

# THE PROBLEM OF NON-COMPLIANCE WITH AN ECtHR JUDGEMENT IN THE CONTEXT OF INTERNATIONAL LAW EFFECTIVENESS

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## Abstract

*The effectiveness of the European Court of Human Rights is often debated as not all the Member States of the European Convention on Human Rights tend to comply with the standards set by this human rights instrument. Therefore, this research paper has the aim to analyse the effectiveness scope of this Convention through article 46 that establishes the main obligation for the states to implement an ECtHR decision. Thus, it remains to be determined whether the mentioned international judicial body is still granted the authority to maintain and promote the human rights standards in Europe.*

**Keywords:** Human Rights Standards, Non-Compliance, Effectiveness, ECHR, Pacta sunt servanda, Sovereignty

## Introduction

The international human rights law has been created as a result of the globalist process of fragmentation and the need of a certain focus and expertise for creating and promoting human rights standards on an international level<sup>1</sup>. Thus, it represents a branch of international law that was mainly developed through the United Nations (hereinafter the UN) mechanisms<sup>2</sup>, but rapidly spread into regional systems in order to establish and protect the individuals from human rights violations more efficiently<sup>3</sup>. The European Convention on Human Rights (hereinafter ECHR or the Convention) represents a treaty that regards such a regional human rights system, which promotes democratic values and develops human rights standards that must be implemented by the European states that intend to ratify this convention<sup>4</sup>.

It is well-known that the Vienna Convention on the Law of the Treaties has established one of the main principles of public international law, the mandatory force of the treaties<sup>5</sup>. Still there exist states that ratify the Convention, but do not maintain a successful execution of their obligations, or even try to argue the authority of the European Court of Human Rights (hereinafter ECtHR or the Court)<sup>6</sup>. Therefore, this study aims to explore the following research question: *How effective is the European Court of Human Rights system in protecting the human rights, considering its compliance challenges?* Hence, the research paper will employ the doctrinal legal research methodology, with particular emphasis on article 46 ECHR, the

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<sup>1</sup> Mehrdad Payandeh, *Fragmentation within International Human Rights Law*, (Cambridge University Press, 2015), p. 1-5.

<sup>2</sup> *Ibid.*, p. 4.

<sup>3</sup> Martti Koskenniemi, *Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law* (General Assembly, A/CN.4/L.682 International Law Commission, 13 April 2006), p. 102-108.

<sup>4</sup> *Ibid.*

<sup>5</sup> Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331, art 26; Augustina Şiman, 'Validitatea Tratatelor Internaționale ca Garant al Realizării Principiilor și Normelor de Drept Internațional' (2022), (Moldova State University), p. 189-200.

<sup>6</sup> Thomas Hammarberg, 'Judgments issued by the European Court cannot be ignored' (*Commissioner for Human Rights, Council of Europe*, 19 July 2011) <<https://www.coe.int/en/web/commissioner/-/judgments-issued-by-the-european-court-cannot-be-ignor-1> > accessed 26 March 2025; George Stafford, Jakub Jaraczewski, 'Taking European Judgments Seriously: A Call for the EU Commission to Take Into Account the Non-Implementation of European Court Judgments in its Rule of Law Reports' (*Verfassungsblog*, 24 January 2022) <<https://verfassungsblog.de/taking-european-judgments-seriously/> > accessed 27 March 2025; Philip Leach, Alice Donald, 'Russia Defies Strasbourg: Is Contagion Spreading?' (*EJIL: Talk*, 19 December 2015) <<https://www.ejiltalk.org/russia-defies-strasbourg-is-contagion-spreading/> > accessed 29 March 2025.

ECtHR's case law and the existent literature that discusses the non-compliance problematic. To achieve comprehensive results, the scientific paper will address the concept of effectiveness in the context of public international law. Moreover, it will analyse the ECHR system structure and the mandatory character of an ECtHR decision. Nevertheless, the paper will explain the mechanism of decision implementation and the effects of the non-compliance.

### 1. The Concept of Effectiveness in the Context of Public International Law

There are different perspectives regarding what international law effectiveness can mean. According to the author's belief, the best definition of this notion regards the idea of a system that provides binding rules and authoritarian institutions that may have the capacity to implement the laws into practice with prolific results<sup>7</sup>. Essentially, the effectiveness scope may be measured through the relationship between the anticipated and the generated factual results<sup>8</sup>. Therefore, one may consider the international law system to be an effective one, if it manages to pursue the specific objective it was created for<sup>9</sup>. It is not surprising though that the effectiveness character of public international law is still argued. Although it was created with the main purpose to maintain and guarantee the peace, security and human rights protection, the world still faces many episodes of war and international crimes and delicts<sup>10</sup>.

We should not be too pessimistic about the international law system though, as we have to agree on the fact that the international treaties have had a great role in adapting the domestic regimes and bringing the spirit of democracy<sup>11</sup>. Who could have believed a century ago that the individuals would be allowed to address an international court regarding a human right violation and likewise would become a subject of public international law<sup>12</sup>. In fact, it is not easy to bring together a variety of states, each with their own tradition, morality, legal and political system, and ask them to cooperate<sup>13</sup>. Each state represents an individuality on the international arena, with its own vision towards a subject<sup>14</sup>. Hence, the inconsistency is undeniable, but it does not mean that the system is ineffective.

Still, there may arise the ambiguity regarding, for instance, why the domestic law system can be referred as effective enough to maintain the national political and legal agenda on its territory, while the international law cannot. The answer to this question lies within the power character which is vertical in cases of domestic law and horizontal for international law<sup>15</sup>. Thus, the domestic system represents a vertical arrangement with subordinative features<sup>16</sup>. The state power is granted by individuals that elect their representatives to perform the legislative, executive and legal power through supreme forums, which, in turn, can easily impose rules towards the subordinate population<sup>17</sup>. On the other hand, the international law

<sup>7</sup> Sopia Kiladze, 'Effectivity of Public International Law. A Need for Paradigm Change' (2022), 1(15) *Torun International Studies*, 5-23, <https://doi.org/10.12775/TIS.2022.001>, p. 7.

