JUSTICE DELAYED AND JUSTICE DENIED:

Non-implementation of European Courts Judgments and the Rule of Law

2024 Edition

DEMOCRACY REPORTING INTERNATIONAL

European Implementation Network

re:constitution

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STIFTUNG MERCATOR

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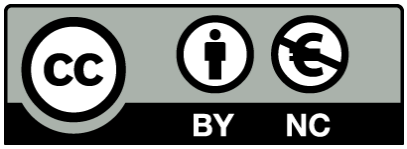

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TABLE OF CONTENTS

EXECUTIVE SUMMARY

1 This is the third edition of the report assessing the implementation of rulings of the European Court of Human Rights (ECtHR) and the Court of Justice of the European Union (CJEU) by EU member states. The previous editions raised concerns about the systemic nature of non-implementation of regional courts' judgments by certain member states, while also acknowledging strong performers. The current edition updates data to include the judgments issued by 1 January 2024, and offers a more nuanced assessment of the available information, both substantively and methodologically.

2 **Overall takeaway:** The 2024 edition of the report, similarly to previous editions, highlights a concerning trend among EU member states regarding the non-implementation of rulings from both the ECtHR and the CJEU. This non-compliance and lengthy delays are often coupled with open contestation of decisions by political authorities and, at times, by the highest national courts, undermining the authority and potential effectiveness of these supra-national institutions. More critically, each case of non-implementation results in prolonged rule of law and human rights violations, with far-reaching consequences for individuals and communities who are denied timely justice. Certain countries consistently struggle with compliance across both courts (e.g. Bulgaria, Hungary, Poland, and Romania), and there are several indications of worsening implementation trends overall. At the same time, positive developments in specific states demonstrate that swiftly improving a country's implementation record is possible, if the requisite political will and commitment to effectively comply with the European Courts' rulings is in place.

3 **Methodological clarifications:** The report introduces a refined methodology to measure state performance in implementing rulings from both courts. For the ECtHR, it uses as its basis the same binary framework relied upon by the Council of Europe institutions, categorising judgments as implemented or not, based on their monitoring by the Committee of Ministers of the Council of Europe. It then draws on three further key indicators: the number of pending leading judgments, the percentage of these judgments from the past decade still pending, and the average duration of pending judgments. States are then classified using these indicators, nuanced by qualitative information.

For the CJEU, this 2024 edition of our report introduces a new methodology, focusing on rulings related to the rule of law from 2019 to 2024. While non-implementation is inherently a rule of law issue, this study zeroes in on judgments affecting the cen-

tral tenet of checks and balances, which, if compromised, could negatively impact individuals' access to justice. Amid a decline in the rule of law, the CJEU has increasingly issued such rulings. The study categorises states based on their compliance levels – full, partial, or non-compliance – and highlights significant delays, differentiating between "good," "moderate," or "struggling" compliers.

Additionally, this year's report highlights key themes in ECtHR and CJEU jurisprudence to identify cases that are particularly challenging to implement.

4 **The ECtHR implementation record:** As of 1 January 2024, there were 624 leading ECtHR judgments awaiting implementation across the EU, slightly up from 616 in 2022, and 602 in 2021. Forty-four per cent of the leading judgments from the past decade remained unimplemented, compared with 40 per cent in 2022, and 37.5 per cent in 2021. The average length of time leading ECtHR judgments concerning EU states had been pending implementation in 2023 was five years and two months, compared with five years and one month in 2022, and four years and four months in 2021. Bulgaria, Finland, Greece, Hungary, Ireland, Italy, Malta, Poland, Portugal, and Romania all have leading judgments that had yet to be implemented for more than five years.

In Bulgaria, Cyprus, Hungary, Italy, Malta, Poland, Romania, Slovakia, and Spain, over 50 per cent of the leading judgments rendered against them in the last ten years had yet to be implemented. In Bulgaria and Romania, more than 85 leading judgments were pending implementation. In 2023, Hungary remained the state recording the highest percentage of leading ECtHR rulings rendered in the last ten years still awaiting implementation – 76 per cent, while Romania remained the state with the highest number of leading judgments pending implementation – 115. Denmark, Estonia, Luxembourg, and Sweden were among the top performers in terms of implementation of ECtHR rulings. The small size of some of these countries and/or their overall high Convention-compliance record (i.e., a low number of violation judgments rendered with respect to them in the first place) is, nevertheless, a factor to be taken into account when considering the respective national implementation mechanisms' capacities for ensuring effective implementation of ECtHR judgments. On a positive note, Finland recorded impressive progress, by almost clearing its backlog of non-implemented judgments over the course of 2023.

Behind these statistics are numerous individual stories of people who sought and won relief from Europe's highest courts, all too often only to realise that states did not implement these decisions. Major themes of concern pertain to conditions

of detention, as well as other rights of detained persons; police ill-treatment and failure to investigate it; matters pertaining to mental disability rights and psychiatry; matters pertaining to LGBTIQ+ rights and discrimination; and matters pertaining to asylum and migration. Other themes pertain to the authorities' ineffective response to domestic and sexual violence; the excessive length of civil, administrative and criminal proceedings; and a wide variety of issues related to fair trial and property rights, and to access to justice, as well as privacy-related issues. Persistent lack of progress in implementing these types of judgments also raises important concerns as regards the prevalence of the rule of law, in the sense of respect for the decisions of the judiciary.

5 **The CJEU compliance record:** The report assessed a total of 201 judgments across 17 EU members states. Only around half of the rulings (110) issued over the past five years have been fully complied with. There is clear evidence of no or partial compliance for 71 judgments, and of these, 60.5 per cent have been pending for two years or more.

In several EU member states, categorised as struggling compliers, partial compliance is the predominant pattern; while authorities may follow the CJEU decisions to some extent, overall efforts fall short of achieving full compliance. Romania and Hungary exemplify this category, with 83.3 per cent and 52.6 per cent of rulings only partly complied with, respectively. For these two countries, 50 per cent and 66.7 per cent of the rulings, respectively, have been pending for two years or longer. For Bulgaria, in 31.8 per cent of cases, compliance has been partial, but 25 per cent of the rulings have not been complied with at all, resulting in an overall non-compliance rate of 56.8 per cent. Fifty-six per cent of those pending rulings have been awaiting compliance for two years or more. Similarly to Bulgaria, Poland has failed to fully comply with 50 per cent of the rulings, and 75 per cent of those rulings have been pending compliance for two years or more.

Moderate compliers (Croatia, Portugal, and Estonia, among others) have fully complied with somewhere between 50 and 80 per cent of the rulings. Good compliers (France, Germany and Luxembourg, among others) have complied with over 80 per cent of the rulings. Neither moderate nor good compliers are immune to occasional legislative delays or judicial misgivings, even though this does not occur so routinely as in struggling compliers.
Constitutional courts in struggling compliers have systematically challenged the CJEU's authority and hindered compliance – some openly, and some more discreetly. Their counterparts in good compliers (for example, French and German top courts) have also challenged the primacy of EU law and the CJEU's authority,

although challenges have been isolated and non-systematic by comparison, and have emanated from independent courts and generally shown restraint.

The record of compliance with the CJEU's rulings related to access to justice, including judicial and prosecutorial independence, remains a major area of concern, alongside records related to asylum and migration. Other themes involved include the general and indiscriminate retention of personal data and authorities' access to such data, as well as access to information and the appropriateness of restricting such access by invoking national security concerns. Compliance with the rulings related to restrictions on civil society organisations and academic institutions has also been a challenge.

Based on the findings of this report, we recommend the following to the European Commission:

1. Integration of Implementation Data: The Commission should continue incorporating ECtHR judgment implementation data into its annual Rule of Law Report, and systematically analyse and prominently feature compliance with CJEU rulings.

2. Targeted Recommendations: The Commission should issue specific recommendations to states based on their implementation records of ECtHR and CJEU judgments related to the rule of law, and expand its reports to cover democracy and systemic fundamental rights violations, urging immediate action from states with recurring issues.

3. Utilisation of Enforcement Tools: The Commission should use all available tools, including infringement procedures and financial pressure, to address member states' failures to implement CJEU judgments, leveraging related ECtHR judgments as additional evidence.

4. Enhanced Monitoring: The Commission should consider closer monitoring of the implementation of CJEU judgments, including preliminary rulings, and explore ways to support national-level mechanisms for their implementation.

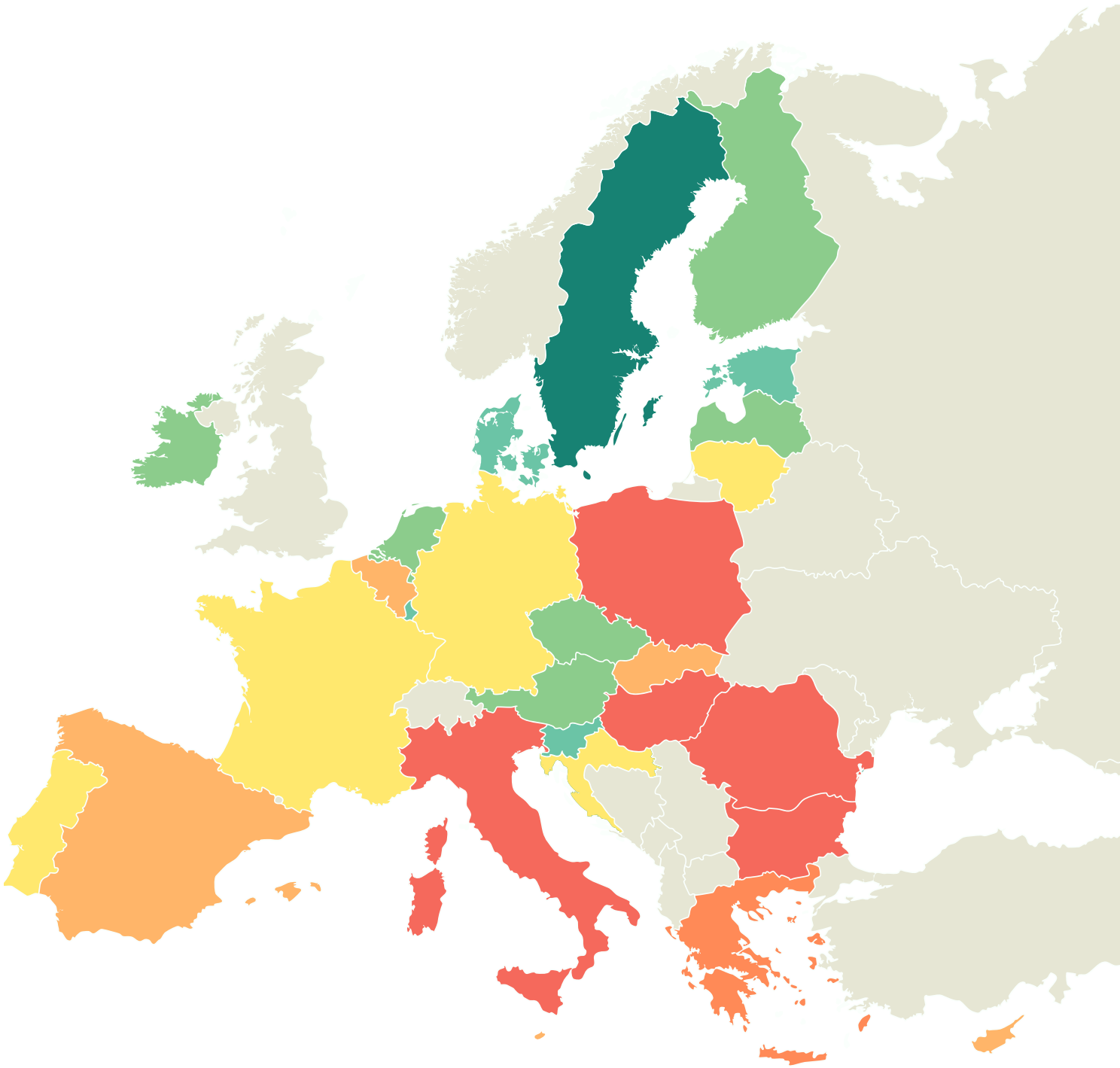
Additionally, the report suggests:

5. Prioritisation in EU Discussions: EU institutions should highlight the non-implementation of ECtHR and CJEU judgments as a priority rule of law issue in discussions with member state governments and parliaments.

6. Funding for Implementation Activities: The EU should fund initiatives to enhance the implementation of ECtHR and CJEU judgments, particularly those led by civil society organisations and the Council of Europe.

More details about these recommendations can be found in Chapter 4 "Key recommendations" of this report.

THE STATE OF NON-IMPLEMENTATION OF ECTHR JUDGMENTS IN EU MEMBER STATES (LEADING JUDGMENTS UNTIL 1 JANUARY 2024)



Excellent ● ● ● ● ● ● ● Very serious problem

Table 1.

Country	Overall assessment of implementation record	Indicators		
		Number of leading judgments pending implementation, as of 1 January 2024	Percentage of leading judgments pending implementation from the last ten years	Average time leading cases have been pending implementation
Sweden	Excellent	1 (Very low)	10% (Very low)	2 years and 7 months (Moderately low)
Denmark	Very good	3 (Very low)	50% (High)	2 years (Low)
Estonia	Very good	3 (Very low)	15% (Low)	1 year and 5 months (Low)
Luxembourg	Very good	2 (Very low)	50% (High)	1 year and 5 months (Low)
Slovenia	Very good	5 (Very low)	14% (Low)	1 year and 2 months (Low)
Austria	Good	6 (Low)	32% (Significant)	1 year and 5 months (Low)
Czechia	Good	5 (Very low)	24% (Moderately low)	4 years and 3 months (Significant)
Finland	Good	2 (Very low)	25% (Moderately low)	10 years and 3 months (Very high)
Ireland	Good	2 (Very low)	50% (High)	11 years and 8 months (Very high)
Latvia	Good	8 (Low)	17% (Moderately low)	1 year and 9 months (Low)
The Netherlands	Good	5 (Very low)	33% (Significant)	3 years and 9 months (Moderate)

Table 1.

Country	Overall assessment of implementation record	Indicators		
		Number of leading judgments pending implementation, as of 1 January 2024	Percentage of leading judgments pending implementation from the last ten years	Average time leading cases have been pending implementation
Croatia	Moderate	27 (Moderate)	28% (Moderate)	3 years and 4 months (Moderate)
France	Moderate	20 (Moderately low)	29% (Moderate)	3 years and 10 months (Moderate)
Germany	Moderate	10 (Low)	33% (Significant)	4 years (Moderate)
Lithuania	Moderate	22 (Moderate)	34% (Significant)	3 years and 8 months (Moderate)
Portugal	Moderate	16 (Moderately low)	44% (Significant)	5 years and 9 months (Significant)
Belgium	Moderately poor	21 (Moderate)	39% (Significant)	3 years and 11 months (Moderate)
Cyprus	Moderately poor	10 (Low)	53% (High)	3 years and 4 months (Moderate)
Malta	Moderately poor	15 (Moderately low)	57% (High)	6 years (High)
Slovakia	Moderately poor	29 (Moderate)	53% (High)	3 years and 3 months (Moderate)
Spain	Moderately poor	23 (Moderate)	51% (High)	2 years and 10 months (Moderately low)
Greece	Problematic	28 (Moderate)	30% (Moderate)	6 years and 7 months (High)

Table 1.

Country	Overall assessment of implementation record	Indicators		
		Number of leading judgments pending implementation, as of 1 January 2024	Percentage of leading judgments pending implementation from the last ten years	Average time leading cases have been pending implementation
Bulgaria	Very serious problem	89 (Very high)	53% (High)	6 years and 9 months (High)
Hungary	Very serious problem	45 (High)	76% (Very high)	6 years and 2 months (High)
Italy	Very serious problem	66 (Very high)	65% (Very high)	6 years and 7 months (High)
Poland	Very serious problem	46 (High)	51% (High)	5 years and 5 months (Significant)
Romania	Very serious problem	115 (Very high)	59% (High)	5 years and 5 months (Significant)

THE STATE OF NON-IMPLEMENTATION OF CJEU JUDGMENTS ACROSS THE EU (RULE OF LAW-RELATED JUDGMENTS UNTIL 1 JANUARY 2024)

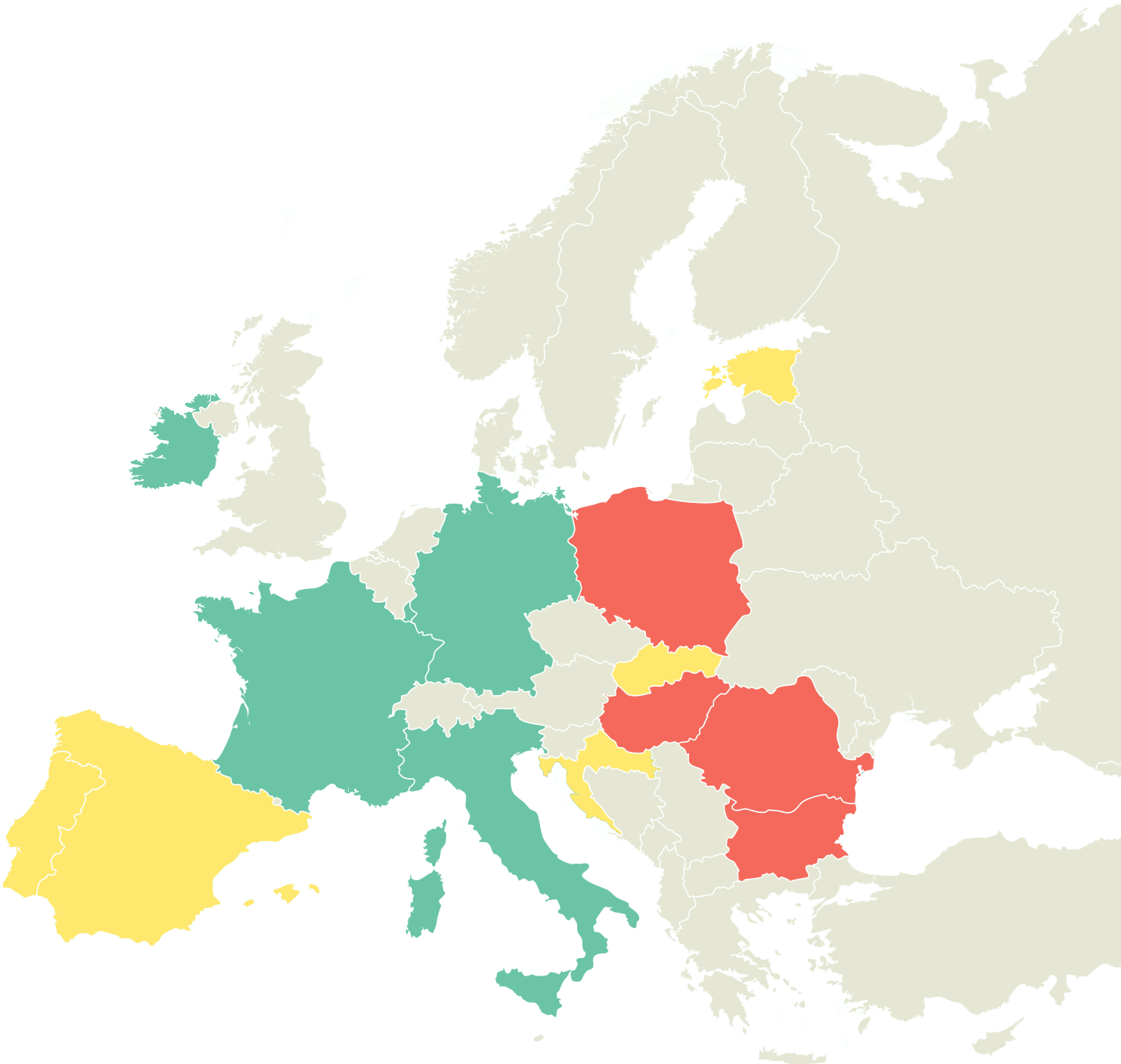


Table 2.

Country	Category	Number of rulings covered by the study	Number and % of rulings fully complied with	Number and % of rulings partly complied with	Number and % of rulings not complied with	Number and % of rulings where impossible to judge compliance	Number and % of rulings pending for 2 or more years[1]
Luxembourg	Good complier	4	4 (100%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)
Ireland	Good complier	19	18 (94.7%)	0 (0%)	1 (5.3%)	0 (0%)	0 (0%)
France	Good complier	7	6 (85.7%)	1 (14.3%)	0 (0%)	0 (0%)	1 (100%)
Germany	Good complier	20	19 (95%)	1 (5%)	0 (0%)	0 (0%)	1 (100%)
Italy	Good complier	34	30 (88.2%)	3 (8.8%)	1 (2.9%)	0 (0%)	3 (75%)
Spain	Moderate complier	6	4 (66.7%)	1 (16.7%)	0 (0%)	1 (16.7%)	0 (0%)
Portugal	Moderate complier	11	6 (54.5%)	4 (36.7 %)	1 (9.1%)	0 (0%)	2 (40%)

Table 2.

Country	Category	Number of rulings covered by the study	Number and % of rulings fully complied with	Number and % of rulings partly complied with	Number and % of rulings not complied with	Number and % of rulings where impossible to judge compliance	Number and % of rulings pending for 2 or more years[1]
Estonia	Moderate complier	3	2 (66.7%)	1 (33.3%)	0 (0%)	0 (0%)	1 (100%)
Croatia	Moderate complier	2	1 (50%)	0 (0%)	1 (50%)	0 (0%)	0 (0%)
Slovakia	Moderate complier	6	3 (50%)	0 (0%)	2 (33.3%)	1 (16.7%)	1 (50%)
Romania	Struggling complier	6	0 (0%)	5 (83.3%)	1 (16.7%)	0 (0%)	3 (50%)
Hungary	Struggling complier	19	5 (26.4%)	10 (52.6%)	2 (10.5%)	2 (10.5%)	8 (66.7%)
Bulgaria	Struggling complier	44	7 (15.9%)	14 (31.8%)	11 (25%)	12 (27.3%)	14 (56%)
Poland	Struggling complier	16	4 (25 %)	6 (37,5%)	2 (12,5%)	4 (25%)	6 (75%)

Table 2.

Country	Category	Number of rulings covered by the study	Number and % of rulings fully complied with	Number and % of rulings partly complied with	Number and % of rulings not complied with	Number and % of rulings where impossible to judge compliance	Number and % of rulings pending for 2 or more years[1]
Malta	_[2]	1	1 (100%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)
Sweden	_	1	0 (0%)	1 (100%)	0 (0%)	0 (0%)	1 (100%)
Finland	_	2	0 (0%)	2 (100 %)	0 (0%)	0 (0%)	2 (100 %)
Netherlands	_[3]						
		201	110	49	22	20	43

[1] Calculation refers to identified rulings issued between 1 January 2019 and 1 May 2022 where there has been no or only partial compliance.

[2] Malta could qualify as a good complier, with Finland and Sweden qualifying as moderate compliers. However, the numbers of rulings are too low to speak of patterns and assign such labels.

[3] We have consulted a national expert concerning compliance situation in the Netherlands but, due to incompleteness of the data, Netherlands will not be ranked.

Data Explainer:

Judgments of the ECtHR (Table 1)

The study focuses on "leading" ECtHR judgments, as designated and monitored by the Committee of Ministers of the Council of Europe. These judgments identify human rights problems in a country for the first time, and often highlight systemic or structural issues requiring complex reforms. The report evaluates the implementation of these rulings using three key indicators: the number of pending leading judgments, the percentage of leading judgments from the past decade still pending, and the average time these have been pending implementation. These indicators are prioritised by importance, and analysed alongside qualitative data to determine the overall state of implementation.

Judgments of the CJEU (Table 2)

The study focuses on CJEU judgments related to the rule of law issued between 1 January 2019, and 1 January 2024. These judgments address laws and practices connected with such issues as legal certainty, effective judicial protection (including access to independent and impartial courts), separation of powers, and equality before the law. The implementation of each judgment was evaluated using local expertise. The overall level of implementation for a given country was determined by the general implementation rate and the proportion of judgments pending for two years or more. This evaluation was also supported by qualitative insights. Overall, data was collected for 17 member states.

For more information on the methodology, see section below.

1. INTRODUCTION

For more than seven decades, the two European regional courts – the European Court of Human Rights (ECtHR) and the Court of Justice of the European Union (CJEU) – have been setting out comprehensive, pan-European standards for effectively upholding the continent's constitutional values of democracy, human rights, and the rule of law. Over the last five years, their significance has grown exponentially, as both courts became actors in the rule of law crisis engulfing Europe and in the fallout from Russia's full-scale invasion of Ukraine. Recently, the Strasbourg Court wrote a new chapter in the history of litigation related to climate change, with its *KlimaSeniorinnen v. Switzerland* judgment, where it found that European countries have an obligation to mitigate the adverse effects of climate change.

The importance of both courts for protecting values in the EU is tremendous, despite them being set up in very different ways in terms of how cases reach each of them and what mechanisms exist for following up on the implementation of judgments. The ECtHR can be accessed by anybody who claims that their human rights as protected by the European Convention on Human Rights (ECHR) have been violated by a Council of Europe member, if the formal criteria for lodging an application are met. The CJEU does not allow for such broad access and, instead, hears several categories of cases, most importantly those coming from preliminary references – legal questions as to interpretation of EU law – originating from courts in member states, as well as those brought by the European Commission against member states in claiming a breach of EU law. Both courts also hear interstate cases.

As a result of their different set-ups, the implementation procedures foreseen for each European Court's rulings also vary significantly. The binding force of the Strasbourg Court's judgments stems directly from the text of the European Convention on Human Rights. This has resulted in the establishment of a unique implementation mechanism, concretely tasked with monitoring the respondent states' compliance with their implementation obligations. In its turn, this has allowed the Committee of Ministers – the Council of Europe body entrusted with monitoring implementation progress – to develop wide and far-reaching implementation practices, and to support respondent states in meeting their implementation obligations, through a set of means at their disposal (mostly political/diplomatic in nature) to exercise pressure. Whilst the question of the effectiveness of this mechanism lies at the heart of the present study, it is undeniable that assessing implementation levels in connection with the Strasbourg Court's judgments is a much more straightforward exercise for external researchers.

On the other hand, the CJEU's adjudication of conflicts over the interpretation and application of EU law is a central element of the regime of EU law enforcement. Knowledge of how well EU member states comply with CJEU rulings is limited and scattered, however, because no single body comprehensively monitors and assesses all judicial and political responses.

The European Commission can bring states that fail to fulfil their obligations under EU law before the CJEU. Additionally, EU member states can also bring cases against other member states. If the CJEU finds that a member state has not fulfilled its obligations under EU law, the state must take the necessary measures to comply with the Court's judgment. If the Commission determines that the member state has not complied, it can bring the state before the Court again, and have the CJEU impose a lump sum or penalty payment on the state for non-compliance.

Infringement cases brought by the Commission constitute only a small portion of the cases handled by the CJEU. The majority of the Court's docket is made up of preliminary references sent by national courts in cases initiated by private parties. The CJEU rulings in such cases are sent back to the referring court for a decision. No centralised EU-level mechanism exists for the monitoring and assessment of compliance with CJEU rulings issued under the preliminary reference procedure. Consequently, exact levels of compliance are not immediately clear, and can only be clarified through careful analysis of national court rulings.

Comparing the Two Courts		
	European Court of Human Rights	**Court of Justice of the European Union**
Is an institution of…	the Council of Europe	the EU
Hears cases concerning…	violations of human rights enshrined in the European Convention on Human Rights	the interpretation and application of EU law
Is composed of…	judges representing all Council of Europe member States	judges representing all EU member states
Cases can be brought to it by…	anyone claiming their human rights have been violated by Council of Europe member States	references from EU member state courts, by EU institutions, or by anyone claiming their interests have been harmed by the action of EU institutions
Seat in…	Strasbourg	Luxembourg
Implementation of judgments overseen by…	the Committee of Ministers of the Council of Europe	the European Commission
Possibility of financial sanctions over non-compliance with judgments?	no	yes

What is common in both European jurisdictions are the gains for the protection of fundamental human rights and the upholding of democratic principles and the rule of law that result from effectively implementing the European Courts' rulings. The institutions tasked with overseeing the implementation of the judgments – the Council of Europe's Committee of Ministers and the EU's European Commission – have dedicated significant efforts to pursuing meaningful implementation and follow-up of the judgments, with the Council of Europe mechanism leading to the closure of an important number of leading judgments over the history of the ECtHR – i.e., the apparent (albeit not unquestionable in all instances) resolution of an equal number of human rights problems.

Despite this importance, both courts face ignorance on the part of national authorities, unwillingness or inability to follow the courts'

judgments, and, in an ever-increasing number of cases, active resistance and attempts to undermine their authority. Democratic countries that pride themselves on their record on human rights and the rule of law have flouted key judgments by the ECtHR and CJEU. Governments trying to sidestep democratic commitments they have made as EU members have systematically ignored rulings related to the independence of the judiciary, asylum rights, and the autonomy of universities. The previous Polish government employed a politically captured and improperly composed Constitutional Tribunal to undermine the authority of both courts, through judgments claiming that elements of Polish law and policy do not fall under the purview of Strasbourg or Luxembourg courts.

Our study aims to highlight the issue of non-implementation, present data showcasing how EU member states perform on implementation, highlight key judgments that are not being followed, and issue recommendations aimed at national authorities, as well as EU and Council of Europe bodies. We have developed a set of methodologies that allow us to examine the situation related to both the ECtHR and CJEU, and to assess the level of non-implementation of both courts' judgments. While a direct comparison is unfeasible, due to the differences between the courts, our analysis hopes to provide a broader picture of the issue of non-implementation, and to help the readers assess the performance of each EU member state.

This iteration of our report builds upon two previous editions (here and here), and expands upon the approach taken earlier, with our methodology evolving to provide a more complete understanding of the issue. Specifically, we have developed a new methodology to broaden and deepen our understanding of EU member states' compliance with the CJEU rulings. We have covered not only the rulings in cases brought before the CJEU by the European Commission, but also those resulting from preliminary references from national courts of EU member states. Several judgments arising from preliminary references have played a significant role in developing the CJEU case law related to the independence and status of judges. In this latter category, we have looked not only at whether the referring courts adhered to the CJEU's interpretation of EU law, but also at whether other courts in the same or similar cases either followed or disregarded the CJEU's guidance. Additionally, we have traced political responses to all kinds of CJEU rulings, to reveal successes and failures in terms of changing legislation or administrative practices incompatible with EU law.

Concerning both European Courts, we have furthermore developed a thematic approach, bringing further qualitative elements to further nuance to the analysis, with a focus on fundamental systemic human rights issues.

Our report summarises the current state of play with non-implementation, and includes recommendations aimed at key stakeholders towards improving the situation and pushing back against damage to the rule of law in Europe.

2. METHODOLOGY AND FINDINGS

METHODOLOGY: JUDGMENTS OF THE ECTHR

The data for this report is accurate as of 1 January 2024. The number of pending leading judgments in each country has been taken from the Council of Europe's 2023 Annual Report for the Supervision of Judgments and Decisions of the European Court of Human Rights. The other indicators have been calculated by extracting data from the Council of Europe's "Hudoc Exec" website.[4] The report should be read through the lens of the methodology summarised below.

The data in the report refers to **"leading"**, rather than all, ECtHR judgments pending implementation. Judgments that identify human rights issues for the first time in a country are classified as "leading" by the Committee of Ministers (as opposed to "repetitive" cases, which reveal the magnitude of the problem at issue in a given jurisdiction). These are often **structural or systemic issues, requiring complex reforms.** To successfully implement a leading case, states must ensure that the underlying problems that led to the ECHR violation have been resolved through the adoption of adequate general measures. The most accurate method to assess whether the ECHR system is leading to substantive changes is, therefore, by examining the state of implementation of leading judgments.

Qualifiers in the report are applied according to a classification grid. These qualifiers range from **"very serious problem"** to **"moderate", "low",** or **"very low"** (See Annex II). 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** for which leading cases have been pending implementation are elements assessed in a uniform manner across the different member states, in line with this classification grid.

For the overall assessment of the implementation record of the countries, a final descriptive qualifier is applied (as **"Excellent", "Good"**, etc.). This assessment is not, however, subject to a uniform formula. The categorisation of countries and the attribution of the final qualifier cannot be carried out according to a rigid formula, as this would prevent a sufficiently flexible analysis of diverging underlying circumstances and the different challenges the 27 EU states are faced with. The overall rating is thus based on the three objective indicators, while being further nuanced by qualitative information.

It is worth noting that judgments pending implementation may also be the subject of on-

[4] HUDOC-EXEC (coe.int)

going reforms. The quantitative methodology opted for the purposes of this report does not distinguish between unjustified delays in the implementation process (caused, for example, by the lack of political will to proceed to the necessary reforms) and delays recorded as a result of the significant time required for adopting the necessary implementation measures. Furthermore, the report does not quantify the severity of violations or the complexity of the required reforms, as, to the best of our researchers' understanding, there currently exists no method capable of evaluating these elements. For the first time, however, this year our research does assess the main themes present in the ECtHR jurisprudence, in an effort to derive qualitative conclusions on the types of cases that are more susceptible to becoming stumbling blocks implementation-wise, as a result of the nature of the violations found.

Summing up, the indicators used in this report were chosen not because they are perfect, but because, to our knowledge, they are the best available. Despite certain methodological limitations, we believe this data provides the best quantitative assessment possible of the overall status of the implementation of ECtHR judgments in different countries, while relevant qualitative nuances are also taken into account, to the extent possible.

Full information and further remarks about the methodology are set out in the Annex II.

METHODOLOGY: JUDGMENTS OF THE CJEU

This study traces and assesses the compliance of EU member states **with the rulings related to the rule of law issued by the CJEU over the past five years** (1 January 2019 to 1 January 2024). The study addresses CJEU rulings that touch upon laws and practices challenging values such as transparent, accountable, democratic, and pluralistic law-making processes; legal certainty; and prohibition of arbitrariness on the part of the executive; effective judicial protection, inclusive of access to justice through independent and impartial courts; and also those with regards to fundamental rights, the separation of powers, and equality before the law.[5]

The study follows up on the infringement cases initiated by the European Commission, consti-

[5] For the definition, see Regulation 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget.

tuting only a minority of all cases handled by the CJEU, as well as cases brought by national courts through the preliminary reference procedure, which make up the majority of the CJEU's docket.[6]

The data collection process involved two elements: (a) identifying CJEU rulings pertinent to the study, particularly those related to the rule of law; and (b) tracking national efforts, if any, to adhere to these rulings. In this latter task we were supported by national experts.

