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The Enforcement of Judgments: A Case Study of the European Court of Human Rights and the African Court on Human and Peoples' Rights.

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Alla mia famiglia,
a Nunzia, Egidio, Laura,
per aver sempre creduto in me.

A Nonno Adamo,
che mi guardi da lassù,
per avermi insegnato la curiosità
e per aver permesso tutto questo.

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Abbreviations

ECtHR	European Court of Human Rights
AfCtHPR	African Court on Human and Peoples' Rights
CEDH	Cour européenne des droits de l'homme
CADHP	Cour africaine des droits de l'homme et des peuples
UDHR	Universal Declaration of Human Rights
UN	United Nations
UPR	Universal Periodic Review
ICCPR	International Covenant on Civil and Political Rights
CoE	Council of Europe
OAS	Organization of American States
OAU	Organization of African Unity
IACtHR	Inter-American Court of Human Rights
ECHR	European Convention on Human Rights
NGOs	Non-Governmental Organizations
PACE	Parliamentary Assembly of Council of Europe
AfCmHPR	African Commission on Human and Peoples' Rights
AfCHPR	African Charter on Human and Peoples' Rights
AU	African Union
AfCJHR	African Court of Justice and Human Rights
DRC	Democratic Republic of Congo
REAL	Republican Alternative Civic Movement
ECEH	European Centre for Environment and Health
ARPA	Regional Agency for Environmental Protection
AIA	Integrated Environmental Authorization
CJEU	Court of Justice of the European Union
MASAK	Financial Crimes Investigation Board
ICE	Independent Commission of Inquiry

ECOWAS	Economic Community of West African States
APDH	Actions pour la Protection des Droits de l'Homme
CEI	Independent Electoral Commission
RDR	Rassemblement Républicain pour la Démocratie au Rwanda
ADR	Alliance for Democratic Renewal
FRD	Forces Républicaines de la Démocratie
FDU Inkingi	Forces Democratiques Unifiées Inkingi
WECL	Well Established Case Law
DEJ	Department for the Execution of Judgments
ExCN	Execution Coordinators Network
NHRIs	National Human Rights Institutions

Introduction

The enforcement of judgments by regional human rights courts has emerged as a critical area of research in contemporary international law.

While the normative frameworks of these courts have significantly expanded access to justice and contributed to the progressive development of human rights jurisprudence, their actual impact ultimately depends on the degree of compliance by respondent States.

In recent years, both legal scholars and international observers have increasingly turned their attention to the practical mechanisms through which regional courts seek to ensure the implementation of their judgments.

This thesis contributes to that debate by conducting a comparative analysis of the enforcement structures and procedural practices of two major regional courts: the European Court of Human Rights (ECtHR) and the African Court on Human and Peoples' Rights (AfCtHPR).

These courts have been selected not only for their institutional significance within their respective regions, but also because they represent contrasting models of regional adjudication in terms of historical development, institutional maturity, accessibility, and enforcement capacity.

Established in the aftermath of the Second World War, the ECtHR is widely regarded as the most institutionalised and accessible regional human rights court.

With over six decades of jurisprudence and a well-developed supervision system via the Committee of Ministers of the Council of Europe, it has become a reference point in the international human rights landscape.

Nonetheless, despite its normative strength and institutional authority, the Court continues to face persistent challenges in ensuring full compliance with its judgments—especially in politically sensitive cases or where substantial domestic reforms are required.

Conversely, the AfCtHPR is a more recent institution, operational since 2006, and functions within a more fragmented and politically diverse regional context, where the idea of supranational judicial oversight remains contested.

The African Court operates with a more limited caseload, restricted access for individuals and non-governmental organisations, and an enforcement regime that lacks a robust institutional follow-up mechanism.

Nevertheless, its jurisprudence reveals a dynamic and, at times, innovative approach to the protection of human and peoples' rights, particularly in the domains of socio-economic and collective rights.

By comparing these two regional courts, the thesis addresses the following core research question: to what extent do procedural design and enforcement mechanisms influence the effectiveness of regional human rights adjudication?

The analysis also explores whether enforcement practices or procedural innovations developed in one system could be adapted to strengthen the other.

More broadly, the research seeks to contribute to the ongoing discussions on how regional courts can reinforce the protection of fundamental rights in an increasingly complex global order, where universal legal principles are frequently challenged by national political dynamics.

Methodologically, the thesis adopts a comparative case-law approach grounded in doctrinal legal analysis. It examines six key judgments—three from each court—that illustrate different dimensions of enforcement and compliance.

These judgments are analysed not only in terms of legal reasoning and outcomes, but also with respect to the post-judgment trajectories of implementation by national authorities.

This approach avoids a merely abstract or normative perspective and anchors the analysis in the practical challenges faced by the two courts in exercising their supervisory roles.

While comparative studies of regional human rights systems frequently include the Inter-American Court of Human Rights (IACtHR) as a third pillar, this thesis deliberately focuses on the European and African Courts.

This choice reflects a concern for analytical depth and coherence, given the contrasting institutional maturity of the selected courts.

The Inter-American Court, though normatively significant, operates within a distinct legal tradition and institutional setting that would introduce an additional layer of complexity beyond the scope of this thesis. Its exclusion enables a more focused and detailed comparative analysis of Strasbourg and Arusha.

The structure of the thesis reflects the analytical progression of the research.

Chapter 1 situates the ECtHR and the AfCtHPR within their respective legal and institutional frameworks. It analyses their foundational treaties, jurisdictional reach, access mechanisms, and procedural rules, with particular attention to legal standing, admissibility criteria, and the use of provisional measures.

Special emphasis is placed on the architecture of enforcement and the institutional actors responsible for monitoring compliance.

Chapter 2 offers a detailed examination of six emblematic cases: *Ilgar Mammadov v. Azerbaijan*, *Osman Kavala v. Türkiye*, and *Cordella and Others v. Italy* for the European Court of Human Rights; and *Zongo v. Burkina Faso*, *APDH v. Côte d'Ivoire*, and *Ingabire Victoire Umuhoza v. Rwanda* for the African Court on Human and Peoples' Rights.

These cases were selected for their legal and institutional significance and for the insights they provide into the practical functioning of enforcement mechanisms.

Through close analysis, the chapter identifies both systemic obstacles and potential strengths in each court's approach to post-judgment implementation.

Chapter 3 adopts a potential future perspective.

Drawing on recent institutional reports and developments, it identifies contemporary challenges and emerging trends that affect the enforcement capacity of regional human rights courts.

These include the growing role of civil society actors, the increasing politicisation of human rights litigation, and the need to modernise enforcement procedures through digitalisation and inter-institutional cooperation. The chapter also explores how cross-regional dialogue and legal borrowing might enhance and promote more effective compliance strategies.

Ultimately, the thesis argues that the effectiveness of regional human rights courts should not be measured solely by the quantity of judgments delivered or the doctrinal sophistication of their legal reasoning.

Rather, it must be assessed in terms of the Courts' capacity to generate meaningful change within domestic legal systems, provide effective redress to victims, and uphold the normative authority of international human rights law.

By comparing the experiences of the ECtHR and the AfCtHPR, the thesis highlights both divergence and convergence in their enforcement strategies and suggests that mutual learning across regions can reinforce the legitimacy and transformative potential of regional adjudication.

Introduction

L'exécution des arrêts rendus par les juridictions régionales des droits de l'homme s'impose comme un champ de recherche essentiel dans le droit international contemporain.

Bien que les cadres normatifs de ces juridictions aient considérablement élargi l'accès à la justice et contribué au développement progressif de la jurisprudence en matière de droits humains, leur impact réel dépend en dernier ressort du degré de respect et de mise en œuvre par les États défendeurs.

Ces dernières années, tant les juristes que les observateurs internationaux ont accordé une attention croissante aux mécanismes pratiques par lesquels les cours régionales cherchent à garantir l'application effective de leurs décisions.

Ce mémoire s'inscrit dans ce débat en proposant une analyse comparative des structures d'exécution et des pratiques procédurales de deux juridictions régionales majeures : la Cour européenne des droits de l'homme (CEDH) et la Cour africaine des droits de l'homme et des peuples (CADHP). Ces cours ont été choisies non seulement pour leur importance institutionnelle dans leurs régions respectives, mais aussi parce qu'elles incarnent des modèles contrastés de justice régionale, en termes d'évolution historique, de maturité institutionnelle, d'accessibilité et de capacité d'exécution.

Créée dans l'après-guerre, la CEDH est largement considérée comme la juridiction régionale des droits de l'homme la plus institutionnalisée et la plus accessible.

Avec plus de soixante ans de jurisprudence et un système de supervision bien établi à travers le Comité des Ministres du Conseil de l'Europe, elle constitue une référence incontournable dans le paysage international des droits de l'homme.

Néanmoins, malgré sa solidité normative et son autorité institutionnelle, la Cour continue de rencontrer des difficultés persistantes pour assurer la pleine exécution de ses arrêts — en particulier dans les affaires politiquement sensibles ou impliquant des réformes internes substantielles.

À l'inverse, la CADHP est une institution plus récente, opérationnelle depuis 2006, et évolue dans un contexte régional plus fragmenté et politiquement diversifié, où l'idée d'un contrôle juridictionnel supranational demeure controversée.

La Cour africaine traite un volume de contentieux plus restreint, l'accès y est limité pour les individus et les organisations non gouvernementales, et elle ne bénéficie pas d'un mécanisme institutionnel de suivi suffisamment robuste.

Pourtant, sa jurisprudence révèle une approche dynamique et parfois innovante de la protection des droits de l'homme et des peuples, notamment dans les domaines des droits socio-économiques et collectifs.

En comparant ces deux juridictions régionales, ce mémoire aborde la question centrale suivante : dans quelle mesure la conception procédurale et les mécanismes d'exécution influencent-ils l'efficacité du contentieux régional des droits de l'homme ?

L'analyse explore également si les pratiques d'exécution ou les innovations procédurales développées dans un système pourraient être adaptées pour renforcer l'autre.

Plus largement, la recherche entend contribuer aux discussions en cours sur la manière dont les cours régionales peuvent renforcer la protection des droits fondamentaux dans un ordre mondial de plus en plus complexe, où les principes juridiques universels sont souvent remis en cause par des dynamiques politiques nationales.

Sur le plan méthodologique, ce mémoire adopte une approche comparative de jurisprudence, fondée sur l'analyse doctrinale du droit.

Il examine six arrêts clés — trois pour chaque cour — illustrant différentes dimensions de l'exécution et du respect des décisions.

Ces arrêts sont analysés non seulement en termes de raisonnement juridique et d'issues contentieuses, mais aussi au regard des trajectoires de mise en œuvre par les autorités nationales après le prononcé de la décision.

Cette approche permet d'éviter une perspective purement abstraite ou normative et d'ancrer l'analyse dans les défis concrets auxquels sont confrontées les deux juridictions dans l'exercice de leur fonction de supervision.

Alors que les études comparatives des systèmes régionaux de protection des droits de l'homme incluent fréquemment la Cour interaméricaine des droits de l'homme (CIDH) en tant que troisième pilier, ce mémoire se concentre délibérément sur les cours européenne et africaine.

Ce choix découle d'une volonté de profondeur analytique et de cohérence, eu égard à la différence de maturité institutionnelle entre les cours sélectionnées.

La Cour interaméricaine, bien que normativement importante, fonctionne dans un cadre juridique et institutionnel distinct qui introduirait un niveau de complexité supplémentaire, incompatible avec les limites de ce travail.

Son exclusion permet ainsi une analyse comparative plus ciblée et approfondie entre Strasbourg et Arusha.

La structure du mémoire reflète la progression analytique de la recherche.

Le chapitre 1 situe la CEDH et la CADHP dans leurs cadres juridiques et institutionnels respectifs. Il analyse leurs traités fondateurs, leur champ de compétence, leurs mécanismes d'accès, ainsi que leurs règles procédurales, en portant une attention particulière à la qualité pour agir, aux critères de recevabilité et à l'usage des mesures provisoires.

Un accent particulier est mis sur l'architecture de l'exécution et les acteurs institutionnels chargés de surveiller la conformité des États.

Le chapitre 2 propose une analyse approfondie de six affaires emblématiques : *Ilgar Mammadov c. Azerbaïdjan*, *Osman Kavala c. Turquie* et *Cordella et autres c. Italie* pour la Cour européenne des droits de l'homme; *Zongo c. Burkina Faso*, *APDH c. Côte d'Ivoire* et *Ingabire Victoire Umuhoza c. Rwanda* pour la Cour africaine des droits de l'homme et des peuples.

Ces affaires ont été sélectionnées pour leur importance juridique et institutionnelle, ainsi que pour les enseignements qu'elles offrent sur le fonctionnement concret des mécanismes d'exécution. Grâce à une analyse approfondie, le chapitre identifie les obstacles systémiques ainsi que les points forts potentiels dans l'approche adoptée par chaque cour à la phase post-jugement.

Le chapitre 3 adopte une perspective prospective.

En s'appuyant sur des rapports institutionnels récents et sur l'évolution des pratiques, il identifie les défis contemporains et les tendances émergentes qui influencent la capacité d'exécution des juridictions régionales des droits de l'homme.

Parmi ces éléments figurent le rôle croissant des acteurs de la société civile, la politisation accrue des litiges relatifs aux droits humains, ainsi que la nécessité de moderniser les procédures d'exécution à travers la digitalisation et la coopération interinstitutionnelle.

Le chapitre explore également comment un dialogue interrégional et l'emprunt comparatif peuvent contribuer à renforcer l'efficacité des stratégies de conformité.

En définitive, ce mémoire soutient que l'efficacité des juridictions régionales des droits de l'homme ne devrait pas être évaluée uniquement à l'aune du nombre d'arrêts rendus ou de la sophistication doctrinale de leur raisonnement juridique.

Elle doit plutôt être appréciée en fonction de leur capacité à générer des changements significatifs dans les ordres juridiques nationaux, à offrir une réparation effective aux victimes et à affirmer l'autorité normative du droit international des droits de l'homme.

En comparant les expériences de la CEDH et de la CADHP, ce mémoire met en évidence à la fois les divergences et les convergences dans leurs stratégies d'exécution, et suggère que l'apprentissage mutuel entre régions peut renforcer la légitimité et le potentiel transformateur de la justice régionale.

Chapter 1: Introduction and Contextual Framework

1.1 Overview of the Subject and Scope

Today, regional human rights courts play an increasingly important role in ensuring the protection of fundamental rights at both the national and regional levels.
However, their systems, jurisdiction, and effectiveness vary considerably from one region of the world to another, reflecting the uniqueness that characterizes each different area.

This chapter introduces briefly the origins of human rights in the international legal framework and examines the general functioning of two major regional human rights courts: the European Court of Human Rights and the African Court on Human and Peoples' Rights.
Particular attention is paid to their institutional structures, jurisdiction and, primarily, enforcement mechanisms, highlighting their varied approaches to human rights protection and their distinct strategies for addressing gross human rights violations.

1.1.1 The Foundations of Human Rights

It is important to define and delimit the nature and the scope of human rights themselves before considering the functioning and procedural mechanisms of regional human rights courts.

Human rights are inherent, universal, and inalienable rights that belong to every human being, regardless of their nationality, gender, legal status, religion, language, or any other distinguishing characteristic. They range from civil and political rights (e.g. the right to life or prohibition of torture) to socio-economic rights (e.g. the right to education or adequate housing)[1].

The concept of human rights has evolved significantly over the centuries and continues to change. In early legal thought, natural law theories held that certain rights were intrinsic to human beings because of their very existence, rather than being granted by the rules imposed by society[2].

In the 19th century, then, legal positivism emerged as a counterargument, asserting that rights derive their legitimacy solely from formal legal recognition, rather than from moral considerations[3].

Despite this shift, the atrocities committed during the World War II reignited the debate on the nature of human rights, which eventually led to their formal recognition in international law with the adoption of the Universal Declaration of Human Rights[4] (UDHR) in 1948[5].

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[1] United Nations OHCHR, *What are human rights?*
[2] Himma K. E., *Natural Law*, Internet Encyclopedia of Philosophy
[3] Himma K. E., *Legal Positivism*, Internet Encyclopedia of Philosophy
[4] United Nations, *Universal Declaration of Human Rights*
[5] See Pustorino P., *Tutela internazionale dei diritti umani*, Bari, Cacucci Editore, 2024, on which this paragraph is based

1.1.2 The Institutionalization of Human Rights in International Law

The post-war period marked a significant turning point, transforming human rights from simple abstract moral claims into concrete, enforceable legal standards[6].

The creation of the United Nations (UN) in 1945 laid the foundation for the first international human rights system, designed to prevent future atrocities and protect fundamental human rights.

The framework created operates at two levels:

First, the Charter-based system, which applies to all UN Member States including mechanisms such as the Human Rights Council[7] and its Universal Periodic Review[8].

Second, the treaty-based system, which is binding only on States that have ratified specific human rights treaties (e.g. the International Covenant on Civil and Political Rights[9]).

While the UN framework has played a central role in setting standards and monitoring compliance, its effectiveness is often limited by the principle of State sovereignty.

Since the ratifications of treaties is voluntary, States retain the discretion to accept or reject international obligations and can introduce reservations that may modify or limit the scope of their commitments[10]. The same principle further limits external intervention in human rights matters, as "*No State or group of States has the right to intervene, directly or indirectly, for whatever reason, in internal or external affairs from another State*[11]".

These limitations have led to the creation and development of regional human rights systems, which provide additional levels of protection, but are tailored to specific legal, political, and cultural contexts. In turn, these systems have established legally binding treaties, independent monitoring bodies, and judicial enforcement mechanisms to address human rights violations in a more effective and localized manner.

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[6] See Pustorino P. and Raimondi G., *Introduction to International Human Rights Law*, Berlin, TMC Asser Press, 2023 and Viljoen F., *International Human Rights Law a Short History,* Journal of Humanitarian Medicine - Vol. XII - N° 1 - January-March, 2012 on which this paragraph is based.

[7] The Human Rights Council is an intergovernmental body within the United Nations system made up of 47 States responsible for the promotion and protection of all human rights around the globe.

[8] The Universal Periodic Review (UPR) is a Human Rights Council mechanism requiring each UN Member State to undergo a peer review of its human rights record every 4.5 years. It allows states to report on progress and challenges in human rights and receive recommendations from other Member States for continuous improvement.

[9] The International Covenant on Civil and Political Rights (ICCPR) is a multilateral treaty adopted by the UN General Assembly on December 16, 1966. The covenant commits its parties to respect the civil and political rights of individuals, including the right to life, freedom of religion, freedom of assemble, electoral rights, and rights to a due process and a fair trial.

[10] See Palombino F. M., *Introduzione al diritto Internazionale*, Bari, Editori Laterza, 2021

[11] United Nations, General Assembly Resolution 2131 (XX)

1.1.3 Regional Human Rights Systems: Structure and Functioning

While the UN provides a common universal legal framework for the protection of human rights, regional human rights systems have evolved to respond more directly to the different challenges faced in each region[12].

These systems are based on three main pillars:

First, they are built on legally binding instruments that define the obligation of States to protect human rights through regional treaties and conventions.

Second, they are supported by monitoring bodies that oversee States compliance through investigations, periodic reports and the issuance of recommendations.

Third, they use judicial and quasi-judicial mechanisms providing individuals, groups, and even States with access to legal remedies for alleged human rights violations, thus ensuring accountability[13].

Since the mid-20th century, three regional human rights systems have emerged, each in the framework of an intergovernmental organization: the European, the Inter-American, and the African systems.

The European system, developed within the framework of the Council of Europe (CoE), was established in 1949 by 10 Western European States to safeguard human rights and the rule of law in post-World War II Europe[14]. The system has prevented a slide into totalitarianism and served as a bulwark against communism. Notably, it is also the most structured one, with a single judicial body to which individuals can take their complaints directly.

The Inter-American system, set up by the Organization of American States (OAS), was founded in 1948 to promote regional peace, security and development. It adopts a two-tier model, comprising both a commission and a court [15].

The African system, established in 1963 under the auspices of the Organisation for the African Unity (OAU)[16], presents yet another distinctive regional approach. It is characterized by its unique integration of individual rights with collective[17] and socio-economic rights, and by an approach that reflects the continent's diverse legal traditions.

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[12] See Burgorgue-Larsen L., *Les 3 cours regionals des droits de l'homme in context: La justice qui n'allait pas de soi*, Paris, Éditions A. Pedone, 3 March 2023 and Viljoen F., *International Human Rights Law a Short History,* Journal of Humanitarian Medicine - Vol. XII - N° 1 - January-March, 2012, on which this paragraph is based

[13] International Justice Resource Center, *Regional Systems – Common features*

[14] Council of Europe, *Who we are*

[15] Organization of American States, *Who We Are*

[16] The OAU was transformed into the African Union in 2001;
African Union, *About the African Union*

[17] A collective right is a right held by a group of people rather than by individuals alone. These rights often relate to the shared interests and needs of a community, such as cultural preservation and self-determination.

Despite the diversity of regional approaches, their primary objective is to enhance accountability by providing victims with accessible and effective legal mechanisms. In doing so, they also contribute to the development of international human rights law through their case law and jurisprudence.

1.1.4 The Role of Regional Human Rights Courts

Within the aforementioned systems, specialised regional courts have been established to ensure the effective application of treaty-based human rights standards. Unlike the UN treaty bodies, these courts issue binding judgments and can enforce concrete legal remedies.

The main regional tribunals are: the European Court of Human Rights (ECtHR), the Inter-American Court of Human Rights (IACtHR) and the African Court on Human and Peoples' Rights (AfCtHPR). These courts play a crucial role in strengthening human rights protection by allowing individuals to challenge State action and ensuring that national governments bring their legislative frameworks into line with international human rights standards.

Their rulings not only resolve individual disputes but also contribute to the evolution of human rights at both the regional and international levels.

1.2 The European Court of Human Rights

1.2.1 History

The establishment of the European Court of Human Rights (ECtHR) must be understood within the broader context of post-war Europe. Emerging from the devastation of the World War II and the ideological divide of the Cold War, it played a pivotal role in the continent's recovery[18]. During this period, Western Europe also witnessed the consolidation around shared democratic principles, providing fertile ground for the development of a regional human rights system.