<sup>8</sup> František Vojtuš, Marek Kordík, Lucia Kurilovská, *The Evaluation of the Efficiency of Law and Law Norms* (Archivio Penale, 2022), p. 35.

<sup>9</sup> Sopia Kiladze, *op. cit.*, p. 7.

<sup>10</sup> *Ibid.*

<sup>11</sup> Dia Anagnostou, Alina Mungiu-Pippidi, 'Domestic Implementation of Human Rights Judgments in Europe: Legal Infrastructure and Government Effectiveness Matter' (2014) 25(1) *The European Journal of International Law*, 205-227, p. 206.

<sup>12</sup> Sopia Kiladze, *op. cit.*, p. 13-14.

<sup>13</sup> Asif Khan, Muhammad Usman, Sohail Amjad, 'The Effectiveness of International Law: A Comparative Analysis' (2023) 2(3) *International Journal of Contemporary Issues in Social Sciences*, 780-786, p. 781.

<sup>14</sup> Wojciech Lamentowicz, 'Why International Law is Less Efficient than Domestic Legal Systems?' (2021) *Per mare ad astra. Space technology, governance and law Conference, Vol. II* (Gdańsk: Polska Akademia Nauk, Oddział w Gdańsku Komisja Nauk Kosmicznych, 2021) 185-193, p. 187.

<sup>15</sup> Sopia Kiladze, *op. cit.*, p. 13.

<sup>16</sup> *Ibid.*

<sup>17</sup> Duško Glodić, 'International Legal Obligations of the States and Problem of Their Implementation' (2024) 14(14) *Godišnjak Fakulteta Pravnih Nauka* 60-74, p. 70; Grigore Vieru, 'Puterea de stat – exercitor contemporan al suveranității naționale' (2018) *State, security and human rights: in condition of information society conference* (Artpoligraf, 2019), 524-538.

represents a horizontal arrangement of judicial, diplomatic and punitive measures with coordinative features<sup>18</sup>. The system has neither a sovereign, nor a superior authority above the states that would be able to enforce the law as in the case of domestic example<sup>19</sup>. Even the International Court of Justice jurisdiction must be accepted by the state parties to a conflict, and it is not taken as granted or imposed with force<sup>20</sup>. Hence, the international challenges are mainly solved through diplomatic channels and cooperation and in the extreme cases- through countermeasures and sanctions<sup>21</sup>.

The effectiveness character can be negatively influenced once the states try to disobey or not recognize anymore what they have agreed on, especially when the powerful actors put their national benefit on a higher scale than the international interest<sup>22</sup>. International law has no other choice than to admit the fact that the political power plays a great role in shaping its trajectory<sup>23</sup>. Therefore, it is very common for the powerful states to play strategic political games without any negative effects against them<sup>24</sup>. Despite the Westphalian rule in which all states are equal, the hegemony effect may not be denied<sup>25</sup>. In the following chapters, we will analyse the effectivity character of international law through the Council of Europe example.

## 2. The Council of Europe System

The second world war left Europe and the whole world in a difficult crisis, bringing important needs for politic, economic and social changes<sup>26</sup>. It was high time to adapt the form of international law, to develop unions with common purposes and sign multilateral treaties in order to maintain peace and security, regionally and internationally<sup>27</sup>. Winston Churchill was one of the most important historical personalities that highlighted the necessity for creating organizations that would promote the democracy and human rights<sup>28</sup>. Considering the Nazi practices that horrified the world, Churchill militated intensively for an European integration movement especially through economic cooperation and a common human right protection framework<sup>29</sup>.

While at international level, the main entity to maintain the proper cooperation between the states was the UN, on the European continent there were created two main organizations: the European Coal and Steel Community, to overcome the post-war political and economic challenges and the Council of Europe (hereinafter CoE), that was perceived as a prompter and protector of human rights on the European continent<sup>30</sup>. As of the end of the war, it could be easily observed that Europe had to prevent the massive human rights violations that were aggressively spread during the war and overcome the serious deficiency of international law in which a state violation against its own population and territory represented a domestic matter where the international community could not intervene<sup>31</sup>.

<sup>18</sup> Sopio Kiladze, *op. cit.*, p. 13; Asif Khan, Muhammad Usman, Sohail Amjad, *op. cit.*, p. 781.

<sup>19</sup> *Ibid.*

<sup>20</sup> Statute of the International Court of Justice (1945) 33 UNTS 993, art. 36.

<sup>21</sup> Sopio Kiladze, *op. cit.*, p. 15, 18.

<sup>22</sup> *Ibid.*, p. 7-8.

<sup>23</sup> *Ibid.*, p. 12, 13.

<sup>24</sup> Wojciech Lamentowicz, 'Why International Law is Less Efficient than Domestic Legal Systems?' (2021) *Per mare ad astra. Space technology, governance and law Conference, Vol. II* (Gdańsk: Polska Akademia Nauk, Oddział w Gdańsku Komisja Nauk Kosmicznych, 2021) 185-193, p. 187.

<sup>25</sup> Eyal Benvenisti, George Downs, 'The Empire's New Clothes: Political Economy and The Fragmentation of International Law' (2007) 60(2) *Stanford Law Review*, 595- 631, p. 597, 625.

<sup>26</sup> Rory O'Connell, 'Council, Convention and Court: Origins and Evolution' in *Law, Democracy and the European Court of Human Rights* (Cambridge University Press 2020) 33-64, <https://doi.org/10.1017/9781139547246.005> p. 33.

<sup>27</sup> *Ibid.*, p. 33.

<sup>28</sup> *Ibid.* p. 36.

