



**IMPLEMENTATION OF
THE JUDGMENTS OF
THE EUROPEAN COURT
OF HUMAN RIGHTS:
RUSSIA**

**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 member states. In doing so, we hope to raise awareness and incentivize both governments and wider civil society to play a pro-active role in the implementation of judgments of the European Court of Human Rights.



This report examines the implementation record of the Russian Federation. There are some positive examples of progress which can be identified - such as efforts to re-unite parents with their children in accordance with court orders (see the Khanamirova group, page 4). However, the report shows that the overall record of implementation in Russia is troubling. There are currently 223 leading judgments that are still pending implementation, more than in any other member state of the Council of Europe. Each of these represents a systemic and recurring human rights problem that has not yet been effectively addressed. 91% of leading judgments from the last ten years are still pending implementation. Furthermore, the average time that leading cases have been pending is 7 years and 11 months (for the statistics and our analysis, see pages 6-10). 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 re-occur. Domestic violence, freedom of assembly, enforcement of custody decisions, fair trial guarantees and prison conditions are only some of the areas in which important general measures are required.

Across Europe we have seen that the increased involvement of civil society and a stronger collaborative relationship between it and national authorities can improve the implementation record, turning the judgments of the European Court of Human Rights into human rights. We hope that the dissemination of this report will serve as an informative basis for future work on the implementation of judgments in Russia.

*Professor Başak Çalı,
EIN Chair*

WHY IMPLEMENTATION MATTERS

Khanamirova v. Russia and the systemic problem of family abductions

Ms Khanamirova is a **mother who was forced by her husband to leave the family house - without her son, who was only 5-months old**. In spite of a court judgment granting her custody over the boy, she was effectively barred from having any contact with him for more than 4 years. During this time, she took every possible step to enforce the custody decision, but to no avail. In 2010 she applied to the European Court of Human Rights, and obtained a judgment finding that the **continuous failure of the authorities to enforce the custody decision breached her Article 8 right to a family life**. Still, she was not re-united with her child for another year, when the child was finally handed over as a result of the measures required to implement the European Court's judgment. **This tragic story is common to far too many other mothers in the region, where family abductions are quite common**.



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Perpetrators (often the father or other members of his family) largely go unpunished due to systemic shortcomings in the legal system (including a lack of deterrent sanctions and the absence of a special procedure to enforce custody decisions) and due to the persistence of regressive practices (especially in the North Caucasus). Following the delivery of the *Khanamirova* judgment, several mothers who have been forcefully separated from their children applied to the ECtHR, but **many among them are still unable to see their children, despite judgments in their favour**. Therefore, the implementation process of this group of cases should be seized as an opportunity to adopt the necessary measures to avoid further violations - a need that is all the more urgent given the **time-sensitive nature of the violations found in these cases**.



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))

HOW IMPLEMENTATION WORKS

The implementation process of the *Khanamirova* group of cases concern an **ever growing number of judgments**, and recently new cases have been communicated to the Russian Government. Taking effective general measures is the only way to avoid repetitive litigation and ensure that the underlying human rights problem is properly dealt with.

The Judgment of the ECtHR

With the [judgment of 14 June 2011](#), the ECtHR found a violation of Article 8 for the authorities' **failure to take adequate measures to enforce the domestic judgment concerning the applicant's custody of her child**, censuring the "unjustified delays" in the enforcement proceedings, the "unacceptable" reasoning employed by the local authorities, and their lack of "due diligence".

The Procedure before the Committee of Ministers

With an [action plan of 6 February 2012](#) the Russian authorities stated that the applicant was paid the compensation awarded by the ECtHR. Moreover, the [update of 25 April 2012](#) states that the domestic judgment concerning the applicant's custody had been enforced, and that the applicant was **finally re-united with her son**. Yet, in these submissions the government labelled the violation as specific, denying the existence of any deficiency in the domestic legal system.

Ongoing litigation before the ECtHR

In spite of the government's contention that this was an isolated incident, in the following years the ECtHR issued several judgments finding a breach of Article 8 for the exact same reasons, including [Y.U. v. Russia](#), [Zelenevy v. Russia](#), [Pakhomova v. Russia](#) and many others.

The existence of a systemic human rights issue

All the new judgments on the issue were included in the *Khanamirova* group of cases, and in the implementation process, namely with the [Action Plan of 14 August 2013](#), the [update of 28 October 2014](#), and the [Action Plan of 29 September 2014](#), Russia acknowledged the need to pass the "necessary amendments to national legislation" to "prevent further violations".