The database of the CJEU case law[7] does not allow for the filtering of rulings in a manner that isolates those related to the rule of law. It does, however, categorise rulings based on subject matter. To create a pool of rulings potentially relevant to this study, we have concentrated on several thematic categories provided by the CJEU database, including "freedom, justice and security", "justice and home affairs", "Fundamental rights", and "non-discrimination."[8] Not all rulings from these categories were automatically included in our dataset. We reviewed the list of rulings to identify those aligning with our definition of a rule of law-related ruling. Additionally, we scrutinised secondary sources, such as reports by civil society organisations, academic writings, etc., to ensure that we did not overlook any significant rulings.

In assessing the degree of compliance with CJEU rulings, we delved into the extent to which political and judicial authorities have adhered to the CJEU's prescriptions. We differentiate between three levels of compliance: **full-compliance, partial compliance,** and **non-compliance.** Partial compliance signifies adherence to CJEU rulings to some degree, but not fully. An example of partial compliance is mixed judicial practice, with some national courts following the CJEU guidance, while others adjudicating similar cases fail to do so. Partial compliance may also involve adopting legislative change that fails to fully and properly follow the CJEU case law. Non-compliance can be manifested as an outright failure to comply, resulting in continued infringements of EU law, such as continued practices of tax or immigration authorities. It may also be manifested as substantial delay in implementing reforms, despite rhetorical commitment to comply, or even to sham reforms that do not genuinely alter the status quo or address the violations of EU law.

Individual profiles prepared for each EU member state (see Annex I) covered by the study indicate the **number of rule of law-related rulings** issued by the CJEU for the given timeframe (1 January 2019 to 1 January 2024). This number is broken down into the number of rulings that have fully been complied with, those that have been partly complied with, and those that have not been complied with

[6] Almost 67 per cent of cases completed between 2019 and 2023 resulted from preliminary reference requests. Further data available in the CJEU's Annual Report.

[7] CURIA - Search form (europa.eu)

[8] Certain judgments can fall in more than one category, so we filtered rulings to avoid duplication.

at all, calculating percentages for each category. Where appropriate, the number of rulings with regards to which compliance is difficult to assess is indicated. Individual country profiles also highlight the **number and percentage of rulings where the compliance has been significantly delayed.** These are rulings issued between 1 January 2019 and 1 May 2022 that were still pending compliance as of 1 May 2024, i.e., for two years or more. Each of the profiles gives the list of selected rulings that have been complied with only partly or not at all (highlighting the incompatibilities with EU law as identified by the CJEU).

To contextualise data collected through this study, country profiles **highlight patterns in the behaviour of constitutional courts,** especially highlighting instances of such **courts hindering compliance** either in a confrontational fashion or more indirectly or surreptitiously. The profiles additionally provide data from other sources, such as World Justice Project's Rule of Law Index, as well as DRI's own Judiciary **Hub.** This external data is not factored into our calculations, but it clarifies and contextualises the results of research.

When assessing and comparing state performance, the reader should not solely focus on the absolute number of rulings but, instead, look beyond this into tendencies and patterns. The report does not rank states based on these numbers. It **categorises them based on their performance**, differentiating between **"good"**, **"moderate"**, and **"struggling"** compliers. The categorisation is based on the portions of the rulings that states complied with fully, partly, or not at all. For more details about the assessment scheme, see Annex III.

"Good compliers" consistently demonstrate a strong commitment to complying with CJEU rulings. They exhibit very high levels of compliance, with over 80 per cent of rulings fully complied with, and very low (0-5 per cent) to low (5-20 per cent) levels of non-compliance or partial compliance. Although excessive delays in compliance (for two years or more) are possible, they are relatively rare.

"Moderate compliers" fully comply with a sizable portion of rulings (between 50 and 80 per cent). They show considerable level of commitment, with occasional failures in achieving full compliance (up to 50 per cent partial compliance or non-compliance). Such failures could be due to the mixed judicial record in adhering to the CJEU case law or political reluctance to implement a particular legislative reform properly.

"Struggling compliers" fully comply with only a limited number of rulings (around 20 per cent or less). The state record is mixed and marked with high degree of partial compliance (between 50 and 80 per cent). This means that, while some national actors occasionally adhere to CJEU prescriptions, compliance is mostly incomplete and insufficient. Non-compliance or partial compliance may be politically or judicially driven, and often involves both. Delays occur systematically in a high number of cases.

FINDINGS: KEY DEVELOPMENTS IN BOTH COURTS

Both European Courts continue to deliver new judgments.

(NON) IMPLEMENTATION OF JUDGMENTS I: ECTHR

In 2023, the ECtHR delivered 1,014 violation-finding judgments.[9] Out of these, 95 are leading judgments pending implementation against EU member states.

As of 1 January 2024, there were **624 leading ECtHR judgments**[10] waiting to be implemented across the EU, a slight increase in comparison with the respective figures for 2022 (616) and 2021 (602). This consistent increase, although small, indicates that the ECtHR is delivering judgments faster than the national authorities are able to implement them.

Total number of ECtHR judgments concerning EU states pending implementation

To more accurately assess this figure, additional elements should be taken into account. Out of the total number of pending leading judgments, 29 per cent have been delivered by the Court in the past two years. Non-implementation of these judgments may not be automatically attributed to a lack of political will and/or insufficient implementation capacities. It

[9] ECtHR 2023 statistics

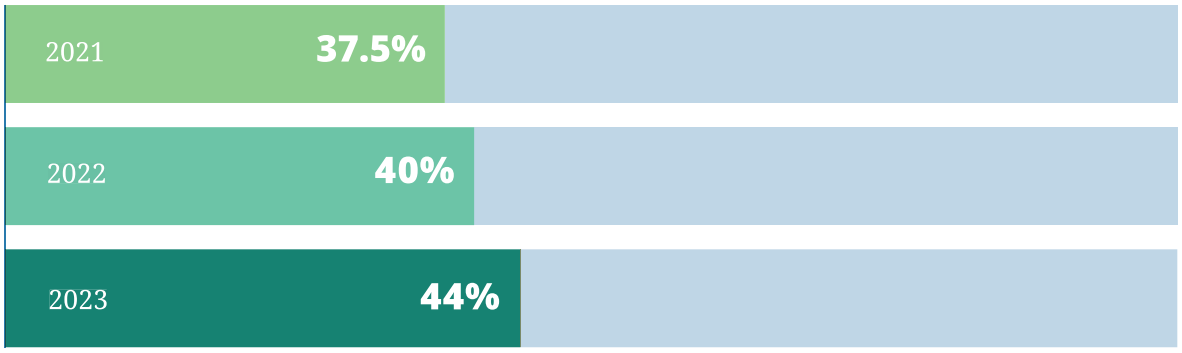
[10] This figure does not include judgments that became final in 2023, but were classified as leading cases after 1 January 2024. These judgments will be reflected in next year's report.

needs to be acknowledged that, in these cases, state authorities may not have yet had the time to define and undertake the necessary reforms and bring them to completion.

On the other hand, there also **exists not a negligible number of judgments** that have been pending implementation for **more than 10 years** and, thus, that fall outside the scope of this research; these amount to 14.5 per cent of the total number of pending leading judgments, and showcase disproportionate delays or insufficient political will for effective implementation. As long as these issues remain unresolved, the effectiveness of the **implementation mechanism will be severely undermined.**

Forty-four per cent of the leading judgments of the ECtHR pronounced with regard to EU states in the last ten years are still pending implementation, compared to 40 per cent in 2022, and 37.5 per cent in 2021. A slow but steady increase in the rate of non-implementation has, therefore, also been identified with respect to this metric.

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



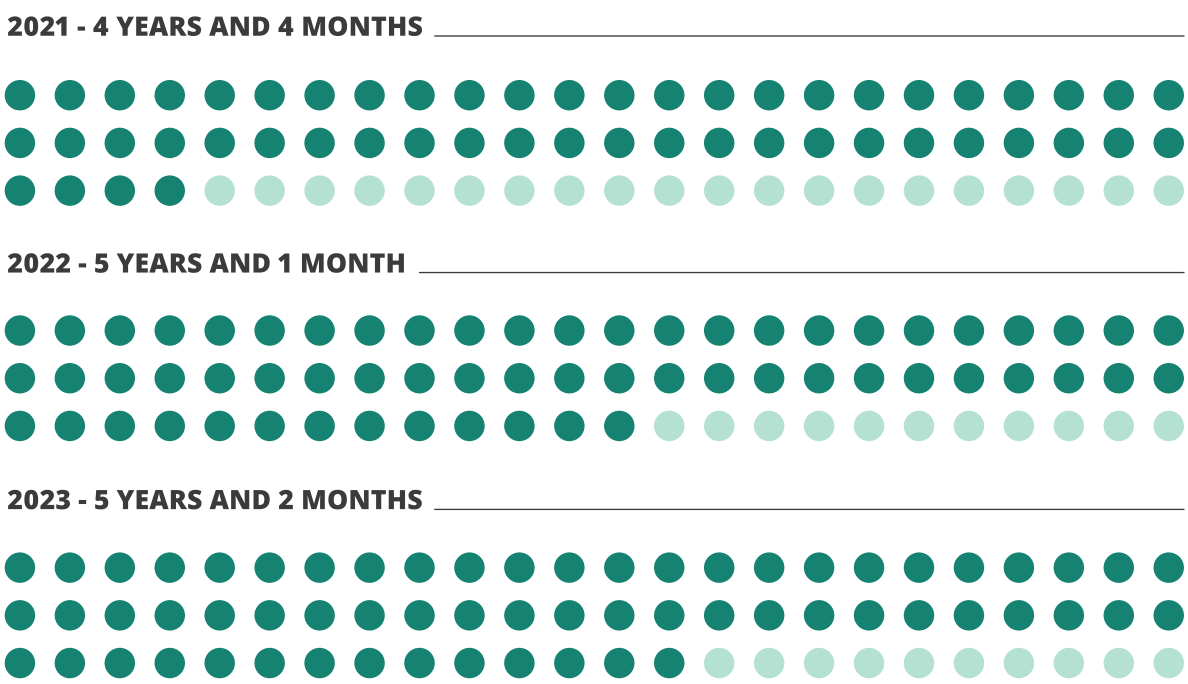
Many of these judgments **relate to systemic or structural human rights problems** identified in the laws, policies, jurisprudence, and/or practices of the states. These unresolved problems contribute to the **erosion of democratic values and the rule of law** in EU member states, while continuing to negatively affect the rights of citizens and non-citizens alike in the EU.

Bulgaria, Finland, Greece, Hungary, Ireland, Italy, Malta, Poland, Portugal, and Romania all have leading judgments that have been pending implementation for more than five years.

In Bulgaria, Cyprus, Hungary, Italy, Malta, Poland, Romania, Slovakia, and Spain, over 50 per cent of the leading judgments rendered against them in the last ten years have yet to be implemented. In Bulgaria and Romania, more than 85 leading judgments are still pending implementation.

In 2023, Hungary remained the state recording the highest percentage of leading ECtHR rulings rendered in the last ten years still awaiting implementation – 76 per cent – while Romania remained the state with the highest number of leading judgments pending implementation – 115.

Average time leading ECtHR judgments concerning EU states have been pending implementation



The average length of time leading ECtHR judgments concerning EU states had been pending implementation for in 2023 was 5 **years and 2 months,** compared to 5 years and 1 month in 2022 and 4 years and 4 months in 2021. Several factors have contributed to this slow but consistent increase. On the one hand, the measurable increase in the number of judgments that have been pending implementation for a very long time – and which often require complex reforms – contributes to the increase of this metric. On the other hand, the significant percentage of leading judgments pending implementation for less than two years prevents the average length of time from increasing exponentially. A third factor that positively impacted on the only modest increase of the average length time is the fact that, in 2023, out of the 109 leading judgments whose supervision was closed by the Commit-

tee of Ministers, a small number of cases that had been pending implementation for an excessively long time were partially closed, and the supervision of the remaining outstanding issues was transferred and continues under more recent judgments. This practice has also contributed to mitigating the rise in this indicator.[11]

While the rule of law-related performance of EU member states can, to a certain extent, be quantitatively measured through recourse to the key indicators presented above, further qualitative elements bring greater clarity and nuance to the analysis. Certain **thematic areas** (presented below) constitute main areas of concern as regards ECtHR-related implementation. While several of the ECtHR judgments address systemic issues that are key to the rule of law and democratic values in the strict sense of the terms (such as the independence and impartiality of the judiciary, freedom of expression, and freedom of assembly and association), there is also a high number of important fundamental human rights issues reflected in other judgments delivered by the ECtHR that have been pending implementation for an excessively long time. Major themes concern conditions of detention, as well as other rights of detained persons; police ill-treatment and failure to investigate it; matters pertaining to mental disability rights and psychiatry; matters pertaining to LGBTIQ+ rights and discrimination; and matters pertaining to asylum and migration. Other themes pertain to the authorities' ineffective responses to domestic and sexual violence, the excessive length of civil, administrative and criminal proceedings, and a wide variety of fair trial, access to justice, property rights, and privacy-related issues.[12] The persistent lack of progress in implementing these types of judgments also raises important concerns as regards the prevalence of the rule of law in the broader sense of the term.

Furthermore, a growing and worrisome pattern of **non-compliance with interim measures** delivered by the Strasbourg Court,[13] which are meant to prevent the risk of irreparable harm to applicants, also raises increasingly significant concerns regarding non-respect for the rule of law by some member states. While information on compliance with interim measures is not officially collected, in part because this issue is not monitored by the Committee of Ministers of the Council of Europe (unlike compliance with the Court's judgments), this year's report also touches upon this issue in the country analyses, where such information is available.

[11] The methodology only accounts for pending leading judgments; it does not, however, account for pending leading human rights problems if their supervision is transferred from under an old judgment to a newer one.

[12] From the latter themes above – namely those pertaining to several fair trial issues and property rights – a small number of judgments may be deemed to be "isolated cases"; if so, then their implementation will require minimal implementation measures, such as the translation and dissemination of the judgment to relevant authorities.

[13] Interim measures are urgent measures that apply only where there is an imminent risk of irreparable harm to a Convention right, and where such a measure is necessary in the interests of the parties or the proper conduct of the proceedings.

(NON-) IMPLEMENTATION OF JUDGMENTS II: CJEU

The study has identified 201 rulings related to the rule of law the CJEU issued between 1 January 2019 and 1 January 2024, with the compliance status valid as of 1 May 2024. Only around half of the rulings (110) issued within the past five years have been fully complied with. There is clear evidence of no or partial compliance for 71 judgments and, of these, 60.5 per cent have been pending for two years or more.

In some countries, **partial compliance** with the CJEU's rule of law-related rulings is a predominant pattern: As shown in Table 2, **Romania and Hungary** fit this category, with **83.3 per cent and 52.6 per cent** of rulings partly complied with, respectively. This indicates that, while some authorities follow the CJEU prescriptions to some extent, overall **efforts fall short of achieving full compliance.** Among the rulings not fully complied with by the two countries mentioned, 50 per cent and 66.7 per cent, respectively, have been **pending for two years or more.** We have labelled such countries as struggling compliers. **Bulgaria** has performed slightly worse than Romania and Hungary – in **31.8 per cent of cases,** compliance has been partial, but **25 percent** of the rulings have **not complied with at all,** resulting in an **overall non-compliance rate of 56.8 per cent.**[14] Difficulties in establishing compliance in a substantial number of cases – such as the inaccessibility of relevant documents – suggest the situation could be even worse. Notably, 56 per cent of pending rulings have been awaiting compliance for two years or more. Similarly to Bulgaria, **Poland** has failed to fully comply with **50 per cent** of rulings, and **75 per cent** of those rulings have been pending compliance for two years or more.

In struggling compliers, referring courts often follow CJEU guidance, but other courts do not always do so. As a result, the overall record of **judicial compliance is mixed.** Even when courts consistently follow CJEU guidance, **political authorities typically fall short,** by inadequately or insufficiently implementing changes in laws and practices (for example, prosecutorial, police, or immigration practices). Political resistance or inability accounts for much of the delay in compliance. In these states, **constitutional courts systematically challenge the CJEU's authority,** hindering compliance by providing governments with justifications. Some do this openly and confrontationally (for example, in **Poland and Romania**), while others do so more indirectly **(Hungary).** Constitutional and supreme courts in these countries have also hindered the lower courts from seeking and applying the CJEU's guidance.

[14] An expert has expressed concern that the CJEU sometimes overlooks flaws in Bulgarian legislation and practice, placing too much faith in compromised courts and prosecution. From that perspective, the CJEU's finding of compatibility of national laws and practices with EU law is not necessarily positive news.

Finland and Sweden would also qualify as struggling compliers based purely on percentages, with all rulings only partly complied with, even though the number of rulings related to the rule of law is **too low** to establish clear patterns and tendencies.

Moderate compliers have shown a fair degree of compliance, **fully complying with 50 to 80 per cent** of rulings, but still face some unresolved issues. National courts in these countries have **mixed records** in terms of following CJEU guidance. Additionally, some countries, such as Portugal, face challenges in implementing necessary legislative changes as well. Good compliers have fully complied with 80 per cent or more of the CJEU rulings. Political unwillingness **occasionally delays** legislative changes and **hinders compliance** for extended periods (for example, in **Italy**). Delays are routine and systematic in struggling compliers, occurring in a higher number of cases, and while delays do also occur in moderate and good compliers, they are rare.

Top courts in some good complier states have **challenged the primacy of EU law** and CJEU authority, although the challenges have been **more isolated/less systemic** than those from, for example, the Polish Constitutional Tribunal. Some commentators cited the German Constitutional Court's 2020 declaration that the CJEU ruling concerning the Public Sector Purchase Programme (PSPP) of the European Central Bank (ECB) was ultra vires as an alarming development that could potentially be replicated by other constitutional courts. In 2021, the French Conseil d'État, following up on a CJEU ruling concerning the balancing of data protection and public security objectives (6 October 2020 C-511/18), established a new exception to the primacy of EU law. Academics fear that the Court might have paved the way for further weakening the rule of law and for more challenges coming from French courts on other issues. In July 2023, a Maltese judge challenged the primacy of EU law to support governmental policy regarding the gaming industry, and consequently refused to enforce an Austrian court ruling against a Maltese gaming company. These instances are somewhat less alarming, however, since, arguably, the courts in question are not instrumentalised, and they are far more likely to show restraint. Hence, contestation is not as systematic, and they are far more likely to show restraint.

Access to justice, including judicial and prosecutorial independence, remains an area of concern in several EU member states. The record of compliance with rulings related to **asylum and migration** has also been unsatisfactory, especially in **Hungary.** Hungary's failure to comply with the CJEU's ruling in case C808/18 of 17 December 2020 prompted the European Commission to bring a new action before the CJEU, which resulted, in June 2024, in the imposition of significant financial penalties. Other themes involved general and indiscriminate **retention of personal data** and access of authorities to such data, as well as access to information and the appropriateness of restricting such access based on national security concerns. Compliance with the rulings related to

the **restrictions on civil society organisations** and academic institutions has also been a challenge (see more on this in the next section).

Analysis of states' performance for the past year reconfirms the need for caution in assessing their progress. Making the release of EU funds to **Hungary** conditional upon addressing rule of law concerns, including those highlighted by CJEU rulings, **prompted legislative amendments** that might not otherwise have been introduced. For example, in May 2023, the Hungarian parliament introduced legislative amendments meant to restore judicial independence. Subsequent statements and initiatives have signalled, however, that positive evaluations may have been premature. Soon after the reform, the Supreme Court *(Kúria)* president, a political appointee, criticised judicial reform as externally forced, and incompatible with Hungarian sovereignty. This is in line with the political narrative the government has used to justify a controversial law adopted in April 2024 allowing them to control the content of judicial and prosecutorial decisions.

The condition of the Polish judiciary and courts, including the issue of disciplinary action against judges, were the reasoning behind the European Commission conditioning the release of the Polish Recovery and Resilience Facility (COVID-19 recovery) funds by the European Commission in 2021. The so-called "milestones" for the release of funds required **Poland** to, *inter alia,* implement the CJEU judgments and **reform the system of disciplinary proceedings against judges.** In February 2024, following the presentation by the new Polish government of an action plan to repair the rule of law in the country, the Commission released the funds, d**espite the lack of full implementation** of the relevant CJEU judgments. In June of the same year, the Commission also concluded the Art. 7 Treaty on European Union (TEU) procedure against Poland, under which it examined, among other questions, the condition of the Polish judiciary and the observance of CJEU judgments. This move has been widely seen as premature; while some progress has been achieved by the government of Prime Minister Donald Tusk, the complete repair of the rule of law in the country is still a distant prospect.

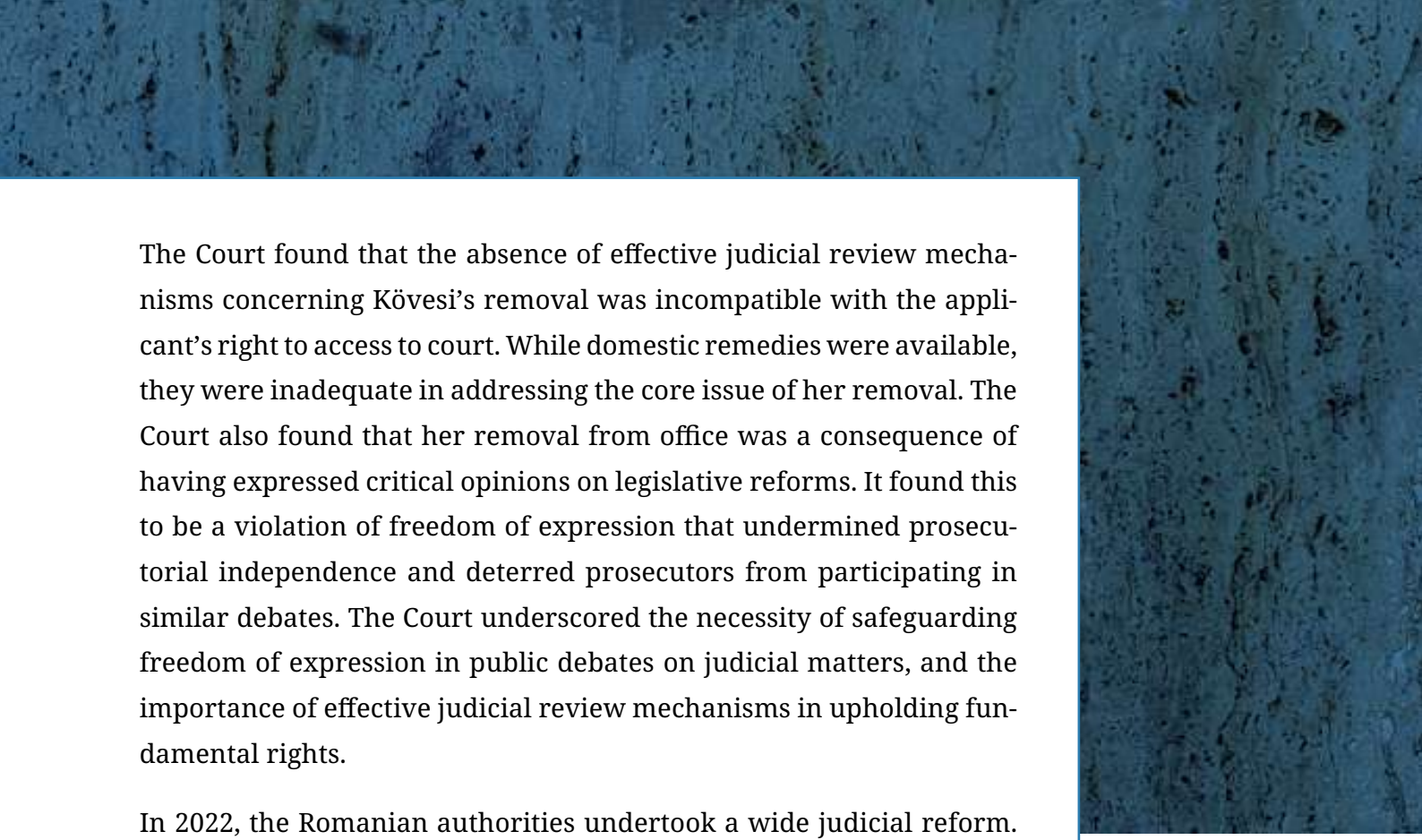
3. CROSS-CUTTING ISSUES IN BOTH COURTS

ISSUES ECTHR

The European Courts' judgments hold significant potential for bringing about positive changes in societies, by helping **align national laws, policies, jurisprudence, and practices** with European values. When the European Courts' judgments are effectively implemented, legal and practical obstacles that hinder a democratic way of life are removed, democracy is strengthened, and states with poor rule of law records are **prevented from exerting a negative influence** on others. One important instance of positive developments for the independence and impartiality of the Romanian judiciary, for example, is the *Kövesi* case.

JUDICIAL REFORMS IN ROMANIA: *Implementation of the Kövesi judgment*

In 2016, Laura-Codruța Kövesi was the chief prosecutor of the National Anticorruption Directorate. Following the 2016 Parliamentary elections, an emergency ordinance was adopted, decriminalising several types of acts of corruption. This development led to widespread criticism and public protests. Kövesi herself expressed concerns about this legislation, and initiated an investigation into the circumstances that led to its adoption. As a result, the Minister of Justice proposed her dismissal, citing alleged breaches of constitutional duties and managerial shortcomings. The Higher Council of the Judiciary refused to endorse this proposal, and the President of Romania refused to sign it. A constitutional conflict ensued, with the Constitutional Court ordering her removal by presidential decree. There was no possibility for her to subject this decision to judicial review.



The Court found that the absence of effective judicial review mechanisms concerning Kövesi's removal was incompatible with the applicant's right to access to court. While domestic remedies were available, they were inadequate in addressing the core issue of her removal. The Court also found that her removal from office was a consequence of having expressed critical opinions on legislative reforms. It found this to be a violation of freedom of expression that undermined prosecutorial independence and deterred prosecutors from participating in similar debates. The Court underscored the necessity of safeguarding freedom of expression in public debates on judicial matters, and the importance of effective judicial review mechanisms in upholding fundamental rights.

In 2022, the Romanian authorities undertook a wide judicial reform. The related law on the status of judges and prosecutors introduced the possibility for high-ranking prosecutors to challenge decrees for their removal. It also introduced guarantees aimed at ensuring that members of the judiciary may express their opinions on public policies or legislative initiatives in the field of justice or in other areas of public interest. Following these reforms, in June 2023, the supervision of the judgment was closed by the Committee of Ministers. While concerns regarding the independence of judges continue to persist, they were not yet reflected in the leading judgments, which were pending implementation at the beginning of 2024.

Several important themes emerging from the 624 leading judgments of the ECtHR that are pending implementation relate to systemic issues key to the rule of law and democratic values. Despite the fundamental importance of ensuring that judges and prosecutors remain free from undue political harassment, merely addressing matters strictly pertaining to the independence and impartiality of the judiciary will not suffice **to ensure that "the law rules".** The Convention system must be able to afford effective and timely **protection against those human rights violations** that cause the greatest suffering, and to ensure redress to the persons affected. As long as long-standing and/or grave human rights concerns, which affect large numbers of vulnerable persons or raise humanitarian issues, persist over time, the weakening of the rule of law in the broader sense continues producing its deleterious effects.

INDEPENDENCE AND IMPARTIALITY OF THE JUDICIARY

As of 1 January 2024, there were 13 leading ECtHR judgments pending implementation, in seven EU member states, regarding the independence and impartiality of the judiciary. **Bulgaria, Hungary,** and **Poland** involve the issues of greatest concern, while judgments in respect of **Belgium, Portugal, Romania,** and **Spain** also identify important questions around this topic.

Poland has the most concerning ECtHR implementation record in terms of judgments related to the **independence and impartiality of the judiciary,** with six such leading judgments pending implementation, and two more having been delivered or classified in 2024.[15]

A number of systemic or structural issues in respect to Poland were developed in the context of a series of 2017 judicial reforms weakening judicial independence. Grave breaches of the procedure for the **appointment of judges** on the Constitutional Court panels, in contravention of domestic law, engendered **violations of the right to a tribunal** established by law (*Xero Flor w Polsce sp. z o.o v. Poland*). Urgent remedial action is needed to ensure that the Constitutional Tribunal is composed of lawfully elected judges. Up to the end of 2023, the previous government was showing overt opposition to this judgment's implementation.

Additionally, the above-mentioned judicial reform deprived the judiciary of the power to elect judicial members of the National Council of the Judiciary (NCJ), as this task was re-assigned to the lower chamber of the Parliament, and removed from office judicial members elected under the previous system. This *ex lege* and premature termination of NCJ mandates **without the possibility of a judicial review** led to **violations of the right to access to court** (*Grzęda v. Poland*).Furthermore, amendments to the Polish Law on the organisation of the ordinary courts enabled dismissals of judges by order of the Minister of Justice, **without giving the reasons for the decisions** and without holding a hearing; this has led to the dismissals of vice-presidents of a regional court, who had their **mandates prematurely terminated** (*Broda and Bojara v. Poland*).Measures are required to protect judges from arbitrary dismissals and to introduce the possibility of judicial review for such dismissals.

A further problem lies in the fact that depriving the judiciary of the power to elect NCJ members resulted in the **NCJ no longer being independent from the legislature and the executive** when issuing recommendations for the appointment of judges to various chambers in the Supreme Court (the Disciplinary Chamber, Chamber of Extraordinary Review,

[15] *Wałęsa v. Poland,* which became final on 23 February 2024, and *Tuleya v. Poland,* which became final in October 2023, and was not yet classified as a leading case as of 1 January 2024.

and Civil Chamber). Therefore, judges in these Chambers of the Polish Supreme Court had been appointed "in an inherently deficient procedure". The rulings of these Chambers (for example, a disciplinary order suspending a lawyer from practicing law, as in *Reczkowicz v. Poland*, and the suspension from duties of a judge for verifying the independence of another judge appointed at the recommendation of the reconstituted NCJ, in *Juszczyszyn v. Poland*) give rise to important violations of the right to a tribunal established by law (which are assessed in the *Reczkowicz v. Poland*).[16] A legal reform must be carried out to secure the independence of the NCJ, by guaranteeing the right of the Polish judiciary **to independently elect judicial members of the body.**

Disciplinary measures against high-ranking judges for **expressing critical views regarding corruption or reforms in the judiciary, or expressing views in defence of the rule of law and judicial independence** (thus violating their freedom of expression), are a common sub-theme. A demotion to a lower-level court in *Miroslava Todorova v. Bulgaria*, the undue and premature termination of the mandate of the President of the former Hungarian Supreme Court through targeted legislative measures (without the possibility of review) in *Baka v. Hungary*, and a financial audit, work inspection, and dismissal in *Zurek v. Poland* (also without the possibility of a judicial review) are all **measures taken to intimidate and silence vocal judges**, and have an overall chilling effect on the judiciary. Judges (and magistrates) must have the freedom to express themselves freely on matters of public interest without fear of retaliation; this is **crucial for the independent functioning** of the judiciary.

In the cases listed immediately above, national authorities must also put in place **safeguards against abuse** when it comes to restrictions on **judges' freedom of expression.** Such safeguards must be effective and sustainable. As regards Hungary, in relation to the implementation of the Baka judgment, measures to safeguard the freedom of judges to express their views on matters of public interest concerning the judiciary have been partially undertaken. A **new Code of Ethics for Judges** was adopted, whose constitutionality was nevertheless challenged by the President of the *Kúria;*[17] these measures have not, therefore, been able to take effect.

The European Commission should consider the non-implementation of the ECtHR judgments that concern independence and impartiality of the judiciary in **Bulgaria, Poland, and Hungary** – and set out concrete recommendations to address these matters in its annual Rule of Law Report.

In **Romania,** as mentioned above, extensive

[16] Since the *Reczkowicz* judgment was delivered, three new repetitive cases were added in this group: *Dolińska-Ficek and Ozimek v. Poland*, *Advance Pharma Sp. Z o.o. v. Poland* and *Juszczyszyn v. Poland.*

[17] The Supreme Court of Hungary

judicial reforms have led to the full implementation of the two main judgments concerning independence and impartiality of the judiciary: *Kövesi* and *Camelia Bogdan.* While concerns regarding this matter continue to persist, they are **not yet reflected in the leading judgments** that were pending implementation at the beginning of 2024. The only exception is *Brisc v. Romania,* in which a prosecutor's **right to impart public information** to the press (regarding an ongoing criminal investigation, in his capacity as a staff member designated to maintain contact with the press) was violated, as he was **unduly reprimanded and dismissed** from office.[18]

Less systemic issues have been identified by the Court in **Portugal and Spain;** these remain pertinent to the rule of law and to the conditions in which magistrates can perform their functions. **In Spain,** judges who had expressed views in favour of Catalan independence were subject to **the police secretly compiling information** about them and leaking it to the media, together with their photographs (*M.D. and Others v. Spain*). The implementation of this judgment, requires, *inter alia,* the conduct of an effective investigation capable of identifying and sanctioning the police officers who had carried out the unlawful activities, which led to the **violation of the applicants' rights to private life.**

In **Portugal,** in the context of disciplinary proceedings against a judge in the Supreme Council of the Judiciary (*Ramos Nunes de Carvalho E Sa v. Portugal*) that resulted in the imposition of a fine and his suspension from office, the Supreme Court refused to reassess the facts and did not hear the applicant, holding that its role was only to assess whether the establishment of the facts by the Supreme Council of the Judiciary had been reasonable. The findings of the Court regarding the inadequacy of the review have already led to some positive developments, consisting in the amendment of the status of magistrates, allowing for oral hearings already at the administrative stage of proceedings, regardless of the gravity of the seriousness of the case; the case is still pending full implementation.

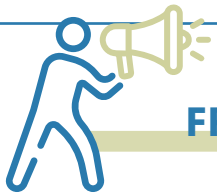
[18] The case has been pending implementation since 2019, and the authorities argue that no legislative or other general measures are required for implementing this case.

ECTHR: INDEPENDENCE AND IMPARTIALITY OF THE JUDICIARY – *Juszczyszyn v. Poland*

Paweł Juszczyszyn was a judge at the Olsztyn District Court. In 2019, upon hearing an appeal in a civil case, he decided to verify whether the first instance judge fulfilled the requirement of independence (as he had been appointed upon the recommendation of the NCJ, in the context of controversial 2017 judicial reforms). In doing so, he requested the Chancellery of the Sejm, the lower house of the Polish Parliament, to provide copies of the endorsement lists for judicial candidates to the new NCJ. As a result, the applicant's secondment was terminated, he was suspended from duties, and his salary was reduced by 40 per cent for the duration of the suspension. The Supreme Court ruled that his order had compromised the dignity of the judicial office.

