR. The country has a moderately low number of pending leading judgments; and the average amount of time for which these judgments have been pending is also moderate. Meanwhile, a significant proportion of leading cases from the last ten years are still pending implementation.

13

● **Leading judgments pending implementation**

As of January 2022, there were **13 leading ECtHR judgments pending implementation** relating to Germany. National authorities are under an obligation to address the implementation of these judgments through general measures. For example, for the implementation of *Roth v. Germany*, the authorities should take measures to put an end to intrusive strip searches in prison and ensure an effective remedy before a national authority to deal with such complaints.

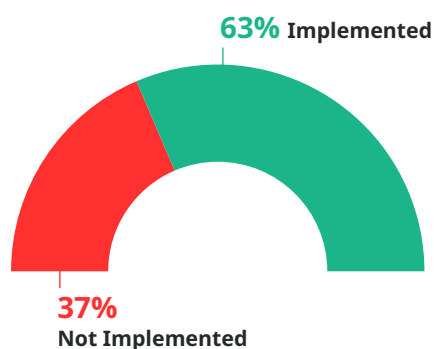
3 years, 2 months

● **Average time that leading judgments have been pending**

On average, leading cases have been pending in Germany for an average of **three years and two months**. This is a moderate period of time, similar to that in neighbouring European Union states France, Belgium and the Netherlands, while significantly lower than the same figure for Austria and Poland. Five of the pending leading judgments against Germany have not been pending for long, as they only became final in 2020 and 2021.

The oldest pending leading judgment relating to Germany is [*Madaus v. Germany*](#), which concerns the lack of an oral hearing in civil proceedings under the Criminal Rehabilitation Act: it has been pending implementation since September 2016.

Percentage of the leading ECtHR cases from the last 10 years pending implementation in **Germany**



Germany has a moderate percentage **of leading judgments from the last decade which are pending implementation: 37%, which is almost the same as the 37.5% European Union average.** As of January 2022, the German authorities had complied with their reporting obligations in ten of the thirteen pending leading cases, by submitting either action plans, or action reports.

Greece



Implementation record:
Significant Problem

Five Examples of ECtHR Judgments Pending Implementation in Greece

1. **Failures to enforce court judgments** (*Beka-Koulocheri v. Greece*), pending implementation since 2006.
2. **Disproportionate convictions and fines for journalism carried out in good faith** (*Katrami v. Greece; Vasilakis v. Greece*), pending implementation since 2008.
3. **Police torture and ill-treatment** (*Sidiropoulos and Papakostas v. Greece*), pending implementation since 2004.
4. **Refusal to register non-profit associations for particular minorities** (*Bekir-Ousta and others v. Greece; House of Macedonian Civilization and others v. Greece*), pending implementation since 2008 and 2015.
5. **Failures to investigate hate crimes** (*Sakir v. Greece*), pending implementation since 2016.

Greece has a significant ECtHR implementation problem. Statistics indicate a significant number of pending leading judgments. Furthermore, a significant percentage of leading cases handed down by the Strasbourg Court are still pending implementation. Finally, these judgments have been pending implementation for a long time.

34

Leading judgments pending implementation

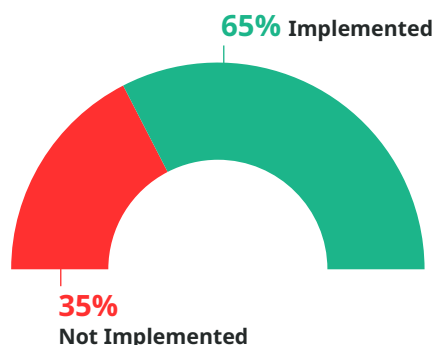
As of January 2022, there were **34 leading judgments pending implementation** in Greece. This significant number of unimplemented judgments can only be effectively **addressed by implementing individual or/and general measures**. A small number of the issues pending implementation are listed in the box above. For example, measures to address police brutality and conduct effective investigations are required for the implementation of the Sidiropoulos and Papakostas case (the ECtHR first identified an issue in this area in 2004).

6 years, 5 months

Average time that leading judgments have been pending

On average, leading ECtHR cases have been pending regarding Greece for **six years and five months**, which is significantly longer than the average time in neighbouring non-EU states Albania or North Macedonia, and similar to Bulgaria. The oldest pending leading judgment in Greece is *Satka and others v. Greece*, which has been pending since 2003. It concerns violations of the right to property due to blocking the use of the land by virtue of successive pieces of legislation, without expropriation.

Percentage of the leading ECtHR cases from the last 10 years pending implementation in **Greece**



Greece also has a significant percentage **of leading judgments from the last decade which are pending implementation: 35%**. This is slightly lower than the 37.5% EU average. In the past two years, the Committee of Ministers ended the supervision of 25 leading judgments in Greece, considering that all necessary measures had been taken to implement them. This demonstrates that, although Greece has a significant problem in addressing longstanding human rights problems, it is engaging with the ECtHR implementation process.

Case study: Refusal to register Turkish associations

In 1995, Hasan Bekir-Ousta and other applicants – all Greek nationals living in the Evros region – set up a non-profit association called the Evros Prefecture Minority Youth Association. The association was designed to protect and promote the traditions of the local Turkish ethnic minority, develop relations between its members, and protect human rights, democracy and friendship between Greek and Turkish people.

However, in 1996, the Greek courts refused to register the association, holding that the Treaty of Lausanne recognised only a Muslim but not a Turkish minority in Western Thrace and that the name of the association was confusing. In 2008, the European Court of Human Rights found a violation of the right to freedom of association.

Thirteen years after the judgment of the Court – and 26 years after the first attempt to register the association – the organisation has still not been registered. The ECtHR has delivered similar judgments in two other cases. However, the Greek courts continue to refuse to register Turkish associations. In 2021, the Committee of Ministers deplored the fact that the associations still have not been registered. The case remains open and pending implementation.



“In Greece, there is unfortunately an interpartisan consensus not to implement ECtHR judgments concerning Turkish and Macedonian minority associations, effective prosecution of hate crimes and police torture and ill-treatment. At the same time, even though those concerned voice their protest against disproportionate punishment of journalists and non-enforcement of court judgments, consecutive governments of the right, the center and the left have failed to take the appropriate implementation measures. However strong a measure it may be, an infringement procedure concerning the ban of minority associations confirmed by the Supreme Court in 2021 is necessary to be launched in 2022.” - Panayote Dimitras, Spokesperson for the Greek Helsinki Monitor

Hungary



Implementation record:
Very Serious Problem

Five Examples of ECtHR Judgments Pending Implementation in Hungary

1. **Systemic threats to judicial independence** (*Baka v. Hungary*), pending implementation since 2016 – more information below.
2. **Torture and ill-treatment by police officers** (*Gubacsi v. Hungary*), pending implementation since 2011.
3. **Laws enabling secret surveillance of “virtually anyone” by the state** (*Szabo and Vissy v. Hungary*), pending implementation since 2016.
4. **Unreasonable limits of journalistic activities** (*Mandli and others v. Hungary*), pending implementation since 2020.
5. **Discriminatory assignment of Roma children to schools for children with mental disabilities** (*Horvath and Kiss v. Hungary*), pending implementation since 2013.

