



IMPLEMENTATION OF JUDGMENTS OF THE EUROPEAN COURT OF HUMAN RIGHTS: GEORGIA

**European Implementation Network
January 2021**



The European Implementation Network works with NGOs and others across Europe to make sure that judgments of the European Court of Human Rights are fully implemented, and thus capable to provide real change.

The most successful work on implementation of ECtHR judgments combines advocacy at the national level with engagement with the supervision process at the Committee of Ministers of the Council of Europe.

EIN supports work at both levels through advocacy, training, and resources.

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The statistics in this document are valid as of 27 November 2020. They were drawn on that date from the Council of Europe's implementation database, [HUDOC-EXEC](#)

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FOREWORD

Judgments of the European Court of Human Rights are rightly celebrated for bringing justice to victims of human rights violations. However, they are only a first step towards human rights protections. Unfortunately, judgments can remain pending implementation for very long periods. This can mean that the human rights violations continue to happen. EIN aims to highlight examples of this, by assessing the implementation record of Council of Europe states. In doing so, we hope to raise awareness and incentivize governments and civil society to play an active role in the implementation of judgments of the European Court of Human Rights.



This report examines the implementation record of Georgia. Georgia's implementation is better than that of neighboring countries and positive steps have been noted in a number of cases (for example, see progress for childrens' rights set out on page 11). However, government engagement in the implementation process could be increased, as well as the inclusion of non-government actors in the process. There are currently 23 leading judgments against Georgia that are pending implementation. Each represents a systemic and recurring human rights problem that has not yet been effectively addressed. Of the leading judgments from the last ten years, 61.1% are still pending implementation. Furthermore, in 43.5% of cases, there is not yet an Action Plan/Report which sets out how the government is responding to the judgment. This means opportunities to bring domestic legislation, policies, and practices into line with European human rights standards are being lost, while human rights violations continue to reoccur. Police violence, freedom of assembly, hate crimes and fair trial guarantees are some of the areas in which important reforms are required.

Across the Council of Europe, a strong collaborative relationship between national authorities and civil society has helped improve the ECHR implementation record. At the same time, increased involvement from wider civil society through Rule 9 submissions in leading cases has proved it can change the course of implementation and turn the judgments of the European Court of Human Rights into reality. We hope that the dissemination of this report will serve as an informative basis for future work on the implementation of judgments in Georgia - by both government and civil society.

*Professor Başak Çalı,
EIN Chair*

WHY IMPLEMENTATION MATTERS

Tsintsabadze v. Georgia and the right to an independent investigation

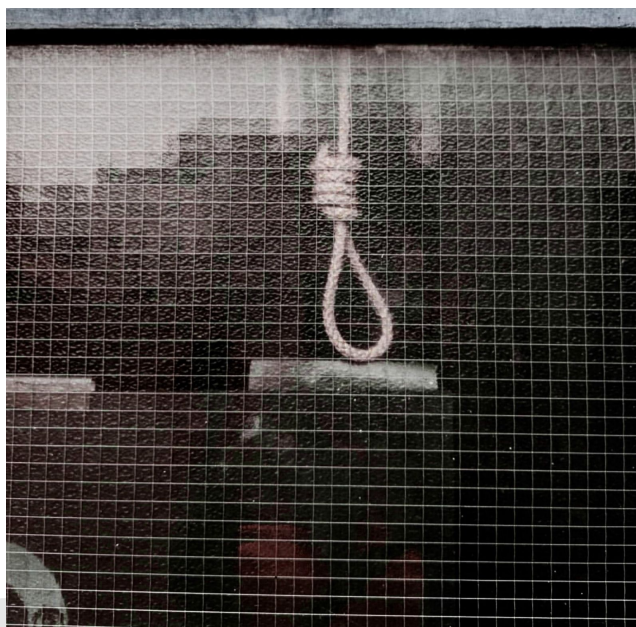
On 30 September 2005, Zurab Tsintsabadze, a 30 year-old man who was serving a jail sentence, was found dead in prison. His body was hanging from the ceiling. The prison authorities immediately stated that he committed suicide, and the Ministry of Justice investigators confirmed this conclusion. However, Mr Tsintsabadze's mother rejected the suicide story, **claiming the authorities were covering up her son's murder**. The truth began to emerge through the testimony of inmates, who had witnessed Mr Tsintsabadze being beaten and dragged to the storeroom by other prisoners. All attempts to cast light on the events met with the authorities' refusal to question the suicide theory.