In its 2022 judgment, the Court found that his right to a tribunal established by law was violated, since the judges that decided on his suspension were appointed "in an inherently deficient procedure", gravely compromising the independence and impartiality of that court. Furthermore, Juszczyszyn did not have any legal avenues at his disposal to challenge his suspension, which also violated his right to access to court. The imposition of disciplinary sanctions was based on a manifestly unreasonable and unforeseeable interpretation and application of the law by the Supreme Court, in breach of his right to respect for his private life. Furthermore, the impugned restrictions were imposed on him for non-Convention-compliant reasons, namely, to sanction and dissuade him from assessing the status of judges appointed upon the recommendation of the NCJ.

As a result of this judgment, the Polish authorities must put in place measures to effectively protect the freedom of expression of judges defending the rule of law and judicial independence.

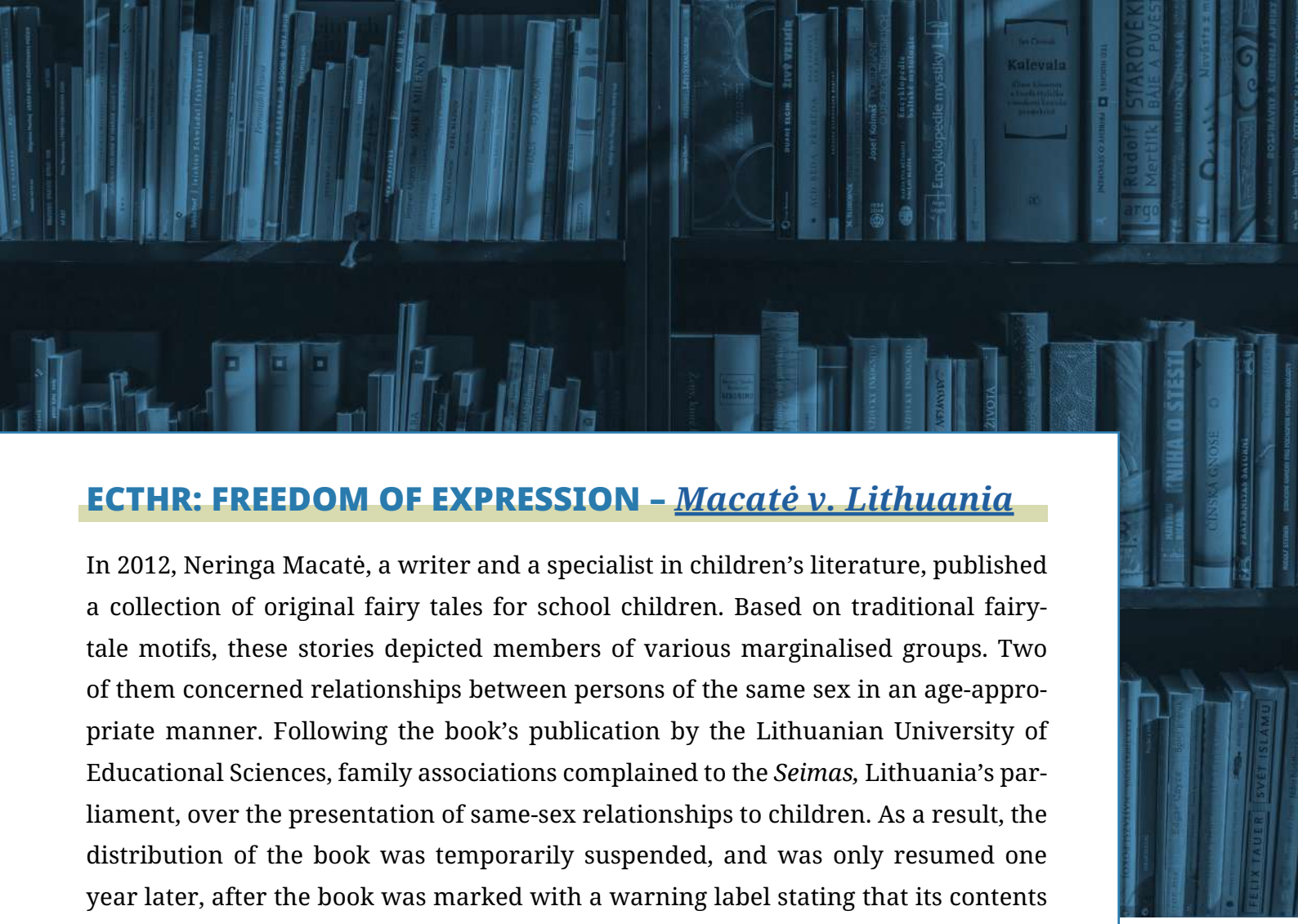


FREEDOM OF EXPRESSION

Aside from the cases that concern the freedom of expression of magistrates, **sixteen other leading judgments pertaining to freedom of expression** are pending implementation in EU member states, in particular in Bulgaria, Greece, Hungary, Lithuania, Romania, Spain, and Slovakia. Many of these concern various types of sanctions imposed on persons for **exercising their freedom of expression.**

Greece and Romania must fully implement judgments concerning **unlawful defamation proceedings against journalists (***Ghiulfer Predescu v. Romania*, *Katrami v. Greece*, *Vasilakis v. Greece*); in Greece in particular, these judgments have been pending implementation since 2008, whereas the authorities have systematically tried to prematurely end their supervision. In these cases, which concern both civil and criminal defamation proceedings, the national authorities must ensure that domestic courts distinguish between "facts" and "value judgments" in a Convention-compliant manner. Romania should also take measures to ensure that the fines ordered for compensation in such cases are proportionate.

An important number of leading judgments concerning **freedom of expression** are pending in respect of **Hungary,** which reflects the global concerns over the **declining state of the rule of law** in the country. These non-implemented judgments concern, *inter alia,* the **refusal to provide access to information of public interest (***Magyar Helsinki Bizottsag v. Hungary*), the continued resistance of the authorities to grant **access to documents** regarding the Hungarian secret services for research purposes (*Kenedi v. Hungary*), and the denial of **access for journalists** to reception centres for asylum seekers (*Szurovecz v. Hungary*).

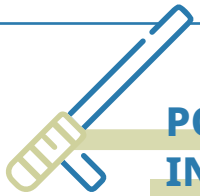


ECTHR: FREEDOM OF EXPRESSION – *Macatė v. Lithuania*

In 2012, Neringa Macatė, a writer and a specialist in children's literature, published a collection of original fairy tales for school children. Based on traditional fairy-tale motifs, these stories depicted members of various marginalised groups. Two of them concerned relationships between persons of the same sex in an age-appropriate manner. Following the book's publication by the Lithuanian University of Educational Sciences, family associations complained to the *Seimas,* Lithuania's parliament, over the presentation of same-sex relationships to children. As a result, the distribution of the book was temporarily suspended, and was only resumed one year later, after the book was marked with a warning label stating that its contents could be harmful to children under the age of 14 (in application of the provisions of the Act on the Protection of Minors from Negative Effects of Public Information).

The Court found a violation of the right to freedom of expression. In doing so, it noted that the purpose of the book was to depict same-sex relationships as essentially-equivalent to different-sex relationships, advocating for respect and acceptance of all members of society. The measures imposed against the book's distribution contributed to the continuing stigmatisation of same-sex relationships, and were incompatible with the notions of equality, pluralism, and tolerance inherent in a democratic society.

In November 2023, the *Seimas* rejected a draft law seeking to eliminate the discriminatory provision in question. The authorities have now submitted a petition with the Constitutional Court, asking it to consider and adopt a decision on the constitutionality of the impugned provision.



POLICE ILL-TREATMENT AND FAILURE TO EFFECTIVELY INVESTIGATE VIOLENCE (BY POLICE OR THIRD PARTIES)

Judgments concerning ill-treatment by the police or by prison guards, and the failure to effectively investigate this (by taking measures capable of identifying and punishing the perpetrators), are particularly relevant to the rule of law, as failure to effectively implement these judgments means that **state agents are not being held accountable for violating core rights** protected by the Convention. Furthermore, the inadequate investigation of violence carried out by third parties in cases with discriminatory motives also demonstrates the **failure of authorities to enforce the rule of law.**

These problems are present in **11 EU member states,** but it is important to highlight that they are not equally systemic in all of them. Systemic problems of ineffective criminal investigations into ill-treatment or excessive use of force by law enforcement are notably present in **Bulgaria** (*S.Z. v. Bulgaria*), **Greece** (*Sidiropoulos and Papakostas v. Greece*), **Hungary** (*Gubacsi v. Hungary, Balazs v. Hungary*), **Italy** (*Cestaro v. Italy*), and **Romania** (*Lingurar v. Romania, M.C. and A.C. v. Romania*). Important instances of **ill-treatment,** often with discriminatory motive, yet less indicative of a problem of a systemic nature, have been identified in respect of **Croatia** (*Sabalic v. Croatia*), **Poland** (*Kancial v. Poland, Kuchta and Metel v. Poland*) **and Slovakia** (*A.P. v. Slovakia*).

Not all of these cases require the adoption of the same types of measures. Furthermore, several measures have already been undertaken in the context of these cases, but are not yet adequate to allow the conclusion that the judgments regarding the cases listed above have been fully implemented. **Romania** is yet to carry out **reviews of relevant criminal law provisions** pertinent to police operations (*Lingurar v. Romania*). **Italy** must put in place a legislative framework capable of **imposing appropriate penalties on perpetrators of acts of torture** (*Cestaro v. Italy*). **Bulgaria** must ensure that the mechanism for the **independent investigation of a Chief Prosecutor** is effective, and that the prosecutorial governance body has a balanced composition (*S.Z. v. Bulgaria*).

Further, national authorities must carry out ongoing annual **specialised training of law enforcement personnel.** Depending on the scope of implementation and the jurisdiction, police training must focus on the correct and proportional use of lethal weapons or lethal force, instructions for effective investigations and investigating hate motives, or on professional ethics (*Kuchta and Metel v. Poland*). **Legislation to enable the identification of police officers** (body cameras, identification numbers) is also required in some cases (*Cestaro v. Italy*). High-level authorities should convey strong messages of **intolerance of ill-treatment,** and **periodic reviews** should be carried out to **identify deficiencies in prosecutorial practices.**

ECTHR: POLICE ILL-TREATMENT – *Cestaro v. Italy*

In 2001, during the 27th G8 Summit in Genoa, 500 police officers broke down the doors of two schools that were used as overnight accommodation for "anti-globalisation" demonstrators, and beat the occupants with fists, feet, and truncheons. Many of the occupants who were beaten were sitting or lying down in sleeping bags. Arnaldo Cestaro, 62 years old at the time, was beaten despite standing with his arms up in surrender and his back against the wall; he was hit in the head, arms and feet and suffered multiple fractures, which required surgery and hospitalisation, leaving him with permanent sequelae. While the public prosecutor's investigation brought 30 people to trial, there were no convictions for ill-treatment.

The Court found that the ill-treatment suffered by the applicant had amounted to torture. The treatment had been inflicted entirely gratuitously and the police had attempted to conceal or justify the events. Furthermore, the investigation into these events was ineffective; it did not lead to the identification of the responsible police officers, who thus benefited from impunity. The national courts only sanctioned the cover-up attempts and applied remissions to the sentences. The Court concluded that the relevant Italian legislation had proven to be both inadequate with respect to the requirement to punish acts of torture and devoid of the necessary deterrent effect to prevent similar violations

The judgment has been pending implementation since 2015. The introduction in 2017 of the crime of torture in the Italian legal system marked a crucial step in the execution of this judgment. It has, therefore, been deeply concerning that draft legislation is currently being considered to repeal the provisions defining torture as a specific criminal offence.

RIGHTS IN DETENTION

A cross-cutting theme across **14 EU member states**[19] is rights in detention, identified in more than 30 leading judgments of the ECtHR that are pending implementation. The failure to effectively implement these judgments **affects a large group of vulnerable persons** who are in the custody of the state – the entire prison population in these states, as well as persons detained in remand centres and police stations. A main sub-theme is that of **inadequate conditions of detention,** characterised by overcrowding, poor material conditions (marked by poor hygiene; the sharing of beds; improper sanitary facilities; lack of privacy; infestations with rats, mice, bedbugs, and lice; and lack of adequate lighting and ventilation). Such conditions amount to **inhuman and degrading treatment.** Additional sub-themes concern the **lack of an effective remedy** to complain about conditions of detention, and about inadequate medical care in detention. Other violations, which are more country-specific, concern the impossibility of prisoners to attend the funerals of relatives, the detention of mentally ill persons in prison, the prolonged detention of terminally ill prisoners, and life sentences without eligibility for release on parole.[20]

In order to address these systemic issues, EU member states must take (often complex) general measures, and **implement criminal justice reforms** and new policies to reduce prison occupancy. For example, to sustainably reduce the number of detainees, rather than focus on increasing prison capacity (*Vasilescu v. Belgium*). Additionally, states need to effectively and promptly implement the **use of alternatives to detention,** including community service, while also taking measures to ensure the **effectiveness of a new domestic remedy** for poor conditions of detention, by providing **extensive training to the judiciary** (*Nisiotis v. Greece*). Furthermore, **Romania** must modernise and renew the "existing network of police arrest and detention centres and ensure that new and renovated facilities offer conditions adapted to the length of the prisoners' stay, including an appropriate regime of out-of-cell activities and suitably equipped premises for such activities".[21]

[19] Belgium, Bulgaria, Croatia, Cyprus, Estonia, France, Greece, Hungary, Italy, Lithuania, Malta, Netherlands, Portugal and Romania.

[20] The thematic assessment excludes cases regarding psychiatric detention and administrative detention of asylum seekers.

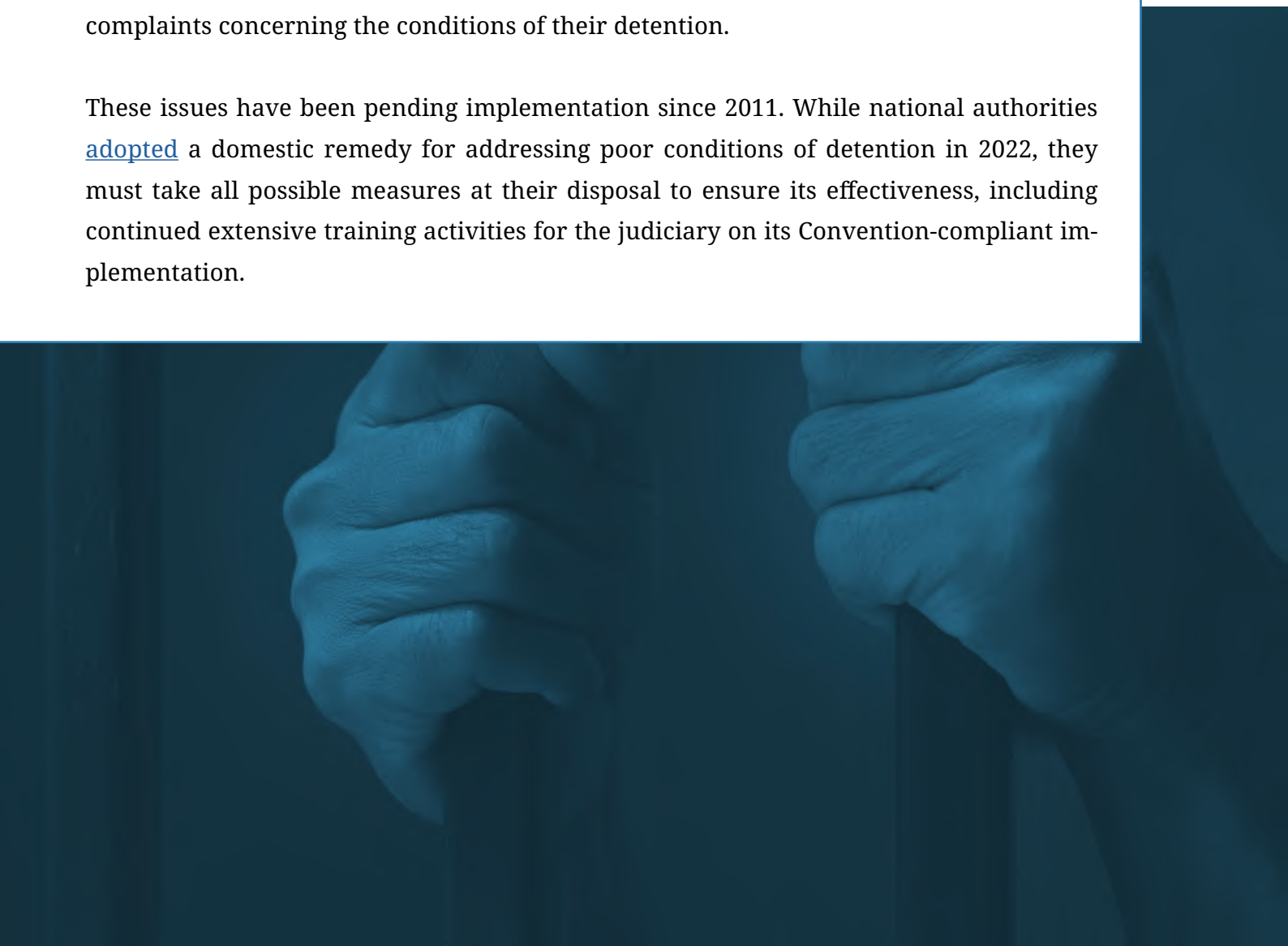
[21] *Rezmives and Others v. Romania*

ECTHR: RIGHTS IN DETENTION – *Nisiotis v. Greece*

In 2006, Nikolaos Nisiotis was convicted of a drug-related criminal offence, and sentenced to six years of imprisonment. Between March 2008 and June 2009, he was detained in the Ioannina prison in a 50-square-meter cell, together with another 30 inmates. The prison was heavily overcrowded, holding almost three times more detainees than its capacity; the corridors were occupied by beds as well, and there were no chairs, table, or space between them. His private space was limited to his bed. All detainees had to spend 18 hours a day in their cells. Together with other detainees, Nisiotis complained to the prison administration and to the Ioannina correctional tribunal, without success.

Relying on findings of the European Committee for the Prevention of Torture, the Court found that the conditions of detention in which the applicant and his co-detainees were detained amounted to inhuman and degrading treatment, due to hardship of an intensity exceeding the unavoidable level of suffering inherent in detention. Furthermore, in a related case, the Court also found that detainees lacked an effective remedy in respect of complaints concerning the conditions of their detention.

These issues have been pending implementation since 2011. While national authorities adopted a domestic remedy for addressing poor conditions of detention in 2022, they must take all possible measures at their disposal to ensure its effectiveness, including continued extensive training activities for the judiciary on its Convention-compliant implementation.



MENTAL HEALTH AND PSYCHIATRY

Another important topic that raises grave humanitarian concerns and affects a significant number of extremely vulnerable persons is that of psychiatry and mental disability rights. This problem is identified in **a relatively small number of judgments** pending implementation; however, these judgments **raise fundamental systemic and structural human rights issues in six EU member states.**[22] The intersectionality between mental health and rights in prison also gives rise to systemic issues, reflected in the Strasbourg Court's jurisprudence, regarding inadequate treatment or ill-treatment of persons with mental disorders in prison (particularly in **Belgium and Romania). Bulgaria and Romania** have the most concerning records of implementation of judgments as related to the field of psychiatry and mental health.

Romania has 12 leading judgments on this topic (excluding another two that concern mental health in prison). One of the most pressing issues concerns **deficiencies in the legal protection** and **medical and social care** afforded to vulnerable persons, and the **failure to effectively investigate the deaths** of persons with mental disabilities in state institutions (*Centre for Legal Resources on behalf of Valentin Campeanu v. Romania*). Romanian civil society indicates that approximately **2,000 persons with mental disabilities die** in mental health institutions every year. Many of these deaths are caused by **medical neglect** and extreme **deprivation in living conditions,** are not investigated, and remain underreported.[23]

Related issues concern living conditions in psychiatric hospitals (*Parascineti v. Romania*); structural deficiencies in the application of procedures and insufficient safeguards for involuntary psychiatric placements – both in "ordinary" psychiatric hospitals, under the Mental Health Act, and with regard to psychiatric security measures, under the Criminal Code (*Cristian Teodorescu v. Romania*, *R.D. and I.M.D. v. Romania*, *N. v. Romania*) – and with regard to consent for psychiatric treatment (*Atudorei v. Romania*, *R.D. and I.M.D. v. Romania*); unlawful placement without consent in social care homes, without possibility for judicial review (*Stanev v. Bulgaria*); and failure to prevent the deaths of children with severe mental disabilities placed in public care.

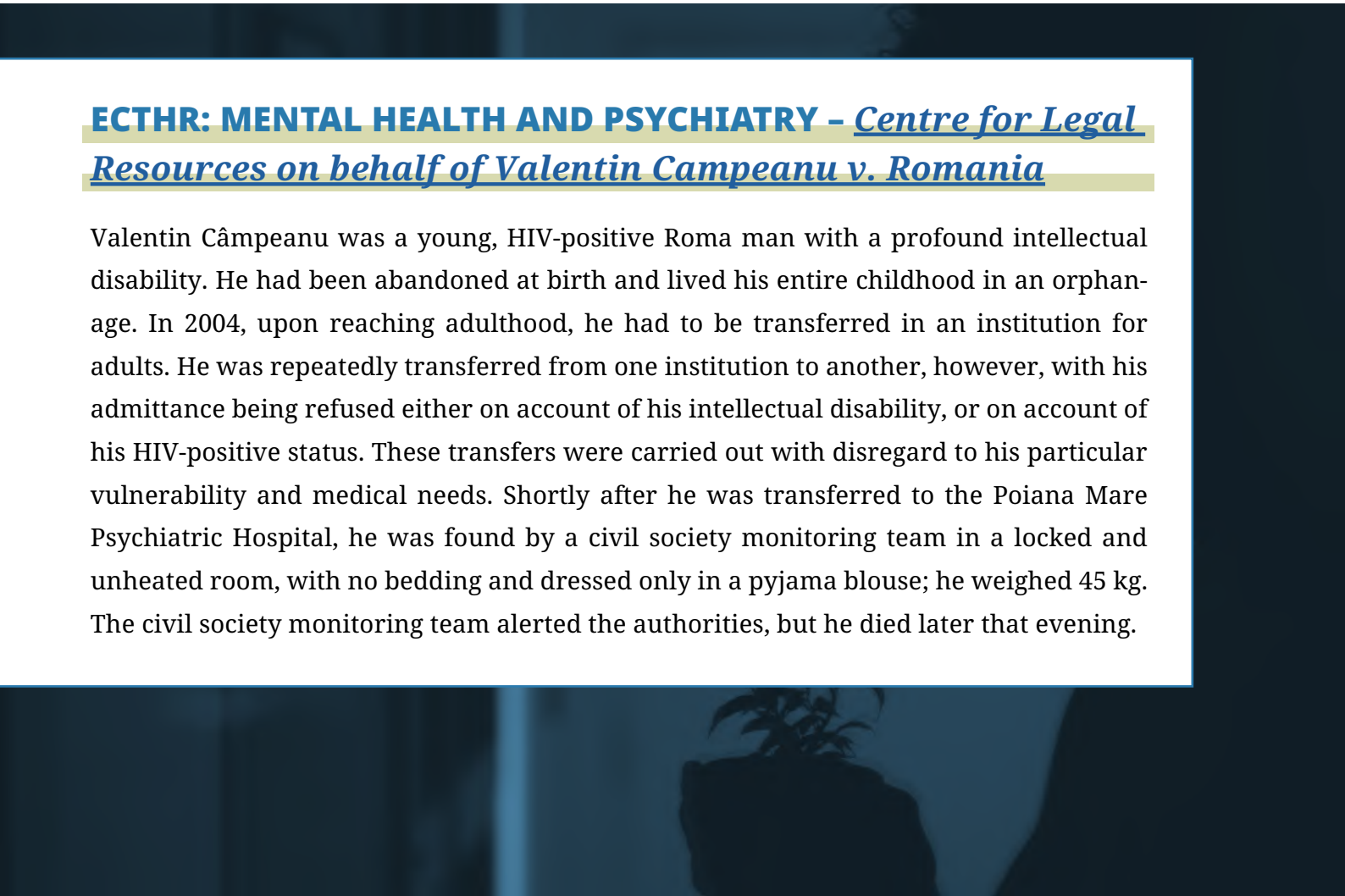
The Romanian authorities are putting into place a **new support and legal protection system** for persons with mental disabilities, to replace the outdated previous system of legal guardianship (which was not in line with

[22] Belgium, Bulgaria, Denmark, Hungary, Lithuania, Romania

[23] See submissions made by the Centre for Legal Resources to the Committee of Ministers, available here: https://hudoc.exec.coe.int/eng?i=004-13375 and https://hudoc.exec.coe.int/eng?i=DH-DD(2023)546E

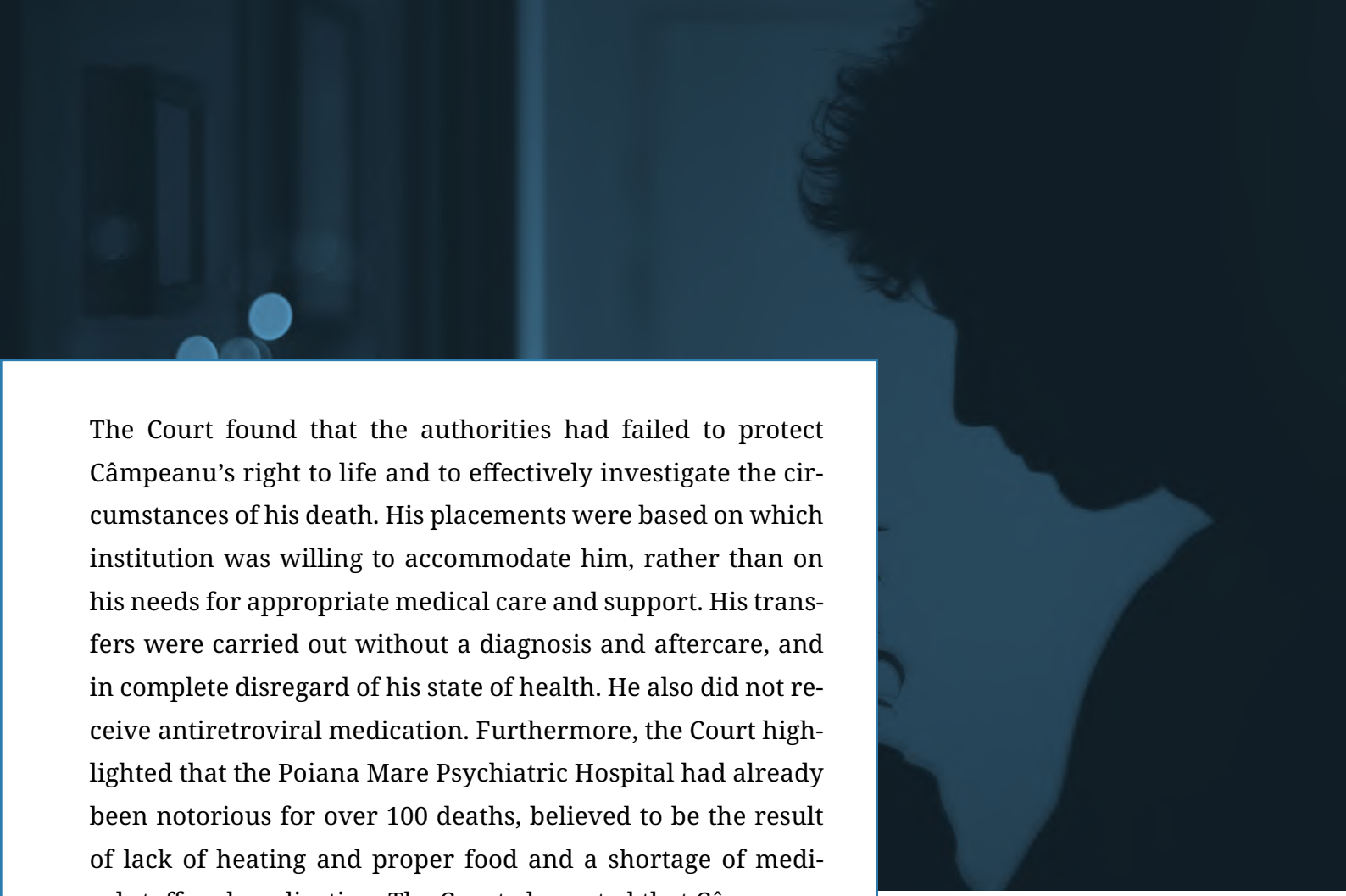
international human rights standards). Significant challenges, however, prevent its effective implementation – **lack of training of the professionals** working with persons with disabilities, lack of concrete and clear information regarding the mechanism for **conducting medical and psychosocial evaluation reports** required for persons with disabilities, and the extremely high costs of these evaluation reports, which are not covered by the national health insurance. In addition to addressing these problems, Romania must also find solutions to provide **access to justice for persons with severe mental disabilities** who have no relatives able or willing to take over support or representation duties under the new system.

The **Bulgarian** authorities have undertaken measures to ensure some **progress in respect of hygiene or physical neglect** in the social care institutions, but further measures are required to avoid serious forms of neglect and unhygienic conditions caused by insufficient personnel. The authorities have also initiated a **deinstitutionalisation strategy for persons with disabilities,** which has been heavily criticised by civil society organisations for being **contrary to international disability rights standards.** Other outstanding measures are needed to ensure that persons under full guardianship benefit from reasonable accommodations and safeguards, and that a judicial review is put in place with regards to the **lawfulness of placements** not based on valid consent.



ECTHR: MENTAL HEALTH AND PSYCHIATRY – *Centre for Legal Resources on behalf of Valentin Campeanu v. Romania*

Valentin Câmpeanu was a young, HIV-positive Roma man with a profound intellectual disability. He had been abandoned at birth and lived his entire childhood in an orphanage. In 2004, upon reaching adulthood, he had to be transferred in an institution for adults. He was repeatedly transferred from one institution to another, however, with his admittance being refused either on account of his intellectual disability, or on account of his HIV-positive status. These transfers were carried out with disregard to his particular vulnerability and medical needs. Shortly after he was transferred to the Poiana Mare Psychiatric Hospital, he was found by a civil society monitoring team in a locked and unheated room, with no bedding and dressed only in a pyjama blouse; he weighed 45 kg. The civil society monitoring team alerted the authorities, but he died later that evening.



The Court found that the authorities had failed to protect Câmpeanu's right to life and to effectively investigate the circumstances of his death. His placements were based on which institution was willing to accommodate him, rather than on his needs for appropriate medical care and support. His transfers were carried out without a diagnosis and aftercare, and in complete disregard of his state of health. He also did not receive antiretroviral medication. Furthermore, the Court highlighted that the Poiana Mare Psychiatric Hospital had already been notorious for over 100 deaths, believed to be the result of lack of heating and proper food and a shortage of medical staff and medication. The Court also noted that Câmpeanu had never been appointed a legal guardian, and that Romania had no appropriate legal framework that would enable the examination by an independent authority of allegations regarding his care and medical treatment. The Court called on Romania to **"envisage general measures to ensure that mentally disabled persons in comparable situations are afforded independent representation, enabling them to have Convention complaints relating to their health and treatment examined before a court or other independent body".**

This judgment has been pending implementation since 2014. While a legal guardianship reform was initiated last year, it still does not cover the specific situation of persons in a situation comparable to that of Câmpeanu (i.e., who do not have any relatives able or willing to take over their representation duties). Furthermore, important concerns have been raised by civil society regarding the effectiveness of the new reform.

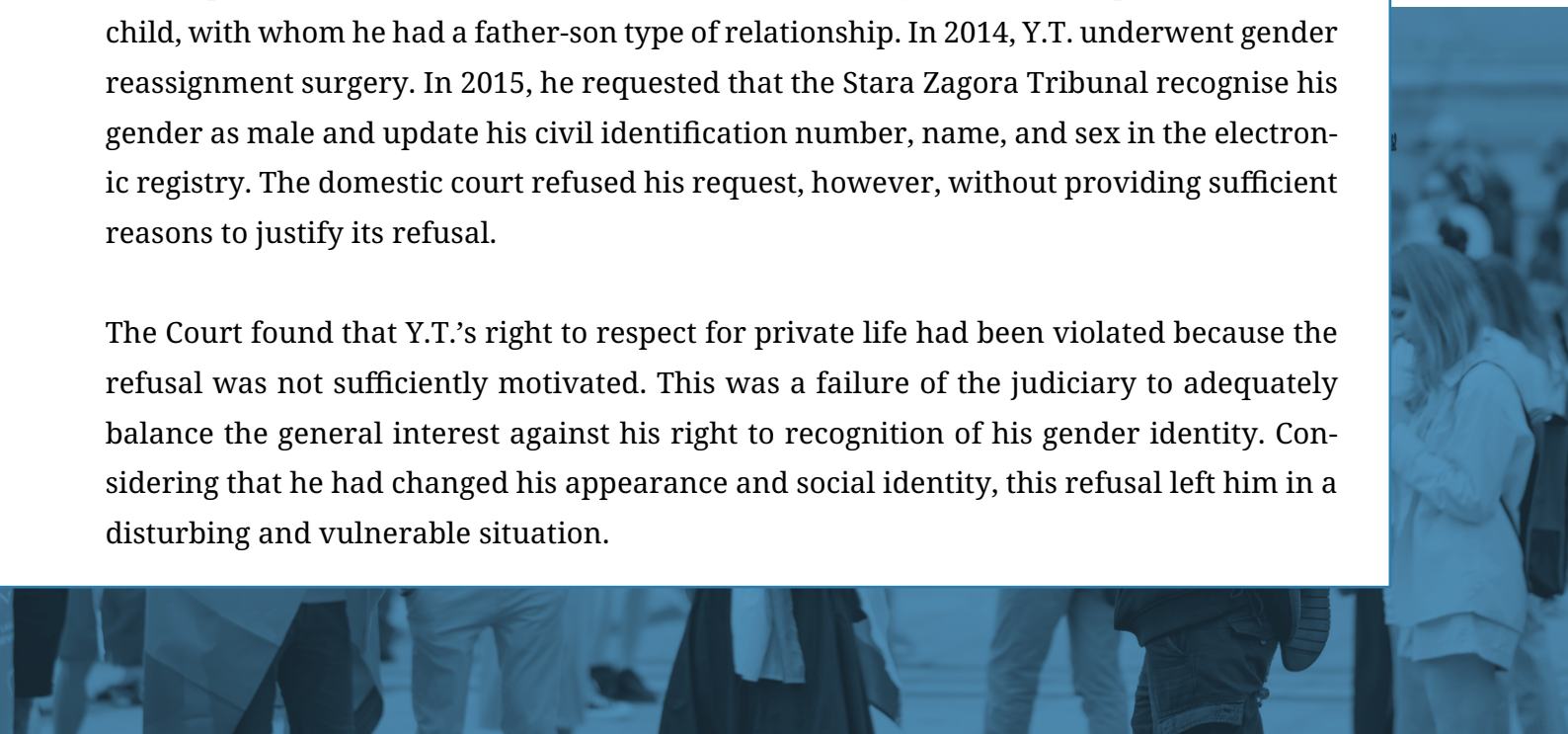
LGBTIQ+ RIGHTS

Another cross-cutting theme in the Strasbourg Court's jurisprudence is the respect for the rights of LGBTIQ+ persons. **Bulgaria, Croatia, Hungary, Lithuania, and Romania** have leading judgments pending implementation on this topic and are under the obligation to take general measures to address these issues. Legal frameworks to **recognise and protect same-sex couples** must be put in place in Bulgaria and Romania (*Buhuceanu v. Romania*); Croatia and Romania are required to resolve **deficiencies in investigating homophobic hate crimes;** whereas Lithuania needs to ensure that online hate speech be properly investigated, and that the investigating authorities' actions or omissions do not reflect the very same discriminatory state of mind that underpinned the actions of the persons who made the hateful comments (*M.C. and A.C. v. Romania*, *Sabalic v. Croatia*, *Beizaras and Levikas v. Lithuania*). Finally, reforms to ensure adequate **legislation and procedures for legal gender recognition** are needed in four EU member states (*X and Y v. Romania*, *Rana v. Hungary*, *L. v. Lithuania*, *Y.T. v. Bulgaria*). Heightened attention is required in respect of cases where the member states have demonstrated a long-term resistance to adopting the necessary measures to ensure compliance with the Convention standards (such as, for example, the case of *L. v. Lithuania,* which has been pending before the Committee of Ministers for more than 16 years).