Hungary has one of the poorest records in the European Union for the implementation of leading judgments of the European Court of Human Rights. The statistics below show that there are a high number of leading judgments pending implementation – and that these have been pending for a long period of time. Most strikingly, the data indicates that Hungary is implementing only a minority of the leading judgments handed down by the Strasbourg Court.

47

● Leading judgments pending implementation

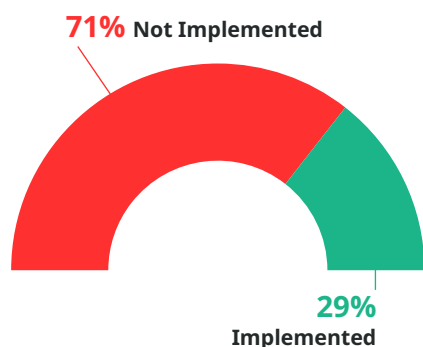
As of January 2022, there were **47 leading judgments pending implementation** in Hungary. This is a high amount – the fourth highest of any country in the European Union, coming after Romania, Bulgaria, and Italy. Each of these pending judgments represents a **human rights problem**. A small number are listed in the box above. They can only be effectively **addressed by implementing individual and general measures**.

6 years, 3 months

● Average time that leading judgments have been pending

On average, leading cases have been pending in Hungary for over **six years and three months**. One of the oldest pending leading judgments in Hungary is the [Patyi and others](#) case, which has been pending implementation since 2009. The case concerns violations of the right to freedom of assembly due to bans on demonstrations that were either unjustified or devoid of a legal basis. Today, the Patyi group has ten repetitive cases. Even though in 2018 the Parliament adopted a new Assembly Law, Hungary has failed to fully resolve the structural deficiencies that have led to the violations in order to prevent similar violations from recurring – meaning that leading cases remain pending implementation year after year.

Percentage of the leading ECtHR cases from the last 10 years pending implementation in **Hungary**



Most notably, of all European Union states, Hungary has implemented one of the lowest proportions of leading judgments rendered against it from the last ten years – as **71% of the leading judgments from the last decade are pending full implementation**. In the past two years, the authorities have implemented 14 leading judgments concerning subjects ranging from fair trial to freedom of expression.

The data shows that there is **significant room for improving the ECtHR implementation record of Hungary**. Systemic problems revealed by the European Court of Human Rights are not being resolved.

Case study: Independence of the Judiciary in Hungary – the case of András Baka



In 2009, András Baka was elected as President of the Hungarian Supreme Court for a six-year term. Two years into his mandate, Mr Baka criticised legislative reforms that would fundamentally affect and endanger the independence of the Hungarian judiciary. As a result of his public comments, Mr Baka was forced out of office years before the end of his mandate, following a change in the law designed specifically to remove him. In 2016, the European Court delivered its judgment in the case, finding that this law had been incompatible with the rule of law. It held that his removal was prompted by the views and criticisms that he had publicly expressed in his professional capacity, and realised through a legislative measure, which he could not challenge, violating not only Mr Baka's right of access to a court and his freedom of expression,

but also creating a “chilling effect” on other judges. The case has been pending implementation since 2016. Despite the heavy stakes for the rule of law in the country, the authorities have failed to take steps to implement the judgment. Instead, structural deficiencies that contribute to a chilling effect on the freedom of expression of judges have remained in place and even intensified, according to Amnesty International and the Hungarian Helsinki Committee.

In September 2021, the Committee of Ministers criticised the continuing absence of the necessary safeguards and “firmly urged” authorities to provide information on their plans to guarantee that judicial mandates will not be terminated in an abusive manner as was seen in Mr Baka's case.



Hungarian Helsinki Committee

“Behind Hungary's poor track record of the implementation of ECtHR judgments lie institutional reasons as well as an increasing unwillingness to implement court decisions that are unfavourable for the government. General measures necessary to prevent repeated human rights violations are often not taken, contributing to the increasing caseload of the Court. Thus, national structures responsible for the implementation of judgments and for the supervision of that process should be reorganised with a view to ensure transparency and inclusivity of various professional groups.” - Statement by the Hungarian Helsinki Committee

Ireland



Implementation record:

Good

Two ECtHR Judgments Pending Implementation in Ireland

1. **Historical allegations of sexual abuse of children** (*O'Keeffe v. Ireland*), pending implementation since 2014
2. **Excessive length of decade-long court proceedings** (*McFarlane v. Ireland*), pending implementation since 2010.

Ireland has a good ECtHR implementation record. The Strasbourg Court very rarely finds a violation of the European Convention on Human Rights concerning Ireland and the country has a very low number of leading judgments pending implementation. The proportion of leading cases which are still pending implementation is lower than the European average. However, there are two leading cases pending implementation and these have been pending for a long time. Due to the non-execution of these cases, the average amount of time for which leading judgments have been pending is very high.

2

Leading judgments pending implementation

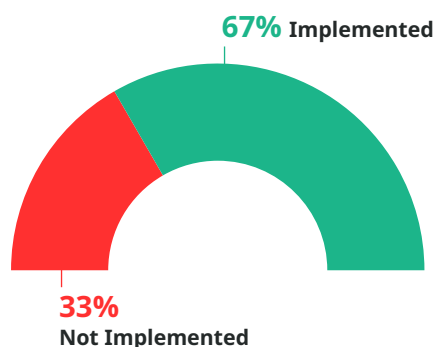
As of January 2022, there were **two leading judgments pending implementation** in Ireland, which are mentioned in the box above. National authorities are under the obligation to address the implementation of these judgments through general measures. For example, for the implementation of *O'Keeffe v. Ireland*, among other measures already taken, the authorities must effectively handle compensation claims for historic abuse in schools.

9 years, 7 months

Average time that leading judgments have been pending

These two leading cases have been pending implementation for an average of **nine years and seven months**, which is a very long time. It is the second longest average time for which ECtHR judgments have been pending in an European Union state, after Finland. It results from two leading judgments that have not been implemented since 2010 and 2014. Therefore, it is not indicative of a widespread implementation problem – but certainly of the existence of a serious issue in these two cases, both of which require a series of complex general measures in order to be implemented.

Percentage of the leading ECtHR cases from the last 10 years pending implementation in **Ireland**



The percentage **of leading judgments from the last decade which are pending implementation stands at 33%, which is lower than the 37.5% European Union average**. The last ECtHR judgment implemented by Irish authorities was in 2019, *Independent Newspapers (Ireland) Weekly v. Ireland*, concerning defamation awards. Irish authorities have complied with their reporting obligations with the two pending cases, having submitted 20 action plans concerning their implementation to the Committee of Ministers. Furthermore, the Irish government has not yet called for case closure in these cases.