<sup>29</sup> *Ibid.*

<sup>30</sup> *Ibid.*, p. 33, 41.

<sup>31</sup> *Ibid.*, p. 36-37.

Established in 1949, at Strasbourg, the CoE was created with the main purpose to unify the vision of the European countries on human rights aspects<sup>32</sup> and was based on three main pillars: the imperativeness of the law, the political pluralism and the importance of the universal human rights protection<sup>33</sup>. Hence, the organization wanted to spread the democratic visions in order to combat the totalitarian mentality that almost diminished the continent and took away the lives of millions of people<sup>34</sup>. Therefore, being inspired by the Universal Declaration of Human Rights, the organization adopted the ECHR in 1950, which codified a series of human rights and fundamental liberties that were vital for a democratic society<sup>35</sup>. The main purpose of the Convention was to include the core rights that could be easily implemented by the states<sup>36</sup>. Some of these rights can be referred as: torture, slavery and forced labour prohibition, right to life, liberty, security, fair trial, private life, thought, conscience, religion, expression, assembly, association and others<sup>37</sup>. With time, the treaty was supplemented with a series of addition protocols, that were not ratified by all the states as some of them did not accept provisions regarding private life, education and democratic institutions<sup>38</sup>.

In order to protect these fundamental human rights, the Convention system established the ECtHR<sup>39</sup>, a regional human rights court composed of one judge per member state that renders judgements regarding interstate or individual complaints<sup>40</sup>. Out of the 200 human rights treaties adopted by the CoE, still the ECHR remains to be the most elaborated instrument of human rights protection in the whole world<sup>41</sup>. Thus, the ECtHR is not just a regular regional court that issues decisions or recommendations, but it may be considered one of the most important human rights courts in the whole international law system<sup>42</sup>. These powerful statements follow the changes brought by the 11<sup>th</sup> Protocol that provided advanced mechanisms of human rights protection in Europe, that lead to palpable democratic developments<sup>43</sup>. Therefore, what makes the Convention system so successful is that it is not just a classic interstate treaty but it also provides a judicial mechanism that allows individual persons to complaint against the human rights violation regulated in the articles<sup>44</sup>. Nevertheless, important factors that played a great role in the efficiency of the Court can be referred as the recognition at high-level of the Court's rigid authority and the systemic control of the decision implementation provided by the Committee of Ministers (hereinafter the Committee or CM)<sup>45</sup>. It has been even argued that the Convention system represents a 'constitutional instrument of the European legal order' that gained people's trust<sup>46</sup>.

<sup>32</sup> Alice Donald, Jane Gordon, Phillip Leach, *The UK and the European Court of Human Rights* (Human Rights and Social Justice Research Institute 2012), p. 6.

<sup>33</sup> Diana Sârcu, 'Rolul Consiliului Europei în Promovarea și Protecția Drepturilor Omului în Spațiul Pan-European' (2009) 4 *Revista Moldovenească de Drept Internațional și Relații Internaționale*, 180-183, p. 181.

<sup>34</sup> Rory O'Connell, *op. cit.*, p. 33, 45.

<sup>35</sup> Alice Donald, Jane Gordon, Phillip Leach, *op. cit.*, p. 6- 7.

<sup>36</sup> Rory O'Connell, *op. cit.*, p. 46-47.

<sup>37</sup> European Convention on Human Rights (adopted 4 November 1950, entered into force 3 September 1953) ETS No 5.

<sup>38</sup> Rory O'Connell, *op. cit.*, p. 47.

<sup>39</sup> European Convention on Human Rights (adopted 4 November 1950, entered into force 3 September 1953) ETS No 5, Art. 19; Maxim Toncogla, 'Rolul Hotărârilor Curții Europene a Drepturilor Omului și Consecințele Juridice ale Deciziilor în Ordinea Juridică Internă a Statelor Membre ale Consiliului Europei' (2020) 2 *Vector European*, 48-51, p. 49.

<sup>40</sup> Diana Sârcu, 'Rolul Consiliului Europei în Promovarea și Protecția Drepturilor Omului în Spațiul Pan-European' (2009) 4 *Revista Moldovenească de Drept Internațional și Relații Internaționale*, 180-183, p. 181; Sârcu Diana, 'Elaborarea Actului Jurisdicțional Internațional' (2010) 3 *Revista Moldovenească de Drept Internațional și Relații Internaționale*, 123-127, p. 124.

<sup>41</sup> *Ibid.*

<sup>42</sup> Rory O'Connell, *op. cit.*, p. 50.

<sup>43</sup> Maxim Toncogla, *op. cit.*, p. 49.

<sup>44</sup> Diana Sârcu, 'Rolul Consiliului Europei în Promovarea și Protecția Drepturilor Omului în Spațiul Pan-European' (2009) 4 *Revista Moldovenească de Drept Internațional și Relații Internaționale*, 180-183, p. 181.

<sup>45</sup> Maxim Toncogla, *op. cit.* p. 49; Nils Muižnieks, 'Non-implementation of the Court's judgments: our shared responsibility' (*Commissioner for Human Rights, Council of Europe*, 23 August 2016)

<https://www.coe.int/en/web/commissioner/-/non-implementation-of-the-court-s-judgments-our-shared-responsibility> > accessed 26 March 2025.

<sup>46</sup> *Ibid.*

Initially, the CoE system provided the classic interstate procedure in which the ECtHR gained jurisdiction only through recognition<sup>47</sup>. The Court's limited powers however were adapted with the introduction of a petitionary mechanism through which individual persons that suffered from human rights violations were granted the right to application, and the state was imposed a compliance obligation<sup>48</sup>. Hence, the Court is entitled to adjudicate interstate complains, individual applications, but also to present advisory opinions and hear the execution challenges, from the CM<sup>49</sup>. In order to provide a decision, the Court uses both internal or external legal sources (i.e., written legal regulations, case law or judicial precedents, legal practice and customary law) and non-legal sources (i.e., policies or morality)<sup>50</sup>.

