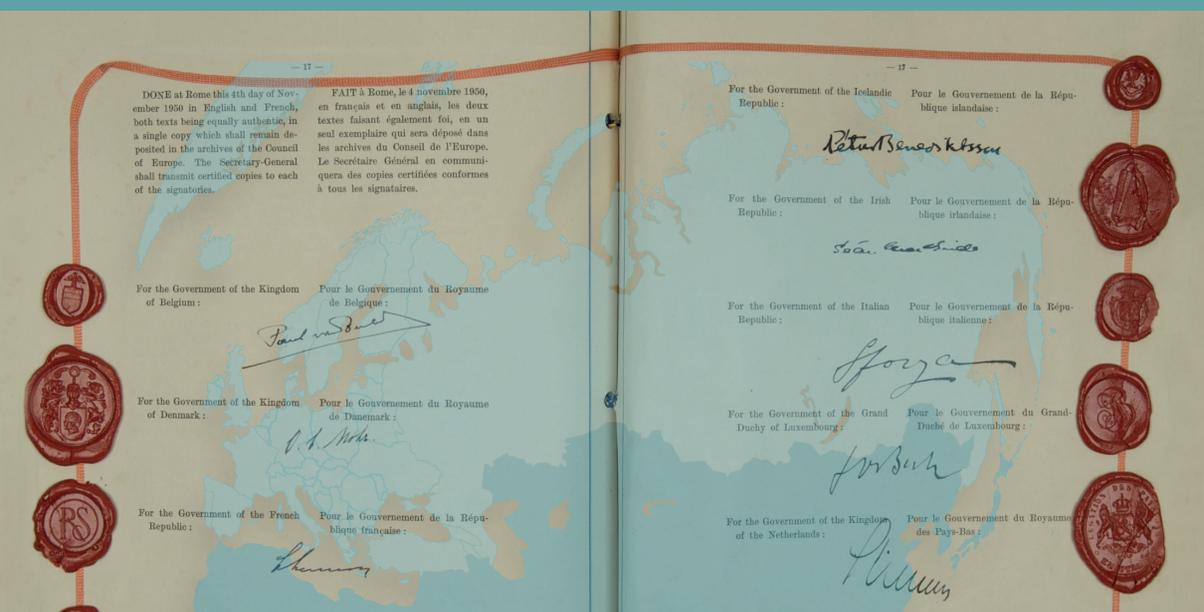


# IMPACT OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS IN STATES PARTIES SELECTED EXAMPLES



COUNCIL OF EUROPE



CONSEIL DE L'EUROPE



**IMPACT  
OF THE EUROPEAN CONVENTION  
ON HUMAN RIGHTS  
IN STATES PARTIES**

Overview prepared by the Legal Affairs and Human Rights Department upon the request of Mr Pierre-Yves Le Borgn' (France, SOC), Rapporteur on the implementation of judgments of the European Court of Human Rights.<sup>1</sup>

Upon his appointment as Rapporteur on "The implementation of judgments of the European Court of Human Rights" on 2 November 2015, Mr Le Borgn' requested the Secretariat of the Assembly's Legal Affairs and Human Rights Department to prepare an information document compiling selected examples of the positive impact that the European Convention on Human Rights (ETS No. 5,<sup>2</sup> "the Convention", "ECHR") has had within States Parties to the Convention. The present text is the result of this work undertaken by the department in collaboration with the Human Rights Centre of the University of Essex, United Kingdom.

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1. AS/Jur/Inf 2016) 04, 8 January 2016, ajinfdoc04 2016.

2. Available at [www.coe.int/en/web/conventions/full-list/-/conventions/treaty/005](http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/005).

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SELECTED EXAMPLES

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# Introduction

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**A**rticle 1 of the European Convention on Human Rights (“the Convention”) places primary responsibility on states parties to ensure that the rights and freedoms enshrined in the Convention are fully guaranteed to everyone within their jurisdiction, and that their national law and practice conform with the Convention, as authoritatively interpreted by the European Court of Human Rights (“the Court”, “the Strasbourg Court”). As a corollary of states’ principal responsibility in securing the effective protection of Convention rights and the Strasbourg Court’s role as the final arbiter as to the scope and meaning of these rights, states parties are obliged to fully and rapidly implement the Court’s final judgments (Article 46, paragraph 1 of the Convention).