Mrs Tsintsabadze then turned to Strasbourg, where the ECtHR [vindicated](#) her claim by finding **a violation of the right to life due to 2 the investigation's lack of independence and the responsibility of the Georgian state for the death**. But the story doesn't end with this judgment. **The failure to investigate ill-treatment of detainees is a systemic problem** in Georgia.



The convention system has the power to make a real difference to people's lives and to help bring about positive changes across the Continent

(Secretary General of the Council of Europe, 4 September 2020, DC 106 (2020))



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A combination of national advocacy and international pressure prompted the authorities to launch fresh investigations into many of these cases and pass legal reforms, including the **creation of the State Inspector's Service**. This and other reforms have been assessed in positive terms by different CoE institutions, including the [Venice Commission](#) and the [Commissioner on Human Rights](#). However, **various problems remain as the new investigation service lacks independence from prosecutors**. This is reflected in the decisions of the Committee of Ministers, which welcomed the reforms but required the authorities to **"accelerate and reinforce their efforts"**,

Both the authorities and local NGOs submitted a second round of observations for the supervision process, the outcome of which will be crucial in deterring prison deaths in Georgia.

HOW IMPLEMENTATION WORKS

The *Tsintsabadze* group of cases can be taken as an example of the positive synergy in the implementation process between government, national human rights institutions, NGOs and the Council of Europe.

The Judgment of the ECtHR

With the judgment of [15 February 2011](#), the ECtHR found a violation of Article 2 holding that **the investigation into the applicant's son's death had not been independent, objective or effective**, and that the authorities failed to provide a satisfactory and convincing explanation as regards the death.

The role of local and international NGOs

The case would not have been brought to Strasbourg, let alone won and implemented, without the efforts of the [Georgian Young Lawyers Association](#), which represented the applicant before the ECtHR, prepared [reports](#) on [ill-treatment in prison](#), and submitted [two communications](#) to the Committee of Ministers, in partnership with [EHRAC](#).

The role of national human rights institutions

The Office of the Public Defender was also involved in the implementation process, submitting observations to the Committee of Ministers and publishing reports on the impact of the amendments enacted by the government.

The involvement of the CoE

The [Venice Commission](#), the [Directorate on Human Rights](#), the [Commissioner on Human Rights](#), and the [Committee for the Prevention of Torture](#) gave opinions on the measures enacted by the government. Moreover, this group of cases is at the centre of the CoE [Action Plan for Georgia](#) and of the [Joint Programme between the EU and the CoE](#) on the application of the ECHR in Georgia.

The measures enacted by the Government

With the action plans of [13 July 2018](#), [25 October 2019](#), [12 October 2020](#), the government expressed the resolve to remedy the violations highlighted in this group of cases by **taking a series of reforms in synergy with civil society**, the office of the Public Defender, and national and international experts.

The supervision process before the Committee of Ministers

The Committee of Ministers started the examination of this group of cases under the **Enhanced Procedure** and took several decisions to the effect of continuing the supervision process. In its latest decisions of [20 September 2018](#), [19 December 2019](#) and [3 December 2020](#) the Committee asked the authorities to provide **more information as regards both individual and general measures** and give details as to the way the legislative amendments enacted operate in everyday practice.

EVALUATING THE IMPLEMENTATION PROCESS

Key Figures (1)

Number of leading judgments pending implementation

23

As of October 2020, there are 23 leading ECtHR judgments against Georgia still pending implementation. This means that the **human rights problems identified by the judgments have not been resolved**, and are therefore likely to recur.