ECTHR: LGBTIQ+ RIGHTS – *Y.T. v. Bulgaria*

Y.T. is a transgender man who had had been registered as female in the civil status registers upon birth, but had led a life as a man for years, together with his partner and her child, with whom he had a father-son type of relationship. In 2014, Y.T. underwent gender reassignment surgery. In 2015, he requested that the Stara Zagora Tribunal recognise his gender as male and update his civil identification number, name, and sex in the electronic registry. The domestic court refused his request, however, without providing sufficient reasons to justify its refusal.

The Court found that Y.T.'s right to respect for private life had been violated because the refusal was not sufficiently motivated. This was a failure of the judiciary to adequately balance the general interest against his right to recognition of his gender identity. Considering that he had changed his appearance and social identity, this refusal left him in a disturbing and vulnerable situation.



This judgment has been pending implementation since 2020. In 2017, following a new request by the applicant, a domestic court allowed the change of the sex marker, the names, and the personal identification number on the applicant's birth certificate. The changes were then reflected in the civil status register. Nevertheless, the Bulgarian authorities are still under the obligation to carry out reforms providing for a Convention-compliant procedure for legal gender recognition. In this context, the Committee of Ministers has recently expressed deep regrets at the fact that, while for many years recognition of gender reassignment had been regularly authorised by national judicial practice, a recent interpretative decision of the Supreme Court of Cassation of February 2023, based on a ruling of the Constitutional Court of October 2021, has made it virtually impossible for transgender persons to obtain legal recognition of their gender in Bulgaria.

ASYLUM AND MIGRATION

A cross-cutting ECtHR theme across the European Union is that of asylum and migration. There are over **30 leading judgments, in 13 EU member states,** concerning asylum, migration, and the rights of refugees and foreigners subjected to expulsion or deportation for various reasons. Many of these are **systemic fundamental human rights problems** that affect a great number of vulnerable people, have humanitarian implications, and require complex reforms and public policies, as well as considerable resources, to implement.

The subthemes are diverse, ranging from conditions of detention in hotspots or administrative detention centres to refusals to accept asylum applications, expulsions to third countries despite a real and serious risk of ill-treatment, collective expulsion orders, ineffective remedies against expulsion and conditions of detention, and the placement of families with children or unaccompanied minors in administrative detention. A more elaborate analysis of this theme will feature in next year's edition of this report.

ISSUES CJEU

GUARANTEES OF JUDICIAL AND PROSECUTORIAL INDEPENDENCE

Judicial and prosecutorial independence is critical to the rule of law, ensuring that justice is administered fairly and without political interference. In recent rulings, the CJEU has identified the mechanisms that undermine the independence of judges and prosecutors in several EU member states. This section provides an overview of the CJEU's findings on these mechanisms and their impact on the quality of justice in **Romania, Hungary, Poland, and Germany,** as well as the responses by national authorities.

CJEU rulings regarding **Romania** have raised concerns about **political pressure on Romanian judges** through disciplinary, civil, and criminal liability mechanisms. In its Judgment of 18 May 2021, (Joined Cases C-83/19, C-127/19, C-195/19, C-291/19, C-355/19, C-397/19), the CJEU identified issues with appointments of the leadership of the Judicial Inspectorate, a disciplinary body. Similarly, in its Judgment of 11 May 2023, case C-817/21, the CJEU pointed out that the rules governing the organisation and operation of the Judicial Inspectorate could **encourage disciplinary action** that exerts pressure on judges or **ensures political control.** Amendments made by the Romanian Parliament in October 2022 aimed to address these concerns, for example, by having the chief inspector share power with a newly established board, and by involving the Supreme Council of the Magistracy in the appointments of inspectors. Some judges believe, however, that **these changes are not sufficient** to prevent harassment by the Inspectorate.

The CJEU also highlighted risks associated with the Special Section for the Investigation of Offences in the Judiciary (SIIJ), in its Judgment of 18 May 2021. Legislative changes adopted in March 2022 (Law no 49 of 11 March 2022) dismantled the SIIJ and gave the **power to investigate judges to non-specialised prosecutors.** While the removal of the SIIJ was in line with CJEU prescriptions, it was a subject of concern for the Council of Europe's European Commission for Democracy through Law (the Venice Commission) that the new law did not re-establish the competences as regards corruption offences committed by judges and prosecutors of the DNA (National Anti-Corruption Directorate), a body which, according to the Commission, was superior to the new structure in terms of functional independence, specialisation, experience, and technical means at its disposal. The European Commission, in its 2023 Rule of Law Report, already expressed concern about the absence of safeguards against the use of the new structure as an instrument of political control over the judges' and prosecutors' activities, to the detriment of their independence.

This criticism is no longer featured in the 2024 edition of the Report, which, the Romanian Judges' Forum Association has argued, does not objectively reflect the situation of the judiciary in Romania and ignores the disregard of the CJEU rulings. This was not, however, the first time the Commission was criticised for its approach to the Romanian situation. On 28 November 2023, the Romanian prosecutors' association applied to the EU General Court asking for the annulment of the Commission's decision to close the Cooperation and Verification Mechanism introduced at the time of Romania's EU accession, despite the country's persistent shortcomings with regard to the rule of law.

Notably, in its decision no 390/2021, the Romanian Constitutional Court (RCC) disagreed with the CJEU, asserting the SIIJ's constitutionality. **The RCC insisted that national courts do not have the power to disapply national law provisions that are contrary to EU law if the has RCC declared those provisions constitutional.** Because non-compliance with RCC decisions constituted a disciplinary offence, judges seeking to follow the CJEU guidance were in a precarious position. The CJEU reiterated in subsequent rulings (the ruling of 21 December 2021 in cases C-357/19, C-379/19, C-547/19, C-811/19 and C-840/19, and that of 22 February 2022 in case C-430/21) that national courts cannot be bound by the decisions of the constitutional court that are contrary to EU law, and should not be subject to disciplinary liability for the failure to comply with such decisions and for application of EU law as interpreted by the CJEU. A press release signed by the Constitutional Court's president on 23 December 2021 emphasised that the CJEU's conclusions, according to which national courts are bound not to apply any national rule or practice contrary to a disposition of EU law, would require the revision of the current Constitution. This press release was seen as a way for the Constitutional Court to flex its muscles for the national judges. The RCC indicated, already in November 2021, that it would not change its Decision 390/2021. Notably, in December 2022, Romania abolished the disciplinary offence of non-compliance with RCC decisions but, according to the RCC's interpretation, disciplinary liability remains if bad faith or gross negligence is demonstrated.

In its 8 May 2024 ruling in case C-53/23, referred by a Romanian court, the CJEU stressed that EU member states must ensure that prosecutors competent to conduct prosecutions against judges **operate within rules that fully respect judicial independence.** These rules must prevent the misuse of proceedings for political control over judges. In the very same case, however, the CJEU explained that, while EU law in some instances allows representative associations to bring cases, such as for environmental protection or anti-discrimination, this does not extend to judges' associations challenging national provisions related to judicial status. According to the CJEU, there is no provision in EU law that requires member states to grant procedural rights to professional associations of judges to enable them to challenge any purported incompatibility with

EU law of a national provision or measure connected to the status of judges.

Most recently, the High Court of Cassation and Justice, in its interpretative decision no 37/2024 of 17 June 2024, took the same stance as the RCC. It found that the disapplying of provisions of national law falling within the standard of protection related to the foreseeability of criminal law, requested by the CJEU in its judgment in Case C-107/23, is not compatible with Article 7(1) of the ECHR and, therefore, the judgment of the CJEU can never be applied in Romania.

Hungarian judges, like their Romanian counterparts, faced **challenges in submitting requests for preliminary references to the CJEU. In Case C-564/19, the CJEU** ruled that article 267 of TFEU precludes Hungary's Supreme Court from declaring a request from **preliminary reference by a lower court unlawful** based on its relevance to the main dispute. The CJEU emphasised that EU law primacy requires **the lower court to ignore such decisions of the Supreme Court,** and interpreted Article 267 of the TEU as **prohibiting disciplinary actions** against judges for making such references.

The Hungarian Helsinki Committee noted that judicial reforms removed procedural obstacles to making preliminary references, but did not address the effects of the binding precedential decision by the *Kúria,* found contrary to EU law by the CJEU. As a result, if the national judges submit the requests for preliminary reference deemed irrelevant, they could face negative evaluations under Hungarian law. The issue as a whole, and the aftermath of the CJEU ruling, are closely related to the governmental efforts to undermine judicial independence in Hungary, including strengthening the *Kúria* and parachuting a political appointee into the position of its president.

The CJEU addressed judicial independence risks in several cases brought by the European Commission against **Poland.**

In the ruling of 2 March 2021, in case C-824/18, the CJEU indicated that the procedure for appointing Poland's Supreme Court judges **could violate EU law,** due to the **lack of effective judicial control over the decisions of the National Council of the Judiciary.** Despite the Polish Supreme Administrative Court's rulings in May and September 2021 that these appointments based on recommendation from the politically captured National Council of Judiciary **are contrary to Polish and EU law,** the president of Poland continued to appoint judges based on the Council's recommendations.

In case C-791/19, ruling of 15 July 2021 (Commission vs Poland), the CJEU called Poland out for the **failure to guarantee the independence** of the Supreme Court's Disciplinary Chamber. Subsequently, in its 5 June 2023 ruling, in case C-204/21, the CJEU tackled a piece of Polish legislation, informally known as the "muzzle law," aimed at **dissuading Polish judges from applying EU rule of law** requirements or punishing them for doing so. The CJEU's vice pres-

ident, on 27 October 2021, ordered Poland to pay a penalty of 1 million EUR per day, as Polish authorities had not suspended the application of the muzzle law as previously ordered by the CJEU on 14 July 2021. On 21 April 2023, the Court reduced the fine to 500,000 EUR per day until adoption of the judgment on the merits.

In its June 2023 judgment, the CJEU emphasised that the disciplinary regime for judges **must provide necessary guarantees** to prevent its use as a system of political control of the content of judicial decisions, or as an instrument of pressure and intimidation against judges. The CJEU concluded that the circumstances in which the Disciplinary Chamber was created, its characteristics, and the method of appointing its members could give rise to reasonable doubts about its **being subject to the direct or indirect influence of the Polish legislature and executive.** By the time the judgment was issued, the Polish authorities had already replaced the Disciplinary Chamber with the Chamber of Professional Liabilities, a body that suffers from the same flaws. The provisions of the muzzle law providing for the disciplinary liability of judges for applying EU law or sending preliminary reference requests to the CJEU were removed. The changes were still perceived as cosmetic and **insufficient to secure compliance with the CJEU rulings.** Judges continued to face **harassment through informal channels**, such as calls by the National Council of the Judiciary for action to be taken against "activist" justices. Issues persist with incumbent disciplinary officers appointed by the previous parliamentary majority launching **disciplinary action against judges** based on overtly political motives. The Ministry of Justice is mitigating the issue, however, through assigning ad hoc disciplinary officers, who then drop the charges.

In its ruling on case C-204/21, the CJEU also pointed out that EU law precludes any reallocation of jurisdiction within a member state when it has the objective or **effect of undermining effective judicial protection.** And since all national courts must be able to ascertain whether they or other acts meet effective judicial protection requirements under EU law, a member state cannot give an exclusive jurisdiction to a single body, such as the Disciplinary Chamber of the Polish Supreme Court. The CJEU also highlighted disproportionate obligations that the so-called "muzzle law" imposed on judges, who were required to provide personal information about specific non-professional activities. The Court highlighted the risk of "undue stigmatisation" created by the law. Hence, the muzzle law was found incompatible with the judges' right to respect for private life and to the protection of personal data. While Poland ultimately abolished the Disciplinary Chamber in 2022, and replaced it with a less controversial (yet still problematic, due to its composition, including "neo" judges) Professional Liability Chamber, some elements of the "muzzle law" – chiefly the requirement for judges to disclose their membership in organisations – remain.

ABUSE OF THE DISCIPLINARY REGIME OF JUDGES: *Commission v. Poland (C-204/21 and C-791/19)*

In 2018, Poland introduced a broad reform of the country's Supreme Court and the disciplinary proceedings system for judges. As part of this reform, a new Disciplinary Chamber of the Supreme Court was established as the final instance in disciplinary cases. This Chamber has been entirely composed of the so-called "neo" judges – those appointed to the Supreme Court on the recommendation of the National Council of the Judiciary, after a reform that rendered the Council politicised and no longer independent. The Disciplinary Chamber embarked on a series of politically motivated decisions concerning Polish judges critical of the government and the ruling party, leading to them being suspended from work, having their immunities lifted, and facing potential removal from office. Some of the most prominent Polish judges who criticised the destruction of the rule of law in the country were suspended from work by the Disciplinary Chamber for exceedingly long periods of time – Igor Tuleya (740 days), Paweł Juszczyszyn (685 days), and Piotr Gąciarek (420 days) – severely disrupting their professional and private lives. The European Commission launched two infringement procedures against Poland concerning the activities of the Disciplinary Chamber and, following the lack of a constructive response, lodged cases with the CJEU.

In judgments (C-791/19 from 15 July 2021 and C-204/21 from 5 June 2023), the CJEU found that the existence of the Disciplinary Chamber constituted a breach of EU law, owing to its lack of independence and its activities harmful to judicial independence in Poland.

In July 2022, Poland introduced a revised law on the Supreme Court, abolishing the Disciplinary Chamber and replacing it with the Professional Liability Chamber, composed of "old" judges, appointed before the reform of the judicial council, and "new" justices. While the composition of the new Chamber remains problematic, its activities have not been controversial so far.

Polish authorities have challenged the CJEU's jurisdiction to review national measures or practices related to the **organisation of national judiciaries**, using the Polish Constitutional Tribunal. The Tribunal has issued judgments stating that various **elements of EU law are incompatible with the Polish Constitution**, going as far as denying the primacy of EU law in the sphere of independence of the judiciary (in the judgment K 3/21, from October 2021). While overtly presented as matters of collision between the EU treaties and Polish Constitutional law, these judgments were de facto **attempts to undermine the aforementioned case law of the CJEU** by means of providing the Polish government with the legal basis for ignoring the CJEU. Of note is the fact that the Polish authorities – the government and the parliament – seemingly ignored these judgments of the Polish Constitutional Tribunal in its dismantling of the Disciplinary Chamber in 2022, as well as in the failed attempt to further reform the Supreme Court in 2023, both of which instances invoked the necessity to implement CJEU judgments and obligations arising from the treaties.

Concerns regarding prosecutorial independence have also emerged in **Germany.** In 2019, following two preliminary ruling requests by the Irish High Court and the Supreme Court of Ireland, the CJEU determined that Germany's prosecution services, being subject to external orders of the ministries of justice, could not be considered **independent "issuing judicial authorities"** within the meaning of Framework Decision 2002/584 on the European Arrest Warrant. This means justice ministries could directly influence decisions to issue or withhold European Arrest Warrants. The **UN Human Rights Committee** also voiced concerns about the **lack of independence in prosecution services**, and urged Germany to consider reform (CCPR/C/DEU/CO/7, 30 November 2021, paras. 40-41).

The current government coalition promised to amend the law in accordance with the requirements of the CJEU decision, and to **adjust the ministerial powers** of instruction. The federal justice minister has now proposed a reform that **would not abolish that right but narrow it further;** ministers could only use the right to prevent illegal decisions in cases where there is a legal margin of appreciation, and they could only do so with stated legal reasons. The expert reporting on Germany highlighted, however, that, as long as the law is not amended, it is interpreted in light of EU law. This means that the criminal justice system **has adapted its practice to EU law, by subjecting every European Arrest Warrant to a judge's decision.** The public prosecutors' offices are still tasked, however, with the preparation and execution of European Arrest Warrants.

EUROPEAN ARREST WARRANTS AND PROSECUTORIAL INDEPENDENCE: *Minister for Justice and Equality v PI + Minister for Justice and Equality v OG (Joined cases C-82/19 PPU and C-508/18)*

The European Arrest Warrant is an institution of EU law of chief importance for judicial cooperation in criminal matters, allowing one EU member state to render an individual suspected of criminal activity or sentenced for a prison term to another EU member state. The CJEU has consistently held that the national authorities issuing the warrant must comply with the requirements of independence and autonomy.

In most EU member states, judges are tasked with executing the European Arrest Warrant requests, hearing them as part of criminal court proceedings. Germany is one of exceptions to this rule, as these warrants are executed by prosecutors. The German prosecutorial system is highly hierarchical, and features the ability of higher-ranking prosecutors, including the Minister of Justice, who oversees the entirety of prosecutorial activities in Germany, to instruct lower-ranking prosecutors. This feature of the German legal framework has long been a subject of intense debate, as it potentially opens prosecutors to the possibility of political influence. In two cases pending before Irish courts, individuals faced European Arrest Warrant requests issued by German prosecutors, seeking to render those individuals to Germany to stand trial.

The CJEU found that the German prosecutors are not sufficiently independent and are open to possible political pressure, thus making them open to undue influence by the government, which could possibly lead to political direction of prosecution services. The judgment had far-ranging consequences, as hundreds of European Arrest Warrants had already been executed based on requests from German prosecutors. Furthermore, this judgment applied to prosecution services liable to political influence in other member states, with particular relevance for Hungary and Poland, as both member states were experiencing rule of law crises that featured the issue of undue political control over prosecutors.

As an immediate measure, Germany moved towards enshrining the competence to issue European Arrest Warrants by courts. A review of existing warrants issued by German prosecutors led to approximately 150 of these being replaced. A wider reform of German prosecutorial services, spurred by the CJEU judgments regarding the warrants, among others, is ongoing. Notably, the judgment and its German implementation had a spillover effect in the Netherlands, where the competence to issue European Arrest Warrants has also been moved to the judiciary.

OTHER "ACCESS TO JUSTICE" CASES: THE RIGHT TO DEFENCE AND BEYOND

Several CJEU rulings identified issues with **Bulgarian** legislation affecting **the right to defence and access to a lawyer, as well as the right to an effective remedy.** These issues include the failure to provide information about the grounds for detention in due time (C-608/21, ruling of 25 May 2023), failure to provide a procedural mechanism for remedying errors in the content of the indictments (C-282/20, ruling of 21 October 2021); legislation allowing decisions on the guilt or innocence based on witness testimony obtained during a hearing at a pre-trial stage of proceedings without participation of the accused or their lawyer (C-348/21, ruling of 8 December 2022); and legislation allowing committal to a psychiatric hospital of persons who, in a state of insanity, have committed acts representing a danger to society, without enabling the court to verify that procedural rights were respected in proceedings prior to those before that court (C-467/18, ruling of 19 September 2019). Other incompatibilities with EU law highlighted by the CJEU included the imposition of criminal penalties on legal entities for an offence for which a natural person who has the power to bind or represent that legal entity is allegedly liable, where the legal entity has not been put in a position to dispute that offence (C-203/21, ruling of 10 November 2022); and legislation permitting separate procedures for financial penalties and the sealing of business premises for the same tax-related offence without coordination, leading to additional disadvantage associated with the cumulation of those measures (C-97/21, ruling of 4 May 2023).

The CJEU also called **Poland** out in its ruling of 15 July 2021 in case C-791/19, for the failure to guarantee that disciplinary cases are examined within a reasonable time, and that the right of defence of accused judges is respected. Since the introduction of the Professional Liability Chamber of the Supreme Court in 2022, disciplinary proceedings at the Supreme Court have accelerated, and have been carried out in a manner that does not raise significant concerns regarding the judges' right to defence and to an impartial trial. Issues persist, however, with the disciplinary officers, appointed for a set term in 2022 by the previous Minister of Justice, Zbigniew Ziobro, who continue to initiate disciplinary proceedings against judges on blatantly political grounds. The effect of these proceedings has been mitigated by the current minister of justice, Adam Bodnar, employing legislation introduced by the previous parliament allowing him to appoint extraordinary ad hoc disciplinary officers to take over proceedings, leading to them dropping politically motivated charges against judges.

In **Hungary's** Glencore case, C-189/18, the CJEU addressed tax fraud investigations under criminal and tax (administrative) law. In the ruling of 16 October 2019, the CJEU ruled

the tax authorities must disclose to the taxable person evidence, including that originating in those administrative procedures, on the basis of which they intend to make a decision, so that the taxable person is **not deprived of the right to effectively challenge** those findings during the procedure brought against them; the taxable person was expected to have access during that procedure to all the evidence on which the authorities intended to base their decision, or which could assist the exercise of the rights of their defence, unless the objectives of public interest justified restricting that access. Finally, (administrative) courts, when exercising their judicial review competences in such tax cases, were to check the legality of the way in which that evidence was obtained. Hungarian courts have generally complied, but disagreements remain over the proper interpretation of the ruling. Based on the judicial practice, one may conclude that the tax authorities have continued the practice of using evidence collected in the criminal limb of tax fraud cases in its parallel administrative limb. This means that implementation has relied to a large extent on domestic lawyers **seizing the legal opportunities provided by the CJEU ruling.**

In another ruling regarding **Hungary** (C-512/21), addressing judicial control over tax authorities in fraud cases, the CJEU concluded that the right to a fair hearing does not preclude the court from hearing the action against the tax authority's decision from taking into account, as evidence of the existence of value added tax fraud, **an infringement of the obligations under national or EU law** if sufficient legal guarantees are available – if that evidence can be contested, debated or heard before that court. The Budapest Regional Court, in a ruling delivered on 28 March 2023 (Fővárosi Törvényszék 38.K.700.482/2023/7), repealed the decisions of the tax authority, and ordered that authority to base its decision on the evidence acquired **according to a procedure fulfilling the requirements established by the CJEU.**

In C-30/19, 15 April 2021, with respect to **Sweden,** the CJEU ruled that national courts must disapply national law that prevents courts from examining a claim seeking a **declaration of the existence of discrimination prohibited by EU law.** In the follow-up, the Swedish Supreme Court used its discretion under national procedural law, and dismissed the applicant's claim seeking a declaration that discrimination had taken place, because the defendant had agreed to pay compensation and, hence, there was no longer a need for the court to hear the case. As reported by the expert, however, in a short quote published by the Supreme Court as guidance for future cases, "an allegation that discrimination has taken place must be able to be tried in a case where discrimination compensation is requested, even when the defendant agrees to pay the requested compensation but does not certify that discrimination has taken place." This likely means that the courts **will comply with the answer given by the CJEU in future cases,** and set aside Swedish procedural law under similar circumstances.

In its ruling of 1 August 2022, based on a reference coming from the Court of Appeal, Evora, **Portugal,** in case C-242/22, the CJEU found that national laws cannot deprive a person of the opportunity to invoke the infringement of the right to interpretation and translation in criminal proceedings if they fail to do so within a set time-frame, especially if this period starts before that person is properly informed about their right. Portugal **failed to change the legislation in response to the CJEU ruling.** Portuguese courts have been inconsistent in applying the CJEU guidance, with some refusing to apply the national law invoking the primacy of EU law, and others accepting the CJEU ruling, but continuing to apply the national provision for other reasons (for example, where the accused demonstrated to have understood documents).

The case (C-897/19 PPU) involved a third country (Russia) requesting that a member state **(Croatia)** extradite a national of Iceland, in relation to alleged corruption offences. In an earlier ruling (Case C-182/15 Petruhhin), the CJEU held that when a member state receives a request from a third country to extradite a national of another member state, it must ensure that **the extradited person will not be subject to persecution.** The Petruhhin ruling was applied in the present case by analogy to a non-EU national. The CJEU directed the Croatian authorities to verify that **extraditions align with fundamental rights guarantees of the EU Charter.** They cannot, the Court stated, rely on the declaration of the requesting third state, or on its being a party to international treaties guaranteeing, in principle, respect for fundamental rights. Rather, the requested member state must rely on **"information that is objective, reliable, specific and properly updated".** In this instance, Iceland had granted asylum to the person, indicating significant risk of mistreatment in their home country. The CJEU held that this **asylum decision was substantial evidence justifying refusal of extradition.** Croatia was also obligated to inform Iceland before considering extradition. The referring court, the Supreme Court of Croatia, annulled the extradition order, and returned the case to the lower court for reconsideration. The latter ultimately refused the extradition request, and agreed to surrender the person to Iceland, which decided to initiate criminal proceedings against him. The Supreme Court confirmed this decision.

DATA PRIVACY AND STATE INTERVENTIONS

The dataset features several cases regarding the protection of personal data from state interventions. In **France,** NGOs challenged national regulations requiring electronic communication providers and operators to **store and process personal data** automatically, so as to detect terrorist threats. They argued these regulations violated EU law. The Conseil d'Etat paused proceedings, and sought guidance from the CJEU. The CJEU's ruling of 6 October 2020 C-511/18 (La Quadrature du Net and Others v Premier ministre and Others) addressed the **balance between personal data protection,** on one hand, **and public security objectives** and access by security and intelligence services to telecommunications data, on the other. The CJEU cautioned against laws providing, as a preventive measure, for the general and indiscriminate retention of traffic and location data, but noted that targeted retention may be permissible to safeguard national security where the threat is genuine, provided that the retention is subject to effective review. The CJEU also stressed that the retention should be limited to targeted groups or geographic regions, and also in time to what is necessary.

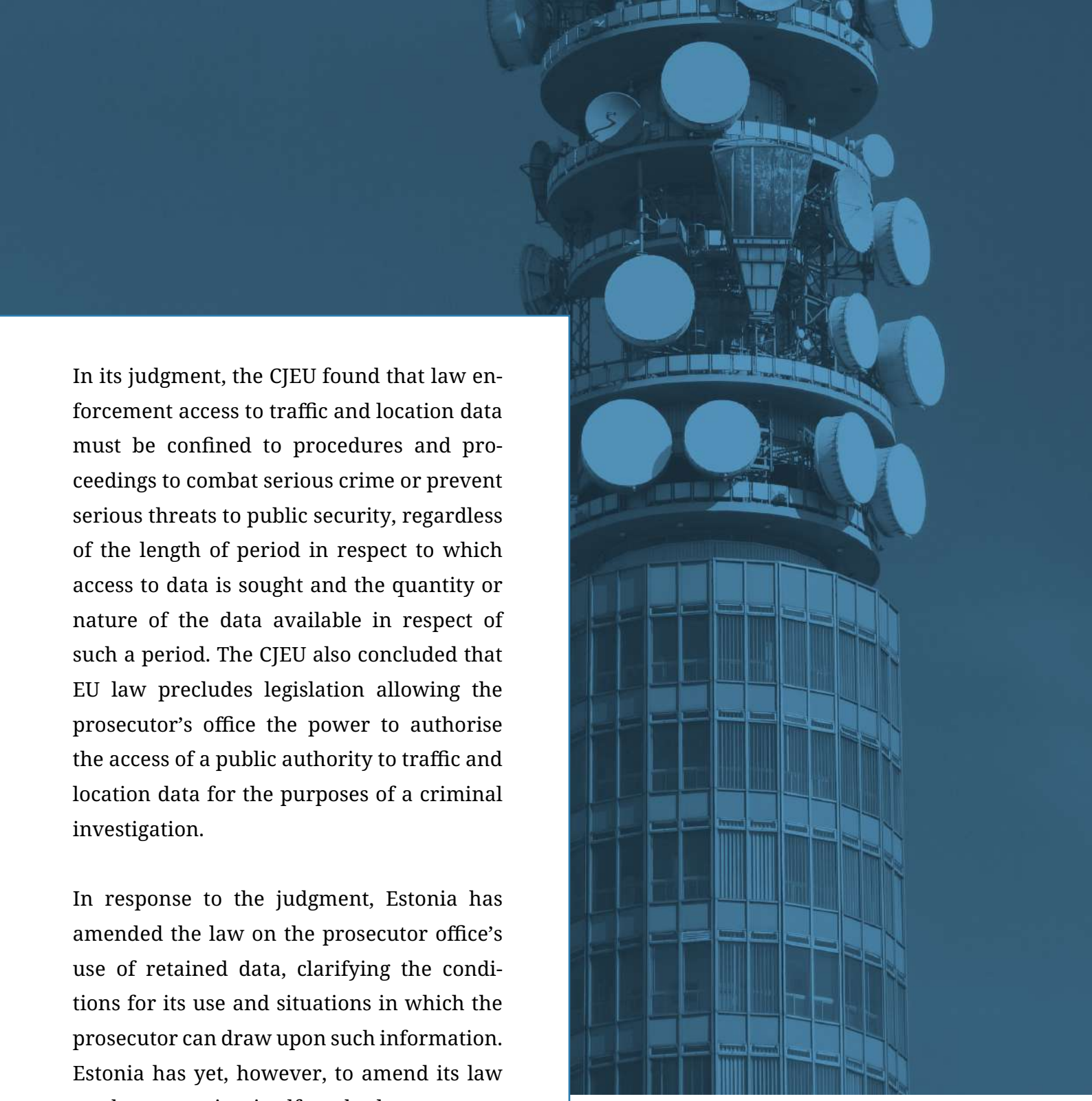
In response, the Conseil d'État established **an exception to the primacy of EU law,** indicating that national security concerns **could justify exceptions to EU data protection laws.** Academic commentators have warned that the approach followed by the Conseil d'État is surreptitious, rather than obviously confrontational, and could be more **efficient in challenging the implementation of EU fundamental rights standards** within member states. The French court may have provided a tempting alternative for national courts and governments that are uneasy with aspects of CJEU case law. By openly challenging the EU's legal order both in its form (the ruling) and in its substance (the Charter of Fundamental Rights), France might be doing both: **paving the way for further weakening of the Rule of Law across the EU,** and possibly also paving the way for more challenges coming from France on other issues. It seems that the French Conseil d'État and Constitutional Council confirmed the general grounds introduced here to allow for exceptions to the primacy of EU law in later rulings.

In another case, referred by an **Estonian** court (C-746/18), in its ruling of 2 March 2021, the CJEU argued that law enforcement **access to traffic and location data must be limited** to procedures and proceedings to combat serious crime or to prevent serious threats to public security, regardless of the quantity or nature of the data available. The CJEU also concluded that EU law precludes legislation allowing the prosecutor's office to authorise access by a public authority to traffic and location data for the purposes of a criminal investigation.

Estonia amended its criminal law accordingly, but has yet to address law regarding data storage, leading to debates over the compliance of the country's Electronic Communications Act's with EU law. Estonia's chancellor of justice stated, for example, that there is no unreasonably large intrusion, as the protection of the secrecy of the message has not been infringed, and the storage of data does not strongly infringe on the protection of private life.

GENERAL AND INDISCRIMINATE RETENTION OF TRAFFIC AND LOCATION DATA, ACCESS OF AUTHORITIES TO SUCH DATA: *Prokuratuur (C-746/18)*

An individual, H.K., was sentenced by Estonian courts to two years in custody, having been found guilty of theft using another person's credit cards, and acts of violence against a person involved in the proceedings. One element of evidence used against H.K. was electronic telecommunication data gathered by the Estonian prosecution from a telecommunications company. Estonian laws require telecom companies to retain such data for one year, and to disclose it on a request from authorities in the course of criminal proceedings. Such retention of telecoms data for purposes of access for use in investigations and bringing criminal charges is a frequent feature in the domestic law of EU member states, and has been the subject of academic criticism, as well as investigation by domestic and international courts over the last two decades, in particular following the widespread expansion of the surveillance powers of state authorities in the context of antiterrorism policy following the September 2001 terrorist attacks in the United States. H.K. challenged the legality of such wide-ranging retention of data without judicial oversight, with the court of appeal rejecting their arguments and the Supreme Court of Estonia choosing to refer the case to the CJEU, asking it to interpret the Privacy and Electronic Communications Directive 2002/58/EC, commonly known as the ePrivacy Directive.



In its judgment, the CJEU found that law enforcement access to traffic and location data must be confined to procedures and proceedings to combat serious crime or prevent serious threats to public security, regardless of the length of period in respect to which access to data is sought and the quantity or nature of the data available in respect of such a period. The CJEU also concluded that EU law precludes legislation allowing the prosecutor's office the power to authorise the access of a public authority to traffic and location data for the purposes of a criminal investigation.

In response to the judgment, Estonia has amended the law on the prosecutor office's use of retained data, clarifying the conditions for its use and situations in which the prosecutor can draw upon such information. Estonia has yet, however, to amend its law on data retention itself, and telecoms operators continue to retain widespread data on the use of telephone communications.

ASYLUM AND MIGRATION

In asylum and migration cases involving **Hungary,** referring courts often followed the CJEU's guidance, but judicial practice in similar cases did not consistently align with this guidance. For instance, while Alekszij Torubarov was granted protection in September 2019, following CJEU ruling C-556/17, courts did not always grant protection to asylum seekers in similar cases.[24] In cases reviewing negative decisions by immigration authorities on family reunification, courts sometimes followed the CJEU guidance C-519/18 (TB Judgment), but not always.