The Role of Local NGOs

With a [decision of 4 December 2014](#), the CM decided to pursue supervision of this group of cases under the standard procedure. Since then, however, the *Khanamirova* group of cases disappeared from the agenda. The cost of inaction has been highlighted in a Rule 9.2 communication by the Stichting Justice Initiative (SJI), which highlighted that the number of cases in the group will "continue to grow" as a result of **systemic shortcomings in domestic law**, such as the absence of "significantly serious measures to induce compliance with custody decisions", the non-criminalisation of "family abductions" (i.e. kidnap of a child by one of the parents), and the lack of cooperation between bailiffs and other public authorities.

These views were aired in a [briefing](#) between SJI and CM members. Following this, the CM decided to resume the supervision of this critical group of cases in December 2020. It is hoped that the continued pressure of civil society will lead to justice for the parents.

EVALUATING THE IMPLEMENTATION PROCESS

Key Figures (1)

Number of leading judgments pending implementation

223

As of October 2020, a very high number of leading ECtHR judgments against Russia are 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

7 years
11 months

The backlog of pending leading cases is due to the considerable amount of time needed on average to close each leading judgment, which causes an **overload in the implementation process**.

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.

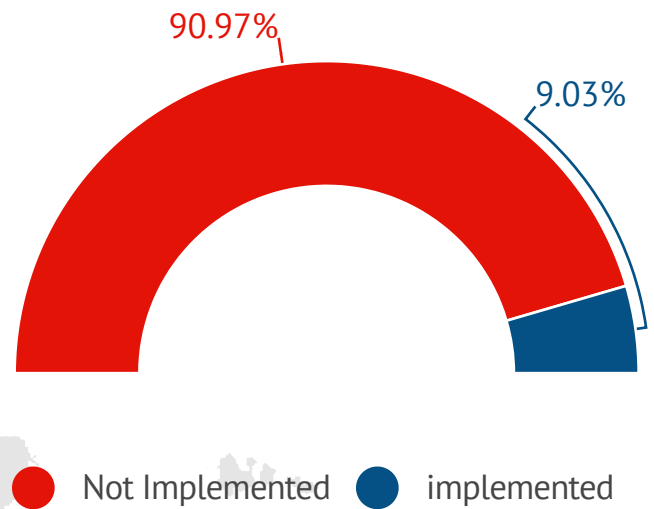
It is also necessary to look at the **overall number of leading cases pending**. The countries with the most serious non-implementation problem have both a high proportion of leading cases still pending **and** a high overall number of pending leading cases.

EVALUATING THE IMPLEMENTATION PROCESS

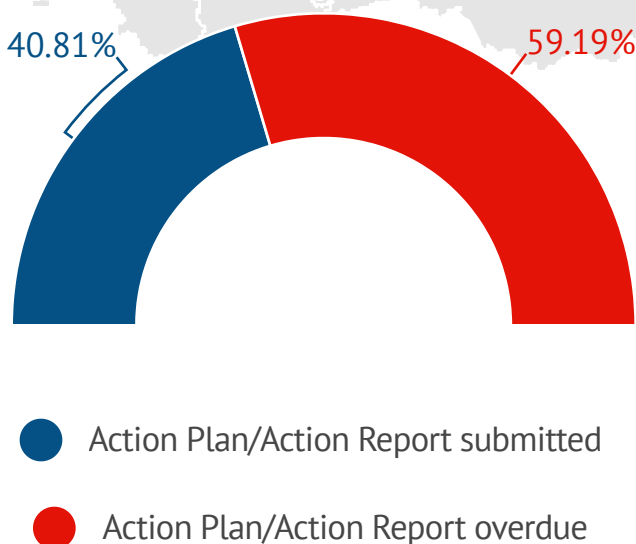
Key Figures (2)

Among the leading judgments issued against Russia in the past 10 years, the implementation rate is less than 1 out of 10. This means that more than 90% of cases (and the systemic human rights issues they identify) have not been dealt with by the authorities. These figures are all the more worrisome considering that, in the absence 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

