NEMZETI
KÖZSZOLGÁLATI EGYETEM
ÁLLAMTUDOMÁNYI ÉS NEMZETKÖZI TANULMÁNYOK KAR
NEMZETKÖZI JOGI TANSZÉK

T H E S I S

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Effectiveness of the European Court of Human Rights: The Case of Russia

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INTRODUCTION

The relationship between international law and domestic law is one of the main questions in the theory of international law. On the one hand, international and national laws are two independent legal systems. On the other hand, there is a close relationship between them. National legal systems influence the shaping of international law (for example, bilateral agreements on the regime of state borders reflect the national laws of the respective countries; constitutional provisions are taken into account when agreeing on the provisions of a treaty on the procedure for its entry into force, etc.).[1] International law, in turn, influences national legislation, and this influence is constantly growing. This influence is especially noticeable in the field of human rights protection which should be ensured on a national level through relevant legislation and the judicial system. International institutions often play the role of an observer or watchdog, ensuring that states fulfil their obligations in good faith in relation to their citizens and their rights. However, what happens if the state itself violates these rights or fails to provide adequate protection? In this case, a citizen can seek protection at the international (regional or universal) level and apply it to the appropriate authorities. But even this possibility does not guarantee a full satisfaction of the interests of the citizen and the restoration of his human rights, since the principle of state sovereignty often hinders the compliance with the decisions of international institutions. And although the sovereignty of states is not absolute and unlimited, it is hard to be denied in issues of human rights protection.

Due to the limited effect of international law and its interdependence with national law, questions arise related to the effectiveness of international institutions such as the European Court of Human Rights (ECtHR or the Court). This work will be devoted to the analysis of the effectiveness of the ECtHR in terms of its impact on the system of national law and its effectiveness in protecting the rights of citizens.

The objectives of the paper are the following:

1. Examine the work of the ECtHR: the nature of ECtHR's judgements, how and how often the Court's judgments are implemented by member states, the negative effects of non-compliance.
2. Consider the indicators that affect the effectiveness of the work of the Court, and assess the Court's self-evaluation of effectiveness.
3. Develop an indicator of the effectiveness of the ECtHR.

[1] Alexander Vylegzhanin, *International Law: textbook (*Moscow: Yurayt Publ. House, 2010), 31-32.

4. Study the issue of the relationship between the ECtHR and Russia, as one of the main suppliers of cases to the Court with one of the lowest implementation rates.
5. Examine the question of Russia's compliance with the judgements, the role of ECtHR's ruling in the national legal system and the effect of the recently passed constitutional amendment on the binding force of the Court's decisions.

In the course of work, for a more objective study, an own indicator of the effectiveness of the ECtHR will be developed. It serves to assess the work of the ECtHR as a mechanism for the protection of human rights in Europe. This indicator will also be used to assess the level of influence and effectiveness of the ECtHR as a mechanism for the protection of human rights in Russia.

The thesis intends to contribute to the understanding of the role of international courts, more specifically, the European Court of Human Rights, in human rights protection and their place in the domestic legal systems. Also, it examines the important issue of the effectiveness of the international mechanisms of human rights protection and the states' attitude to such mechanisms. The paper's findings can be further used in the research on the topics of international human rights protection and interrelations between national and international law. The newly developed ECtHR effectiveness indicator can be used in further research on other countries or other international judicial institutions.

1. THEORETICAL ASPECTS OF THE WORK OF THE EUROPEAN COURT OF HUMAN RIGHTS

1.1. Procedure and decision implementation

1.1.1. Court's history

The European Court of Human Rights is also known as the Strasbourg Court due to its location in Strasbourg, France. It is a regional international court functioning under the auspices of the Council of Europe. The Council of Europe was founded after World War II to protect human rights and the rule of law, and to promote democracy in Europe. The member states' first task was to draw up a treaty to secure basic rights for anyone under their jurisdiction: hence the European Convention on Human Rights (ECHR) was adopted in 1950. The Court itself was established on 21 January 1959 based on Article 19 of the ECHR. The first judgement was adopted in 1960.[2]

Initially, individuals did not have direct access to the Court; they had to apply to the European Commission of Human Rights. It would examine the case and if it proved to be well-founded, the Commission would launch the case in the Court. In 1998, Protocol No. 11 came into force and abolished the Commission. The Court became a single full-time body. From that time on individuals were allowed to take cases directly to the Court. Undoubtedly, that increased the number of cases submitted to the Court. Thus, in 2004 Protocol No. 14 was drafted with the aim "to maintain and improve the efficiency of the control system for the long term, mainly in the light of the continuing increase in the workload of the European Court of Human Rights and the Committee of Ministers of the Council of Europe".[3] The Protocol came into force in 2010, three months after Russia ratified it. Between 2006 and 2010 Russia was the only state that was refusing to ratify the Protocol. Among other modifications, the Protocol allowed the Court to filter out clearly inadmissible applications and new admissibility criteria limited the submission of cases where the applicant has not suffered a significant disadvantage. Since then, roughly 54,000 applications are being allocated to a judicial formation per year.[4] Those are applications for which the Court has received a correctly completed form, accompanied by copies of relevant documents. These applications will be examined by a single judge, a

[2] Malcolm Shaw, *International Law*. 4th ed. (Cambridge: Cambridge Univ. Press., 2003): 345-353.
[3] Council of Europe, *Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, Amending the Control System of the Convention*, Treaty Series - No. 194, 2004, https://www.echr.coe.int/documents/library_collection_p14_ets194e_eng.pdf.
[4] Council of Europe, *Analysis of statistics 2020*, https://www.echr.coe.int/Documents/Stats_analysis_2020_ENG.pdf.

Committee or a Chamber of the Court. The number does not include applications which are at the pre-judicial stage so the actual number of applicants is even higher.[5]

1.1.2. Jurisdiction[6]

The Court rules on applications alleging violations of the civil and political rights set out in the European Convention on Human Rights. An application can be lodged by an individual, a group of individuals, a non-governmental organization, and one or more of the 47 contracting states. All members of the Council of Europe are also state parties to the ECHR, including all the European states except Belarus and the Vatican. The Court cannot launch a procedure by itself (ex officio) without an application. The applicant does not have to be national of the state against which they are applying, but the alleged violation must be committed by the state that ratified the ECHR and it must directly affect the applicant.

Although states are allowed to submit interstate complaints to the Court, this happens very rarely. Within more than 70 years of its existence, only five interstate cases have been decided by the Court, and nine more are ongoing.[7] So, the Court can be considered mostly as a higher court for the citizens of member states. This is where citizens can turn if their rights are violated and all the means of protection in their state are exhausted. Also, Protocol No. 16 gave the highest national courts of the states the authority to ask the ECtHR for advisory opinions on pending cases that concern interpretation of the ECHR and its protocols.[8]

1.1.3. Application submission

Applications to the European Court of Human Rights must comply with the formal requirements described in Article 47 of the Rules of Court. For the complaint to be declared admissible and accepted for consideration, the following conditions set out by Article 35 of ECHR must be met:

1) the complaint must be submitted no later than 6 months after the decision has been made by the competent state authority *(ratione temporis)*;
2) the complaint may concern only those violations that occurred after the date of ratification by the state of the European Convention *(ratione temporis)*;

[5] Shaw, 2003. *op. cit.* pp. 351-354.
[6] Council of Europe, *The European Convention on Human Rights* (Strasbourg: Directorate of Information, 1952), Art. 32-34.
[7] European Court of Human Rights, *Inter-State Applications*, https://www.echr.coe.int/Documents/InterState_applications_ENG.pdf.
[8] Council of Europe, *Protocol No. 16 to the Convention for the Protection of Human Rights and Fundamental Freedoms*, Treaty Series - No. 214, 2013, https://www.echr.coe.int/Documents/Protocol_16_ENG.pdf.

3) the subject of the complaint can only be the rights and freedoms guaranteed by the Convention and its additional protocols *(ratione materiae)*;
4) the complaint must concern events that occurred within the territorial jurisdiction of the respondent state *(ratione loci)*;
5) before filing a complaint, the applicant must exhaust all means of protecting his rights within the state.

It should be noted that more than half of the applications to the ECtHR are rejected due to a lack of factual circumstances or due to an incorrectly drawn up application form.[9] Compliance with the above criteria is assessed by a rapporteur judge, who makes the final decision on the admissibility of the case to the Court. Sometimes the judgment on admissibility and merits can be delivered simultaneously.

1.1.4. Adjudication[10]

For more efficient work, the ECtHR is divided into five sections, each of which has its judicial chamber, consisting of the president, vice president and several judges. The judges are elected by the Parliamentary Assembly of the Council of Europe. They are elected for a non-renewable term of nine years.[11] There are 47 judges in total, one per member state. However, judges do not represent their state. They are independent and act as individuals. After the rapporteur judge decides that the case can proceed, the case is referred to a chamber of the Court. It, in turn, can independently decide on the inadmissibility of the complaint and reject it.

Depending on the "complexity" of the case or the "severity" of violation, the case can be allocated to either of the four judicial formations.

1) Single judge. They only conclude on the inadmissibility of the application when it clearly cannot be considered based on the submitted materials.
2) Committee of 3 judges. They rule on the admissibility as well as the merits when the case concerns an issue covered by well-developed case law. In that case, the decision should be voted unanimously.
3) Chamber of 7 judges. They rule on admissibility and merits for cases that concern issues that have not been considered often enough before (a decision is made by a majority). Each chamber includes the Section President and the judge who has the nationality of the state against which the application is filed.

[9] Alyona Semernikova, "European Court of Human Rights and Russia," *Vestnik Tomskogo Gosudarstvennogo Universiteta* 373 (2013): 123. http://vital.lib.tsu.ru/vital/access/manager/Repository/vtls:000466244.
[10] *The European Convention on Human Rights*. Art. 20-31.
[11] *Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms.*

4) Grand Chamber is composed of 17 judges. They rule only on a small, select number of cases. Those cases are either referred to it on appeal from a Chamber decision or raise serious questions of interpretation and application of the ECHR that have not been considered before. Applications never go directly to the Grand Chamber. The Grand Chamber always includes the President and Vice-President of the Court, the five Section presidents, and the national judge.

If the application is not declared inadmissible, it will be referred to one of the five sections of the ECtHR and the state will be notified of the complaint. During this time, both the applicant and the state can provide their observations on the case to the Court.

When the Chamber decides on the merits, there is a three-month period before the decision becomes final. During this period, any of the parties may request a hearing before the Grand Chamber. However, the Grand Chamber only handles a limited number of exceptional cases.[12]

1.1.5. Execution of Court decisions and their effect[13]

Once the Court delivers a judgement finding a violation of the ECHR, the respondent state is obliged to comply with the judgement as soon as it becomes final and must execute it. In order to supervise the respondent state's compliance with this obligation, the final judgement is transmitted to the Committee of Ministers of the Council of Europe. This responsibility is enshrined in Article 46 of the ECHR.

The respondent state must implement the measures imposed by the Court. There are two groups of measures:

1) *Individual measures* concerning the applicant. They relate to the obligation to erase the consequences suffered by the applicant because of the violations (*restitutio in integrum).* They include payment of just satisfaction, the sum of which is established by the Court, and taking some further actions by the states if applicable. Just satisfaction is meant to cover all the material and moral damage of the applicant. Other individual measures serve to erase the consequences of the violations. For example, they may include reopening of unfair criminal proceedings, reinstatement of the claimant's rights,

[12] *The European Convention on Human Rights*.
[13] Jonathan Sharpe, *The Conscience of Europe: 50 Years of The European Court of Human Rights* (London: Third Millennium Publ., 2011), 88-93.

destruction of information gathered in breach of the right to privacy, modification in criminal records or other official registers, etc.[14]

2) *General measures.* They are meant to prevent similar violations in the future or put an end to continuing violations in the respondent state. General measures imply amending the legislation, changing the judicial practice, improvement of conditions of detention, and others. Some cases may even involve constitutional changes.[15]

The respondent state communicates the measures envisaged to the Committee of Ministers in the form of Action Plans. When the state considers that it has taken all the necessary steps to erase the violation and its consequences, it submits an Action Report. The Committee of Ministers holds four regular meetings every year dedicated to supervising the execution of the Court's judgments. During those meetings, the Committee of Ministers reviews the submitted Action Reports and in case of their approval, it closes the case by adopting a Final Resolution. During the supervision process, the applicants may inform the Committee of any problems regarding the compensation payments or any other measures taken. Also, civil society plays an important role in the supervision process and may submit any concerns regarding the execution of the judgement.[16]

States are bound by the decisions of the Court and must comply with them. However, the Court does not have the power to overturn a national decision or overrule national laws. The Committee of Ministers has more powers enforcing the implementation, but these are rather soft and diplomatic. Moreover, the case is considered to be closed when the state pays the compensation in full. In other words, the state can decide to pay compensation, but not to amend the legislation, while in practice the case will be listed as closed. That is, despite the binding nature of the Court's rulings, the decision on the full implementation of these rulings remains with the state.

To conclude, the ECtHR is a fairly well-designed institution, which makes it one of the most effective mechanisms for-human rights protection in Europe. Its relevance is evidenced by the number of complaints filed annually, and the amount of compensation paid by the member states to comply with their obligations under the ECHR. Nevertheless, the question of the effectiveness of the Court still arises, and the main reason for this is the lack of enforcement powers. This issue will be discussed in detail in the next section.

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[14] Council of Europe - Department for the Execution of Judgments of the ECtHR, "The Supervision Process," accessed October 15, 2021, https://www.coe.int/en/web/execution/the-supervision-process.
[15] Ibid.
[16] Council of Europe OP Services, "The Supervision of the Execution of Judgments of the European Court of Human Rights," *Vimeo*, June 21, 2018, video, 3:54, https://vimeo.com/276224475.

1.2. Approaches to measuring the efficiency of the European Court of Human Rights

Experts agree that the European Court of Human Rights is one of the most effective institutions for human rights protection.[17] Jurisdiction of the Court extends to approximately 837 million people in 47 countries. The Court acts as an institutional system beyond a national level where individuals can seek help if a state violates their human rights and fundamental freedoms. This is possible due to the binding force of the Court's decisions to member states which is enshrined in article 46 of the ECHR. This means that the Court's finding imposes on the respondent state a legal obligation to put an end to the breach and make reparation for its consequences.

Also, ECtHR rulings have *erga omnes* effects meaning that the judgments are potentially binding to all the contracting parties because the Court in its judgements interpreted the Convention, which is binding to all the members.[18]

Despite its key role in human rights protection in the region, some argue that the Court became a "victim of its own success".[19] Since 1999 when the Court became a single full-time body and individuals were allowed to apply to the Court directly, the number of allocated cases increased by 627 per cent by 2010. Thanks to Protocol No. 14, which entered into force that year and allowed to filter out more inadmissible cases, the number of allocated cases dropped by 42 per cent by 2020 (396 per cent increase compared to 1999). It is important to know that these statistics include only the allocated cases (assigned to a judicial formation). The statistics on applications lodged or introduced over a given period are less relevant since the fact of filing an application does not make it a pending application before the Court. Thus, an application is not included in the Court's statistics until it is assigned to any judicial formation. The above figures clearly show how the popularity of the Court as a mechanism for protecting the rights of individuals grew over the years. The reasons for this lie in many factors. Among the most significant ones, experts note the Court's positive public reputation, its broad interpretation of the ECHR, mistrust of national judicial authorities in some countries, and entrenched human rights concerns in different states.[20]

However, the number of applications allocated (lodged) does not determine the effectiveness of a court. Rather, it speaks of the level of trust in the court and its "accessibility"

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[17] Laurence Helfer, "Redesigning the European Court of Human Rights: Embeddedness as a Deep Structural Principle of the European Human Rights Regime," *European Journal of International Law* 19 no. 1 (February 1, 2008): 125, https://doi.org/10.1093/ejil/chn004.

[18] Davíd Björgvinsson, "The Effect of the Judgments of the ECtHR before the National Courts – A Nordic Approach?" In *Nordic Journal of International Law* (2017): 304, https://doi.org/10.1163/9789004343597_009.

