

EXECUTION OF THE EUROPEAN COURT OF HUMAN RIGHTS JUDGMENTS RELATED TO RIGHTS OF PERSONS WITH DISABILITIES: TWO STEPS FORWARD, ONE STEP BACK?

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ABSTRACT

The European Court of Human Rights plays an important role in safeguarding the rights of persons with disabilities in Europe through a dynamic interpretation of the European Convention on Human Rights in the light of the provisions of the United Nations Convention on the Rights of Persons with Disabilities and its fundamental principles. The objective of the paper is to examine the impact of ECtHR judgments on national legal frameworks regarding rights of persons with disabilities and the ways to improve the ECtHR judgments execution in national contexts. Key findings of the research indicate that despite positive developments, a number of challenges in the execution of ECtHR judgments remain, including varying levels of compliance among Contracting Parties of the ECHR, delays in the implementation process and limitations in addressing systemic discrimination of persons with disabilities, especially persons with mental and intellectual disabilities. In order to improve the effectiveness of the execution of the judgments of the ECtHR, the authors call for creating joint forces between the ECtHR and other international actors in charge of monitoring the implementation of disability rights, national authorities, civil society organisations and persons with disabilities to establish synergic action and enable sustainable improvement in the quality of life of persons with disabilities throughout the European continent.

Keywords: European Court of Human Rights, execution of judgments, Persons with disabilities

1. INTRODUCTION

Persons with disabilities constitute approximately 27% of the EU population and are at increased risk of poverty or social exclusion, especially during emergencies and conflict situations. According to Eurostat estimates for 2023, there were around 101 million people with disabilities in the EU, which means that one in four adults in the EU is a person with disability.¹ Many individuals with disabilities face mistreatment or unfair treatment due to their condition. According to a 2023 Eurobarometer survey, around half of respondents (49%) who are EU citizens believed that discrimination on the basis of disability is widespread.²

Key international instrument governing the rights of persons with disabilities is certainly the UN Convention on the Rights of Persons with Disabilities, which implementation is monitored by the UN Committee on the Rights of Persons with Disabilities. The Committee produces periodic reports on the state of affairs of persons with disabilities in numerous countries which are signatories of the Convention. At the time of writing of this paper (April 2025), there were 164 signatories and 192 parties of the UNCRPD, 191 states and the European Union (which ratified it on 23 December 2010).³ Given the number of countries signatories to the UNCRPD and relatively limited capacities of the Committee to cover complex disability issues in each country signatory to the Convention, persons with disabilities, especially in the countries which are members of the Council of Europe, have increasingly started using other available legal instruments and institutions in order to ensure the protection of their rights, such as the European Court of Human Rights (hereinafter ECtHR).

Although the European Convention on Human Rights (hereinafter ECHR) does not contain explicit provisions related to the persons with disabilities, the ECtHR started emerging as an important actor to protect the rights of persons with disabilities through dynamic interpretation of the ECHR provisions. In order to “fill in the gaps” of the ECHR in relation to the rights of persons with disabilities, the ECtHR has frequently cross-referenced to other relevant international instruments, such as the Convention on the Rights of Persons with Disabilities and its Additional Protocols in order to align its practices with international standards

¹ European Council, *Disability in the EU: Facts and Figures*, [<https://www.consilium.europa.eu/en/infographics/disability-eu-facts-figures/#0>], Accessed 5 April 2025.

² European Commission, *Discrimination in the European Union*, Special Eurobarometer 535, April-May 2023, [<https://europa.eu/eurobarometer/surveys/detail/2972>]. Accessed 5 April 2025.

³ United Nations Convention on the Rights of Persons with Disabilities, Department of Economic and Social Affairs, [<https://social.desa.un.org/issues/disability/crpd/convention-on-the-rights-of-persons-with-disabilities-crpd>]. Accessed 5 April 2025.

and the jurisprudence of corresponding monitoring bodies.⁴ Through judgments that interpret the ECHR in accordance with the UN Convention on the Rights of Persons with Disabilities, the ECtHR started to safeguard the rights of persons with disabilities both through addressing individual cases and initiating systemic changes in national legislations.

At the same time, one of the key issues for debate within the academic community and the Council of Europe (CoE) has been the process of the execution of the judgments of the ECtHR within national contexts, especially those that require changes of national legislation. A number of authors have critically analysed the process of execution of the ECtHR judgments in a more general manner,⁵ while others examined this issue in relation to individual subjects (e.g. prisoners' right to vote, asylum seekers etc etc)⁶ or individual countries (especially UK⁷ and Russia).⁸ The matter of execution of the judgments of the ECtHR has also become an issue of the debate within the Committee of Ministers (hereinafter the Committee), national governments and civil society. Various scholarly and policy-oriented initiatives, such as conferences and workshops, have also aimed to outline the obstacles

⁴ For example, the ECtHR often makes references to: UN Human Rights Committee; UN Committee against Torture (CAT); European Committee for the Prevention of Torture and Inhuman and Degrading Treatment; report of the Commissioner for Human Rights of the CoE, etc. Cf. Lubarda B., *The Rights of Persons with Disabilities in the Case-law of the European Court of Human Rights*, 2021(1) 3, Europe of Rights & Liberties/Europe des Droits & Libertés, p. 6.