Italy



Implementation record:
Very Serious Problem

Five Examples of ECtHR Judgments Pending Implementation in Italy

1. **Criminal convictions for acts of free speech on matters of the public interest** (*Belpietro v. Italy*), pending implementation since 2013.
2. **Failures to enforce court judgments** (*Therapic Center S.r.l. and Others v. Italy*), pending implementation since 2018.
3. **Extremely long court proceedings across the Italian justice system** (*Abenavoli v. Italy*, *Ledonne v. Italy (no.1)*, *Barletta and Farnetano v. Italy*), with the first case dating from 1997.
4. **Failures to address domestic violence** (*Talpis v. Italy*), pending implementation since 2017.
5. **Police brutality not properly criminalised** (*Cestaro v. Italy*), pending implementation since 2015.

Italy has a particularly poor record of implementing the Strasbourg Court's judgments. Statistics indicate a very high number of leading judgments pending implementation, as well as a high percentage of leading cases which are still pending implementation. Furthermore, these judgments have been pending implementation for a significant period of time.

58

● **Leading judgments pending implementation**

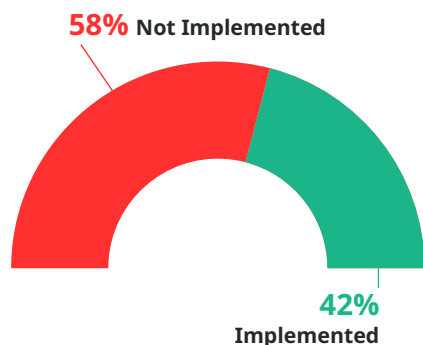
As of January 2022, there are **58 leading judgments pending implementation** in Italy. Five of these systemic problems are listed in the box above. This is a high number of unimplemented judgments, which can only be effectively addressed by implementing individual or/and general measures. For example, the *Ledonne v. Italy (no.1)* case requires criminal justice reform to reduce the length of proceedings; while this reform was initiated in 2017, further measures are required to achieve full implementation.

5 years, 10 months

● **Average time that leading judgments have been pending**

On average, leading cases have been pending concerning Italy for **over five years and ten months**, which is significantly longer than the average time in neighbouring states France and Slovenia. The oldest pending leading judgments against Italy are *Ledonne (no .1)* and *Abenavoli*, which have been pending implementation since 1999 and 1997, respectively. They concern the excessive length of criminal and administrative proceedings. The delayed implementation of these judgments creates an ongoing risk that similar violations will continue to occur.

Percentage of the leading ECtHR cases from the last 10 years pending implementation in **Italy**



Italy also has a high percentage of **leading judgments from the last decade which are pending implementation: 58%**, much higher than the European Union average of 37.5%. In the past two years, the Committee of Ministers has ended supervision of eleven leading judgments in Italy, considering that all necessary measures had been implemented.

Case study: Criminal convictions or fines for defamation for newspaper editors

In 2004, Mr Belpietro was the director of the *Il Giornale* newspaper. He published an article, signed by senator R.I., entitled “Mafia, thirteen years of disputes between the prosecution and the carabinieri”. Considering that this article had defamed them, two prosecutors lodged a criminal complaint against Mr Belpietro and R.I. The domestic courts decided that Mr Belpietro had breached his duty to verify the content and presentation of the article. He was ordered to pay a criminal fine of EUR 110,000 and given a suspended prison sentence of four months.

The ECtHR delivered its judgment in 2013. The Court ruled that the imposition of a criminal fine or a prison sentence – even if suspended – amounted to a disproportionate interference with the freedom of expression, given the significant deterring effect on free discussion of a matter of public interest. Since the judgment has been pending implementation, two more similar cases have been added to this group: *Sallusti v. Italy* and *Magosso and Brindani v. Italy*. These also concern unreasonable criminal convictions of newspaper directors.

The Italian authorities have provided no evidence to the Council of Europe to demonstrate that this problem has been resolved. The *Belpietro* case has been pending implementation for eight years.



*“While the number of pending cases against Italy has slightly decreased since last year, dropping from 56 to 54, this is not necessarily good news. In fact, at least for one of the cases for which the Committee of Ministers has decided to close its supervision - *Khlaifia and others v. Italy* -, our country is still far from having implemented all the measures that are necessary to prevent similar human rights violations from occurring.*

Alongside other civil society organisations, we have been trying to push for the implementation of the pending judgments by submitting Rule 9.2 Communications; however, the Italian government has not responded adequately and promptly to these calls so far.” - Gennaro Santoro, Legal Advisor at the Italian Coalition for Civil Liberties and Rights

Latvia



Implementation record:

Very Good

Two Examples of ECtHR Judgments Pending Implementation in Latvia

1. **Unnecessary seizures of legally confidential material** (*Moculskis v. Latvia*), pending implementation since 2020.
2. **Blanket ban on prison leave for male prisoners in closed prisons** (*Ecis v. Latvia*), pending implementation since 2019.

Latvia has a very good ECtHR implementation record. The country has a low number of leading judgments pending implementation, which have been pending for a short amount of time, as well as a low proportion of leading cases which are still pending.

7

Leading judgments pending implementation

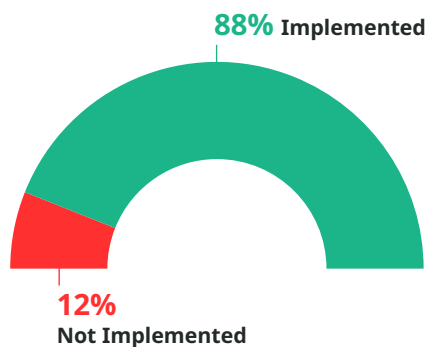
As of January 2022, there were **seven leading judgments pending implementation** in Latvia. Two examples of systemic human rights problems in the country are presented in the box above. The seven unimplemented judgments should be effectively addressed by the Latvian authorities through individual and/or general measures.

1 year, 5 months

Average time that leading judgments have been pending

On average, leading cases have been pending in Latvia for **one year and five months**. Latvia's pending leading cases all became final in 2020 or 2021, with the exception of the *Ecis* case, which is pending implementation since January 2019. The country does not have judgments that have been pending implementation for a long time.

Percentage of the leading ECtHR cases from the last 10 years pending implementation in **Latvia**



Latvia also has a low percentage of **leading judgments from the last decade which are pending implementation: 12%, which is around three times lower than the European Union average**. The supervision of six leading cases was ended in the past two years, as the Committee of Ministers considered all necessary measures had been taken for their implementation.

Lithuania



Implementation record:

Moderate

Three Examples of ECtHR Judgments Pending Implementation in Lithuania

1. **Failure to investigate alleged murder** (*Tumėnienė v. Lithuania*), pending implementation since 2019.
2. **Failure to investigate extremist online homophobic hate speech** (*Beizaras and Levickas v. Lithuania*), pending implementation since 2020.
3. **Imprisonment in psychiatric hospital without an oral hearing** (*D.R. v. Lithuania*), pending implementation since 2018.

Lithuania has a moderate implementation record. The country has a moderately low number of leading judgments pending, which have been pending for a moderate amount of time, as well as a moderately low proportion of leading cases which are still pending implementation.