[19] BBC News, "Profile: European Court of Human Rights, " February 5, 2015, https://www.bbc.com/news/world-europe-16924514.

[20] Helfer, 2008. *op. cit.* p. 126.

for individuals. The ECtHR itself, in its statistical data and annual reports, constantly mentions the number of decided applications in a given period. Applications are "decided" when they are declared inadmissible or struck out of the list of cases (in a decision), or when a judgment is delivered in their respect. Thus, in 2020, 39,190 applications were decided overall. Of these, 37,289 applications (or 94.15 per cent) were recognized as inadmissible or struck out of the list of cases. That is, the decision was made on the merits in respect of the violations that took place in 4.85per cent of cases (1,901 applications). In 2019 – in 5.38 per cent of cases, in 2018 – in 6.4 per cent of cases. Overall, the average number of cases decided by the judgment delivered in the period from 2007 to 2020 was 3,091 cases per year (5.95 per cent). The maximum number of judgments delivered on the merits to all decided applications was in 2017 – 18.14 per cent.[21]

However, the above data are more indicative of how good judges (mostly in single-judge formation) are at analysing an application for human rights violations or compliance with formal criteria. In other words, these decisions do not judge on human rights violations but rather conclude on the compliance of the case with the Court's formal criteria (*ratione temporis, ratione materiae,* and *ratione loci*), interpretation of the Convention, comparison of a specific case with the general human rights protection practice, and so on. This indicator can be used to assess the quality of the cases submitted, perhaps the general legal education of the applicants and their lawyers, the work of the ECtHR as a judicial institution, but not as an indicator of the effectiveness of the Court's work as a way to protect the rights of individuals.

As noted earlier, the number of applications to the Court has grown steadily over the years, while there have been no significant structural changes in the work of the Court, until the entry into force of Protocol No. 14 in 2010. This naturally led to the accumulation of applications and the number of pending applications increased from year to year. The highest number was achieved in 2011 – 151,600 pending applications (for comparison – 64,200 applications were allocated to a judicial formation that year). As of the end of 2020, 62,000 applications were pending (41,700 applications were allocated the same year). This trend has prompted the need for reforms to reduce the Court's caseload. Alongside Protocol No. 14, which was described before, a prioritisation policy has been pursued to speed up processing times and to dispose of the most important, most serious and most urgent cases.[22] The Protocol and this reform were part of the Interlaken Process initiated in 2010. Before 2010, the cases were adjudicated by the Court mainly in chronological order which led to situations when the most

[21] More statistical data and sources can be found in Annex No. 1 Decided applications by years.
[22] Registrar of the European Court of Human Rights, *The European Court of Human Rights Is Launching a New Case Processing Strategy*, ECHR 092 (2021), March 17, 2021.

serious allegations of human rights violations were taking too long, up to several years, to be examined by the ECtHR.[23] Based on the new prioritisation policy the Court has established seven categories, ranging from urgent applications to those that are manifestly inadmissible and considered them in order from the highest priority to the lowest.

For 10 years, the number of pending applications (that is, their decrease) was one of the key indicators of ECtHR's effectiveness. That is seen from the annual reports and the speeches of the President of the ECtHR and other Court's judges.[24] Therefore, the new policy of reducing the number of pending applications was a change in the approach to closing cases.

In order to fully understand this new policy, it is necessary to examine how cases are proceeded by the Court in more detail. As it was described before, if the ECtHR finds a violation of the ECHR it rules for the measures to be taken by the state: only individual, or individual and general measures. Individual measures consist of just satisfaction or rehabilitation or restoration of individual rights. General measures concern the amendment of domestic legislation or practice of law enforcement.[25]

Moreover, depending on the novelty and exceptionality of the case, the Court ascribes the case to one of the following types:

1) *Leading cases* are those that raise a new and structural or systematic issue within the state. They are also referred to as *pilot cases*. They have a higher priority and they are singled out and examined as soon as possible. Leading cases always require the adoption of general measures to avoid repetition of the violation.
2) *Repetitive cases* stem from the same underlying issue as leading cases but were filed later than the leading case. The Court's decision on repetitive cases, of course, also implies the implementation of general measures. However, the Court usually links it to the leading case and indicates that general measures should be implemented within the leading case.

As it was described before, once the case is decided by the Court, it is transmitted to the Committee of Ministers for implementation oversight. The Committee, which is assisted by the

[23] Registrar of the European Court of Human Rights, *The Court's Priority Policy*, accessed October 10, 2021, *https://www.echr.coe.int/documents/priority_policy_eng.pdf*.
[24] Council of Europe, *Supervision of the Execution of Judgments and Decisions of the European Court of Human Rights – 12th Annual Report of the Committee of Ministers 2018* (Strasbourg: Council of Europe, 2019), https://rm.coe.int/annual-report-2018/168093f3da.; Council of Europe, *Supervision of the Execution of Judgments and Decisions of the European Court of Human Rights – 11th Annual Report of the Committee of Ministers 2017* (Strasbourg: Council of Europe, 2018), https://rm.coe.int/annual-report-2017/16807af92b.
[25] Maria Issaeva, Irina Sergeeva, and Maria Suchkova, "Enforcement of the Judgments of the European Court of Human Rights in Russia," *SUR* 8 no. 15 (December 2011): 69. https://sur.conectas.org/en/enforcement-judgments-european-court-human-rights-russia/.

Department for the Execution of Judgments of the Court operating within the Directorate General of Human Rights and Rule of Law, monitors the execution of Court orders through Action Plans and Action Reports submitted by the respondent state. As soon as the Committee recognizes that the state has fulfilled all its obligations, it closes the case. However, the obligations of the state concerning leading cases and repetitive cases differ.

A sufficient condition for closing a repetitive case is the satisfaction of individual measures, that is, the payment of just satisfaction or taking individual actions. However, the repetitive case might be based on some systematic problem that has already been addressed or is being considered in the leading case. However, when making a decision to close a case, the status of the leading case is not taken into account. The repetitive case is closed as soon as the payment has been made, regardless of the status of the leading case and the implementation of general measures.[26]

In other words, as a rule, the Court's decision on a leading case contains both individual measures (just satisfaction and individual actions) and general measures (amendments to national legislation). The leading case will not be closed and will be monitored by the Committee of Ministers until both of these conditions are fulfilled. Repetitive cases also contain the requirement of adoption of individual measures, and imply the adoption of general measures, since the case itself is based on some defect in the national legislation of the respondent state. However, the court ruling on the repetitive case in the part on general measures will refer to the leading case(s) on this issue(s). There will be no monitoring of the implementation of general measures within the framework of the repetitive case. That is why the repetitive case will be closed by the Committee of Ministers as soon as the compensation is paid.[27]

However, this approach to closing cases did not always exist. As it can be seen from the ECtHR online database (HUDOC-EXEC), many repetitive cases, where individual measures were implemented but general measures remained pending, were closed around 2016-2017. Since then, the implementation of general measures has been monitored only within the framework of leading cases. This very change of the approach to closing cases was a part of the new policy of reducing the number of pending applications.[28]

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[26] George Stafford, "The Implementation of Judgments of the European Court of Human Rights: Worse Than You Think – Part 1: Grade Inflation," *EJIL: Talk!*, October 29, 2019, https://www.ejiltalk.org/the-implementation-of-judgments-of-the-european-court-of-human-rights-worse-than-you-think-part-1-grade-inflation/.

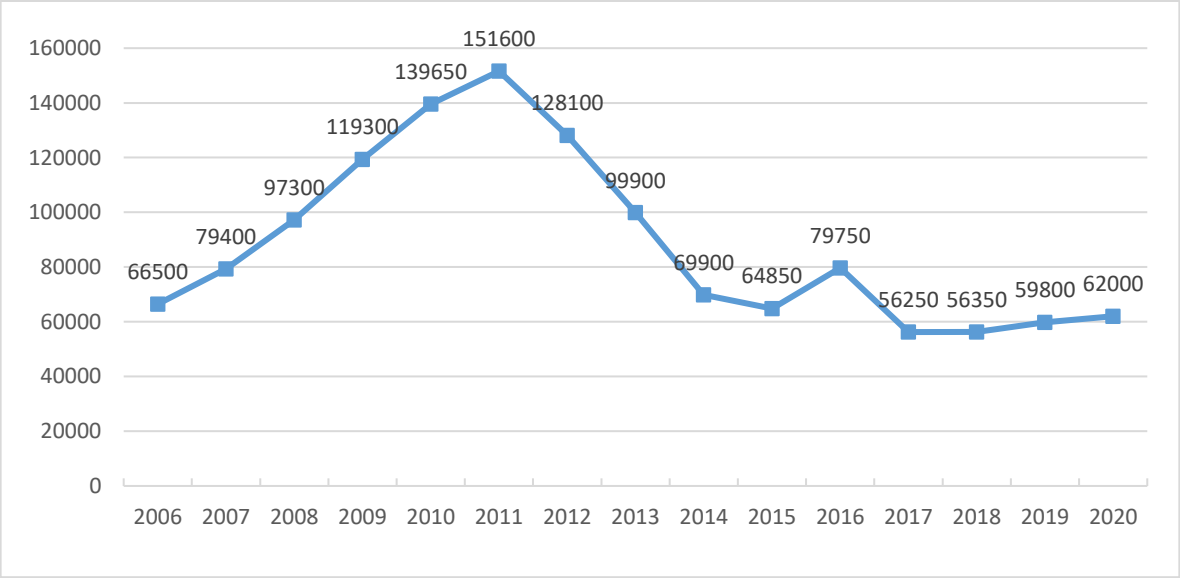
[27] Ibid.

[28] 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!*, October 8, 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/.

Most likely, such a system was introduced to facilitate the oversight of the implementation of general measures and to reduce the workload of the Committee of Ministers. Such a reform allowed the Committee to monitor the implementation of one leading case instead of dozens of cases on the same issue. The effect of this reform is seen in Chart 1 below. It shows the number of pending applications before a judicial formation by years. In 2017, after the implementation of the reform, there was a 30 per cent drop in pending cases.

Another anomaly seen in the chart is a sharp decrease in the number of cases after 2011. This was due to the implementation of Protocol No. 14 allowing the streamlined rejection of applications at the admissibility stage. For many years before, the number of submitted applications had been growing annually and by 2011 it reached 151,600 applications. It would have taken the Court 46 years to process all of them with the pace it had back then.[29] Thanks to the reform, the backlog of pending cases has decreased after 2011.

Chart 1. Applications pending before a judicial formation by years (prepared by author)[30]



On the one hand, this reform and change in the attitude to closing the cases had a positive effect, as it allows the Court and the Committee of Ministers to focus on leading cases and fundamental issues as well as reject inadmissible cases on earlier stages.[31] Also, the reform seemed to be the only possible option for the Court to reduce the caseload created until 2011. On the other hand, this reform caused several problems.

[29] Profile: European Court of Human Rights, *op. cit.*
[30] Prepared by the author. Source: ECHR – Analysis of Statistics 2020, ECHR – Analysis of Statistics 2018, ECHR – Analysis of Statistics 2016, ECHR – Analysis of Statistics 2014, ECHR – Analysis of Statistics 2012, ECHR – Analysis of Statistics 2010, ECHR – Analysis of Statistics 2008, ECHR – Analysis of Statistics 2007. Available at: https://www.echr.coe.int/Pages/home.aspx?p=reports&c.
[31] Stafford, 2019.

First, repetitive cases address the same fundamental issues as leading cases. Therefore, it is very likely that a situation may arise when dozens of cases, built on a structural issue in the legislation of the respondent state, are closed due to the payment of compensation. Although the issue itself has not been fixed and the leading case remains pending.

Second, this somewhat distorts the statistics of the Court. That is, the statistics show a positive dynamic in the work of the ECtHR, but it is not directly related to the improvement of the work of the Court or the quality of the resolution of cases, but is based on changes in the approach to the consideration of cases.

Third, respondent states can abuse this system. They may pay compensation for repetitive cases, thereby improving statistics and fulfilling most of the obligations to the Council of Europe, but at the same time not change their domestic legislation and ignore decisions on leading cases. In particular, this is often done by the Russian Federation, which will be discussed in the second part of this work.

Such loopholes in the system undermine the Court's status as an effective mechanism for the protection of human rights and replace the very essence of the creation of the ECtHR. In this form, the ECtHR rather plays the role of a defender of the rights and freedoms of individual citizens who were able to apply to the Court and receive compensation or restoration of their rights. However, the Court does not play a major role in creating a fairer domestic legal system focused on the protection of human rights in the member states of the Council of Europe.

However, proposals on changes to the proceeding and closing of cases in the ECtHR are not the subject of this paper. This work focuses on changing the efficiency measurement of the Court. Thus, given all the above-described Court procedures, the performance indicators currently used by the Court itself appear to be irrelevant as they mostly measure the Court's work as an institution and judicial formation rather than a mechanism of human rights protection.

1.3. Effectiveness criteria of the European Court of Human Rights

There is a number of different systems and approaches to measuring court performance and efficiency in general. They assess access level and fairness, applicant satisfaction, clearance rate, on-time case processing, time to disposition, age of active pending caseload.[32] However, those approaches are designed for assessing the performance of national courts and are hard to apply to international courts like the ECtHR. The published statistics on the efficiency of the work of the Court, as has been proven earlier, often speak of the quality of the Court's work only as of an administrative mechanism. But even based on the data published by the Court itself, we can conclude that the administrative mechanism of the Court is performing quite well, especially after 2011 and subsequent reforms. However, statistical data on the number of applications filed, the number of complaints reviewed, even data on the speed of the proceedings and the number of appeals, does not give a complete understanding of the quality of the decisions made and the level of protection provided by the Court to the claimants. However, this is precisely what constitutes the primary subject of this work.

To understand the effectiveness of the ECtHR not as an institution but as a mechanism for the protection of human rights and freedoms, it is necessary to measure the subsequent effect of its decisions, namely compliance with the decisions. In the case of domestic courts, this indicator is close to 100 per cent, since there are special bodies responsible for enforcing court decisions. In the case of the ECtHR, or other international courts, which lack enforcement mechanisms, it is necessary to analyse what happens to the case after the decision has been made and communicated to the Committee of Ministers. Naturally, these data are not included in the statistics of the ECtHR, since it is not within the competence of the Court to monitor their implementation.

The body responsible for overseeing the implementation of ECtHR judgments is the Committee of the Ministers, which is assisted for this task by its Department for the Execution of Judgments of the European Court of Human Rights. The Department advises and assists the Committee in its function of supervision of the implementation of the Court's judgments. It also provides support to the member States to achieve full, effective and prompt execution of judgments. In addition, it keeps statistics on the implementation of Court orders. The Department for the Execution of Judgments deals with statistics on cases, in contrast to the

[32] Secretariat for the International Consortium for Court Excellence, *International Consortium for Court Excellence*, Global Measures of Court Performance, 3rd Edition (Sydney, 2020), http://www.courtexcellence.com; National Center for State Courts, *Giving Courts The Tool To Measure Success*, Courtools: Trial Court Performance Measures Overview (Denver, 2017), https://www.courtools.org.

ECtHR, which bases its statistics on applications. The difference is that an "application" is a complaint recorded in the Court's database under a separate application number. A "case" may be equivalent to one application examined separately, or to several applications which have been joined and are examined together. Thus, the number of cases is always lower than the number of applications. There is no limit on the number of applications that may be joined; for example, the Court has delivered a judgment in McHugh and Others v. the United Kingdom which concerned 1,014 applications.[33]

This heterogeneity naturally leads to difficulties in data analysis when it comes to enforcement of Court decisions. With the transition from Court statistics to statistics of the Committee of Ministers, the number of applications turns into the number of cases and the numbers noticeably decrease. This is important to note, since later in this work we will operate with both the data of the ECtHR and that of the Department for the Execution of Judgments, so the numbers may not correlate with each other.