⁵ Gerards J.H.; Fleuren J.W.A. (eds), *Implementation of the European Convention on Human Rights and of the judgments of the ECtHR in national case law. A comparative analysis*, Antwerp, Intersentia, 2014; Mottershaw E.; Murray, R. H., *National responses to human rights judgments: the need for government co-ordination and implementation*, European Human Rights Law Review 6 (2012): 639; De Londras F.; Dzehtsiarou K. *Mission Impossible? Addressing Non-Execution Through Infringement Proceedings in the European Court of Human Rights*, International and Comparative Law Quarterly, 2017; 66(2):467-49, Jaskiernia J., *Actual Challenges for the Implementation of Judgments of the European Court of Human Rights*, Review of European and Comparative Law, 2022, Vol. 48, No. 1, 103-131; Abdelgawad, E., *Measuring the Judicial Performance of the European Court of Human Rights*, May 2017, International Journal for Court Administration, Vol. 8, No. 2.

⁶ Kucukcu A., *Enforcing Rights Beyond Litigation: Mapping NGO Strategies in Monitoring ECtHR Judgment Implementation*, Human Rights Law Review. Volume 22, Issue 2, 2022, p. 1-24; Bruskina N., *Execution of the ECtHR Judgment in Beizaras and Levickas v. Lithuania Case: Effectiveness and Legal Implications*, Teisė. 2023, Vol. 126, pp. 21-37.

⁷ Dzehtsiarou K., *The United Kingdom and the European Convention on Human Rights: Together Until the End?*, European Convention on Human Rights Law Review 5, 2024, pp. 1-7; Stanić M., *Neophodnost određivanja pritvora i naknada štete u praksi Evropskog suda za ljudska prava*, Prouzrokovanje štete, naknada štete i osiguranje, Institut za uporedno pravo, 2019, pp. 269-281.

⁸ Usenkov I.; Morozov I., *Enforceability of ECtHR Judgements in Russia: Alternatives of Interaction Between Jurisdictions*, SHS Web of Conferences 50, 01192, 2018; Mottershaw E.; Murray R.H., *National responses to human rights judgments: the need for government co-ordination and implementation*, European Human Rights Law Review 6, 2012, p. 639.

to effective implementation of ECtHR rulings, including issues such as delayed execution, improper implementation, and resistance by States.⁹

The topic of the execution of judgments of the ECtHR related to persons with disabilities has not been the subject of sufficient academic attention so far. This topic was instead brought to the forefront of the public attention in September 2024, when the Department for the Execution of Judgments of the European Court of Human Rights issued a “Thematic Factsheet: Rights of Persons with Disabilities”,¹⁰ with key positive examples of measures reported by states in the context of the execution of the ECtHR judgments concerning rights of persons with disabilities, which brought about systemic changes in the national legislation.

The key objective of this paper is to critically analyse a sample of judgments of the ECtHR related to the rights of persons with disabilities in order to try to answer the following questions: what are the wider implications of judgments where the ECtHR has found a violation of the rights of persons with disabilities in the CoE member states? Which measures have these countries undertaken in order to prevent similar violations from occurring in the future? Should persons with disabilities be encouraged to use the ECtHR as their advocate for making systemic changes, in cases when they cannot find justice and adequate support for realisation of their rights in their national systems?

In order to provide answers these questions, the paper shall first analyse the normative framework regarding the implementation of the judgments of the ECtHR, as a background against which the implementation of the judgments related to the rights of persons with disabilities will be assessed. The second, central section of the paper shall explore the ECtHR’s judicial approach in five disability-related cases in different areas of the ECHR: the right to life (Article 2), prohibition of torture and inhuman or degrading treatment (Article 3) and the right to respect of private and family life (Article 8), focusing on the implementation of these cases in national legal systems. Particular attention shall be given to assessing transformative potential of the ECtHR’s jurisprudence and the Committee in aligning national legislation with human rights standards related to persons with disabilities.

⁹ Concurrently, these initiatives also focus on sharing best practices to enhance the execution process, such as a German Presidency’s Workshop, Guidance for National Human Rights Institutions (NHRIs), Conference on Systemic Non-Implementation, etc.

¹⁰ Department for the Execution of the Judgments of the European Court of Human Rights, *Rights of Persons with Disabilities*, 2024, [<https://rm.coe.int/persons-with-disabilities-final-en/1680b1bf48>]. Accessed 27 April 2025.