The European Court of Human Rights, based in Strasbourg, France[19], was created under the auspices of the Council of Europe to ensure further judicial protection to human rights in Europe[20].

The Council of Europe (CoE) is an intergovernmental organisation established through the Treaty of London on 5 May 1949, by ten founding States[21] to promote human rights, democracy, and

[18] See Zagrebelsky V., Chenal R., Tomasi L., *Manuale dei diritti fondamentali in Europa*, Bologna, il Mulino, 2022 on which this paragraph is based

[19] Strasbourg was chosen as the seat of the ECtHR primarily for its symbolic significance as a city on the border between France and Germany, representing post-war reconciliation.

[20] International Justice Resource Center, *European Court of Human Rights*

[21] The ten founding Member States of the Council of Europe are Belgium, Denmark, France, Ireland, Italy, Luxembourg, Netherlands, Norway, Sweden, and the United Kingdom.

the rule of law across the European continent. It is the continent's leading human rights organisation and its main activity is the drafting and the adoption of international conventions[22].

The cornerstone of the CoE's legal framework is the European Convention on Human Rights (ECHR), also known as Convention for the Protection of Human Rights and Fundamental Freedoms.

It was signed in Rome on 4 November 1950 by 12 Member States[23] and entered into force on 3 September 1953[24]. Over the years, the Convention has been amended on many occasions by the adoption of additional protocols[25], which have introduced both procedural and substantive changes.

Moreover, it was the first legally binding instrument to give effect to certain rights enshrined in the Universal Declaration of Human Rights (UDHR)[26], and to establish a supranational mechanism to ensure State compliance[27]. The ECHR also refers to the UDHR, but differs mainly in the rights it affirms and protects: while the UDHR enshrines a wide range of human rights, the ECHR focuses primarily on first-generation rights (i.e., civil and political rights), while second- and third-generation rights (i.e. socio-economic, cultural, and collective rights) were largely left to be addressed in later instruments[28]. This approach can be understood in the historical context in which the ECHR was adopted: given the urgency perceived by the Council of Europe at the time, controversial or divisive issues were postponed and addressed later through additional protocols.

The adoption of the ECHR and the consequent creation of the ECtHR marked a crucial milestone in international law: by accepting the jurisdiction of a supranational court, States acknowledged that human rights obligations could take precedence over national laws and practices. The Court's establishment reflected a broader commitment to ensuring that human rights principles were judicially enforceable and set a precedent that later influenced other regional mechanisms.

To bring a case before the Court, a State must first be a member of the Council of Europe. Membership in the CoE is a precondition for acceding to the European Convention on Human Rights, which must be signed and ratified separately. Only by ratifying the ECHR a State accept the jurisdiction of the European Court of Human Rights and commit to upholding its provisions[29].

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[22] International Center for not-for-profit law, *Council of Europe*

[23] Along with the 10 founding member countries, Iceland and Germany also joined in signing the Convention for the Protection of Human Rights and Fundamental Freedoms.

[24] Council of Europe, *The Convention in 1950*

[25] Additional protocols are separate treaties that supplement or amend an existing international convention. They often address specific issues or expand the rights and obligations outlined in the main document, and States can choose to become parties to these protocols independently of the original convention.

[26] The Universal Declaration of Human Rights is a landmark document adopted by the United Nations General Assembly in 1948. It sets out the fundamental human rights and freedoms to which all individuals are entitled, though it is not a legally binding treaty.

[27] European Court of Human Rights – Public Relations Unit, *The European Convention on Human Rights – A living Instrument*, September 2022

[28] Lemmens P., *Can We Still Afford Human Rights?,* Cheltenham, UK, Edward Elgar Publishing, 2020

[29] ECHR, Art. 59(1) (Signature and ratification)

From the outset, the Convention allowed both inter-State applications and individual petitions, although the latter were initially subject to acceptance by the respondent State. This mechanism was progressively strengthened through reforms aimed at improving individual access to justice.

As of May 2025, the ECtHR has jurisdiction over 46 Member States of the Council of Europe, following the expulsion of the Russian Federation on 16 March 2022[30], in response to its violation of the Organisation's fundamental principles[31].

The ECtHR was formally established to enforce the ECHR and became operational on 21 January 1959, following the election of its first judges. Its first session took place on 23 February 1959[32] and the first judgment *Lawless v. Ireland*[33] was issued on November 14, 1960.

Initially, the European system operated through a two-stage mechanism: individual applicants were first examined by the European Commission of Human Rights, which assessed their admissibility and, where possible, tried to find an amicable solution between the parties, then only cases deemed admissible and unresolved were referred to the ECtHR for a final decision[34].
However, the increasing number of applications received led to significant delays and inefficiencies in the existing system.

To address these challenges and to improve judicial protection, Protocol No. 11[35], which entered into force in 1998, abolished the Commission and transformed the ECtHR into a Court with direct access for individuals subject to certain eligibility conditions[36].

Further key reforms were introduced by Protocol No. 14 (entered into force in 2010)[37], which aimed to increase the Court's efficiency by allowing single judges to dismiss manifestly inadmissible

[30] Russia was expelled from the Council of Europe as a direct consequence of its full-scale invasion of Ukraine; Council of Europe, *Member States*;
The ECtHR notwithstanding has stated its commitment to continue examining applications against Russia concerning events that took place *before* its expulsion;
See for further information on the topic, Emtseva J., *The withdrawal mystery solved: how the European Court of Human Rights decided to move forward with the cases against Russia*, EJIL:Talk – Blog of the European Journal of International Law, 8 February 2023
[31] Raimondi G., *Il Consiglio d'Europa e gli Effetti Giuridico-Istituzionali della Guerra in Ucraina sul Sistema Convenzionale*, Freedom, Security & Justice: European Legal Studie, n.2, 2022 and Raimondi G., *L'expulsion de la Fédération de Russie du Conseil de l'Europe – Quel impact sur la Convention européenne des droits de l'homme?*, in J.F.KJØLBRO, S.O'LEARY (eds), Liber amicorum Robert Spano, Limal, Anthémis, 2022
[32] European Court of Human Rights Archives, *Key dates of ECtHR*.
[33] *Lawless v. Ireland*, 1 July 1961
[34] See *Lawless v. Ireland* on the role of the European Commission of Human Rights in relation to the ECtHR.
[35] *Protocol No. 11 to the ECHR, restructuring the control machinery established thereby*, 11 May 1994;
European Court of Human Rights Archives, *History of the ECHR's Reforms*
[36] Raimondi G. and Conforti B., *First Commissioner and Then Judge of Human Rights in Strasbourg*, Diritti Umani e diritto internazionale, Rivista quadrimestrale 2/2016, 2016
[37] *Protocol No. 14 to the ECHR, amending the control system of the Convention*, 13 May 2004

cases. This procedural streamline was essential given the exponential increase in applications during the years, particularly following the accession of Eastern European States to the CoE[38].

Over the decades, the ECtHR has played a pivotal role in shaping European human rights jurisprudence, issuing landmark decisions, *inter alia*, on freedom of expression[39], prohibition of torture[40], and right to a fair trial[41].

Moreover, although 75 years have passed since the European Convention entered into force, it is nowadays more relevant than ever, thanks in particular to the skilful and competent work of the European Court, which has managed to "modernise" a post-war text by means of a contemporary interpretation.

1.2.2 Jurisdiction

The European Court of Human Rights has jurisdiction to hear cases ("applications") brought by individuals, groups, non-governmental organisations (NGOs), or States concerning alleged violations of the European Convention on Human Rights.

The jurisdiction of the European Court of Human Rights is defined by four key criteria.

Firstly, the Court's jurisdiction is limited *ratione personae* (jurisdiction over the parties), which means that it can only hear applications brought against a State party to the ECHR, brought by individuals or entities, and only in respect of violations of the Convention committed by State actors[42].

Secondly, the criteria of *ratione loci* (jurisdiction over territory) requires that the alleged violation must have occurred within the jurisdiction of a State party.

While the principle of jurisdiction under the Convention is primarily understood in a territorial sense, the Court has, in certain instances, recognised its extraterritorial application where a State exercises effective control[43] outside its own territory — for example, in cases involving detention centres or military occupation. Separately, the enjoyment of the rights guaranteed by the Convention does not depend on the nationality of the individual concerned, but rather on their being within the jurisdiction of a State Party[44].

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[38] Reddemann G., *Report on the enlargement of the Council of Europe*, Doc. 7103, Parliamentary Assembly of the Council of Europe, 10 June 1994

[39] *Handyside v. United Kingdom,* 7 December 1976

[40] *Soering v. United Kingdom,* 7 July 1989

[41] *Salduz v. Türkiye,* 27 November 2008

[42] A more detailed analysis of jurisdiction *ratione personae*, specifically concerning issues of legal standing, will be addressed in Section 1.2.4.

[43] *Al-Skeini and Others v. United Kingdom*, 7 July 2011, ¶ 131:"*A State's jurisdictional competence under Article 1 is primarily territorial. Jurisdiction is presumed to be exercised normally throughout the State's territory. Conversely, acts of the Contracting States performed, or producing effects, outside their territories can constitute an exercise of jurisdiction within the meaning of Article 1 only in exceptional cases."*

[44] ECHR, Art. 1 (Obligation to respect Human Rights)

Thirdly, the Court operates under *ratione temporis* (temporal jurisdiction), indicating that it does not apply the ECHR retroactively. Violations must have taken place after the respondent State ratified the Convention. Nonetheless, if a violation continues[45] to produce effects beyond that date, the Court may still assert jurisdiction[46].

Lastly, *ratione materiae* (jurisdiction over the matter) requires that the application concerns a right protected by the ECHR or its additional protocols[47]. Although the Court has at times interpreted Convention rights in light of broader international norms, it does not issue rulings on breaches of other treaties unless they are directly relevant to the Convention's provisions, even if the respondent State has not ratified them[48].

In the event of a dispute over its jurisdiction, the ECtHR has the power to rule on the matter[49], but it cannot initiate proceedings of its own motion, and it only examines cases that have been formally submitted to it[50].

Under Article 33 of the ECHR, it is allowed to a State to bring a case against another State for alleged systematic violations, even if its own citizens are not the direct victims[51]. However, inter-State cases are rare and often linked to a wider political conflict between two Member States.
These cases have recently become more prominent, particularly in the context of armed conflicts and sovereignty disputes. For example, the case *Ukraine v. Russia (re Crimea)*, involved allegations of human rights violations following the annexation of Crimea[52].

The admissibility of applications before the Court is determined through a combination of procedural and substantive criteria.

From a procedural standpoint, applicants are required to exhaust all available domestic remedies before bringing their case before the Court[53]. Furthermore, the application must be

[45] Continuing violations refer to breaches of human rights that persist over a period of time, rather than being limited to a single, instantaneous act.
[46] *Janowiec and Others v. Russia,* 21 October 2013; *Blečić v. Croatia*, 8 March 2006, ¶ 70:" *« […]en vertu des règles générales du droit international […],les dispositions de la Convention ne lient une Partie contractante ni en ce qui concerne un acte ou fait antérieur à la date de l'entrée en vigueur de la Convention à l'égard de cette partie, ni en ce qui concerne une situation qui avait cessé d'exister avant cette date »; See also Klyakhin c. Russie*, 30 November 2004
[47] *C.R. c. France*, 15 Juin 2000, la Cour *"est uniquement compétente pour appliquer la Convention européenne des droits de l'homme et qu'elle n'est pas compétente pour faire application d'une autre Convention internationale."*
[48] *Demir et Baykara c. Turquie*, 12 november 2008, ¶ 85*:" La Cour, quand elle définit le sens des termes et des notions figurant dans le texte de la Convention, peut et doit tenir compte des éléments de droit international autres que la Convention, des interprétations faites de ces éléments par les organes compétents et de la pratique des Etats européens reflétant leurs valeurs communes."*
[49] ECHR, Art. 32 (Jurisdiction of the Court)
[50] ECHR, Art. 33 (Inter-State cases) and Art. 34 (Individual applications)
[51] *Denmark v. Greece*, 5 November 1969
[52] *Ukraine v. Russia (re Crimea),* 25 June 2024
[53] Raimondi G., *Reflections on the Rule of Prior Exhaustion of Domestic Remedies in the Jurisprudence of the European Court of Human Rights*, The Italian Yearbook of International Law Online, 1 January 2010

submitted within four months of the final decision at the national level[54] (Protocol No. 15, entered into force in 2021[55], reduced this period from six to four months).

On the substantive side, the application must not be manifestly ill-founded; this means it should present a credible allegation of a rights violation and must not be incoherent, frivolous, or devoid of legal merit. Additionally, the applicant must demonstrate that they have suffered a significant disadvantage as a result of the alleged violation, in line with the principle *de minimis non curat praetor*[56].

The Court's judgments are binding on the respondent State, and their enforcement is monitored by the Committee of Ministers of the Council of Europe[57].

Since 1 August 2018, the ECtHR has also had advisory jurisdiction under Protocol 16, which allows the highest domestic courts of participating States to request advisory opinions on the interpretation of the ECHR in cases pending before them[58].

The impact of the European Court goes far beyond the resolution of individual cases: its judgments have a profound influence on the policies of the Contracting States, promoting the development of a human rights culture and encouraging the adoption of legislative and administrative reforms aimed at preventing future violations. In this way, the Court acts as a watchdog and a stimulus, contributing to the strengthening of the rule of law in Europe.

1.2.3 Structure

To better manage the large workload that annually fills the Strasbourg Registry[59], the ECtHR is divided into different sections. Each section is formed of a president, a vice president and a group of judges, who examines cases according to geographical and legal criteria.

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[54] The ECtHR interprets the requirement of a "final decision" under Article 35(1) of the ECHR as referring to the exhaustion of all domestic remedies as prescribed by the domestic law of the respondent State.
This entails pursuing all available and effective legal avenues to seek redress for the alleged violation within the national legal system before an application can be lodged with the Court.
The Court's case law has developed a complex set of principles to determine whether a remedy is "effective", considering factors such as its accessibility, its likelihood of success, and the swiftness of the proceedings.

[55] *Protocol No. 15, amending the ECHR*, 24 June 2013

[56] *Korolev v. Russie,* 1 July 2010

[57] A detailed analysis of the enforcement of judgments within the European system is provided in Section 1.5.3

[58] Advisory Jurisdiction will be analyzed in section 1.2.5

[59] The Registry of the ECtHR is a permanent body providing legal and administrative support to the Court in the exercise of its judicial functions (Rule 18 of the Rules of Court – Organisation of the Registry).
It is therefore composed of lawyers, administrative and technical staff and translators.

The Court is composed of 46 judges (one per State party)[60], elected by the Parliamentary Assembly of the Council of Europe[61] (PACE) from a list of three candidates proposed by each Member State[62]. Candidates for the ECtHR must be jurists of high moral character and possess recognized competence in human rights law. The election procedure[63] is designed to ensure that the appointments are based on merit and competence rather than on political considerations[64].

Judges serve for a non-renewable nine-year term[65] and act in an independent capacity, not as representatives of their home country[66] - this structural safeguard reinforces their impartiality and ensures that judicial decision-making remains free from national pressures.

In cases involving a particular State, however, the judge elected from that country sit on the Chamber providing an insight into the domestic legal system. This mechanism, introduced to reassure Member States when the Court was established, does not confer any special role in decision-making, as all judges participate equally and decide with full independence.

The ECtHR is divided into different judicial formations to manage its caseload efficiently[67].

The first is the single-judge formation, which handles manifestly unfounded cases with minimal resources. The process begins with a judicial rapporteur[68], who examines the cases and recommends their dismissal if they are inadmissible. The single judge then assesses the admissibility of the applications; if the application is deemed inadmissible, it is dismissed without further consideration, otherwise, it is referred to the Committee. This mechanism allows the Court to filter out clearly unfounded cases and focus on more substantive human rights issues[69].

The second formation is the Committee, composed of 3 judges. It deals with straightforward cases, particularly those that fall within established case law, such as repetitive or pilot judgements[70].

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[60] ECHR, Art. 20 (Number of judges)

[61] The PACE is one of the Council's two main statutory bodies (together with the Committee of Ministers), composed of members from the national parliaments of its Member States. Its primary functions include debating topical issues, examining human rights concerns, and electing key officials

[62] ECHR, Art. 22 (Election of judges)

[63] The selection process begins at the national level, where governments are required to organise a transparent and open process to identify suitable candidates. The Committee on the Election of Judges to the ECtHR, a subsidiary body of PACE, then evaluates the shortlisted candidates through interviews and background checks and makes a recommendation to the Assembly, which elects the judge by an absolute majority of the votes cast.

[64] See for further, Council of Europe, *The Advisory Panel of Experts on Candidates for Election as Judge to the European Court of Human Rights - A short guide on the Panel's role and the minimum qualifications required of a candidate (2020)*

[65] ECHR, Art. 23 (Terms of office and dismissal)

[66] ECHR, Art 21(3) (Criteria for office)

[67] ECHR, Art. 26(1) (Single-judge formation, Committees, Chambers and Grand Chamber)

[68] ECHR, Art. 24 (Registry and rapporteurs)

[69] ECHR, Art. 27 (Competence of single judges)

[70] Pilot judgments are a specific type of ruling developed by the ECtHR to address systemic or structural problems within a respondent State that are the underlying cause of numerous similar applications before the Court.

The Committee rules on both the admissibility and the merits, but its decisions must be unanimous; if unanimity cannot be reached or if the case proves more complex, it is transferred to a Chamber of seven judges. The Committee's role is essential in streamlining the handling of clear-cut or systemic issues[71].

More complex cases are assigned to the Chamber, which is considered the Court's standard formation. It is composed of seven judges, including the President of the Section and the national judge (the judge from the respondent State). The Chamber rules on both the admissibility and the merits of a case, with decisions taken by majority vote; if a case raises novel legal questions or might lead to a conflict with existing case law, the Chamber may refer it to the Grand Chamber fo further consideration[72].

At the top of the judicial hierarchy is the Grand Chamber, composed of 17 judges. It deals with cases of particular importance and ensures coherence in the interpretation of the Convention.
The Grand Chamber does not accept direct applications, but hears cases referred by a Chamber either through relinquishment, where serious interpretative questions arise, or following a request for referral after a Chamber judgment, which may be accepted where the case raises a serious question affecting the interpretation or application of the Convention or its Protocols, or a serious issue of general importance, as provided for in Article 43 of the Convention.[73].
Its decisions are final and binding on the respondent State[74]. In addition to contentious matters, the Grand Chamber also holds advisory powers[75], reinforcing its constitutional-like role within the European human rights system.

1.2.4 Legal standing

Legal standing, also known as *locus standi*, refers to a party's right to bring a lawsuit or appear in court. Essentially, it's the legal capacity to participate in a legal proceeding.

The European Court of Human Rights operates within a large framework of legal standing, which allows a wide range of applicants to bring cases before it. Under Article 34 ECHR, individuals, groups, and NGOs may submit applications alleging violations of Convention rights by a Contracting

Rather than deciding each case individually, the Court identifies the systemic issue in a pilot judgment and orders the State to implement general measures to resolve the problem, thereby preventing future violations and often providing redress to the applicant in the pilot case.
[71] ECHR, Art. 28(1) (Competence of Committees)
[72] ECHR, Art. 29 (Decisions by Chambers on admissibility and merits)
[73] ECHR Art. 43 (Referral to the Grand Chamber)
[74] ECHR Art. 30 (Relinquishment of jurisdiction to the Grand Chamber)
[75] ECHR Art. 47 (Advisory Opinions)

State[76]. This feature distinguishes the ECtHR from other international human rights courts and reinforces the principle of access to justice.

A key aspect of legal standing before the ECtHR is the requirement of victim status.
The applicant must show that he or she is a direct victim of the alleged violation.
This criterion prevents *actio popularis* claims, meaning that applicants cannot challenge laws or policies in the abstract without demonstrating a personal impact.

In exceptional cases, however, the Court has extended this concept. A notable example is the case *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania*[77].

The case concerned the circumstances surrounding the death of Valentin Câmpeanu, a young Romanian man of *Roma* origin who was HIV-positive and severely mentally disabled.
The Centre for Legal Resources, an NGO based in Bucharest, argued that the Romanian authorities had failed to provide Valentin Câmpeanu with adequate care and treatment, leading to his premature death. In this circumstance, for the first time in its history, the Court allowed an NGO to bring a case on behalf of an individual without a legal representative, recognising the need to ensure access to justice for vulnerable persons, and recognizing that otherwise, serious human rights violations could go unexamined because the victim had no family or legal representation.

More recently, in the judgment *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*[78], an association of elderly women brought a case concerning the impact of climate change on their health, the Court ruled that the Switzerland's inadequate climate policy and insufficient reduction of greenhouse gas emission violated the human rights of the applicants (considered particularly vulnerable to the health effects of heat waves exacerbated by climate change). In this case, the Court surprisingly recognised the legal standing of the association in the collective interest of its members, acknowledging the growing importance of environmental rights within the human rights framework.

These two landmark rulings reinforced two key principles.
First, they set an important precedent for access to justice for individuals unable to represent themselves effectively – particularly those who are institutionalised, disabled, or marginalized.
Second, they underscored the role of civil society organisations in human rights litigation, recognising that NGOs can serve as critical intermediaries in the protection of vulnerable populations.

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[76] ECHR, Art. 34 (Individual applications)
[77] *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania*, 17 July 2014;
European Court of Human Rights*, Information Note on the Court's case-law 176*, 17 July 2014 and Dothan S., *Luring NGOs to International Courts: A Comment on CLR v. Romania*, Zeitschrift für ausländisches öffentliches Recht und Völkerrecht / Heidelberg journal of international law, 2015
[78] *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland,* 9 April 2024;
European Court of Human Rights, *Information Note on the Court's case-law 261*, April 2022

Both cases also demonstrated the ECtHR's commitment to ensuring that systemic failures in national legal systems do not leave victims without recourse. Nonetheless, despite the openness demonstrated in cases like *Câmpeanu* and *Klimaseniorinnen*, the general tendency of the Court remains one of restraint. It continues to apply the victim requirement strictly, aiming to prevent an overly broad access to justice that could undermine the principle of subsidiarity[79] or lead to judicial overreach. Its accessibility, combined with a dynamic approach to procedural fairness, ensures that serious human rights violations do not go unchallenged because of formalistic restrictions[80].