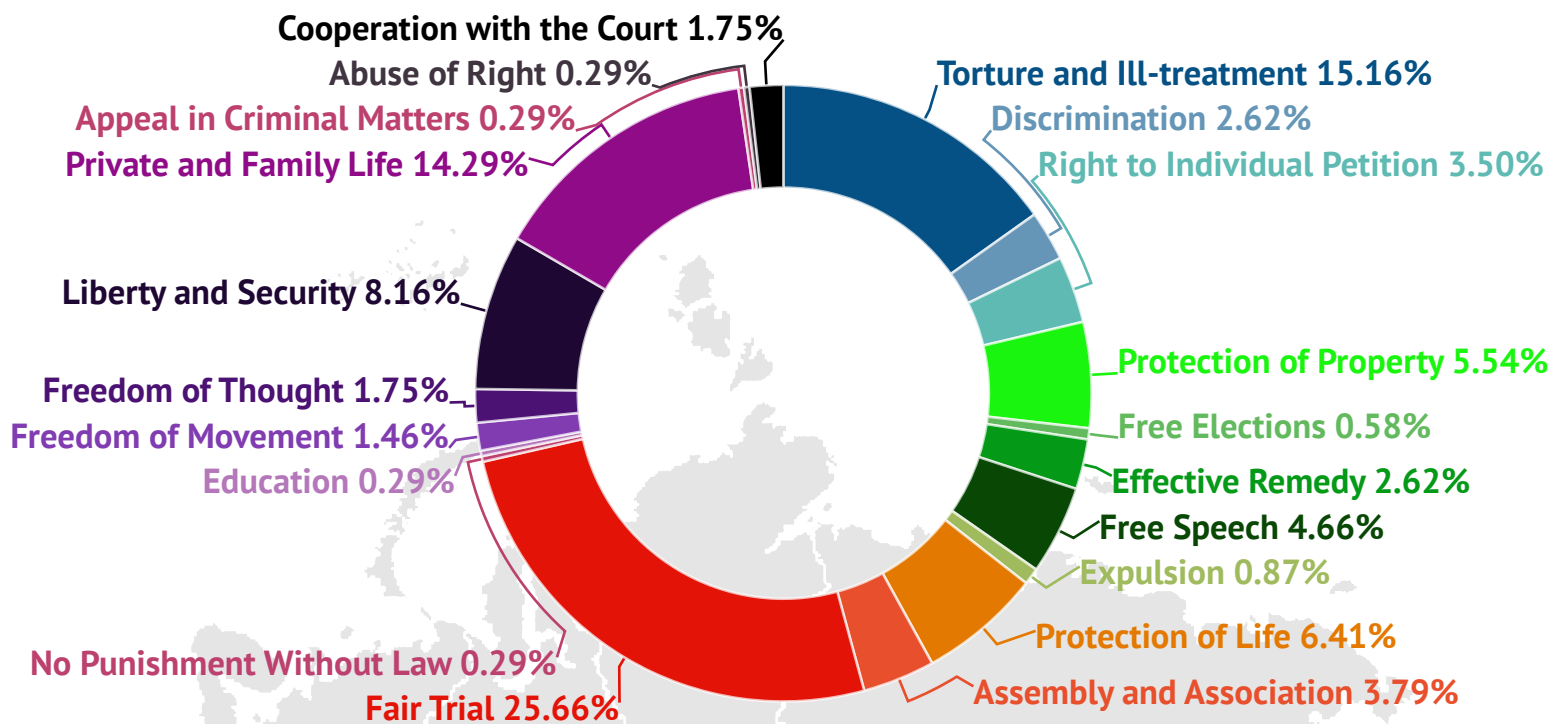


Looking at the pending leading judgments overall, it is worth noting that in nearly 6 cases out of 10 the Russian government have not submitted an **Action Plan** (i.e. the document setting out what steps are envisaged in order to implement the judgment) and/or an **Action Report** (i.e. the overview of the measures successfully taken). This is a huge 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 in leading judgments pending implementation is also worth noting.



Examples of Violations



12 of the pending leading judgments concern violations of the right to individual petition guaranteed by **Article 34** of the Convention. In addition to this, in 2 more cases **the government was sanctioned for failing to comply with interim measures ordered by the ECtHR** under Rule 39.

There are **52 findings of violations of Article 3 (torture and ill-treatment)** in the leading judgments pending implementation. Most of these findings of violation result from **dire conditions of detention**, a problem which is dealt with in the [Kalashnikov](#) and [Generalov](#) group of cases.

The findings of violations of the **right to fair trial (88 in total)** concern **both civil and criminal matters**, and cover issues ranging from breaches of the accused person's right to defence, to the non-enforcement of final judgments.

ANALYSIS

The State of ECtHR Implementation (1)

Russia's track record of ECtHR implementation is arguably the worst among all the Council of Europe Member States. The statistics provide a **worrying picture**, and the analysis of the implementation process of specific groups of cases confirm this account of the situation. There is **strong resistance to change from the authorities**, and in many cases non-implementation appears to be legitimate under domestic law, including in the Constitutional sphere.