Ordinary courts have often ruled in favour of the applicants against the immigration authorities, but the Hungarian Constitutional Court, packed by the ruling government majority, did the opposite. The Hungarian Helsinki Committee highlighted that 2019 legislation granted state authorities the right to submit constitutional complaints if, in their view, the authorities' fundamental rights have been violated or their scope of competence has been unconstitutionally limited by ordinary court decisions.

Hungary has been slow to amend its legislation in line with CJEU rulings. The "Stop Soros" legislation, which introduced new grounds for declaring asylum applications inadmissible and criminalised helping asylum seekers, was only partially amended, about a year after the CJEU's ruling in case C-821/19. In the view of the Hungarian Helsinki Committee, the amendments fail to implement the CJEU ruling, because general criminalisation of assistance was replaced by a new, vaguely defined criminal activity that jeopardises the attorney-client privilege and, in the case of non-attorney helpers, forces the helpers to sacrifice the applicant's best interests in order to protect themselves from potential prosecution. While the grounds to reject asylum applications as inadmissible on the basis of a "safe transit country" was removed from the Asylum Act, the rejection grounds remain in the Fundamental Law as a restriction on the right to asylum.

After the CJEU rulings in cases C-924/19 PPU and C-925/19 PPU (the FMS case), the Hungarian government ended the transit zone detention regime, but it has never officially closed them. Moreover, the legislative framework has also been left intact, but is not currently applicable, by virtue of the provision of the Transitional Act. The government might, however, decide to set the transit zone regime in motion again. A new Act on the Entry and Stay of Third Country Nationals that entered into force on 2 January 2024 still does not provide a judicial remedy against the modification of the destination country of expulsion. This

[24] The Hungarian Helsinki Committee referred to the case where a court should have granted international protection based on the principles laid down by the CJEU, but it simply annulled the decision and referred the case back to the NDGAP (National Directorate-General for Aliens Policing), without referring Torubarov ruling at all (11.K.700.169/2022/12, 26 April 2022).

clearly shows deliberate non-implementation of the FMS judgment. In practice, however, such modifications of expulsion decisions are no longer performed by the NDGAP (National Directorate-General for Aliens Policing), although the legal uncertainty remains.

In the case C-159/21, the CJEU confirmed the right of applicants for international protection of access to the grounds for an asylum authority's refusal to grant protection, even if the information contained therein pertains to national security. The national contributor has highlighted that compliance **required legislative amendment, which did not happen.** National courts did, however, follow the judgment and order a new procedure, in which the essence of the grounds should be disclosed to the applicant. The Security agencies claim, however, that this is not possible without disclosing sensitive information and, therefore, they preferred to withdraw their opinions on national security risk rather than disclose anything.

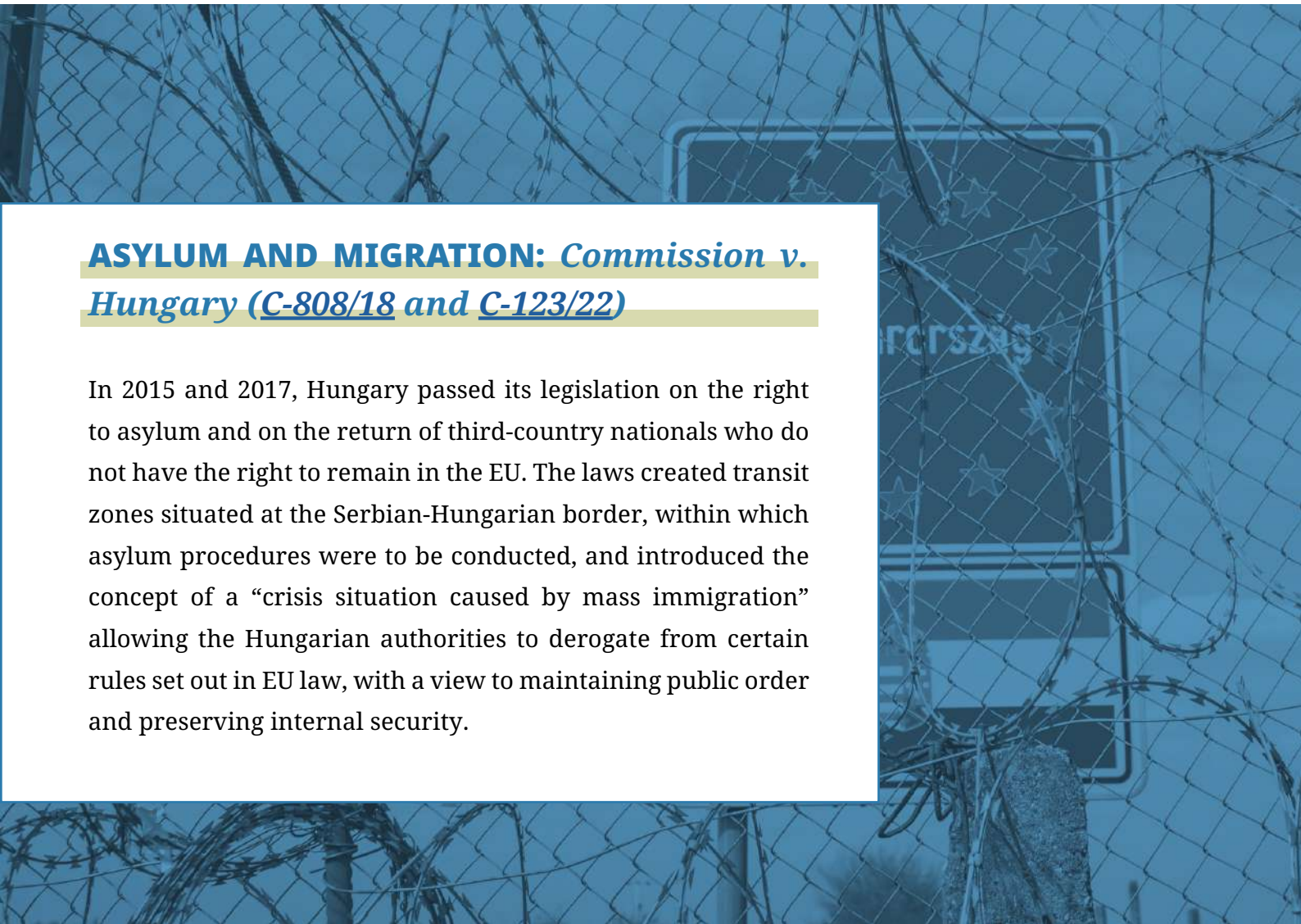
In C-823/21 (*Commission vs Hungary*), the CJEU concluded that Hungary had violated Directive 2013/32/EU, by failing to ensure that third country nationals or stateless persons **were afforded effective access to an international protection procedure.** By forcing third country nationals or stateless persons present in Hungary or at its borders to first leave, lodge a declaration of intent at a Hungarian embassy in a third country, and then obtain a travel document authorising them to apply for international protection upon arrival at a Hungarian border, Hungarian legislation disproportionately **interferes with their right to make an application for international protection.** Hungary defended its 2020 law, focusing on the right of every state to authorise or refuse entry into its territory. It also maintained that the law allows ensuring territorial sovereignty and self-determination. The judgment did **not lead to any change in legislation and practice,** with access to asylum at the border or within the territory still restricted.

In its ruling in the case C-808/18 of 17 December 2020, the CJEU ruled that Hungary's legislation on the **rules and practice in the transit zones at the country's border was contrary to EU law.** Hungary adopted legislation on the right to asylum and return of non-EU nationals who do not have the right to remain in the EU. The laws created transit zones, situated at the Serbian-Hungarian border, and introduced the concept of a "crisis situation caused by mass immigration", allowing the Hungarian authorities to **derogate from certain rules, in order to maintain public order** and preserve internal security.

In February 2021, the Hungarian Minister of Justice requested an interpretation of the Hungarian Fundamental Law by the Hungarian Constitutional Court, arguing that the implementation of the C-808/18 judgment would violate the Fundamental Law. On 7 December 2021, the Constitutional Court refused to explicitly rule that the decision of the CJEU could not be implemented, but **did not effectively uphold the primacy of EU law either.** The

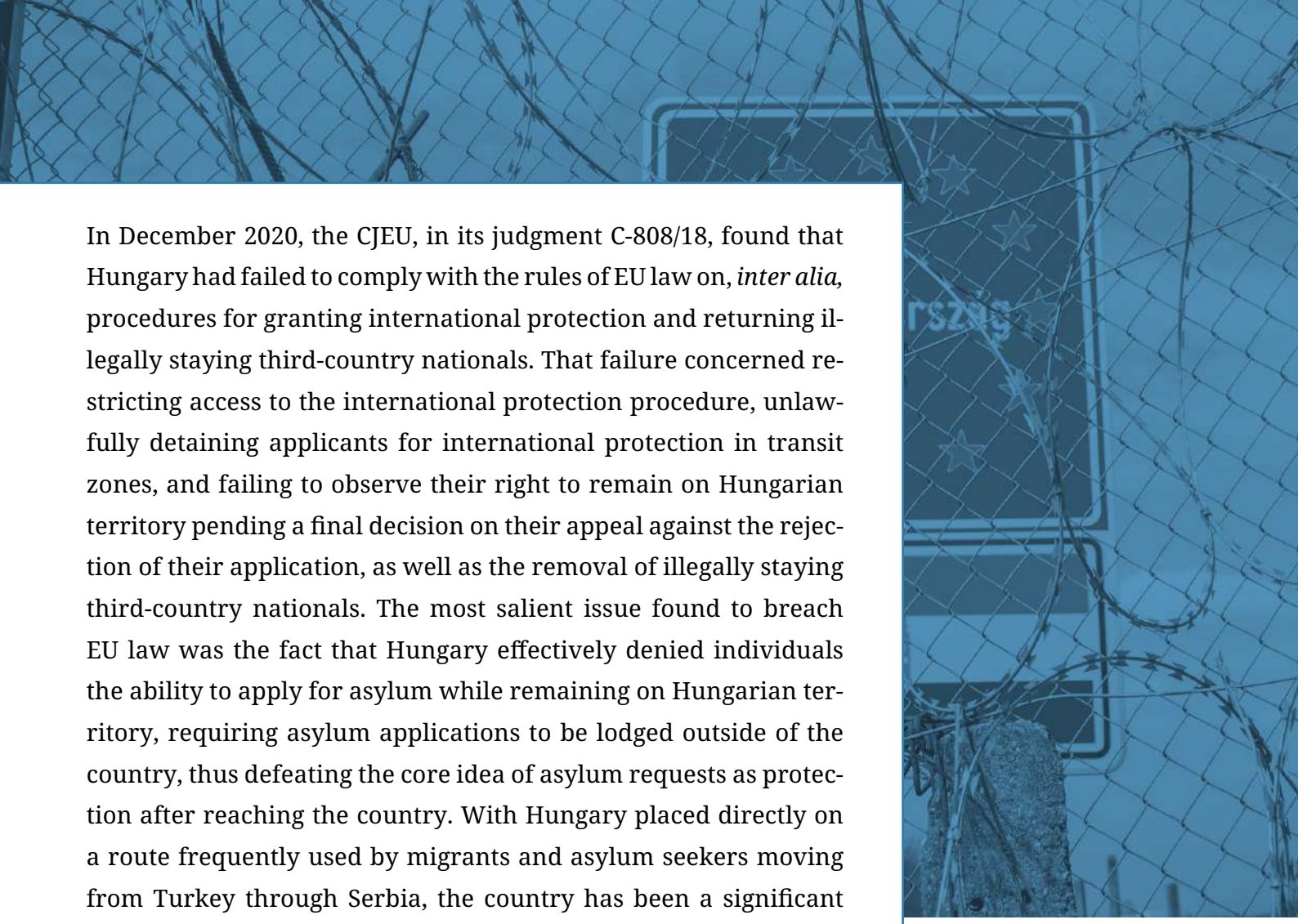
judgment stated that Hungarians have a right to "constitutional identity", to be **interpreted as the right to live in a culturally homogeneous country,** essentially associating the arrival of migrants and asylum seekers with a threat to said identity. The Government's response to the judgment was that it confirms Hungary's approach to migration, and **that pushbacks are allowed to continue.**

Ultimately, no legislative amendments followed, and the practice remained unchanged. Hence, the ruling has not been complied with. The European Commission brought a new action for failure to comply with obligations, seeking the imposition of financial sanctions. In its 13 June 2024 judgment, the CJEU took the view that Hungary **had not taken the measures necessary to comply** with the 2020 judgment as regards access to the international protection procedure, the right of applicants for international protection to remain in Hungary pending a final decision on their appeal against the rejection of their application, and the removal of illegally staying third-country nationals. Since this failure to fulfil obligations constitutes an unprecedented and exceptionally serious breach of EU law, the Court ordered Hungary to pay a lump sum of 200 million euros and a penalty payment of 1 million euros per each additional day of delay.



ASYLUM AND MIGRATION: *Commission v. Hungary (C-808/18 and C-123/22)*

In 2015 and 2017, Hungary passed its legislation on the right to asylum and on the return of third-country nationals who do not have the right to remain in the EU. The laws created transit zones situated at the Serbian-Hungarian border, within which asylum procedures were to be conducted, and introduced the concept of a "crisis situation caused by mass immigration" allowing the Hungarian authorities to derogate from certain rules set out in EU law, with a view to maintaining public order and preserving internal security.



In December 2020, the CJEU, in its judgment C-808/18, found that Hungary had failed to comply with the rules of EU law on, *inter alia,* procedures for granting international protection and returning illegally staying third-country nationals. That failure concerned restricting access to the international protection procedure, unlawfully detaining applicants for international protection in transit zones, and failing to observe their right to remain on Hungarian territory pending a final decision on their appeal against the rejection of their application, as well as the removal of illegally staying third-country nationals. The most salient issue found to breach EU law was the fact that Hungary effectively denied individuals the ability to apply for asylum while remaining on Hungarian territory, requiring asylum applications to be lodged outside of the country, thus defeating the core idea of asylum requests as protection after reaching the country. With Hungary placed directly on a route frequently used by migrants and asylum seekers moving from Turkey through Serbia, the country has been a significant entry point into EU for such people.

In its judgment of 13 June 2024 (C-123/22), the Court held that Hungary had not taken the measures necessary to comply with the 2020 judgment. In so doing, Hungary, disregarding the principle of sincere cooperation, deliberately evaded the application of the EU common policy on international protection as a whole and the rules relating to the removal of illegally staying third-country nationals. The CJEU ruled that this conduct constituted a serious threat to the unity of EU law, having an extraordinarily serious impact both on private interests – particularly the interests of asylum seekers – and on the public interest.

Consequently, having found the failure to comply, the CJEU ordered Hungary to pay a lump sum of 200 million euros, and a penalty payment of 1 million euros per day of delay.

JUDGMENTS ADDRESSING MEASURES THAT TARGET CIVIL SOCIETY ORGANISATIONS AND ACADEMIC INSTITUTIONS

The CJEU's ruling of 18 June 2020, in case C-78/18, addressed Hungary's 2017 law targeting independent civil society organisations. The government claimed that then purpose of the law was to ensure the transparency of such organisations receiving donations above a certain threshold from abroad. The CJEU found this law discriminatory and unjustified, breaching EU law by interfering with the respect for private life, protection of personal data, and freedom of association. Despite this ruling, the 2017 law remained in force for over ten months, before being repealed in 2021. At the same time, in parallel, the governing majority introduced another law subjecting certain civil society organisations (associations or foundations with an annual balance sheet amounting to at least 20 Million Hungarian forints) to inspection/auditing by the State Audit Office. The adoption of the new law was not preceded by any public consultation, even though that would have been mandatory by law.

Another CJEU ruling, of 16 November 2021, on case C-821/19, concerned Hungary's law **criminalising assistance to asylum seekers.** Amendments made in December 2022 were criticised for replacing general criminalisation with a vaguely defined formulation still **jeopardising the attorney-client privilege** and, in the case of non-attorney helpers, forcing them to sacrifice the applicant's best interests to protect themselves from potential prosecution.

In a separate case (C-66/18), in its ruling of 6 October 2020, the CJEU found that Hungary had violated EU law by imposing conditions on foreign higher education institutions. It ruled that, first, the Hungarian legislation required that the Hungarian government and the government of the state in which the institution has its seat agree to be bound by an international treaty. Second, it required that, in order to exercise activities in Hungary, the educational institution should deliver higher education in the state in which it has its seat, including member states of the European Economic Area. While seeking compliance with the CJEU ruling, Hungary removed the second requirement in May 2018, but the legislation still requires the conclusion of an international treaty between Hungary and their home state, in continuing breach of EU law. This law essentially targeted the Central European University, funded by Hungarian-American investor and philanthropist George Soros. It was viewed as part of a crackdown on academic freedom and a smear campaign against Soros. By the time the CJEU judgment was delivered, CEU had (mostly) left Hungary: as of September 2019, it moved all U.S.-accredited degree programmes to Vienna, and has never returned these to Budapest. In April 2024, the European Commission decided to open an infringement procedure for not properly complying with EU law and the CJEU ruling in case CC 66/18.

Cases C-14/21 and C-15/21 concerned cargo ships that are, in practice, systematically used by a humanitarian organisation for non-commercial activities, such as those related to the search for and rescue of persons in danger or distress at sea. The referral was made to the CJEU in the proceedings involving Sea Watch, a humanitarian organisation registered in Germany and carrying out search-and-rescue operations in the Mediterranean Sea, concerning two detention orders issued by Italian ports with regard to the ships they used. Sea Watch sought the annulment of those measures, arguing that the authorities of the port state exceeded their powers. In its ruling of 1 August 2022, the CJEU indicated that the port state may subject ships that systematically carry out search and rescue activities to control, albeit only if that state has established, on the basis of detailed legal and factual evidence, that there are serious indications capable of proving that there is a danger to health, safety, on-board working conditions, or the environment, having regard to the conditions under which the ships operate. Italy has been called on to include in its legislation clear provisions outlining the limits of the power of inspection in relation to imposing administrative measures, in accordance with the CJEU's guidance. Italy has so far **failed to amend the relevant legislation,** and the detention and control of NGO vessels continues to be a matter of political debate.

FREEDOM OF MOVEMENT AND SENTENCING POLICIES

The CJEU's preliminary ruling of 6 October 2021, in case C-35/20, concerned the application of the requirements of proportionality under EU law to national sentencing systems. A Finnish citizen travelling to **Estonia** and back by boat did not carry his passport with him, and was subsequently fined. The Supreme Court of Finland requested a preliminary ruling from the CJEU to determine whether the national penal provision was compatible with an **EU citizen's right to freedom of movement**, and whether the punishment was proportionate under EU law. The CJEU ruled that, while EU law does not preclude national legislation criminalising such behaviour, in these circumstances, the Finnish day-fine system constituted a **criminal sanction disproportionate to the seriousness of the offence** (crossing the border without a travel document), due to the excessively high total monetary amount of the fine (95,250 euros), which was determined based on the boatman's income.

The Supreme Court of **Finland** reiterated that the day-fine system and the basic principles of calculating the monetary amount of a day fine are integral to the Finnish criminal justice system. The Court was obliged, however, to find a solution that aligned the proportionality of the criminal sanction imposed with the requirements of proportionality under Directive 2004/38/EC and Article 49(3) of the Charter of Fundamental Rights, as interpreted by the CJEU in its ruling. To achieve proportionality, the majority lowered the number of day fines from 15 to five, reducing the total amount of the fine to 58,310 euros. Nevertheless, from the perspective of EU law, the **total amount of the fine might still be deemed disproportionate.**

The Supreme Court of Finland did not expressly call for legislative change. The tension between the principled nature of the CJEU's ruling and the Finnish sentencing system has, however, been pointed out in academic commentary.[25] It has been argued that, while the CJEU's ruling is justifiable from the point of view of EU law, the view on proportionality adopted by the CJEU is too narrow, and often in conflict with the broader requirements of proportionality adopted in national criminal justice systems.

Experts have predicted that, given the considerable effects of case C-35/20 on the Finnish sentencing system, it is likely that the ruling **will lead to more wide-reaching legislative changes**, possibly resulting in the increased use of fixed fines, although the Constitutional Law Committee of the Finnish Parliament has traditionally seen such fines to be more problematic from the viewpoint of equality than the day-fine system.

[25] Sakari Melander, "How a Boat Trip to Estonia Challenged the Foundations of the Finnish Sentencing System", Verfassungsblog 23 August 2023.

CONCLUSION

The EU member states' records of compliance with the rulings of ECtHR and CJEU reveal common issues of concern. A major challenge lies in **laws and practices undermining access to justice, including judicial and prosecutorial independence.** The issues of concern have been the politicisation of the bodies deciding on judicial careers and resulting flaws in judicial appointment procedures, as well as the abuse of judicial accountability mechanisms, such as disciplinary and criminal proceedings to target and silence outspoken judges, which is made possible through influencing the bodies in charge of such proceedings. The case law signals that justice **systems can be vulnerable to political interference and pressure,** where political authorities seek to weaken checks and balances and dismantle the rule of law.

There have also been issues with the implementation of rulings **related to various vulnerable groups.** These include asylum seekers, with concerns in connection to refusals to grant protection and disclose grounds for such decisions invoking national security, as well as to poor detention conditions, expulsions despite the risk of ill-treatment, and ineffective judicial remedies against decisions of immigration authorities. The ECtHR segment of the study has focused on judgments directed at other vulnerable groups, such as detainees, LGBTIQ+ persons, and patients of psychiatric hospitals. The CJEU part of the study has investigated follow-up to rulings touching upon measures targeting civil society organisations (including those working with vulnerable groups) and academic institutions.

The study also reveals emerging themes, with rulings that reveal the potential for abuse by authorities if the laws the European Courts found problematic remain in force. One such theme concerns authorities' access to personal data, the conditions of such access, and the balance between personal data protection and public security objectives.

4. KEY RECOMMENDATIONS

Stemming from the findings of our report, we propose the following key recommendations:

We recommend to the European Commission:

1. **Integration of Implementation Data: The Commission should continue incorporating ECtHR judgment implementation data into its annual Rule of Law Report, and systematically analyse and prominently feature compliance with CJEU rulings.**

On the one hand, non-compliance with ECtHR and CJEU rulings, regardless of their subject matter, is intrinsically a rule of law issue. Respect for court rulings is integral to a state that is run by laws, rather than by the absolute power of government. They constitute 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 is compromised.

On the other hand, the European Courts have identified serious problems with executives' control of judiciaries. There are also a range of judgments concerning the protection of fundamental values that are necessary for maintaining a democratic way of life in a state governed by the rule of law. These cover core issues such as the protection of free speech, the right to peaceful protest, the need for a pluralistic media environment, and the protection of the rights of vulnerable groups. Failure to adhere to these specific rulings can directly impact the quality of checks and balances and the overall state of the rule of law in a given member state, necessitating particular attention.

It is necessary, therefore, for the European Commission's Rule of Law Reports to focus on the state of implementation of rulings that are connected to rule of law issues, in the narrow sense. At the same time, it is of critical importance that the reports do not lose sight of the overall level of implementation of ECtHR and CJEU rulings, regardless of their thematic focus. This is with a view to accurately assessing and addressing the impact of non-compliance with European Courts' judgments on the rule of law, in the broadest sense.

2. **Targeted Recommendations: The Commission should issue specific recommendations to states based on their implementation records of ECtHR and CJEU judgments related to the rule of law, and expand its reports to cover democracy and systemic fundamental rights violations, urging immediate action from states with recurring issues.**

It is of particular importance that the European Commission adds its weight to the effort to ensure timely and effective implementation of rulings of the European Courts, through the formulation of targeted, pertinent recommendations to the member states. At the very least, these should cover those rulings related to the independence and impartiality of the judiciary, in the strictest sense, and to the protection of fundamental values that are necessary for maintaining a democratic way of life in a state governed by the rule of law. Such attention is particularly necessary when judgments have not been complied with over extended periods.

The expansion of the reports' scope is furthermore justified because the application of the rule of law and protection of human rights are interdependent and overlapping objectives. Allowing long-term non-implementation of rulings of the European Courts on matters pertaining to democracy and systemic violations of fundamental rights to remain unaddressed ultimately contributes to the erosion of the rule of law in the wider sense of the term.

In this context, it is welcome that the 2024 edition of the European Commission's Rule of Law Report calls for a few selected member states (e.g., Belgium) to implement the final rulings of the ECtHR. It is nevertheless crucial that this approach be generalised and systematically applied to other member states recording a similar or even more significant degree of failure to effectively implement not only ECtHR, but also CJEU rulings.

3. **Utilisation of Enforcement Tools: The Commission should use all available tools, including infringement procedures and financial pressure, to address member states' failures to implement CJEU judgments, leveraging related ECtHR judgments as additional evidence.**

In the case of persistent and/or long-term non-compliance with the CJEU rulings, the European Commission should take more concrete enforcement action. The Commission could, in particular, refer the recalcitrant member state to the CJEU for a second

time, under Article 260 of the TEU, and request the imposition of financial penalties for non-compliance (should the latter be established by the Court), to incentivise the governments to act.

The European Commission should, furthermore, make compliance with CJEU rulings a condition of access to EU funds, where non-compliance affects the EU's financial interests. The ECtHR judgments identifying similar problems should be relied upon as additional evidence about the gravity of underlying problems.

4. **Enhanced Monitoring: The Commission should consider closer monitoring of the implementation of CJEU judgments, including preliminary rulings, and explore ways to support national-level mechanisms for their implementation.**

To integrate data on compliance with CJEU rulings in the Rule of Law Report, the Commission needs to closely monitor national follow-up to rulings. While the Commission's report on monitoring the application of EU law is a valuable resource, it does not provide systemic and in-depth follow-up, especially in cases of rulings other than those resulting from infringement procedures. More comprehensive and targeted collection of data will enable a more informed discussion on the extent of non-compliance, which varies across countries and issues. A more nuanced analysis may reveal (as ours has) that, even in countries with generally problematic rule of law and compliance records, there are actors that comply with the CJEU prescriptions. It will then be possible to identify both good practices and gaps in compliance, and to support actors that enforce or call for the enforcement of EU law/rule of law.

This proposal is in line with the European Parliament Resolution of 28 February 2024, calling on the Commission to set up a scoreboard dedicated to monitoring the implementation of the CJEU (and ECtHR) judgments related to democracy, rule of law, and fundamental rights, and to fully integrate it into the annual Rule of Law Report.

In understanding the extent to which the CJEU prescriptions in rule of law-related rulings are followed by national courts and/or executive authorities, it may be useful to draw not only on state input, but also on the expertise and critical insights of independent experts and civil society organisations, such as those included in the EIN/DRI report. The non-compliance issues can also be raised as part of engagement with governments and stakeholders within the framework of national dialogues.

Moreover, we suggest:

5. **Prioritisation in EU Discussions: EU institutions should highlight the non-implementation of ECtHR and CJEU judgments as a priority rule of law issue in discussions with member state governments and parliaments.**

Such discussions can be helpful in raising the profile of the issue of non-compliance and in supporting compliance communities. It would also enable the Commission to obtain up-to-date information on compliance challenges, be they in connection with the mixed record of national courts in applying CJEU case law or the lack of political will to implement necessary reforms required by ECtHR and CJEU rulings.

6. **Funding for Implementation Activities: The EU should fund initiatives to enhance the implementation of ECtHR and CJEU judgments, particularly those led by civil society organisations and the Council of Europe.**

CIVIL SOCIETY ACTIVITIES

Civil society has a vital role to play in the implementation of court judgments. Civil society actors, through their active engagement with a wide range of stakeholders involved in implementation procedures, both at the national and at pan-European levels, are a vital force for ensuring respect for and compliance with the European Courts' findings. The funding opportunities for this type of important work, nevertheless, leave a lot to be desired. 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 for such work. 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 or CJEU 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. The CERV calls for tenders published to date, however, focus on the EU Charter of Fundamental Rights or citizens' participation in democracy, and not the implementation of judgments of the ECtHR or the CJEU. It is of vital importance that this gap be bridged.

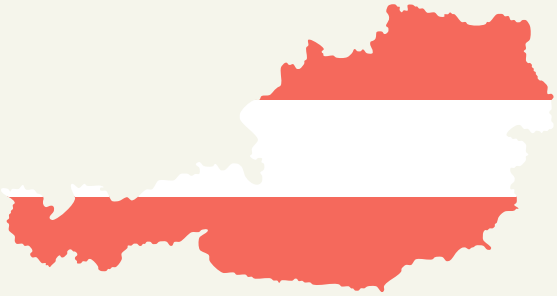
COUNCIL OF EUROPE ACTIVITIES

The Council of Europe's new initiatives to promote ECtHR implementation, including more ample technical support projects, a larger budget for the Department for the Execution of Judgments, and parliamentary cooperation initiatives, require funds far greater than the budget available to enable them to be carried out. As the one of the main funders of Council of Europe project activities, the EU will have a key role in supporting new initiatives to promote ECtHR implementation and ensuring that these materialise in practice.

5. ANNEXES

ANNEX I: COUNTRY PROFILES FOR BOTH COURTS

Country Profile: **AUSTRIA**



ECTHR:

● GOOD

6 (Low)

ECtHR leading judgments pending implementation

32% (Significant)

Proportion of leading judgments rendered in the last ten years that are still pending implementation.

1 YEAR AND 5 MONTHS (Low)

Average time leading judgments have been pending implementation.

Austria's overall ECtHR implementation record is **good.** The proportion of judgments from the last ten years awaiting implementation has increased, due to the ECtHR delivering three more judgments in respect of Austria over the last year, but it remains below the EU average.

It should be noted that Austria has complied with its' reporting obligations in all judgments that are pending implementation.

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. **Obligation imposed on a media company to disclose data of authors of comments posted on its internet news portal** (*Standard Verlagsgesellschaft MBH v. Austria*), judgment final in March 2022.

Country Profile: **AUSTRIA**

CJEU:

No Data available

CONTEXTUAL INFORMATION

"Government powers are effectively limited by the Judiciary", WJP RoL Index – 0.82/1, (regional average: 0.71)

"Justice [system] is free of improper government influence", WJP RoL index: civil: 0.84/1 (regional average: 0.75); criminal 0.86/1 (regional average: 0.74)

For more about the Austrian justice system: Austria – The Judiciary Map (judiciaryhub.eu)

Country Profile: BELGIUM

ECTHR:

MODERATELY POOR

21 (Moderate)

ECtHR leading judgments pending implementation.

39% (Significant)

Proportion of leading judgments rendered in the last ten years that are still pending implementation.

3 YEARS AND 11 MONTHS (Moderate)

Average time leading judgments have been pending implementation.

The number of leading judgments in respect of Belgium pending implementation remains relatively stable in comparison with previous years. Three of the main structural problems that must be addressed by Belgium are: conditions of detention in prison (*Vasilescu v. Belgium*), inadequate care or ill-treatment of persons with mental health problems in prison (*L.B. v. Belgium*, *Jeanty v. Belgium*), and the excessive length of criminal proceedings (*Bell v. Belgium*). Emerging issues also concern the *de facto* irreducibility of a life sentence (*Horion v. Belgium*) and the systemic non-enforcement of judicial decisions ordering the authorities to give material assistance and shelter to asylum seekers (*Camara v. Belgium*).

Four examples of ECtHR judgments pending implementation in Belgium

1. **Excessive length of judicial proceedings** (*Bell v. Belgium*), pending implementation since 2009.
2. **Inadequate care of persons with mental health problems detained in prison psychiatric wings** (*L.B. v. Belgium*), pending implementation since 2013.
3. **Failure to properly review claims of unfair elections** (*Mugemangango v. Belgium*), pending implementation since 2020.
4. **Prison overcrowding and material conditions of detention** (*Vasilescu v. Belgium*), pending implementation since 2015.

Country Profile: **BELGIUM**

CJEU:

No Data available

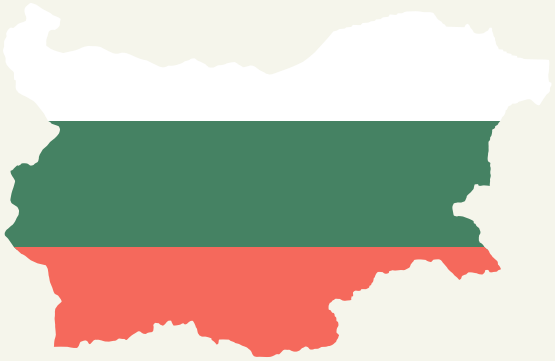
CONTEXTUAL INFORMATION

"Government powers are effectively limited by the Judiciary", WJP RoL index – 0.78/1, (regional average: 0.71)

"Justice [system] is free of improper government influence", WJP RoL index: civil 0.86/1 (regional average: 0.75); criminal 0.85/1 (regional average: 0.74)

For more about the Belgian justice system: Belgium – The Judiciary Map (judiciaryhub.eu)

Country Profile: BULGARIA



ECTHR:

● VERY SERIOUS PROBLEM

89 (Very high)

ECtHR leading judgments pending implementation.

53% (High)

Proportion of leading judgments rendered in the last ten years that are still pending implementation.

6 YEARS AND 9 MONTHS (High)

Average time leading judgments have been pending implementation.

Bulgaria continues to have a **very serious problem** regarding the implementation of ECtHR judgments. The oldest leading judgment is *Kehayov v. Bulgaria*, which concerns poor conditions of detention in remand facilities and prisons, and lack of an effective remedy; it has been pending implementation since 2005.[26] Matters concerning torture, ill-treatment, and the excessive use of force by law enforcement agents have been on the Committee of Ministers' agenda since 2000 (these issues, originally examined under the *Velikova v Bulgaria* group, which was closed last year, continue to be examined under the *Dimitrov and Others* group of cases, which is pending since 2014).

Four examples of ECtHR judgments pending implementation in Bulgaria

1. **Sanctions against the president of the judges' association in retaliation against her criticism of the Supreme Judicial Council and the executive** (*Miroslava Todorova v. Bulgaria*), pending implementation since 2022.

2. **Systemic problem of ineffective investigations in respect of serious crimes**

[26] It should be noted that the supervision of the *Velikova v Bulgaria* judgment, which, as of last year, had been pending for 23 years, and which concerns torture, ill-treatment, and the excessive use of force by law enforcement agents, ended in December 2023, as several significant measures have been taken to address this issue. However, the supervision of remaining issues (ill-treatment, death, or lack of timely medical assistance under the responsibility of law enforcement agencies, and ensuring effective investigations into such incidents or into the broader circumstances surrounding a killing during police operation and effective domestic remedies) continue to be examined under the *Dimitrov and Others* group of cases, which has been pending since 2014. In fact, these issues have been brought to the authorities' implementation agenda for a much longer time, but, as they have been moved under a more recent case, they have less impact on the average time figure.