16

● **Leading judgments pending implementation**

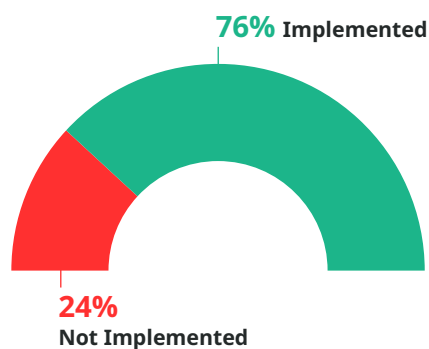
As of January 2022, there were **16 leading judgments pending implementation** in Lithuania. Three examples of systemic human rights problems in the country are listed in the box above. These unimplemented judgments should be effectively addressed by the national authorities through individual and/or general measures. The most recent ECtHR judgment in respect of Lithuania concerns the non-recognition as religious association, in 2019, of a non-traditional (pagan) association (*Ancient Baltic Religious Association “Romuva” v. Lithuania*).

3 years, 9 months

● **Average time that leading judgments have been pending**

On average, leading cases have been pending in Lithuania for an average of **three years and nine months**, which is more than double than in neighbouring Latvia, for which the figure is less than two years. Five pending leading cases in Lithuania have become final in the past two years, while the oldest pending case is *L. v. Lithuania*, which concerns lack of legislation governing the conditions and procedures relating to gender reassignment. This latter case has been pending implementation for thirteen years.

Percentage of the leading ECtHR cases from the last 10 years pending implementation in **Lithuania**



Lithuania also has a moderate percentage **of leading judgments from the last decade which are pending implementation: 24%, which is lower than the European Union average**. In the past two years, the Lithuanian government has implemented 13 leading judgments, according to the Committee of Ministers. These cases concerned subjects ranging from protection against ill-treatment at the hands of police upon arrest (*Zematis v. Lithuania*) to protection of private life related to non-enforcement of custody decisions (*Rinau v. Lithuania*).

Luxembourg



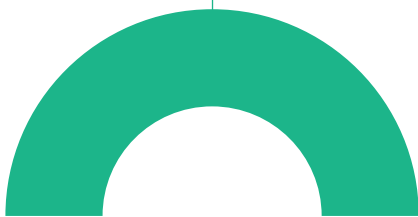
Implementation record:

Perfect

Implementation of ECtHR judgments has not been problematic for the Luxembourg authorities, as the few judgments pronounced in respect of Luxembourg in the past ten years have already been implemented. Their supervision by the Committee of Ministers has ended.

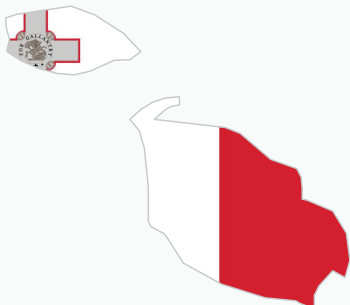
Percentage of the leading ECtHR cases from the last 10 years pending implementation in **Luxembourg**

100% Implemented



Therefore, as of 1 January 2022 the overall record of implementation of Luxembourg is perfect, as there are no leading judgments against the state which are still pending implementation. Since 2012, Luxembourg has implemented 10 leading ECtHR judgments, taking measures to address, for example, the absence of a judicial review of revocation of releases on parole (*Etute v. Luxemburg*), and measures to grant additional rights to suspects in criminal proceedings, in line with four Directives of the European Union (*A.T. v. Luxemburg*).

Malta



Implementation record:
Moderately poor

Four Examples of ECtHR Judgments Pending Implementation in Malta

1. **Lack of independence and impartiality in proceedings for unfair dismissal** (*Grace Gatt v. Malta*), pending implementation since 2020.
2. **Excessively long criminal proceedings** (*Galea and Pavia v. Malta*), pending since 2020.
3. **Unlawful ban on a theatre production** (*Unifaun Theatre Productions and other v. Malta*), pending implementation since 2018.
4. **Expropriation without timely and adequate compensation** (*Galea and others v. Malta*), pending implementation since 2018.

Malta has a moderately poor record of ECtHR implementation. The country is not the subject of a high number of judgments from the Strasbourg Court and there are a moderately low number of leading judgments pending implementation. However, when violations are found by the ECtHR, the judgments of the Court are not being implemented consistently. This is demonstrated by the fact that the proportion of leading cases which are still pending implementation is quite high. Furthermore, the average amount of time for which these judgments have been pending is significant, indicating that several cases have been pending for a long time.

13

● **Leading judgments pending implementation**

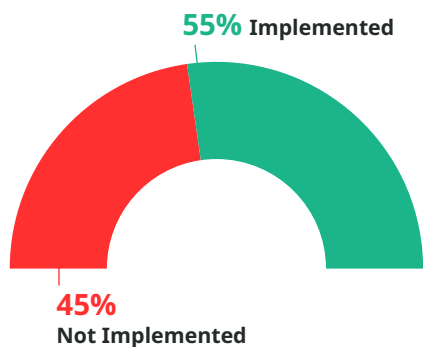
As of January 2022, there were currently **13 leading judgments pending implementation** in regard to Malta. This is a moderately low number of pending leading judgments. Four of these judgments are listed in the box above. Four of the pending leading judgments in Malta concern either rent control legislation, or disproportionate control of property in the context of landlord-tenant relationship. These groups of judgments alone are composed of over 30 repetitive judgments; the Maltese authorities have the obligation to take individual and general measures to implement them.

5 years, 1 months

● **Average time that leading judgments have been pending**

On average, leading cases have been pending in Malta for **five years and one month**, which is a significant amount of time. One of the oldest cases is the Ghigo group of judgments, which has been pending implementation since 2006: it concerns the disproportionate control of the applicants' property.

Percentage of the leading ECtHR cases from the last 10 years pending implementation in **Malta**



Malta has quite a high percentage **of leading judgments from the last decade which are pending implementation: 45%, higher than the European Union average**. The Maltese authorities have implemented four ECtHR judgments in the past two years, which covered issues such as the excessive extension of pre-trial detention on remand (*Mikalauskas v. Malta*), and access to effective justice (*Carmen Saliba v. Malta*).

The Netherlands



Implementation record:

Good

Two Examples of ECtHR Judgments Pending Implementation in the Netherlands

1. **Breaches of the right to fair trial** (*Hokkeling v. the Netherlands*; *Van Der Volk v. the Netherlands*; *Keskin v. the Netherlands*), pending since 2017.
2. **Insufficient justifications for pre-trial detention** (*Maassen v. the Netherlands*), pending since 2021.

The Netherlands has a good record of ECtHR implementation. This record is demonstrated by a low number of pending leading judgments, together with a proportion of leading cases which are still pending implementation which is around the EU average. Furthermore, the average amount of time for which these judgments have been pending is moderately low.