The ECtHR is an international court to which citizens file complaints against the member States of the Council of Europe. The state is both the respondent and the subject, which must compensate for the damage and correct (prevent) the consequences of the violation. Compliance rate varies from country to country and depends on the good faith and diligence of the Member States. The ECtHR, which does not have an enforcement mechanism, cannot be held responsible for the execution of its decisions. Therefore, speaking about the effectiveness of the ECtHR as a mechanism for protecting human rights, we should not refer to the statistics of the Court, which fairly assess their work positively and annually report on the decrease in pending applications and the increase in decisions made, but to the statistics of the Department for the Execution of Judgments, that analyses cases.

This work examines the effectiveness of the ECtHR, but this is considered equivalent to the effectiveness of the Department for the Execution of Judgments. Overall, none of these is completely correct, since neither a Court decision nor the Department for the Execution of Judgments can overrule national court decisions or annul national laws. Speaking about the effectiveness of the ECtHR or the Committee of Ministers in terms of overseeing the execution of the Court's decisions, we are talking about the compliance rate and execution of Court decisions by each member state of the Council of Europe. But states have different attitudes towards fulfilling their obligations under the ECHR. It is the effect of the decisions of the ECtHR on national legislation and the good faith of their execution by the respondent state that

[33] Council of Europe, *Understanding the Court's statistics* (Strasbourg: Council of Europe, 2016): 6, https://rm.coe.int/2020-cm-annual-report-eng/1680a1f4e8.

this work seeks to measure when it speaks of the effectiveness of the ECtHR as a mechanism for protecting human rights.

Neither the ECtHR nor the Committee of Ministers uses any such indicator, they only evaluate statistics. To assess the effect of the decisions of the Court, I propose to develop a brand-new indicator of the effectiveness of the ECtHR. For simplicity, I will call it the "ECtHR effectiveness indicator" while keeping in mind that it refers to the effectiveness of the Court not as an institution, but as a defence mechanism, that is, to what extent the decisions of the ECtHR help to correct legislation that violates human rights and prevent further violations in the member states of the Council of Europe (CoE).

The methodology for indicator calculation will be similar to the one of the Corruption Perceptions Index by Transparency International.[34] The indicator will rely on a comparison of states with one another based on a set of sub-indicators that represent states' compliance with Court decisions and the number of human rights violations in the specific state. The ECtHR effectiveness indicator will include the following sub-indicators:

1) *Number of applications allocated per capita – average within last 10 years*. It is important to consider the number of allocated applications, not the number of pending applications or lodged cases. Lodged cases are not representative as many of them will be dismissed for formal reasons. Pending applications are not representative either as those are the cases that were allocated but awaiting consideration. The number of pending applications depends a lot on the Court's quality and speed of work and not on the number of human rights violations committed within the state. The number of applications allocated per capita shows how many states' citizens file admissible applications (having a ground for complaint) to the Court.
2) *Number of pending leading cases per capita – average within last 10 years*. Calculating the per capita rate for leading cases may not matter much. Leading cases reveal shortcomings and weaknesses in the legislation or domestic legal system. Once the issue affected some citizens and they applied to the Court, all the subsequent cases arising from the same issue will be repetitive and will not affect the number of leading cases. So, it is expected that a larger population will not lead to a larger number of leading cases. A bigger population means that the law is applied more widely and the shortcomings of the legislation will be revealed quicker, but the number of such legislation issues is limited and does not correlate with population size. Nevertheless,

[34] Transparency International, *Corruption Perceptions Index 2020*, accessed October 30, 2021, https://www.transparency.org/en/cpi/2020/index/.

for greater objectivity, the calculation will be carried out precisely per capita, since the legislation of the countries of the former communist bloc is relatively young and their citizens did not have enough time to face all the shortcomings of national legislation.

3) *Number of pending leading cases per capita – current.* This sub-indicator will contribute to a better understanding of the current situation and even out possible distortions that will arise in the previous sub-indicator. Since indicator no. 2 considers statistics for 2011-2020, it does not take into account the dynamics of change to date. For example, if a state had many leading cases in the early 2010s, but by the late 2010s it closed them, then the average can remain quite high. This sub-indicator will allow for greater emphasis on the actual pending leading cases and add value to them when calculating the ultimate effectiveness indicator.
4) *Average age of pending leading cases.* Leading cases remain open until the general measures fixing shortcomings in legislation are applied. Thus, the bigger the average age of leading cases, the more resistant the state is to amending national legislation as it was advised by the Court. This sub-indicator was calculated as the average number of years that has passed from the moment when the final judgement on the pending leading cases was delivered until today. The sub-indicator was calculated for all the pending cases regardless of their age. Thus, the oldest pending leading case is against Turkey. The final judgement for it was delivered in 1993, and the case remained pending since then.
5) *Percentage of pending cases under enhanced supervision – within the last 8 years.*[35] Cases can be under enhanced or standard supervision. Cases under enhanced supervision refer to the long-standing, mainly structural and systemic issues which have been under the Committee's supervision for many years, such as ill-treatment or death caused by security forces and ineffective investigations, and non-Convention compliant conditions of detention. Thus, the percentage of such cases shows how many pending cases are of severe importance. This sub-indicator treats both leading and repetitive cases equally as in this case the novelty of the case is not important. It shows how complex the case is in the eyes of the Court or the Committee, and that the Committee closely follows the progress of the execution of a case.

[35] The period of 8 years was chosen as prior to 2013 the cases were not devided by enhanced or standard supervision in the ECtHR publications.

6) *Percentage of closed leading cases in relation to pending leading cases in the last 10 years.* This indicator will show the willingness of states to change the legislation as it was recommended by the Court.
7) *Percentage of closed repetitive cases in relation to pending repetitive cases in the last 10 years.* This indicator will show how inclined or financially capable the state is to pay out just satisfactions to the applicants.

The sub-indicator data will be collected from the statistics of the ECtHR (HUDOC-EXEC database[36]) and the Committee of Ministers (Country Factsheets[37]). For each sub-indicator, a rating of states will be built from best to worst. For each sub-indicator, the state will be awarded a number of points by its position among the 47 member states of the ECHR: from 47 points for the best performance in the ranking to 1 point for the worst. After that, the overall score will be calculated for each state by summing up the points awarded for each sub-indicator. On this basis, a rating of the effectiveness of the ECtHR by states will be compiled - the higher the score, the higher the ranking position and the better the state's performance.

This indicator is experimental since it is the first indicator of this kind ever developed. It can be improved further and include other aspects such as the level of national legislation, the level of satisfaction of the applicants, the accessibility of the Court for applicants from specific states and other important aspects that would make this indicator more objective. But this work does not set the goal of analysing the impact of ECtHR decisions on the national legislation and their position in the national legal systems of all CoE member states. The main focus of the work and this rating is to assess the impact of the ECtHR on the legal system of the Russian Federation (this will be discussed in the second part of the work). However, this cannot be done in isolation from other member states, since a more or less objective assessment of efficiency is possible only in comparison.

The final ranking of the effectiveness of the ECtHR for individual states is presented in table 1 below. A more detailed calculation of indicators and sub-rankings are presented in Annex No. 2 – ECtHR effectiveness indicator by countries sub-indicators 1-7.

[36] https://hudoc.exec.coe.int.
[37] https://www.coe.int/en/web/execution/country-factsheets.

Table 1. ECtHR effectiveness indicator by countries[38]

Country	(1)	(2)	(3)	(4)	(5)	(6)	(7)	Points	Ranking
Denmark	46	47	39	42,5	41,5	46	45,5	**307,5**	1
Luxembourg	27	28	45,5	45,5	41,5	45	39	**271,5**	2
Norway	39	44	38	40	22	44	35	**262**	3-4
Sweden	29	42	40	36,5	34	40	40,5	**262**	3-4
Estonia	13	24	45,5	45,5	41,5	43	45,5	**258**	5
Andorra	24	11	45,5	45,5	41,5	42	45,5	**255**	6-7
Monaco	8	27	45,5	45,5	41,5	47	40,5	**255**	6-7
Germany	38	40	36	33	28	32	42	**249**	8
Netherlands	45	45	42	34	32	23	27	**248**	9
Switzerland	35	36	30	41	27	38	38	**245**	10
France	42	41	35	30	30	34	24	**236**	11
Czech Republic	34	38	41	7,5	24	36	37	**217,5**	12
United Kingdom	43	46	43	16,5	5	37	23	**213,5**	13
Spain	44	43	34	32	35	14	7	**209**	14
Portugal	40	33	28	24	12	29	26	**192**	15
Austria	36	31	33	3	41,5	25	19	**188,5**	16
Slovak Republic	22	25	21	28	26	33	33	**188**	17
Latvia	15	5	19	39	41,5	30	36	**185,5**	18
Ireland	47	39	37	2	19	7	34	**185**	19
Iceland	26	10	14	36,5	41,5	26	30	**184**	20
Montenegro	1	8	11	35	41,5	41	45,5	**183**	21
Belgium	41	32	27	27	7	28	15	**177**	22
San Marino	12	1	1	42,5	41,5	35	43	**176**	23
Slovenia	10	12	22	38	25	27	28	**162**	24
Poland	20	35	31	14	6	20	25	**151**	25
Georgia	32	21	10	21	13	31	16	**144**	26
Lithuania	17	14	12	26	29	24	21	**143**	27
Cyprus	21	13	6	31	16	21	31	**139**	28
Finland	31	30	24	1	41,5	5	5	**137,5**	29
Italy	30	37	32	13	2	9	12	**135**	30-31
Liechtenstein	3	4	2	16,5	41,5	39	29	**135**	30-31
Serbia	2	22	26	7,5	21	15	32	**125,5**	32
Bosnia and Herzegovina	7	23	20	20	11	22	22	**125**	33
Albania	37	15	16	29	14	10	3	**124**	34-36

[38] Prepared by the author. Sourse: ECHR – Analysis of Statistics 2020; ECHR – Analysis of Statistics 2018; ECHR – Analysis of Statistics 2016; ECHR – Analysis of Statistics 2014; ECHR – Analysis of Statistics 2012; ECHR – Analysis of Statistics 2010; ECHR – Analysis of Statistics 2008; ECHR – Analysis of Statistics 2007. Available at: https://www.echr.coe.int/Pages/home.aspx?p=reports&c.

Country	(1)	(2)	(3)	(4)	(5)	(6)	(7)	Points	Ranking
Greece	28	17	18	15	15	13	18	**124**	34-36
North Macedonia	11	9	8	25	33	18	20	**124**	34-36
Armenia	19	16	7	22	20	17	17	**118**	37
Turkey	18	29	25	4	18	6	8	**108**	38
Croatia	6	7	9	19	31	19	14	**105**	39
Russian Federation	23	34	29	5	3	2	2	**98**	40
Malta	25	2	3	18	23	16	10	**97**	41
Romania	5	20	15	23	4	12	11	**90**	42
Azerbaijan	33	19	17	10	8	1	1	**89**	43
Ukraine	14	26	23	9	1	3	4	**80**	44
Hungary	9	18	13	12	9	4	13	**78**	45
Bulgaria	16	6	5	11	10	11	9	**68**	46
Republic of Moldova	4	3	4	6	17	8	6	**48**	47

This rating is not to show how well human rights are protected in the individual states. It only shows how well states have implemented the decisions of the ECtHR over the past 10 years and how often serious human rights violations end up in front of the ECtHR (without assessing the accessibility of the court to citizens). This rating can be considered only from the point of view of better or worse execution of decisions of states in comparison with each other since the rating does not take into account how big the gap between indicators is.

Overall, we can see that European countries with well-developed democracies and respected judicial protection (Denmark, Luxembourg, Sweden, Norway, Estonia) perform better in the implementation of ECtHR judgments. On the contrary, countries with a low level of civil society development, with poorly developed democracies and a high level of corruption (Romania, Ukraine, Hungary, Bulgaria, Moldova) are at the bottom positions of the rating. A more detailed breakdown by specific criteria can be found in Annex 2 of this work. This work does not set itself the task of fully assessing the level of implementation of the decisions of the ECtHR in all states of the Council of Europe. This rating was compiled to study the interaction between Russia and the ECtHR in comparison with other states. So, from this rating, it is clear that Russia occupies 40th out of 47 positions in the rating, which indicates a rather poor attitude to the ECtHR decisions implementation of the Russian government. The reasons and consequences of this will be considered in more detail in the second part of the paper, which will be fully devoted to the effectiveness of the ECtHR in relation to Russia.

To sum up, the European Court of Human Rights is rightfully considered one of the most efficient courts in the world. It receives about 50,000 applications annually. Despite the

fact that 95 per cent of applications are inadmissible or struck out, about 3,000 applications are decided by judgements. Although the number of pending applications has been decreasing in recent years, this is not due to a decrease in the popularity and demand for the Court, but due to an improvement in the speed and quality of application processing by the Court. Some of these changes and reforms are controversial, such as changing the approach to case closure. Nevertheless, the reforms allow the Court to accept a greater number of applications and exclude the inadmissible ones at an early stage, which makes it possible to make more decisions on the merits. However, the statistics that the Court publishes describe its effectiveness as a judicial institution and not as a mechanism of human rights protection. The effect of the Court's actions can be assessed through statistics on cases published by the Committee of Ministers of the Council of Europe, which is responsible for monitoring the execution of Court decisions. This is exactly what was done in the first part of the paper: the indicator and the rating of the effectiveness of the ECtHR were independently derived. The data obtained will be used in the analysis of the effectiveness of the ECtHR in relation to the Russian Federation in the next part of the paper.

2. RUSSIA AND THE EUROPEAN COURT OF HUMAN RIGHTS

2.1. Relationship between international law and national law

The European Court of Human Rights is meant to protect and develop the right and freedoms that are guaranteed by the European Convention of Human Rights. The ECHR itself does not define its position within international law. However, the ECtHR in its case-law defined its position as follows: ECHR "comprises more than mere reciprocal engagements between contracting states. It creates, over and above, a network of mutual, bilateral undertakings, objective obligations which, in the words of the Preamble, benefit from a 'collective enforcement' ".[39] Article 1 of the ECHR states that it is within the responsibilities of national authorities, namely domestic courts, to implement and enforce the rights and freedoms guaranteed by the Convention.

One of the main principles of human rights protection under the ECHR is the principle of subsidiarity of the ECHR protection. It means that by ratifying the ECHR, the contracting states have recognized that their national legislation is in compliance with the ECHR and that the rights and freedoms of citizens will be protected by national law at the same or more favourable level as by the provisions of the ECHR.[40] Moreover, on 1 August 2021, Protocol No. 15 to the Convention came into force as all the Member states had ratified it.[41] The Protocol brought the principle of subsidiarity directly to the wording of the Convention.

The ECHR does not oblige contracting states to incorporate the Convention into domestic law. It rather lays down an obligation to secure the substance of the rights and freedoms under the domestic legal order in any form suitable and practicable for the state. Thus, the incorporation of the ECHR into the domestic legal system does not make the ECHR provisions or ECtHR's decisions directly applicable at the national level and does not guarantee faithful and effective application of the ECHR or fulfilment of ECtHR decisions by the contracting states.[42]

The strength of the impact of the ECHR and ECtHR's decisions on the national legal system depends on the following aspects:

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[39] *Ireland v the United Kingdom.* 1978. Application No 5310/71 § 239; Shaw, 2003. *op. cit.* p. 354.

[40] Helen Keller, Andreas Fischer, and Daniela Kühne, "Debating the Future of the European Court of Human Rights after the Interlaken Conference: Two Innovative Proposals," *European Journal of International Law* 21 no. 4 (2010): 1031-1032, https://doi.org/10.1093/ejil/chq067.

[41] Council of Europe, *Protocol No. 15 Amending the Convention on the Protection of Human Rights and Fundamental Freedoms*, Council of Europe Treaty Series - No. 213 (Strasbourg: Council of Europe, 2013), https://rm.coe.int/1680084831.

[42] Helen Keller, and Alec Stone Sweet, "Assessing the Impact of the ECHR on National Legal Systems," In *A Europe of Rights (*Oxford: Oxford University Press, 2008): 682-684.