1.2.5 Ancillary Competencies

Together with its core judicial function, the European Court of Human Rights exercises a number of ancillary competences which contribute to the further development and harmonisation of human rights law within the Council of Europe. These include its advisory jurisdiction, the interpretation of the European Convention on Human Rights, and the development of legal doctrines that influence both the national and international legal order.

The advisory jurisdiction of the ECtHR is twofold.

First, under Article 47 of the Convention[81], as amended by Protocol No. 2, the Committee of Ministers of the Council of Europe may request non-binding advisory opinions from the Court on legal questions concerning the interpretation of the Convention and its Protocols. Although rarely used in practice, this mechanism reinforces the institutional dialogue between the Court and the political organs of the Council of Europe, providing interpretative guidance that can influence the implementation of the Convention at a broader policy level.

Second, a complementary advisory mechanism was introduced by Protocol No. 16[82] (entered into force in 2018). It allows the highest national courts of the Contracting States to request advisory opinions (non-binding pronouncements) on questions of principle relating to the interpretation or application of the ECHR or its Protocols[83].

[79] The principle of subsidiarity in the context of the ECtHR posits that the primary responsibility for securing human rights lies with national authorities. The ECtHR acts in a subsidiary role, intervening only when national legal systems fail to provide adequate redress for alleged violations of the ECHR.
[80] A specific paragraph on legal standing was included to clarify who has the right to bring a case or application within the legal framework being discussed. This is a fundamental aspect in ensuring that only those with a sufficient connection to and interest in the matter can seek legal remedies;
See for further, Beqiraj J., *Access to justice for vulnerable groups "Strengthening the efficiency and quality of the judicial system in Azerbaijan"*, European Commission for the efficiency of justice (CEPEJ), October 2020
[81] ECHR, Art. 47 (Advisory Opinions)
[82] *Protocol No.16 to the ECHR*, 2 October 2013
[83] European Court of Human Rights, *Protocol No.16 to the ECHR* – Explanatory Report

Only the highest courts and tribunals of a State Party that has ratified Protocol No. 16 may request an advisory opinion. The request must arise in the context of a case pending before the national court and abstract questions unrelated to a specific ongoing case are not admissible.

The requesting tribunal must state the reasons for its request and provide the ECtHR with the relevant legal and factual background to the pending case, including the applicable domestic law and the relevant provisions of the Convention. The request is submitted to the ECtHR, where a panel of five judges of the Grand Chamber convenes to decide whether to accept the application.

The judge elected in respect of the High Contracting Party to which the requesting court belongs shall sit as an *ex officio* member of the panel. If the panel accepts the request, the Grand Chamber will examine the question(s). This may involve written submissions from various parties and possibly a hearing. Finally, the Grand Chamber delivers a reasoned advisory opinion, which is transmitted to the requesting court or tribunal and made public.

It is important to note that advisory opinions are not legally binding on the requesting court or on other States Parties; however, they carry considerable weight and may influence the interpretation and application of the Convention in future cases.

This mechanism is created to enhance dialogue between Strasbourg and domestic courts, promoting consistency in the application of human rights standards and guiding national adjudication on complex legal questions.

The Court's first advisory opinion under this Protocol, issued in 2019, concerned the recognition of parent-child relationship in cases of gestational surrogacy[84] underscoring the mechanism's practical relevance[85].

Beyond its advisory role, the ECtHR plays a pivotal role in the evolution of human rights law through its dynamic interpretative approach, commonly referred to as the *living instrument* doctrine. This approach, first established in *Tyrer v. United Kingdom* [86], enabled the Court to interpret the Convention in line with present-day conditions[87]. This approach has led to landmark judgments such as *Christine Goodwin v. United Kingdom* [88], which extended protection to transgender individuals,

[84] Gestational surrogacy is a reproductive arrangement where a woman carries a pregnancy created using the egg and sperm of intended parents, to whom the resulting child is given. The surrogate has no genetic connection to the child.
[85] *Advisory opinion concerning the recognition in domestic law of a legal parent-child relationship between a child born through a gestational surrogacy arrangement abroad and the intended mother* [GC], *request no. P16-2018-001, French Court of Cassation*, 10 April 2019; Bracken, L., T*he ECtHR's first advisory opinion: Implications for cross-border surrogacy involving male intended parents.* Medical Law International, *21*(1), 2021
[86] *Tyrer v. The United Kingdom*, 25 April 1978 at ¶ 31:" *The Court must also recall that the Convention is a living instrument which, (...) must be interpreted in the light of present-day conditions*"
[87] George L.*, The ECHR as a Living Instrument: Its Meaning and its Legitimacy*, University College London Laws, 14 March 2012
[88] *Christine Goodwin v. The United Kingdom*, 11 July 2002

and *Bayatyan v. Armenia* [89], which recognised conscientious objection to military service under Article 9 of the Convention[90].

The jurisprudence of the ECtHR has become a point of reference point for national courts, international bodies, and other regional systems, helping to shape legal reform and strengthening the principle of subsidiarity [91]. Its case law on freedom of expression[92], data protection[93], and the rights of migrants[94], among others, has contributed to the dynamic development of human rights standards.

The ECtHR's ancillary competences help to amplify its role as a guardian of human rights – not only by resolving disputes, but also by offering interpretative guidance, encouraging convergence of legal standards, and fostering an evolving human rights framework within (and beyond) Europe.

1.2.6 Provisional measures

The European Court of Human Rights has the authority to grant provisional measures under Rule 39 of its Rules of Procedure[95] in cases where there is an imminent risk of irreparable harm to a Convention right. These measures, addressed to the respondent State (and occasionally to the applicant[96]), aim to preserve the *status quo* and prevent irreversible damage while a case is pending, particularly in the interest of justice and procedural integrity[97].

From a procedural point of view, the Court's decisions on interim measures are notified to the parties in the form of an order and the names of the judges are systematically mentioned in the decisions. No appeal shall lie from a decision on a request for interim measures; however, the parties may request the Court to reconsider its decision to indicate interim measures if they consider that the measures are no longer necessary or if they have information which was not available at the time or was not made available to the Court in time.

[89] *Bayatyan v. Armenia*, 7 July 2011
[90] ECHR, Art. 9 (Freedom of thought, conscience and religion)
[91] The principle of subsidiarity holds that the primary responsibility for securing human rights lies with national authorities, including national courts and governments. The ECtHR's role is therefore subsidiary, meaning it only intervenes when national authorities have failed to adequately address alleged human rights violations.
[92] *Sunday Times v. United Kingdom*, 26 April 1979
[93] *M.K. v. France*, 18 April 2013
[94] *Saadi v. United Kingdom*, 29 January 2008
[95] Rules of Court ECtHR, Rule 39 (Interim measures)
[96] *Rackete and others v. Italy*, 25 June 2019
[97] See European Court of Human Rights, *Interim measures – Factsheet Press Unit*, March 2024 and Saccucci A., Provisional Measures Issued by International Courts and Tribunals, Interim Measures at the European Court of Human Rights: Current Practice and Future Challenges, Berlin, TMC Asser Press, 2021 and Rieter E., *Preventing Irreparable Harm: Provisional Measures in International Human Rights Adjudication*, Doctoral Thesis, Maastricht University, 1 January 2010 on which this paragraph is based.

Provisional measures are most frequently applied in deportation[98] or extradition[99] cases, especially where applicants face a credible risk of torture, inhuman treatment, or death[100].
A landmark example is *Soering v. United Kingdom*[101], where the Court blocked the extradition of the applicant to the United States of America due to potential exposure to death row conditions.

More recently, the use of interim measures has been extended to areas such as access to health care[102], family reunification[103], and the protection of vulnerable persons, including asylum seekers[104] and victims of trafficking[105]. The Court will only grant such measures where applicants demonstrate that the harm they risk cannot be remedied by compensation or subsequent legal action.
Although initially limited to physical harm, the Court has gradually extended its application to other rights (e.g. the right to private and family life), reflecting its dynamic and victim-centred approach to the interpretation of the rights enshrined in the European Convention on Human Rights.

The nature of interim measures has often been debated, with a tendency to view them as non-binding recommendations or requests, rather than strict obligations on States.
This meant that, in practice, States sometimes failed to comply with these measures, which could undermine the Court's ability to effectively protect individuals from imminent and irreparable harm.
Finally, the binding nature of Rule 39 measures was definitively established in *Mamatkulov and Askarov v. Türkiye* [106], where the Grand Chamber held that failure to comply with interim measures constituted a breach of Article 34 ECHR, which guarantees the right to an effective remedy before the Court[107].

Nevertheless, challenges persist in the enforcement of these measures. Despite oversight by the Committee of Ministers [108], compliance is often problematic in politically sensitive case, such as those involving migration[109].

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[98] *W.H. v. Sweden*, 8 April 2015
[99] *Öcalan v. Türkiye*, 12 May 2005
[100] Arnell P., *Extradition and the Regrettable Influence of Politics upon Law: The European Court of Human Right's Decision in Sanchez-Sanchez v. UK*, Verfassungsblog on matters constitutional, 17 November 2022
[101] *Soering v. United Kingdom*, 7 July 1989
[102] *Paposhvili v. Belgium*, 13 December 2016
[103] *Amrollahi v. Denmark*, 11 July 2002
[104] *F.G. v. Sweden*, 23 March 2016
[105] *M. v. United Kingdom,* 1 December 2009;
Parliamentary Assembly of the Council of Europe, *Resolution 1788, Preventing harm to refugees and migrants in extradition and expulsion cases: Rule 39 indications by the European Court of Human Rights*, 26 January 2011
[106] *Mamatkulov and Askarov v. Türkiye*, 4 February 2005
[107] Jorem H., *Protecting Human Rights in Cases of Urgency: Interim Measures and the Right of Individual Application under Article 34 ECHR*, Nordic Journal of Human Rights, 22 January 2013
[108]ECHR, Art. 46 (Binding force and execution of judgement)
[109] *Camara v. Belgium*, 18 July 2023

Over the years, the ECtHR has made notable progress in both the use and the conceptualisation of interim measures, reinforcing their preventive and protective role within the broader framework of human rights protection.

The binding nature of these measures has been affirmed, and their scope has been gradually expanded to cover a wider range of rights and vulnerable groups. However, further efforts are needed to ensure consistent compliance by Member States.

The ability of the ECtHR to maintain its credibility and effectiveness in preventing irreparable harm will depend not only on addressing these enforcement challenges, but also on its continued capacity to adapt to emerging threats to human rights.

1.3 The African Court on Human and Peoples' Rights

1.3.1 History

The creation of a regional human rights court in Africa was shaped by the continent's unique historical and political context. Africa's post-colonial reality, marked by legal fragmentation and concerns over external judicial intervention, made the institutionalization of supranational human rights adjudication a gradual and politically sensitive process[110].

The African human rights system is structured around three fundamental institutions: the African Court of Human and Peoples' Rights, the African Commission on Human and Peoples' Rights (AfCmHPR) and the African Union (preceded by the Organization for African Unity[111]).

Historically, the idea of establishing a regional human rights court in Africa dates to the 1960s. At the 1961 African Conference on the Rule of Law in Lagos, Nigeria, legal experts advocated the adoption of an African Convention on Human Rights and the creation of a judicial body with the power to adjudicate violations. However, when the OAU was established in 1963, the focus remained on non-interference and national sovereignty, and no such mechanism was included.

The Organisation of African Unity was an intergovernmental organisation founded on May 25, 1963, in Addis Ababa, Ethiopia, by 32 independent African States with the aim of promoting unity and solidarity among African states, coordinating their efforts to improve the lives of Africans, defending their sovereignty, and eradicating colonialism.

[110] See Dangabo M. A., Chronique de la Cour africaine des Droits de l'Homme et des Peuples à la Cour de Justice de l'Union africaine : Histoire d'une coexistence pacifique en attendant la fusion, *Revue internationale de droit pénal,* 76(1), 2005; fidh - International Federation for Human Rights, *Practical Guide - The African Court on Human and Peoples' Rights towards the African Court of Justice and Human Rights*, April 2010, and International Justice Resource Center*, African Human Rights System* on which this paragraph is based.

[111] The African Union was officially launched in 2002, succeeding the Organization for African Unity

It was only later that momentum began to build for the development of a regional human rights framework. The African Charter on Human and Peoples' Rights (AfCHPR), also known as the Banjul Charter[112], was adopted by the OAU in 1981 and entered into force in 1986.
This Charter serves as the cornerstone of the African human rights system and defines the substantive rights and freedoms to be protected[113].

To date, all the 55 Member States of the African Union - with the exception of Morocco - have ratified or acceded to the African Charter, thereby committing themselves to respecting the principles set out therein[114].

Notably, the AfCHPR protects not only civil and political rights, but also economic, social and cultural rights. Moreover, it also uniquely recognizes the rights of peoples, combining traditional African values with universally recognized standards. The inclusion of "peoples' rights" reflects the historical and socio-political context of the continent, acknowledging that collective rights—such as those linked to development, self-determination, and natural resources—are central to the African experience of decolonization, community identity, and social solidarity[115].

The Charter contains reservation clauses that allow for certain limitations under national law, but it does not provide for a general derogation clause[116]. This has been interpreted both as a safeguard against arbitrary suspension of rights and as potential rigidity in emergency situations[117].

To supervise implementation of the African Charter, the AfCmHPR was established in 1987 as a quasi-judicial body. Its core mandate, as outlined in Article 45 of the AfCHPR[118], involves the promotion and the protection of human and people's rights.
Promotion activities include conducting studies, organizing seminars and conferences and generally raising awareness of human rights in the African continent.
Protection mechanisms include receiving and evaluating complaints from individuals, groups and NGOs alleging violation of the Charter by State parties, conducting investigations into alleged violations, seeking friendly settlements and undertaking urgent appeals.

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[112] Adopted in Banjul, The Gambia, on 27 June 1981.
[113] See for further Murray R., *The African Charter on Human and Peoples' Rights: A Commentary*, Oxford, Oxford University Press, 20 February 2019
[114] African Court on Human and Peoples' Rights - Basic Information, *Ratification & Declaration*
[115] Ikechukwu O., *A Critical Analyses of the Unique Features of the African Regional Human Rights System with Reference to Its Conceptualization, Standard Setting and Implementation*, University of Hull, 30 March, 2022
[116] Differently the ECHR includes Article 15, which provides for a general derogation clause.
This article permits High Contracting Parties to take measures derogating from their obligations under the Convention in time of war or other public emergency threatening the life of the nation, subject to specific conditions and limitations.
[117] *Media Rights Agenda and Others v. Nigeria, African Commission on Human and Peoples' Rights,* 31 October 1998
[118] AfCHPR, Art. 45 (Mandate of the Commission)

As human rights abuses continued and the limitations of the Commission's mandate became more evident[119], the need for a court with binding authority resurfaced in the 1990s.

The African Court was formally established in 1998 through a Protocol to the African Charter[120], adopted in Ouagadougou, Burkina Faso, under the auspices of the OAU[121].

Legal experts and international NGOs played an important role in the drafting of the Protocol, with a first draft prepared in Cape Town, South Africa, in 1995 and later revised in Nouakchott, Mauritania, in 1997 to allow for optional State acceptance of individual complaints[122].

This compromise — requiring States to make an additional declaration under Article 34(6) to allow direct access by individuals — significantly limited its accessibility.

Although some States ratified the Protocol early on, broader acceptance was hampered by concerns about sovereignty and the political implications of individual petitions. Even after the formal establishment of the Court, its operationalization faced significant hurdles.

Many African States were reluctant to accept the full jurisdiction of the Court, fearing that the Court could encroach on national sovereignty or be used as a tool for external political pressure.

As of May 2025, only 34 of the 55 African Union (AU) Member States have ratified the Protocol, and only 7 have accepted individual jurisdiction under Article 34(6).

The Court became operational in 2006, with its seat in Arusha, Tanzania – a decision taken by the AU Assembly of Heads of State and Government[123] thanks to Arusha's established judicial infrastructure, notably the presence of the International Criminal Tribunal for Rwanda[124].

Since its inception, the Court has issued more than 300 judgments, and its first judgment was delivered in December 2009 in the case of *Yogogombaye v. Senegal*[125].

However, its early jurisprudence reflected broader structural and political challenges, underscoring the difficulties of regional human rights adjudication in Africa.

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[119] Viljoen F., *The African Court on Human and Peoples' Rights*, International Human Rights Law in Africa (2nd edn), Oxford, 2012; online edn, Oxford, Oxford Academic, 20 April 2015

[120] The Protocol to the African Charter on Human and Peoples' Rights will be referred to simply as "the Protocol"

[121] Protocol, Art. 1 (Establishment of the Court);
African Court on Human and Peoples' Rights, *Basic Information - The African Court in brief*

[122] Viljoen F., *The African Court on Human and Peoples' Rights*, International Human Rights Law in Africa (2nd edn), Oxford, 2012; online edn, Oxford Academic, 20 April 2015

[123] The Assembly of Heads of State and Government is the supreme policy-making organ of the African Union.
It is composed of all the Heads of State and Government of the AU's Member States and meets at least once a year to define the Union's policies, establish its priorities, adopt its budget, and oversee the implementation of its decisions.

[124] Viljoen F., *The African Court on Human and Peoples' Rights*, International Human Rights Law in Africa (2nd edn), Oxford, 2012; online edn, Oxford, Oxford Academic, 20 April 2015

[125] *Yogogombaye v. Senegal*, 15 December 2009

1.3.2 Jurisdiction

The jurisdiction of the African Court on Human and Peoples' Rights is defined by the Protocol, which empowers the Court the authority to adjudicate on cases of human rights violations committed by States Parties[126].

The Court's jurisdiction is structured around four main criteria which reflect the general framework shared by other regional human rights courts, including the ECtHR[127].

First, *ratione personae*[128], the Court can hear cases brought by the African Commission on Human and Peoples' Rights, by States Parties to the Protocol, or by African intergovernmental organizations officially recognized by the African Union[129]. Individuals and NGOs may also submit applications directly to the Court, but only if the respondent State has previously accepted this possibility by making an official declaration under Article 34(6) of the Protocol[130]. This requirement significantly limits access, as most AU Member States have not issued such a declaration, and some – like Rwanda and Tunisia – have even withdrawn their consent, citing concerns over sovereignty[131].

Second, ratione loci, the alleged violation must have occurred within the territory of a State Party or in a context where that State exercise effective jurisdiction. While this principle theoretically allows the Court to consider extraterritorial violations, its case law in this area remains limited compared to that of other regional systems.

Third, *ratione temporis*, the jurisdiction of the Court applies only to violations that took place after the respondent State ratified the Protocol. However, in line with established international practice, the Court has accepted jurisdiction in case of continuing violations whose effects persist after ratification[132].

Fourth, *ratione materiae*, the case must concern rights protected by the African Charter or by any other human rights instrument ratified by the respondent State[133].

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[126] See fidh International Federation for Human Rights, *Practical Guide - The African Court on Human and Peoples' Rights towards the African Court of Justice and Human Rights*, April 2010 and Murray R., The African Court of Justice and Human and Peoples' Rights in Context, *The Human Rights Jurisdiction of the African Court of Justice and Human and Peoples' Rights*, Cambridge, Cambridge University Press, 2 May 2019, on which this paragraph is based

[127] Protocol, Art. 3(1) (Jurisdiction)

[128] A more detailed analysis of jurisdiction *ratione personae*, specifically concerning issues of legal standing, will be addressed in Section 1.3.4.

[129] Protocol, Art. 5(1) (Access to the Court)

[130] Protocol, Art. 5(3) (Access to the Court) and Art. 34(6) (Ratification)

[131] See for further, International Commission of Jurists Joint Statement, *Tunisia's withdrawal of individuals' and NGOs' access to the African Court marks a serious setback for human rights accountability*, 27 March 2025

[132] This principle was applied in *African Commission on Human and Peoples' Rights v. Libya*, 3 June 2016, where the Court examined continuing rights violations even though some elements of the case predated Libya's ratification.

[133] Protocol, Art. 7 (Sources of Law)

The Court's material jurisdiction is particularly broad, as the Charter includes, as mentioned before, not only civil and political rights, but also economic, social, cultural rights, and collective rights.
In its jurisprudence[134], the Court has reinforced this breadth by referring to other instruments such as the Maputo Protocol on Women's Rights[135] and the African Charter on the Rights and Welfare of the Child[136], allowing for a dynamic interpretation of the Charter's provision.

The AfCHPR allows for inter-State complaints, whereby one State can bring a case against another for systematic human rights violations; however, this mechanism has rarely been used, as African States often prefer diplomatic channels to resolve disputes.

The admissibility of applications before the African Court on Human and Peoples' Rights must meet both procedural and substantive criteria.

Procedurally, applicants are required to exhaust all available domestic remedies prior to bring their case to the Court, unless such remedies are unavailable, ineffective, or subject to undue delay[137]. Moreover, the application must be filed within a reasonable time following the exhaustion of domestic remedies, and cannot be simultaneously pending before another international body.

Substantively, the application must not be manifestly unfounded or based on frivolous allegations. The applicant is also required to establish a *prima facie* violation of the African Charter or any other relevant human rights treaty to which the respondent State is a party.

Under Article 4 of the Protocol[138], the Court has also advisory jurisdiction, which allows to issue non-binding legal opinions on human rights issues at the request of AU Member States, AU organs, African intergovernmental organisations, and NGOs with observer status before the African Commission[139].

Beyond resolving individual disputes, the African Court plays a crucial role in fostering a continental culture of human rights. Through its judgments and advisory opinions, it promotes state accountability and supports the legal harmonisation in different jurisdictions.
Despite institutional and political constraints, the Court remains a vital instrument for the progressive realisation of human dignity, justice and the rule of law in Africa.