2. THE NORMATIVE FRAMEWORK REGARDING IMPLEMENTATION OF THE ECtHR JUDGMENTS

As the ECtHR has limited powers to implement its judgments, it has to rely on “assistance” of national institutions, especially regarding systemic issues of human rights violations. A judgment rendered by the ECtHR must be executed within the territory of the contracting state that has breached the provisions of the ECHR. This entails not only the formal compliance with the judgment but also its substantive implementation to restore the violated rights of the individual. Failure to execute ECtHR judgments may call into question the very purpose of the ECHR and undermine trust in the international human rights protection system.¹¹

The implementation of judgments of the ECtHR is governed in more details by Article 46 of the ECHR, which requires parties to the Convention to abide by the final judgment of the ECtHR in any case to which they are parties.¹² The Article 46 further authorises the Committee to supervise the execution of final judgments.¹³ This means that if the ECtHR finds that a party to the Convention did not implement its judgment, it shall refer the case to the Committee for consideration of the measures to be taken.

The effectiveness of the execution of the ECtHR judgments has, however, become a source of a growing concern over the past two decades, especially in resource intensive or politically sensitive cases, which then fed into the problem of repetitive applications before the ECtHR.¹⁴ For these reasons, the system of implementation of judgments of ECtHR was substantively reformed by the Protocol 14 of the ECHR (that entered into force in 2010), which allowed the Committee to bring infringement proceedings against a Contracting Party that has failed to execute the judgment, even after being served with a notice to comply by the Committee.¹⁵

¹¹ Krstić I.; Marinković T, *Evropsko pravo ljudskih prava- 2nd edition*, Council of Europe, 2021, p.82.

¹² Article 46, para. 1 of the ECHR.

¹³ Article 46, para. 2 of the ECHR.

¹⁴ Council of Europe, *Explanatory Report to Protocol 14*, 13 May 2004, para. 16, <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016800d380f>.

¹⁵ According to the Protocol 14 of the ECHR, the states who are parties to the ECHR were required to undertake a number of measures to ensure execution of the ECtHR judgments. These are, *inter alia*, to designate a co-ordinator – individual or body – of execution of judgments at the national level, with reference contacts in the relevant national authorities involved in the execution process; identify as early as possible the measures which may be required in order to ensure rapid execution; rapidly prepare, where appropriate, action plans on the measures envisaged to execute judgments, if possible including an indicative timetable etc. Furthermore, considering the importance of rapid execution of judgments, in particular in cases concerning structural problems, in order to prevent repetitive applications, the Protocol allowed the Committee of Ministers to decide, in exceptional circumstances and with a 2/3

Since 2011, a dual-track supervision system of the execution of the ECtHR judgments has been in operation, which includes two key procedures: standard and enhanced procedure. As a general rule, cases are examined under the standard procedure unless their complexity or structural significance necessitates application of the enhanced procedure. The enhanced track is reserved for cases where the ECtHR and the Committee find reflecting persistent and systemic issues.¹⁶ The Committee retains the discretion to reclassify a case between the standard and enhanced procedures in response to changing circumstances. Cases initially classified as ‘simple’ and placed under standard supervision may later be transferred to enhanced supervision if the execution process becomes more complex due to political, economic, or other considerations.¹⁷ The Committee is responsible for ensuring continuous oversight of the execution of judgments and decisions, with such oversight lasting until the state demonstrates that it has taken all necessary measures to implement the judgment.¹⁸ The state against which a judgment has been rendered is required to submit an action plan to the Committee and, once all prescribed measures have been taken, an action report.

Although the Committee assumes a primary role in the execution process, its work is substantively supported by the Execution Section of the European Court of Human Rights and also by the Parliamentary Assembly of the Council of Europe (PACE). The supervision of the execution of judgments takes place at special meetings of the Committee and the Execution Section of the ECtHR, where human rights are discussed, which are held four times a year.¹⁹ Within PACE, the Committee on Legal Affairs and Human Rights plays a key role by regularly analyzing the status of judgment execution, preparing reports on execution-related issues, and adopting resolutions and recommendations. While resolutions carry political weight, recommendations are formal acts directed at the Committee of Ministers and member states, providing concrete proposals to enhance the execution of judgments.²⁰

majority, to initiate proceedings of non-compliance in the Grand Chamber of the Court in order to make the state concerned execute the Court’s initial judgment. These proceedings before the Court would result in another judgment related to the lack of an effective execution. See also De Londras F.; Dzehtsiarou K., *op. cit.*, note 7, p. 481.

¹⁶ Committee of Ministers, *Supervision of the Execution of Judgments and Decisions of the European Court of Human Rights. 8th Annual Report of the Committee of Ministers*, 2014, [<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680592ae9>28>]. Accessed 7 May 2025.