1) The position of the ECHR in the domestic hierarchy of sources of law;
2) The self-executing character of the ECHR and the possibility that the ECHR rights be directly enforced by national courts.[43]

There are different approaches and a variety of constitutional provisions concerning the status and the application of the ECHR in the domestic legal systems. The approach is different for each contracting state. The two main theories of the relationship between international law and national law are dualism and monism.

According to the dualistic view, the international and national legal systems exist independently as two separate legal systems. International law in a dualistic state will have effect only after it has been transformed into national law through a specific instrument or procedure provided by domestic law. Citizens' rights and duties exist only in national law; judges are able to apply only national legislation. However, even after the international treaty is translated into a national one, its status within the domestic legal system will be dictated by the national constitutional law – more often it will be secondary in relation to the constitution. The United Kingdom is an example of a dualistic system. International law becomes part of the UK legal system only after an Act of Parliament is passed to give effect to it.[44]

The monistic view states that national and international legal systems are united. In monistic states, international law does not need to be translated into national law. The ratification of an international treaty immediately incorporates it into the national legal system, and customary international law is simply treated as part of national law. Citizens of such states can equally invoke national law and international law that the state has accepted, and a national judge can directly apply international law. In the monistic view in case of a conflicting situation, international law takes priority over national law. However, even among the monistic systems, many differences exist. Although as a general rule they accept the domestic legal effect of approved international treaties, the scope of this acceptance varies considerably.[45] For example, in Russia, Egypt, France, Chile, and Japan, a treaty that has entered into force internationally has no legal force domestically until the treaty is published or promulgated by the executive branch.

There are no pure monistic states where judicial systems treat all the national and international laws equally. Ultimately, the state can independently determine the "boundaries"

[43] Keller, 2008. *op. cit.* p. 684.
[44] Alessia Cozzi et al, *Comparative Study on the Implementation of the ECHR at the National Level Council of Europe* (Belgrade: Council of Europe, 2016): 8-13, https://rm.coe.int/16806fbc14.
[45] David Sloss, "Domestic Application of Treaties," *Santa Clara Law Digital Commons* Faculty Publications (March 2011): 3-7, https://digitalcommons.law.scu.edu/facpubs/635.

of the unity of international and national law. For example, in the Netherlands, the most monistic state currently, in the event of incompatibility between international law and Dutch legislation, Dutch courts may declare the national law inapplicable only if it is incompatible with universally binding (directly effective) provisions of treaties and decisions of international organisations.[46] So, fairly speaking the Netherlands has a partly monist system. The same applies to all so-called monist states, which rather have a mixed monist-dualist system. Most of them make a distinction between different sources of international law. Thus, customary law and *jus cogens* norms are more easily applicable on the national level than international law in the form of treaties.[47] Courts in monist states make a distinction between "self-executing" and "non-self-executing" treaties. When a domestic court decides that the treaty is non-self-executing, it may behave as if the treaty has not been incorporated into domestic law even though the treaty, from the formal point of view, has the status of law in the domestic legal system.[48] Thus, the dominance of a monistic or dualistic view in a state does not secure an only approach to all international treaties. Just as in some dualist states judges may apply unincorporated treaties as if they were incorporated, in some monist states judges may handle formally incorporated treaties as if they were unincorporated.

The conditions for the implementation of each source of international law in the national legal system are decided individually. Such significant sources of law as the ECHR occupy a fairly strong place in the legal systems of both monistic and dualistic states.[49] According to the ECHR, countries must bring their legislation in line with the level of protection of rights and freedoms established by the Convention. For example, Belgium, France, the Netherlands, Switzerland, and the UK have incorporated the Convention in ways that make Convention rights directly effective and supra-legislative in the domestic system. On the other hand, there are states where the ECHR tends to function as a supplement to the Constitution, such as in Germany, Ireland, Spain and some Central European states.[50]

Understanding the state's practice of embedding international law into national legislation is important for understanding how responsibly the state fulfils its international obligations. So, to assess the obligations of countries with a dualistic system, it is enough to

[46] Janneke Gerard, Joseph Fleuren, *Implementation of the European Convention on Human Rights and of the Judgments of the ECtHR in National Case-law. A Comparative Analysis* (Cambridge: Intersentia Publishing Ltd., 2016): 221.
[47] Sloss, 2011. *op. cit.* pp. 19-21.
[48] Damos Agusman, "Self Executing and Non Self Executing Treaties. What Does It Mean?" *Indonesian Journal of International Law* 11, no. 3 (April 4, 2014): 335-336. DOI:10.17304/ijil.vol11.3.501.
[49] Gerard, 2016. *op. cit.* pp. 23-24.
[50] Cozzi, 2016. *op. cit.* p. 134.

assess what percentage of accepted international treaties are built into the national system (according to which individual acts are adopted). Naturally, this figure should be close to 100 per cent. In the case of monistic systems, it is rather the practice of law enforcement that needs to be assessed, namely how often international law is applied by judges in national courts. Nevertheless, although the ECHR is generally accepted and applied by states regardless of their monism or dualism, attitudes towards the decisions of the ECtHR differs significantly.

The decisions of the ECtHR, just like the ECHR itself, are the sources of international law. By interpreting the provisions of the Convention, ECtHR creates obligations under international treaties that states must abide by. However, the ECtHR only clarifies the provisions of the Convention and finds inconsistencies between national legislation or decisions of domestic courts in relation to the Convention, and, as in the case of the Convention itself, the ECtHR does not have the power to dictate or prescribe how the states should prevent or fix any detected violations. This in no way replaces the binding force of the ECtHR judgments, which is spelt out in Article 46 of the ECHR. However, the ECHR does not endow the Court with the ability to enforce its decisions and, on the contrary, speaks of the subsidiarity of the ECtHR and the Court's decisions to national legislation.[51]

Even if the ECHR does not prescribe a mechanism for the responsibility of the state in relation to the decisions of the Court, it is automatically imposed by Article 26 of the Vienna Convention on the Law on Treaties which obliges states to respect ratified international agreements. And this obligation is imposed on the state regardless of its monism or dualism. Monism and dualism in this case act as mechanisms or existing tools for embedding international law into national law, but do not in any way indicate the level of the bindingness of international obligations.[52]

[51] Helfer, 2008. *op. cit.* pp. 131-134.
[52] Cozzi, 2016. *op. cit.* pp. 26-27.

2.2. Decisions of the European Court of Human Rights in the Russian legal system

Russia belongs to the monistic system. International treaties are an integral part of the Russian legal system. According to the Federal law "On International Treaties", international treaties have direct effect, that is, no additional laws are required for their application.[53] The same law sets out the procedure for the conclusion, ratification, publication, execution and termination of international treaties in Russia. According to it, the adopted international treaties come into force by agreement of the parties and after their official publication, after which they become valid and can be applied. At the same time, the parties to the agreement may agree to begin to apply the treaty even before its official entry into force.

Since international treaties constitute a part of the Russian legal system directly, their evaluation and alignment of the national legislation are carried out before the signing of the treaty. The process of concluding an international treaty begins with the concerned governmental departments preparing their proposals, which they then send to the president or the government through the Ministry of Foreign Affairs. If the agreement requires amendments to Russian legislation, the conclusion of the Ministry of Justice is additionally required. Once signed, the treaty is sent to parliament for ratification. Not all international treaties are subject to ratification, but only those that imply a change in domestic Russian legislation or transfer part of state powers to the international level; that relate to human and civil rights and freedoms, border issues or defence and security spheres; and if the parties have agreed that ratification of this agreement is mandatory.[54] The ECHR was ratified by Russia on March 30, 1998.

Before signing, international treaties must be checked for compliance with the Russian Constitution. The Constitutional Court is the body responsible for deciding whether a treaty complies with the Constitution or not. It is important to keep in mind that only treaties that have not yet become effective can be sent for such a check. If the judges consider that the agreement is contrary to the basic law, it can neither be ratified nor enter into force.[55] That is, according to the law on the Constitutional Court, it does not have the right to revise agreements already signed and in force. However, this applies specifically to the treaties themselves, whose provisions will be part of the Russian legal system after ratification, so it is so important to verify their legal effect in advance. This does not apply to obligations arising from the international treaty, which do not have a self-executing effect and do not affect the Russian

[53] Federal Law of 15.07.1995 N 101-FZ (as amended on 08.12.2020) "On international treaties of the Russian Federation". *Rossiyskaya gazeta* 140 (2757).
[54] Ibid.
[55] Federal Constitutional Law of 21.07.1994 N 1-FKZ (as amended on July 1, 2021) "On the Constitutional Court of the Russian Federation". *Collected Legislation of the Russian Federation* 13 (1447).

legal system. In particular, with regard to the ECHR, such an obligation is the execution of the ECtHR judgments (Article 46): "The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties". This is what allowed the Constitutional Court of Russia to rule on the non-binding nature of individual decisions of the ECHR in 2015, and subsequently to enshrine this in the Constitution itself. This issue will be considered in more detail later.

The position of international treaties in the Russian legal system is established by the Constitution. According to article 15 of the Constitution, "the generally recognized principles and norms of international law and international treaties of the Russian Federation are an integral part of its legal system".[56] The same article establishes the priority of an international treaty over Russian domestic law: "If an international treaty of the Russian Federation establishes rules other than those provided for by law, then the rules of the international treaty are applied." Moreover, if the Constitutional Court considers that the treaty does not comply with the Russian Constitution, it will not be valid. In other words, in the hierarchy of legal acts, international treaties are below the Constitution, since they, in principle, will not be adopted if they are inconsistent with the Constitution. However, international treaties adopted by Russia are of the same status as federal laws but have priority in the application. That is, in relation to international treaties, in particular the ECHR, the following hierarchy is built:

1. International obligations of the Russian Federation arising from generally recognized principles and norms of international law;
2. The Constitution of the Russian Federation;
3. Obligations arising from international treaties.
4. Federal constitutional laws and federal laws (including codes).
5. Other regulations, according to the hierarchy of national legislation.

Such a hierarchy is not uniquely Russian; most countries de facto put their main law, the constitution, above international treaties. In countries with a monistic system, treaties that are contrary to the constitution are not signed. In countries with a dualistic system, treaties that are contrary to the constitution are simply not built into national legislation. If the international obligations had a direct supra-national effect, then the sovereignty of the state would be violated.[57] However, the case of the Russian Federation is special, since of all the member states

[56] *Constitution of the Russian Federation*, December 25, 1993, https://www.refworld.org/docid/3ae6b59f4.html.
[57] Sloss, 2011. *op. cit.* p. 23.

of the Council of Europe, Russia is the only country that has enshrined this practice at the legislative level.[58]

As described earlier, the ECHR and the decisions of the ECtHR are both sources of international law but are treated differently by the CoE member states. The ECHR is an international treaty, which, moreover, partly enshrines the generally accepted norms of international law. That is, in the case of Russia, the ECHR is higher in the hierarchy than the Constitution. Russia has undertaken to bring its legislation in line with the ECHR and to protect the rights and freedoms of citizens at a level similar to that specified in the Convention. Obligations for the execution of judgments of the ECtHR from a legal point of view are obligations arising from international treaties. Thus, they are in the legal hierarchy below the Constitution and should not contradict it. The principle of the supremacy of the Constitution of the Russian Federation was additionally confirmed in the resolution of the Constitutional Court of the Russian Federation on the Markin case[59] in December 2013. It stated that the execution of the international courts' decisions in Russia is possible only if they comply with the Constitution of the Russian Federation and the positions of the Constitutional Court.

It is obvious that the ECtHR interprets the ECHR and uses it as the main source in its rulings. The legal basis of the ECtHR cannot differ significantly from the provisions that are spelt out in the Constitutions of the member states of the Council of Europe, since they were initially brought into conformity with the ECHR itself. That is, the decisions of the ECtHR, as a rule, cannot contradict the constitutions of the CoE member states, at least the letter of the law. However, a constitution is usually a rather meagre document and many of its provisions are broad in interpretation. And the way the ECtHR interprets and applies the provisions of the ECHR may not coincide with how the domestic judicial system interprets and applies the provisions of the Constitution similar to the Convention's ones. The Constitutional Court, as the body responsible for the interpretation of the Constitution, should, if necessary, interpret its provisions and explain if the ECtHR's decisions contradict the Constitution.

This practice was enshrined by the Constitutional Court of Russia in 2015. In its Resolution No. 21-P, the Constitutional Court indicated the following:

> As follows from the Constitution of the Russian Federation, its Articles 4 (Section 1), 15 (Section 1) and 79 enshrining Russia's sovereignty, supremacy and the highest legal

[58] Konstantin Khudoley, "Otkaz ot ispolneniya resheniy mezhdunarodnykh sudebnykh organov po zashchite prav i svobod grazhdan." [Refusal to Execute Decisions of International Judicial Bodies on the Protection of the Rights and Freedoms of Citizens.] Vestnik Permskogo Universiteta. *Yuridicheskiye Nauki / Perm University Herald. Legal sciences* 4 no. 38 (2017): 467, DOI: 10.17072/1995-4190-2017-38-463-473.
[59] ECtHR, *Markin v. Russia*, Judgment of 22 March 2012, app. no. 30078/06.

> force of the Constitution of the Russian Federation, and inadmissibility of implementation into the legal system of the state of international treaties, participation in which can entail restrictions of human and civil rights and freedoms or allow any infringements to the constitutional system of the Russian Federation and thereby break constitutional prescriptions, neither the Convention for the Protection of Human Rights and Fundamental Freedoms as international treaty of the Russian Federation nor legal positions of the European Court of Human Rights based on the Convention containing appraisals of national legislation or concerning the need to alter its provisions, do not abrogate for the Russia's legal system the priority of the Constitution of the Russian Federation and therefore are subject to execution within the framework of this system only with the condition of recognition of supreme legal force exactly of the Constitution of the Russian Federation.[60]

After that, federal law No 7-FKZ was passed in December 2015 allowing the Constitutional Court to decide whether principles declared by an international tribunal can or cannot be applied in Russia.[61] The law provides for two options for the actions of authorized state bodies. Firstly, the Ministry of Justice has the right to apply to the Constitutional Court with a request about the possibility of executing the judgment of the ECtHR. The Constitutional Court decides on the possibility of executing the decision in whole or in part in accordance with the Constitution of the Russian Federation. Secondly, the President and the Government of Russia have the right to apply to the Constitutional Court with a request for an interpretation of the provisions of the Constitution, if there is a contradiction between the provisions of an international treaty as interpreted by the ECtHR and the provisions of the Constitution of the Russian Federation.

In any case, the Constitutional Court has the right to "authorize" not to execute the ECtHR judgments.[62] Naturally, this procedure creates a number of issues:

1) Federal law No 7-FKZ allowed the Constitutional Court to legalize the refusal of the Russian authorities to comply with the ECtHR judgment requiring the execution of both

[60] European Commission for Democracy Through Law (Venice Commission), *Russian Federation Final Opinion on the Amendments to the Federal Constitutional Law on the Constitutional Court,* CDL-AD(2016)016, June 13, 2016. https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)016-e

[61] Federal Constitutional Law of 14.12.2015 N 7-FKZ "On Amendments to the Federal Constitutional Law" On the Constitutional Court of the Russian Federation," *Collected Legislation of the Russian Federation 2015* 51 (7229).

[62] Lyudmila Anufrieva, "The Constitution of the Russian Federation and International Law: Theoretical Approach to the Concept of 'Generally Recognized Principles and Norms of International Law', or on the Principles of Law in General and on Principles in International Law," *Lex Russica* 11 no. 144 (November 2018): 128. https://doi.org/10.17803/1729-5920.2018.144.11.122-133.

general and individual measures (including the requirement to pay compensation appointed by the ECtHR).