8

Leading judgments pending implementation

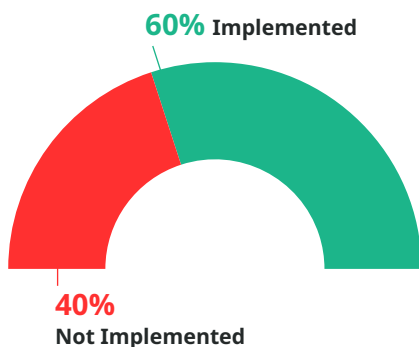
As of January 2022, there are currently **eight leading judgments pending implementation** relating to the Netherlands. This is a low number of pending leading judgments. Two of these are listed in the box above.

2 years, 10 months

Average time that leading judgments have been pending

On average, leading cases concerning the Netherlands have been pending for **two years and ten months**, which is a moderate amount of time. The oldest pending judgment is [Murray v. the Netherlands](#), which has been pending since 2016: it concerns the irreducibility of a life sentence imposed on prisoner suffering from mental illness.

Percentage of the leading ECtHR cases from the last 10 years pending implementation in the **Netherlands**



The Netherlands also has an percentage **of leading judgments from the last decade which are pending implementation which is around the EU average: 40%**. However, the authorities have not implemented any ECtHR judgments in the past two years; the last time the Committee of Ministers ended supervision of the execution of a judgment relating to the Netherlands was in 2018 (*Sanoma Uitgevers B.V. v. the Netherlands*, and *M. v. the Netherlands*).

Poland



Implementation record:
Significant Problem

Five Examples of ECtHR Judgments Pending Implementation in Poland

1. **Constitutional Court formed unlawfully** (*Xero Flor w Polsce sp. z o.o. v. Poland*), pending implementation since 2021.
2. **Supreme Court formed unlawfully** (*Reczkowicz v. Poland*), pending implementation since 2021
3. **Unjustified criminal convictions of journalists and editors, in violation of their freedom of expression** (*Kurlowicz v. Poland*), pending implementation since 2010.
4. **Excessive length of court proceedings across the Polish justice system** (*Rutkowski v. Poland, Beller v. Poland*), with the first case in 2005.
5. **Restrictions on access to legal abortion** (*P. and S., R.R., Tysiac v. Poland*), pending since 2007.

Poland has a significant ECtHR implementation problem. The statistics presented below show a significant number of leading judgments pending implementation, which have been pending for a long time. In addition, there is a high percentage of leading cases which are still pending implementation.

38

● **Leading judgments pending implementation**

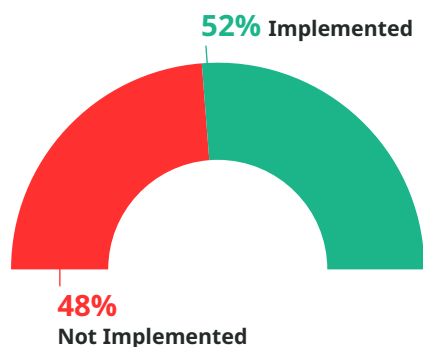
As of January 2022, there were **38 leading judgments pending implementation** in relation to Poland. This is a significant number, which leaves significant room for improvement. Each of these judgments pending implementation represent a human rights problem. Five cases are listed in the box above: they can only be effectively addressed by implementing individual and general measures.

5 years, 10 months

● **Average time that leading judgments have been pending**

On average, leading cases have been pending implementation in Poland for **five years and ten months**, which is significantly more than neighbouring European Union states Germany, Lithuania or Slovakia. One of the oldest leading judgments pending implementation in Poland is the [Beller](#) case, which concerns the excessive length of proceedings before administrative bodies and courts and absence of an effective remedy. The case has been pending implementation since 2005, having accumulated more than 50 repetitive cases. This demonstrates that when reforms are not carried out to implement ECtHR judgments, there is an ongoing risk that similar human rights violations will reoccur.

Percentage of the leading ECtHR cases from the last 10 years pending implementation in **Poland**



In comparison with its neighbouring EU states, Poland also has the highest percentage **of leading judgments from the last decade which are pending implementation: 48%**. This is also higher than the EU average percentage of ECtHR non-implementation, which stands at 37.5%. Since the beginning of 2020, the Committee of Ministers has ended supervision for seven leading judgments in Poland. Polish authorities have been active in their reporting obligations, although many of these documents concern a small number of cases which have been subject to increased international attention, in which the authorities have increased their reporting: [Al-Nashiri v. Poland](#), concerning secret detention and “extraordinary rendition” in CIA black sites, and the [R.R., P. and S.](#) and [Tysiac](#) cases, which concern safe access to abortion.

Case study: Criminal convictions for defamation

Marcin Kącki worked as a journalist for the *Gazeta Wyborcza* newspaper. In December 2006, he interviewed a former member of the political party ‘Samoobrona,’ who claimed that she was offered a post in a parliamentary deputy’s office by a fellow party member in return for sexual favours. She then alleged that the job was in the end offered to the daughter of another member of parliament. The interview was published, along with a statement that all the comments were personal opinions of the interviewee, not the interviewer.

In November 2007, the accused party member started proceedings against Mr Kącki. Despite the statement in the interview that it was an allegation rather than a fact, the Warsaw District Court found Mr Kącki guilty of defamation under the criminal code in March 2010. He was ordered to pay a PLZ 1,000 fine and was entered in the National Criminal Register.

The European Court of Human Rights found in favour of Mr Kacki. It deemed his conviction exceptionally harsh and disproportionate, and held that it was an unjustifiable infringement of his freedom of expression.

The ECtHR has since handed down five other judgments concerning criminal convictions and fines for defamation. Civil society has pointed out that criminal defamation laws are a significant problem for free speech, public discussion and democratic life. The Criminal Code still contains a punishment of imprisonment for defamation via media, and the number of criminal defamation cases as well as imprisonments to punish speech has been rising. The Helsinki Foundation for Human Rights has called for the decriminalisation of defamation, or at least for the removal of prison sentences for defamation from the Criminal Code. These important cases all remain pending implementation.



“We can identify several problems with regards to the process of implementation of the ECtHR’s judgments in Poland. First, there are a number of decisions that have not yet been enforced or have not yet been fully enforced. Judgments concerning the excessive length of proceedings are a good example here. Second, in 2021 a new serious threat to the effectiveness of the implementation process in Poland emerged. In November the Constitutional Tribunal stated that Article 6 para. 1 of the ECHR (the right to a fair trial), insofar as it applies to the Constitutional Tribunal, is inconsistent with the Polish Constitution. This judgment will probably serve as a justification for the ruling authorities not to comply with the important rule of law ECtHR judgment of Xero Flor w Polsce sp. z o.o. v. Poland. Importantly, in March 2022 the Constitutional Tribunal issued

another judgment declaring unconstitutionality of Article 6 of the ECHR in so far as this provision was the basis for the judgments in a series of other key rule of law cases.” - Dr. Marcin Szwed, Head of Strategic Litigation at Helsinki Foundation for Human Rights, Poland

Portugal



Implementation record:

Moderate

Two Examples of ECtHR Judgments Pending Implementation in Portugal

1. **Unfair proceedings for the removal of judges** (*Ramos Nunes de Carvahlo E SA v. Portugal*), pending implementation since 2018.
2. **Excessive length of judicial proceedings** (*Vincente Cardoso v. Portugal*), pending implementation since 2013.