Country Profile: BULGARIA

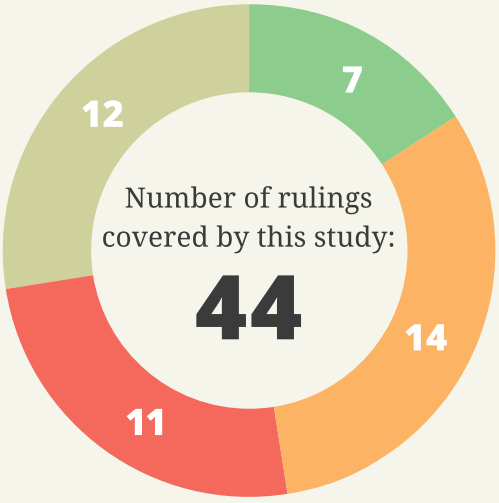
(*S.Z. v. Bulgaria*, *Kolevi v. Bulgaria*), pending implementation since 2009.

3 **Deaths of institutionalised children with disabilities resulting from government failures, and lack of effective investigations** (*Nencheva and Others v. Bulgaria*), pending implementation since 2013.

4 **Unjustified refusals to register associations that represent minorities** (*Umo Ilinden and Others v. Bulgaria*), pending implementation since 2006.

CJEU:

STRUGGLING COMPLIER



- Full compliance (15.9%)
- Partial compliance (31.8%)
- Failure to comply (25%)
- Impossible to establish (27.3%)

Number and percentage of rulings pending compliance for 2 years and more: 14 (56%)

Ordinary courts' response: mixed

Political response: under-performance

CONTEXTUAL INFORMATION

"Government powers are effectively limited by the Judiciary", WJP RoL index – 0.44/1, (regional average: 0.71)

"Justice [system] is free of improper government influence", WJP RoL index: civil: 0.47/1 (regional average: 0.75); criminal 0.45/1 (regional average: 0.74)

For more about the Bulgarian justice system: https://judiciaryhub.eu/country/bulgaria/

Country Profile: **BULGARIA**

Commentary: The adherence of ordinary courts to CJEU prescriptions is mixed. While some courts adhere to CJEU guidance, the necessary changes in legislation and prosecutorial, police, or other practices are typically not implemented. Over 50 per cent of the rulings pending compliance have been so for two years or more.

SELECTED INSTANCES OF NON-COMPLIANCE

1 Failure to Comply:

C-282/20 **ruling of 21 October 2021,** EU law precludes national legislation that fails to provide a means to remedy errors in indictments, prejudicing the right of the accused to information about the charges following the pre-trial hearing.

C-467/18, **ruling of 19 September 2019,** EU law precludes national legislation that allows committing persons to psychiatric hospitals without enabling courts to verify that their procedural rights were respected in prior proceedings.

C-393/19, **ruling of 14 January 2021** and C-505/20, ruling of 12 May 2022, on the lack of an effective remedy for the third parties whose property is frozen as alleged instrumentality or as alleged proceeds of a criminal offence.

2 Partial compliance:

C-203/21, **ruling of 10 November 2022,** EU law precluding national legislation allowing a national court to impose on a legal person a criminal penalty for an offence for which a natural person who has power to represent that legal person is already liable, where that legal person was not in a position to dispute the reality of that offence.

C-608/21, **ruling of 25 May 2023,** on the need to provide information about the grounds for detention at the time of the deprivation of liberty or shortly thereafter, and not only when the legality of the detention is challenged in court.

Country Profile: CROATIA

ECTHR:

MODERATE

27 (Moderate)

ECtHR leading judgments pending implementation.

28% (Moderate)

Proportion of leading judgments rendered in the last ten years that are still pending implementation.

3 YEARS AND 4 MONTHS (Moderate)

Average time leading judgments have been pending implementation.

Croatia has a **moderate** record of ECtHR implementation. Croatian authorities are actively fulfilling their reporting obligations to the Committee of Ministers; this has led to the closure of five leading cases in 2023. The main systemic fundamental human rights problems concern the investigation of hate crimes against LGBTIQ+ persons and collective expulsions of asylum seekers.

Four examples of ECtHR judgments pending implementation in Croatia

1. **Lack of protection against unlawful state surveillance** (*Dragojevic v. Croatia*), pending implementation since 2015.
2. **Failure to investigate the motives of hate crimes against LGBTIQ+ victims** (*Sabalic v. Croatia*), pending implementation since 2021.
3. **Collective expulsions of asylum seekers, and delays in processing detention and asylum proceedings** (*M.H. and Others v. Croatia*), pending implementation since 2022.
4. **Statutory limitations on the use of property by landlords, including through the rent control scheme for flats subject to protected leases** (*Statileo v. Croatia* group of cases), pending implementation since 2014.

Country Profile: **CROATIA**

CJEU:

MODERATE COMPLIER

- Full compliance (50%)
- Partial compliance (0%)
- Failure to comply (50%)
- Impossible to establish (0%)

Number and percentage of rulings pending compliance for 2 years or more: 0 (0 %)

CONTEXTUAL INFORMATION

"Government powers are effectively limited by the Judiciary", WJP RoL index 0.47/1, (regional average: 0.71)

"Justice [system] is free of improper government influence", WJP RoL index: civil: 0.54/1 (regional average: 0.75); criminal 0.47/1 (regional average: 0.74)

For more about the Croatian justice system: Croatia – The Judiciary Map (judiciaryhub.eu)

Commentary: A rule of law-related case to watch is Hann Invest (joined Cases C-554/21, C-622/21 and C-727/21), on which the Advocate General delivered an opinion on 26 October 2023. The case touches upon internal judicial independence, as it focuses on the question of whether a judicial panel can be considered independent if its autonomous decisions may be blocked by two bodies within the structure of the same court.

SELECTED INSTANCES OF NON-COMPLIANCE

Failure to implement

C-726/21, **ruling of 12 October 2023,** (applicability of the ne bis in idem principle – the CJEU calling for change in national judicial practice) – given the fact that CJEU ruling was issued relatively recently, making a judgment on (non-) compliance somewhat premature.

Country Profile: CYPRUS

ECTHR:

● MODERATELY POOR

10 (Low)

ECtHR leading judgments pending implementation.

53% (High)

Proportion of leading judgments rendered in the last ten years that are still pending implementation.

3 YEARS AND 4 MONTHS (Moderate)

Average time leading judgments have been pending implementation.

Cyprus has a **moderately poor** ECtHR implementation record. The main human rights issues pending in Cyprus concern conditions of detention in prison (*Danilczuk v. Cyprus*) and conditions of detention pending deportation, in several police stations (*Khanh v. Cyprus*).

Two examples of ECtHR judgments pending implementation in Cyprus

1. **Poor conditions of detention** (*Danilczuk v. Cyprus*), pending implementation since 2018.

2. **Excessive length of criminal proceedings** (*Foutas Aristidou v. Cyprus*), pending implementation since 2022.

Country Profile: **CYPRUS**

CJEU:

No Data available

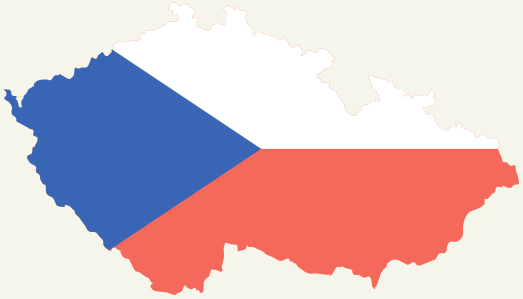
CONTEXTUAL INFORMATION

"Government powers are effectively limited by the Judiciary", WJP RoL index – /0,62/1, (regional average: 0.71)

"Justice [system] is free of improper government influence", WJP RoL index: civil 0.76/1 (regional average: 0.75); criminal 0.76/1 (regional average: 0.74)

For more about the Cypriot justice system: Cyprus – The Judiciary Map (judiciaryhub.eu)

Country Profile: CZECHIA



ECTHR:

● GOOD

5 (Very low)

ECtHR leading judgments pending implementation

24% (Moderately low)

Proportion of leading judgments rendered in the last ten years that are still pending implementation.

4 YEARS AND 3 MONTHS (Significant)

Average time leading judgments have been pending implementation.

Czechia has a **good** ECtHR implementation record. The small increase in the proportion of leading judgments from the last ten years that are pending implementation (from 18 to 24 per cent) is explained by the delivery of two new ECtHR judgments in 2023.

Czechia has set in place a strong ECtHR implementation mechanism at the national level, which can serve as a good practice for other member states facing difficulties with ECtHR implementation.

That notwithstanding, it is problematic that the *D.H. v the Czech Republic* case – concerning discrimination in education against Roma children – has been pending since 2007; a range of measures have been taken by the authorities over the years aimed at addressing this case, but further steps are still required.

Two examples of ECtHR judgments pending implementation in Czechia

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. **Excessive length of detention pending extradition, due to serious delays in asylum proceedings** (*Komissarov v. the Czech Republic*), judgment final in May 2022.

Country Profile: **CZECHIA**

CJEU:

No Data available

CONTEXTUAL INFORMATION

"Government powers are effectively limited by the Judiciary", WJP RoL index – 0.72/1, (regional average: 0.71)

"Justice [system] is free of improper government influence", WJP RoL index: civil 0.74/1 (regional average: 0.75); criminal 0.82/1 (regional average: 0.74)

For more about the Czech justice system: Czechia – The Judiciary Map (judiciaryhub.eu)

Country Profile: DENMARK

ECTHR:

● VERY GOOD

3 (Very low)

ECtHR leading judgments pending implementation

50% (High)

Proportion of leading judgments rendered in the last ten years that are still pending implementation.

2 YEARS (Low)

Average time leading judgments have been pending implementation.

Denmark has a **very good** ECtHR implementation record; it is one of the best in the EU, which is mostly due to the overall high Convention-compliance record of the country (low number of violation judgments, in first place). The proportion of leading judgments rendered in the last ten years that are still pending implementation is high because, out of a small number of such judgments rendered in respect of Denmark in the last decade (six), only half have so far been fully implemented.

Denmark's unimplemented judgments concern unlawful restraints in psychiatric hospitals (*Aggerholm v. Denmark*), expulsion orders against settled migrants (*Savran v. Denmark*), and the refusal to allow the adoption of children born abroad through surrogacy (*K.K. and Others v. Denmark*). *Inter alia,* the Danish authorities must introduce further measures to decrease the use of belt fixation in psychiatric institutions.

Two examples of ECtHR judgments pending implementation in Denmark

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

2. **Refusal to allow the adoption of children born abroad through surrogacy** (*K.K. and Others v. Denmark*), pending implementation since March 2023.

Country Profile: **DENMARK**

CJEU:

No Data available

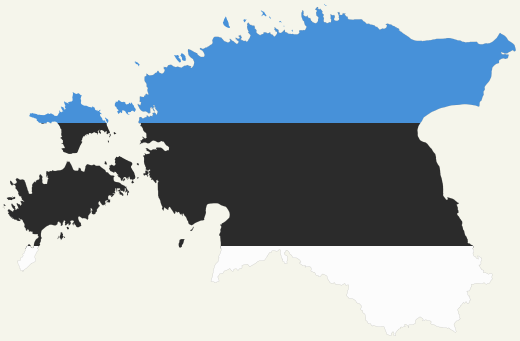
CONTEXTUAL INFORMATION

"Government powers are effectively limited by the Judiciary", WJP RoL index – 0.95/1, (regional average: 0.71)

"Justice [system] is free of improper government influence", WJP RoL index: civil 0.91/1 (regional average: 0.75); criminal 0.94/1 (regional average: 0.74)

For more about the Danish justice system: Denmark – The Judiciary Map (judiciaryhub.eu)

Country Profile: ESTONIA



ECTHR:

● VERY GOOD

3 (Very low)

ECtHR leading judgments pending implementation

15% (Low)

Proportion of leading judgments rendered in the last ten years that are still pending implementation.

1 YEAR AND 5 MONTHS (Low)

Average time leading judgments have been pending implementation.

Estonia has a **very good** implementation record, and the best implementation record among the Baltic States. In the *Särgava* case, which concerns data protection, the authorities have demonstrated the political will to resolve the underlying problem, having already prepared draft legislative amendments following the delivery of the judgment in February 2022.

Two examples of human rights problems that are yet to be fully resolved in Estonia

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

2. **Lack of sufficient procedural safeguards to protect privileged data during seizure and examination of a lawyer's laptop and mobile telephone** (*Särgava v. Estonia*), pending implementation since 2022.

Country Profile: ESTONIA

CJEU:

MODERATE COMPLIER

- Full compliance (66.66%)
- Partial compliance (33.33%)
- Failure to comply (0%)
- Impossible to establish (0%)

Number and percentage of rulings pending compliance for 2 years or more: 1 (100%)

Ordinary courts' response: adequate

Political response: mixed

CONTEXTUAL INFORMATION

"Government powers are effectively limited by the Judiciary", WJP RoL index 0.83/1, (regional average: 0.71)

"Justice [system] is free of improper government influence", WJP RoL index: civil: 0.87/1 (regional average: 0.75); criminal 0.86/1 (regional average: 0.74)

For more about the Estonian justice system: https://judiciaryhub.eu/country/estonia/

Commentary: There was an active political debate in Estonia regarding the Electronic Communications Act immediately after the CJEU decision in case C-746/18. Officials have argued that the storage of personal data did not constitute a significant intrusion, and did not strongly infringe on the right to private life.

SELECTED INSTANCES OF NON-COMPLIANCE

Partial compliance

C-746/18, **ruling of 2 March 2021,** (the CJEU found domestic law regarding the storage of data collected by the telecommunications companies contrary to EU law, but the law has not been changed; a criminal law provision which allows receiving data from a telecommunications company with the permission of the Prosecutor's Office was found contrary to EU law, and subsequently changed).

Country Profile: FINLAND

ECTHR:

● GOOD

2 (Very low)

ECtHR leading judgments pending implementation

25% (Moderately low)

Proportion of leading judgments rendered in the last ten years that are still pending implementation.

10 YEARS AND 3 MONTHS (Very high)

Average time leading judgments have been pending implementation.

Finland's ECtHR implementation record is **good**, having significantly improved over last year. The closure of several cases in the course of 2023 has led to a tangible improvement in the proportion of pending leading cases from the last decade. The only two judgments that were still pending implementation at the beginning of 2024 were delivered in 2012 and 2014, respectively. This explains why the average implementation time remains very high.

Example of one ECtHR judgment pending implementation in Finland

Violation of the right not to be punished twice due to criminal and administrative proceedings being applied to the same facts (*Nykanen v. Finland*), pending implementation since 2014.

Country Profile: **FINLAND**

CJEU:

- Full compliance (0%)
- Partial compliance (100%)
- Failure to comply (0%)
- Impossible to establish (0%)

Number and percentage of rulings pending compliance for 2 years or more: 2 (100 %)

CONTEXTUAL INFORMATION

"Government powers are effectively limited by the Judiciary", WJP RoL index 0.90/1, (regional average: 0.71)

"Justice [system] is free of improper government influence", WJP RoL index: civil: 0.90/1 (regional average: 0.75); criminal 0.99/1 (regional average: 0.74)

For more about the Finnish justice system: https://judiciaryhub.eu/country/finland/

SELECTED INSTANCES OF NON-COMPLIANCE

Partial compliance

C-35/20, **ruling of 6 October 2021** (EU law precluding rules on criminal sanctions by which a member state makes crossing the border without a valid identity card or passport punishable by fine, where such a fine is not proportionate to the seriousness of the offence, which is of a minor nature).

Country Profile: FRANCE

ECTHR:

MODERATE

20 (Moderately low)

ECtHR leading judgments pending implementation.

29% (Moderate)

Proportion of leading judgments rendered in the last ten years that are still pending implementation.

3 YEARS AND 10 MONTHS (Moderate)

Average time leading judgments have been pending implementation.

France has an **overall moderate** ECtHR implementation record. The closure of the supervision of nine leading cases in 2023, which concerned, *inter alia,* excessive use of force by the police, and insufficiency of measures to protect children from parental abuse explains the decrease in the proportion of pending leading judgments rendered in the last ten years (from 36 per cent last year). On the contrary, the increase in the "time pending indicator" (from 2 years and 11 months last year) resulted from the fact that the majority of the leading cases closed in 2023 were newer judgments, the majority of which had been pending implementation for up to 3 years. France continues to have a better implementation rate than neighbouring Belgium, Germany, Italy, and Spain.

Fundamental human rights issues include the inadequacy of prison conditions, which continue to worsen (*J.M.B. v. France*); and the non-enforcement of decisions ordering improved reception conditions for asylum-seekers (*M.K. and Others v. France*). In fact, almost half of the pending leading judgments in France concern the rights of asylum seekers and migrants. Worryingly, in 2023, the French authorities failed to respect an ECtHR interim measure regarding the expulsion of an Uzbekistani back to Uzbekistan, and went ahead with the expulsion, despite the imminent risk of irreparable harm to the applicant.

Country Profile: FRANCE

Three examples of ECtHR judgments pending implementation in France

1 **Poor conditions of detention and overcrowding, and lack of an effective preventive remedy** (*J.M.B. v. France*), pending implementation since 2020.

2 **Collection and storage of personal data** (*Drelon v. France*), pending implementation since 2022.

3 **Disproportionate convictions for exercising freedom of expression** (*Rouillan v. France*), pending implementation since 2022.

CJEU:

GOOD COMPLIER

- Full compliance (85.72%)
- Partial compliance (14.28%)
- Failure to comply (0%)
- Impossible to establish (0%)

Number and percentage of rulings pending compliance for 2 years or more: 1 (100 %)

constitutional court: non-confrontational, surreptitious challenge of EU law

CONTEXTUAL INFORMATION

"Government powers are effectively limited by the Judiciary", WJP RoL index 0.67/1, (regional average: 0.71)

"Justice [system] is free of improper government influence", WJP RoL index: civil: 0.76/1 (regional average: 0.75); criminal 0.67/1 (regional average: 0.74)

For more about the French justice system: France – The Judiciary Map (judiciaryhub.eu)

Country Profile: **FRANCE**

Commentary: The CJEU's ruling of 6 October 2020, C-511/18 (La Quadrature du Net and Others v Premier ministre and Others), addressed the balance between personal data protection and public security objectives, and access by security and intelligence services to telecommunications data. The CJEU cautioned against laws providing, as a preventive measure, for the general and indiscriminate retention of traffic and location data, but noted that targeted retention may be permissible to safeguard national security, where the threat is genuine, if it is subject to effective review.

In response, the Conseil d'État established an exception to the primacy of EU law, indicating that national security concerns could justify exceptions to EU data-protection laws. Academic commentators have warned that the approach followed by the Conseil d'État is surreptitious rather than obviously confrontational, and could be more efficient in challenging the implementation of EU fundamental rights standards within the member states. The French court may have provided a tempting alternative for national courts and governments that are uneasy with aspects of the CJEU case law. By openly challenging the EU's legal order both in its form (the ruling), as well as in its substance (the Charter of Fundamental Rights), France might be doing both: paving the way for further weakening of the Rule of Law across the EU, and possibly also paving the way for more challenges coming from France on other issues. It seems that the French Conseil d'État and Constitutional Council confirmed the general grounds introduced here to allow for exceptions to the primacy of EU law in later rulings.

SELECTED INSTANCES OF NON-COMPLIANCE

Partial compliance

C-511/18 (La Quadrature du Net and Others v Premier ministre and Others), ruling of 6 October 2020 (the balancing of the protection of personal data vs public security objectives, and access by security and intelligence services to mass-collected telecommunications data).

Country Profile: GERMANY

ECTHR:

● MODERATE

10 (Low)

ECtHR leading judgments pending implementation.

33% (Significant)

Proportion of leading judgments rendered in the last ten years that are still pending implementation.

4 YEARS (Moderate)

Average time leading judgments have been pending implementation.

Germany has a **moderate** ECtHR implementation record. As of January 2024, the German authorities had complied with their reporting obligations in all of the 10 pending leading cases, by submitting action plans or action reports. This demonstrates that the German authorities are engaging with the implementation process. Nevertheless, more rigorous action is required to address the problems identified by the ECtHR in a timely manner.

Among the most significant problems Germany still needs to resolve, *Hentschel and Stark v. Germany* requires, for example, that the authorities address specific issues regarding the effectiveness of investigations into police ill-treatment allegations during interventions.

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 implementation since 2021.

Country Profile: **GERMANY**

CJEU:

GOOD COMPLIER

- Full compliance (95%)
- Partial compliance (5%)
- Failure to comply (0%)
- Impossible to establish (0%)

Number and percentage of rulings pending compliance for 2 years or more: 1 (100 %)

Constitutional Court: occasional, non-systemic challenge to the CJEU authority

CONTEXTUAL INFORMATION

"Government powers are effectively limited by the Judiciary", WJP RoL index -0.86/1, (regional average: 0.71)

"Justice [system] is free of improper government influence", WJP RoL index: civil: 0.90/1 (regional average: 0.75); criminal 0.90/1 (regional average: 0.74)

For more about the German justice system: Germany – The Judiciary Map (judiciaryhub.eu)

Commentary: In 2019, the CJEU ruled, after preliminary ruling requests from Irish courts, that Germany's prosecution services being subjected to orders of the ministries of justice, could not be considered independent "issuing judicial authorities" within the meaning of the Framework Decision 2002/584 on the European Arrest Warrant. The government proposed reforms to limit ministerial powers, but no legislation has been adopted yet.

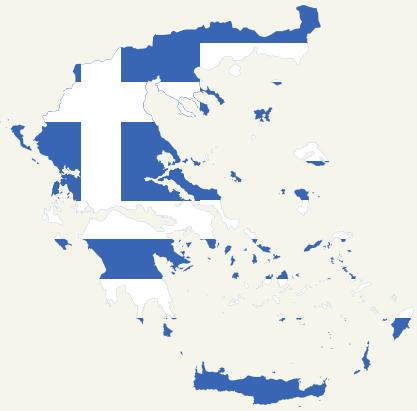
Commentators saw the 2020 declaration by the German Constitutional Court that the CJEU ruling concerning the Public Sector Purchase Programme (PSPP) of the European Central Bank (ECB) was *ultra vires* as a concerning development. They worried this could be copied by other constitutional courts. Unlike other courts, however, the German Constitutional Court is independent, and exercises its *ultra vires* review with restraint.

SELECTED INSTANCES OF NON-COMPLIANCE

Partial compliance

Joined Cases C-508/18 and C-82/19 PPU, ruling of 27 May 2019, (failure to change legislation that makes German prosecutors subject to ministerial orders, endangering their independence).

Country Profile: GREECE



ECTHR:

● PROBLEMATIC

28 (Moderate)

ECtHR leading judgments pending implementation.

30% (Moderate)

Proportion of leading judgments rendered in the last ten years that are still pending implementation.

6 YEARS AND 7 MONTHS (High)

Average time leading judgments have been pending implementation.

Greece continues to have a **problematic** ECtHR implementation record. While Greece is, in general, engaging with the implementation process, issues regarding the refusal to register non-profit associations for Turkish minorities (*Bekir-Ousta and Others v. Greece*; *House of Macedonian Civilization and Others v. Greece*) remain an important pocket of resistance. Furthermore, Greek authorities must take measures to address freedom of expression violations due to civil and criminal defamation proceedings against journalists (in relation to the *Katrami v. Greece* and *Vasilakis v. Greece* groups of cases); the authorities must also take measures to address police brutality and conduct effective investigations, an issue first identified by the ECtHR in 2004 (in the *Sidiripoulos and Papakostas* group of cases).

Furthermore, according to civil society reports, Greek authorities have refused to comply with many interim measures delivered by the Court over the course of 2023, which concerned immediate assistance to and the rescue and non-removal of persons in distress on the border. The authorities appear to continue unlawfully removing migrants from Greek territory, in defiance of Court orders,[27] and despite the risk of irreparable harm to them.[28] In one case, two ECtHR interim measure decisions ordering the authorities to provide emergency assistance to a group of 50 people at the Greek-Turkish border and to refrain from pushing them back were not able to prevent these violations.[29]

[27] GCR, "Information Note on interventions and on interim measures granted by the ECtHR in cases regarding pushbacks", 3 December 2023.

[28] For instance, *B.M. v. Greece* App No 29860/23, Order of 1 August 2023; *H.A. v. Greece* App No 27303/23, Order of 12 July 2023; *M.D. v. Greece* App No 13532/23, Order of 30 March 2023.

[29] Alarmphone.org, "48 Days Back and Forth at the Turkish-Greek Land Border", 11 January 2024; Alarmphone.org, "Evros: The Brutal Face of the European Border Regime", 7 August 2023; Alarmphone.org, "Evros One Week on: Another Chapter in the Deadly European Border Regime", 15 August 2023.

Country Profile: GREECE

Four examples of ECtHR judgments pending implementation in Greece

1. **Disproportionate convictions and fines for journalism carried out in good faith** (*Katrami v. Greece*; *Vasilakis v. Greece*), pending implementation since 2008.
2. **Police torture and ill-treatment** (*Sidiropoulos and Papakostas v. Greece*), pending implementation since 2004.
3. **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, respectively.
4. **Conditions of detention of asylum seekers and irregular migrants, and lack of an effective remedy to challenge them** (*M.S.S. v. Greece*), pending implementation since 2011.

CJEU:

No Data available

CONTEXTUAL INFORMATION

"Government powers are effectively limited by the Judiciary", WJP RoL index – 0.72/1, (regional average: 0.71)

"Justice [system] is free of improper government influence", WJP RoL index: civil 0.60/1 (regional average: 0.75); criminal 0.55/1 (regional average: 0.74)

For more about the Greek justice system: Greece – The Judiciary Map (judiciaryhub.eu)

Country Profile: HUNGARY

ECTHR:

● VERY SERIOUS PROBLEM

45 (Fifth highest figure in the EU)

ECtHR leading judgments pending implementation.

76% (Very high)

Proportion of leading judgments rendered in the last ten years that are still pending implementation.

6 YEARS AND 2 MONTHS (High)

Average time leading judgments have been pending implementation.

Hungary continues to have **one of the poorest records** in the EU regarding implementation of leading judgments of the ECtHR.

An important number of these judgments concern issues highly pertinent to the rule of law, including freedom of expression of judges and legislative shortcomings that hinder judicial independence (*Baka v. Hungary*), access to public information (*Kenedi v. Hungary*), freedom of assembly (*Patyi and Others*), denial of journalists' access to reception centres for asylum seekers (*Szurovecz v. Hungary*), and more.

The *Patyi and Others* case, pending implementation since 2009, is one of the oldest pending leading cases; it concerns violations of the right to freedom of assembly, due to demonstration bans that were either unjustified or devoid of a legal basis. Legislative reforms have been undertaken by the authorities, but civil society organisations point to key administrative obstacles that are built into the Hungarian regulation and hinder the exercise of freedom of assembly in practice.

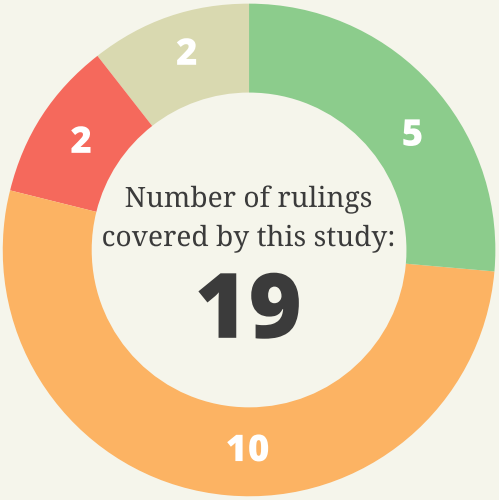
Four examples of ECtHR judgments pending implementation in Hungary

1. **Systemic threats to judicial independence** (*Baka v. Hungary*, pending implementation since 2016).
2. **Ill-treatment by police officers and a lack of effective investigations therein** (*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. **Discriminatory assignment of Roma children to schools for children with mental disabilities** (*Horvath and Kiss v. Hungary*), pending implementation since 2013.

Country Profile: HUNGARY

CJEU:

STRUGGLING COMPLIER



- Full compliance (26.4 %)
- Partial compliance (52.6 %)
- Failure to comply (10.5 %)
- Impossible to establish (10.5 %)

Number and percentage of rulings pending compliance for 2 years or more: 8 (66.66 %)

Ordinary courts' response: mixed;

constitutional court: hindering compliance through indirect rejection of CJEU guidance.

Political response: hostility and/or under-performance

CONTEXTUAL INFORMATION

"Government powers are effectively limited by the Judiciary", WJP RoL index - 0.39/1, (regional average: 0.71)

"Justice [system] is free of improper government influence", WJP RoL index: civil: 0.33/1 (regional average: 0.75); criminal 0.31/1 (regional average: 0.74)

For more about the Hungarian justice system: https://judiciaryhub.eu/country/hungary/

Commentary: Despite a mixed record, Hungarian courts' adherence to CJEU rulings is a key reason for the country's somewhat acceptable compliance rates. Political authorities often fail to act on rulings requiring changes in legislation or practice and, when they do, their responses are frequently delayed and inadequate. The Constitutional Court is seen as an obstacle to compliance, providing justifications for governmental non-compliance.

Country Profile: **HUNGARY**

SELECTED INSTANCES OF NON-COMPLIANCE

I. **Failure to comply:**

C-823/21 (Commission vs Hungary), ruling of 22 June 2023, Hungary's Failure to provide third-country nationals or stateless persons with effective access to international protection procedures in line with EU law.

C-808/18 (Commission v Hungary), ruling of 17 December 2020, Hungary's failure to ensure access to international protection procedures, guarantee that applicants for international protection can remain in Hungary pending a final decision on their appeal, and addressing the removal of illegally staying third-party nationals. The CJEU imposed a fine for non-compliance in case 123/22, 13 June 2024.

II. **Partial compliance**

C-159/21, ruling of 22 September 2022, the CJEU confirming the right of applicants for international protection to access to the grounds of the asylum authority's refusal to grant protection, even if the information contained therein pertains to national security; national courts adhering to the CJEU ruling and ordering a new procedure, in which the grounds are disclosed; failure to amend legislation in line with the CJEU ruling; security agencies refusing disclosure, invoking national security risk.

C-564/19 (*IS case*), ruling of 23 November 2021, failure to address the effects of the binding precedential decision of the Hungarian supreme court *(Kúria),* the content of which was found contrary to EU law by the CJEU.

Country Profile: IRELAND

ECTHR:

● GOOD

2 (Very low)

ECtHR leading judgments pending implementation.

50% (High)

Proportion of leading judgments rendered in the last ten years that are still pending implementation.

11 YEARS AND 8 MONTHS (Very High)

Average time leading judgments have been pending implementation.

Ireland has a **good** ECtHR implementation record, stable in comparison with last year. The **two leading judgments** in respect of Ireland (*O'Keeffe v. Ireland* and *McFarlane v. Ireland*) have been pending implementation for a very long time, since 2014 and 2010, respectively. This is the longest average time ECtHR judgments have been pending implementation in any EU state. The proportion of leading cases pending implementation is high due to the fact that Ireland is not a jurisdiction generating violation-finding judgments in general: another two leading judgments delivered in the past ten years in respect of Ireland have already been implemented. While Ireland does not have a widespread implementation problem and the authorities fulfil their reporting obligations for the two pending judgments, the authorities should promptly take further general measures to fully implement them.

For the implementation of *O'Keeffe v. Ireland*, in particular, the authorities should still take measures to ensure that adequate redress is offered in relation to claims for historic abuses in schools.

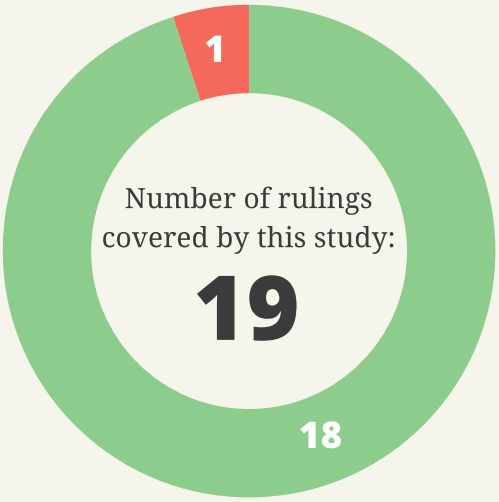
Two ECtHR judgments pending implementation in Ireland

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

Country Profile: **IRELAND**

CJEU:

GOOD COMPLIER



- Full compliance (94.73%)
- Partial compliance (0%)
- Failure to comply (5.26%)
- Impossible to establish (0%)

Number and percentage of rulings pending compliance for 2 years or more: 0 (0 %)

Ordinary courts' response: close to full adherence

CONTEXTUAL INFORMATION

"Government powers are effectively limited by the Judiciary", WJP RoL index 0.83/1, (regional average: 0.71)

"Justice [system] is free of improper government influence", WJP RoL index: civil: 0.93/1 (regional average: 0.75); criminal 0.85/1 (regional average: 0.74)

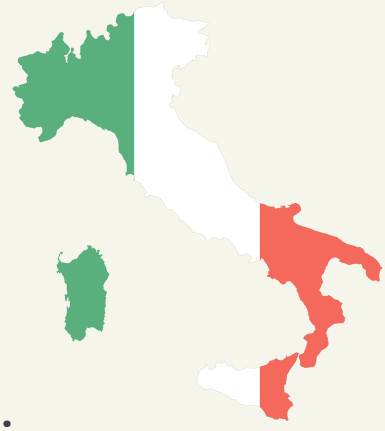
For more about the Irish justice system: https://judiciaryhub.eu/country/ireland/

Commentary: The only ruling not (yet) complied with – C-84/22 – is relatively recent and awaits a ruling from the High Court.

SELECTED INSTANCES OF NON-COMPLIANCE

C-84/22 - **Right to Know, CLG v. An Taoiseach, ruling of 23 November 2023,** right of access to environmental information. balanced against cabinet confidentiality.

Country Profile: ITALY



ECTHR:

● VERY SERIOUS PROBLEM

66 (Very High)

ECtHR leading judgments pending implementation.

65% (Very High)

Proportion of leading judgments rendered in the last ten years that are still pending implementation.

6 YEARS AND 7 MONTHS (High)

Average time leading judgments have been pending implementation.

Italy has a **particularly poor** record of implementing the Strasbourg Court's judgments. However, while the non-implementation portion of judgments delivered in the past ten years is very high, it should also be taken into account that 17 of the Italian leading judgments have only been delivered by the ECtHR in the past two years and, therefore, they are relatively recent.