While the compensation awarded by the ECtHR is usually paid, more often than not the authorities overlook the need to take the general measures required to solve **systemic human rights problems** and curb further violations of the Convention. This leads to **repetitive cases and generates a huge backlog in the work of the Committee of Ministers**.

The Human Rights Centre "Memorial" and OVD-Info are two non-governmental organisations that carry out extensive work on the issue of non-implementation of ECHR judgments in Russia. We asked them to set out what they perceive to be the reasons behind the absence of systemic ECHR implementation in the country.

They provided the following responses:

The authorities believe that once the compensation awarded by the Court has been paid, then the judgment is duly implemented regardless of the enactment of general measures, thus abusing the room for manoeuvre left by the ECtHR and the CM as to the means of implementation.

This is coupled by **insufficient knowledge of the ECHR system** by public authorities, especially at the local level and in remote areas, and from the **persistence of traditional and customary regional practices of a regressive nature**, which are often used as a blanket excuse by the federal government to justify all sorts of deficiencies in the implementation process.

Limited co-operation between the authorities in charge of taking the measures needed to fulfil the needs indicated in ECtHR judgments **and all the other stakeholders involved in the process** is another obstacle to implementation.

In addition to this, the **lack of transparency on the part of the authorities and the media** make 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.



Traditional practices and regional customs should not be exploited as an excuse to justify non-implementation.

(Marina Agaltsova, Lawyer at the Human Rights Centre "Memorial")

ANALYSIS

The State of ECtHR Implementation (2)

Russian NGOs also provided the following ideas as recommendations to improve implementation in the country:

Many obstacles to implementation may be overcome by introducing an **inclusive procedure at the domestic level**, allowing all the parties involved in the execution of a given group of cases to advance their views and make their voices heard. A thorough discussion between the different stakeholders (governmental bodies, national human rights institutions, victims' representatives, and NGOs) should take place **in parallel with the process of international supervision**.

”

It is impossible to bring about real change in terms of ECtHR implementation in the absence of a robust and open public debate.

(Denis Shedov, Legal Coordinator at OVD-INFO)

In this regard, the **establishment of a national institution specifically dealing with the implementation of ECtHR judgments** and able to coordinate the efforts of the different public authorities involved in the process would be an important step forward.

Moreover, the **role of the national Commissioner for Human Rights should be strengthened**, and her involvement in the implementation process should become systematic, rather than limited to specific occasions.

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The visibility of the Committee of Ministers should be increased, so to make sure that applicants and NGOs know what is at stake in the implementation process and how to participate in it.

(Tatiana Chernikova, Lawyer at the Human Rights Centre “Memorial”)

Legal capacity at the domestic level should be enhanced to make sure that the applicants and their lawyers, as well as local NGOs, are able to deploy all the possibilities offered by the CoE mechanism of human rights protections, **including participation in the supervision process before the CM**. To achieve this, it is crucial to have the support of international human rights groups and of the Council of Europe via capacity building programmes, training activities, and research grants.

CASE STUDY (1)

The Right to Public Protest

In January 2009, [Mr Lashmankin wanted to hold a “picket”](#) in Yuri Gagarin Park in the town of Samara, to commemorate a lawyer and a journalist who were **shot dead** some days before. The local authorities **refused to allow** the meeting, holding that it might have been a “danger to the health and life” of the families walking in the park. Mr Lashmankin appealed this decision before the local courts, but his complaint was dismissed, just like the complaints of many other citizens wanting to exercise their right to protest. 15 among them filed applications to the ECtHR alleging a violation of Article 11 and Article 13 of the Convention. Their claims were vindicated in a judgment of 7 February 2017, which found multiple violations of the right to free assembly. In the implementation process *Lashmankin* was selected as the leading case in a group of 35. With the [Action Plan of 13 April 2018](#), the government stated that the applicants were paid just satisfaction and domestic proceedings were re-opened, that translations of the judgment were circulated while a conference was being organised in Moscow, and that the Supreme Court was preparing a draft resolution. With a [decision of 7 June 2018](#), the CM took note of these measures but made it clear that there was a “**need to rapidly adopt additional measures[...] to ensure that the practice of [the] relevant authorities [...] is brought into line with the Convention**”.