The political figure and the executive body that assures the proper implementation of the Convention's articles and the decisions of the Court, is called the Committee of Ministers that is usually composed of one minister of foreign affairs per member state<sup>51</sup>. Hence, according to article 13 of the Statute of the CoE, the Committee is entitled to act on behalf of CoE<sup>52</sup>. Thus, it is the main body to participate at the establishment of agreements and policies and to issue implementing recommendations for the states<sup>53</sup>. It is also considered to be the guardian of the Convention that supervises the fair execution of the obligations that the states have under ECHR<sup>54</sup>.

### 3. The Mandatory Obligation of Implementing an ECTHR Decision

#### *Pacta sunt servanda principle*

One general and universal rule of public international law is that once a state has signed and ratified a treaty, it should respect the legal binding effects and the enforcement mechanism provided by the certain instrument<sup>55</sup>. Thus, *pacta sunt servanda bonnae fidae*, represents one of the most important and imperative principles of public international law, provided in the 26<sup>th</sup> article from Vienna Convention on the Law of the Treaties (VCLT) that has established the binding effect for the parties to a treaty, which must implement their commitments with good faith<sup>56</sup>. The ECHR prescribes the *pacta sunt servanda* principle and the binding force of the Court's decisions through article 1 and 46 and stipulates that each member state has the duty to respect the rights and obligations provided by the Convention<sup>57</sup>.

The mandatory jurisdiction of the Court was reinforced by the 11<sup>th</sup> Protocol to the Convention<sup>58</sup>. This provision represents the origin to the conflict between *pacta sunt servanda* and national sovereignty, which has been widely debated in the academic literature and by state authorities, as the main question that arises

<sup>47</sup> Rory O'Connell, *op. cit.*, p. 51.

<sup>48</sup> *Ibid.*, p. 52-54.

<sup>49</sup> *Ibid.*

<sup>50</sup> Kanstantsin Dzehtsiarou, 'What is Law for the European Court of Human Rights?' (2017) 49(1) *Georgetown Journal of International Law*, 89-134, p. 95-96.

<sup>51</sup> Rory O'Connell, *op. cit.*, p. 42; Alice Donald, Jane Gordon, Phillip Leach, *op. cit.*, p. 11; European Court of Human Rights, 'Ghid privind art. 46 din Convenția Europeană a Drepturilor Omului. Forța obligatorie și executarea hotărârilor' (2023) Council of Europe < [https://ks.echr.coe.int/documents/d/echr-ks/guide\\_art\\_46\\_rum](https://ks.echr.coe.int/documents/d/echr-ks/guide_art_46_rum) > accessed 20 March 2025, p. 14.

<sup>52</sup> Diana Sârcu, 'Rolul Consiliului Europei în Promovarea și Protecția Drepturilor Omului în Spațiul Pan-European' (2009) 4 *Revista Moldovenească de Drept Internațional și Relații Internaționale*, 180-183, p. 183; Statute of the Council of Europe (adopted 5 May 1949, entered into force 3 August 1949) 87 UNTS 103, art. 13.

<sup>53</sup> *Ibid.*, art 15; European Convention on Human Rights (adopted 4 November 1950, entered into force 3 September 1953) ETS No 5, art. 46(2).

<sup>54</sup> Alice Donald, Jane Gordon, Phillip Leach, *op. cit.*, p. 11.

<sup>55</sup> Rory O'Connell, *op. cit.*, p. 50; Augustina Șiman, *op. cit.*, p. 189-200.

<sup>56</sup> *Ibid.*; Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331, art. 26.

<sup>57</sup> European Court of Human Rights, 'Ghid privind art. 46 din Convenția Europeană a Drepturilor Omului. Forța obligatorie și executarea hotărârilor' (2023) Council of Europe < [https://ks.echr.coe.int/documents/d/echr-ks/guide\\_art\\_46\\_rum](https://ks.echr.coe.int/documents/d/echr-ks/guide_art_46_rum) > accessed 20 March 2025, p. 7.

<sup>58</sup> Maxim Toncoglaz, (*op. cit.*), p. 49.

is why a sovereign country should obey a decision issued by a foreign court and accept it as a hierarchical statement?<sup>59</sup> It is important to mention though that international law does not deny the sovereignty character of a state, however, once the state decides to be part of an international organization, it must be aware of the fact that the membership brings a commitment to the common values shared by this organization<sup>60</sup>. Therefore, if a state ratifies an international treaty, as a matter of course it accepts and bears not just a moral or political obligation, but also a codified legal one<sup>61</sup>. The main purpose of the ECHR system was to formulate and shape human rights standards that would become mandatory for the state parties to the Convention who would be bound to adapt their national systems accordingly<sup>62</sup>.

In order to respect the rights and obligations set by the Convention, the state must terminate the human rights violations and pay financial damages or implement national developments<sup>63</sup>. The ECHR system follows the *restitutio integrum* principle, that is also set by article 35 ARSIWA (Articles on Responsibility of States for Internationally Wrongful Acts), that regards the re-establishment of the victim's initial situation<sup>64</sup>. If the reinstatement may not be possible, then the state must offer an equitable financial repay<sup>65</sup> and provide individual or general measures within the domestic system which should be compliant with the ECHR standards<sup>66</sup>.

The Court usually issues two types of concepts: *in concreto*, in which the Court establishes the scope of a state liability in a specific case and *in abstracto*, in order to evaluate a law problem or a state practice in general<sup>67</sup>. Therefore, an interesting matter about the ECHR system relies in the mandatory and opposable character of an obligation in the following cases: the opposability of the general standards provided throughout the Convention and the case law, the *in concreto* measures held by the Court for the parties to a case and the third-party opposability.