Average time leading cases have been pending

3 years
6 months

The average **time** each leading judgment has been pending is moderately long. However, there are **seven** leading judgments that have been pending for implementation for **over five years**. These highlight serious issues such as **hate crimes, police violence** and the **ill-treatment of prisoners**.

Leading judgments are those that identify a **new significant or systemic problem** in a country. Each leading judgment therefore represents a human rights issue that needs to be resolved via the implementation process.

Assessing the **proportion of leading judgments being implemented** is the best method available to assess whether a country is carrying out general reforms to put into effect judgments from the European Court of Human Rights.

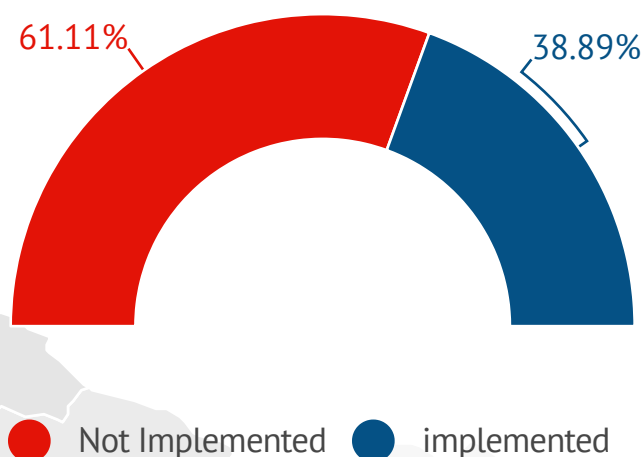
It is also necessary to look at the **overall number of leading cases pending**. The countries with the most serious non-implementation problem have both a high proportion of leading cases still pending **and** a high overall number of pending leading cases.

EVALUATING THE IMPLEMENTATION PROCESS

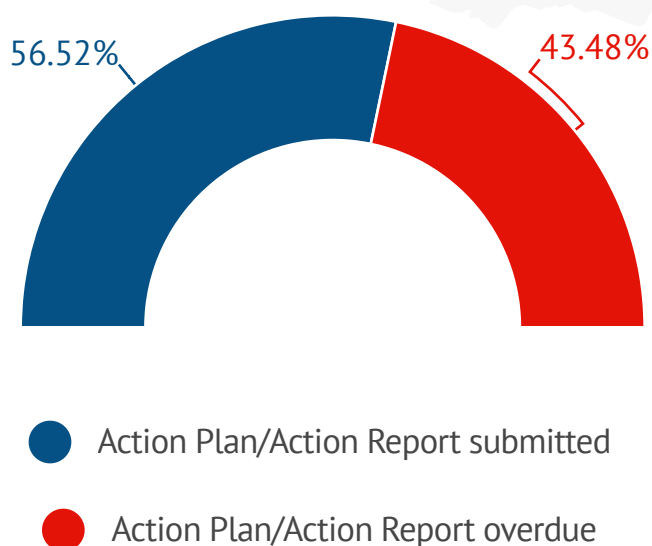
Key Figures (2)

Only **14 out of 36** leading judgments issued against Georgia in the past 10 years have been implemented. This means that **more than half** of the judgments recently issued by the ECtHR (and the systemic human rights issues they identify) have not yet been dealt with by the authorities. These figures are all the more notable considering that, in the absence of the **general legislative and/or policy reforms indicated by the ECtHR in these judgments**, the violations are likely to recur.