¹⁷ *Ibid.*

¹⁸ Resolution DH (99) 26 of January 18, 1999,

¹⁹ Krstić I.; Marinković T., *op. cit.*, note 14, p. 92.

²⁰ See: Resolution 1787 (2011) Implementation of judgments of the European Court of Human Rights.

The most recent 2024 Report of the Committee highlights notable progress in the implementation of ECtHR judgments during 2023, while also emphasizing that several key challenges persist. In 2024, the Committee closed supervision of around 900 cases,²¹ which is indeed a great achievement. However, the Report notes that following a steady decline in recent years, the number of significant cases pending for over five years has begun to rise again.²² This is line with trend noted over past years, where serious delays were observed in cases where a judgment demands that national legislation be modified.²³

3. SELECTED CASELAW OF THE ECTHR RELATED TO THE RIGHTS OF PERSONS WITH DISABILITIES AND ITS IMPACT ON NATIONAL LEGISLATION

One of the key cases brought before the ECtHR regarding violation of the rights of persons with disabilities in relation to Article 2 (right to life) of the ECHR is *Nencheva and Others v. Bulgaria*.²⁴ This case was invoked in 2006 by nine applicants who were parents of seven of the fifteen children and young adults under the age of twenty-two who died during the winter 1996-1997 in a home for children with severe mental disabilities in the village of Dzhurkovo in Bulgaria. The ECtHR found that the Bulgarian authorities had not taken practical and sufficient measures to prevent these deaths, despite having concrete prior knowledge of a real danger to the lives and health of the children.²⁵ The oversight revealed systemic deficiencies in the functioning of social protection of children with disabilities in Bulgaria and underscored the need for reform.

This case prompted a response from Bulgarian authorities to start implementing a series of reforms aimed at improving the social protection system, under the enhanced procedure for monitoring the implementation of the judgment. This included measures such as closing of the former social care homes and placement of children with developmental disabilities in foster families or new family-type residential centres. Furthermore, several domestic bodies for monitoring and evaluating social protection services were established. Notably, the Agency for the Quality of Social Services was established under the Social Services Act of 2019 and began operating in 2020. This agency is tasked with monitoring institutional

²¹ Council of Europe, *18th Annual Report of the Committee of Ministers, Supervision of the Execution of Judgments and Decisions of the European Court of Human Rights*, Council of Europe 2025, p. 5.

²² *Ibid.*

²³ Jaskiernia J, *op. cit.*, note 7, p. 105.

²⁴ *Nencheva and Others v. Bulgaria* (48609/06), Judgment 18 June 2013 [Section IV].

²⁵ *Ibid.* paras 123-125.

conditions, ensuring compliance with standards, and responding to potential violations of the rights of social protection users. In addition, the new law has been drafted to support biological families in order to reduce the reliance on institutional care for children with disabilities.²⁶

In spite of all these efforts, the status of the execution of this judgment *Nencheva and Others v. Bulgaria* in the Department for the Execution of Judgments of the ECtHR is still marked as “pending”, almost 20 years after the case was brought before the ECtHR. This means that the systemic measures to improve the quality of life of children with mental and developmental disabilities in Bulgaria have still not been fully implemented.

Another important case regarding violation of the right to life and degrading treatment of persons with disabilities is certainly the case of *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania*, which illustrate deep-rooted problems in the human rights protection system of adults with intellectual disabilities in Romania.²⁷ The application was lodged by a non-governmental organisation, the Centre for Legal Resources, on behalf of a young Roma man with intellectual disabilities, Mr. Câmpeanu, who died in a psychiatric hospital in 2004 at the age of 18.²⁸ In addition to this judgment, the ECtHR acknowledged that Romania had violated the Convention in thirteen leading judgments concerning psychiatry and the rights of persons with mental disabilities, by far the most of all Council of Europe convicted states on this important topic.²⁹

²⁶ Department for the Execution of the Judgments of the European Court of Human Rights, *op. cit.*, note 13.

²⁷ Romania has 12 landmark rulings on the inadequacy of legal protections and the lack of proper medical and social care for vulnerable individuals, as well as the failure to thoroughly investigate the deaths of persons with mental disabilities in state institutions. Cf. Tsereteli N.; Jaraczewski J.; Iliescu I.; Bisiouli I.; Lefebvre V.; Ciccarone A., *Justice Delayed and Justice Denied, Non-implementation of European Courts Judgments and the Rule of Law*, Democracy Reporting International, European Implementation Network, 2024, p. 49.