“The practice whereby the authorities allow an assembly to take place, but only at a location which is not within sight and sound of its target audience and where its impact will be muted, is incompatible with the requirements of Article 11 of the Convention”

(Lashmankin and others v. Russia, 7 February 2020, § 426)



Rule 9.2 communication HRC Memorial and OVD

HRC Memorial and the OVD media project are two local organisations that participated in the implementation process via a [Rule 9.2 communication in April 2020](#). They argued that, since the Lashmankin judgment, **the situation did not improve and in some ways became worse**. The only effective change was Ruling no. 28 of the Plenary of the Supreme Court of 26 June 2018, which interpreted domestic law on freedom of assembly in light of Article 11. However, the ruling is overlooked in practice. The submissions describe the **shortcomings of the existing legal framework** at local and federal level, **the lack of effective judicial control**, and **the practice of unlawful arrest of participants**. Recommendations were made to improve the situation, like introducing an obligation that local authorities must give precise reasons to back a refusal, or abolishing criminal liability for breaches of the law on public events. However, these were overlooked by the government in the latest [Action Plan](#), which reiterates points already raised. This seems to have been noted by the CM with its most recent [decision](#) discerning no “**tangible progress**” and indicating the **need to “introduce further changes to the legislation as a matter of priority”**. The CM will resume examination of these cases in June 2021.

CASE STUDY (2)

The Fight Against Domestic Violence

After the end of a relationship, Ms Volodina was subjected to abusive behaviour from her former partner. For over three years, [she was assaulted, kidnapped, stalked, threatened, robbed, and intimidated](#). In at least one occasion, her former partner made a serious attempt on her life. Yet, all of her criminal complaints were superficially dismissed. She then turned to the ECtHR, and on 9 July 2019 obtained a [judgment](#) finding multiple **violations of Article 3** on account of the authorities' failure to protect her from the known risk of ill-treatment and to conduct an effective investigation. The Court criticised Russia for **“not [having] enacted specific legislation to address violence [in] the family context”**, noting that **“the concept of domestic violence [...] is not defined or mentioned in any form in the Russian legislation”**, that, contrary to the [CoE Recommendation Rec\(2002\)5](#), criminal proceedings cannot start ex officio, and that there are no **measures of protection** in domestic law, e.g. restraining orders. Moreover, the ECtHR found a violation of **Article 14** on account of the **discriminatory effect of the state's inaction toward domestic violence**. The systemic nature and massive scale of this human rights problem drew the attention of international NGOs, like [EHRAC](#) and the [Equal Rights Trust](#). As decried in NGO submissions and confirmed by CEDAW, gender-based violence is widespread in Russia. However, **the Volodina judgment is far from being implemented**.



“the issue of domestic violence [...] transcends the circumstances of an individual case. It is a general problem [...] which does not always surface since it often takes place within personal relationships or closed circuits and affects different family members, although women make up an overwhelming majority of victims”
(*Volodina v. Russia*, 9 July 2019, § 71)



Käännöstoimisto Transly [via](#) Unsplash.com

The inaction was highlighted in a Rule 9.2 communication of 31 July 2020 by the Stichting Justice Initiative. This pointed out that **“8 months since the entry into force of the judgment” Ms Volodina is yet to receive justice:** to the contrary she had “received 11 new refusals to initiate criminal proceedings”. The non-implementation of the individual measures required by the ECtHR reflect the **overall inaction of the authorities**. Legislation on domestic violence has not been passed, nor has judicial and administrative practice undergone a serious process of review. Draft legislation was to be discussed in Parliament, but, according to the Stichting Justice Initiative, this is not sufficient to protect victims.

The discussion was eventually stalled following the outbreak of Covid-19 – which has led to a high rate of domestic abuse being [reported](#). In the meantime, the ECtHR has issued [two more judgments](#) on domestic violence against Russia, and communicated four more applications.

These place the implementation of this group of cases under the spotlight. Civil society continues to be active in pushing this issue back onto the agenda.

NGO ENGAGEMENT

NGOs play a crucial role in the implementation process. Through their **Rule 9.2. 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. NGOs also push forward reforms at the national level through their advocacy. These are some of the NGOs engaged in the process of implementation of ECtHR judgments concerning Russia. They can be contacted for more information on specific cases.

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- Co-operation on the implementation of the Russian Federation National Action Strategy for Women 2017–2022 (2019-2020) available at <<https://www.coe.int/en/web/genderequality/russian-federation-national-action-strategy-for-women-2017-2022->>>

All the hyperlinks are accurate as of 27 November 2020.



**IMPLEMENTATION OF
THE JUDGMENTS OF
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RUSSIA**

**European Implementation Network
January 2021**