Portugal has an overall moderate ECtHR implementation record. While the overall number of pending leading judgments is moderately low, the proportion of leading cases which are still pending implementation is significant. The average length of time that these cases have been pending implementation is also moderate.

17

Leading judgments pending implementation

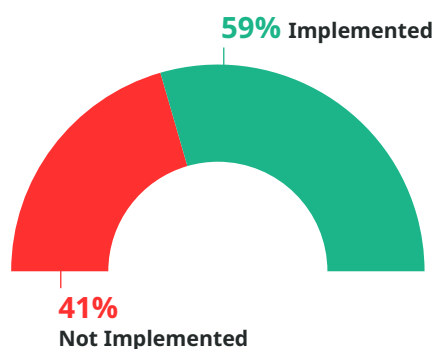
As of January 2022, there were **17 leading judgments pending implementation** in Portugal. Examples of systemic human rights problems are listed in the box above (see “*Two Examples of ECtHR Judgments Pending Implementation in Portugal*”). This moderately low number of unimplemented judgments can only be effectively addressed by the Portuguese authorities through individual and/or general measures. For example, the implementation of the *Ramos Nunes de Carvahlo E SA v. Portugal* requires measures addressing the fairness of proceedings for the removal of judges from their position.

3 years, 10 months

Average time that leading judgments have been pending

On average, leading cases relating to Portugal have been pending for **three years and ten months**, which is a moderate length of time, comparable with the same figure in neighbouring Spain. The oldest pending leading judgment against Portugal is [Moreira Ferreira v. Portugal](#), pending since 2011. It concerns the failure of the court of appeal to hear the applicant in person, in criminal proceedings brought against her which resulted in her conviction.

Percentage of the leading ECtHR cases from the last 10 years pending implementation in **Portugal**



The percentage of **leading judgments from the last decade which are pending implementation regarding Portugal is 41%, which is around the EU average.**

This figure is lower than that of neighbouring Spain (which stands at 61%). In the past two years, Portugal has implemented six leading ECtHR judgments. These concerned the effective functioning of justice, the right to life, and the protection of private life.

Romania



Implementation record:
Very Serious Problem

Four Examples of ECtHR Judgments Pending Implementation in Romania

1. **Unjustified dismissal of the anti-corruption prosecutor** (*Kovesi v. Romania*), pending implementation since 2020.
2. **Journalists and politician given crippling defamation awards when discussing matters of public interest** (*Ghiulfer Predescu v. Romania*), pending implementation since 2017.
3. **Unjustified dismissal of chief prosecutor for informing the public about anti-corruption activities** (*Brisco v. Romania*), pending implementation since 2019.
4. **Failure to investigate LGBT hate crimes** (*M.C. and A.C. v. Romania*), pending implementation since 2016.

The ECtHR implementation record in Romania is among the poorest in the European Union. The statistics set out below indicate an extremely high number of leading judgments pending, as well as a high percentage of leading judgments which are waiting to be implemented. These have been pending implementation for a significant amount of time.

106

● **Leading judgments pending implementation**

As of January 2022, there are **106 leading judgments pending implementation** in Romania. This is the highest number of pending leading judgments of any country in the European Union. Just since the beginning of 2020, the ECtHR has delivered 36 new leading judgments in respect of Romania. Recent judgments include those concerning the failure of authorities to carry out an effective investigation into ill-treatment by a third party (*Toma v. Romania*), the failure to protect the life of a victim of a subway station accident (*Nedelcu v. Romania*), and unlawful psychiatric confinement as a security measure (*R.D. and I.M.D. v. Romania*).

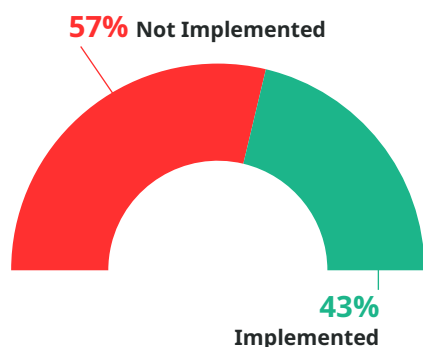
The implementation of these cases needs to be effectively addressed through the taking of individual and general measures.

4 years, 2 months

● **Average time that leading judgments have been pending**

On average, leading cases have been pending in Romania for over **four years and two months**. The oldest pending leading case in Romania is *Strain and others*. It has been pending implementation since 2005. It concerns the ineffectiveness of the mechanisms set up to afford restitution or compensation for properties nationalized during the communist period.

Percentage of the leading ECtHR cases from the last 10 years pending implementation in **Romania**



Of the leading judgments handed down by the ECtHR against Romania over the past ten years, **57% await full implementation**. Only five leading judgments have been implemented by authorities since the beginning of 2020. While the data shows that there is **significant room for improvement**, there are also some positive examples of ECtHR judgment implementation where **reforms** have been initiated or are underway (see example below). However, significant efforts are required further to improve ECtHR compliance and its overall implementation record.

Case study: Chief Prosecutor's mandate terminated after criticising anti-corruption reforms

Ms Laura Kovesi was the Chief Prosecutor of the National Anticorruption Directorate and a prominent figure in the fight against corruption in Romania. In 2018, after having expressed public criticism of draft legislation affecting the judiciary and anti-corruption efforts, her mandate was terminated early at the initiative of the Minister of Justice.

The European Court delivered its judgment in 2020. Since Ms Kovesi had not been able to effectively challenge the premature termination of her mandate, the Court held that her right to access to court had been impaired. She had also suffered an unlawful interference with her freedom of expression, as her early removal had been motivated by her criticism of legislative reforms which impacted the fight against corruption.

The implementation of the judgment has been rapidly set in motion in this high-profile case through an ongoing judicial reform through a series of draft bills. According to these draft provisions, high-ranking prosecutors will be able to challenge their removal before the competent administrative court and existing provisions that restrict the freedom of expression of judges and prosecutors will be abandoned.

While welcoming the draft legislation, the Romanian Judges' Forum Association and the Association Initiative for Justice have indicated that more far-reaching measures are needed in response to the judgment. They have called for effective and adequate safeguards against abuse in the context of premature removal of magistrates, as well as other measures to lift and counteract the "chilling effect" on magistrates.