²⁸ Valentin Câmpeanu was a young Roma man living with HIV and a severe intellectual disability. Abandoned at birth, he spent his entire childhood in an orphanage. In 2004, upon reaching adulthood, he was required to transition to an institution for adults. However, he was repeatedly moved between various facilities, with several institutions refusing to admit him—either due to his intellectual disability or his HIV-positive status. These transfers were carried out without consideration for his heightened vulnerability and specific medical needs. Shortly after being placed at the Poiana Mare Psychiatric Hospital, he was discovered by a civil society monitoring team in a locked, unheated room. Although the monitoring team promptly alerted the authorities, Valentin passed away later that same evening. Cf. *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC] - 47848/08 Judgment 17 July 2014 [GC].

²⁹ Strasbourg Observers, *The Implementation of ECtHR Psychiatry-Related Judgments In Romania: UN-CRPD Standards as a Way Forward*, available at: <https://strasbourgobservers.com/2023/06/16/the-implementation-of-ecthr-psychiatry-related-judgments-in-romania-un-crp-d-standards-as-a-way-forward/>.

In its judgment of 17 July 2014, the ECtHR identified a serious breach of Article 2 of the ECHR, citing significant deficiencies in the social and medical care provided to the applicant prior to his death at the neuropsychiatric hospital. Pursuant to Article 46 of the ECHR, the ECtHR urged Romania to adopt appropriate general measures to guarantee that individuals with intellectual disabilities and mental health conditions, in situations similar to that of Mr. Câmpăanu, are granted independent representation. Furthermore, the ECtHR found that the institute of guardianship, which assumed full deprivation of legal capacity of individuals with intellectual disabilities stripped these individuals of their ability to make independent decisions about their lives. Such an approach did not allow for a proportionate response to their specific needs and resulted in those under protection becoming completely dependent on their guardians, thereby undermining their dignity and fundamental rights.³⁰

Six years after the judgment was passed, a number of reform steps were undertaken to improve the position of persons with intellectual and mental disabilities in Romania, especially regarding the system of guardianship. The first step was prompted by a human rights activist, Constantin Cojocariu, a well-known Romanian lawyer, who filed a claim to the Romanian Constitutional Court to challenge the guardianship system established by the Article 164(1) of the Romanian Civil Code. In 2020, the Constitutional Court of Romania declared the Article 164(1) of the Civil Code unconstitutional, pointing out that this system severely violated human dignity.³¹ In order to remedy such situation, measures were introduced to protect legal capacity rights of persons with intellectual and mental disabilities.³² Courts were required to reassess the position of individuals with intellectual and mental disabilities under guardianship according to the old legislation. Additionally, there was an obligation for adequate training of judges and prosecutors regarding the new forms of protection, reflecting an ambition to reform judicial practice and align it with contemporary human rights protection standards.

In May 2024, the Romanian Government adopted a National Action Plan for the Execution of the ECtHR judgments, which represents an additional step toward rectifying serious deficiencies in the health and social care system of persons

³⁰ Centre for legal resources on behalf of *Valentin Câmpăanu v Romania* (47848/08) Judgment final on 17/07/2014, paras 132-133.

³¹ Romanian Constitutional Court Decision, No. 601/2020 on the unconstitutionality of the provisions of Art. 164 paragraph (1) of the Civil Code.

³² The first measure allows a person to retain full legal capacity, but with the help of a notary when making important decisions. The second and third measures introduce limitations of legal capacity in accordance with the degree of autonomy and specific needs of the individual.

with disabilities.³³ This plan was prepared under high level coordination under the Prime Minister's Office and included the Ombudsperson and the National Council responsible for monitoring the implementation of the Convention on the Rights of Persons with Disabilities, as well as relevant civil society and professional organisations. The plan is to be implemented during the period 2024–2029, and foresees improvements in medical and social services and strict oversight and supervision by the Committee,³⁴ which marks a significant step forward in the execution of this landmark case in practice.

Another important case, with respect to persons to deprivation of capacity rights of persons with mental disabilities and breach of the Article 8 of the ECHR is the case of *X and Y v. Croatia* (Application No. 5193/09, judgment of 3 November 2011). In this case, the Social Welfare Centre initiated proceedings for deprivation of legal capacity of the persons with mental disability based on a report by a psychiatrist who spoke to the applicant by telephone only once. Prior to that conversation, the applicant had been hospitalized twice in a psychiatric ward, from which she was discharged because she responded well to therapy and the prognosis for further treatment was positive. The ECtHR pointed out that deprivation of legal capacity is a very serious measure that should be activated only in exceptional circumstances. In this case, the fact that the applicant independently and successfully took care of all her needs, including paying bills, purchasing food and social life, did not indicate that she harmed anyone's interests. Therefore, the ECtHR found that initiating proceedings to deprive her of legal capacity was contrary to Art. 8 of the Convention.³⁵ In the similar case of *Ivinović v. Croatia* (Application No. 13006/13, judgment of 18 September 2014), the ECtHR stated that complete deprivation of legal capacity must be a measure of last resort, applied only when the national authorities conclude that no other, less restrictive measure is appropriate or when other measures have been unsuccessfully attempted.³⁶

Shortly after these ECtHR decisions were adopted, the Croatian Parliament adopted a new Family Law,³⁷ which abolished the institute of full deprivation of legal

³³ Department for the Execution of the Judgments of the ECtHR, *Romania: Government adopts national action plan on mental health care and disability rights*, [https://www.coe.int/en/web/execution/-/romania-government-adopts-national-action-plan-on-mental-health-care-and-disability-rights], Accessed 18 February 2025.