[134] *Association pour le Progress et la Défense des Droits des Femmes Maliennes (APDF)* and *The Institute for Human Rights and Development in Africa (IHRDA) v. Republic of Mali*, 11 May 2018
[135] *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa*, 1 July 2003
[136] *African Charter on the Rights and Welfare of the Child*, 11 July 1990
[137] AfCHPR, Art. 56(2)
[138] Protocol, Art. 4 (Advisory Opinion)
[139] The Advisory jurisdiction will be analyzed in section 1.3.5 (Ancillary competencies)

1.3.3 Structure

In order to ensure the proper resolution of disputes, the African Court has established a judicial system capable of dealing with the applications it receives[140].

The Court is composed of 11 judges, including a President and a Vice-President.
Judges are elected for a six-year term, renewable once, and serve in their personal capacity to guarantee independence from political influence. They are nominated by African Union Member States[141] and elected by the AU Assembly of Heads of State and Government, following a shortlist of candidates compiled by the AU Executive Council[142].
No two judges may be of the same nationality, and gender representation is mandatory[143].
The President, who is the only full-time judge, supervises the judicial and administrative work of the Court and represent it in its external relations, while the Vice-President assists him in these duties and assumes them in the President's absence[144].
Judges must be chosen from the *"jurists of high moral character and of recognised practical, judicial or academic competence and experience in the field of human and peoples' rights"*[145].

The African Court generally sits as a full bench of 11 judges, decisions are taken by majority vote with a *quorum* of seven judges required for deliberations[146], and it is possible to include dissenting or separate opinions[147]. Judges enjoy diplomatic privileges and during and after their term, including protection from legal liability for opinion expressed in the exercise of their functions. They must refrain from any other activities incompatible with judicial independence[148], such as holding political office, in case of violation of these conditions, the judge may be suspended or removed[149].

Judgments are final, binding and published to ensure transparency. Their enforcement is monitored by the Executive Council of the African Union[150]; however, the absence of automatic

[140] See *Practical Guide - The African Court on Human and Peoples' Rights towards the African Court of Justice and Human Rights*, fidh International Federation for Human Rights, April 2010 on which this paragraph is based
[141] Protocol, Art. 11 (Composition)
[142] The Executive Council of the African Union is composed of the Ministers of Foreign Affairs of the AU Members States. It is responsible for coordinating and decide on policies in areas of common interest, preparing the agenda for the Assembly of Heads of State and Government, and ensuring the implementation of the Assembly's decisions.
[143] Protocol, Art. 12(2) (Nominations)
[144] Protocol, Art. 21 (Presidency of the Court)
[145] Protocol, Art. 11(1) (Composition)
[146] Protocol, Art. 23 (Quorum)
[147] Protocol, Art. 28(2) (Judgment) and Art. 28(7) (Judgement)
[148] Protocol, Art. 11(2) (Composition)
[149] Protocol, Art. 19(1) (Cessation of Office)
[150] Protocol, Art. 30 (Execution of judgment)

sanctions weakens the mechanism[151], in view of the fact that non-compliant States face no immediate consequences, making implementation largely dependent on political will[152].

The Court's effectiveness is further limited by its reliance on the AU's general budget, which often proves insufficient to support its growing workload. This financial dependency also exposes the institution to potential political pressure from Member States that may be reluctant to fund a Court capable of issuing rulings against them.

Since 2008[153] discussions have been ongoing regarding the possible merger of the AfCtHPR with the African Union Court of Justice[154] to form a unified African Court of Justice and Human Rights (AfCJHR)[155]. Progress, however, has been slow, as many States fear that the proposed Court's expanded jurisdiction – particularly over international crimes - could pose a threat to national sovereignty[156].

1.3.4 Legal standing

Legal standing before the African Court on Human and Peoples' Rights is considerably more restricted, reflecting the peculiarities and characteristics of the African system of human rights protection, historically and politically distinct from the European model.

This distinction is rooted in a series of factors, including the divergent trajectories of state development, the legacy of colonialism, and the persistent challenges related to state sovereignty and regional integration.

As previously mentioned, the Court has jurisdiction over cases brought by the African Commission on Human and Peoples' Rights, States parties to the Protocol, and African intergovernmental organisations recognized by the African Union[157].

Individuals and NGOs may submit applications directly to the Court only if the respondent State has made a special declaration in this sense under Article 34(6) of the Protocol[158].

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[151] Viljoen F., *The African Court on Human and Peoples' Rights*, International Human Rights Law in Africa (2nd edn), Oxford, 2012; online edn, Oxford, Oxford Academic, 20 Apr. 2015

[152] African Court on Human and Peoples' Rights, *Activity Report of the African Court on Human and Peoples' Rights 1 January – 31 December 2023*

[153] African Union, *Protocol on the Statute of the African Court of Justice and Human Rights*, 1st July 2008

[154] The African Union Court of Justice is the principal judicial organ of the African Union, mandated to ensure adherence to and interpret the Constitutive Act of the African Union and other relevant legal instruments. It is intended to adjudicate disputes as provided for in its statutes.

[155] See for further, Jalloh C. C., Clarke K. M. and Nmehielle V. O., *The African Court of Justice and Human and Peoples' Rights in Context – Development and Challenges*, Cambridge, Cambridge University Press, May 2019

[156] African Court on Human and Peoples' Rights, *List of Countries which have signed,ratified/acceded to the Protocol*

[157] Protocol, Art. 5(3) (Access to the Court)

[158] As of May 2025, only seven States (Burkina Faso, Malawi, Mali, Ghana, The Gambia, Niger, Guinea Bissau) have accepted this provision, which significantly limits direct access by individuals, African Court on Human and Peoples' Rights, *List of Countries which have made a special declaration under Article 34(6) of the Protocol*

Applications to the African Court require the proof of victim status; however, the African system does not always require individuals or NGOs to demonstrate a personal interest – particularly in public interest cases[159].

Given this restriction of the Article 34(6) requirement, the AfCmHPR plays a crucial role in referring cases on behalf of individuals and NGOs[160].

A landmark example is *African Commission on Human and Peoples' Rights v. Kenya*, where the Commission brought a case on behalf of the Ogiek community regarding their eviction from their ancestral lands in the Mau Forest, in violation of their rights to property, culture, and non-discrimination under the African Charter[161]. The Court ruled in favour of the Ogiek, reinforcing indigenous and illustrating how the Commission can overcome procedural barriers.

However, on several occasions, the AfCmHPR has been reluctant to intervene in the internal political situations of States that affect their sovereignty, particularly in relation to disputes over territorial boundaries[162].

The Court also has jurisdiction over inter-State complaints, but such cases remain very rare due to political sensitivities and the preference for diplomatic solutions within the African Union. Regional political dynamics, often characterized by complex bilateral relations and concerns about regional stability, tend to favor non-contentious approaches to dispute resolution.

More recently, the case of the *Democratic Republic of Congo (DRC) v. Rwanda* marks a significant moment in the jurisprudence of the AfCtHPR. Filed on 21 August 2023, it is the first inter-state application to be brought before the Court.

The DRC's application concerns alleged human rights violations arising from the armed conflict in the eastern part of the DRC, specifically implicating the involvement of Rwanda.

The DRC accuses Rwanda of supporting the M23 rebel group and committing various violations of the African Charter on Human and Peoples' Rights and other human rights instruments.

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[159] *XYZ v. Benin*, 27 November 2020, ¶ 48:" *do not require individuals or NGOs to demonstrate a personal interest in an application in order to access the Court, especially in the case of public interest litigation*".

[160] African Union, *The African Commission on Human and Peoples' Rights: At the Forefront of Advancing Human Rights*, AU ECHO - The Newsletter of the African Union Commission, 2016: African Year of Human Rights with a focus on the Rights of Women, July 2016

[161] *African Commission on Human and Peoples' Rights v. Kenya,* 26 May 2017;
Minority Rights Group, *African Commission of Human and Peoples' Rights v Kenya (the 'Ogiek case')*, 14 November 2016

[162] See *Katangese Peoples' Congress v. Zaire,* October 1995 and *Kevin Mgwanga Gunme et al v. Cameroon,* 27 May 2009

These alleged violations include the right to life, personal security, human dignity, and protection from torture. In practice, however, inter-State litigation has been significantly under-utilized, largely due to concerns about political backlash[163].

Restrictive standing requirements have had a significant impact on the Court's caseload and accessibility, limiting the ability of victims and civil society organisations to seek justice[164].
In addition, the fear of political retaliation from other States parties, limits the use of the Court as a tool for resolving international disputes.

A reassessment of the Court's accessibility and role as an international adjudicator could be essential to strengthen the rule of law in the African continent and promote a culture of accountability for human rights violations.

1.3.5 Ancillary competencies

The African Court on Human and Peoples' Rights also exercises ancillary competences that complement its primary judicial function. These include issuing advisory opinions, interpreting human rights instruments, and promoting legal development within the African Union framework[165].

Under Article 4 of the Protocol Establishing the African Court, the Court is empowered to give advisory opinions on legal questions relating to the African Charter on Human and Peoples' Rights and other relevant human rights instruments[166].

The requests for advisory opinions must indicate the provisions at issue, the contextual background, and the names and addresses of the requesting entities, as clarified in Rule 82 of its Rules of Procedure[167]. Once submitted, the Registrar forwards the request to all interested parties, who have 90 days to submit written observations[168].

If necessary, oral hearings are provided[169] (however rare in practice), and the public delivery of the opinion is also provided unless confidentiality or security considerations dictate otherwise[170].

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[163] Pascale G., *La mancata "esplosione" del contenzioso interstatale nel sistema africano di tutela dei diritti umani*, Diritti Umani e Diritto Internazionale, vol. 15, n°3, 2021
[164] De Silva N., *Individual and NGO Access to the African Court on Human and Peoples' Rights: The Latest Blow from Tanzania*, EJIL: Talk! – Blog of the European Journal of International Law, 16 December 2019 and Nkongho F. A., *Reflections on the Role of Civil Society Organisations in Implementing Cases from the African Commission and Court*, University of Bristol, 2021 and *African Court on Human and Peoples' Rights, Strategic Plan 2021-2025 "Deepening trust in the African Court by enhancing its efficiency and effectiveness"* on which this paragraph is based.
[165] See Makunya T. M., *Advisory Opinion: African Court on Human and Peoples' Rights (AfCtHPR)*, Max Planck Encyclopedias of International Law, June 2023, on which this paragraph is based
[166] Rules of Court AfCtHPR, Rules 68 (Forms of decisions) and Article 45(3) AfCHPR also confers advisory jurisdiction to the African Commission although it is not framed as such.
[167] Rules of Court AfCtHPR, Rule 82 (Request for Advisory Opinion)
[168] Rules of Court AfCtHPR, Rule 83 (Transmission of a Request for Advisory Opinion)
[169] Rules of Court AfCtHPR, Rule 85 (Oral Proceedings)
[170] Rules of Court AfCtHPR, Rule 86 (Delivery of Advisory opinion)

This function is open to States parties, AU organs, and recognised NGOs with observer status before the African Commission.

Through its interpretative function the Court contributes to the progressive development of human rights law, often drawing on other regional instrument – such as for instance the Maputo Protocol[171] – to reinforce protection[172].

Advisory opinions, though limited in number, have helped clarify the normative content of rights in complex contexts.

In its *PALU COVID-19 and Elections Opinion*[173] the Court examined how States should balance public health and democratic obligations, holding that elections may be postponed under exceptional circumstances, provided health authorities and political actors – including civil society – are consulted.

Similarly, in the *Children's Rights Committee Opinion*[174] the Court clarified the standing and procedural requirements for entities seeking advisory opinions, particularly in relation to the protection of children's rights.

Despite these valuable contributions, the Court's advisory opinions suffer from limited State engagement and lack of binding force, which, together with political constraints, undermine their practical impact.

Greater acceptance of the Court's advisory jurisdiction and closer dialogue with national courts would strengthen the development and coherence of African human rights law[175].

1.3.6 Provisional measures

The African Court on Human and Peoples' Rights has the power to grant provisional measures under Article 27(2) of the Protocol Establishing the African Court[176] and Rule 59 of the Rules of Procedure of the African Court[177].

These measures are granted, as stated in *General Kayumba Nyamwasa & Six Others v Republic of Rwanda*[178], "*in cases extreme gravity and urgency and when necessary to avoid*

[171] African Union, *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa "Maputo Protocol"*, 11 July 2003
[172] *Tike Mwambipile and Equality Now v. United Republic of Tanzania*, 9 December 2022
[173] *Advisory Opinion on Request No 001/2020 by the Pan African Lawyers Union (PALU) on the Rights to Participate in the Government of One's Country in the Context of an Election Held During a Public Health Emergency or a Pandemic, such as the Covid-19 Crisis,* 2021.
[174] *Request for Advisory Opinion by the African Committee of Expertson the Rights and Welfare of the Child*, 2014
[175] Chenwi L., *The Advisory Proceedings of the African Court on Human and Peoples' Rights, Nordic Journal of Human Rights*, Vol. 38, No. 1, 2020
[176] Protocol, Art. 27(2) (Findings)
[177] Rule 59, Rules of Court (Provisional Measures)
[178] *General Kayumba Nyamwasa & Six Others v Republic of Rwanda*, 24 March 2017

irreparable harm to the persons' and which the court deems to be necessary to be in interests of the parties or justice"[179].

The Court interprets the principle of irreparable harm broadly, extending beyond threats to life and physical integrity to include economic and property rights.

For example, in *Charles Kajoloweka v. Malawi*[180], the Court granted provisional measures to protect property rights, demonstrating a dynamic and victim-centred approach.
Such measures are crucial to maintaining the *status quo* and preventing violations that could lead to irreversible consequences ensuring the effectiveness of human rights adjudication.

In application for interim measures, "*the Court need not satisfy itself that it has jurisdiction on the merits of the case*", but it only needs to confirm *prima facie* jurisdiction[181].
Request for provisional measures may be submitted by either party[182].

The binding nature of provisional measures has been consistently reaffirmed by the Court. In *African Commission on Human and Peoples' Rights v. Libya*[183], for instance, the Court ordered Libya to suspend the execution of a death sentence, recognising the loss of life as a situation of extreme gravity and irreparable harm.

However, enforcement remains a critical challenge.

Unlike the ECtHR, whose decisions are monitored by the Committee of Minister of the Council of Europe, the AfCtHPR lacks a comparable enforcement authority[184].

The African Union has not yet established a structured mechanism to ensure compliance, leaving implementation largely dependent on political dynamics[185].
As a result, States often face no direct consequences for non-compliance, weakening the protective function of provisional measures.

Major institutional support from the African Union and closer engagement with regional organisations are needed to enhance the effectiveness of the African human rights system.

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[179] See Virzo R., *La condition du «dommage irréparable à des personnes» dans les ordonnances sur les mesures provisoires de la cour africaine des droits de l'homme et des peuples*, Ordine internazionale dei diritti umani 2022; Naldi G. J., *Interim measures of protection in the african system for the protection of human and peoples' rights*, African Human Rights Law Journal, 2002 and *Commentary on Provisional Measures*, Commentary AfCtHPR, 1 September 2017 and Pascale G., Provisional Measures Issued by International Courts and Tribunals, Provisional Measures Under the African Human Rights System, Berlin, TMC Asser Press, 2021 on which this paragraph is based.
[180] *Charles Kajoloweka v. Malawi* (*Provisional measures*), 27 March 2020
[181] In *Evodius Ruechura v Tanzania,* 18 March 2016, the Court found that it has *prima facie* jurisdiction following allegations of violations of the African Charter and the ICCPR.
[182] *Lohé Issa Konaté v Burkina Faso*, 4 December 2014, the Court considered the deterioration of the applicant's health as irreparable harm for which it ordered provisional measures in the form of adequate healthcare for the applicant.
[183] *The African Commission on Human and Peoples' Rights vs Libya*, 15 March 2013
[184] African Court on Human and Peoples' Rights, *Conference on the Implementation and Impact of Decisions of the African Court on Human and Peoples' Rights*, 3 November 2021
[185] *Houngue Éric Noudéhouenou v. Republic of Benin, Dissenting Opinion Judge Bensaoula Chafika*, 1 December 2022

Strengthening oversight and encouraging State cooperation are essential steps to ensure that provisional measures fulfil their intended role in preventing serious human rights violations[186].

1.4 Comparative Analysis of Procedure in the African and European Courts

The procedural frameworks of the African Court on Human and Peoples' Rights and the European Court of Human Rights reflect two distinct approaches to regional human rights adjudication[187].

Both institutions share the goal of protecting fundamental rights beyond the reach of national systems, but their operational realities, historical trajectories, and institutional architectures diverge in ways that profoundly shape access to justice, case management, and the enforcement of decisions.

The African Court's jurisdictional mandate is quite broad, covering violations of the African Charter and, by extension, any other human rights treaty ratified by a respondent State.
This comprehensiveness allows the Court to address a large amount of different human rights, ranging from civil and political, to economic, social, cultural, and collective rights.
However, this expansive mandate remains largely aspirational, hampered by the Protocol's Article 34(6) requirement that each State make a separate declaration before individuals and NGOs have direct access to the Court. As a result, most petitions have to be routed through the African Commission, which itself faces resource constraints and procedural delays.

By contrast, the European Court of Human Rights benefits from a more permissive standing regime: any individual, group, or NGO can apply directly once all domestic remedies have been exhausted, without the need for separate declarations. The ECtHR's substantive jurisdiction also covers civil and political rights under the Convention, with additional protocols extending protection to other areas. The net effect is that the Strasbourg's Court handles tens of thousands of applications each year[188], while the Arusha docket has never exceeded a few dozen cases per year[189].

This disparity caseloads reflects two mirror-image dilemmas.
In Africa, the "birth defect" of Article 34(6) restricts direct access so severely that many meritorious cases are never heard; victims may lack the means to petition the Commission, or face strategic resistance from States unwilling to cooperate.

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[186] African Union, *African Commission on Human and Peoples' Rights – Strategic Framework 2021-2025*
[187] See Zouapet A. K., *From 'puzzling' to comprehensible and efficient: Reform proposals to the African human rights framework through a 'system' lens*, African Human Rights Law Journal, Vol.23, No.1, 2023 and
Spano R., *The Future of the European Court of Human Rights – Subsidiarity, Process-Based Review and the Rule of Law*, Human Rights Law Review, Vol. 18, Issue, 3 September 2018, and Murray R., *A comparison between the African and European Courts of Human Rights*, African Human Rights Law Journal, 2002, on which this paragraph is based
[188] European Court of Human Rights, *Annual Report 2024 of the European Court of Human Rights*
[189] African Court on Human and People's Rights, *AfCtHPR Cases Statistics*, updated to 1 April 2025

Meanwhile, in Europe, procedural overload burdens the Registry and judges, forcing the adoption of filtering mechanisms[190], unilateral strikes of inadmissible applications[191], and friendly settlements[192] to manage volume. Undeniably, the Strasbourg has become highly proficient in case filtration — deploying single-judge formations for manifestly inadmissible cases, three-judge Committees to streamline others, and adjudicating the most important matters before Chambers and the Grand Chamber—but these layers add complexity and lengthen timelines for genuine complaints.

Underlying these structural divergences are different historical and political contexts.

The ECtHR emerged in a post-World War II Europe determined to prevent the return of totalitarianism, supported by a network of stable democracies and a judiciary willing to cede a measure of sovereignty. From its inception, Member States accepted that an external court could make binding judgments that require legislative or administrative changes.

By contrast, the African Court was born into a post-colonial landscape defined by newly independent States cautious of external intervention and keen to assert national sovereignty.

As a result, the Protocol itself was drafted with an opt-in mechanism for individual petitions—a compromise designed to allay the fears of State, but which ultimately stifled the Court's impact.

When it comes to procedural mechanisms, the two Courts diverge even further.

The African Court sits as a full bench of eleven judges for each case, which promotes collegial deliberation but at the expense of speed: all applications, whether simple or complex, go through the same identical judicial channels. The lack of a tiered system means that even manifestly inadmissible cases consume scarce judicial time.

Conversely, the tiered architecture of the European system's allows for rapid preliminary screening. Single judges can deliver inadmissibility rulings within weeks, while Committees and Chambers allocate judicial resources according to the importance of the case.

Procedural safeguards on admissibility also differ.

Both Courts require exhaustion of domestic remedies: applicants must first exhaust all available domestic remedies.

The African system allows for exceptions where remedies are unavailable, ineffective, or unduly delayed—a principle also recognized in Strasbourg jurisprudence. However, it has interpreted these exceptions more narrowly, rejecting applications where there was some semblance of due process.

The European Court, conversely, has developed a rich doctrine on "effective" remedies and the "reasonable time" rule, adapting to national idiosyncrasies in order to prevent procedural abuses.

[190] ECHR, Art. 27 (Competence of single judges)
[191] ECHR, Art. 37 (Striking out applications)
[192] ECHR, Art. 39 (Friendly settlements)

A comparative analysis would be incomplete without considering the advisory jurisdiction. Both Courts can issue advisory opinions, but their use and approaches differs.

The African Court's advisory role under Article 4 of the Protocol is open to AU organs, Member States, and NGOs with observer status, but since the establishment of the African Court, only few times they have made use of this power (15 to date).

By contrast, the ECtHR has issued only six advisory opinions since the entry into force of Protocol No. 16 in 2018, reflecting the limited number of requests by national courts and a more restrained institutional design.

Despite their potential, the advisory functions of both Courts remain underutilized and unevenly developed. Strengthening this tool—through greater engagement with domestic actors and institutional support—could enhance their normative authority across the regions.

From a generale perspective, reducing the gap in the two Courts requires reasoned reforms.

For Arusha, wider ratification and acceptance of Article 34(6) is imperative.

This could be achieved through a phased approach: first, encouraging regional economic communities (e.g.SADC[193]and EAC[194]) to adopt declarations on behalf of their members; second, integrating direct access declarations into broader AU reform agendas, such as the African Governance Architecture[195]; and third, to offer incentive packages—judicial training, and funding—to States that opt in.

In Strasbourg, the challenge is to balance access with efficiency.