Number of leading judgments from the last 10 years still pending



Percentage of leading judgments with overdue Action Plan/Action Report

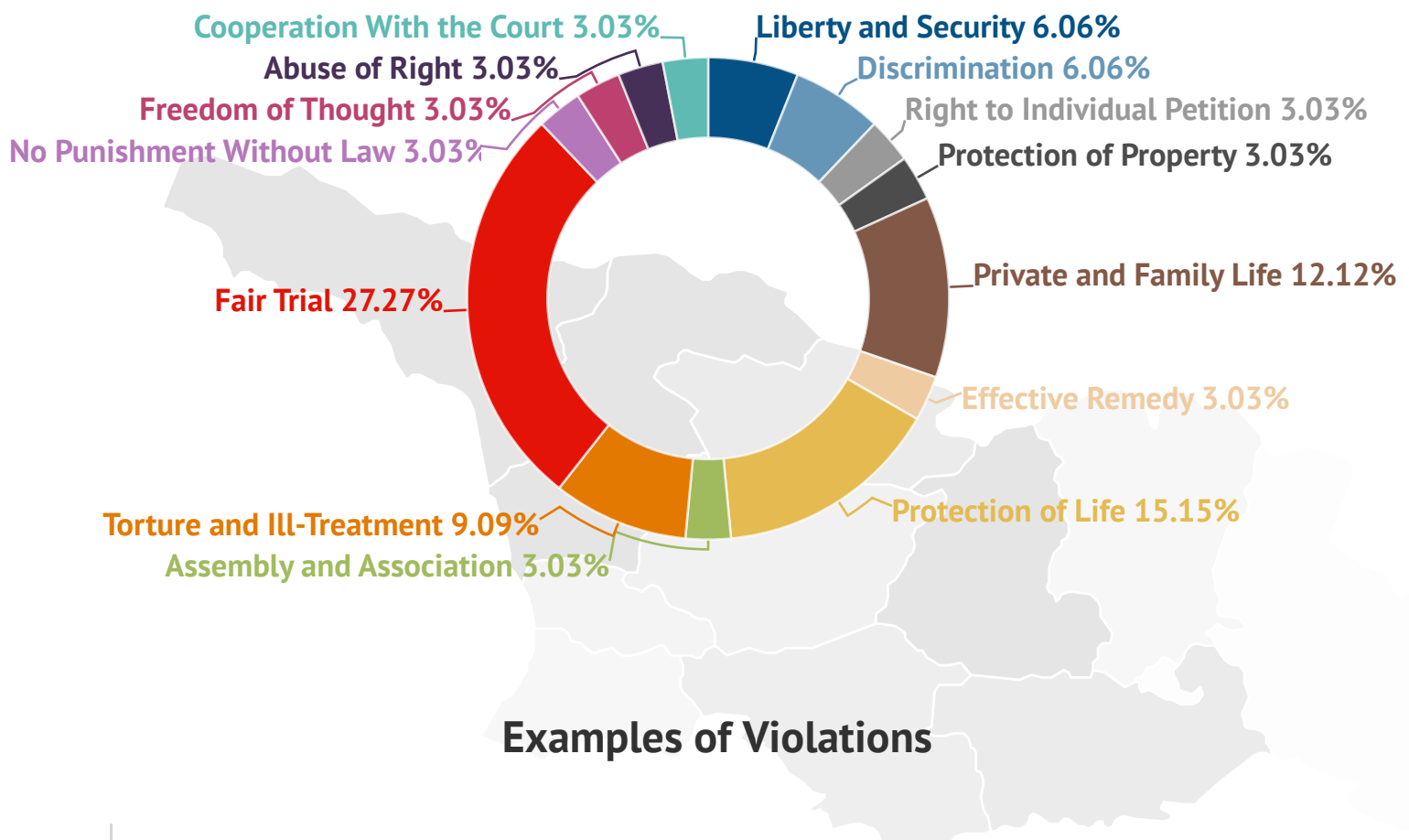


Looking at the pending leading judgments overall, it is worth noting that in more than 4 cases out of 10 the Georgian authorities are yet to submit an **Action Plan** (i.e. the document setting out what steps are envisaged in order to meet the indications of the ECtHR) and/or an **Action Report** (i.e. the overview of the measures taken and/or planned and their timeframe). This is a clear obstacle to implementation, as the lack of an Action Plan and/or Action Report implies government inactivity in relation to the implementation process.