³⁴ *Ibid.*

³⁵ Spadina, H., *Lišenje poslovne sposobnosti osoba s duševnim poremećajima u sudskoj praksi Europskog suda za ljudska prava*, in: Savic, D. (eds), Collection of Papers from Scientific Conference „Society and Politics“: Everyday Life of Persons With Disabilities: Between Proclaimed Inclusivity and the Culture of Accessibility, Banja Luka, 2024. p. 108.

³⁶ *Ibid.*

³⁷ Law on Family, Official Gazette of the Republic of Croatia, No. 103/2015, of 29/9/2015.

capacity. Instead of full deprivation of legal capacity, the new Law introduced the concept of “person of trust” as an alternative to the traditional system of guardianship system, which is fully in line with Article 12 of the UN Convention of the Rights of Persons with Disabilities.

However, in 2023, the Constitutional Court of the Republic of Croatia made a Decision by which it abolished the ban on complete deprivation of legal capacity introduced by the Croatian Family Law of 2015.³⁸ This decision was made despite numerous abuses of the institute of complete deprivation of legal capacity for persons with mental disabilities by the competent courts before 2015,³⁹ and represents an obvious step back in the regulation of the rights of persons with disabilities, especially intellectual and mental disabilities.

Another important case concerning the deprivation of legal capacity of persons with mental disabilities and procedural fairness is the case of *Salontaji-Drobnjak v. Serbia*,⁴⁰ which implementation had a direct impact on amendments of legislation in the Republic of Serbia concerning the deprivation of legal capacity. In this case, Ms. Salontaji-Drobnjak filed a complaint with the ECtHR after she was deprived of legal capacity in Serbia, claiming that the domestic courts in the proceedings for the deprivation of legal capacity did not sufficiently investigate her condition, nor did they ensure her presence at the hearing, all of which the proceedings resulted in her being placed under guardianship, without her having been able to express her will or preferences in this regard.

The ECtHR found that the applicant had been deprived of her right to a fair trial within the meaning of Article 6, as she had not been adequately involved in the proceedings. The ECtHR concluded that the Serbian courts had failed to meet the standards of fairness by deciding on her legal capacity without her presence and without a proper assessment of her mental state. This omission constitutes a serious violation of the right to participate in the proceedings and the possibility of expressing one’s own interests.⁴¹ The Court also found a violation of Article 8 of the European Convention on Human Rights and concluded that deprivation of legal capacity, especially when not based on thorough assessments and respect for

³⁸ Decision of the Constitutional Court of the Republic of Croatia (U-I-394/2015. of 18 April 2023) on the repeal of the provision of 234, paragraph 2 of the Law on Family of 2015.

³⁹ According to data from the Ministry of Demography, Family, Youth and Social Policy of the Republic of Croatia from 2017 on the total number of persons deprived of legal capacity from 2007 to 2015, the share of persons completely deprived of legal capacity was 88%, while only 12% of persons with mental disabilities were partially deprived of legal capacity. See: Decision and Ruling of the Constitutional Court of the Republic of Croatia, 2023, Spadina H., *op. cit.*, note 45, p. 101.

⁴⁰ *Salontaji-Drobnjak v. Serbia*, Application No. 36500/05, Judgment of 13 October 2019.

⁴¹ *Ibid.*

the person's will, can seriously undermine an individual's right to autonomy and control over their own life.⁴²

The importance of this judgment is reflected in the fact that it provided the basis for amendments to the Law on Non-Contentious Procedure in the Republic of Serbia, with a view to a more favorable procedural position for persons with disabilities. However, in spite of these amendments, the Law on Non-Contentious Procedure is still not fully aligned with the provisions of the United Nations Convention on the Rights of Persons with Disabilities.⁴³ Furthermore, in spite of several efforts to amend the Law on Family and abolish the possibility of full deprivation of legal capacity in the Serbian legislation, this substantive change has not happened yet and will probably wait for a while to be implemented.⁴⁴

Finally, we want to highlight the case of *Alajos Kiss v. Hungary*, regarding the voting rights of persons with mental disabilities, which results in amendments of the Hungarian Constitution in 2012. In its decision, the European Court of Human Rights stressed that the non-selective and automatic deprivation of voting rights from persons with mental disabilities those placed under partial guardianship constitutes an unjustifiable restriction of their civil rights.⁴⁵ The Court noted that such a practice is not compatible with legitimate grounds for limiting voting rights because the deprivation was carried out without an individualized judicial assessment and solely on the basis that the person has a mental disability requiring partial guardianship.⁴⁶ According to the Court, this approach represents discrimination and undermines the fundamental principles of equality and non-discrimination enshrined in international human rights conventions.