The use of AI-based tools to detect repetitive or abusive applications (while adhering to strict privacy and fairness standards) could reduce the burden of the Registry without compromising access[196]. Furthermore, enhancing cooperation between the ECtHR and national courts through joint training programmes could reduce the volume of application at the national level by encouraging better compliance at home[197].

Ultimately, while the African and European Courts operate in different legal and political ecosystems, their procedural challenges converge on a single principle: ensuring that the machinery of regional justice remains both accessible and efficient. Without targeted reforms—rooted in local realities yet inspired by proven best practices—there is a tangible risk that victims will be left without

[193] Southern African Development Community (SADC) is a regional organization of 16 countries in Southern Africa.
[194] East African Community (EAC) is a regional intergovernmental organisation of 6 Partner States.
[195] African Governance Architecture (AGA) is a platform for dialogue between the various stakeholders who are mandated to promote good governance and strengthen democracy in Africa
[196] Molbæk-Steensig H., "*AI at The European Court of Human Rights: technological improvement or leaving justice by the wayside?"*, Ordine internazionale e diritti umani, 2022
[197] African Court on Human and Peoples' Rights – Press Release, *African and European human rights courts meet in Strasbourg,* 4 October 2022

recourse, and that these tribunals will fall short of their transformative promise in an era when human rights norms face renewed scepticism.

1.5 Enforcement and Monitoring of the Judgments

1.5.1 Introduction: The Role of Enforcement in Human Rights Adjudication

Enforcement is fundamental to the legitimacy and effectiveness of human rights adjudication systems. Judicial decisions, while symbolically powerful, achieve their transformative potential only through effective implementation[198].

In international human rights law, robust enforcement frameworks are essential to transform abstract obligations into tangible guarantees. This process bridges the gap between legal pronouncements and domestic reforms, thereby strengthening the rule of law.

A key driver is the concept of *compliance pull*—the legal and moral force of human rights norms that compels States to fulfil their obligations through coercion, persuasion and diplomatic incentives. This approach has led to the gradual internalisation of human rights standards into national systems, supported by both legal obligations and civic engagement[199].

Socialisation and acculturation help to embed these norms in regional and domestic frameworks.

Enforcement serves multiple functions: it provides redress to the victims, promotes institutional reform, and strengthens the legitimacy of the system by demonstrating the ability to deliver justice.

As Harold Koh[200] (a prominent American legal scholar) observes, the dynamics of enforcement are shaped by power relations, reputational concerns, and the benefits of legal cooperation. States comply not only out of duty, but also because of broader strategic and normative incentives[201].

Monitoring mechanisms—such as follow-up reports, peer reviews, and oversight by both international and domestic actors—play a crucial role in sustaining compliance.

The Universal Periodic Review, for example, uses reputational and diplomatic pressure to encourage States to fulfil their obligations.

Regional bodies shape enforcement in different ways. The Council of Europe, through the Committee of Ministers, has effectively used peer pressure to ensure compliance.

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[198] See Moscrop H., *Enforcing International Human Rights Law: Problems and Prospects*, E-International Relations, 29 April 2014 on which this paragraph is based

[199] Vorderbruggen K., *A Rules-Based System? Compliance and Obligation in International Law*, E-International Relations, 9 October 2018

[200] Harold Hongju Koh is a distinguished American legal scholar specializing in international law and human rights. He served as the Legal Adviser of the U.S. Department of State during the Obama administration and later as the Sterling Professor of International Law at Yale Law School.

[201] Koh, H, *How is International Human Rights Law Enforced?, Indiana Law Journal,* Vol. 74 (3), 1999

In contrast, the African Union through the Executive Council of the African Union faces greater challenges, reflecting regional differences in political will and legal capacity.

1.5.2 Enforcement Mechanisms in the European System

The European Court of Human Rights operates within a well-defined and legally binding enforcement structure designed to ensure compliance with its judgments[202].
Under Article 46(1)[203] of the European Convention on Human Rights, final judgments of the Court are binding on the respondent States, which are obliged to comply with them in good faith.
However, the ECtHR has no direct enforcement powers, relying instead on a supervisory mechanism based on political pressure and compliance monitoring.

A key component of this enforcement framework is the Committee of Ministers of the Council of Europe, which monitors the execution of judgments under Article 46(2)[204].

States are required to submit action plans outlining both individual and general measures adopted to remedy the violation. These include *restitutio in integrum*[205] (where possible) and/or just satisfaction[206] under Article 41 ECHR[207], as these two remedies are not mutually exclusive.

When the violation stems from systemic problems, the ECtHR often points to the need for structural reforms, such as legislative amendments or policy changes, to prevent future violations[208]. Since 2004[209], the Court has also developed a "pilot judgment" procedure to address widespread structural problems: by identifying a leading case, it gives guidance to national authorities on how to adapt their legal and administrative frameworks in order to prevent recurrent infringements.

The Committee monitors progress through periodic evaluations, that assess both the adequacy and the timeliness of the States' remedial measures[210]. In parallel, the Council of Europe publishes

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[202] See Caligiuri A. and Napoletano N., *The Application of the ECHR in the domestic systems*, The Italian Yearbook of International Law 2011 and Council of Europe, *The Execution of Judgments*, The Conscience of Europe: 50 years of the European Court of Human Rights, October 2010, and European Commission for the Efficiency of Justice (CEPEJ), *Good practice guide on enforcement of judicial decisions*, 11 December 2015, on which this paragraph is based
[203] ECHR, Art. 46(1) (Binding force and execution of judgments)
[204] ECHR, Art. 46(2) (Binding force and execution of judgments)
[205] *Restitutio in integrum* is a legal term, primarily in international law and contract law, meaning the restoration of a party to the condition they were in before a wrongful act, or a breach of contract occurred
[206] In human rights law, *"just satisfaction"* refers to the compensation or other forms of redress awarded by a court or tribunal to a victim whose rights have been violated. This can include monetary compensation for material and moral damage, as well as other measures like apologies or rehabilitation.
[207] ECHR, Art. 41 (Just satisfaction)
[208] Council of Europe, *Committee of Ministers: Voice of the governments*;
Council of Europe, *iGuide Committee of Ministers: Procedures and working methods*, 1 September 2024
[209] *Broniowski v. Poland*, 22 June 2004
[210] Council of Europe - Department of the Execution of Judgments of the European Court of Human Rights, *Annual Reports of the Committee of Ministers*

an annual report on the execution of judgments, including statistics on the percentage of cases closed, pending cases by country and thematic overviews of compliance trends.

In cases of non-compliance or delay, the Committee of Ministers may initiate diplomatic or political interventions to increase pressure on States, and in serious cases apply a "strengthened monitoring procedure" to increase international scrutiny and pressure for domestic action.

This mechanism reinforces not only the enforcement of individual judgments but also encourages systemic reform[211]. Although formal sanctions remain limited (e.g. the suspension of voting rights in the Committee of Ministers or the threat to withhold contributions to the CoE budget), they do exist and contribute to financial and political restraint[212].

Despite this structured framework, enforcement still faces obstacles.

The Committee of Ministers relies primarily on diplomatic means—public scrutiny, dialogue, and political pressure—to secure compliance.

In the most serious cases of persistent non-compliance, the Committee of Ministers may resort to the infringement procedure under Article 46(4) of the Convention[213]. Unlike the procedure in Article 46(3), which concerns difficulties in interpreting a judgment, this mechanism is invoked when a State fails to collaborate in the execution of a final judgment.

This mechanism allows the Committee to refer the matter back to the European Court of Human Rights, asking it to determine whether the State in question has failed to fulfil its obligations under Article 46(1)—namely, the obligation to abide by the final judgment of the Court.

The procedure is initiated by a two-thirds majority of the representatives entitled to sit on the Committee of Ministers.

Once activated, the Court—sitting in Grand Chamber—examines whether the measures taken by the respondent State are sufficient to comply with the original judgment.

If the Court concludes that the State has not fulfilled its obligations, it issues a second judgment confirming the failure to comply.

Although the procedure does not provide for coercive sanctions per se, its political and reputational implications are considerable. A finding of non-compliance by the Grand Chamber constitutes an authoritative and public condemnation, which increases international scrutiny and may lead to further diplomatic isolation or consequences under the Statute of the Council of Europe, including suspension or expulsion procedures.

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[211] Efstathiou C., *Implementation of judgements of the European Court of Human Rights*, Council of Europe: Parliamentary Assembly, 11 April 2023

[212] Council of Europe – Committee of Ministers, *Recommendation No. R (92) 16 of the Committee of Ministers to Member States on the European Rules on Community Sanctions and Measures*, adopted by the Committee of Minister on 19 October 1992 at the 482nd meeting of the Ministers' Deputies

[213] ECHR, Art. 46 (Binding force and execution of judgments)

This mechanism, though rarely used, represents a critical safeguard for preserving the authority of the Court and the integrity of the Convention system in the face of persistent defiance.

Monitoring the enforcement of judgments is conducted through periodic reports submitted by States, which detail legislative, administrative, and policy responses. The Committee maintains direct dialogue with national authorities to ensure clarity of obligations and to guide implementation efforts[214].

Given the importance of domestic implementation, some States have established internal mechanisms to ensure continuous monitoring of ECtHR judgments. Several Council of Europe members have set up parliamentary or governmental bodies dedicated to monitoring compliance.
The UK's Joint Parliamentary Committee on Human Rights[215], for example, reviews all government responses to ECtHR judgments and recommends legislative changes where necessary. Nonetheless, sanctions remain limited, and enforcement largely depends on the willingness of States to comply with the decisions issued by the Strasbourg international tribunal.

Although the European model is among the most effective in promoting compliance, challenges persist, particularly in politically sensitive contexts or with States resistant to human rights norms[216]. To ensure full and timely execution of judgments, strengthening domestic monitoring mechanisms and enhancing political accountability remain more essential than ever.

1.5.3 Enforcement Mechanisms in the African System

Enforcing the judgments of the African Court on Human and Peoples' Rights remains one of the major challenges facing the continent's human rights system[217].

It should be noted that the Court complements the African Commission on Human and Peoples' Rights, which itself has no binding enforcement powers, creating a dual mechanism whereby decisions of the Commission can be referred to the Court for more authoritative pronouncements.

The Court operates within a legal and institutional framework that lacks a centralized enforcement body, relying instead on State compliance and the political will of national governments.

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[214] See for further, Keller H. and Stone Sweet A., *A Europe of Rights: The Impact of the ECHR on National Legal Systems*, Oxford, Oxford University Press, 2008
[215] UK Parliament*, Joint Committee on Human Rights - Role*
[216] Council of Europe – Committee of Minister, *Supervision of the Execution of Judgments and Decisions of the European Court of Human Rights*, March 2025
[217] See Wiebusch M., *Enforcement of International Human Rights Law in Africa,* iCourts Working Paper Series No. 351, 2024, June 18, 2024; Udu E. A., *Re-positioning the African court of human and peoples' rights in the enforcement of human and people's rights in Africa*, Nnamdi Azikiwe University Journal of International Law and Jurisprudence, Vol. 8 No. 1, 2017, and Sibanda E., *An Analysis of the Execution of Judgments and Follow-up Mechanism Under the African Court on Human and Peoples' Rights: Lessons from the European Human Rights System*, South African Yearbook of International Law Vol.44, 2019 on which this paragraph is based

Article 30 of the Protocol establishing the African Court[218] obliges Contracting Parties to comply with the Court's judgment in all disputes to which they are parties.

However, there is no direct enforcement mechanism to ensure that this obligation is met. The responsibility for monitoring implementation lies with the AfCmHPR, which plays a facilitative role in urging States to adopt necessary legislative and policy reforms. This function, however, lacks coercive powers and remains non-binding, making enforcement highly dependent on the domestic legal and political context[219].

In addition, Article 31 of the Protocol[220] requires the Court to report cases of non-compliance to the Executive Council of the African Union.

While the Executive Council has the power to exert political pressure, there are no automatic consequences for non-compliant States, and the AU lacks a structured system for enforcing compliance with judgments[221].

Moreover, under Article 23 of the African Union Constitutive Act[222], the Assembly has authority to impose a range of sanctions on any Member State that defaults on its obligations—including denial of the right to speak at meetings, to vote, or to present candidates—and may further suspend transport and communications links or apply other political and economic measures.

However, despite these broad powers, the Assembly has never resorted to sanctions in response to non-compliance with Court judgments, underscoring the gap between formal sanctioning tools and their actual implementation.

In practice, this crippled system limits the Court's ability to ensure that rulings are respected. In fact, in the absence of a formal follow-up mechanism, enforcement relies heavily on advocacy by civil society organisations, diplomatic interventions, and political negotiations within the AU[223]. Although these efforts can be effective in specific cases, they do not guarantee systematic compliance or reliable path to implementation. As a result, many States fail to implement the Court's rulings, especially those that require institutional or legal reforms that may entrench political interests.

In recent years, a worrying pattern has emerged: a growing number of AU member states have simply stopped submitting the mandatory execution reports required under Article 31 of the Protocol, thereby failing to keep the Court informed of their progress in implementing judgments.

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[218] Protocol, Art. 30 (Execution of judgment)
[219] Ayeni V. O., *The role of the African Commission in enhancing implementation monitoring through dialogue and documentation*, African Human Rights Law Journal, Vol. 24, No.2, 1 December 2024
[220] Protocol, Art. 31 (Report)
[221] African Union, Executive Council
[222] Constitutive Act of the African Union, Art. 23 (Imposition of Sanctions)
[223] Nkongho F. A., *Reflections on the Role of Civil Society Organisations in Implementing Cases from the African Commission and Court*, University of Bristol, 2021

For example, Libya has not submitted a single execution report since the judgement *African Commission on Human and Peoples' Rights v. Libya*, despite several reminders against it, while Rwanda has informed the AfCtHPR that it would no longer cooperate in the implementation of the Court's judgements.

This systematic under-reporting not only violates Convention obligations, but also leaves the Court - and the Commission - without reliable data on compliance, undermining any follow-up. Observers attribute this trend to a widespread distrust of the African human rights system among national governments, which perceive it as overly politicised and disconnected from local realities. At the same time, many Member States cite lack of domestic capacity and competing priorities as reasons for non-reporting. The result is a *de facto* blackout on implementation: without regular, transparent reporting, neither the Court nor civil society monitors can assess whether and how judgments are being enforced, perpetuating a cycle of impunity across the continent[224].

Although the African Court has regulatory mechanisms similar to those in Europe, its enforcement remains fragile and highly dependent on voluntary state cooperation.
This lack of an effective guarantor body, coupled with the absence of regular monitoring data and limited internal pressure, results in a significant gap between the Court's decisions and the reality on the ground.

1.5.4 Comparative Analysis, Enforcement Challenges, and Future Prospects

Effective enforcement and rigorous monitoring are the core pillars that transform judicial pronouncements into concrete advances in human rights protection. Yet, the African Court on Human and Peoples' Rights and the European Court of Human Rights face very different enforcement architectures—and thus divergent outcomes[225].

In Strasbourg, Article 46 of the ECHR creates a legally binding obligation to implement judgments, overseen by the Committee of Ministers, which systematically reviews State action plans, applies diplomatic pressure, and, if necessary, applies the "strengthened supervision". National follow-up bodies (e.g. judicial councils in France[226]) further embed ECtHR judgments into domestic law, resulting in generally high rates of compliance even in politically sensitive cases.

[224] Nxumalo S. B., *A Culture of Non-Compliance? A Challenge to the African Commission and African Court*, African Law Matters, 9 June 2022
[225] See Gryazin N., *Four ways to strengthen the enforcement of the judgments of the European Court of Human Rights*, European Leadership Network, 11 May 2023 and Sibanda E., *An Analysis of the Execution of Judgments and Follow-up Mechanism Under the African Court on Human and Peoples' Rights: Lessons from the European Human Rights System*, South African Yearbook of International Law Vol.44, 2019 on which this paragraph is based
[226] The *Commission nationale consultative des droits de l'homme* monitors the implementation of ECtHR recommendations within France

In contrast, the Arusha Court relies on the Executive Council of the African Union and the quasi-judicial African Commission to remind State parties to comply with Article 30 of the Protocol, without a dedicated enforcement body or formal sanctions.

As a result, flagship rulings often remain unimplemented or only partially applied, as States weigh reputational costs against domestic political constraints.

These gaps in implementation reflect deeper institutional and cultural dynamics.

Europe's post-war consensus and its dense web of intergovernmental oversight created an environment in which ceding sovereignty to a supranational court paid political dividends; whereas in Africa, a legacy of colonialism, uneven democratic consolidation, and prioritisation of non-interference make binding judgments more difficult.

Nevertheless, both systems could benefit from mutual learning.

The Strasbourg model suggests the value of a standing political body with an explicit monitoring mandate; the Arusha Court could implement a dedicated enforcement secretariat within the African Union to track implementation, publish periodic compliance reports, and recommend incentive-based measures to encourage reform.

Conversely, the European Court could rethink its reliance on purely diplomatic tools, explore targeted financial or procedural sanctions for recalcitrant States, and strengthen early warning mechanisms in Member States legislatures to prevent systemic violations before reaching Strasbourg.

Ultimately, sustainable enforcement will depend on reinforcing domestic ownership: empowering national judiciaries and human rights institutions to domesticate and implement regional judgments, and embedding compliance in routine governance.

Through a combination of robust political oversight, the strategic use of incentives and sanctions, and improved domestic implementation structures, both the African and European Courts can strengthen the rule of law and ensure that their transformative decisions do more than decorate judicial reports, becoming realities for the individuals and communities they serve.

This comparative analysis sets the stage for the next chapter, which examines six case studies—three from the ECtHR and three from the AfCtHPR—to assess how enforcement mechanisms work in practice and the challenges faced in implementing judgments.

Chapter 2: The Enforcement in the practice of the European and African Court

This chapter provides a detailed examination of a selection of cases from the European Court of Human Rights and the African Court on Human and Peoples' Rights, chosen based on their concrete effects on the respondent states. In particular, the cases are divided into three categories: those in which the Court's judgment significantly altered the *status quo*, leading to substantial changes in the domestic context, those in which it had no impact on the existing legal situation, and those reflecting an intermediate situation in which changes were only partially implemented.

The rationale behind this categorisation is to provide a structured framework that allows a clear comparison of how judicial decisions are translated into practical enforcement outcomes in different regional contexts. By analysing cases from both courts, this chapter aims to highlight similarities and differences in the processes and challenges of enforcing human rights judgments.
For each case, the analysis is divided into three main sections - *factual background, judgment analysis* and *enforcement procedure* - to ensure that each aspect of the judicial process is fully explored.

The decision to examine both European and African courts enriches the discussion by highlighting different legal traditions and enforcement mechanisms. While the European Court is often cited for its long-established role in shaping human rights law, the African Court offers insights into a more recent framework in which the relationship between international human rights adjudication and national legal systems continues to evolve. This comparative approach not only deepens our understanding of each system individually, but also provides a broader perspective on the global challenges of human rights enforcement. Overall, the chapter lays the groundwork for identifying recurring patterns in judicial reasoning and enforcement practices, insights that could help shape future improvements in the implementation of human rights judgments.

2.1 European Court of Human Right Case Law Analysis

This section examines three selected cases from the European Court, chosen for the diversity of their judicial and enforcement outcomes. The first case (*Ilgar Mammadov v. Azerbaijan*) stands out for its profound and far-reaching impact on the domestic legal system of Azerbaijan.
The second case (*Cordella & Others v. Italy*) underscores the intricate challenges and complexities that arise with partially or delayed implementation. The third case (*Osman Kavala v. Türkiye*) illustrates a situation where State resistance and broader political dynamics have significantly influenced the implementation of the Court’s ruling.
Each case is analyzed in-depth to offer a comprehensive understanding of the factors that influence the practical impact of the European Court's rulings.

2.1.1 Case of Ilgar Mammadov v. Azerbaijan

2.1.1.1 Factual Background

Ilgar Mammadov, born in 1970 and based in Baku, Azerbaijan, has been a prominent figure in Azerbaijani civil society and political life for many years. In 2008, he co-founded the Republican Alternative Civic Movement[227] (REAL) and was elected its chairman in 2012.
He also served as the Director of the Baku School of Political Studies, a crucial institution within a network affiliated with the Council of Europe. Additionally, he maintained a personal blog where he frequently shared his insights on political matters[228].

In November 2012, following the enactment of a law imposing significant sanctions for unauthorized public gatherings, Mammadov published a blog post that criticized the National Assembly. In his post, he described the members of the Assembly as "fraudulent" and compared the legislative body to a "zoo". The comments were widely reported in the media and drew responses from various members of the Azerbaijani National Assembly.
In early January 2013, REAL announced that it would consider nominating its own candidate for the upcoming presidential elections, and Mammadov declared that he was considering running for office. This announcement coincided with heightened political tensions in the country.
On 23 January 2013, riots broke out in the town of Ismayilli, northwest of Baku, following an incident involving the son of a prominent local official. The chaos resulted in damage to commercial properties and public buildings, with conflicting accounts of the causes and participants in the unrest.

Mammadov visited Ismayilli on 24 January 2013 to gather first-hand information about the unfolding events. On 25 January 2013, he published a detailed report on his blog describing the situation in the town, noting the heavy police presence, the gathering of protesters near the local administration building, and discussions with local residents about the causes of the disorder.
His report also mentioned information about a possible political dimension to the unrest.
Subsequently, on 28 January 2013, Mammadov updated his blog with additional information, citing data from official sources and challenging the government's version of events - in particular, he disputed statements regarding the ownership of a key local property involved in the riots.
This post, which was quickly picked up by the media, exacerbated political tensions and contributed to the narrative that the government was trying to hide the true nature of the riots.

These events provided the context for the criminal case against Mammadov.

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[227] The Republican Alternative Civic Movement is a political movement and party in Azerbaijan.
It advocates for national liberalism, secularism, republicanism, and closer ties with Europe.
[228] See *Ilgar Mammadov v. Azerbaijan* (Judgment), 22 May 2014 at ¶6-67 on which this paragraph is based

The authorities charged him with offences related to organising and participating in actions that allegedly disrupted public order during the events in Ismayilli[229] - a charge that was later expanded as the authorities redefined his actions under more serious criminal provisions[230].