2) This allows to directly review the constitutionality of the decisions of the ECtHR, and it violates the status of the ECtHR as the last judicial instance, where a citizen can seek protection in case if the violation of his rights is made by the state;
3) The Constitutional Court of Russia is empowered to rule on the conformity of the judgment of the ECtHR with the Constitution of Russia. The decision binds all other Russian courts, as well as state bodies, and prevents the application of the ECtHR judgements.[63]

From a formal point of view, if we reason only according to the letter of the law, then this provision should not be applied often, and only a very small fraction of the ECtHR decision can contradict the Constitution. However, from an international point of view, Russia is regarded as a country with a large number of problems in the field of protection of human rights and freedoms and a poorly developed civil society. This is what made the international community doubt that this legislation would be applied in good faith and not to be used as a loophole to avoid fulfilling its international obligations. This caused a wide resonance and discussion both in the ECHR and in the Council of Europe. For example, the European Commission for Democracy through Law (Venice Commission) in its Interim Opinion of March 2016 stressed:

> 97. (...) Whatever model of relations between the domestic and the international system is chosen, a State is bound under Article 26 of the Vienna Convention on the Law on Treaties to respect ratified international agreements and pursuant to Article 27 of the Vienna Convention it cannot invoke the provisions of its internal law as justification for its failure to perform a treaty, including the European Convention on Human Rights. The execution of international obligations stemming from a treaty in force for a certain State is incumbent upon the State as a whole, i.e. all state bodies, including the Constitutional Court; thus, it is the duty of all State bodies to find appropriate solutions for reconciling those provisions of the treaty with the Constitution (for instance through interpretation or even the modification of the Constitution).
>
> 98. Instead, the Russian Constitutional Court has been empowered to declare an international decision as "unenforceable", which prevents the execution of that decision in

[63] Sergey Marochkin, "Evropejskij Sud po pravam cheloveka i Kostitucionnj Sud Rossii dvadcat' let spostya: v budushchee nazad? (Part II)" [European Court of Human Rights and Russian Constitutional Court Twenty Years After: Back to the Future?] *Rosskijsij uridicheskij zhurnal* / *Russian Juridical Journal* 1 no. 124 (2019): 17-20.

any manner whatsoever in the Russian Federation. This is incompatible with the obligations of the Russian Federation under international law.[64]

Despite the opinion of the Venice Commission, the above-mentioned provisions were enshrined in the Constitution itself. In 2020, the constitutional amendments came into force, in particular amendments to Article 79 and Article 125, part 51, point "b". According to the new version of the Constitution, "[d]ecisions of international bodies, taken based on provisions of international treaties of the Russian Federation in their interpretation that contradicts the Constitution of the Russian Federation shall not be executed in the Russian Federation". This amendment sparked a new series of discussions. In the opinion of the ECtHR and the Council of Europe, this amendment, like the Constitutional Court's resolution previously, violates the international obligations of the Russian Federation.[65] Under Article 46 of the ECHR, decisions of the ECtHR are binding. According to the Vienna Convention, a state cannot invoke the Constitution as an excuse for non-compliance with an international treaty and its "actions or inaction" that violate it. However, neither the ECtHR nor the Council of Europe, due to the sovereignty of Russia as a state in its internal affairs, can take any action to force Russia to change its legislation, and can only act within the framework of soft power and diplomacy.

To date, Russia has refused to comply with the decisions of the Court, referring to Law 7-FKZ or this amendment to the Constitution. This happened so far in two cases that ended up in front of the ECtHR as discussed below.

The *Anchugov and Gladkov v. Russia* case[66] was related to the active suffrage granted to prisoners. In 2016, after the adoption of amendments to the Constitutional Court law[67], the Ministry of Justice of Russia addressed the Constitutional Court with a request for a decision on the enforceability of the ECtHR judgment in the case of Anchugov and Gladkov v. Russia. On April 19, 2016, the Constitutional Court issued a resolution, in this case, stating that general measures on this decision are not enforceable, but the federal legislator has the right (but is not obliged) to transfer certain regimes of serving liberty (for example, a colony-settlement) to alternative types of punishment, which are not considered a deprivation of liberty and thereby give the persons concerned electoral rights. In 2017, forced labour was introduced in Russia,

[64] European Commission for Democracy Through Law (Venice Commission), *Interim Opinion on the Amendments to the Federal Constitutional Law on the Constitutional Court of the Russian Federation*, CDL-AD(2016)005, March 15, 2016, https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)005-e.
[65] European Commission for Democracy Through Law (Venice Commission), *Interim Opinion on the Amendments to the Federal Constitutional Law on the Constitutional Court of the Russian Federation.* CDL-AD(2020)009, June 18, 2020, https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2020)009-e.
[66] ECtHR, *Anchugov and Gladkov v. Russian Federation,* Judgment of 4 July 2013, app. no. 11157/04.
[67] Federal Constitutional Law of 14.12.2015 N 7-FKZ, *op. cit.*

which in 2018 began to be assigned to prisoners who had served part of their sentences. As of July 2019, about 3000 people were serving forced labour in Russia. They are held in special centres, have the right to an 18-day leave, but (unlike prisoners) do not receive food, clothing and are required to pay utilities for living in a hostel. They are not considered prisoners and have the right to vote in elections. In this regard, the Committee of Ministers of the Council of Europe in 2019 recognized the decision of the ECtHR in the case Anchugov and Gladkov v. Russia case as executed.[68]

In the *Yukos shareholders v. Russia* case,[69] the Yukos Oil Company's former shareholders and management sought compensation for their expropriation. They claimed that Russian courts were not acting in good faith in launching tax evasion criminal proceedings against Yukos in 2000-2003, which led to the bankruptcy of the company. The ECtHR ruled that Russia should pay the former Yukos owners 1.87 billion euros in compensation for unfair proceedings of the tax evasion case.[70] In 2017, the Constitutional Court considered that Russia had the right not to pay compensation to the former shareholders of Yukos. At the same time, the Constitutional Court allowed this amount to be paid, but not from state funds, but only if new Yukos property is discovered and the company's debts to creditors (including the state) are paid off.[71]

So far, only in these two cases has Russia directly refused to comply with the ECtHR judgements. In the overwhelming majority of cases, Russia simply does not comply with Court decisions, ignoring them or delaying their execution. In more detail, the statistics of the execution of the ECtHR judgments by Russia will be considered in the next part of this paper.

[68] Committee of Ministers, *Execution of the judgments of the European Court of Human Rights. Two cases against Russian Federation,* Resolution CM/ResDH(2019)240, September 25, 2019.
[69] ECtHR, *OAO Neftyanaya Kompaniya Yukos v. Russia,* Final judgment of 8 March 2012, app. no. 14902/04.
[70] ECtHR, *Case of OAO Neftyanaya Kompaniya Yukos v. Russia*. Judgment of 15 December 2014, app. no. 14902/04.
[71] The Constitutional Court of the Russian Federation Judgment of 19 January 2017 No. 1-П/2017. *Rossiyskaya gazeta 2017* 24; English translation available at the RCC's official website: http://www.ksrf.ru/en/Decision/Judgments/Documents/2017_January_19_1-P.pdf.

2.3. Evaluation of the effectiveness of the ECtHR judgements in cases against Russia

In the ECtHR effectiveness ranking, presented in the first chapter of the paper, Russia occupies 40th out of 47 positions. Taking into account the status of ECtHR decisions in the Russian legislation and Russia's prevailing resistant attitude to the ECtHR as an institute of judicial protection, Russia's relatively low ranking seems more understandable. This data already allows us to conclude on low ECtHR effectiveness in the case of Russia. However, as was stated before, the ECtHR effectiveness ranking is based entirely on a comparison of the CoE member states compliance. So the low or high position in the ranking does not directly imply poor implementation of the ECtHR judgments. It signifies only a better or worse implementation of judgements or a smaller number of submitted complaints in relation to other states. So, in order to make a conclusion about the effectiveness of the ECtHR decisions when submitted by citizens of Russia, it is necessary to consider the statistics of applications and the decisions in more detail. I propose to do this by considering the sub-indicators used to compile the ECHR Effectiveness Rating for Russia in their numerical and not comparative terms. Namely, these sub-indicators include:

1) Number of applications allocated per capita – average within last 10 years.
2) Number of pending leading cases per capita – current and average within last 10 years.
3) Average age of pending leading cases.
4) Percentage of pending cases under enhanced supervision – within the last 8 years.
5) Percentage of closed leading cases in relation to pending leading cases in the last 10 years.
6) Percentage of closed repetitive cases in relation to pending repetitive cases in the last 10 years.

During the analysis, other significant statistics will also be considered. Also, the statistics will be viewed with adjustment to Russia's big population and therefore a large number of applications.

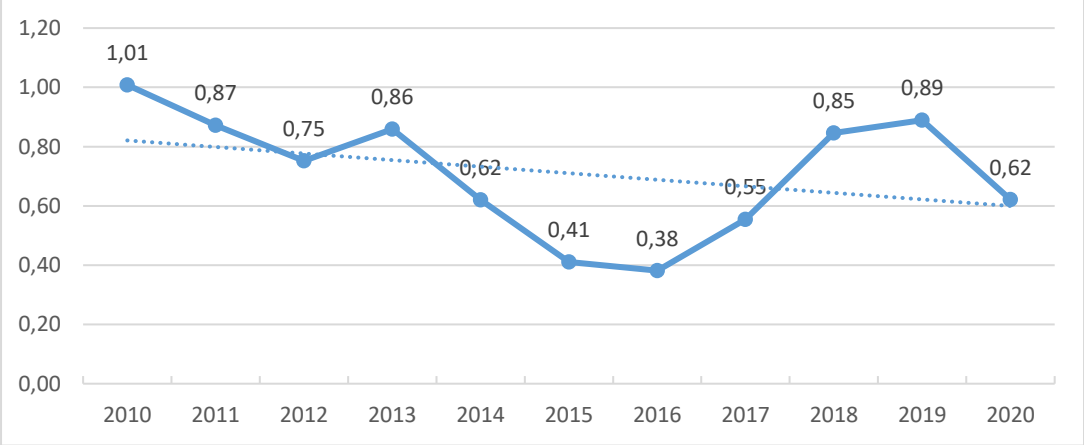
2.3.1. Number of applications allocated per capita – average within last 10 years

Russia accounts for the greatest number of applications allocated against it.[72] In 2020, 41681 applications were allocated to one of the Court's judicial formations. 8923 applications, or 21.4 per cent of the total number, were filed against Russia. At first sight, this number seems

[72] European Court of Human Rights, *Analysis of Statistics 2020. European Court of Human Rights in Facts & Figures 2020* (Strasbourg: Council of Europe, 2021), https://www.echr.coe.int/Documents/Facts_Figures_2020_ENG.pdf.

significant but this large number of complaints submitted against Russia is mostly due to Russia's great population. In terms of CoE member states, Russia has a significantly larger population. For comparison, the next most populated countries in the CoE are Germany and Turkey and their population is 42 per cent smaller than Russia's. Meanwhile, the number of applications against Turkey allocated in 2020 is 2 per cent bigger. Although in the case of Germany this number is 93.6 per cent smaller than the one of Russia. If considered per capita, Russia accounts for 0.62 applications allocated per citizen in 2020 and for 0.72 applications on average within the last 10 years. It puts Russia in 25th place out of 47 considered countries – an absolute average position. Chart 2 below shows that the trend for the number of applications against Russia allocated to a judicial formation has even declined over the past 10 years.

Chart 2. Number of applications against Russia allocated per capita – average within last 10 years[73]



Based on this, it can be concluded that the number of applications filed to the Court from Russian citizens per capita remains at the average level and even decreases, although, in the context of the general statistics of the Court, Russia accounts for one-fifth of the applications annually allocated to a judicial formation.

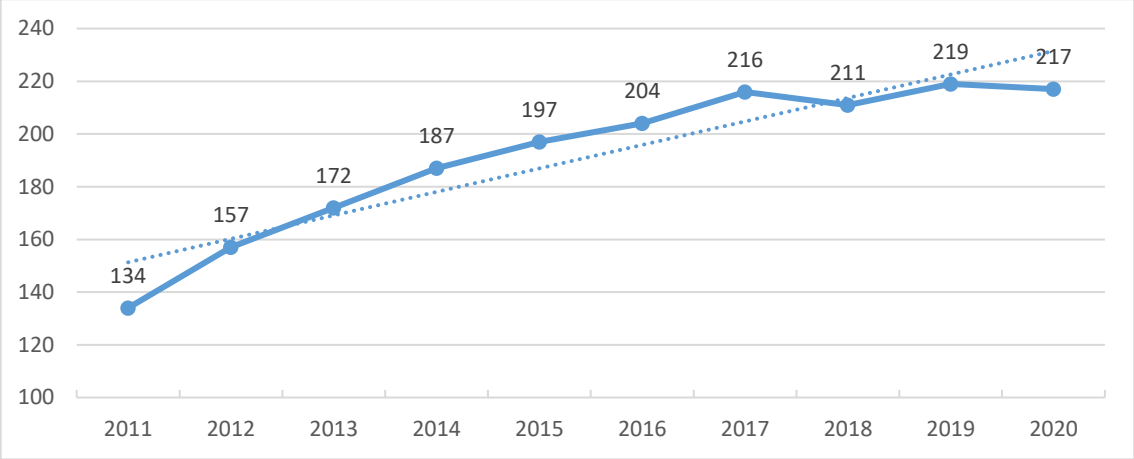
2.3.2. Number of pending leading cases per capita – current and average within last 10 years

Just like with the previous indicator, Russia accounts for the largest number of pending leading cases – 217 cases in 2020 (or 17 per cent of the total number of pending leading cases). But once again the reason for that is Russia's population. For comparison, Turkey's population is

[73] Prepared by the author. Source: ECHR – Analysis of Statistics 2020, ECHR – Analysis of Statistics 2018, ECHR – Analysis of Statistics 2016, ECHR – Analysis of Statistics 2014, ECHR – Analysis of Statistics 2012, ECHR – Analysis of Statistics 2010, ECHR – Analysis of Statistics 2008, ECHR – Analysis of Statistics 2007.

42 per cent smaller but the number of pending leading cases is only 31 per cent smaller compared to Russia's. Calculated per capita, there are 0.015 cases against Russia per citizen in 2020 and 0.013 cases on average within the last 10 years. The dynamics of the numbers of pending leading cases against Russia is shown in chart 3 below.

Chart 3. Number of pending leading cases against Russia – average within last 10 years[74]



The number of pending leading applications has been steadily growing over the last years and increased by 62 per cent since 2011. Considering that the number of submitted applications has not increased, and even decreased compared to 2011, the increase of pending applications can be explained by the fact that Russia does not fulfil general measures imposed by the ECtHR judgements. The old cases remain pending and new obligations under more recent cases keep arriving and piling up. Nevertheless, the overall number of pending leading cases per capita is lower than that of many other countries. Russia occupies 14th place in the ranking, meaning that 33 countries on average have more pending leading cases per capita than Russia. Considering only the current number of pending leading cases, Russia occupies 19th place in the ranking. It once more supports the conclusion that Russia, unlike some countries, does not work on reducing the number of pending leading applications and does not fulfil the obligations imposed by the ECtHR judgements.