This paper contains selected examples from all 47 States Parties to the Convention that illustrate how the protection of human rights and fundamental freedoms has been strengthened at the domestic level thanks to the Convention and the Strasbourg Court’s case law. The list is by no means exhaustive, and does not claim to be representative of the fields in which the Convention has had the most far-reaching impact.

In most instances, a respondent state enjoys a certain discretion as to how to give effect to the Court’s judgments, subject to the Committee of Ministers’ supervision. Corrective measures that states have undertaken to implement Court judgments include constitutional and legislative amendments, organisational and administrative reforms, as well as adjustments reflected in the case law of the highest judicial organs. Of relevance, in this connection, is the status of the Convention and its protocols in the domestic law of states parties (see Appendix – Select bibliography).

A number of states made changes to their legal systems prior to or shortly after their accession to the Council of Europe, in order to bring them into conformity with Convention requirements. Mention can be made of Switzerland, which granted women the right to vote at federal level before ratifying the Convention. In the course of the political changes in the late 1980s/early 1990s, several post-Soviet states abolished the death penalty; and a number of countries joining from Central and Eastern Europe undertook an analysis of whether their legal system complied with Convention standards, and adapted their respective legal systems and practices accordingly.

As illustrated by the examples discussed below, a violation need not necessarily be found by the Court in Strasbourg for the Convention to have an impact; in fact, a number of reforms have been implemented without the Court first finding a violation. On some occasions, a violation has been remedied prior to a judgment of the Court, leading to the case being removed from the Court's docket. In others, friendly settlements (in accordance with Article 38 of the Convention) have been reached on the basis of the respondent state accepting an alteration of its law or practice, or the case has been struck out following a unilateral declaration (in accordance with Rule 62A of the Rules of Court<sup>1</sup>) by the state acknowledging a violation and undertaking to remedy the situation. Similarly, states have been prepared to meet their Convention obligations by scrutinising the Court's case law and, if necessary, adjusting their legal systems following the finding of a violation in a case against another state, thus amplifying the effect of the Court's case law across Europe by taking into account the interpretative authority (*res interpretata*) of the Strasbourg Court's judgments.

The examples, in this information document, show that the effects of the Convention extend to all areas of human life, benefiting individuals, associations, political parties, companies, and persons belonging to particularly vulnerable groups such as minors, victims of violence, elderly persons, refugees and asylum seekers, defendants in judicial proceedings, persons with (mental) health problems, and those belonging to national, ethnic, religious, sexual or other minorities.

The areas where the Convention and its case law have brought about change include, but are not limited to, individuals' access to justice, the prohibition of discrimination, property rights, family law issues such as custody rights, the prevention and punishment of acts of torture, the protection of the victims of domestic violence, the privacy of individuals in their correspondence and sexual relations, and the protection of religious freedoms and freedoms of expression and association.

Finally, it is important to bear in mind that although Convention standards, enriched by the Court's case law – especially that of the Grand Chamber's judgments of principle – create a body of law which reflects “common European standards” by which all states parties are bound, this European supervision functions without prejudice to the basic premise that states ensure higher standards of human rights protection (Article 53 of the Convention).

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1. Available at [www.echr.coe.int/Documents/Rules\\_Court\\_ENG.pdf](http://www.echr.coe.int/Documents/Rules_Court_ENG.pdf) (consulted 16 August 2016).

# Impact of the European Convention on Human Rights in states parties: selected examples

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## ALBANIA

### **More effective prevention of child abduction**

The applicant in *Bajrami v. Albania* (Application No. 35853/04, judgment of 12 December 2006) had been unable to have a custody award in his favour enforced, since his ex-wife had taken their daughter to Greece. The Court found a violation of Article 8 of the Convention (right to respect for family life), interpreted in light of the Hague Convention on the Civil Aspects of International Child Abduction (“Hague Convention”<sup>2</sup>), due to the lack of a specific remedy for preventing and punishing child abduction. This judgment prompted the Albanian authorities to complete the ratification procedure of the Hague Convention, to which it became a party on 1 August 2007.