The arrest, prolonged pre-trial detention and subsequent legal manoeuvres were widely perceived by domestic and international observers as politically motivated measures aimed at limiting Mammadov's dissenting activities and nascent political ambitions.

2.1.1.2 Judgment Analysis

The Court's judgment in *Ilgar Mammadov v. Azerbaijan* provides a detailed critique of both the substantive and procedural bases of Mammadov's pre-trial detention[231].

The Court first upheld the admissibility of the application, finding that it was not manifestly ill-founded under Article 35(3)(a) of the Convention[232].

This paved the way for a detailed examination of the merits of the case.

Central to the Court's analysis was whether Mammadov's arrest and detention were based on "reasonable suspicion" as required by Article 5(1) (c) of the Convention[233].

The Court found that the domestic authorities had largely relied on vague references to *"case material*" without providing any concrete evidence to support a reasonable suspicion of his involvement in the alleged offences[234]. In particular, the Court specifically noted that "*the prosecution's official documents mentioned no witness statements and no other specific information that had given them reason to suspect the applicant of having committed any of the actions described in those documents and to charge him with the above-mentioned criminal offences*[235]".

This failure, the ECtHR found, meant that the courts never examined whether there were sufficient objective elements to justify Mammadov's continued detention.

Further, the European Court highlighted that the domestic courts' justifications for detention were based on the perceived gravity of the charges and the potential risk of escape or obstructing the investigation. However, these justifications were insufficient because they did not include a thorough

[229] Ilgar Mammadov was firstly charged with criminal offences under Articles 233 (organising or actively participating in actions causing a breach of public order) and 315.2 (resistance to or violence against public officials, posing a threat to their life or health) of the Azerbaijani Criminal Code.

[230] On 30 April 2013 the authorities decided to charge Mr Mammadov under Articles 220.1 (mass disorder) and 315.2 (resistance to or violence against public officials, posing a threat to their life or health) of the Azerbaijnai Criminal Code, thereby replacing the original charges.

[231] See *Ilgar Mammadov v. Azerbaijan* (Judgment), 22 May 2014 on which this paragraph is based

[232] ECHR, Art. 35(3)(a) (Admissibility criteria)

Id. at ¶ 81

[233] ECHR, Art. 5(1)(c) (Right to liberty and security)

[234] Id. at ¶ 95-98

[235] Id. at ¶96

assessment of Mammadov's personal circumstances—such as his long-standing political involvement, his stable family situation, and his consistent cooperation with the authorities[236].
As a result, the detention did not meet the standard of "reasonable grounds" required by the Convention.

The Court then examined the ulterior-purpose restriction under Article 18[237], which concerns the limitation on use of restrictions on rights, specifically "*the applicant complained under Article 18 that his Convention rights had been restricted for purposes other than those prescribed in the Convention. In particular, his arrest and the criminal proceedings against him were repressive measures and had the purpose of "removing" him as a critic of the Government and a potentially serious opponent in the upcoming presidential elections*[238]".
The European Court in this sense finds "*that the restriction of the applicant's liberty was applied for purposes other than bringing him before a competent legal authority on reasonable suspicion of having committed an offence*[239]"

The Court went on to assess whether Mammadov enjoyed the Article 5(4)[240] guarantee of a "speedy judicial review" of his detention. It observed that, in every decision, domestic courts had merely reproduced the prosecution's submissions and employed "*short, vague and stereotyped formulae*" when rejecting his requests for release. They never conducted a "*genuine review of the 'lawfulness' of the applicant's detention*[241]" contrary both to Article 5(4) and to the Supreme Court's own case-law requiring courts to verify the prosecuting authorities' evidence.
There has accordingly been a violation of Article 5(4) of the Convention, as Mammadov was not afforded proper judicial scrutiny of the continued lawfulness of his detention.

Lastly, the Court examined whether the joint press statement issued by the Prosecutor General's Office and the Ministry of Internal Affairs on 29 January 2013 had constituted a breach of Article 6(2)[242] of the Convention. Although the authorities argued it merely informed the public, the Court found that it contained an *"unequivocal declaration ... that those actions by the applicant had been 'illegal'" and "essentially prejudged the assessment of the facts by the courts*[243]" thereby encouraging the public to believe Mammadov guilty before any trial.

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[236] Id. at ¶ 34, 86
[237] ECHR, Art. 18 (Limitation on use of restrictions on rights)
[238] Id. at ¶ 133
[239] Id.
[240] ECHR, Art. 5(4) (Right to liberty and security)
[241] Id. at ¶ 118
[242] ECHR, Art.6(2) (Right to a fair trial)
[243] Id. at ¶ 127

In sum, the Court found that the measures taken by the domestic authorities were disproportionate and lacked the necessary evidential support, thereby violating the procedural and substantive safeguards of the Convention.

The Court concluded that Azerbaijan had violated Articles 5(1)(c), 5(4), 6(2) and 18 of the Convention, and that "*the actual purpose of the impugned measures was to silence or punish the applicant for criticising the Government and attempting to disseminate what he believed was the true information that the Government were trying to hide*[244]".

2.1.1.3 Execution Procedure

Following the Court's initial judgment of 22 May 2014, which found serious violations of the Convention in Mr. Mammadov's pre-trial detention, the implementation of the judgment unfolded in several distinct phases, illustrating both initial non-compliance and, ultimately, proper adherence[245].

After the judgment became final on 13 October 2014, it was transmitted to the Committee of Ministers under Article 46(2) of the Convention to monitor its implementation[246].

Despite the clear findings—including the lack of any reasonable suspicion for Mammadov's arrest and the coercive nature of his detention—the Azerbaijani authorities were initially slow to take effective action. The process began with the submission of an Action Plan by the Azerbaijani Government on 26 November 2014, outlining the steps it had taken or planned to take in order to address the Court's findings[247].

However, the Committee of Ministers found that the measures were insufficient, particularly as long as domestic criminal proceedings against Mr. Mammadov continued relentlessly.

The Committee's subsequent reviews at several Human Rights meetings[248]—starting from December 2014 to December 2016—repeatedly stressed the urgency of his release. At these meetings, the Committee not only highlighted the procedural and substantive shortcomings of the domestic proceedings, but also called for immediate individual measures to remedy the situation[249].

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[244] Id. at ¶ 143
[245] See *Proceedings Under Article 46(4) in the Case of Ilgar Mammadov v. Azerbaijan*, 29 May 2019 on which this paragraph is based
[246] Id. at ¶ 39
[247] Id. at ¶ 40
[248] Human rights meetings of the Committee of Ministers typically occur within the framework of their regular sessions and specific thematic discussions. Specifically, the Committee of Ministers holds dedicated "DH/HR meetings" four times a year. These meetings are primarily focused on supervising the execution of judgments and decisions of the European Court of Human Rights. During these sessions, the Committee assesses the measures taken by Member States to comply with the Court's rulings and ensures that violations are addressed. Beyond these dedicated meetings, human rights issues can also be discussed during the Committee's ministerial sessions (held annually in May or November) and at the level of the Ministers' Deputies (Permanent Representatives), who meet weekly.
[249] Id. at ¶ 39-58

A turning point in the execution process came with increased international and domestic pressure. The Committee of Ministers placed the case under the "enhanced procedure[250]" due to the continuing violations and insisted on Mr. Mammadov's unconditional release in several interim resolutions[251]. At its 1259th Human Rights meeting (7–9 June 2016), the Committee stated that the continued detention of Mr. Mammadov was unacceptable in a State governed by the rule of law and reminded Azerbaijan of its unconditional obligation to implement the judgments of the Court[252].

Further push was provided by direct interventions by the Council of Europe. In early 2017, the Secretary General's representative visited Baku and met with high-level officials, while on 10 February 2017 the President of Azerbaijan signed an executive order providing for wide-ranging criminal justice reforms. In addition to committing to measures aimed at preventing arbitrary arrests and enhancing judicial accountability, the order specifically called for changes to domestic criminal procedure to ensure compliance with the principles articulated in the Court's judgment[253].

Further legislative initiatives followed. On 20 October 2017, the *Milli Majlis* (Azerbaijani Parliament) adopted amendments to the Criminal Code that decriminalized certain acts and provided for conditional release after serving two-thirds of a sentence. These measures, together with the Executive Order, marked a significant shift in the domestic legal landscape towards the protection of human rights and compliance with the Court's standards[254].

A decisive turning point in the enforcement process was the activation of the infringement procedure under Article 46(4) of the Convention, initiated by the Committee of Ministers in December 2017. This was the first time in history that such a procedure was used, signaling the seriousness of Azerbaijan's persistent non-compliance with the Court's original judgment of 2014.

The Grand Chamber of the European Court of Human Rights, in its judgment of 29 May 2019, confirmed that Azerbaijan had failed to fulfill its obligations under Article 46(1) by refusing to abide by the final judgment. This unprecedented judicial declaration of non-compliance increased political and diplomatic pressure on Azerbaijan.

In response to this mounting pressure, on 13 August 2018, the Shaki Court of Appeal revisited Mr. Mammadov's case and decided to conditionally release him, applying Article 70 of the Azerbaijani Criminal Code. While the conviction was upheld, the Court took into account mitigating personal circumstances and the time already served in prison.

[250] An enhanced procedure is used for cases requiring urgent individual measures or revealing important structural problems.
[251] Id. at ¶ 45
[252] Id. at ¶ 57
[253] Id. at ¶ 60
[254] Id. at ¶ 69

Finally, on 28 March 2019, the Supreme Court of Azerbaijan, following a cassation appeal, reduced Mr. Mammadov's sentence and removed all remaining restrictions, including probation and travel limitations. This marked the full execution of the individual measures required by the Court's judgment and closed the supervisory process under Article 46.

The case sets an important precedent, demonstrating that when a State fails to comply with the Court's decisions, the robust supervisory mechanisms available within the Council of Europe can compel meaningful changes in national practice, thereby strengthening the authority and impact of the European human rights system.

2.1.2 Case of Cordella & Others v. Italy

2.1.2.1 Factual Background

Ilva S.p.A.[255] is a company specializing in the production of steel beginning its operations in 1965 in Taranto, Italy. Originally founded in Genoa at the beginning of the twentieth century, Ilva expanded its industrial activities to Taranto—a site that is currently the largest steel complex in Europe, covering roughly 1,500 hectares and employing around 11,000 workers.

In 1995, following its privatization, Ilva was acquired by the Riva Group and subsequently placed under provisional administration due to financial insolvency[256].

The industrial processes at the Taranto complex have long been associated with significant environmental pollution. In 2002, the judicial authorities ordered the closure of a coking plant at Ilva's Cornigliano site in Genoa after epidemiological studies showed a link between particulate emissions in the air and an increased mortality rate in the surrounding area. As a result, production was transferred from this area to Taranto, concentrating the environmental impact in the region.

In the decades that followed, numerous scientific studies and reports documented the adverse environmental and public health effects of Ilva's emissions. Reports by institutions such as the European Centre for Environment and Health (ECEH) and the Regional Agency for Prevention and Environmental Protection (ARPA) have shown that levels of hazardous substances—including dioxins, benzopyrene, and fine particulate matter (PM10[257])—in the air around Taranto consistently exceed legal limits[258]. Epidemiological studies, including the 2012 and 2014 SENTIERI reports[259]

[255] The steelworks continue to be referred to by many as ILVA although it has changed ownership several time (more recently 2018 ArcelorMittal Italia S.p.A. and 2021 Acciaierie d'Italia S.p.A.).

[256] See *Cordella and others v. Italy* (Judgment) at ¶8-91, 24 January 2019, on which this paragraph is based

[257] PM_{10}: inhalable particles, with diameters that are generally 10 micrometres and smaller.
Short-term exposures to PM10 have been associated primarily with worsening of respiratory diseases, including asthma and chronic obstructive pulmonary disease, leading to hospitalization and emergency department visits.

[258] The legal limit for PM10 in Italy is 40 µg/m3 per year and 50 µg/m3 per day, not to be exceeded for more than 35 days per year.

[259] The SENTIERI report is a result of the SENTIERI project, which is a long-term study of the health of people living near contaminated areas in Italy. The project was created in 2006 by the Istituto Superiore di Sanità (ISS).

and a cohort study published in 2009, have shown that residents of the area suffer from higher incidences of various cancers (such as lung, colon, and liver cancers), cardiovascular diseases, and respiratory diseases compared to regional and national averages.

In recognition of these risks, in 1990 the Italian Council of Ministers designated Taranto and several neighbouring municipalities (including Crispiano, Massafra, Montemesola, and Statte) as areas of high environmental risk[260]. Subsequent decrees, environmental plans, and regulatory measures were introduced to reduce industrial pollution and protect public health.
These included the implementation of stricter emission standards, the establishment of Integrated Environmental Authorizations (AIA), and agreements between Ilva and local authorities designed to reduce pollutant emissions[261].

The applicants in *Cordella and others v. Italy* are individuals who currently live or have previously lived in Taranto and the surrounding areas. They claim that chronic exposure to the pollutants emitted by the Ilva plant has resulted in significant damage to their health and a deterioration in their quality of life. The scientific evidence presented in various studies underlines a causal link between the industrial emissions and the increased prevalence of adverse health effects in the local population.

2.1.2.2 Judgment Analysis

The Court's judgment in *Cordella and others v. Italy* provides a comprehensive examination of the applicants' claims of violations of Articles 8, and 13 of the Convention[262].

The analysis, which consolidates two previous applications[263], begins by considering the admissibility and scope of the applicants' complaints, before moving on to a detailed assessment of the substantive merits.

The Court first considered whether the applicants' complaints fell within the scope of protection of the Convention. It found that the allegations relating to the adverse effects of industrial emissions on both public health and the environment were closely connected to the right to respect for private and family life under Article 8. Moreover, the Court emphasized that the central question

[260] Dichiarazione di area ad elevato rischio di crisi ambientale di parte del territorio delle province di Brindisi, Taranto, Cagliari e della Sicilia sud-orientale, 14 December 1990
[261] The Integrated Environmental Authorisation (AIA) is the authorisation measure necessary for the operation of a plant included in Annex VIII of the second part of the Italian Legislative Decree 152/2006 and provides for measures to avoid or reduce emissions into the air, water and soil, in order to achieve a high level of protection of the environment as a whole, in accordance with the principles of environmental protection and sustainable development.
[262] See *Cordella and others v. Italy* (Judgment), 24 January 2019, on which this paragraph is based
[263] Applications n° 54413/13 and 54264/15;
Id. at ¶ 92

was whether the persistent environmental pollution in Taranto had a demonstrable adverse effect on the private life of those inhabitants of the affected areas[264].

Despite the contention of the Government that some of the applicants were not directly affected, the Court rejected this argument, holding that the designation of the area as "high environmental risk" [265] implied by its very nature a significant risk to the health and well-being of the local population[266].

In its substantive analysis, the Court examined the extent to which the Italian authorities had complied with their obligations under the Convention. It found that a number of scientific studies—including those carried out by ARPA, the SENTIERI reports, and various epidemiological studies[267]—provided solid evidence of a causal link between the emissions from the Ilva steelworks and an increased incidence of serious illnesses such as cancer, cardiovascular, and respiratory diseases among the local population[268].

The ECtHR held that this evidence demonstrated an objective deterioration in the applicants' quality of life, thereby implicating the State's obligation under Article 8[269].

The Government argued that the measures taken—such as environmental monitoring, the implementation of de-pollution plans, and various legislative initiatives—were sufficient[270].

However, as the Court explained[271], these measures were either inadequately implemented or introduced too late to mitigate the damage identified. The Court stated that the failure to take effective and timely measures deprived the applicants of an effective remedy under Article 13[272].

The European Court also addressed the Government's argument concerning the exhaustion of domestic remedies, in particular it found that the available domestic remedies—whether criminal, civil, or administrative—*"n'auraient pas permis aux requérants de se prévaloir du préjudice découlant des dommages à l'environnement*[273]". The ECtHR emphasized that the domestic procedures did not provide the applicants with an effective means of securing protection from continued exposure to hazardous emissions, thus reinforcing the need for a supervisory role at the international level.

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[264] Id. at ¶ 101-102
[265] Id. at ¶ 32-34
[266] Id. at ¶ 106-109
[267] Id. at ¶ 15-20, 25-29
[268] Id. at ¶ 106
[269] ECHR, Art. 8 (Right to respect for private and family life)
[270] Id. at ¶ 143-146
[271] *Id. at* ¶ 157-160
[272] ECHR, Art. 13 (Right to an effective remedy)
[273] Id. at ¶ 110-127, 175-176

Moreover, the judges affirmed that national authorities failed to ensure *"le juste équilibre à ménager entre, d'une part, l'intérêt des requérants de ne pas subir des atteintes graves à l'environnement pouvant affecter leur bien-être et leur vie privée et, d'autre part, l'intérêt de la société dans son ensemble n'a pas été respecté*[274]".

In conclusion, the Court's held that "*les autorités nationales ont omis de prendre toutes les mesures nécessaires pour assurer la protection effective du droit des intéressés au respect de leur vie privée*[275]", despite clear scientific evidence of the harmful effects of industrial pollution.
The Court held that Italy had violated Articles 8 and 13 of the Convention by failing to prevent severe environmental harm and by denying the applicants an effective remedy.

2.1.2.3 Execution Procedure

Following the final judgment of 24 June 2019, the implementation of the Court's judgment in *Cordella and Others v. Italy* has been marked by significant delays and partial compliance[276].
The judgment unequivocally condemned the Italian authorities for failing to take sufficient measures to protect the local population from dangerous emissions from the former ILVA steelworks in Taranto. However, the implementation of the judgment has suffered from several procedural and substantive shortcomings that continue to undermine full compliance with the Court's directives.

One of the main problems was the delay in the payment of the just satisfaction awarded in respect of costs and expenses. The authorities imposed strict procedural requirements—such as the authentication of signatures by public officials—which delayed the payment of these sums to the applicants[277]. This delay not only hampers financial compensation but also reflects wider inefficiencies in the administrative response.

On the environmental front, the Ministry of the Environment had adopted an environmental plan in 2014 intended to reduce the pollutant emissions from the steel plants[278].
While the information provided indicates that almost all the work foreseen in the plan has been completed by September 2023, several critical measures remain unfulfilled.
Key tasks—such as asbestos removal, completion of stormwater management measures and completion of additional remediation works—are still outstanding. In addition, the authorities have

[274] Id. at ¶ 174
[275] Id. at ¶ 173
[276] See *CM/Del/Dec(2024)1514/H46-22*, 5 December 2024, on which this paragraph is based
[277] Id. at ¶ 2-3
[278] Decreto del Presidente del Consiglio dei Ministri, 14 March 2014, Approvazione del piano delle misure e delle attivita' di tutela ambientale e sanitaria, a norma dell'articolo 1, commi 5 e 7, del decreto-legge 4 giugno 2013, n. 61, convertito, con modificazioni, dalla legge 3 agosto 2013, n. 89

yet to provide an independent and comprehensive expert assessment of whether the current operation of the plant continues to pose a threat to public health and the environment[279].

Another major obstacle in the execution process relates to the renewal of the operating permit for the ex-ILVA steelworks. The permit renewal process, which started in March 2023, is supposed to be conditional on a thorough, independent health and environmental risk assessment.
However, the assessment submitted by the plant operator has been criticized for lacking the necessary independence.

This procedural shortcoming is critical, especially in light of the recent Court of Justice of the European Union decision in *C. Z. and Others v Ilva SpA*[280]**.**
In this ruling, the CJEU specifically addressed the interpretation of Article 21(3) of the Industrial Emissions Directive, emphasizing that a renewed operating permit cannot be granted if there are serious doubts as to the compatibility of the plant's activities with the protection of human health.
The decision thus clearly requires that the permit can only be renewed if there is compelling and clear evidence that the operation of the plant is compatible with the protection of human health.

To make matters worse, recent legislative changes have introduced a criminal immunity for plant managers, effectively shielding key decision-makers from accountability[281].
This immunity[282], enacted in 2023, is particularly broad in scope and indefinite in duration, which is at odds with the Court's emphasis on the need for effective remedies and robust oversight[283].

In summary, while some progress has been made in implementing the environmental plan and initiating remedial measures, compliance with the judgment in *Cordella and others v. Italy* remains only partial and incomplete.

The continuing delays in financial compensation, the incomplete remediation of environmental hazards and the problematic legislative reforms, taken together, illustrate the significant challenges that continue to hinder the full implementation of the Court's remedies.

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[279] Id. at ¶ 4-6
[280] Court of Justice of the European Union (CJUE), *C. Z. and Others v Ilva SpA in Amministrazione Straordinaria and Others.* Request for a preliminary ruling from the Tribunale di Milano. Case C-626/2, 25 June 2024;
Id. at ¶ 16
[281] Decreto Legge 5 Gennaio 2023, n. 2, Misure urgenti per impianti di interesse strategico nazionale.
[282] Decreto Legge 5 Gennaio 2023, n.2, Art. 7:" *Chiunque agisca al fine di dare esecuzione ad un provvedimento che autorizza la prosecuzione dell'attivita' di uno stabilimento industriale o parte di esso dichiarato di interesse strategico nazionale (...) non e' punibile per i fatti che derivano dal rispetto delle prescrizioni dettate dal provvedimento dirette a tutelare i beni giuridici protetti dalle norme incriminatrici, se ha agito in conformita' alle medesime prescrizioni*."
[283] Id. at ¶ 8

2.1.3 Case of Osman Kavala v. Türkiye

2.1.3.1 Factual Background

Mehmet Osman Kavala, born in 1957 and based in Istanbul, is a prominent Turkish businessman and human rights defender known for his extensive involvement with non-governmental organizations and civil society initiatives. Kavala has played a key role in establishing and supporting various NGOs focused on promoting peace, human rights, cultural initiatives, and social reconciliation. His long-standing involvement in these activities, as confirmed by the observations of the Council of Europe Commissioner for Human Rights[284], has earned him recognition as a reliable source of information on the human rights situation in Türkiye[285].

The factual context of the case is closely linked to two major episodes in recent Turkish history: the Gezi Park events and the coup attempted of 15 July 2016.