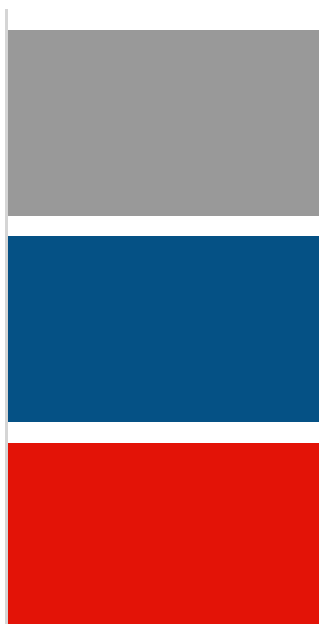
EVALUATING THE IMPLEMENTATION PROCESS

Type of Violation

Besides the percentage of implemented/non-implemented leading judgments, **the nature of the violation(s)** found by the European Court with leading judgments pending implementation is also worth noting.



Examples of Violations



1 leading judgment pending implementation concerns the violation of **Article 34** of the Convention on account of the authorities' failure to ensure confidential communication between an individual and his lawyers in the process of preparing an ECHR application.

Among the leading judgments pending implementation, there are **2 findings of a violation of the right to liberty** due to the lack of sufficient and adequate reasons in the domestic courts' decisions ordering and/or extending pre-trial detention.

The findings of a **violation of the right to fair trial** (9 in total) mostly concern **criminal matters**, which signals that there are recurring shortcomings in the way domestic criminal procedure is applied.

ANALYSIS

The State of ECtHR Implementation (1)

The statistics disclose – and the analysis of specific cases confirms – that given the right conditions **the implementation process is capable of bringing about real change in Georgia**, prompting the adoption of long-awaited reforms. Georgia is performing positively in comparison to other countries in the region.

Nevertheless, the **lack of systematic engagement** of the authorities in the implementation process before the Committee of Ministers is worth noting. In particular, there is a high proportion of leading judgments that have **not yet been subject to an Action Plan/Report**. Additional concerns have been raised by those working on the issue within Georgia, particularly relating to the **adequacy of reforms** and the **levels of inclusion** for non-government actors in the reform process.

We asked representatives from the **Georgian Young Lawyer's Association** and the **Office of the Public Defender** to set out their views on how ECtHR implementation is operating in practice. They responded with the following concerns:

Domestic judges' **expertise in the ECHR system of human rights protection** needs to be enhanced, for example by providing them with proper assistance from human rights experts in the framework of targeted projects by the Council of Europe.

Moreover, there is **insufficient knowledge of the supervisory function of the Committee of Ministers** which makes it difficult for victims and local NGOs to fully participate in the implementation process and make sure their views are taken into consideration.

Especially when cases are dealt with in the framework of the Standard rather than the Enhanced procedure for supervision, **it is not sufficiently clear what measures are judged by the Council of Europe as necessary** in order to overcome the human rights problems highlighted by the ECtHR.

In addition to this, the **lack of transparency on the part of the authorities** makes it impossible to effectively control the developments of the implementation process, let alone to put together a coherent agenda of reforms and bring about real change.



The perceived vagueness of the decisions of the Committee of Ministers is exploited by the authorities to delay and/or avoid the taking of far-reaching, comprehensive reforms.

(Nino Jomarjidze, Head of International Litigation at the Georgian Young Lawyers' Association)

ANALYSIS

The State of ECtHR Implementation (2)

Georgian NGOs and the Office of the Public Defender also provided the following ideas as recommendations to improve implementation in the country:

■ Many obstacles to implementation are overtaken via **informal meetings between the representatives of the Committee of Ministers and members of local NGOs, lawyers and victims**. These meetings should be organised more frequently, as they allow a frank and open debate on the real impact of the measures proposed by the government in order to meet the indications contained in the ECtHR judgments to be implemented.

”

The ECtHR is highly regarded in the country due to the many important judgments it has delivered for the Georgian people. This consideration should be used as a spring to bring about real change.

(Tamar Abazadze, Head of the Analytical Department at the Office of the Public Defender of Georgia)

■ The **procedure before the Parliamentary Committee on ECtHR implementation should be strengthened**: victims, NGOs, and national human rights institutions should be involved in the procedure and their views taken into consideration by law.