To align domestic legislation with European standards and remove constitutional barriers that had enabled systemic discrimination against persons with mental disabilities, amendments to the Constitution were enacted in 2012. These amendments introduced an obligation for courts to conduct a detailed assessment in every individual case and to decide whether the personal circumstances of an individual justify the retention of guardianship and the restriction of voting rights. As a result, the deprivation of voting rights is no longer an automatic consequence of partial or total incapacity for legal transactions—a significant step toward protect-

⁴² *Ibid*, paras. 143-145.

⁴³ Jović Prlainović, O., *Međunarodni standardi u nacionalnom sistemu poslovne sposobnosti osoba sa invaliditetom*, Zbornik radova „Pravo, tradicija i promjene“, Istočno Sarajevo, 2020, p. 92.

⁴⁴ Tintor Lj.; Rabrenovic, A., *Poslovna sposobnost kao osnova za kvalitetat život osoba sa invaliditetom: međunarodni instrumenti i praksa Evropskog suda za ljudska prava*, Pravni horizonti, 7 (9). p. 110.

⁴⁵ *Alajos Kiss v. Hungary*, Application No. 38832/06, Judgment final on 20/08/2010, paras 39-41.

⁴⁶ *Ibid*, para. 44.

ing the rights of persons with disabilities and ensuring their equal participation in social and political life. These changes are particularly important for persons with mental disabilities, as they allow for an individualized assessment of their capacity to participate in the electoral process, rather than excluding them based on generalized assumptions.

In addition to constitutional changes, a new Electoral Procedure Act was enacted in 2013, further elaborating the criteria and modalities for excluding the voting rights of incapable persons. This law specifies that domestic courts, when deciding guardianship proceedings, must provide detailed reasoning for their decisions and clearly state whether, based on the available evidence, it can be unequivocally determined that a person—due to mental impairment—is unable to exercise their voting rights. This process includes an obligation for the court to examine all relevant facts and to consider medical reports, expert opinions, and other pertinent evidence when making its decision. Moreover, it guarantees the affected individual the right to be heard personally before any decision is made regarding the restriction of their voting rights. This provision is intended to ensure that the decision-making process is conducted in a fair manner that respects the individual's right to participate in their own legal proceedings.⁴⁷ In this way, persons with mental disabilities are given the opportunity to present their views and actively participate in proceedings that directly affect their fundamental civil rights. The introduction of these legislative amendments has significantly improved the position of persons with mental disabilities in the electoral process, as their voting rights can no longer be automatically restricted without a detailed judicial assessment. These reforms ensure that any limitation on voting rights may be based solely on objective and individually determined circumstances, in accordance with the principles of proportionality and necessity.⁴⁸ Consequently, domestic legislation is aligned with international human rights protection standards, including those of the European Convention on Human Rights and the United Nations Convention on the Rights of Persons with Disabilities.

5. CONCLUDING REMARKS

The findings of our analysis of a sample of judgments of the ECtHR regarding human rights of persons with disabilities show that the ECtHR does have a potential to have a multilayered and transformative impact on the development of national

⁴⁷ Resolution CM/ResDH(2020)317, Execution of the judgments of the European Court of Human Rights Three cases against Hungary, Adopted by the Committee of Ministers on 8 December 2020 at the 1391st meeting of the Ministers' Deputies.

⁴⁸ *Ibid.*

legal frameworks in this area. In its role as the international guardian of the Convention, the ECtHR not only resolves individual complaints but also, through its interpretative decisions, establishes standards that shape and guide national legislative practice and its implementation. The judgments of the ECtHR often function as a “living” instrument of human rights protection, which can lead to an expansion of human rights, including the rights of persons with disabilities.

The key issues with respect to execution of the ECtHR judgments related to the rights of persons with disabilities are similar to those of other human rights issues and include primarily a lack of capacity of the ECtHR and the Committee to handle growing number of both new complex and repetitive cases. Although the reform of the execution process which took place in 2010 shown positive results overall, the Committee is now tasked with overseeing a range of unprecedented challenges that raise novel legal questions and require solutions previously unencountered, such as environmental issues, such as climate change mitigation, the ongoing influx of cases related to international conflicts, extensive migration concerns, and the rise of emerging digital technologies.⁴⁹ This naturally does not leave sufficient time and resources for the Committee to devote to each individual case regarding individual human rights issues, including the area of rights of persons with disabilities, which can have a negative impact on further work of the Committee and persons with disabilities throughout Europe.