The Gezi Park protests, which erupted in mid-2013 in response to urban redevelopment plans in Istanbul, evolved into widespread demonstrations involving a wide range of civil society actors. Although Kavala was not centrally involved in the initial occupation of Gezi Park, he has been repeatedly associated with the movement due to his advocacy of public space and support for numerous environmental and cultural initiatives.

The events were marked by allegations of heavy-handed police intervention and a significant number of arrests and injuries, which later became the subject of international scrutiny.

In addition to the Gezi Park events, Kavala was also implicated in the attempted *coup d'état* of 15 July 2016. On that night, elements within the Turkish armed forces, under the banner of the "Peace at Home Council", attempted to overthrow the democratically elected government by force.

This period was marked by the extensive use of emergency measures, including the declaration of a state of emergency and the issuance of numerous legislative decrees that curtailed procedural safeguards. The Turkish Government later attributed the coup attempt to networks linked to Fethullah Gülen[286] and argued that such networks had influenced the wider protest movements.

[284] The Council of Europe Commissioner for Human Rights is an independent body that promotes human rights in the Council of Europe's Member States

[285] See *Kavala v. Türkiye* (Judgment) at ¶11-80, 10 December 2019, on which this paragraph is based

[286] Fethullah Gülen (1941-2024) was a Turkish Islamic scholar, preacher, and social advocate. He inspired the Gülen movement, a transnational religious and social movement centered on values such as education, community service, interfaith dialogue, and non-violence. He was a controversial figure, particularly in Türkiye, where the government accused him and his followers of orchestrating a coup attempt in 2016, leading to the movement being labeled a terrorist organization.

Against this backdrop, Kavala was arrested in Istanbul on 18 October 2017, on charges of attempting to overthrow the Government and the constitutional order by force and violence under Articles 312[287] and 309[288] of the Turkish Criminal Code.

Following his arrest, he was placed in pre-trial detention, amid claims that his detention was not only disproportionate, but also aimed at silencing a human rights defender, thereby serving as a tool of judicial harassment.

2.1.3.2 Judgment Analysis

The Court's judgment in *Kavala v. Türkiye* examines both the substantive and procedural aspects of the applicant's detention, ultimately finding violations of Articles 5[289] and 18[290] of the Convention[291].

The analysis begins by noting that the applicant's arrest and prolonged pre-trial detention were not based on sufficient "reasonable suspicion[292]" of violent or conspiratorial activity.

Instead, the evidence in the case file related primarily to his activism as a human rights defender—a factor which, according to the Court, should have been protected rather than punished[293].

With regard to the admissibility, the Court found that the applicant's claims—in particular his allegations that his detention was imposed in bad faith and that the Constitutional Court failed to review its legality in a timely manner—were sufficiently substantiated to merit a full examination. The applicant argued that his detention had an ulterior purpose: to silence his human rights activities and to create a chilling effect on civil society. The Court accepted this argument and held that such an ulterior motive, if present, violated Article 18 of the Convention[294].

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[287] Article 312 (1) of the Turkish Criminal Code provides: "*Anyone who attempts to overthrow the Government of the Republic of Türkiye by force and violence or to prevent it, whether fully or in part, from discharging its duties shall be sentenced to aggravated life imprisonment*."

[288] Article 309 (1) of the Turkish Criminal Code is worded as follows: "*Anyone who attempts to overthrow by force and violence the constitutional order provided for by the Constitution of the Republic of Türkiye or to establish a different order in its place, or de facto to prevent its implementation, whether fully or in part, shall be sentenced to aggravated life imprisonment.*"

[289] ECHR, Art. 5 (Right to liberty and security)

[290] ECHR, Art. 18 (Limitation on use of restrictions on rights)

[291] See *Kavala v. Türkiye* (Judgment), 10 December 2019, on which this paragraph is based

[292] A "reasonable suspicion" that a criminal offence has been committed presupposes the existence of facts or information which would satisfy an objective observer that the person concerned may have committed an offence (*Selahattin Demirtaş v. Türkiye* (no. 2) [GC], 2020, ¶ 314).

[293] Id. at ¶ 125-128

[294] Id. at ¶ 129-134

In its substantive assessment, the Court noted that the charges under Articles 312[295] and 309[296] of the Criminal Code—which alleged that Kavala had attempted to overthrow the Government and the constitutional order—were not supported by concrete evidence of violent intent or acts.
Instead, the charges appeared to be based on the applicant's involvement in peaceful activism and his participation in protests, which are rights protected by the Convention.
The Court emphasized that, even during a state of emergency, any restriction on liberty must be justified by clear and objective evidence of a threat. In this case, the evidence failed to meet that threshold, rendering the continued detention disproportionate and unjustified [297].
In fact, "*the Court considers it to have been established beyond reasonable doubt that the measures complained of in the present case pursued an ulterior purpose, contrary to Article 18 of the Convention, namely that of reducing the applicant to silence. Further, in view of the charges that were brought against the applicant, it considers that the contested measures were likely to have a dissuasive effect on the work of human-rights defenders[298]*".

The judgment also examines the procedural delays in the judicial review of the applicant's detention. The Court was particularly critical of the lengthy period during which the Constitutional Court failed to conduct a speedy review, a delay which continued even after the state of emergency had been lifted. This failure to ensure prompt judicial review not only violated the requirement of "speedy" review under Article 5(4)[299], but also further undermined the legitimacy of the detention[300].

In conclusion, the Court found that the applicant's detention was both substantively and procedurally flawed. It was maintained without adequate evidence of a threat justifying such a severe measure and was prolonged by unjustified delays in judicial review. The detention not only violated the requirements of Article 5 on the right to liberty and security, but also violated Article 18 by serving an ulterior purpose—to stifle dissent and intimidate human rights defenders[301].

The Court, therefore concluded that the detention breached Articles 5(1), 5(4) and 18 of the Convention, and "*having regard to the particular circumstances of the case and the grounds on which the Court has based its findings of a violation, it considers that the Government must take every measure to put an end to the applicant's detention and to secure his immediate release[302]*".

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[295] Id. at ¶ 139-153, 156-160
[296] Id. at ¶ 154-155, 156-160
[297] ECHR, Art. 15 (Derogation in time of emergency);
Id. at ¶ 29-33, 42-44
[298] Id. at ¶ 232
[299] ECHR, Art. 5(4) (Right to liberty and security)
[300] Id. at ¶ 185-196
[301] Id. at ¶ 232
[302] Id. at ¶ 240

2.1.3.3 Execution Procedure

Following the final judgment in *Kavala v. Türkiye*, delivered on 10 December 2019 and becoming final on 11 May 2020, the Turkish authorities have persistently failed to implement the Court's clear order for Mr. Kavala immediate release[303].

The judgment, which found that his pre-trial detention was maintained without sufficient evidence and for the ulterior purpose of silencing a human rights defender, ordered his release under Article 46 of the Convention[304]. Despite this clear directive, the State has repeatedly extended Mr. Kavala's detention for more than four years.

The Turkish authorities have justified these extensions by reclassifying and introducing new charges, such as those under Article 328 on military or political espionage[305], although the underlying facts remain unchanged[306].

These judicial orders—often based on reports from the Financial Crimes Investigation Board[307] (MASAK) and on procedural arguments about the danger of escape—serve to prolong his detention without addressing the fundamental problems identified by the Court[308].

Moreover, the execution process has been marked by a blatant non-compliance from the State. Information from the Committee of Ministers, as detailed in the latest high-level notes from the 1514th meeting, shows that despite numerous communications, technical meetings, and even visits by senior officials—including meetings of former chairs of the Committee of Ministers and consultations with the Directorate General of Human Rights and Rule of Law[309]—the Turkish Government has failed to take decisive and effective action to secure Mr. Kavala's release.

The authorities have invoked the finality of his conviction and the continuation of domestic proceedings as justification for his continued detention, but these arguments stand in stark contrast to the Court's finding that his detention violates Articles 5 and 18 of the Convention.

A crucial development in the execution process was the unprecedented triggering of infringement proceedings under Article 46(4) of the Convention by the Committee of Ministers on

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[303] See *Proceedings under Article 46(4), in the case of Kavala v. Türkiye*, 11 July 2022 and *CM/Notes/1521/H46-32 Kavala v. Türkiye (Application No. 28749/18) Supervision of the execution of the European Court's judgments*, 6 March 2025 on which this paragraph is based

[304] *Proceedings under Article 46(4), in the case of Kavala v. Türkiye* ¶ 22

[305] Article 328(1) of the Turkish Criminal Code provides:" Anyone who obtains, for the purposes of political or military espionage, information which, by its nature, must remain confidential for reasons linked to the State's security or domestic or foreign policy interests, shall be liable to a sentence of fifteen to twenty years' imprisonment."

[306] Id. at ¶ 25-35

[307] *Mali Suçlar Araştırma Kurulu* (MASAK), is a Turkish financial intelligence unit attached to the Ministry of Finance and Treasury. MASAK's main duties are to prevent money laundering crime, to conduct research on it, to develop measures, and to process the collected information and submit it to the necessary authorities.

[308] Id. at ¶ 24

[309] The Directorate General of Human Rights and Rule of Law is a key department within the CoE. It holds the responsibility for developing and implementing the Council's standards in the fields of human rights and rule of law.

2 February 2022, due to Türkiye's failure to comply with the Court's 2019 final judgment.
This referral marked only the second time in history that such a measure was taken, reflecting the gravity and persistence of Türkiye's non-compliance.

In its Grand Chamber judgment of 11 July 2022, the European Court concluded that Türkiye had failed to fulfil its obligations under Article 46(1), as it had not secured the applicant's immediate release as required. The Court emphasized that Türkiye had not presented any new relevant or sufficient facts capable of altering the substance of the original judgment: the charges remained based on the same factual context already declared in violation of Articles 5 and 18. Thus, the mere reclassification of accusations did not meet the threshold of good faith implementation of the Court's decision.

Despite this clear legal finding, Mr. Kavala has not been released. On 25 April 2022, shortly before the Grand Chamber ruling, the Istanbul 13th Assize Court convicted him under Article 312 of the Turkish Criminal Code and sentenced him to aggravated life imprisonment, thus continuing the violation. As of today, Mr. Kavala remains in prison, and his detention is still being challenged before Turkish courts, including with pending applications to the Constitutional Court and a new application to the ECtHR filed in January 2024.

The Turkish Government has justified its position by invoking the finality of domestic judicial decisions, asserting that the conviction under new legal qualifications constitutes a distinct matter. However, both the Committee of Ministers and the Court have rejected this argument, reaffirming that the substance of the charges and evidence has not changed.
This ongoing refusal to execute the judgment reflects a systemic challenge to the authority of the Court and to the credibility of the Convention system as a whole.
This situation not only contravenes the obligations imposed under the Convention, but also raises serious concerns about the effectiveness of domestic remedies in ensuring the protection of human rights in Türkiye.

2.2 African Court on Human and Peoples' Rights Case Law Analysis

This section examines three selected judgments of the African Court on Human and Peoples' Rights, chosen to illustrate a spectrum of implementation dynamics and the varying degrees to which States comply with the Court's judgments.

Each case highlights a different trajectory of implementation: one demonstrates full compliance by the respondent State (*Beneficiaries of the Late Norbert Zongo v. Burkina Faso*); another shows partial or symbolic compliance (*APDH v. Côte d'Ivoire*); while the third exemplifies outright resistance or refusal to implement the Court's orders (*Umuhoza v. Rwanda*).

The analysis of each decision includes a review of the factual background, a detailed account of the Court's reasoning and conclusions, and a critical assessment of the measures taken—or deliberately avoided—by the State in response. By comparing these different outcomes, the section aims to provide a nuanced understanding of the political, legal, and institutional factors that shape the real-world impact of regional human rights adjudication in Africa.

2.2.1 Beneficiaries of the Late Norbert Zongo and others v. Burkina Faso

2.2.1.1 Factual Background

On 13 December 1998, Norbert Zongo, a prominent investigative journalist and director of the independent weekly "*L'Indépendant"*, was found dead along with his brother Ernest Zongo and two colleagues, Blaise Ilboudo and Abdoulaye Nikiéma (alias Ablassé)[310].

Their charred bodies were discovered in a vehicle near Sapouy, approximately 100 kilometres south of the capital of Burkina Faso, Ouagadougou.

The circumstances of the murders and the nature of Zongo's work quickly raised serious suspicions about the political motivations behind the crime.

In particular, Norbert Zongo had been investigating the suspicious death of David Ouedraogo, the driver of François Compaoré, brother of the then President of Burkina Faso, Blaise Compaoré.

David Ouedraogo had died in January 1998, reportedly as a result of torture inflicted while in custody at the presidential guard compound, where he was being interrogated over allegations on theft.

Zongo's persistent reporting on the case, including the implication of high-ranking presidential security officials, placed him in a vulnerable position.

In the weeks leading up to his death, he had published several articles criticizing the lack of judicial progress and the perceived impunity enjoyed by members of the President's entourage.

Against this background, the applicants argued that Zongo's murder was directly linked to his journalistic activities and, in particular, to his investigations into abuses of power and serious human rights violations committed by State agents.

Following the murder, the Burkinabé[311] authorities took initial investigative measures.

An Independent Commission of Inquiry (ICE) was set up on 18 December 1998. It submitted its report in May 1999, concluding that Zongo and his associates were most likely murdered because of his professional investigations, in particular his inquiries into the death of David Ouedraogo.

[310] See *Beneficiaries of Late Norbert Zongo v. Burkina Faso* (Judgment) at ¶ 2-6, 28 March 2014, on which this paragraph is based

[311] The citizens of Burkina Faso are all known as Burkinabe.

The ICE identified six members of the Presidential Guard as serious suspects, but judicial follow-up was limited. Only one individual, Marcel Kafando, was prosecuted for "murder and arson."
The charges were eventually dropped in 2006, with the investigating judge citing a lack of sufficient evidence. In response to public outrage and internal pressure, the government also established a "Committee of the Wise" in May 1999 to propose solutions to the political crisis arising from the killings. However, neither the recommendations of this committee nor the conclusions of the ICE led to the effective prosecution of those suspected of responsibility.

The applicants—composed of members of Zongo's family and civil society actors—argued that the Burkinabé authorities had failed to carry out a thorough, prompt, and impartial investigation, and to ensure accountability for the killings.
This, they argued, constituted a violation of the right to life, the right to a fair trial, and the right to obtain justice and reparation under the African Charter on Human and Peoples' Rights and other international instruments.

2.2.1.2 Judgment Analysis

The Court's judgment provides a comprehensive analysis that integrates considerations of admissibility, merits, and reparations, thereby establishing a robust legal framework for assessing Burkina Faso's responsibility for the tragic events surrounding the assassination of Norbert Zongo and his companions[312].

The Court first examined the preliminary objections relating to jurisdiction and admissibility, finding that although the murder occurred on 13 December 1998 was an instantaneous act—which in itself would fall outside the Court's jurisdiction *ratione temporis*—the State's prolonged failure to conduct an effective and continuous investigation transformed the matter into a continuing violation of its obligations under the African Charter on Human and Peoples' Rights[313].
In fact, "*the Court sustained the objection to its jurisdiction rationae temporis on the allegation of the violation of the right to life but overruled the objection to its jurisdiction ratione temporis on the allegation of violation of the rights of the Applicants to have their cause heard by a judge*[314]".
This reasoning allowed the Court to reject objections based on the principle of non-retroactivity, since the absence of a sustained investigation and judicial follow-up extended the violation well beyond the date of the original offence[315].

[312] See *Beneficiaries of Late Norbert Zongo v. Burkina Faso* (Preliminary Objections), 21 June 2013 and Beneficiaries *of Late Norbert Zongo v. Burkina Faso* (Judgment), 28 March 2014 and *Beneficiaries of Late Norbert Zongo v. Burkina Faso* (Judgment on Reparations), 5 June 2015, on which this paragraph is based
[313] Preliminary Objections at ¶ 61-64
[314] Judgment at ¶ 50
[315] Judgment at ¶ 51

Turning to the merits, the Court examined the factual matrix of the case and assessed the scope and effectiveness of the national investigative measures, such as the establishment of the Independent Commission of Inquiry and the Committee of the Wise. Although the Government of Burkina Faso argued that these procedures demonstrated that all necessary measures had been taken, the applicants convincingly demonstrated that these measures had been undermined by significant delays, inadequate forensic analysis, and a failure to identify and prosecute all those responsible[316].
As a result, the Court found "*that that the Respondent had not acted with due diligence in seeking out, prosecuting and placing on trial those responsible for the murder of Norbert Zongo and his three companions*[317]".

From a legal perspective, the Court reaffirmed that a State found to have violated its international obligations must provide full reparation for all resulting damage. Drawing on principles from the *Chorzów* Factory case[318] and the Draft Articles on Responsibility of States[319], the Court emphasized that reparation must cover both material and moral damage and must effectively "wipe out all the consequences" of the wrongful act[320].

In this case, the Court found that the prolonged inaction and the failure to ensure accountability for the murder caused extensive moral and emotional suffering to the families of the victims, a violation in direct contravention the State's obligations under Articles 4[321], 7[322], and 9(2)[323] of the African Charter as well as Article 66(2)(c)[324] of the Revised Economic Community of West African States (ECOWAS) Treaty.

Furthermore, the Court emphasized the importance of establishing a causal link between the State's failure to act and the harm suffered by the victims[325]. As confirmed by international jurisprudence, the applicants demonstrated that the State's failure to act not only resulted in direct material loss, but also caused severe moral prejudice—aggravated by a delay of almost eight years in achieving accountability. In assessing beneficiary status and quantifying reparations, the Court adopted a broad interpretation of the term "victim" in line with international human rights law, noting

[316] Judgment at ¶ 16-17, 153
[317] Judgment at ¶ 156
[318] Permanent Court of International Justice (PCIJ) *Factory at Chorzów*, 8 February 1927:" *It is a principle of international law that the breach of an engagement involves an obligation to make reparation in an adequate form*"
[319] Draft Articles on Responsibility of States for Internationally Wrongful Acts, Art. 31(1):" *The responsible State is under the obligation to make full reparation for the injury caused by the internationally wrongful act*"
[320] Judgment on Reparations at ¶ 20-22, 60
[321] AfCHPR, Art. 4
[322] AfCHPR, Art. 7(1)(a)
[323] AfCHPR, Art. 9(2)
[324] Economic Community of West African States (ECOWAS) Revised Treaty, Art. 66(2)(c) (The press):"*to ensure the respect for the rights of journalists*"
[325] Judgment on Reparations at ¶ 55-57

that the rights of close relatives extend beyond those strictly recognized under domestic inheritance law[326].

The Court balanced the evidence of prolonged suffering and mental anguish provided by the applicants[327] against the State's arguments of economic constraints and ultimately determined a lump sum that fully compensated for the moral prejudice suffered, while also incorporating the reimbursement of legal and other expenses as an integral part of the concept of full reparation[328].

In conclusion, the judgment firmly establishes that Burkina Faso's delayed and fragmented investigation constitutes a continuing violation of its human rights obligations by failing to effectively investigate, prosecute and provide reparation for the wrongful act of assassination.

2.2.1.3 Execution Procedure

Following the delivery of the Court's judgment on the merits on 28 March 2014 and the subsequent Judgment on Reparations on 5 June 2015, the State of Burkina Faso undertook a series of methodical and transparent measures to execute the Court's orders[329].

The implementation process unfolded in distinct phases, demonstrating both a comprehensive implementation and a commitment to accountability rarely seen in cases before the African Court. Burkina Faso was ordered to pay specific sums to various categories of beneficiaries—a detailed breakdown provided for payments of 25 million CFA francs to each spouse, 15 million to each son or daughter, and 10 million to each parent, in addition to a symbolic payment for other specified costs and reimbursement of legal expenses. According to the Activity Report submitted by the States to the African Court to inform it of the status of the execution of the rulings, these sums have been duly paid, with proof of compensation, such as the submission of official payment documents by 9 December 2015[330].

The Court also ordered that Burkina Faso publish the summary of the judgment. This involved a double publication: in the Official Gazette and in a widely read national newspaper, as well as on the government's official website. By 28 November 2016, copies of the Official Gazette and newspaper editions – such as the Special Bis Notice and the Sidwaya newspaper – were submitted as evidence of compliance. In addition, confirmation was provided in July 2017 that the summary was available online, thereby meeting the Court's publication requirements[331].

[326] Judgment on Reparations at ¶ 45-47
[327] Judgment on Reparations at ¶ 32-36
[328] Judgment on Reparations at ¶ 73-82
[329] See African Court on Human and Peoples' Rights, *Activity Report of the African Court of Human and Peoples' Right*, 1 January – 31 December 2018, pp. 8-11, on which this paragraph is based
[330] Id. at pp. 8-9
[331] Id. at pp. 9-11

In addition to the financial reparations and publicity measures, the Court's order required that the Burkinabé authorities to reopen the investigation into the murder of Norbert Zongo and his companions. Subsequently, on 30 March 2015, the Prosecutor General of Burkina Faso filed a request to reopen the case, and on 8 April 2015, the Examining Magistrate of the High Court of Ouagadougou issued an order to reopen the investigation. This step represents a crucial mechanism of accountability, ensuring that the original wrongs are not only remedied financially, but are also judicially reviewed in order to ensure justice for all concerned[332].

A notable aspect of this enforcement procedure is the extensive reporting and monitoring regime established by the Court. Burkina Faso has submitted detailed reports on the measures taken, including the publication of the judgment summary and the status of the compensation payments.
The Court's practice of requiring regular updates—within set deadlines such as six months from the date of the judgment—has been carefully followed by Burkina Faso. The transparency of these reports contrasts sharply with the general trend among State parties, many of which fail to provide regular updates on the status of the execution of Court judgments[333].

The enforcement process in the case of *Late Norbert Zongo v. Burkina Faso* is a perfect example of the full and correct execution of an African Court judgment. It demonstrates a systematic approach: from the issuance of precise orders (both in terms of monetary reparations and non-monetary measures such as the publication of summaries of judgments and the reopening of investigations) to the regular monitoring and reporting on implementation. Burkina Faso's actions are characterised by absolute compliance with the Court's instructions.