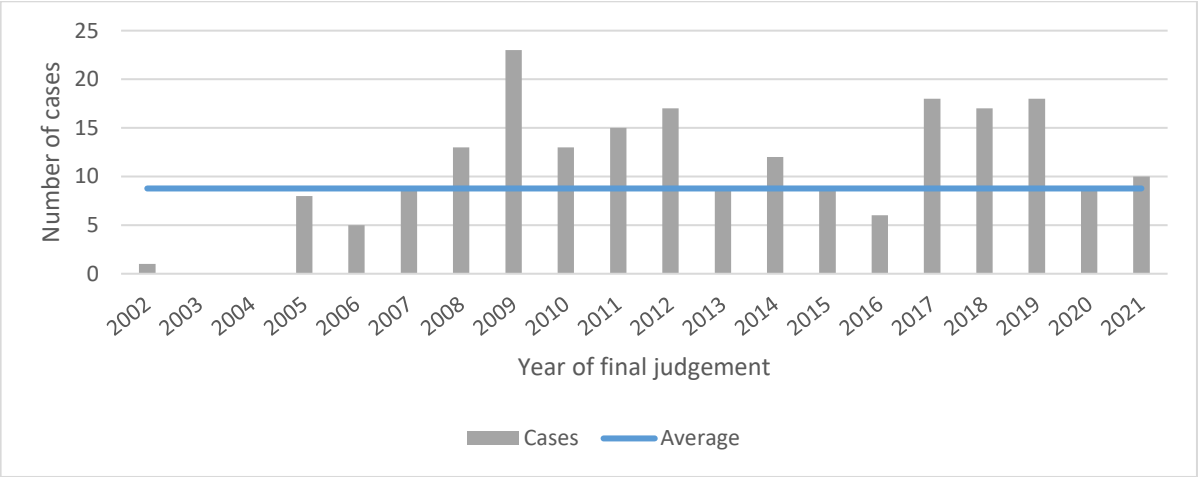
2.3.3. Average age of pending leading cases

Currently, there are 1648 pending repetitive cases and 212 pending leading cases against Russia. Most of the pending repetitive cases (986 cases or 59.8 per cent) remain pending due to non-fulfilment of the leading case measurements. Some of them are pending as the

[74] Prepared by the author. Source: ECHR – Analysis of Statistics 2020, ECHR – Analysis of Statistics 2018, ECHR – Analysis of Statistics 2016, ECHR – Analysis of Statistics 2014, ECHR – Analysis of Statistics 2012, ECHR – Analysis of Statistics 2010, ECHR – Analysis of Statistics 2008, ECHR – Analysis of Statistics 2007.

information on payment is awaited (565 cases or 34.2 per cent). But all of them remain pending as the issues in the legislation or some structural flows have not been fixed by Russia. And thus, all of the pending repetitive cases are linked to some pending leading case. Repetitive cases cannot be older than a leading case.[75] To avoid double accounting of the cases, I have considered only the leading cases to calculate how long the structural issue outlined by the Court remains unresolved in the state's legislation. There are 212 pending leading cases against Russia, and their average age is 8.8 years. This puts Russia in 43rd place out of 47. The oldest pending leading case against Russia has been pending since 2002. Chart 4 below shows the age of pending leading cases and their average age in Russia.

Chart 4. Average age of pending leading cases against Russia[76]



In this sub-indicator, the population of the country does not matter much. The larger population does not affect significantly the compliance rate of the government and how long the pending issue revealed by the leading case takes to be fixed. For comparison, Finland and Ireland have the largest average age of pending cases (10.6 and 10 years respectively). However, in Finland, those are only 12 pending leading cases and they account for 0.012 cases per capita. Finland's population is 26 times smaller than that of Russia but has a similar number of pending leading cases per capita (0.012 in Finland and 0.013 in Russia). Nevertheless, the average age of pending leading cases in Finland is bigger than in Russia. In Ireland, there are only two pending leading cases (from 2010 and 2014), and they account for 0.006 cases per capita. Ireland's population is almost 29 times smaller than Russia's but still, Ireland's average

[75] Stafford, George, "The Implementation of Judgments of the European Court of Human Rights: Worse Than You Think – Part 1: Grade Inflation", *EJIL: Talk!* 2019, https://www.ejiltalk.org/the-implementation-of-judgments-of-the-european-court-of-human-rights-worse-than-you-think-part-1-grade-inflation/

[76] Prepared by the author. Source: ECHR – Analysis of Statistics 2020, ECHR – Analysis of Statistics 2018, ECHR – Analysis of Statistics 2016, ECHR – Analysis of Statistics 2014, ECHR – Analysis of Statistics 2012, ECHR – Analysis of Statistics 2010, ECHR – Analysis of Statistics 2008, ECHR – Analysis of Statistics 2007.

age of pending leading cases is bigger. Thus, the population does not affect this sub-indicator significantly, and the conclusion on the compliance and willingness to implement the ECtHR decisions can be drawn on that data only.

Such a big average age of pending cases in Russia reveals a very poor desire of the state to "close" pending leading cases and implement the general measures suggested by the Court. Pending leading cases oblige the state to report to the Committee of Ministers the status of the case in form of Action Plans, and the Committee of Ministers might keep bringing the case up to discussion during its annual meetings. All that creates extra legal obligations and workload for the state and its institutions. In other words, failure to fulfil the measurements imposed by the Court and "close" the case tells not about the inability of the state to enforce changes in law or legal and institutional practices due to lack of time or other resources, but rather about state resistance and unwillingness to obey Court orders. In the case of Russia, this unwillingness was expressed many times orally in the speeches of the government representatives[77] and is also visible from the recently adopted national legislation, which diminishes the significance of the decisions of the ECtHR for Russian law.

2.3.4. Percentage of pending cases under enhanced supervision – average within last 8 years

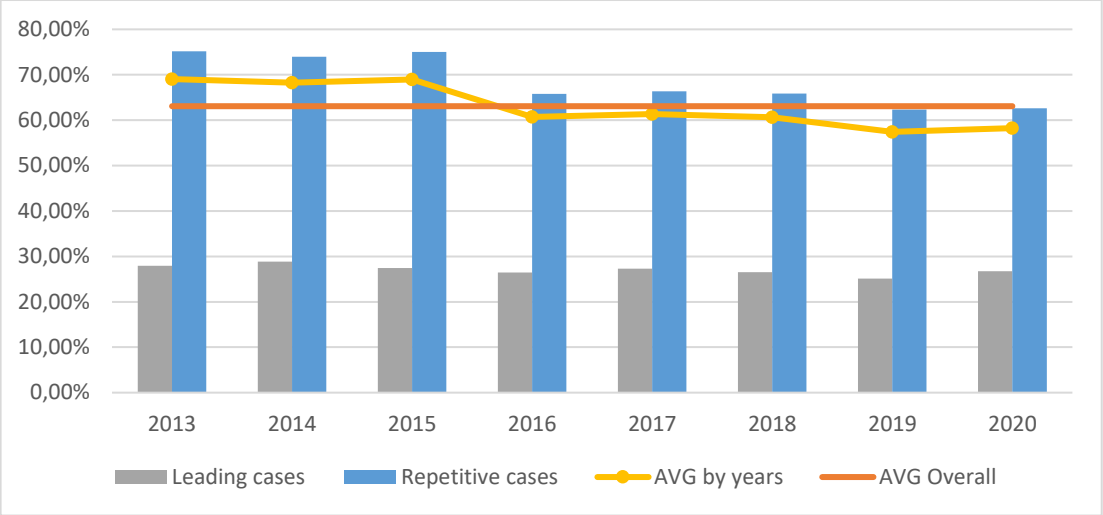
This sub-indicator reveals the long-standing, mainly structural and systemic issues which have been under the Committee's supervision for many years. It combines both the repetitive and the leading cases under enhanced supervision in the period from 2013 to 2020. This indicator is very important as it gives an understanding of what kind of issues the citizens bring into the Court. The higher the percentage, the more severe human rights violations are happening within the state. The rest of the indicators do not differ largely between the types of violations occurring and treat equally, for example, the cases filed due to long proceedings in the national court and cases filed due to torture in police stations. This naturally does not reflect the full picture. This indicator is intended to add value to the content of the cases, not just their number.

By this sub-indicator Russia is in 45th place out of 47, having annually on average 63.08 per cent of the cases under enhanced supervision. This number means that on average 63.08 per cent of all the pending cases against Russia every year within the last 8 years refers to some severe or deep structural and systematic issues. For comparison, 12 out of 47 CoE states have had no cases and 11 states have less than 15 per cent of all the pending cases under enhanced

[77] Yevgeniy Kalyukov, "Matvienko Declared Russia's Refusal to Recognize the Decisions of the ECHR Because of PACE," *RBK* 2017, https://www.rbc.ru/politics/09/10/2017/59db7cdc9a79470249c79eba; Yevgeniy Biyatov, "Klishas commented on the position of the Venice Commission on amendments." *RIA Novosti* 2020, https://ria.ru/20200619/1573173784.html.

supervision within the last 8 years. Chart 5 below shows the percentage of pending cases under enhanced supervision in the period from 2013 to 2020.

Chart 5. Percentage of pending cases under enhanced supervision against Russia – average within last 8 years[78]



In 2020, 26.73 per cent of the pending leading cases and 62.6 per cent of the pending repetitive cases against Russia were under enhanced supervision. This number shows that the applications filed against Russia concern actual human rights violations (right to life and protection against torture, freedom of assembly and association, or issues relating to expulsion or extradition) rather than complaints on the unfair civil or criminal proceedings, that would usually be under standard supervision. Although since 2013 the number of cases under enhanced supervision compared to the overall caseload has decreased from 69 per cent to 58 per cent, this number is still far from average for all the CoE countries – 23.6 per cent.

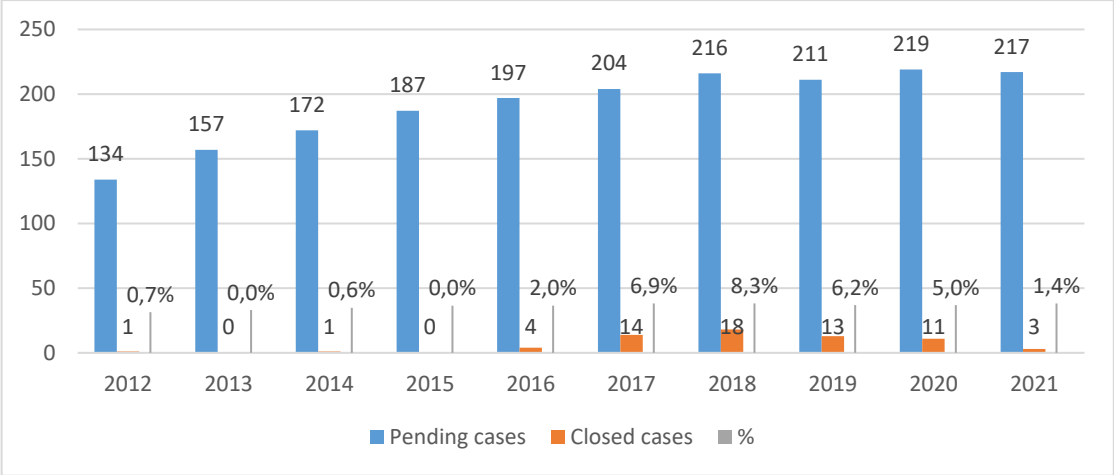
2.3.5. Percentage of closed leading cases in relation to pending leading cases in the last 10 years

This sub-indicator is based on the average ratio between closed leading cases and pending leading cases per year within the last 10 years. It shows how inclined the state is to implement the Court's recommendations to amend the legislation. This indicator does not depend on the population or number of cases as it simply shows how many Court's decisions are implemented by the state during the next year after the decision was delivered.

[78] Prepared by the author. Source: ECHR – Analysis of Statistics 2020, ECHR – Analysis of Statistics 2018, ECHR – Analysis of Statistics 2016, ECHR – Analysis of Statistics 2014, ECHR – Analysis of Statistics 2012, ECHR – Analysis of Statistics 2010, ECHR – Analysis of Statistics 2008, ECHR – Analysis of Statistics 2007.

In this ranking, Russia takes 46th out of 47 places. Overall, within the last 10 years, Russia closed 3.11 per cent of leading cases filed against it. This is a very low number. For comparison, Monaco closed all of the leading cases within the last years, and Denmark on average closes 80 per cent of the leading cases. By the end of 2020, there were 217 pending leading cases against Russia. In 2021, as of 12 November, Russia closed only 3 pending leading cases, which accounts for only 1.4 per cent. Chart 6 shows the ratio of closed leading cases vs. the leading cases that were pending during the previous year.

Chart 6. Percentage of closed leading cases in relation to pending leading cases in the last 10 years.[79]



On average since 2012, Russia has closed 3.1 per cent of pending leading cases annually. Considering that those are only leading cases, meaning that they concern some new and structural or systematic issue within the state and require the implementation of general measurements, these statistics support the statement that Russia is very resistant to implementing ECtHR judgements that require legislative amendments.

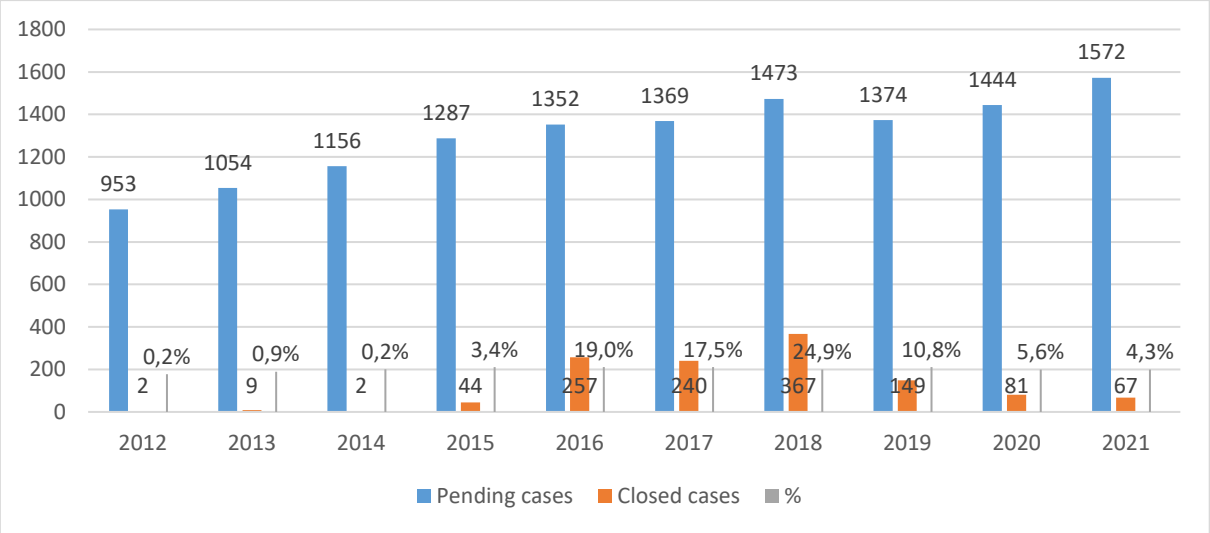
2.3.6. Percentage of closed repetitive cases in relation to pending repetitive cases in the last 10 years

This sub-indicator is similar to the previous one, so all the comments on the irrelevance of the population size and number of cases are applied as well. This sub-indicator considers repetitive cases, meaning that they concern some previously revealed issues in the legislation and primarily imply individual measures that are easier to fulfil for the state.

[79] Prepared by the author. Source: Country Factsheets – Russian Federation. 2021. Available at: https://www.coe.int/en/web/execution/russian-federation; ECHR – Analysis of Statistics 2020, ECHR – Analysis of Statistics 2018, ECHR – Analysis of Statistics 2016, ECHR – Analysis of Statistics 2014, ECHR – Analysis of Statistics 2012, ECHR – Analysis of Statistics 2010, ECHR – Analysis of Statistics 2008, ECHR – Analysis of Statistics 2007.

By this sub-indicator, Russia takes 46th out of 47 positions. Overall, within the last 10 years, Russia closed 8.7 per cent of repetitive cases filed against it. This number is higher than the one for leading cases, which indicates that Russia is more inclined to pay individual compensation than to change legislation. However, this number is still very low. Moreover, in 2021, as of 12 November, Russia closed only 4.3 per cent (67 cases) out of 1572 repetitive cases that were pending at the end of 2020. Chart 7 shows the ratio of closed leading cases compared to the leading cases that were pending during the previous year.

Chart 7. Percentage of closed repetitive cases in relation to pending repetitive cases in the last 10 years.[80]



For comparison, in 2021, as of 12 November, 15 states have closed all of the cases that were pending at the end of 2020 and even some of the cases that were communicated in 2021. 19 states close 50 per cent or more of repetitive cases on average every year. The percentage of case closure for repetitive cases is on average higher than the one for leading cases for all the CoE member states (in 2021, 48 per cent and 18 per cent respectively). This is natural, since the closure of repetitive cases in the overwhelming majority implies the payment of monetary compensation, while the closure of leading cases requires changes in legislation, judicial practice or work of state institutions, which is quite time-consuming and resource-intensive.