The first rule regards the fact that the general standards provided by the ECHR, specially created under the *res interpretata* principle, are always mandatory and opposable for all member states, despite them not being part in a case<sup>68</sup>. Hence, the purpose of the *res interpretata* principle is to interpret a phenomenon in order to harmonize a human right standard<sup>69</sup>. Therefore, all member states are obliged to ensure that these standards are being met throughout their legislation accordingly<sup>70</sup>.

<sup>59</sup> Duško Glodić, 'International Legal Obligations of the States and Problem of Their Implementation' (2024) 14(14) *Godišnjak Fakulteta Pravnih Nauka* 60-74, p. 62.

<sup>60</sup> *Ibid.*

<sup>61</sup> *Ibid.*, p. 63.

<sup>62</sup> Maxim Toncoglaz, *op. cit.*, p. 48; Viorica Gabriela Rotaru, 'Mecanisme Jurisdicționale Internaționale de Protecție și Garantare a Drepturilor Omului' (2009) 8 *Revista Națională de Drept*, 35-39, p. 37.

<sup>63</sup> European Court of Human Rights, 'Ghid privind art. 46 din Convenția Europeană a Drepturilor Omului. Forța obligatorie și executarea hotărârilor' (2023) Council of Europe <[https://ks.echr.coe.int/documents/d/echr-ks/guide\\_art\\_46\\_rum](https://ks.echr.coe.int/documents/d/echr-ks/guide_art_46_rum)> accessed 20 March 2025, p. 8; Papamichalopoulos v. Greece (1995), 14556/89 (ECtHR, 31 October 1995), pt. 34.

<sup>64</sup> Pavel Šturma 'State Responsibility and the European Convention on Human Rights' (2020) *Czech Yearbook of Public & Private International Law* <<https://rm.coe.int/the-issues-of-state-responsibility-before-the-ecthr/1680a05736>>, p. 1, 17-18; European Court of Human Rights, 'Ghid privind art. 46 din Convenția Europeană a Drepturilor Omului. Forța obligatorie și executarea hotărârilor' (2023) Council of Europe <[https://ks.echr.coe.int/documents/d/echr-ks/guide\\_art\\_46\\_rum](https://ks.echr.coe.int/documents/d/echr-ks/guide_art_46_rum)> accessed 20 March 2025, p. 8; Mammadov v. Azerbaijan (2019), 15172/13 (ECtHR, 29 May 2019), pc.151.

<sup>65</sup> *Ibid.*; Brumărescu v. Romania, (2001) 28342/95 (ECtHR, 23 January 2001), pt. 20.

<sup>66</sup> *Ibid* p. 8-9; Scordino v. Italy (2006), 36813/97 (ECtHR, 29 March 2006), pt. 232-234; Mammadov v. Azerbaijan (2019), 15172/13 (ECtHR, 29 May 2019), pt.186.

<sup>67</sup> Olga Beneș 'Întinderea și Intensitatea Caracterului Obligatoriu al Hotărârilor CEDO' (2011) *Știința juridică autohtonă prin prisma valorilor și tradițiilor europene Conference* (Grafema Libris 2011) 64-69.

<sup>68</sup> *Ibid.*, p. 66; Janneke Gerards, Joseph Fleuren, *Implementation of the European Convention on Human Rights and of the Judgements of the EctHR in National Case-Law* (Intersentia, 2014), p. 22-23.

<sup>69</sup> *Ibid.*, p. 23.

<sup>70</sup> Serghei Țurcan, 'Efectul *Res Interpretata* a Jurisprudenței Curtii Europene a Drepturilor Omului în Jurisprudența Curtii Constituționale a Republicii Moldova' (2021) 2 *Studii Juridice Universitare*, 241-250, p. 244.



Once the Court's judgement becomes final, the respondent state has the obligation to provide in 6 months an evolving action plan, with the detailed steps and engagements for overcoming the violation of the human right<sup>82</sup>. The respondent state actively cooperates with the CM, and organizes 4 meetings per year to discuss the level and the achievements of the implementation, by reporting the successes and deficiency throughout the process<sup>83</sup>. Usually, the CM advises the state to designate a specific coordinator or a state authority that has the necessary capacity to inform, provide measures and execute them<sup>84</sup>. Considering that each member state represents a unique conglomerate of tradition, mentality and values, it is almost impossible to have a uniform practice of compliance<sup>85</sup>. Therefore, the member states are free to decide the modality of implementation as long as they preserve the standards imposed by the Convention and the ECHR authorities<sup>86</sup>.

The Interlaken Declaration (2010) has addressed the state responsibility in regard of case law compliance. The states were required to proceed to institutional cooperation among national authorities for preventing the repetitive applications<sup>87</sup>. The declaration reiterated that the states should focus on maintaining an appropriate execution of the measures provided by the developing case law of the Court and the Committee's recommendations by adopting effective legal remedies<sup>88</sup>. In light of the Interlaken prospects, in order to promote the efficient compliance, the CM has introduced a 'prioritization system' that can be divided into the enhanced or standard supervision<sup>89</sup>. The enhanced one requires a strengthened supervision practice and is applied for inter-state cases, urgent cases that show national structural or complex issues, or pilot judgement cases<sup>90</sup>. The rest applications are being supervised under the general rules<sup>91</sup>.

The key to a successful implementation lies in a well-developed diplomatic channel between the state and the CM, that usually engages into frequent and transparent dialogue and guidance<sup>92</sup>. The member states are also kindly asked to sustain the authority of the Court and instruct the domestic bodies to maintain a serious concern about the judgement compliance<sup>93</sup>. The supervision process terminates once the state issues and

<sup>82</sup> European Implementation Network, *Implementation of Judgements of the European Court of Human Rights* (2018) <[https://static1.squarespace.com/static/55815c4fe4b077ee5306577f/t/5e1c2ac53d0fa72e53f955c4/1578904366756/202001\\_EIN\\_HandbookEN\\_Website.pdf](https://static1.squarespace.com/static/55815c4fe4b077ee5306577f/t/5e1c2ac53d0fa72e53f955c4/1578904366756/202001_EIN_HandbookEN_Website.pdf)> last accessed 3 April 2025, p. 4.