The *Abenavoli v. Italy* and *Ledonne v. Italy (no.1)* groups of judgments, pending implementation since 1997 and 1999, require administrative and criminal justice reforms aimed at reducing the length of proceedings. Important reforms undertaken by the authorities have led to improvements in the backlog of court cases, but further measures are required to achieve full implementation. Other problems that need to be effectively addressed by the Italian authorities concern violations of freedom of expression due to criminal convictions and fines for defamation, inadequate police responses to domestic violence, secondary victimisation of victims of sexual violence, unlawful detention of migrants in first reception facilities, as well as the lack of an effective remedy to complain about the discontinuation of a political programme on state-run television.

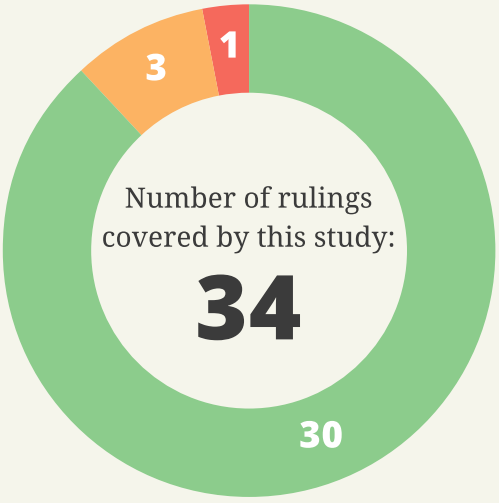
Country Profile: ITALY

Five examples of ECtHR judgments pending implementation in Italy

1. **Criminal convictions for acts of free speech on matters of public interest** (*Belpietro v. Italy*), pending implementation since 2013.
2. **Failures to enforce domestic 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.

CJEU:

GOOD COMPLIER



- Full compliance (88.23%)
- Partial compliance (8.82%)
- Failure to comply (2.94%)
- Impossible to establish (0%)

Number and percentage of rulings pending compliance for 2 years and more: 3 (75 %)

Ordinary courts' response: mixed

Political response: occasional failure to change legislation

CONTEXTUAL INFORMATION

"Government powers are effectively limited by the Judiciary", WJP RoL index – 0.70/1, (regional average: 0.71)

"Justice [system] is free of improper government influence", WJP RoL index: civil: 0.70/1 (regional average: 0.75); criminal 0.83/1 (regional average: 0.74)

For more about the Italian justice system: Italy – The Judiciary Map (judiciaryhub.eu)

Country Profile: **ITALY**

SELECTED INSTANCES OF NON-COMPLIANCE

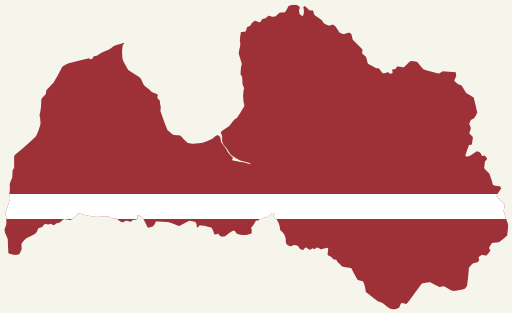
I. **Failure to comply**

C-658/18, ruling of 16 July 2020 (UX v Governo della Repubblica Italiana), (EU law precluding national legislation that does not entitle honorary magistrates to paid annual leave such as that provided for ordinary judges, unless such difference in treatment is justified by differences in qualifications required and the nature of the duties undertaken by judges, which it is for the referring court to verify – failure of Italian courts to adhere to the CJEU ruling and that of the political authorities to put in place necessary legislative or administrative measures.

II. **Partial compliance**

C-14/21 and C-15/21, ruling of 1 August 2022, (the failure to change legislation regarding the inspection of cargo ships used by humanitarian organisations for activities such as those related to the search for and rescue of persons in danger or distress at sea).

Country Profile: LATVIA



ECTHR:

● GOOD

8 (Low)

ECtHR leading judgments pending implementation.

17% (Moderately low)

Proportion of leading judgments rendered in the last ten years that are still pending implementation.

1 YEAR AND 9 MONTHS (Low)

Average time leading judgments have been pending implementation.

Latvia continues to have an overall **good** ECtHR implementation record. There are no judgments that have been pending implementation for an unduly long time; the oldest pending leading judgment, concerning the non-Convention-compliant imposition of a criminal penalty of confiscation of property on the applicant, was delivered in 2020 (*Markus v. Latvia*). Furthermore, the proportion of leading judgments delivered in the last ten years that are still pending implementation is moderately low; at 17 per cent, that figure is significantly lower than the EU average.

Inter alia, the Latvian authorities must address issues related to fair trials and freedom of association rights for trade-union workers, disproportionate denial of access to the use of and applicants' plot of land for over a decade, and investigations of medical negligence.

Two examples of ECtHR judgments pending implementation in Latvia

1. **Freedom of association: shortcomings arising from an employment dispute the applicant, a trade-union chairperson was involved in** (*Straume v. Latvia*), judgment final in September 2022.
2. **Disproportionate denial of access to and use of the applicants' plot of land for over a decade** (*Berzins and Others v. Latvia*), pending implementation since 2021.

Country Profile: **LATVIA**

CJEU:

No Data available

CONTEXTUAL INFORMATION

"Government powers are effectively limited by the Judiciary", WJP RoL index – 0.65/1, (regional average: 0.71)

"Justice [system] is free of improper government influence", WJP RoL index: civil 0.73/1 (regional average: 0.75); criminal 0.80/1 (regional average: 0.74)

For more about the Latvian justice system: Latvia – The Judiciary Map (judiciaryhub.eu)

Country Profile: LITHUANIA

ECTHR:

● MODERATE

22 (Moderate)

ECtHR leading judgments pending implementation.

34% (Significant)

Proportion of leading judgments rendered in the last ten years that are still pending implementation.

3 YEARS AND 8 MONTHS (Moderate)

Average time leading judgments have been pending implementation.

Lithuania has a **moderate** ECtHR implementation record. On 1 January 2024, Lithuania had 22 leading judgments of the ECtHR pending implementation. The proportion of leading cases from the last decade that are pending implementation is significant – 34 per cent. It should be taken into account, however, that nine of these judgments are quite recent, having been delivered in the last two years.

The pending judgments concern issues ranging from the authorities' inadequate response to extreme homophobic hate speech (*Beizaras and Levickas v. Lithuania*) and to unjustified sanctions imposed on journalists for publishing on matters of public interest (*Eigirdas and VI "Demokratijos pletros fondas" v. Lithuania*). The oldest leading judgment, pending implementation since 2008, concerns the lack of legislation governing the conditions and procedures relating to gender reassignment (*L. v Lithuania*). In March 2024, the Committee of Ministers exhorted the authorities to take all necessary action to complete the legislative process regulating the conditions and procedures for gender reassignment and legal recognition.

Three examples of ECtHR judgments pending implementation in Lithuania

1. **Failure to investigate extreme online homophobic hate speech** (*Beizaras and Levickas v. Lithuania*), pending implementation since 2020.
2. **Unlawful placement in a psychiatric hospital without an oral hearing** (*D.R. v. Lithuania*), pending implementation since 2018.
3. **Unlawful ban of children's book depicting same-sex relationships** (*Macate v. Lithuania*), pending implementation since 2023.

Country Profile: **LITHUANIA**

CJEU:

No Data available

CONTEXTUAL INFORMATION

"Government powers are effectively limited by the Judiciary", WJP RoL index – 0.65/1, (regional average: 0.71)

"Justice [system] is free of improper government influence", WJP RoL index: civil 0.73/1 (regional average: 0.75); criminal 0.80/1 (regional average: 0.74)

For more about the Lithuanian justice system: Lithuania – The Judiciary Map (judiciaryhub.eu)

Country Profile: LUXEMBOURG

ECTHR:

● VERY GOOD

2 (Very Low)

ECtHR leading judgments pending implementation.

50% (High)

Proportion of leading judgments rendered in the last ten years that are still pending implementation.

1 YEAR AND 5 MONTHS (Low)

Average time leading judgments have been pending implementation.

Luxembourg has a **very good** ECtHR implementation record, with very few violation judgments having historically been delivered by the Court in its respect, one of which came in 2023. The important increase in the proportion of leading judgments from the past 10 years that remained pending in comparison to the previous year (25 per cent) needs, therefore, to be critically assessed against the very small number of violation-finding judgments rendered in respect of Luxembourg, and not to be interpreted as a deterioration of the overall implementation record of the country. On 1 January 2024, **only two ECtHR judgments** were pending implementation in Luxembourg: *Halet. v. Luxembourg* and *Foyer Assurance S.A. v. Luxembourg*.

One example of ECtHR judgments pending implementation in Luxembourg

1 **Criminal conviction against a whistleblower for disclosing information on tax evasion** (*Halet. v. Luxembourg*), judgment final in February 2023.

Country Profile: LUXEMBOURG

CJEU:

GOOD COMPLIER

- Full compliance (100%)
- Partial compliance (0%)
- Failure to comply (0%)
- Impossible to establish (0%)

Number and percentage of rulings pending compliance for 2 years or more: 0 (0%)

Ordinary courts' response: adherence

Political response: challenges not reported

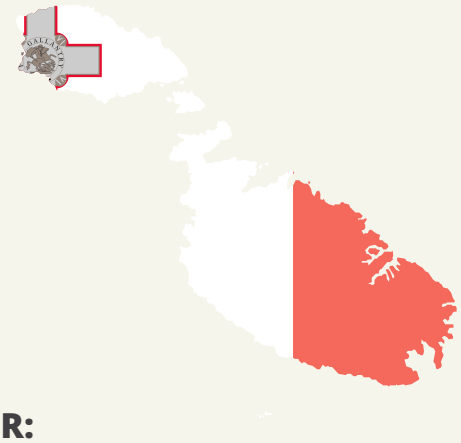
CONTEXTUAL INFORMATION

"Government powers are effectively limited by the Judiciary", WJP RoL index - 0.80/1, (regional average: 0.71)

"Justice [system] is free of improper government influence", WJP RoL index: civil: 0.85/1 (regional average: 0.75); criminal 0.72/1 (regional average: 0.74)

For more about Luxembourg's justice system: https://judiciaryhub.eu/country/luxembourg/

Country Profile: MALTA



ECTHR:

● MODERATELY POOR

15 (Moderately Low)

ECtHR leading judgments pending implementation.

57% (High)

Proportion of leading judgments rendered in the last ten years that are still pending implementation.

6 YEARS (High)

Average time leading judgments have been pending implementation.

Malta has a **moderately poor** record of ECtHR implementation. On 1 January 2024, Malta had 15 leading judgments of the ECtHR pending implementation. While this is a moderately low number, they have on average been pending implementation for a long time – 6 years. Furthermore, the high percentage of leading judgments from the past ten years that are pending implementation, currently at 57 per cent, indicates that the Court's rulings are not being implemented consistently.

Leading judgments in Malta concern issues ranging from inadequate conditions of detention pending deportation, refusal of asylum requests without risk assessment, and disproportionate control of property in the context of the landlord-tenant relationship. The *Ghigo* group of judgments, pending implementation since 2006, continues to be the oldest leading judgment; it concerns disproportionate control of the applicants' property, due to a requisition order imposing a landlord-tenant relationship.

Two examples of ECtHR judgments pending implementation in Malta

1. **Excessive length of criminal proceedings** (*Galea and Pavia v. Malta*), pending since 2020.
2. **Unlawfulness of the detention pending deportation, in poor conditions** (*Feilazoo v. Malta*), pending implementation since 2021.

Country Profile: **MALTA**

CJEU:

- Full compliance (100%)
- Partial compliance (0%)
- Failure to comply (0%)
- Impossible to establish (0%)

Number and percentage of rulings pending compliance for 2 years or more: 0 (0 %)

CONTEXTUAL INFORMATION

"Government powers are effectively limited by the Judiciary", WJP RoL index 0.66/1, (regional average: 0.71)

"Justice [system] is free of improper government influence", WJP RoL index: civil: 0.70/1 (regional average: 0.75); criminal 0.77/1 (regional average: 0.74)

For more about the Maltese justice system: Malta – The Judiciary Map (judiciaryhub.eu)

Commentary:

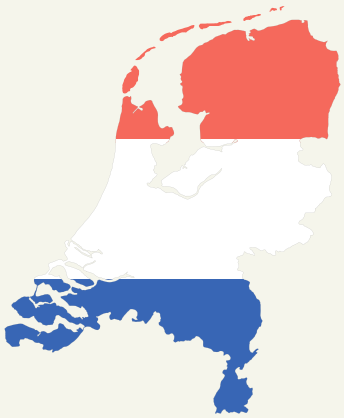
The use of the preliminary reference procedure in Malta is rare. There is little by way of data to ascertain the exact reasons for this beyond public statements. Some analysis suggests that factors such as Maltese public support for EU integration play a role in the decision as to whether to use the procedure. Open-source material connected to the cases that have been forwarded suggests that some are discouraged from doing so for fear of excessive exposure. Experts have suggested that the most recent and highly publicised CJEU preliminary rulings may have had a chilling effect on Maltese courts' use of the procedure, particularly surrounding issues connected to the rule of law. The case in point – *Repubblika v Il-Prim Ministru*, ruling of 20 April 2021 (C-896/19) – likely had notable implications in this regard. In the mentioned case, the body sitting as the Constitutional Court of Malta requested a preliminary ruling in the context of the case between Repubblika, an association promoting the rule of law, and the prime

Country Profile: **MALTA**

minister. The case concerned conformity with EU law of the provisions of the Constitution related to the judicial appointment procedure. The CJEU concluded that Maltese legislation was in line with the relevant EU law, as executive discretion was mitigated by the engagement of the appointment committee, following notable reforms in 2016 and 2020. The latter reforms had somewhat reflected the Council of Europe's Venice Commission recommendations on the subject. This meant that no regression could be noted *per se*. Subsequently, Repubblika withdrew the case at the national level, considering its goal in this context – to shed light on the situation in Malta – achieved.

Though the latest reforms delegate judicial appointments to the president, who is to make this selection following recommendations and scrutiny undertaken by the Judicial Appointments Committee, notable blogs have argued that the prime minister's involvement in judicial appointments, while tangibly limited by the reform, remains significant. Legal commentators continue to indicate that judicial appointments are based on nepotism, rather than merit-based selection. While these concerns may be meritorious in a number of circumstances, analysis must bear in mind the highly politicised (and tight-knit) context on the ground. Commentators are themselves often members of the opposition – some are even former cabinet members – and cannot be said to be neutral or lacking vested interests. To a certain extent, this is inevitable in Malta. Its legal and political system are tied together, with much of its legal elite often current or former members of parliament or, at the very least, politically affiliated.

Country Profile: NETHERLANDS



ECTHR:

● GOOD

5 (Very Low)

ECtHR leading judgments pending implementation.

33% (Significant)

Proportion of leading judgments rendered in the last ten years that are still pending implementation.

3 YEARS AND 9 MONTHS (Moderate)

Average time leading judgments have been pending implementation.

The Netherlands has a **good** record of ECtHR implementation. On 1 January 2024, the Netherlands had 5 leading judgments of the ECtHR pending implementation. This is a very low number in comparison with other EU states. These judgments have been pending implementation for a moderate average time: 3 years and 9 months. The proportion of leading judgments from the past ten years that are pending implementation is significant, currently at 33 per cent, mostly as a result of the fact that several violation-finding leading judgments have been rendered in respect of the Netherlands from 2021 onwards.

In addition to the cases listed in the box below, the Netherlands must take measures to address problems related to poor conditions of detention on remand in the Caribbean (Sint Maarten) and the *de facto* irreducibility of life sentences imposed on prisoners suffering from mental illness (*Murray v. the Netherlands,* which is the oldest pending judgment for that jurisdiction).

Two examples of ECtHR judgments pending implementation in the Netherlands

1. **Breaches of the right to a fair trial** (*Keskin v. the Netherlands*), pending implementation since 2017.
2. **Insufficiently reasoned decisions regarding continued pre-trial detention** (*Maassen v. the Netherlands*), pending implementation since 2021.

Country Profile: **NETHERLANDS**

CJEU:

No Data available

CONTEXTUAL INFORMATION

'Government powers are effectively limited by the Judiciary', WJP RoL index 0.86/1, (regional average: 0.71)

'Justice [system] is free of improper government influence', WJP RoL index: civil: 0.90/1 (regional average: 0.75); criminal 0.86/1 (regional average: 0.74)

For more about Dutch justice system: https://judiciaryhub.eu/country/netherlands/

Commentary:

The expert consulted for this study indicated that courts typically apply the CJEU's interpretation of EU law. Based on judicial responsiveness alone, the Netherlands would qualify as a good complier. However, we cannot fully and objectively assess the Dutch record due to the lack of available information on political responses to CJEU rulings. Anecdotal evidence does indicate that this has been challenging. As noted by the expert regarding case C-441/19 (TQ v Staatssecretaris van Justitie en Veiligheid), the referring court criticized the government in the follow-up judgment: The court pointed out that the Secretary of State had not changed its policy after TQ ruling and does not intend to do so for the time being, despite a binding judgment determining that the policy is contrary to EU law.

Country Profile: POLAND

ECTHR:

● VERY SERIOUS PROBLEM

46 (High)

ECtHR leading judgments pending implementation.

51% (High)

Proportion of leading judgments rendered in the last ten years that are still pending implementation.

5 YEARS AND 5 MONTHS (High)

Average time leading judgments have been pending implementation.

Poland continues to have a **very serious problem** as regards implementation of ECtHR judgments. At the end of 2023, there were seven pending leading judgments concerning independence and impartiality of the judiciary (while two more have become final in 2024). Poland must take general measures to address systemic rule of law issues, ranging from the unlawful formation of the Constitutional Court and grave irregularities in the appointment of judges to the Disciplinary Section of the Supreme Court, to the premature termination of judges' terms of office. Other systemic fundamental human rights issues concern, *inter alia*, unlawful restrictions on abortion and criminal defamation proceedings against journalists and editors.

The *Beller* case (which concerns the excessive length of proceedings before administrative bodies and courts, and the absence of an effective remedy) remains the oldest pending leading case (since 2005). It should be noted that, at the beginning of 2023, this leading judgment was the precedent case for more than 50 repetitive cases, in tangible proof of the fact that the insufficiency of general measures and their inability to address systemic human rights problems facilitates the re-occurrence of violations. Furthermore, over the course of last year, the Polish authorities refused to comply with interim measures in three cases related to the transfer of judges to another division against their will;[30] these judges had been transferred in retaliation for having taken decisions in line with the ECtHR and CJEU case law, and for having refused to adjudicate in unlawfully composed panels (composed of judges appointed through deficient procedures by the NCJ).

[30] https://hudoc.echr.coe.int/eng-press?i=003-7573075-10409301

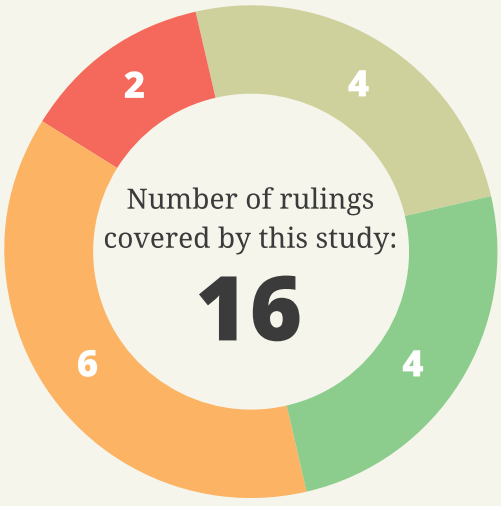
Country Profile: POLAND

Five examples of ECtHR judgments pending implementation in Poland

1. **Unlawfully appointed Constitutional Court judges** (*Xero Flor w Polsce sp. z o.o. v. Poland*), pending implementation since 2021.
2. **Lack of independence of Supreme Court judges** (*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 civil, administrative and criminal proceedings** (*Rutkowski v. Poland*, *Beller v. Poland*), with the first case delivered in 2005.
5. **Restrictions on access to legal abortion** (*P. and S.*, *R.R.*, *Tysiac v. Poland*), pending since 2007.

CJEU:

STRUGGLING COMPLIER



- Full compliance (25%)
- Partial compliance (37.5%)
- Failure to comply (12.5%)
- Impossible to establish (25%)

Number and percentage of rulings pending compliance for 2 years or more: 6 (75 %)

Ordinary court response: mixed;

constitutional court – hindering compliance

Political response: Partial resistance combined with hostile rhetoric and underperformance strongly influenced by external pressure (before Dec 2023) followed by attempts at compliance constrained by legal and political obstacles (after Dec 2023)

Country Profile: **POLAND**

CONTEXTUAL INFORMATION

'Government powers are effectively limited by the Judiciary', WJP RoL index 0.50/1, (regional average: 0.71)

'Justice [system] is free of improper government influence', WJP RoL index: civil: 0.47/1 (regional average: 0.75); criminal 0.42/1 (regional average: 0.74)

For more about the Polish justice system: https://judiciaryhub.eu/country/poland/

Commentary: The main challenge in terms of compliance has been the failure to properly address legislative flaws, particularly (a) those enabling abuse of the disciplinary regime against judges, including precluding national courts from requesting preliminary references from the CJEU; (b) those allowing abuse of other types of decisions, including judicial secondments; and (c) those related to the independence of the National Council of the Judiciary and its implications for judicial appointments due to the Council's involvement in recommending candidates to the president.

SELECTED INSTANCES OF NON-COMPLIANCE

I. **Failure to Comply:**

Joined Cases C-748/19 to C-754/19, ruling of 16 November 2021 (precluding national law provisions pursuant to which the Minister of Justice may, on the basis of criteria which have not been made public, second a judge to a higher criminal court for a fixed or indefinite period and may, at any time, by way of a decision which does not contain a statement of reasons, terminate that secondment, irrespective of whether that secondment is for a fixed or indefinite period).

II. **Partial compliance**

C-585/18**, ruling of 19 November 2019,** (Independence of the Disciplinary Chamber of the Supreme Court), a resolution of the Polish Supreme Court from January 2020 finding the lack of independence of judges appointed with the participation of the National Council of Judiciary, which, in turn was found incompatible with the Polish Constitution by the Constitutional Tribunal in its ruling from April 2020. The 2020 Supreme Court resolution continues to be invoked by other Polish courts, however, and has been the grounds for several domestic judgments considering judicial independence of the so-called "neo" judges.

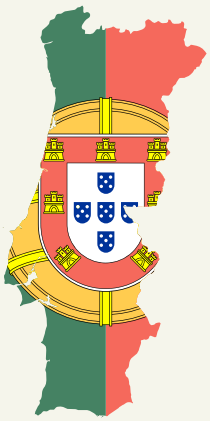
Country Profile: POLAND

C-824/18, ruling of 2 March 2021, Judicial appointments by the president based on the resolution emanating from the National Council of the Judiciary, lack of independence of that Council; lack of effectiveness of the judicial remedy available against such a resolution; judgment of the Constitutional Tribunal repealing the provision on which the referring court's jurisdiction is based; option and/or obligation for national courts to make a reference for a preliminary ruling and to maintain that reference, power to disapply national provisions which do not comply with EU law.

C-791/19, ruling of 15 July 2021, (Commission vs Poland), failure to guarantee the independence and impartiality of the Supreme Court's Disciplinary Chamber, which is responsible for reviewing decisions issued in disciplinary proceedings against judges; failure to guarantee that disciplinary cases are examined within a reasonable time and the right of defense of accused judges is respected; restricting the right of courts to submit requests for a preliminary ruling to the CJEU by the possibility of triggering disciplinary proceedings.

C-204/21, ruling of 5 June 2023, (Commission vs Poland) failure to fulfil obligations under EU law, due to the lack of independence of the Supreme Court's Disciplinary Chamber; also, provisions that prohibit national courts from verifying compliance with EU law requirements related to judicial independence and impartiality; the establishment of the Supreme Court's Extraordinary Review and Public Affairs Chamber to examine complaints and questions of law concerning the lack of independence of a court or a judge – while requests for CJEU references can no longer lead to disciplinary proceedings, and the Disciplinary Chamber was replaced by the Professional Liabilities chamber in June 2022, issues still persist, with incumbent disciplinary officers launching disciplinary actions against judges based on overtly political motives.

Country Profile: PORTUGAL



ECTHR:

MODERATE

16 (Moderately low)

ECtHR leading judgments pending implementation.

44% (Significant)

Proportion of leading judgments rendered in the last ten years that are still pending implementation.

5 YEARS AND 9 MONTHS (Significant)

Average time leading judgments have been pending implementation.

Portugal's overall ECtHR implementation record is **moderate.** On 1 January 2024, Portugal had 16 leading judgments of the ECtHR pending implementation. While the overall number of pending leading judgments is moderately low, the proportion of leading cases rendered in the last decade that are still pending implementation is significant: 44 per cent. The average length of time that these cases have been pending implementation for is also significant: 5 years and 9 months.

Inter alia, systemic problems which must be addressed by the Portuguese authorities include poor conditions of detention in prisons, and the lack of an effective remedy in that regard (*Petrescu v. Portugal*), as well as excessive length of judicial proceedings. Further, the implementation of the *Ramos Nunes de Carvahlo E SA v. Portugal* case requires measures addressing the fairness of proceedings for the removal of judges from their positions.

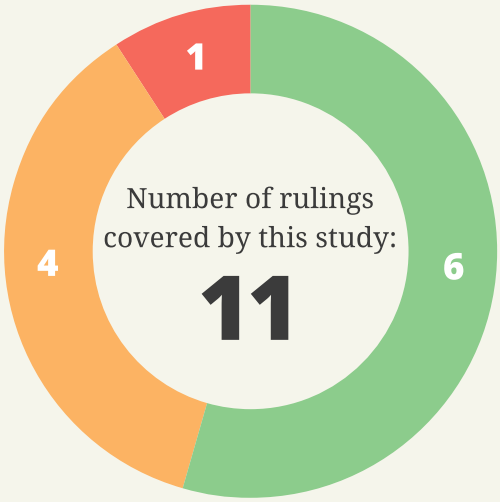
Three examples of ECtHR judgments pending implementation in Portugal

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.
3. **Poor conditions of detention in prisons, and lack of an effective remedy in that regard** (*Petrescu v. Portugal*), pending implementation since 2020.

Country Profile: **PORTUGAL**

CJEU:

MODERATE COMPLIER



- Full compliance (54.54%)
- Partial compliance (36.36%)
- Failure to comply (9.1%)
- Impossible to establish (0%)

Number and percentage of rulings pending compliance for 2 years or more: 2 (40 %)

Ordinary courts' response: mixed/no open challenge

Political response: under-performance (no legislative changes called for CJEU judgments)

CONTEXTUAL INFORMATION

"Government powers are effectively limited by the Judiciary", WJP RoL index 0.72/1, (regional average: 0.71)

"Justice [system] is free of improper government influence", WJP RoL index: civil: 0.70/1 (regional average: 0.75); criminal 0.75/1 (regional average: 0.74)

For more about the Portuguese justice system: https://judiciaryhub.eu/country/portugal/

Commentary: In cases of "full compliance", typically no incompatibility was found and, hence, no additional action was needed. Regarding other rulings, national courts have a mixed record – some following the CJEU guidance, others not. In those cases, legislative changes called for by CJEU rulings have not been implemented.

Country Profile: **PORTUGAL**

SELECTED INSTANCES OF NON-COMPLIANCE

I. **Failure to comply:**

C-388/19, MK v Autoridade Tributária e Aduaneira, 18 March 2021, The law was amended, but the regime that was considered discriminatory remained.

II. **Partial compliance**

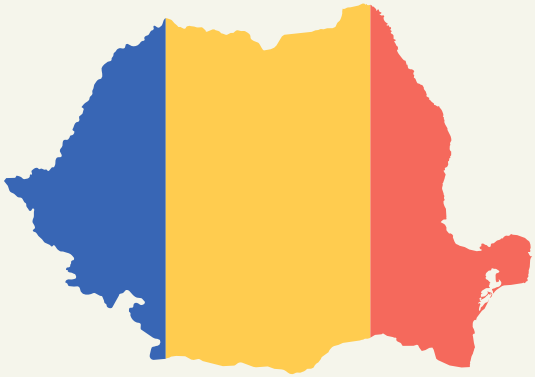
C-66/22, ruling of 21 December 2023, referring court correctly applied the ruling, concluding that national law was not clear enough in transposing the obligation to give reasons for decisions adopted by the contracting authority in the context of public procurement procedures; No changes made to the law, but the law can be interpreted in a manner consistent with EU law.

C-346/21, ING Luxembourg SA v VX, order of 5 May 2022, failure to change the civil procedure code violating the EU regulation; mixed judicial practice, with courts disagreeing over the interpretation of the order and the regulation, some refusing the application of the national provision; others ignoring the CJEU order.

C-242/22 PPU, TL and de traduction, 1 August 2022, case concerning the right to interpretation and translation/failure to translate an essential document and right to information in criminal proceedings – failure to change law; Mixed judicial practice, some courts refusing to apply the national provision invoking the primacy of EU law, others accepting the CJEU ruling, but not refusing to apply the national provision for other reasons.

C-317/18 Correia Moreira, ruling of 13 June 2019, failure to adopt legislation necessitating a public competitive selection procedure in the case of transfer**;** The Supremo Tribunal Administrativo, in a similar case, followed the judgment of the CJEU, and refused to apply the national provision, under the principle of primacy.

Country Profile: ROMANIA



ECTHR:

● VERY SERIOUS PROBLEM

115 (Very High; highest number in the EU) ECtHR leading judgments pending implementation.

59% (High)

Proportion of leading judgments rendered in the last ten years that are still pending implementation.

5 YEARS AND 5 MONTHS (Significant)

Average time leading judgments have been pending implementation.

Romania's ECtHR implementation record is **among the poorest** in the EU. It has the highest number of pending leading judgments of any country in the EU. The proportion of leading judgments delivered in the past ten years that remain unimplemented is high; it should, nevertheless, be noted that, in the last two years, the ECtHR rendered over 20 violation-finding leading judgments in respect of Romania; therefore, the implementation process in these cases has started only recently.

The most systemic and fundamental human rights problems in Romania concern the field of psychiatry and mental health. Romania has the highest number of pending leading judgments in this field, concerning, *inter alia*, deficiencies in the legal protection and medical and social care afforded to adults with mental disabilities, and the failure to investigate deaths of institutionalised persons with disabilities (*Centre for Legal Resources on behalf of Valentin Câmpeanu*); poor conditions and care, and insufficient staff in psychiatric hospitals (*Parascineti v. Romania*); insufficient safeguards (and non-application thereof) regarding involuntary psychiatric placements (both in "regular" psychiatric hospitals, according to the Mental Health Act, and as a security measure, according to the Criminal Code); and regarding consent for medical treatment (*Cristian Teodorescu v. Romania*, *R.D. and I.M.D. v. Romania*, *Atudorei v. Romania*).

Other systemic problems in Romania concern overcrowding and poor conditions in prisons (*Rezmives and Others v. Romania*), and ineffective responses to domestic violence (*Balsan v. Romania*) and to homophobic hate crimes (*M.C. and A.C. v. Romania*). The oldest pending leading case in Romania is *Strain and Others v. Romania*, which has been pending implementation since 2005. The case con-

Country Profile: ROMANIA

cerns the ineffectiveness of the mechanisms set up to afford restitution or compensation for properties nationalised during the communist period.

On the positive side, Romania's 2022 judicial reform has effectively addressed the implementation of rule of law judgments *Kovesi v. Romania* and *Camelia Bogdan v. Romania*, the supervision of which was closed last year by the Committee of Ministers. However, other concerns regarding the impartiality and independence of the judiciary remain. Overall, considerable efforts are required to further improve Romania's ECtHR implementation record.

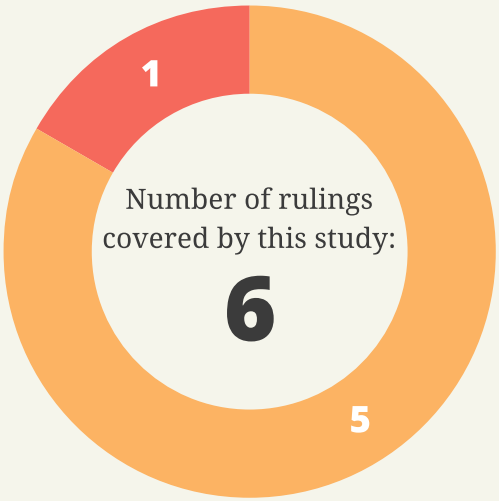
Six examples of ECtHR judgments pending implementation in Romania

1. **Deficiencies in the legal protection of and medical and social care afforded to adults with mental disabilities** (*Centre for Legal Resources on behalf of Valentin Câmpeanu*), pending implementation since 2014.
2. **Overcrowding and inadequate living conditions, treatment, and care afforded to patients in psychiatric establishments** (*Parascineti v. Romania*), pending implementation since 2012.
3. **Journalists and a politician sanctioned with crippling defamation fines for discussing matters of public interest** (*Ghiulfer Predescu v. Romania*), pending implementation since 2017.
4. **Unjustified dismissal of the chief prosecutor for informing the public about anti-corruption activities** (*Brisc v. Romania*), pending implementation since 2019.
5. **Failure to investigate LGBTIQ+ hate crimes** (*M.C. and A.C. v. Romania*), pending implementation since 2016.
6. **Lack of safeguards regarding secret surveillance** (*Bucur and Toma v. Romania*), pending implementation since 2013.

Country Profile: ROMANIA

CJEU:

STRUGGLING COMPLIER



- Full compliance (0%)
- Partial compliance (83.33%)
- Failure to comply (16.66%)
- Impossible to establish (0%)

Number and percentage of rulings pending compliance for 2 years or more: 3 (50 %)

Ordinary courts' response: mixed; constitutional court: hostile, challenging

Political response: Minimal effort masked as progress, but falling short or causing decline

CONTEXTUAL INFORMATION

"Government powers are effectively limited by the Judiciary", WJP RoL index 0.58/1, (regional average: 0.71)

"Justice [system] is free of improper government influence", WJP RoL index: civil: 0.66/1 (regional average: 0.75); criminal 0.56/1 (regional average: 0.74)

For more about the Romanian justice system: Romania – The Judiciary Map (judiciaryhub.eu)

Commentary: Judicial and legislative record of compliance remains mixed. The Constitutional Court has hindered the application of EU law by ordinary courts, and has not since retracted its position in decision nr 390/2021.