In spite of a number of positive developments, our analysis shows that there is a varying level of compliance in the execution of ECtHR judgments in individual countries in the area of the rights of persons with disabilities. One of the most, perhaps surprising, successes is an example of Hungary, which introduced Constitutional amendments in 2012 order to reflect the recommendations of the ECtHR judgment regarding voting rights of persons with mental disabilities. The case of Serbia, in turn, has shown that changes initiated by the cases invoked before the ECtHR can bring about systemic improvements, but only to a limited extent. The case of Croatia, which recently re-instituted full abolishment of legal capacity for persons with intellectual and mental disabilities also shows that policy reversals in this area a reality and that positive changes that were initiated by the ECtHR judgments could go backwards if there is a lack of a sustained domestic support to sustain the reform efforts.

Complex cases of breaches of human rights of persons with mental disabilities in Bulgaria and Romania have demonstrated that, in spite of the resistance to

⁴⁹ Council of Europe, Committee of Ministers, *Supervision of the Execution of Judgments and Decisions of the European Court of Human Rights*, 2024, [<https://www.coe.int/en/web/execution/annual-report-2024>], Accessed 29 April 2025.

change, improvements in these areas are indeed possible, but require a significant amount of time and efforts on part of both EC institutions, national authorities and civil society organisations. As the reform of legal capacity rights of persons with disabilities and other vulnerabilities prompted by the case *Valentin Câmppeanu v Romania* shows, a strong Government support for improving the rights of persons with mental and intellectual disabilities (especially by placing the authority for the rights of persons with disabilities within the Prime Minister's Office), with active role of civil society organisations and independent human rights activities can provide a synergic action in the implementation and oversight of measures that affect the rights of persons with disabilities.

Our analysis thus confirms the arguments of other authors that compliance with the ECtHR judgments is only partly a legal issue, but even more so a matter of national politics.⁵⁰ Therefore, improvement of the position of persons with disabilities, or any other vulnerable group in the society, primarily depends on the will of the ruling elites to initiate substantive changes in the respective areas. Responsibility for execution of the judgments hence does not and should not lie with the institutions of the CoE, but on the member states themselves, who should have the obligation to lead and follow through the systematic changes initiated by legal cases. For countries which do not have a long tradition of democratic governance, such an institutional national response is unfortunately often not possible without a strong support/pressure of civil society organisations, respected individuals, persons with disabilities and the society as a whole. And sometimes even all this internal pressure will not simply work, to the detriment of a rising population of persons with disabilities throughout Europe and all of the world.

The coordinated external pressure is, of course, always a welcome development to push national Governments agendas further. In this sense, it would be advisable to increase cooperation between various Council of Europe bodies, such as the Commissioner for Human Rights and the Venice Commission.⁵¹ The role of the Parliamentarians of the CoE in the area of the rights of persons with disabilities could also be strengthened, looking at the example of the EU Parliamentarians and good national practices.⁵² It would also be helpful to establish a better collaboration between the work of the Committee and other international actors in charge of ensuring rights of persons with disabilities, especially the UN Commit-

⁵⁰ Jerzy Jaskiernia, Actual Challenges for the Implementation of the Judgments of the European Court of Human Rights, *Review of European and Comparative Law*, Vol. 48, No. 1, 103–131, [<https://doi.org/10.31743/recl.12447>]

⁵¹ Jaskiernia J., *op. cit.*, note 7, p. 130.

⁵² Nikolic O.; Manojlovic S., *Razvoj i funkcije parlamenta i njegov odnos prema izvršnoj vlasti u zemljama Evropske unije*, *Strani pravni život*, Vol. 66, No. 3/2022, pp. 367–384.

tee on the Rights of Persons with Disabilities, which on its own cannot manage huge workload mandated to it by the Convention on the Rights of Persons with Disabilities throughout the world.

Finally, to answer to the question posed at the outset of this paper of whether persons with disabilities should be encouraged to use the ECtHR as their advocate for making systemic changes in their national systems, we would say – yes, certainly, but please bear in mind the outlined caveats. The ECtHR and the Committee are indeed good counterparts to consider in the fight for improvement of the rights and position of persons with disabilities, but don't assume that their actions will be sufficient to bring about substantive changes without extensive advocacy efforts from the national level.

In spite of the overall positive trend, we believe that the current pace of the execution of ECtHR judgments related to persons with disabilities is slower than needed. Two steps forward, one step back - best reflects current realities in this matter. And what we need is not only to catch up, but to speed up, and go two steps ahead, in order to help a rising number of persons with disabilities lead fulfilled and dignified lives.

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