<sup>83</sup> *Ibid.*, Department for the Execution of Judgements of the European Court of Human Rights 'Rules and working methods of the Committee of Ministers' (*Council of Europe*) <<https://www.coe.int/en/web/execution/rules-and-working-methods>> accessed 3 April 2025.

<sup>84</sup> Recommendation CM/Rec(2008)2 of the Committee of Ministers to Member States on Efficient Domestic Capacity for Rapid Execution of Judgments of the European Court of Human Rights (adopted 6 February 2008) <[https://search.coe.int/cm/#{%22CoEIdentifier%22:\[%2209000016805ae618%22\],%22sort%22:\[%22CoEValidationDate%20Descending%22\]}](https://search.coe.int/cm/#{%22CoEIdentifier%22:[%2209000016805ae618%22],%22sort%22:[%22CoEValidationDate%20Descending%22]})> accessed 29 March 2025, pt.1.

<sup>85</sup> Janneke Gerards, Joseph Fleuren, *op. cit.*, p. 24.

<sup>86</sup> *Ibid.*, p. 24, 27.

<sup>87</sup> Interlaken Declaration, 'Interlaken Declaration on the Reform of the European Court of Human Rights' (19 February 2010) pt. D.7.

<sup>88</sup> *Ibid.*, B.4.

<sup>89</sup> Council of Europe, *The Interlaken Process. Measures taken from 2010 to 2019 to secure the effective implementation of the European Convention on Human Rights* (2020) <<https://rm.coe.int/processus-interlaken-eng/1680a059c7>> accessed 3 April 2025, pt. 181, p. 91.

<sup>90</sup> *Ibid.*

<sup>91</sup> *Ibid.*; Interlaken Declaration, 'Interlaken Declaration on the Reform of the European Court of Human Rights' (19 February 2010) pt. F. 11.

<sup>92</sup> *Ibid.*, pt. 188, p. 93; Recommendation CM/Rec(2008)2 of the Committee of Ministers to Member States on Efficient Domestic Capacity for Rapid Execution of Judgments of the European Court of Human Rights (adopted 6 February 2008) <[https://search.coe.int/cm/#{%22CoEIdentifier%22:\[%2209000016805ae618%22\],%22sort%22:\[%22CoEValidationDate%20Descending%22\]}](https://search.coe.int/cm/#{%22CoEIdentifier%22:[%2209000016805ae618%22],%22sort%22:[%22CoEValidationDate%20Descending%22]})> accessed 29 March 2025.

<sup>93</sup> *Ibid.*

sends an action report to the CM, that must analyse and approve it, through a Final Resolution<sup>94</sup>. During this implementation process, the applicant and the human right NGOs can always report about any recurring problem<sup>95</sup>. In case a member state refuses to implement the decision, according to article 46(4) ECHR, the CM has the right to inform the Court about this deficiency<sup>96</sup>. Then, the Court itself can issue a final decision regarding that case through a very rarely used mechanism called infringement procedure<sup>97</sup>.

This paragraph aimed to discuss the scope of the compliance obligation of the member states to respect the standards of the Convention and implement the decisions of the Court with good faith. The statistics prove that the states that implement more efficiently the ECtHR decisions, are the ones in which there is a high level of awareness and monitoring, a strong political will, and a high capacity of legal enacting, and prosperous financial and institutional management<sup>98</sup>. Moreover, it has been stated that as a positive progress, there are less repetitive cases in the last years, as the majority of the member states respect and implement the Court's guidelines and critique<sup>99</sup>. Unfortunately, not all the member states fully comply with their obligations, as some of them execute the recommendations very belatedly or even try to disregard them<sup>100</sup>.

Even if a member state can doubt the authority and power of the ECtHR as an international judicial body, it has been recognized on a high-level that the case law of this court has set very high standards for international human rights law<sup>101</sup>. Therefore, if a state chooses to implement the guidelines of such a respectable court, in this manner it demonstrates a high democratic endeavour and positive evolution of the domestic legal system<sup>102</sup>.

#### 4. The Problematic and the Non-Compliance Effects

As a rule, the implementation of human rights judgements represents a convoluted mechanism in which a state must redress its domestic legal system in line with the ratified international standards, by adapting the laws, increasing the capacity of the national institutions, adapting the state conditions etc.<sup>103</sup>. However, even if the states acknowledge the legal obligation that bears a ratified treaty, it is not uncommon for them to breach the *pacta sunt servanda* principle<sup>104</sup>. Although the Interlaken process had an important role in addressing the implementing challenges, still, the data remains concerning, as it reveals a very high level of non-

<sup>94</sup> Department for the Execution of Judgements of the European Court of Human Rights 'The supervision process' (*Council of Europe*) <[https://www.coe.int/en/web/execution/the-supervision-process#%2214997657%22:\[1\],%2214997692%22:\[1\],%2259551776%22:\[\]>](https://www.coe.int/en/web/execution/the-supervision-process#%2214997657%22:[1],%2214997692%22:[1],%2259551776%22:[]>) accessed 3 April 2025; Department for the Execution of Judgements of the European Court of Human Rights 'Rules and working methods of the Committee of Ministers' (*Council of Europe*) <<https://www.coe.int/en/web/execution/rules-and-working-methods> > accessed 3 April 2025.

<sup>95</sup> *Ibid.*

<sup>96</sup> European Convention on Human Rights (adopted 4 November 1950, entered into force 3 September 1953) ETS No 5, art. 46(4).