Overall, although the ECtHR and the Committee of Ministers in their publications and annual reports cite Russia as the country with the largest number of applications or cases

[80] Prepared by the author. Source: Country Factsheets – Russian Federation. 2021. Available at: https://www.coe.int/en/web/execution/russian-federation; ECHR – Analysis of Statistics 2020, ECHR – Analysis of Statistics 2018, ECHR – Analysis of Statistics 2016, ECHR – Analysis of Statistics 2014, ECHR – Analysis of Statistics 2012, ECHR – Analysis of Statistics 2010, ECHR – Analysis of Statistics 2008, ECHR – Analysis of Statistics 2007.

pending, these statistics do not allow us to conclude that Russia is a country with a large number of human rights violations and poor implementation of ECtHR judgments. Moreover, the provision of such data can be seen as a manipulation to some extent, since in the main reports of the ECtHR, the data are not tied either to the population size or are broken down by leading and repetitive cases. For example, the ECtHR statistical brief for 2020 starts with the following: "Approximately 62,000 applications were pending before a judicial formation at 31 December 2020. Nearly a quarter of these applications had been lodged against the Russian Federation".[81] At the same time, taking into account that the population of Russia is 17 per cent of the total population of the CoE countries, these figures seem to be rather alarming, but not critical. That is why, in the process of assessing the effectiveness of the ECtHR for Russia and other countries, it was crucial not to use the final statistical data of the Court itself but to come up with independent performance indicators based on primary data (the actual number of applications, the actual number of cases by category, the number of closed cases, the year of final judgment and the current case status from the Court's database). If one considers only the main indicators given by the ECtHR and the Council of Ministers in their annual reports on the Court effectiveness (the number of applications filed, the number of pending cases, the number of leading cases) without any reference to the population size or statistics for individual years, then it is almost impossible to conclude the actual Court effectiveness for member states.

As a result, we can conclude that Russia, as described in the reports of the ECtHR, has many problems in terms of compliance with its obligations under the ECHR and the proper provision of human rights within the state. However, this can be seen not by the number of filed applications and pending cases (according to those indicators, when considered per capita, Russia is at an average level), but by the cumulative attitude of Russia towards the execution of the ECtHR judgments. In particular, this can be seen in the high average age of leading cases, in the percentage of closure of leading and repetitive cases, in the number of cases under enhanced supervision. For all these indicators, Russia is among the worst 5 countries.

Based on the first three sub-indicators considered, it can be concluded that Russians file complaints to the ECtHR at the average level for the CoE countries, and the number of applications filed annually is decreasing. At the same time, the issues that they bring to the Court are more often of an individual nature and affect the violation of the rights of specific citizens and not the legislation as a whole. However, the number of leading cases, despite remaining at an average CoE level, has been growing dynamically in recent years. Given that

[81] Analysis of Statistics 2020. European Court of Human Rights in Facts & Figures 2020.

the number of applications filed does not change, this is an indicator that Russia is poorly closing leading cases, that is, it is not making amendments to its national legislation, as required by the Court. This is also confirmed by other indicators: a low percentage of cases closed in relation to the total number of pending cases and high age of pending cases. On the whole, it makes it possible to conclude that the ECtHR is a fairly accessible institution for Russian citizens, they are aware of its existence and are seeking protection there. But at the same time, the effectiveness of the ECtHR as a real mechanism for protecting the rights of Russian citizens is extremely low. And its effectiveness as a tool for humanizing and changing national legislation, the judicial system or the principles of the institute's work is rather insignificant and continues to decline. This is a natural consequence of the official position of the state on the actual primacy of the constitution and decisions of the constitutional court, which in recent years has also received legislative confirmation.

Given the fact that neither the ECtHR nor the Committee of Ministers has real powers to enforce the Court's decision, the current situation and Russia's attitude towards the Court judgments demonstrate no sign of oncoming change. From the perspective of the CoE, it is doubtful that it would be inclined to exert extra pressure on Russia to either change its current interpretative practices or leave the organisation.[82] Membership in the CoE indeed has certain conditions attached to it. Article 8 of the ECHR states that if any member state seriously violates violated Article 3, it "may be suspended from its rights of representation and requested by the Committee of Ministers to withdraw from CoE". Nevertheless, in the modern globalised world, the states are bound by more relations and interdependencies than just by bilateral and multilateral international agreements. Thus, even acting within the provisions of international treaties like ECHR might entail higher political costs when imposing sanctions for non-compliance. This results in the imposing of occasional rather than systematic sanctions.[83] For instance, that was the case with Russia in 2014, when the Parliamentary Assembly of the Council of Europe (PACE) suspended its voting and representation rights as a sanction for its annexation of Crimea.[84] The suspension of the rights of Russia was introduced by PACE as a last resort measure for violating the sovereignty and territorial integrity of Ukraine. In the

[82] Marina Aksenova, Iryna Marchuk, "Reinventing or rediscovering international law? The Russian Constitutional Court's uneasy dialogue with the European Court of Human Rights", *International Journal of Constitutional Law* 16 no. 4 (January 21, 2019): 1345–1346. https://doi.org/10.1093/icon/moy088.

[83] Bill Bowring, "Russia and the European Convention (Or Court) Of Human Rights: The End?". *Revue québécoise de droit international / Quebec Journal of International Law* (December 2020): 216. https://doi.org/10.7202/1078537ar.

[84] Parliamentary Assembly of the Coucil of Europe: *Reconsideration on substantive grounds of the previously ratified credentials of the Russian delegation.* Resolution 1990 (2014). April 10, 2014. http://www.assembly.coe.int/LifeRay/APCE/pdf/Communication/2014/20140410-Resolution1990-EN.pdf.

meantime, PACE insisted on continuing the political dialogue with Russia. Nonetheless, although PACE acted concerning the annexation of Crimea, it is unlikely to invoke the same powers to Russia's non-compliance with the ECtHR judgments.[85] There is a common interest in the continuity of Russia's participation in the ECtHR since the regional and international organisations have their interest in maintaining their status as uniting rather than excluding actors in the international arena. It is thus more likely that the Committee of Ministers will continue applying only mild political pressure to ensure its continued engagement with Russia.[86]

[85] Bowring, 2020. *op. cit.* pp. 216–217.
[86] Galina Nelaeva et al., "Russia's Relations with the European Court of Human Rights in the Aftermath of the Markin Decision: Debating The "Backlash"". *Human Rights Review* 21 no. 1 (March 2020): 98-100. doi:10.1007/s12142-019-00577-7; Aksenova, "Reinventing or rediscovering international law? The Russian Constitutional Court's uneasy dialogue with the European Court of Human Rights".

CONCLUSION

The European Court of Human Rights remains one of the most efficient international institutions of human rights protection. For the CoE citizens, it remains the most easily accessible and effective institution for judicial protection if they fail to get satisfactory protection within their state. The Court's relevance is evidenced by the number of complaints filed annually, and the amount of compensation paid by the respondent states. It receives about 50 000 applications annually. Although 95 per cent of applications are inadmissible or struck out, about 3000 applications are decided by the judgement delivered. Although the number of pending applications has been decreasing in recent years, this is not due to a decrease in the popularity and demand for the Court, but due to an improvement in the speed and quality of applications processing by the Court. Some of these changes and reforms are controversial, such as changing the approach to case closure. Nevertheless, the reforms allow the Court to accept a greater number of applications and exclude the inadmissible ones at an early stage, which makes it possible to make more decisions on the merits.

The question of the effectiveness of the Court still arises as the ECtHR and the Committee of Ministers, which is responsible for oversight of the implementations of the decisions, lack enforcement powers. Also, Court judgements despite their binding force for the state are a source of international law and are of complementary nature towards the national legislation. Moreover, it is within the state's powers to decide on the status of ECtHR decisions within the national legislation as the ECHR does not draw any obligation for the state in this sense. The position of the Court is more ambiguous when talking about it not as an institution for individual protection but as a watchdog for national legislation to be compliant with the ECHR provisions. The Courts decisions are binding on one hand, but the state has sovereignty and has powers to decide on the hierarchy of the sources of law, including the ECHR and ECtHR decisions. For that reason, it seems difficult to draw a universal conclusion about the position of the ECtHR decisions and their significance for all countries of the Council of Europe.

For the same reason, it is difficult to measure the overall performance of the Court. As it was revealed in the course of the study, the statistics provided by the Court and the Committee of Ministers in their annual reports do not give a real picture of efficiency, since they evaluate the ECtHR as an ordinary court, paying attention to caseload and the topics of cases, but without analysing in detail its work as an institution. In particular, this paper sought to analyze the Court's effectiveness as a tool for improving the national legislation in the human rights sphere.

Thus, an emphasis was made on analysing the statistics on the leading cases, which reveal some new or systematic issues within states legislation and whose judgments imply changes in national legislation. Court statistics do not consider this particularity and the number of other features, therefore it seemed rational to create a new indicator of the effectiveness of the ECtHR.

This indicator consists of seven sub-indicators, operates with initial data on the number of applications, the number of pending cases, the number of closed cases and case status and analyses the data on average within a few years. Therefore, it can be claimed to be more objective. Based on this indicator, the ECtHR Effectiveness Rating was compiled for all Council of Europe countries. However, this indicator can be further developed since it does not take into account the level of national legislation, the level of satisfaction of the applicants, the accessibility of the Court for applicants from specific states and other important aspects. This work focused on Russia that is often presented as the country with the highest number of cases before the ECtHR, and therefore the country with the highest number of human rights violations. The rating intended to put Russia and the ECtHR's impact in perspective, comparing it to other states.

In the course of the work, it was proved that the position of Russia as the country with the largest number of applications is not in itself indicative of compliance with the ECHR, since the number of cases per capita is at the average level for CoE. However, the statistics of closure of leading cases remains one of the worst in the CoE. In other words, contrary to the data of the Court itself, the main problem in Russia is not the number of human rights violations and the large number of applications filed with the Court, but the failure to comply with the ECtHR decisions to bring national legislation in line with the requirements of the Court, and therefore the ECHR. On the whole, this paper concluded that the ECtHR is a fairly accessible institution for Russian citizens, they are aware of its existence and are seeking protection there. But at the same time, the effectiveness of the ECtHR as a real mechanism for protecting the rights of Russian citizens is extremely low. And its effectiveness as a tool for humanizing and changing national legislation, the judicial system or the principles of the institute's work is rather insignificant and continues to decline.

This is a natural consequence of the long-standing mistrust towards the ECtHR on the part of the Russian authorities and the legislation adopted in recent years that consolidates this position. In particular, this paper analysed the existing legislation and the position of the decisions of the ECtHR in the legal system of Russia. Federal law in 2015 and later the Constitution itself adopted a provision allowing the Constitutional Court to decide whether principles declared by an international tribunal can or cannot be applied in Russia. However,

so far Russia has directly refused to comply with the ECtHR judgments only twice. In the overwhelming majority of cases, Russia simply does not comply with Court decisions, ignoring them or delaying their execution. From the international point of view, this can be seen as a breach of international obligations under the ECHR and Vienna Convention on the Law on Treaties. From the national point of view, the Court's decision should not contradict the Constitution which is in a higher position in the Russian legal hierarchy. In case it does, the state has a legal basis not to abide by that decision and not to adjust national legislation as it was ruled by the Court. Russia is the only state within the CoE that enshrined that provision in the national legislation. These actions of Russian authorities are controversial but remain within the legal field as the very subject of interaction of international and national law and obligations emerging from them are rather disputable.

Ultimately, despite the negative trend, the ECtHR remains an effective mechanism to protect the rights of Russian citizens who seek justice in the Court. Every year Russia enforces fewer Court decisions or delays their execution. However, it is not possible for Russia to completely refuse access to the ECtHR, that is, to leave the Council of Europe, or for the CoE to exclude Russia because it violates the provisions of the ECHR. The most likely development scenario is the continuation of this latent conflict, in which Russia will very selectively implement the decisions of the ECtHR, and the ECtHR and the Committee of Ministers, although they will actively condemn Russian legislation and the actions of the authorities, will not take any active action.

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ANNEXES

Annex No. 1: Decided applications by years.

Annex No. 2: ECtHR effectiveness indicator by countries sub-indicators.

1) Number of applications allocated per capita – average within last 10 years.
2) Number of pending leading cases per capita – average within last 10 years.
3) Number of pending leading cases per capita – current.
4) Average age of pending leading cases.
5) Percentage of pending cases under enhanced supervision – average within last 8 years.
6) Percentage of closed leading cases in relation to pending leading cases in the last 10 years.
7) Percentage of closed repetitive cases in relation to pending repetitive cases in the last 10 years.

Annex No. 1: Decided applications by years[87]

Year	Decided applications	by judgment delivered	by judgement delivered, %	by decision (inadmissible or struck out)	by decision, %
2006	29 878	1 719	5,75%	28 159	94,25%
2007	28 792	1 735	6,03%	27 057	93,97%
2008	32 043	1 880	5,87%	30 163	94,13%
2009	35 460	2 395	6,75%	33 065	93,25%
2010	41 182	2 607	6,33%	38 575	93,67%
2011	52 188	1 511	2,90%	50 677	97,10%
2012	87 879	1 678	1,91%	86 201	98,09%
2013	93 396	3 659	3,92%	89 737	96,08%
2014	86 068	2 388	2,77%	83 680	97,23%
2015	45 576	2 441	5,36%	43 135	94,64%
2016	38 506	1 927	5,00%	36 579	95,00%
2017	85 951	15 595	18,14%	70 356	81,86%
2018	42 761	2 738	6,40%	40 023	93,60%
2019	40 667	2 187	5,38%	38 480	94,62%
2020	39 190	1 901	4,85%	37 289	95,15%
Average	**51 969**	**3 091**	**5,82%**	**48 878**	**94,18%**

[87] Prepared by the author. Source: ECHR – Analysis of Statistics 2020, ECHR – Analysis of Statistics 2018, ECHR – Analysis of Statistics 2016, ECHR – Analysis of Statistics 2014, ECHR – Analysis of Statistics 2012, ECHR – Analysis of Statistics 2010, ECHR – Analysis of Statistics 2008, ECHR – Analysis of Statistics 2007.