SELECTED INSTANCES OF NON-COMPLIANCE

I. **Failure to comply:**

C-817/21, ruling of 11 May 2023, flaws in the legislation regarding the powers of the director of a body conducting investigations and bringing disciplinary proceedings against judges and prosecu-

Country Profile: **ROMANIA**

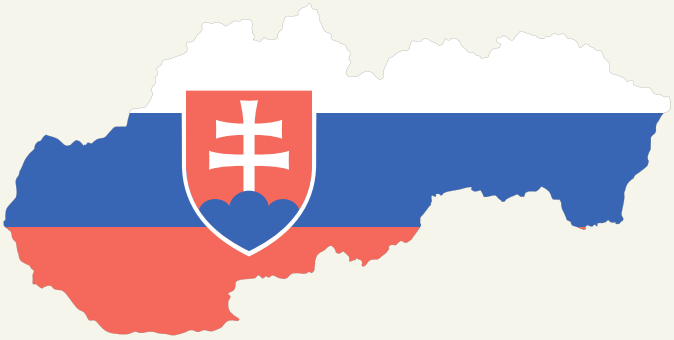
tors, and having a disciplinary investigation against the director conducted by someone whose career, to a large extent, depends on that director; legislation not designed in a way as to exclude reasonable doubt that the powers and functions of that body will not be used as instruments to exert pressure on, or political control over, the activity of those judges and prosecutors.

II. **Partial compliance**

Joined Cases C-83/19, C-127/19, C-195/19, C-291/19, C-355/19 and C-397/19, Asociaţia "Forumul Judecătorilor din România", ruling of 18 May 2021, national legislation governing various aspects of disciplinary, criminal, and other forms of liability of judges and prosecutors.

C-357/19, Euro Box Promotion and Others, ruling of 21 December 2021, C-430/21, ruling of 22 February 2022 and C-107/23 PPU, ruling of 24 July 2023, problematising national law or practice, under which judges are bound by the decisions of the national constitutional court and cannot, by virtue of that fact, and without committing a disciplinary offence, disapply the case law established in those decisions, even if they are of the view, in light of the CJEU judgment, that that case law is contrary to EU law.

Country Profile: SLOVAKIA



ECTHR:

MODERATELY POOR

29 (Moderate)

ECtHR leading judgments pending implementation.

53% (High)

Proportion of leading judgments rendered in the last ten years that are still pending implementation.

3 YEARS AND 3 MONTHS (Moderate)

Average time leading judgments have been pending implementation.

Slovakia has a **moderately poor** ECtHR implementation record. On 1 January 2024, Slovakia had 29 leading judgments of the ECtHR pending implementation. These have been pending for a moderate average length of time: 3 years and 3 months. Meanwhile, there is a high proportion of leading cases rendered in the last decade that are still pending implementation, which stands at 53 per cent.

Systemic issues concern the excessive length of judicial review of detention (*Besina v. Slovakia*), excessive use of force in a police operation in a Roma community (*R.R. and R.D. v. Slovakia*), and police violence against a Romani boy (*A.P. v. Slovakia*), as well as the unlimited surveillance power of intelligence services, without adequate legal safeguards (*Zoltán Varga v. Slovakia*). The oldest pending leading case is *Maxian and Maxianova*, which concerns the excessive length of civil proceedings (a group consisting of 36 repetitive judgments, a number that continues to grow every year).

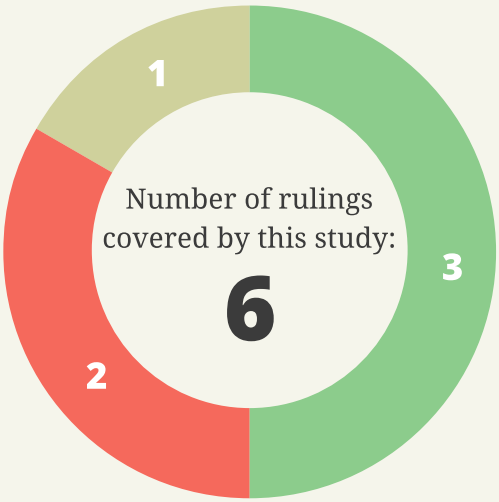
Four examples of ECtHR judgments pending implementation in Slovakia

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 snice 2020.
4. **Failure to properly investigate allegations of police brutality** (*R.R. and R.D. v. Slovakia*), pending implementation since 2020.

Country Profile: **SLOVAKIA**

CJEU:

MODERATE COMPLIER



- Full compliance (50%)
- Partial compliance (0%)
- Failure to comply (33.33%)
- Impossible to establish (16.66%)

Number and percentage of rulings pending compliance for 2 years or more: 1 (50 %)

CONTEXTUAL INFORMATION

"Government powers are effectively limited by the Judiciary", WJP RoL index 0.59/1, (regional average: 0.71)

"Justice [system] is free of improper government influence", WJP RoL index: civil: 0.67/1 (regional average: 0.75); criminal 0.76/1 (regional average: 0.74)

For more about the Slovak justice system: https://judiciaryhub.eu/country/slovakia/

Commentary: In a number of cases, no further action was needed, due to a compliance finding. One out of the two rulings that have not yet been complied with was issued in November 2023; hence non-compliance is not necessarily alarming. Legislative amendments were being considered.

SELECTED INSTANCES OF NON-COMPLIANCE

Failure to comply:

C-447/18, ruling of 18 December 2019, the need to change the legislative provision containing discrimination against migrant workers based on nationality.

C-598/21, ruling of 9 November 2023, EU law precluding legislation, under which the judicial review of fairness of an acceleration clause in a consumer credit agreement does not consider the proportionality of the option given to the seller or supplier to exercise their right under that clause; change of provision of the Civil Code in order to take account a proportionality test in contracts with consumers.

Country Profile: SLOVENIA

ECTHR:

● VERY GOOD

5 (Very Low)

ECtHR leading judgments pending implementation.

14% (Low)

Proportion of leading judgments rendered in the last ten years that are still pending implementation.

1 YEAR AND 2 MONTHS (Low)

Average time leading judgments have been pending implementation.

Slovenia has a **very good** ECtHR implementation record. On 1 January 2024, Slovenia had 5 leading judgments of the ECtHR pending implementation, a very low number in comparison with other states. These have been pending for a moderate time: 1 year and 2 months. Slovenia also has a low percentage of leading judgments rendered in the last decade that are pending implementation – 14 per cent.

Slovenia's implementation record is significantly better than those of neighbouring Croatia, Hungary, and Italy. Slovenia has put in place an effective structural mechanism for ECtHR implementation, which can serve as a model of good practice for other states facing implementation challenges.

Two examples of ECtHR judgments pending implementation in Slovenia

1. **Recognition of foreign judgments rendered in unfair proceedings** (*Dolenc v. Slovenia*), pending implementation since January 2023.
2. **Excessive length of proceedings concerning foster care permission** (*Q and R v. Slovenia*), pending since June 2022.

Country Profile: **SLOVENIA**

CJEU:

NO DATA AVAILABLE

CONTEXTUAL INFORMATION

Contextual information:

"Government powers are effectively limited by the Judiciary", WJP RoL index – 0.65/1, (regional average: 0.71)

"Justice [system] is free of improper government influence", WJP RoL index: civil 0.73/1 (regional average: 0.75); criminal 0.80/1 (regional average: 0.74)

For more about the Slovenian justice system: Slovenia – The Judiciary Map (judiciaryhub.eu)

Country Profile: SPAIN

ECTHR:

MODERATELY POOR

23 (Moderate)

ECtHR leading judgments pending implementation.

51% (High)

Proportion of leading judgments rendered in the last ten years that are still pending implementation.

2 YEARS AND 10 MONTHS (Moderately low)

Average time leading judgments have been pending implementation.

Spain has a **moderately poor** ECtHR implementation record. On 1 January 2024, 23 leading judgments were pending implementation, for a moderately low average time – 2 years and 10 months. A high proportion of ECtHR judgments rendered in the last decade in respect of Spain are, however, still pending implementation – 51 per cent, higher than the EU average. This indicates that there is a lot of room for improving Spain's efficiency to implement ECtHR judgments.

Systemic human rights problems that must be fully addressed by the Spanish authorities concern, *inter alia*, insufficient safeguards in the context of accelerated asylum procedures (*A.C. and Others v. Spain*), ineffective investigations into allegations of ill-treatment (*Lopez Martinez v. Spain*), and disproportionate criminal convictions for defamation of the royal family (*Stern Taulats and Roura Capellera v. Spain*). The Spanish authorities should, furthermore, conduct a thorough, independent investigation into the compiling of files by the police in Catalonia against judges holding pro-Catalan independence views, and the subsequent leakage of these files to the press (*M.D. and Others v. Spain*).

Five 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. **Illegal data collection by police on judges supporting the Catalan people's "*right to decide*", and leakage of this to the press**, (*M.D. and Others v. Spain*), judgment final in September 2022.

Country Profile: SPAIN

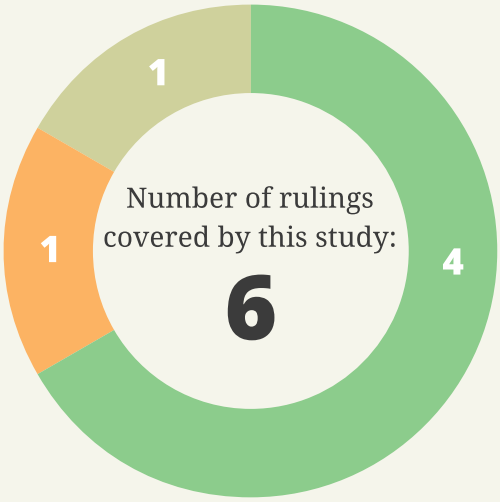
3 **Failure to ensure the impartiality of judges in a criminal trial** (*Otegi Mondragon and Others v. Spain*), pending implementation since 2019.

4 **Ineffective investigations into allegations of police ill-treatment** (*Ataun Rojo v. Spain*), pending implementation since 2015.

5 **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.

CJEU:

MODERATE COMPLIER



- Full compliance (66.66%)
- Partial compliance (16.66%)
- Failure to comply (0%)
- Impossible to establish (16.66%)

Number and percentage of rulings pending compliance for 2 years or more: 0 (0 %)

CONTEXTUAL INFORMATION

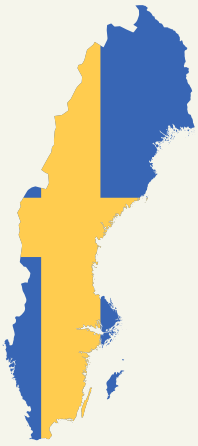
"Government powers are effectively limited by the Judiciary", WJP RoL index 0.65/1, (regional average: 0.71)

"Justice [system] is free of improper government influence", WJP RoL index: civil: 0.65/1 (regional average: 0.75); criminal 0.61/1 (regional average: 0.74)

For more about the Spanish justice system: Spain – The Judiciary Map (judiciaryhub.eu)

Commentary: National expert investigated compliance with CJEU rulings related to the access to justice.

Country Profile: SWEDEN



ECTHR:

● EXCELLENT

1 (Very Low)

ECtHR leading judgments pending implementation.

10% (Very Low)

Proportion of leading judgments rendered in the last ten years that are still pending implementation.

2 YEARS AND 7 MONTHS (Moderately low)

Average time leading judgments have been pending implementation.

Sweden has one of the **best** ECtHR implementation records, in part thanks to the low number of violation judgments rendered in respect of this jurisdiction. On 1 January 2024, Sweden had **only one leading judgment** of the ECtHR pending implementation. This judgment has been pending for a moderately low time: 2 years and 7 months. In comparison with other EU states, Sweden also has the lowest proportion of pending judgments from the last ten years, standing at 10 per cent.

To implement the *Centrum for Rattvisa v. Sweden* judgment, authorities have partially undertaken general measures to addresses the insufficient safeguards in the Swedish bulk interception regime. The judgment is not fully implemented, however, for example, the national law does not provide protection to the correspondence of legal persons during foreign country transfers of intelligence material, there is still no clear rule on destroying intercepted material that did not contain personal data, nor is there an effective ex *post facto* review.

ECtHR judgment pending implementation in Sweden

1 **Insufficient safeguards in bulk signals-intelligence gathering** (*Centrum for Rattvisa v. Sweden*), pending implementation since 2021.

Country Profile: **SWEDEN**

CJEU:

- Full compliance (0%)
- Partial compliance (100%)
- Failure to comply (0%)
- Impossible to establish (0%)

Number and percentage of rulings pending compliance for 2 years or more: 1 (100%)

CONTEXTUAL INFORMATION

"Government powers are effectively limited by the Judiciary", WJP RoL index 0.83/1, (regional average: 0.71)

"Justice [system] is free of improper government influence", WJP RoL index: civil: 0.89/1 (regional average: 0.75); criminal 0.94/1 (regional average: 0.74)

For more about the Swedish justice system: https://judiciaryhub.eu/country/sweden/

SELECTED INSTANCES OF NON-COMPLIANCE

I. **Partial compliance**

C-30/19, **ruling of 15 April 2021,** national courts are expected to disapply any national rule that prevents the examination of the claim seeking a declaration of the existence of discrimination prohibited by EU law

ANNEX II: DETAILED METHODOLOGY

(NON-) IMPLEMENTATION OF JUDGMENTS I: ECTHR

The data for this report is accurate as of 1 January 2024. The number of pending leading judgments in each country has been taken from the the Council of Europe's 2023 Annual Report for the Supervision of the Execution of Judgments and Decisions of the European Court of Human Rights.The other indicators have been calculated by extracting data from the Council of Europe's "Hudoc Exec" website.[31] The report should be read through the lens of the methodology summarised below.

1. The data in the report refers to "leading", rather than all ECtHR judgments pending implementation. After an ECtHR judgment identifying a violation of the ECHR becomes final, the case is classified by the Council of Europe's Department for the Execution of Judgments as "leading" or "repetitive". Judgments that identify human rights issues for the first time in a country are classified as "leading" by the Council of Europe; these are often structural or systemic issues, requiring specific measures or complex reforms. Subsequent judgments that concern an issue already identified in a leading case are classified as "repetitive". To successfully implement a leading case, states must ensure that the underlying problems that caused the ECHR violation have been resolved through the adoption of adequate general measures. If the measures required to implement a leading judgment are not adopted, the underlying problem that led to the finding of the violation at issue remains unresolved. This gives rise to similar violations at the national level and repetitive applications lodged with the ECtHR, thus undermining both the *raison d'être* and the credibility of the Convention mechanism. The most accurate method to assess whether the ECHR system is leading to substantive changes is, therefore, by examining the state of implementation of leading judgments.
2. Qualifiers in the report are applied according to a classification grid (See Annex III). These qualifiers range from "very serious problem" to "moderate" and "low' or 'very low". 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 are elements assessed in a uniform manner across the different member states, in line with this classification grid.
3. For the overall assessment of the implementation record of the countries, a final descriptive qualifier is applied (as "Excellent", "Good", etc.). This assessment is not, however, subject to a uniform formula. The categorisation of countries and the attribution of the final qualifier cannot be carried out according to a rigid formula, as this would prevent a sufficiently flexible analysis of diverging underlying circumstances and the different challenges the 27 EU states are faced with. The overall rating is thus based on the three objective indicators, while

[31] HUDOC-EXEC (coe.int)

being further nuanced by qualitative information.

4. When making an assessment of the categorisation, the following factors were taken into account:

   - The overall number of leading judgments pending implementation, which was the most important indicator.
   - The proportion of leading judgments from the last ten years that are still pending implementation, which was the second key indicator . The methodology assesses the state of implementation in the last ten years to allow effective comparability among the 27 EU member states, given that the point in time each of them acceded to the European Convention on Human Rights – and, hence, the level of consolidation of the Convention standards into the different national jurisdictions – varies.
   - Certain states may have a relatively high proportion of leading judgments pending, without this necessarily qualifying as an implementation problem, because those judgments were delivered recently (often in the context of jurisdictions that generally respect the Convention standards and, thus, do not generate violation-finding judgments, e.g., Denmark). Other states may have a high rate of non-implementation, despite a relatively low number of leading judgments pending implementation, because a significant proportion of the few violation judgments issued in the last decade are still not being effectively implemented (e.g., Ireland).
   - The average time leading judgments have been pending implementation for is the final, and least weighty indicator. It is an undeniable fact that an important number of leading judgments that could be implemented in a relatively short period of time stagnate for an unjustifiably long number of years. The longer leading judgments have been pending implementation, the greater the concern that the necessary reforms are not being carried out.
   - Upon assessing this metric, a lengthy delay in the implementation of leading judgments is often an indicator of a poor implementation record (e.g., Italy). It is also possible, however, for states with an overall good record to have a small number of leading judgments that have been pending for a long period, resulting in a high figure under this heading (e.g., Ireland and Finland). Furthermore, in some cases, a decrease in the average implementation time compared to the previous year may not be interpreted positively, because it is due either to the delivery of an important number of new judgments in the past year (rather than to the closure of old leading cases), or to the existence, in respect of the jurisdiction, of very old cases (pending implementation for more than ten years), that are thus factored out of the calculation for this indicator.

5. Judgments that are pending implementation may also be the subject of ongoing reforms. The quantitative methodology does not make a distinction between unjustified delays in the implementation process (caused by, for example, the lack of political will) and the length of time

required for the ongoing implementation of reforms. Furthermore, the report does not quantify the severity of violations or the complexity of the required reforms, as, to the best of our researchers' understanding, there currently exists no method capable of evaluating these elements. For the first time, however, our research this year does assess the main thematic themes present in the ECtHR jurisprudence, in an effort to derive qualitative conclusions on the types of cases that are more susceptible to becoming stumbling blocks implementation-wise as a result of the nature of the violations found.

In sum, the indicators used in this report were chosen not because they are perfect, but because – to our knowledge – they are the best available. Despite certain methodological limitations, this data provides the best quantitative assessment of the overall status of ECtHR implementation in different countries, while relevant qualitative nuances are also taken into account, to the extent possible.

(NON-) IMPLEMENTATION OF JUDGMENTS II: CJEU

I. Research parameters

- **Which rulings does the study focus on?**

This study traces and assesses the compliance of EU member states with the rulings[32] on the rule of law issued by the CJEU over the past five years (1 January 2019 to 1 January 2024). The study addresses CJEU rulings that touch upon laws and practices challenging values such as transparent, accountable, democratic, and pluralistic law-making processes; legal certainty; the prohibition of arbitrariness of the executive; effective judicial protection, inclusive of access to justice through independent and impartial courts; and also as regards the protection of fundamental rights, the separation of powers, and equality before the law.[33]

The pertinent rulings are likely to reference various provisions of the Treaty of the European Union (TEU), such as Articles 2 (declaring the rule of law as one of the EU values) and 19 (1) (mandating remedies to ensure effective legal protection). Our focus also extends to references to the Charter of Fundamental Rights, such as Article 47, which enshrines the right to an effective remedy and is read in conjunction with Article 19 (1) of the TEU.

As an illustration, this study encompasses CJEU rulings related to judicial independence and impartiality. This includes cases examining legislation that lowers the retirement age of judges or addressing arbitrariness in the executive's exercise of discretionary powers, particularly in decisions regarding judicial appointments, secondments,

[32] We aim to cover all relevant rulings falling under the definition of the rule of law-related ruling, regardless of their origin, whether resulting from preliminary references or infringement procedures. The study will follow up on (a) cases initiated by the European Commission through infringement actions – constituting a minority of the CJEU's caseload; and (b) cases brought by national courts through preliminary reference procedure, representing the majority of the CJEU's docket.

[33] For the definition, see Regulation 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget.

and disciplinary measures. The dataset includes the CJEU rulings that address the obstacles faced by national judges in seeking preliminary rulings or adhering to the CJEU guidance. The study also covers cases involving the ramifications of legislative or institutional flaws for access to justice, including the right to be heard by a court or to have access to a lawyer. Relevant cases also delve into the capacity of the justice system to combat corruption. Additionally, the study includes cases related to other independent institutions that are expected to act as checks on the executive, as well as civil society organisations and academic institutions.

The study follows up on the infringement cases initiated by the European Commission through infringement actions, constituting only a minority of all cases handled by the CJEU, as well as cases brought by national courts through the preliminary reference procedure, making up the majority of the CJEU's docket.[34]

- **How were the relevant rulings identified?**

The database of the CJEU case law[35] does not allow for the filtering of rulings in a manner that isolates those specifically related to the rule of law. It does, however, categorise rulings based on subject-matter. To establish a pool of rulings potentially relevant for this study, researchers have concentrated on several thematic categories provided by the CJEU database, including "freedom, justice and security", "justice and home affairs", "Fundamental rights", and "non-discrimination".[36]

Not all rulings from these categories will automatically be included in the dataset. Researchers reviewed the list of rulings to determine which align with the above given definition of a rule of law-related ruling. Additionally, they scrutinised secondary sources, such as reports of civil society organisations, academic writings etc., to ensure that they did not overlook any significant rulings. Following initial filtering and sorting, they grouped the judgments based on which EU member state is implicated. The list includes mostly cases brought before the CJEU by the Commission or referred by the national courts of the given state, but could also include those referred by other national courts, as long as they implicate the legal system of the given state.

- **How does the study define compliance?**

In assessing the degree of compliance with CJEU rulings, we delve into the extent to which political and judicial authorities have adhered to the CJEU's prescriptions. We differentiate between three levels of compliance: full-compliance, partial compliance, and non-compliance. Partial compliance signifies adherence to CJEU rulings to some degree, but not fully. It may involve adopting only some of the legislative changes called for by the CJEU, or by falling short in the implementation of otherwise

[34] Almost 67 per cent of cases completed between 2019 and 2023 resulted from preliminary reference requests. Further data available in the CJEU's Annual Report.

[35] CURIA - Search form (europa.eu)

[36] Certain judgments can be in more than one category, so we filtered rulings to avoid duplication.

adequate legislation, or by failing to fully embrace CJEU interpretations of EU law. Non-compliance can be manifested as an outright failure to comply, resulting in continued infringements of EU law. It may also be manifested as a substantial delay in implementing reforms, despite rhetorical commitment to comply, or even sham reforms that do not genuinely alter the *status quo* or address violations of EU law.

II. **Research process**

The data collection process involved two elements: (a) the identification of CJEU rulings pertinent to the study, particularly those related to the rule of law; and (b) the tracking of national efforts, if any, to adhere to these rulings. In this latter task, DRI was supported by national experts.

The analysis is also supported by secondary sources.

For each ruling identified as relevant to this study, national experts were assigned the following tasks:

(1) Identify the rule of law issues unveiled by the ruling; clarify the actions expected from the state, by both its political and judicial authorities, in terms of compliance with the ruling.

(2) Specify whether the national response to the ruling qualifies as either full or partial compliance or non-compliance.

(3) Explain non-compliance – the experts were given a non-exhaustive list of reasons, including political unwillingness or inability (for example, due to lack of resources), politically orchestrated judicial resistance, principled defiance by independent courts, non-compliance by referring courts out of fear of sanctions or out of incompetence.

When investigating compliance with CJEU rulings in cases initiated by the European Commission, national experts will assess whether political or judicial authorities have appropriately addressed the CJEU findings. With CJEU rulings issued under the preliminary reference procedure, national experts will scrutinise:

(1) whether national courts that referred questions to the CJEU have applied the CJEU's interpretation of EU law to the specific case;

(2) whether other national courts (for example, appeals courts, or even higher courts) examining the same case have applied EU law correctly and, where warranted, disapplied the national law;

(3) whether, in similar cases, other courts have followed or disregarded the CJEU's guidance; and

(4) how political authorities have responded when national courts, relying on CJEU interpretations, disapplied national rules or practices conflicting with EU law.

The overarching question pertains to how the demands of the CJEU are integrated into the national system, encompassing both judicial and political spheres.

If a CJEU ruling exposes a systemic rule of law issue in countries other than the one from which the preliminary reference originated, a national expert evaluating compliance by a referring court highlighted such a ruling. This enabled us to bring the ruling to the attention of other national experts concerned, allowing them to follow up on relevant national laws and practices to see whether the ruling has been adhered to in those respective jurisdictions.

ANNEX III: CLASSIFICATION GRID

ECTHR

Classification Grid							
	Very low	Low	Moderately low	Moderate	Significant	High	Very high
Leading judgments pending implementation	Less than 5	Over 5	Over 10	Over 20	Over 30	Over 40	Over 50
Percentage of unimplemented leading judgments from the last 10 years	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

CJEU: Assessment scheme

The study includes individual profiles for the EU member states. Each indicates the number of rule of law-related rulings issued by the CJEU identified for this study for the given timeframe (1 January 2019 to 1 January 2024). This number is broken down into the number of rulings that have fully been complied with, those that have been partly complied with, and those that have not been complied with at all, calculating percentages for each category. Where appropriate, the profiles also indicate the number of rulings with regards to which compliance is difficult or impossible to assess. Regarding rulings that have been implemented partly or not at all, the profiles refer to the number/percentage of those pending compliance for two years or more:[37] namely, rulings issued between

[37] Status of compliance was assessed in April 2024.

1 January 2019 and 1 May 2022 that have not yet fully been complied with. Each of the profiles gives the list of selected rulings that have been complied with only partly or not at all (highlighting the incompatibilities at hand).

To contextualise data collected through this study, some of the country profiles highlight patterns in the behaviour of constitutional courts, especially highlighting instances of such courts hindering compliance either in a confrontational fashion or more indirectly or surreptitiously. Additionally, the profiles provide data from other sources, such as the World Justice Project's (WJP's) Rule of Law Index, as well as DRI's own judiciary hub. Researchers have not factored this external data into the calculations, but they are helpful in understanding and contextualising the results of research.

The study does not intend to rank countries based on the absolute number of rulings complied with or not complied with, but categorises them based on their performance, differentiating between good, moderate, and struggling compliers.

Category	**Parameters**		
	% of rulings fully complied with	% of rulings partly complied with	% of rulings not complied with
Good compliers	Very High (80% or more)	Low (5-20 %)	Very Low (0-5 %)
Moderate compliers	High (51-80 %)	Low (5 to 20 %) or Moderate (21 to 50%)	Low (5-20 %) or Moderate (21 to 50 %)
Struggling compliers	Very low (0-5 %) Or low (5 to 20 %)	High (50-80 %)	Very low (0-5 %) Or low (5 to 20 %)

"Good compliers" consistently demonstrate a strong commitment to complying with CJEU rulings. They exhibit very high levels of compliance, with over 80 per cent of rulings fully complied with and very low (0-5 per cent) to low (5-20 per cent) levels of non-compliance or partial compliance. Although excessive delays in compliance (for two years or more) are possible, they are relatively rare.

"Moderate compliers" fully comply with a sizable portion of rulings (between 50 and 80 per cent). They show a considerable level of commitment, with occasional failures in achieving full compliance (up to 50 per cent of partial compliance or non-compliance). Such failures could be due to the mixed judicial record in adhering to the CJEU case law, or to political reluctance to implement a particular legislative reform properly.

"Struggling compliers" fully comply with only a limited number of rulings (typically up to around 20 per cent). The state record is mixed and marked with a high degree of partial compliance (between 50 and 80 per cent). This means that, while some national actors occasionally adhere to CJEU prescriptions, compliance is mostly incomplete and insufficient. Non-compliance or partial compliance may be politically or judicial driven, and is often driven by both. Delays occur in a high number of cases, systematically.

We suggest that the reader does not solely focus on the absolute number of rulings when assessing and comparing state performance, but look beyond into tendencies and patterns. We do not rank states based on these numbers. Our characterisation of the state as a "good", "moderate" or "struggling" compliers is based on the proportions between the rulings that states have complied with fully, partly, or not at all collected for this study. For completeness and proper understanding of the data, we provide additional information (e.g., data showing the degree of judicial independence) and analysis (e.g., about patterns in the top courts' approach to the application of EU law).

Importantly, this study is not aimed at assessing a general record of compliance with EU law by national authorities. We have only followed up on rule of law-related rulings. The number of rulings is also not reflective of the general state of the rule of law in the country, as not all rule of law issues automatically end up before the CJEU.

ANNEX IV – SPECIFIC COUNTRY RECOMMENDATIONS ON ECTHR IMPLEMENTATION IN RESPECT TO SELECTED EU MEMBER STATES

Bulgaria

Key reforms the Bulgarian authorities must adopt include, *inter alia*:

- Putting in place reinforced guarantees against undue influence on the Judicial Chamber of the Supreme Judicial Council (SJC), while taking into consideration concerns expressed over the composition of the Judicial Chamber of the SJC and the division of powers between the SJC and the Inspectorate to the Supreme Judicial Council (*Miroslava Todorova v. Bulgaria*).
- Ensuring that formal legal requirements for the registration requests of ethnic minority associations are applied in a proportionate, foreseeable, and consistent manner, and adopting legislative or other appropriate measures to ensure broader and more effective obligation for the Registration Agency to give instructions to associations to rectify registration files, whenever this is objectively possible (*Umo Ilinden and Others v. Bulgaria*).
- Addressing practical questions regarding the functioning of the mechanism for independent investigation of high-level prosecutors (adequate working conditions and resources, as well as practical independence) (*Kolevi v. Bulgaria*).
- Introducing measures to ensure judicial review of measures placing persons with mental health disorders in social care homes (as a safeguard where a placement is not based on a valid consent, or where the wishes of a person to leave an institution might be disregarded (*Stanev v. Bulgaria*).
- Implementing plans for the renovation or replacement of old prison facilities (*Kehayov v. Bulgaria*).

Greece

Key reforms the Greek authorities must adopt include, *inter alia*:

- Urgently amending the system concerning the registration of associations, in line with the European Court's case law and the 2014 Venice Commission and OSCE Joint Guidelines on Freedom of Association, which favour the registration of associations without any prior control of their legality, when domestic law provides for clauses allowing the monitoring of their activity *a posteriori* (*Bekir-Ousta and Others v. Greece*; *House of Macedonian Civilization and Others v. Greece*).
- Aligning the national case law in freedom of expression cases with the Court's case law, by ensuring that judges are trained to distinguish between factual statements and value judgments (*Katrami v. Greece*; *Vasilakis v. Greece*).
- Ensuring that school education and teaching is in conformity with the parents' religious and philosophical convictions (*Papageorgiou and Others v. Greece*).
- Exploring possible avenues of action to ensure that criminal investigations are sufficiently thorough and conducted in a fully Convention-compliant manner, including through large-scale training and awareness-raising of prosecutors and judges (*Sidiropoulos and Papakostas v. Greece*).

Hungary

Hungarian authorities are under the obligation to proceed to the following reforms, among others:

- Ensure procedural fairness in cases involving the removal of judges from office, including the intervention of an authority independent of the executive and legislative powers in respect of such decisions, and of effective and adequate safeguards against abuse when it comes to restrictions on judges' freedom of expression (*Baka v. Hungary).*
- Ensure timely access to documents of public interest concerning the Hungarian secret services (*Kenedi v. Hungary*).
- Eliminate administrative obstacles incorporated in the Assembly Act and related regulations, including the mandatory legal representation when a ban or a prior limitation is challenged (*Patyi and Others).*
- Develop guidance and provide methodological support for the expert committees examining children with disadvantaged socio-economic backgrounds, in order to identify and overcome the effects of social disadvantage in the diagnostic procedure (*Horvath and Kiss v. Hungary*).
- Create an appropriate solution for lawfully settled third country nationals applying for legal gender recognition (*Rana v. Hungary*).
- Intensify efforts in reforming the asylum system, in order to afford effective access to means of legal entry, in particular border procedures, in line with Hungary's international obligations as arising from the relevant judgments of the ECtHR and the CJEU (*Ilias and Ahmed v. Hungary*).

Italy

Italian authorities are under the obligation to take the following measures, *inter alia*:

- Decriminalise defamation or, at a minimum, abolish prison sanctions for defamation, and ensure that the national court practice is in line with Convention standards when differentiating between statements of fact and value judgments (*Belpietro v. Italy*).
- Take measures to ensure the balance of presence of political subjects in popular information programmes on public television (*Associazione Politica Nazionale Lista Marco Pannella v. Italy*).
- Put in place an effective remedy by which complaints can be made to the national authorities about the discontinuation of political programmes on state-run television (*Associazione Politica Nazionale Lista Marco Pannella and Radicali Italiani v. Italy*).
- Ensure an effective remedy to allow individuals to obtain preventive and remedial orders in respect of polluting industrial activity (*Cordella and Others v. Italy*).
- Undertake efforts to build the capacity of the judiciary (particularly pre-trial judges) to deal with cases concerning gender-based violence, and to promote the use of a gender-sensitive judicial language (*Talpis v. Italy*).

Poland

Inter alia, the Polish authorities are under the obligation to adopt the following reforms:

- Elaborate and adopt measures to ensure the lawful composition of the Constitutional Court, and address the status of decisions already adopted in cases concerning constitutional complaints with the participation of irregularly appointed judge(s) (*Xero Flor w Polsce sp. z o.o. v. Poland*).
- Carry out a broader reform of the system of disciplinary liability of judges in Poland, limiting the influence of the executive on disciplinary proceedings against judges, to prevent misuse of the law for ulterior purposes, and take measures to ensure a high degree of protection of freedom of expression of judges defending the rule of law and judicial independence (*Zurek v. Poland*).
- Elaborate measures to ensure that decisions concerning the disciplinary liability of judges are adopted by a body that complies with requirements under Article 6 of the Convention (*Zurek v. Poland*).
- Rapidly elaborate measures to restore the independence of the NCJ, through the introduction of legislation guaranteeing the right of the Polish judiciary to elect judicial members of the NCJ (*Broda and Bojara v. Poland*).
- Address the status of all judges appointed in deficient procedures involving the NCJ as constituted after March 2018, and of decisions adopted with their participation (*Broda and Bojara v. Poland*).
- Introduce legislative changes to address the absence of obligation in law for hospitals to refer patients to alternative services when an abortion has not been performed due to the use of the conscience clause (*P. and S. v. Poland*).

Romania

The Romanian authorities are under the obligation to take the following measures, *inter alia*:

- Monitor the new legal protection system for adults with disabilities and take adequate measures so that it be adequately and effectively applied, including by ensuring domestic capacities and necessary arrangements to guarantee swift and sound judicial determinations of the situation of the individuals concerned (*Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania*).
- Take urgent remedial action to ensure human rights compliance in psychiatric establishments, with regard to overcrowding and inadequate living conditions, treatment and care afforded to patients, and severe shortages of staff in psychiatric establishments (*Parascineti v. Romania*).
- Introduce judicial review in respect of decisions to renew measures prolonging involuntary placement decisions (*Cristian Teodorescu v. Romania*).
- Introduce criteria to ensure a proportional assessment of the moral damages awarded in defamation cases (*Ghiulfer Predescu v. Romania*).
- Address deficiencies in the criminal law provisions punishing incitement to hatred or discrimination, as they hinder the proper classification and prosecution of hate crimes based on homophobic motives (*M.C. and A.C. v Romania*).