<sup>97</sup> Olga Beneș 'Implementarea Hotărârilor Curții Europene a Drepturilor omului: ultimele Decizii ale Comitetului de Miniștri' (2021) 2 *Studii Juridice Universitare*, 50-55, p. 53. Mammadov v. Azerbaijan (2019), 15172/13 (ECtHR, 29 May 2019); European Court of Human Rights, 'Q&A – the Infringement Procedure of the European Court of Human Rights' (*ECHR Press Unit*, June 2022) <[https://www.echr.coe.int/documents/d/echr/Press\\_Q\\_A\\_Infringement\\_Procedure\\_ENG](https://www.echr.coe.int/documents/d/echr/Press_Q_A_Infringement_Procedure_ENG)> accessed 3 April 2025.

<sup>98</sup> Dia Anagnostou, Alina Mungiu-Pippidi, *op. cit.*, p. 221, 227.

<sup>99</sup> Council of Europe, *The Interlaken Process. Measures taken from 2010 to 2019 to secure the effective implementation of the European Convention on Human Rights* (2020) <<https://rm.coe.int/processus-interlaken-eng/1680a059c7> > accessed 3 April 2025, pt. 206, p. 98; Thomas Hammarberg, 'Judgments issued by the European Court cannot be ignored' (*Commissioner for Human Rights, Council of Europe*, 19 July 2011) <<https://www.coe.int/en/web/commissioner/-/judgments-issued-by-the-european-court-cannot-be-ignor-1> > accessed 26 March 2025.

<sup>100</sup> *Ibid.*

<sup>101</sup> Viorica Gabriela Rotaru, *op. cit.*, p. 38.

<sup>102</sup> Maxim Toncoglaz, *op. cit.*, p. 49.

<sup>103</sup> Dia Anagnostou, Alina Mungiu-Pippidi, *op. cit.*, p. 207-209.

<sup>104</sup> Simma Bruno, Christian Tams 'Reacting against Treaty Breaches' in *The Oxford Guide to Treaties* (Oxford University Press, 2020) 568-594, p. 569.

compliance<sup>105</sup>. The problem usually results from the lack of state capacity, political will or disagreement with the Court's decision<sup>106</sup>. Other circumstances that can be highlighted refer to: legal reasons, national reforms, budgetary procedures, public opinion, conflicts of obligations and others<sup>107</sup>.

Still, according to CCDH (the Steering Committee for Human Rights), the major causes of non-compliance remain to be caused by the political will or the technical problems appeared in complex cases<sup>108</sup>. Considering its political role and character, the CM tries to combine the political mechanism with the judicial norms in order to extend a proper implementing procedure<sup>109</sup>. If a state refuses unequivocally to implement a judgement, the best measure to address this issue is to maintain a political cooperation<sup>110</sup>. Still, it is very worrying that some states maintain a chronic practice of non-enforcement<sup>111</sup>. Although it may be understandable that the democratic policies require time or cultural acceptance, still according to the international responsibility rules, the states must perform their ratified duties in a prompt and effective manner<sup>112</sup>. It is concerning to acknowledge that Azerbaijan, Russia, Hungary, Ukraine, Turkey, Bulgaria, Italy, Republic of Moldova and others, adopt the repetitive case practice, in which the applicants address the Court recurrently, due to the fact that they did not receive any moral or financial compensation<sup>113</sup>. This aspect leads to lack of judicial independence in Hungary, ongoing defamation in Poland and Croatia, common ill-treatment in Greece etc.<sup>114</sup>.

Another alarming challenge that shall be mentioned refers to the 'toxic anti-Strasbourg rhetoric'<sup>115</sup>. Even the CCDH has raised awareness that besides the fact that a decision may be implemented in 8-10 years, there are also cases when the member states doubt the Court's authority, legitimacy or integrity in line with the sovereignty principle<sup>116</sup>. Even if the states may argue their failure to implement decisions through sovereignty virtues, still, the non-execution of a decision goes beyond any question and is not negotiable<sup>117</sup>. The essence of international law lies in the fact that the state gives up voluntary to a small part of their supreme sovereignty,

<sup>105</sup> George Stafford, 'The Implementation of Judgments of the European Court of Human Rights: Worse Than You Think – Part 2: The Hole in the Roof' (EJIL:Talk, 8 October 2019) <<https://www.ejiltalk.org/the-implementation-of-judgments-of-the-european-court-of-human-rights-worse-than-you-think-part-2-the-hole-in-the-roof/>> accessed 27 March 2025.

<sup>106</sup> Olga Beneș 'Implementarea Hotărârilor Curții Europene a Drepturilor omului: ultimele Decizii ale Comitetului de Miniștri' (2021) 2 *Studii Juridice Universitare*, 50-55, p. 51.

<sup>107</sup> *Ibid.*

<sup>108</sup> Council of Europe, *The Interlaken Process. Measures taken from 2010 to 2019 to secure the effective implementation of the European Convention on Human Rights* (2020) <<https://rm.coe.int/processus-interlaken-eng/1680a059c7> > accessed 3 April 2025, pt. 200, p. 97.

<sup>109</sup> Olga Beneș 'Implementarea Hotărârilor Curții Europene a Drepturilor omului: ultimele Decizii ale Comitetului de Miniștri' (2021) 2 *Studii Juridice Universitare*, 50-55, p. 52.

<sup>110</sup> *Ibid.*

<sup>111</sup> Thomas Hammarberg, 'Judgments issued by the European Court cannot be ignored' (*Commissioner for Human Rights, Council of Europe*, 19 July 2011) <<https://www.coe.int/en/web/commissioner/-/judgments-issued-by-the-european-court-cannot-be-ignor-1>> accessed 26 March 2025.

<sup>112</sup> Nils Muižnieks, 'Non-implementation of the Court's judgments: our shared responsibility' (*Commissioner for Human Rights, Council of Europe*, 23 August 2016) <<https://www.coe.int/en/web/commissioner/-/non-implementation-of-the-court-s-judgments-our-shared-responsibility> > accessed 26 March 2025.