Annex No. 2: ECtHR effectiveness indicator by countries sub-indicators 1-7[88]

1) Number of applications allocated per capita – average within last 10 years

Country	Allocated/population (10 000)												Points	Rank
	2010	*2011*	*2012*	*2013*	*2014*	*2015*	*2016*	*2017*	*2018*	*2019*	*2020*	*Av./year*		
Albania	0,30	0,30	0,35	0,37	0,28	0,51	0,51	0,33	0,34	0,31	0,27	0,35	**37**	**11**
Andorra	0,94	0,94	0,71	0,26	0,66	0,79	0,53	0,27	0,40	0,79	1,43	0,70	**24**	**24**
Armenia	0,61	0,53	0,73	0,65	0,52	0,40	2,51	1,19	0,56	0,50	0,72	0,81	**19**	**29**
Austria	0,52	0,46	0,45	0,52	0,37	0,30	0,27	0,26	0,27	0,22	0,24	0,35	**36**	**12**
Azerbaijan	0,37	0,58	0,37	0,35	0,42	0,28	0,34	0,69	0,32	0,40	0,52	0,42	**33**	**15**
Belgium	0,28	0,23	0,24	0,24	0,14	0,18	0,16	0,13	0,16	0,12	0,11	0,18	**41**	**7**
Bosnia and Herzegovina	1,71	1,32	1,12	2,27	1,74	2,37	2,70	2,47	2,56	5,11	2,49	2,35	**7**	**41**
Bulgaria	1,78	1,63	1,74	1,66	1,28	1,43	1,23	0,82	1,10	1,07	0,87	1,33	**16**	**32**
Croatia	2,24	2,70	4,35	4,32	2,58	1,92	1,82	1,74	1,63	1,75	1,52	2,42	**6**	**42**
Cyprus	1,44	0,82	0,92	1,66	0,64	0,38	0,40	0,36	0,60	0,51	0,62	0,76	**21**	**27**
Czech Republic	0,58	0,50	0,52	0,46	0,35	0,32	0,32	0,36	0,33	0,28	0,36	0,40	**34**	**14**
Denmark	0,17	0,20	0,18	0,15	0,12	0,08	0,08	0,10	0,06	0,10	0,11	0,12	**46**	**2**
Estonia	1,98	2,58	2,25	1,80	1,42	1,45	1,57	1,19	1,00	0,91	0,96	1,55	**13**	**35**
Finland	0,70	0,80	0,59	0,58	0,34	0,32	0,36	0,33	0,32	0,24	0,22	0,44	**31**	**17**
France	0,25	0,25	0,21	0,23	0,17	0,16	0,14	0,13	0,13	0,10	0,10	0,17	**42**	**6**
Georgia	0,85	0,88	0,82	0,35	0,23	0,18	0,16	0,24	0,27	0,35	0,35	0,42	**32**	**16**
Germany	0,21	0,22	0,18	0,19	0,13	0,10	0,08	0,07	0,06	0,07	0,07	0,12	**45**	**3**
Greece	0,52	0,59	0,64	0,66	0,54	0,42	0,31	0,39	0,39	0,32	0,61	0,49	**28**	**20**
Hungary	0,44	0,66	0,74	1,00	2,43	4,30	5,67	1,99	0,92	0,97	1,06	1,83	**9**	**39**
Iceland	0,47	0,31	0,31	0,28	0,86	0,30	0,72	0,80	0,69	1,12	0,77	0,60	**26**	**22**
Ireland	0,14	0,12	0,12	0,14	0,07	0,04	0,06	0,11	0,06	0,08	0,08	0,09	**47**	**1**
Italy	0,64	0,78	0,53	0,53	0,90	0,31	0,23	0,23	0,28	0,24	0,25	0,45	**30**	**18**
Latvia	1,21	1,40	1,40	1,59	1,49	1,23	1,31	1,41	1,34	1,21	2,17	1,43	**15**	**33**
Liechtenstein	4,17	2,50	4,44	1,89	3,24	3,51	2,63	2,37	2,37	1,58	2,31	2,82	**3**	**45**
Lithuania	0,73	1,00	1,24	1,44	1,31	1,29	1,41	1,41	1,56	1,42	1,42	1,29	**17**	**31**
Luxembourg	0,88	0,47	0,59	0,71	0,42	0,39	0,66	0,64	0,58	0,37	0,46	0,56	**27**	**21**
Malta	0,56	0,53	0,63	1,19	0,92	0,56	0,60	0,50	0,63	0,71	0,78	0,69	**25**	**23**
Monaco	3,94	2,42	1,39	2,78	1,11	2,37	1,58	1,84	1,32	2,11	0,79	1,97	**8**	**40**
Montenegro	4,95	5,08	2,91	4,64	2,54	2,07	2,65	2,22	5,11	6,86	3,50	3,87	**1**	**47**
Netherlands	0,44	0,48	0,40	0,46	0,40	0,29	0,29	0,31	0,25	0,23	0,22	0,34	**38**	**10**
North Macedonia	2,06	1,83	1,72	2,59	1,85	1,75	1,64	1,66	1,47	1,26	1,32	1,74	**11**	**37**
Norway	0,18	0,32	0,20	0,29	0,28	0,14	0,17	0,23	0,16	0,19	0,18	0,21	**39**	**9**
Poland	1,51	1,30	1,06	1,03	0,72	0,57	0,64	0,54	0,51	0,48	0,43	0,80	**20**	**28**
Portugal	0,17	0,16	0,21	0,25	0,24	0,22	0,15	0,19	0,14	0,18	0,25	0,20	**40**	**8**
Republic of Moldova	2,65	2,87	2,63	3,80	3,09	2,84	2,36	2,13	2,29	1,79	1,47	2,54	**4**	**44**
Romania	2,79	2,40	3,18	2,70	2,22	2,32	4,15	3,31	1,72	1,37	1,55	2,52	**5**	**43**
Russian Federation	1,01	0,87	0,75	0,86	0,62	0,41	0,38	0,55	0,85	0,89	0,62	0,71	**23**	**25**
San Marino	1,29	0,00	0,31	1,18	1,47	1,21	3,94	3,33	1,18	2,86	1,71	1,68	**12**	**36**
Serbia	2,14	5,12	6,77	7,04	3,90	1,74	1,89	2,03	3,04	3,10	2,65	3,58	**2**	**46**
Slovak Republic	1,05	1,03	0,98	0,86	0,60	0,65	0,57	0,78	0,72	0,55	0,53	0,76	**22**	**26**
Slovenia	4,09	2,07	2,05	2,41	1,71	1,03	1,16	1,81	1,33	1,01	0,86	1,77	**10**	**38**
Spain	0,15	0,17	0,15	0,17	0,14	0,12	0,13	0,14	0,13	0,13	0,09	0,14	**44**	**4**
Sweden	0,96	2,06	0,57	0,38	0,28	0,22	0,14	0,15	0,19	0,20	0,17	0,48	**29**	**19**
Switzerland	0,47	0,45	0,41	0,55	0,37	0,39	0,31	0,32	0,32	0,33	0,32	0,39	**35**	**13**
Turkey	0,80	1,18	1,22	0,46	0,21	0,28	1,06	3,25	0,83	0,89	1,09	1,02	**18**	**30**
Ukraine	0,87	1,01	1,72	2,89	3,13	1,33	1,91	0,97	0,71	0,88	0,94	1,49	**14**	**34**
United Kingdom	0,45	0,25	0,28	0,14	0,11	0,09	0,06	0,06	0,05	0,05	0,04	0,14	**43**	**5**

[88] Prepared by the author.

2) Number of pending leading cases per capita – average within last 10 years

Country	Pending leading cases/population (10 000)											Points	Rank
	2011	*2012*	*2013*	*2014*	*2015*	*2016*	*2017*	*2018*	*2019*	*2020*	*Av./year*		
Albania	0,056	0,053	0,062	0,062	0,062	0,035	0,031	0,031	0,038	0,046	0,0477	**15**	**33**
Andorra	0,000	0,118	0,132	0,132	0,132	0,263	0,000	0,000	0,000	0,000	0,0776	**11**	**37**
Armenia	0,028	0,043	0,063	0,053	0,040	0,040	0,037	0,044	0,064	0,064	0,0475	**16**	**32**
Austria	0,025	0,023	0,027	0,027	0,026	0,016	0,017	0,011	0,007	0,006	0,0184	**31**	**17**
Azerbaijan	0,026	0,027	0,035	0,044	0,047	0,055	0,055	0,056	0,034	0,045	0,0424	**19**	**29**
Belgium	0,020	0,015	0,019	0,012	0,012	0,012	0,011	0,010	0,016	0,016	0,0142	**32**	**16**
Bosnia and Herzegovina	0,029	0,047	0,031	0,026	0,029	0,029	0,031	0,026	0,029	0,032	0,0308	**23**	**25**
Bulgaria	0,157	0,142	0,136	0,131	0,124	0,131	0,108	0,128	0,113	0,119	0,1290	**6**	**42**
Croatia	0,095	0,105	0,129	0,158	0,166	0,177	0,152	0,110	0,091	0,057	0,1238	**7**	**41**
Cyprus	0,095	0,093	0,069	0,058	0,047	0,059	0,047	0,081	0,080	0,079	0,0708	**13**	**35**
Czech Republic	0,019	0,019	0,009	0,010	0,004	0,006	0,007	0,007	0,002	0,002	0,0083	**38**	**10**
Denmark	0,005	0,000	0,000	0,000	0,000	0,002	0,002	0,000	0,002	0,002	0,0012	**47**	**1**
Estonia	0,022	0,045	0,038	0,053	0,061	0,030	0,015	0,008	0,015	0,015	0,0302	**24**	**24**
Finland	0,030	0,020	0,020	0,024	0,024	0,022	0,024	0,016	0,016	0,020	0,0216	**30**	**18**
France	0,007	0,006	0,004	0,005	0,006	0,004	0,002	0,003	0,003	0,004	0,0045	**41**	**7**
Georgia	0,007	0,013	0,047	0,042	0,049	0,033	0,035	0,040	0,051	0,062	0,0380	**21**	**27**
Germany	0,002	0,002	0,002	0,002	0,002	0,003	0,002	0,002	0,002	0,001	0,0019	**45**	**3**
Greece	0,056	0,026	0,055	0,051	0,048	0,046	0,051	0,044	0,040	0,036	0,0453	**17**	**31**
Hungary	0,025	0,024	0,035	0,037	0,044	0,055	0,055	0,052	0,049	0,055	0,0432	**18**	**30**
Iceland	0,094	0,156	0,155	0,153	0,061	0,030	0,059	0,086	0,084	0,082	0,0962	**10**	**38**
Ireland	0,009	0,007	0,011	0,004	0,004	0,004	0,006	0,006	0,004	0,004	0,0060	**39**	**9**
Italy	0,010	0,010	0,012	0,013	0,013	0,012	0,009	0,009	0,009	0,009	0,0106	**37**	**11**
Latvia	0,087	0,118	0,188	0,220	0,252	0,208	0,128	0,026	0,031	0,042	0,1299	**5**	**43**
Liechtenstein	0,000	0,000	0,000	0,000	0,270	0,263	0,263	0,263	0,263	0,256	0,1579	**4**	**44**
Lithuania	0,033	0,043	0,064	0,078	0,082	0,069	0,074	0,068	0,075	0,075	0,0661	**14**	**34**
Luxembourg	0,098	0,057	0,037	0,000	0,018	0,017	0,000	0,017	0,016	0,000	0,0260	**28**	**20**
Malta	0,289	0,337	0,309	0,235	0,256	0,161	0,182	0,252	0,263	0,214	0,2499	**2**	**46**
Monaco	0,000	0,000	0,000	0,000	0,000	0,000	0,263	0,000	0,000	0,000	0,0263	**27**	**21**
Montenegro	0,065	0,129	0,161	0,209	0,209	0,096	0,048	0,048	0,048	0,080	0,1094	**8**	**40**
Netherlands	0,005	0,005	0,008	0,005	0,005	0,005	0,006	0,002	0,003	0,003	0,0047	**40**	**8**
North Macedonia	0,088	0,102	0,116	0,126	0,140	0,135	0,121	0,082	0,067	0,072	0,1049	**9**	**39**
Norway	0,000	0,004	0,006	0,006	0,006	0,002	0,000	0,000	0,004	0,004	0,0031	**44**	**4**
Poland	0,019	0,020	0,016	0,011	0,009	0,009	0,008	0,008	0,008	0,009	0,0116	**35**	**13**
Portugal	0,011	0,014	0,008	0,010	0,012	0,013	0,014	0,016	0,017	0,020	0,0133	**33**	**15**
Republic of Moldova	0,166	0,197	0,199	0,214	0,222	0,225	0,214	0,149	0,149	0,138	0,1874	**3**	**45**
Romania	0,041	0,041	0,042	0,042	0,038	0,036	0,030	0,031	0,039	0,046	0,0387	**20**	**28**
Russian Federation	0,009	0,011	0,012	0,013	0,013	0,014	0,015	0,015	0,015	0,015	0,0133	**34**	**14**
San Marino	0,313	0,313	0,588	0,294	0,606	0,606	0,303	0,000	0,000	0,286	0,3308	**1**	**47**
Serbia	0,025	0,044	0,040	0,046	0,041	0,037	0,027	0,017	0,019	0,017	0,0313	**22**	**26**
Slovak Republic	0,037	0,026	0,031	0,037	0,050	0,018	0,017	0,013	0,022	0,026	0,0277	**25**	**23**
Slovenia	0,044	0,078	0,083	0,102	0,097	0,102	0,097	0,048	0,058	0,033	0,0741	**12**	**36**
Spain	0,003	0,003	0,004	0,003	0,004	0,004	0,004	0,003	0,003	0,004	0,0035	**43**	**5**
Sweden	0,006	0,008	0,004	0,002	0,003	0,002	0,002	0,003	0,003	0,003	0,0037	**42**	**6**
Switzerland	0,013	0,010	0,010	0,020	0,016	0,008	0,008	0,009	0,008	0,009	0,0112	**36**	**12**
Turkey	0,022	0,024	0,025	0,022	0,023	0,023	0,022	0,020	0,019	0,018	0,0218	**29**	**19**
Ukraine	0,019	0,023	0,028	0,030	0,032	0,032	0,030	0,027	0,026	0,024	0,0271	**26**	**22**
United Kingdom	0,004	0,003	0,003	0,002	0,001	0,002	0,001	0,001	0,001	0,001	0,0019	**46**	**2**

3) Number of pending leading cases per capita – current

Country	Pending leading cases	Population	Pending leading cases per capita	Points	Rank
	2021	*1.1.2021*	*2021*		
Albania	14	2830	0,04947	**16**	**32**
Andorra	0	77	0,00000	**45,5**	**1-4**
Armenia	19	2263	0,08396	**7**	**41**
Austria	5	8933	0,00560	**33**	**15**
Azerbaijan	47	10119	0,04645	**17**	**31**
Belgium	20	11566	0,01729	**27**	**21**
Bosnia and Herzegovina	11	3256	0,03378	**20**	**28**
Bulgaria	89	6917	0,12867	**5**	**43**
Croatia	30	4036	0,07433	**9**	**39**
Cyprus	8	896	0,08929	**6**	**42**
Czech Republic	2	10702	0,00187	**41**	**7**
Denmark	2	5840	0,00342	**39**	**9**
Estonia	0	1330	0,00000	**45,5**	**1-4**
Finland	11	5534	0,01988	**24**	**24**
France	28	67440	0,00415	**35**	**13**
Georgia	25	3729	0,06704	**10**	**38**
Germany	13	83155	0,00156	**42**	**6**
Greece	44	10683	0,04119	**18**	**30**
Hungary	57	9731	0,05858	**13**	**35**
Iceland	2	369	0,05420	**14**	**34**
Ireland	2	5007	0,00399	**37**	**11**
Italy	55	59258	0,00928	**32**	**16**
Latvia	7	1893	0,03698	**19**	**29**
Liechtenstein	1	39	0,25641	**2**	**46**
Lithuania	18	2796	0,06438	**12**	**36**
Luxembourg	0	635	0,00000	**45,5**	**1-4**
Malta	13	516	0,25194	**3**	**45**
Monaco	0	38	0,00000	**45,5**	**1-4**
Montenegro	4	621	0,06441	**11**	**37**
Netherlands	7	17475	0,00401	**36**	**12**
North Macedonia	17	2069	0,08217	**8**	**40**
Norway	2	5391	0,00371	**38**	**10**
Poland	36	37840	0,00951	**31**	**17**
Portugal	17	10298	0,01651	**28**	**20**
Republic of Moldova	48	3547	0,13533	**4**	**44**
Romania	97	19186	0,05056	**15**	**33**
Russian Federation	213	146171	0,01457	**29**	**19**
San Marino	2	34	0,58824	**1**	**47**
Serbia	12	6872	0,01746	**26**	**22**
Slovak Republic	16	5460	0,02930	**21**	**27**
Slovenia	6	2109	0,02845	**22**	**26**
Spain	20	47394	0,00422	**34**	**14**
Sweden	2	10379	0,00193	**40**	**8**
Switzerland	10	8667	0,01154	**30**	**18**
Turkey	148	83614	0,01770	**25**	**23**
Ukraine	111	41419	0,02680	**23**	**25**
United Kingdom	9	67081	0,00134	**43**	**5**

Appendix No. 1: Summary

This paper intends to contribute to the understanding of the role of the European Court of Human Rights as a mechanism of human rights protection. It examines the place of the Court judgements in the domestic legislation of the Council of Europe member states and describes the possible reasons for different compliance rates among the states.

Furthermore, the paper intends to evaluate the effectiveness of the ECtHR as a mechanism of human rights protection. By combining seven important sub-indicators, based on Court statistical data, the author composes the ECtHR effectiveness indicator and applies it to each Council of Europe member state. The resulting ECtHR effectiveness ranking is used to estimate the compliance of Russia with Court judgements. The findings of the level of implementation of the ECtHR judgment by Russia are explained from the point of view of Russian legislation and recent legal practice.