“Twenty-eight years after the ratification of the European Convention for Human Rights, it’s time we start by recognizing openly that we do have a problem with implementation of important ECHR judgments which highlight systemic human rights violations. And we have to inquire why. We need to better explain to people- whose hopes for their rights lie with the European Court primarily (and not with the state!)- what implementation means, how it can be done to avoid future violations of rights and how each one of us can be part of the process, be it as organized civil society or mere citizens.” - Georgiana Gheorghe, Executive Director of the Association for the Defence of Human Rights in Romania - the Helsinki Committee

Slovak Republic



Implementation record:

Moderate

Four Examples of ECtHR Judgments Pending Implementation in Slovakia

1. **Excessive length of court proceedings** (*Maxian and Maxianova v. Slovakia*; *Javor and Javorova*; *Balogh and others v. Slovakia*), with the first case dating from 2012.
2. **Breach of legal certainty by the Prosecutor General and Supreme Court** (*Draft-Ova A.S. v. Slovakia*), pending implementation since 2015.
3. **Allegations of sexual abuse of children not properly investigated** (*M.M.B. v. Slovakia*), pending since 2020.
4. **Failure to properly investigate allegations of police brutality** (*R.R. and R.D. v. Slovakia*), pending implementation since 2020.

Slovakia has a moderate ECtHR implementation record. The country has a moderate number of leading judgments pending implementation, which have been pending for a moderately low amount of time. Meanwhile, there are a significant proportion of leading cases which are still pending implementation.

20

● **Leading judgments pending implementation**

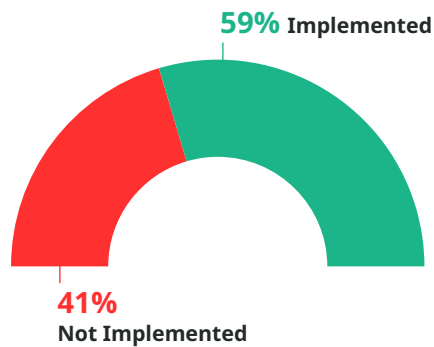
As of January 2022, there were **20 leading judgments pending implementation** in the Slovak Republic. This moderate number of unimplemented judgments should be effectively addressed by the Slovakian authorities through individual and/or general measures. Four examples of systemic human rights problems in Slovakia are listed in the box above. Additional systemic issues concern the lack of impartiality of disciplinary proceedings before the Constitutional Court, excessive length of proceedings concerning compensation claims related to criminal proceedings, and excessive length of judicial review of detention.

2 years, 10 months

● **Average time that leading judgments have been pending**

On average, leading cases have been pending in Slovakia for **two years and ten months**, which is significantly shorter than its European Union neighbours Romania, Hungary and the Czech Republic. The oldest pending leading group is *Maxian and Maxianova*, which concerns the excessive length of civil proceedings. It has 26 repetitive judgments, which have been adding to the group since 2016.

Percentage of the leading ECtHR cases from the last 10 years pending implementation in the **Slovak Republic**



Slovakia has a significant percentage **of leading judgments from the last decade which are pending implementation: 41%, which is slightly above the European Union average**. Since the beginning of 2020, the authorities have implemented three judgments, which concern ethnic discrimination and right to life ([Lakatosova and Lakatos v. Slovakia](#)), protection of property ([Bitto and others v. Slovakia](#)), and access to effective functioning of justice ([Klaczanova v. Slovakia](#)).

Slovenia



Implementation record:

Very Good

Two Examples of ECtHR Judgments Pending Implementation in Slovenia

1. **Failure to provide interpretation for defendant in criminal proceedings** (*Vizgirda v. Slovenia*), pending implementation since 2018.
2. **Unjustified failure of court to examine facts or conduct oral hearing** (*Produkcija Plus storitveno podjetje d.o.o. v. Slovenia*), pending implementation since 2019.

Slovenia has a very good ECtHR implementation record. The country has a very low number of leading judgments pending implementation, which have been pending for a low amount of time, as well as a low percentage of leading cases which are still pending implementation.

4

Leading judgments pending implementation

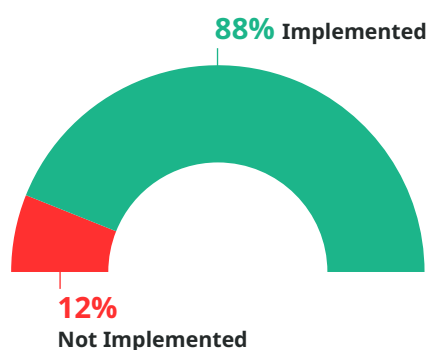
As of January 2022, there were **four leading ECtHR judgments pending implementation** relating to Slovenia. Two of these cases are listed in the box above (see “Two Examples of ECtHR Judgments Pending Implementation in Slovenia”).

1 year, 10 months

Average time that leading judgments have been pending

On average, these three leading cases have been pending in Slovenia for an average of **one year and ten months**. This is significantly shorter than neighbouring Italy, Croatia and Hungary. One case became final in 2018; one became final in 2019, one in 2020, and another in 2021.

Percentage of the leading ECtHR cases from the last 10 years pending implementation in the **Slovenia**



Slovenia also has a low percentage of **leading judgments from the last decade which are pending implementation: 12%, which is significantly lower than the European Union average**. Only in the past two years, the Slovenian authorities have implemented eleven leading ECtHR judgments, which concern a range of subjects ranging from access to and efficient functioning of justice to protection of private and family life. As regards the four remaining pending leading judgments, the authorities have so far requested closure only for the [Cimpersek](#) case, which concerns freedom of expression.

Spain



Implementation record:
Problematic

Four Examples of ECtHR Judgments Pending Implementation in Spain

1. **Criminal convictions for criticising the monarchy** (*Stern Taulats and Roura Capellera v. Spain*), pending implementation since 2018.
2. **Failure to ensure impartiality of judges in criminal trial** (*Otegi Mondragon and others v. Spain*), pending implementation since 2019.
3. **Ineffective investigations into allegations of police ill-treatment** (*Ataun Rojo v. Spain*), pending implementation since 2015.
4. **Disproportionate use of force and failure to investigate police ill-treatment against peaceful assemblies** (*Laguna Guzman v. Spain, Lopez Martinez v. Spain*), pending implementation since 2021

Spain has a problematic record of ECtHR implementation. The country has a moderate number of leading ECtHR judgments pending implementation and the average amount of time for which these judgments have been pending is also moderate. However, a very high proportion of the ECtHR judgments concerning Spain are still pending implementation. This indicates that there are improvements to be made in the efficiency with which Spain implements judgments of the ECtHR.

23

● **Leading judgments pending implementation**

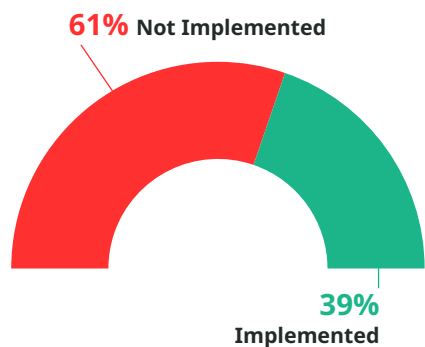
As of January 2022, there were 23 leading ECtHR judgments pending implementation concerning Spain. This is a moderate number: the figure is comparable to those of France and Portugal. Four of these are listed in the box above. Ineffective investigations into allegations of ill-treatment during police custody and disproportionate criminal convictions for defamation are two of the main structural problems which Spanish authorities must address through reforms.