<sup>113</sup> George Stafford, 'The Implementation of Judgments of the European Court of Human Rights: Worse Than You Think – Part 2: The Hole in the Roof' (EJIL:Talk, 8 October 2019) <<https://www.ejiltalk.org/the-implementation-of-judgments-of-the-european-court-of-human-rights-worse-than-you-think-part-2-the-hole-in-the-roof/>> accessed 27 March 2025.

<sup>114</sup> *Ibid.*

<sup>115</sup> Philip Leach, Alice Donald, 'Russia Defies Strasbourg: Is Contagion Spreading?' (*EJIL: Talk*, 19 December 2015) <<https://www.ejiltalk.org/russia-defies-strasbourg-is-contagion-spreading/>> accessed 29 March 2025.

<sup>116</sup> Nils Muižnieks, 'Non-implementation of the Court's judgments: our shared responsibility' (*Commissioner for Human Rights, Council of Europe*, 23 August 2016) <<https://www.coe.int/en/web/commissioner/-/non-implementation-of-the-court-s-judgments-our-shared-responsibility> > accessed 26 March 2025.

<sup>117</sup> *Ibid.*, Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331, Art. 27; Janneke Gerards, Joseph Fleuren, *op. cit.*, p. 20.

therefore committing themselves to particular international obligations<sup>118</sup>. Germany, Italy, the UK and Russia have debated the implementation aspect and challenged the ECtHR's authority<sup>119</sup>. For instance, although the ECHR plays the role of a federal law in Germany, still the courts are advised to give the treaty due consideration, but in the same time to not undermine the national law<sup>120</sup>. The UK also asked the ECtHR to 'treat the domestic system with respect' and to not diminish the reputation of the national courts considering few deficient cases against other multiple valuable precedents<sup>121</sup>.

*The Treaty vs The Constitution: The Russian example*

The Russian Federation portrays a representative example in which there can be analysed the conflictology between the ECHR and the national Constitution. Initially, in 1996, the relationship between the CoE and Russia was very open and cooperative, but it started to damage in 2012, with the controversial Markin case, in which the ECtHR overruled a Constitutional Court decision, leading to protests under the sovereignty and national law supremacy matters<sup>122</sup>. The Markin case is considered by Prof. William E. Pomeranz to be 'the parental leave case that nearly drove a wedge between Russia and ECtHR'<sup>123</sup>. In Markin case, Mr. Markin was a divorced military and father that required an extended three years' parental leave to take care of his children<sup>124</sup>. The Constitutional Court declined his claim considering that he was a special subject, hence a military<sup>125</sup>. Nevertheless, the Constitutional Court addressed the status of motherhood as a privileged position for providing childcare, while the military standings regard specific limitations due to their public engagements<sup>126</sup>. The facts of the case provide a standard precedent based on the parental gender discrimination that is often considered by the Court<sup>127</sup>. Although the ECtHR expressed its views previously on human rights matters in Chechen and political deficiencies, it was the Markin case that started the tension between the state and the organization<sup>128</sup>. This case was often discussed by high officials that raised the proposal to change the national framework so that the decisions issued by interstate bodies may only be implemented if they will not contradict the domestic laws, especially the Constitution<sup>129</sup>.

A few years later, in 2015, a group of parliamentarians brought to the Constitutional Court of Russia the question of state sovereignty, which in their view, it must be superior towards any decision issued by a foreign court with a ratified jurisdiction<sup>130</sup>. The position taken by the Constitutional Court was that in case of such a conflict of norms, the Constitution of Russia must prevail and an international treaty may not interfere with its supreme legal instruments<sup>131</sup>. The state adopted a law in which the Constitutional Court had the right to declare an international body ruling to be not constitutional<sup>132</sup>. Therefore, for the first time in the ECHR history, a ECtHR

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<sup>118</sup> Maria V. Krivenkova, 'Non-Recognition and Non-Execution of the Decisions of International Judicial Bodies' (2019) 9(5) *Helix*, 5354-5357, p. 5355-5356.

<sup>119</sup> William Pomeranz, 'Uneasy Partners: Russia and the European Court of Human Rights' (2012) 19(3) *Human Rights Brief* 17-21, p. 20; Philip Leach, Alice Donald, 'Russia Defies Strasbourg: Is Contagion Spreading?' (*EJIL: Talk*, 19 December 2015) <<https://www.ejiltalk.org/russia-defies-strasbourg-is-contagion-spreading/>> accessed 29 March 2025.

<sup>120</sup> *Ibid.*

<sup>121</sup> *Ibid.*

<sup>122</sup> William Pomeranz, 'Uneasy Partners: Russia and the European Court of Human Rights' (2012) 19(3) *Human Rights Brief* 17-21, p. 17.

<sup>123</sup> *Ibid.*

<sup>124</sup> *Ibid.*; Markin v. Russia (2012), 30078/06 (ECtHR, 22 March 2012), pt. 12-32.

<sup>125</sup> *Ibid.* pt. 33-34

<sup>126</sup> William Pomeranz, *op. cit.*, p. 17.

<sup>127</sup> *Ibid.*

<sup>128</sup> *Ibid.*, p. 18.

<sup>129</sup> *Ibid.* p. 19.

<sup>130</sup> Maria Smirnova, 'Russian Constitutional Court Affirms Russian Constitution's Supremacy over ECtHR Decisions' (*EJIL: Talk*, 15 July 2015) <<https://www.ejiltalk.org/russian-constitutional-court-affirms-russian-constitutions-supremacy-over-ecthr-decisions/>> accessed 29 March 2025.

<sup>131</sup> *Ibid.*

<sup>132</sup> Philip Leach, Alice Donald, 'Russia Defies Strasbourg: Is Contagion Spreading?' (*EJIL: Talk*, 19 December 2015) <<https://www.ejiltalk.org/russia-defies-strasbourg-is-contagion-spreading/>> accessed 29 March 2025.