### **Proceedings cannot be reopened by prosecutor**

In *Xheraj v. Albania* (Application No. 37959/02, judgment of 29 July 2008), the Strasbourg Court, *inter alia*, found that, by granting the prosecutor’s appeal against the applicant’s acquittal out of time, the Supreme Court had infringed the principle of legal certainty, thus violating the right to a fair trial (Article 6.1 of the Convention). In response, the Albanian authorities organised training seminars and round-tables for judges and legal professionals to ensure appropriate implementation. The Supreme Court agreed to reopen the proceedings in relation to a number of applicants who had won their case in Strasbourg, including Mr Xheraj (see Resolution CM/ResDH(2014)96<sup>3</sup> and Supreme Court of Albania, Case No. 76 of March 2012).

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2. Available at [www.hcch.net/en/instruments/conventions/full-text/?cid=24](http://www.hcch.net/en/instruments/conventions/full-text/?cid=24) (consulted 16 August 2016).
  3. All resolutions mentioned in this text come from the Committee of Ministers; they are listed in the Appendix and available on [www.coe.int/fr/web/execution](http://www.coe.int/fr/web/execution).

## Improvement of detention conditions

In *Dybeku v. Albania* (Application No. 41153/06, judgment of 08/12/2007), the Court ruled that the inadequacy of the applicant's detention conditions and inappropriate medical treatment qualified as inhuman and degrading treatment contrary to Article 3 of the Convention. In April 2014, a Law on the Rights and Treatment of Prisoners and Detainees was adopted, and the General Prison Directorate announced a review of the General Prison Rules as well as continuous training to medical staff in penitentiary hospitals. The positive impact of the individual measures taken in response to the Court's judgment, namely the applicant's transfer to a specialised establishment for prisoners suffering from certain mental illnesses where he received daily medical treatment and psychiatric counselling, were acknowledged by the Court in *Dybeku v. Albania* (Application No. 557/12, decision (inadmissible) of 11 March 2014, paragraphs 25-26). (See information on the state of execution, available from the website of the Council of Europe's Department for the Execution of Judgments of the European Court of Human Rights "Execution Department".<sup>4</sup>)

## ANDORRA

### Access to Constitutional Tribunal no longer subject to State Counsel's approval

A noteworthy legislative change was effected following the Court's admissibility decision in the case of *Millan i Tornes v. Andorra* (Application No. 35052/97, decision (strike out) of 6 July 1999), in which the applicant had complained under Article 6, paragraph 1, of the Convention (access to a court) that the Andorran General Prosecutor's refusal to grant permission to lodge an *empara* appeal had denied him access to the Andorran Constitutional Court. The entry into force of the Constitutional Court (Amendment) Act on 20 May 1999 ultimately allowed the applicant to lodge an appeal with the Constitutional Court without the Principal State Counsel's agreement being required. In light of this, a friendly settlement was reached and the application was struck out of the list by judgment of 6 July 1999 (see paragraphs 19-23 of the Court's judgment (friendly settlement) of 6 July 1999, and Resolution DH (99) 721).

### Domestic proceedings reopened subsequent to finding of a violation by the Strasbourg Court

The Court's finding of a violation of Article 6, paragraph 1, of the Convention (right to a fair trial) in the case of *UTE Saur Vallnet v. Andorra* (Application No. 16047/10, judgment of 29 May 2012, available in French only) stemmed from a lack of impartiality of the administrative chamber of the High Court of Justice, due to the fact that the reporting judge in the appeals procedures in this case was a partner in a law firm providing legal services to the government. The Court dismissed the government's

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4. Department for the Execution of Judgments of the Court, [www.coe.int/en/web/execution](http://www.coe.int/en/web/execution).