”

We need to involve more lawyers in training programmes on the ECtHR implementation in order to increase the number of national practitioners able to assist victims in participating in the process.

(Nino Jomarjidge, Head of International Litigation at the Georgian Young Lawyers' Association)

■ Legal capacity at the domestic level should be enhanced to make sure that local NGOs are able to deploy all the possibilities offered by the CoE mechanism of human rights protection, **including participation in the supervision process before the CM**. As the matter currently stands, **very few pending leading cases have Rule 9 submissions** (only 8 out of 23 pending leading cases). These figures need to be increased, as civil society engagement has proven to be one of the most effective tools to enhance the implementation process.

CASE STUDY

The full implementation of children rights

Following the death of their mother, three children went to live with their maternal aunt while their father was undergoing treatment for drug addiction. Later on, the father applied to domestic courts seeking the return of his sons. In spite of the **existence of multiple expert reports recommending otherwise**, domestic courts **granted the father's request making him the boys' sole legal guardian, and ordering them to move into his house**. Pending enforcement of the final domestic decision, the aunt filed an application with the European Court of Human Rights claiming that her nephews' rights were breached in the legal process. The Court agreed, making [findings of a violation of Article 8](#) on account of the **many shortcomings in the representation of the boys** in the proceedings, and of the **domestic courts' failure to take into pre-eminent consideration their best interests**. The Court criticised the "ambiguous" representation given to the boys by the Social Service Agency, and described the domestic courts' decision as a "**radical**" measure, when all the evidence (including several reports by psychologists) **disclosed that this was not what the children wanted**. In reaching these conclusions the Court placed weight on other international human rights instruments, like the CoE [Guidelines on Child-Friendly Justice](#) and the [Convention on the Rights of the Child](#).



“the combination of flawed representation and ... the failure to duly present and hear the views of the boys undermined the procedural fairness of the ... process. This was exacerbated by inadequate and one-sided consideration of the boys' best interests, in which their emotional state of mind was simply ignored”
(*N.Ts. and Others v. Georgia*, 2 February 2016, § 84)



Teodor Drobotia [via](#) Unsplash.com

Following the delivery of the judgment, the children were paid compensation and domestic courts repealed the order for their return to their father. However, as [pointed out by NGOs](#), this was not enough to remedy the violation, as **domestic courts still failed to issue a final decision to establish the childrens' residence at their aunt's**. Such a decision was eventually issued.

As argued by NGOs **the underlying human rights problem has a “systemic” nature** and is due to shortcomings in the legislation concerning child representation, and the social work system. The [adoption](#) of a **Code on the Rights of the Child** and of the **Law on Social Work** are positive steps forward. Nevertheless, “significant flaws” remain, [for example](#) regarding legal representation of minors under the age of 7 and the role of the procedural representative of the child in legal proceedings. In addition, according to local NGOs, **social workers face huge practical problems in Georgia due to lack of resources**. In Summer 2020, [the authorities](#) set out other measures taken to comply with the judgment, such as the inclusion of the issue among the top priorities of the [National Human Rights Strategy](#) and the [Action Plans](#). [GYLA](#) and the [Public Defender](#) set out their ongoing concerns. Implementation of the case continues to be monitored by the Council of Europe.

NGOs and NATIONAL HUMAN RIGHTS INSTITUTION

NGOs and NHRIs play a crucial role in the implementation process. Through their **Rule 9 communications** and **informal briefings** they can shed light on the actual state of execution of a given group of cases, and prevent them from being closed too early.

These organisations can be contacted for more information on specific cases.

[Georgian Young Lawyers' Association \(GYLA\)](#)

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gyla@gyla.ge



[Public Defender \(Ombudsman\) of Georgia](#)

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EIN partners with NGOs across Council of Europe member states to build legal capacity, give advice (including [on how to write a Rule 9.2 communications](#)), and offer a platform for NGOs in Strasbourg – helping NGOs make a real difference through full participation in the implementation process.

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All the hyperlinks are accurate as of 27 November 2020





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