3 years, 1 month

● **Average time that leading judgments have been pending**

On average, leading cases have been pending in Spain for an average of **three years and one month**. Although this is a notable delay, it is a moderate amount of time in the context of the European Union as a whole, very similar to the same figures for neighbouring France and Portugal. The oldest pending leading case is [B.S. v. Spain](#), which has been pending implementation since 2012: it concerns the lack of effective investigation into the allegations of racially motivated ill-treatment inflicted by police.

Percentage of the leading ECtHR cases from the last 10 years pending implementation in **Spain**



Spain has a very high percentage of **leading judgments from the last decade which are pending implementation: 61%, which is much higher than the European Union average**. In the past two years, the Spanish authorities have only implemented two ECtHR judgments ([*Jimenez Ruiz v. Spain*](#) and [*Aparicio Navarro Reverter and Garcia San Miguel Y Orueta v. Spain*](#)), which required only individual measures, but no general measures. It is also notable that, in 2021, the government submitted 12 action reports in the pending leading cases, requesting the Committee of Ministers to end supervision of these cases. However, as of January 2021, they are still pending implementation.

Sweden



Implementation record:

Very Good

Example of an ECtHR Judgment pending implementation in Sweden

1. Failure of courts to investigate invasion of privacy by non-Swedish broadcasts (*Arlewin v. Sweden*), pending implementation for 2016

Sweden has a very good ECtHR implementation record. The country has a very low number of pending leading judgments, which have been pending for a moderate amount of time. It also has a low proportion of leading cases which are still pending implementation.

2

Leading judgments pending implementation

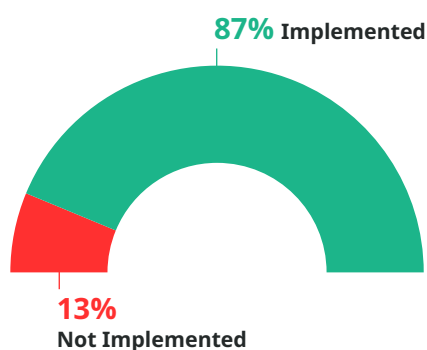
As of January 2022, there were **two leading judgments pending implementation** in Sweden, which are listed in the box above. The authorities have already been taking both individual and general measures to implement the [Arlewin](#) case, which has been pending for five years.

3 year, 1 month

Average time that leading judgments have been pending

On average, these two leading cases have been pending for **three years and one month**. This is much lower than neighbouring Finland, but higher than that of Denmark.

Percentage of the leading ECtHR cases from the last 10 years pending implementation in **Sweden**



Furthermore, Sweden has a low percentage of **leading judgments from the last decade which are still pending implementation: 13%, which is almost three times lower than the EU average**. In total, Sweden has implemented 40 ECtHR judgments to date, out of which two were implemented in 2021.

Methodology

The data for this report is accurate as of 1 January 2022. The number of pending leading judgments in each country has been taken from the Council of Europe's 2021 Annual Report for the Supervision of Judgments and Decisions of the European Court of Human Rights. The other data points have been calculated using data from the Council of Europe's "Hudoc Exec" website (<https://hudoc.exec.coe.int/>). For this purpose, data was extracted from the Hudoc-Exec database in April 2022, and adapted to show the situation at the start of January 2022.⁵

When reading the report, it is important to bear in mind the following:

- **The data in the report refers to 'leading' ECtHR judgments pending implementation – rather than all ECtHR judgments pending implementation.** After the European Court of Human Rights issues a final judgment that identifies a violation of the ECHR, the case is classified by the Council of Europe's Department for the Execution of Judgments as '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'. In order to successfully implement a leading case, states must ensure that the underlying problems that caused the ECHR violation have been resolved. This often requires changes to laws or government practices. 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.
- **Certain descriptive words are applied in the report according to a classification grid.** The report has a uniform way of describing for each country the number of leading cases pending, the proportion of leading cases pending for the last ten years, and the average length of time that leading cases have been pending. The grid setting out how this analysis was conducted is set out below.
- **The overall assessment of each country's record is not subject to a uniform formula.** The overall categorisation of countries (as "Excellent", "Good", etc) is not carried out according to a rigid formula, as this would have prevented a sufficiently flexible analysis for the different situations in the 27 EU states. The categorisation is based on our assessment of what the three data points mean for the overall level of implementation in each state, bearing in mind any relevant contextual information. When making our assessment of the categorisation, we took the following into account:
 - The **overall number of leading judgments pending implementation** was the most important indicator.
 - Another key indicator was the **proportion of leading judgments from the last ten years pending implementation**. It is possible for a state to have a relatively low number of leading judgments pending implementation, but for the implementation record to be problematic because the country is not implementing those judgments that are pending (e.g. Finland). Meanwhile, other states might have a relatively high proportion of leading judgments pending, but for this not to indicate an implementation problem, because of the recent date when those judgments were delivered (e.g. Denmark).

5. Please note that the data in this report differs slightly from the data submitted by EIN to the European Union's Consultation for its Rule of Law Reporting, in January 2022. This is because the data submitted to the consultation process was taken from Hudoc-Exec on 3 January 2022. Since that time, Hudoc-Exec has been updated to show developments at the end of 2021 - mostly notably, to add around 30 leading cases to the database, which became final at the end of the year. The data in the current report is therefore more complete and should be preferred to that contained in EIN's contribution to the consultation process.

- The **average time leading judgments have been pending** was our final indicator, although the least important. A long delay for the implementation of leading judgments is often an indicator of a poor implementation record (e.g. Bulgaria). However, it is also possible for states with an overall good record to have a small number of leading judgments pending for a long period, leading to a high figure under this heading (e.g. Austria).
- **Cases that are pending implementation may be the subject of ongoing reforms.** Many cases which are pending implementation may be in the course of being addressed by national authorities – while many others are not.
- **The report does not quantify the severity of violations or the complexity of the needed reforms.** Some countries have a relatively low overall number of pending leading judgments, but the violations involved in the judgments might be very serious. Other countries might have comparatively less serious issues identified in a high number of judgments. The nature of violations is not assessed in this report.

Many countries have certain outlier data points which need to be read in the context of other data in order for there to be an effective analysis. For example, some countries with a small or very small number of judgments, in which one or two judgments have been pending implementation for a very long time, will have a very high average time pending. Similarly, some countries with a very small number of leading judgments, in which half of the judgments from the last ten years have been implemented, will have a very high proportion of judgments pending implementation from the last ten years (because, for example, out of two judgments, one was implemented). These outliers do not adequately reflect the overall ECtHR implementation of states in that situation – factors such as these have been taken into consideration when choosing which implementation category each state falls into.

It is important to note the difficulties in presenting data about ECtHR non-implementation in a clear and accessible way. The difference between categorisations can be quite fine. Different analysts might reasonably come to different conclusions, such as whether a country's record is “moderate” or “moderately poor”. The types of data used in this report were chosen not because they are perfect, but because – to our knowledge – they are the best available. Despite certain limitations, this data provides the best assessment about the overall status of ECtHR implementation in different countries. We will keep our approach to these figures under review for future publications.