In an era when many States fail to submit or update compliance reports, this case is unique.

The comprehensive submission of official documents, the timely payment of reparations and the proactive resumption of investigations, taken together, reinforce the principle of State accountability and underline the effectiveness of the Court's enforcement mechanisms[334].

This execution procedure, therefore, not only fulfils the mandates of the Court but also serves as a landmark case demonstrating the potential for effective implementation of judicial decisions.
It sets an important precedent, demonstrating that with the right administrative will and structured monitoring, the obligations imposed by international human rights mechanisms can be fully implemented.

[332] Id. at pp. 8-10
[333] Id. at pp. 10-11
[334] Id. at pp. 8-11

2.2.2 APDH v. The Republic of Côte d'Ivoire

2.2.2.1 Factual Background

The case *Actions pour la Protection des Droits de l'Homme* (APDH) v. Republic of Côte d'Ivoire arose from concerns about the legal and institutional framework of the Independent Electoral Commission (CEI)[335] of Côte d'Ivoire[336].

The complaint, APDH[337], a non-governmental organization based in Côte d'Ivoire, challenged the composition of the CEI, as established by Law No. 2014-335 of 18 June 2014[338].
APDH argued that the structure of the CEI, as defined by this law, did not guarantee the independence and impartiality of the electoral body—conditions considered essential for the conduct of free and fair elections in the country.

According to the complaint, the 17-member Commission was predominantly composed of individuals either linked to, or directly appointed by, the executive branch and the ruling political party. In particular, it was alleged that six members were either representatives of the Government or appointed by the President of the Republic, while opposition parties had only three representatives and civil society organizations were represented by a minority of members whose selection processes lacked transparency and independence.

This composition, the APDH argued, reflected a structural imbalance that undermined the Commission's ability to act as a neutral and independent body.

The complaint further alleged that these institutional arrangements fostered a climate of political mistrust, particularly among opposition actors and segments of civil society, and undermined confidence in the integrity of the electoral process.

The APDH expressed concern that this imbalance would have a direct impact on the credibility of the electoral results, particularly in a post-crisis context where democratic legitimacy was crucial for national reconciliation.

These concerns were not new, indeed the reform of the CEI had been the subject of internal political debate following the 2010–2011 post-electoral crisis in Côte d'Ivoire[339].

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[335] The *Commission Electorale Indépendante* (CEI) of Côte d'Ivoire is the independent electoral commission responsible for organizing and supervising elections in the country. Its role is to ensure the fairness, transparency, and credibility of the electoral process.
[336] *See Actions pour la Protection des Droits de l'Homme (APDH) v. Republic of Côte d'Ivoire* (Judgment) at ¶ 4-19, 18 November 2016, on which this paragraph is based
[337] *Action pour la Protection des Droits de l'Homme* (APDH) is a non-governmental organization based in Côte d'Ivoire dedicated to promoting and protecting human rights within the country.
[338] Law No. 2014-335 of 18 June 2014 of Côte d'Ivoire relates to the modification of the Electoral Code. It introduced changes to the rules and procedures governing elections in the country.
[339] The 2010-2011 Ivorian crisis stemmed from a disputed presidential election where incumbent Laurent Gbagbo refused to concede defeat to Alassane Ouattara, the internationally recognized winner. This led to widespread violence,

However, the reform process that culminated in Law No. 2014-335 did not, in the applicant's view, address the core issue of partisanship in the composition of the electoral body.
The APDH therefore turned to the African Court on Human and Peoples' Rights, seeking to challenge the legality of the CEI's structure under applicable international standards.

2.2.2.2 Judgment Analysis

In its judgment of 18 November 2016, the AfCtHPR ruled in favour of the NGO *Actions pour la Protection des Droits de l'Homme*, which had challenged the legality of the composition of the Independent Electoral Commission of Côte d'Ivoire under international human rights law[340].
The case raised fundamental questions about the requirements of impartiality, independence and representativeness of electoral bodies in a democratic society. Before addressing the merits of the case, the Court examined its own jurisdiction and the admissibility of the application.

It confirmed its jurisdiction, both substantive and personal, under Articles 3(1)[341] and 5(3)[342] of the Protocol to the African Charter, noting that Côte d'Ivoire had deposited the declaration under Article 34(6)[343], thus enabling NGOs with observer status before the African Commission on Human and Peoples' Rights to bring cases directly before the Court[344].
The application was also found admissible under Article 56 of the Charter and Rule 40 of the Court's Rules[345], the Court noting that the application was neither incompatible with the Charter, nor based solely on media reports[346], and that it had been submitted within a reasonable time after the adoption of Law No. 2014-335, the legislative measure restructuring the CEI[347].

On the merits, the APDH argued that the composition of the CEI violated key democratic guarantees under both African and international human rights law.

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ethnic tensions, and a humanitarian crisis, culminating in military intervention and Gbagbo's arrest. The crisis resulted in thousands of deaths and displaced hundreds of thousands of people.
[340] *See Actions pour la Protection des Droits de l'Homme (APDH) v. Republic of Côte d'Ivoire* (Judgment), 18 November 2016, on which this paragraph is based
[341] Protocol, Art. 3(1)
[342] Protocol, Art. 5(3)
[343] Protocol, Art. 34(6)
[344] Id. at ¶ 20-26
[345] Rules of African Court, Rule 40 (Commencement of Proceedings)
[346] Id. at ¶. 42-68
[347] Id. at ¶. 73-106

In particular, it invoked the right to equal protection before the law[348], the right to equal access to public services[349], and the right to participate freely in the government of one's country[350].

In assessing these claims, the Court first reaffirmed that the independence and impartiality of electoral bodies are essential components of democratic governance and credible electoral processes. While States retain a margin of appreciation in the design of their electoral systems, they are under an obligation to structure their electoral institutions in conformity with international standards, in particular those guaranteeing the free and equal participation of citizens in public life and the principle of non-discrimination[351].

The central issue in the case concerned the structure and composition of the CEI as reorganized by Law No. 2014-335. The Court examined the provisions of the law and found that the Commission was composed predominantly of members who were either directly appointed by the ruling party or the executive branch, or who were politically aligned with it.

According to the Court, this resulted in a structural imbalance that compromised the Commission's institutional independence and gave rise to reasonable doubts as to its impartiality[352]. Rejecting the respondent State's argument that the presence of representatives of opposition parties and civil society ensured diversity, the Court found that the numerical dominance of pro-government members undermined this claim and did not ensure the perception of impartiality required in a democratic system[353].

The Court placed particular emphasis on the notion that independence is not limited to actual neutrality, but also extends to the appearance of neutrality. It stressed that "*institutional independence in itself is not sufficient to guarantee the transparent, free and fair elections advocated in the African Charter on Democracy and the ECOWAS Democracy Protocol. The electoral body in place should, in addition, be constituted according to law in a way that guarantees its independence and impartiality, and should be perceived as such*[354]".

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[348] African Charter on Democracy, Elections and Governance, Art. 10(3):" *State Parties shall protect the right to equality before the law and equal protection by the law as a fundamental precondition for a just and democratic society*."
[349] AfCHPR, Art. 13(2)
[350] AfCHPR, Art. 13(1) and International Covenant on Civil and Political Rights, Art. 25:" *Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:*
(a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
(b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
(c) To have access, on general terms of equality, to public service in his country.";
Id. at ¶ 50-53
[351] Id. at ¶ 118-121
[352] Id. at ¶ 135-140
[353] Id. at ¶ 141-143
[354] Id. at ¶123

Therefore, a structure which allows a political majority to effectively control the Commission—irrespective of the personal intentions or conduct of its members—violates the principle of impartiality and may undermine public confidence in the fairness of elections.

In this context, the Court underlined that genuine pluralism and a fair balance in the representation of political and civil society actors are indispensable for preserving the integrity of democratic processes.

For these reasons, the Court concluded that "*the composition of the Ivorian electoral body is imbalanced in favour of the Government and that this imbalance affects the independence and impartiality of that body*[355]", thus violating the rights enshrined in Article 13(1) of the African Charter and Article 10(3) of the African Charter on Democracy, Elections and Governance[356].

2.2.2.3 Execution Procedure

Following the issuance of its judgment on 18 November 2016, the African Court ordered to the Côte d'Ivoire to implement a series of substantive reforms to its electoral management system aimed at ensuring the impartiality and independence of the electoral commission[357].
The Court's decision required that the composition of the electoral body be changed in accordance with internationally accepted human rights standards.

In response, the Ivorian authorities held public consultations and subsequently enacted new legislation purporting to reform the electoral management framework. On 28 August 2019, an official communication from the respondent State indicated that these legislative changes had been made and that these measures met the Court's requirements. However, despite this formal enactment, the applicants challenged the sufficiency of the State's actions.

In their report, filed on 19 November 2019, they claimed that while the new law had introduced additional representation for non-governmental organization, it was not sufficient to ensure the absolute impartiality of the Electoral Commission—arguing that the review process lacked inclusiveness and failed to address the core concerns raised by the Court.

In its subsequent response, submitted on 13 February 2020, Côte d'Ivoire reiterated that it had fully implemented the Court's order, emphasizing that stakeholder consultations had been extensive and that the new law effectively ensured the required independence of the electoral management body.

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[355] Id. at ¶ 149
[356] Id. at ¶ 151
[357] See African Court on Human and Peoples' Rights, *Activity Report of the African Court of Human and Peoples' Right*, 1 January – 31 December 2020, pp. 20-22, on which this paragraph is based

Nevertheless, the case is a clear example of only partial implementation of the Court's judgment. The reform measures—although formally adopted—did not fully address the impartiality issues as raised by the applicants. Moreover, additional litigation has been initiated by other applicants[358] to challenge the adequacy of the new law, further underlining the incomplete nature of the State's compliance.

This fragmented implementation not only undermines the remedial intent of the Court's judgment but also contributes to a broader pattern of inadequate execution of African Court decisions. In this instance, Côte d'Ivoire's failure to fully transform its electoral framework as ordered casts a long shadow over the effectiveness of the Court's enforcement mechanismand illustrates the persistent challenges in achieving full State accountability and the realization of human rights guarantees on the continent[359].

2.2.3 Ingabire Victoire Umuhoza v. Republic of Rwanda

2.2.3.1 Factual background

The factual background of Ms. Ingabire Victoire Umuhoza's case begins with her early life and educational pursuits. Born on 3 October 1968 in Gisenyi in Rwanda's Western Province, she was abroad in the Netherlands during the outbreak of the 1994 genocide[360], where she pursued a university degree in economics and business administration. In 2000, after joining the *Rassemblement Républicain pour la Démocratie au Rwanda* (RDR) in 1998, she ascended to leadership of the party. Later, a merger between the RDR, the Alliance for Democratic Renewal (ADR), and the *Forces Républicaines de la Démocratie* (FRD) resulted in the formation of a new political entity, *Forces Democratiques Unifiées Inkingi* (FDU Inkingi), which she has led since its inception.

After spending nearly seventeen years abroad, Ms. Umuhoza returned to Rwanda in 2010 with the expressed intention of contributing to national development.

One of her principal goals upon her return was to register FDU Inkingi in compliance with Rwandan law and to develop the party at a national level in preparation for future elections[361].

[358] *Suy Bi Gohore Emile & 8 Others vs Republic of Cote d'Ivoire*, 15 July 2020

[359] Id. at pp. 18-22

[360] The 1994 Rwanda genocide was a horrific period of mass violence that occurred over approximately 100 days, from April to mid-July 1994. During this time, an estimated 800,000 to one million people, predominantly members of the Tutsi minority, were systematically murdered by extremist Hutu militias and individuals.

[361] See *Ingabire Victoire Umuhoza v. Republic of Rwanda* (Judgment), 24 November 2017 at ¶ 4-8, on which this paragraph is based

However, her political activities were swiftly disrupted when, beginning on 10 February 2010, charges were brought against her by the judicial police, the Prosecutor, and various courts and tribunals in Rwanda.

On 21 April 2010, Ms. Umuhoza was remanded in custody. The charges levelled against her were extensive and multifaceted: she was accused of spreading the ideology of genocide[362], aiding and abetting terrorism[363], engaging in sectarianism and divisionism[364], and undermining the internal security of the State by spreading rumors designed to incite the population and create divisions[365]. Moreover, she was charged with establishing an armed branch of a rebel movement and attempting to resort to terrorism or violence to destabilize the established authority[366].

These allegations led to a rapid progression through the Rwandan judicial system.

Initially, the High Court of Kigali sentenced her to eight years in prison on 30 October 2012.

On appeal, the Supreme Court increased her sentence to fifteen years on 13 December 2013.

According to the applicant, she has exhausted all local remedies since the Supreme Court's judgment is deemed *res judicata* and no effective recourse for review has been offered by Rwandan courts. The cumulative effect of these proceedings, including her arrest, extended detention, and harsher sentence on appeal, formed the nucleus of her grievance.

Ms. Umuhoza contends that the entire process was marred by significant procedural irregularities and violations of fundamental rights as enshrined in various international instruments, namely the Universal Declaration of Human Rights, the African Charter on Human and Peoples' Rights, and the International Covenant on Civil and Political Rights. In light of these alleged violations, she submitted her application to the African Court on Human and Peoples' Rights.

In her recourse, she seeks orders for the retroactive repeal of certain penal provisions, a comprehensive review of her case, annulment of all decisions from the preliminary investigation onward, release on parole, and the payment of costs and reparations.

These interlocking factual elements—involving her return to Rwanda, the initiation of the criminal proceedings, the harsh sentence and the subsequent failure of available local remedies—form the basis of her application to the African Court and the factual basis on which her allegations of human rights violations are based.

[362] Criminal Offence under Law No. 18/2008 of 23 July 2008
[363] Criminal Offence under Law No. 45/2008 of 9 September 2008
[364] Criminal Offence under Law No. 47/2001 of 18 December 2001
[365] Criminal Offence under Law No. 21/77 of 18 August 1997
[366] Id.

2.2.3.2 Judgment analysis

The African Court on Human and Peoples' Rights, in its judgment on the case *Ingabire Victoire Umuhoza v. Republic of Rwanda*, delivered a decision of significant jurisprudential value, examining the admissibility of the application, the merits of the alleged violations, and the question of reparations[367].

The Court first addressed whether the application fulfilled the admissibility criteria under Article 56 of the African Charter and Rule 40 of the Rules of Court[368].
Rwanda had argued that Ms. Ingabire had not exhausted all local remedies, particularly failing to challenge the constitutionality of the laws under which she was convicted, and for not seeking judicial review before the Supreme Court[369].

The AfCtHPR, however, rejected these objections. It found that the applicant had indeed filed a constitutional petition before the Rwandan Supreme Court challenging Law No. 33 bis of 2003[370], which was dismissed as groundless[371].

Regarding the judicial review procedure, the Court observed that such a remedy was not effective or accessible, as it was discretionary and initiated solely by the Office of the Ombudsman[372]. As such, the Court concluded that local remedies had been exhausted or were not applicable, and declared the application admissible[373].

On the merits, the Court found that several of the applicant's rights had been violated during her arrest, trial, and conviction. Specifically, the Court examined the right to a fair trial, the right to freedom of expression, and the legality and non-retroactivity of criminal laws.

First, it found that Ms. Ingabire's right to a defence under Article 7(1)(c)[374] of the African Charter had been violated due to procedural irregularities during her trial[375].

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[367] See *Ingabire Victoire Umuhoza v. Republic of Rwanda* (Judgment), 24 November 2017 and Ingabire *Victoire Umuhoza v. Republic of Rwanda* (Judgment on Reparations), 24 November 2017, on which this paragraph is based
[368] Judgment at ¶ 62-65
[369] According to the *Organic law n°03/2012/Ol of 13/06/2012 determining the organization, functioning and jurisdiction of the Supreme Court,* the Supreme Court of Rwanda has the power to rule on the constitutionality of laws and other legal acts. Citizens or organizations can typically petition the Supreme Court to review a law if they believe it violates the Constitution.
[370] Law Repressing the Crime of Genocide, Crimes against Humanity and War Crimes in Rwanda
[371] Judgment at ¶ 62-74
[372] The Office of the Ombudsman of Rwanda is an independent institution responsible for receiving and investigating complaints from individuals and organizations about maladministration, corruption, and human rights violations within public institutions and certain private entities providing public services;
Judgment at ¶ 70-73
[373] Judgment at ¶ 76
[374] AfCHPR, Art.7(1)(c)
[375] Judgment at ¶ 84-85

In particular, "*ln the instant case, the difficulty encountered by the Applicant's Defence Counsel in putting questions to the co-accused, the threats and environment of intimidation faced by the defence witness and the use of documents seized during what the Applicant considers an illegal search, that was later used against her, without giving her the chance to examine it, are incompatible with international standards pertaining to the right to defence*[376]".

Second, the Court found a violation of Article 9(2) of the African Charter[377] and Article 19 of the International Covenant on Civil and Political Rights (ICCPR)[378], holding that her freedom of expression had been unlawfully restricted. The Court emphasized that "*the Applicant's conviction and sentence for making the above statements both at the Kigali Genocide Memorial and on other occasions, was not necessary in a democratic society. Even if this Court were to accept that there was a need to put restrictions on such statements, the Applicant's punishment was not proportionate to the legitimate purposes which the conviction and sentence seek to achieve. ln this regard, the Court notes that the Respondent State could have adopted other less restrictive measures to attain the same objectives*[379]".

The Court did not accept the applicant's claim that she was tried before a biased tribunal. As the Court quoted: "*the essence of the right to presumption of innocence lies in its prescription that any suspect in a criminal trial is considered innocent throughout all the phases of the proceedings, from preliminary investigation to the delivery of judgment, and until his guilt is legally established*[380]". In the examined case "*the Court finds, on the basis of the pleadings, that the Applicant has not adduced evidence to the effect that her right to presumption of innocence has been violated. It therefore dismisses this allegation*[381]".

Lastly, concerning the legality and non-retroactivity of criminal laws, in the instant case "*The Court notes that the Applicant was initially charged with propagating the ideology of genocide before the High Court on the basis of Law No 18/2008 of 2008. However, the High Court re-qualified the charge and convicted her for the crime of revisionism of genocide on the basis of Article 4 of Law*

[376] Judgment at ¶ 98
[377] AfCHPR, Art. 9(2)
[378] International Covenant on Civil and Political Rights (ICCPR), Art. 19: "*Everyone shall have the right to hold opinions without interference.*
Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
(a) For respect of the rights or reputations of others;
(b) For the protection of national security or of public order (ordre public), or of public health or morals".
[379] Judgment at ¶ 162
[380] Judgment at ¶ 84
[381] Judgment at ¶ 85

No. 33/2003 of 2003 and crime of treason to threaten State security and the constitution under the 1977 Penal code[382]".

The African Court "*is of the view that the rule of non-retroactivity of the law does not preclude the requalification of a criminal charge in the course of a criminal trial resulting from the same facts. What is rather prohibited is the application of new criminal laws*[383]".

In conclusion, the Court held that the Republic of Rwanda had violated Articles 7(1)(c) and 9(2) of the African Charter and Article 19 of the ICCPR, and it ordered Rwanda to take all necessary measures to restore the applicant's rights[384].

2.2.3.3 Execution Procedure

Following the Court's judgment in the Ingabire case, which included orders for reparation and measures to restore the applicant's rights, the implementation phase was clearly delineated by a series of deadlines for the respondent State to report on the measures taken[385].

The Court explicitly requires that a detailed report on compliance be submitted by the State within a specified period after the judgment—in this case, usually within six months of the date of the judgment.

In the aftermath of the judgment, Rwanda was expected to implement all the measures ordered by the Court. These included, inter alia, taking appropriate remedial measures to restore the applicant's human rights, publishing a summary of the judgment through official channels, and ensuring that her rights, in particular in relation to a fair trial and freedom of expression, were effectively restored.

However, Rwanda has persistently failed to comply with these procedural obligations.
Not only has Rwanda failed to submit the required periodic implementation reports, but its silence has been emblematic of a broader problem of non-cooperation with the Court[386].

A striking factor in this case is Rwanda's earlier withdrawal in 2016 of its Article 34(6) Declaration, which gave the Court jurisdiction to receive cases directly from individuals and NGOs. This withdrawal is seen by the Court and external observers as a clear indication of Rwanda's reluctance to be held accountable for its judicial decisions and as a move to limit the Court's influence

[382] Judgment at ¶ 114
[383] Judgment at ¶ 115
[384] Judgment at ¶ 173(viii)–(x)
[385] See African Court on Human and Peoples' Rights, *Activity Report of the African Court of Human and Peoples' Right*, 1 January – 31 December 2022, on which this paragraph is based
[386] Id. at pg. 21, Annex 2

on domestic proceedings[387]. It is emphasized that such withdrawals, coupled with the absence of any substantive compliance report from Rwanda following the judgment in the Ingabire judgment, constitute a serious breach of the principle of full State accountability[388].

The overall implications are profound, indeed the failure to execute the judgment not only undermines the remedial intent of the Court's decision, but also contributes to the systemic non-compliance observed in many African Union Member States.

In sum, the enforcement process in the Ingabire case highlights Rwanda's absolute failure to comply with the Court's orders; despite clear and binding instructions, it has neither taken the necessary steps to restore the applicant's rights nor provided a report on such measures.

This case is a paradigmatic example of the challenges faced by the African Court in enforcing its judgments, a phenomenon exacerbated by explicit statements by States distancing themselves from the Court and its jurisdiction. The consequences of this non-execution are manifold, ranging from the erosion of public confidence in the human rights system to the perpetuation of impunity and the weakening of the Court's credibility across the continent.

2.3 Cross-Jurisdictional Comparative Analysis

2.3.1 Introduction & Methodology

This section conducts a cross-jurisdictional analysis of the six landmark judgments analysed previously to assess how stringent judgments translate into domestic implementation.

We examine each decision's doctrinal logic, its enforcement trajectory, and its tangible impact on domestic law. By comparing political resistance, institutional gaps, and peer pressure mechanisms in two different regional ecosystems, we identify common obstacles and promising practices.

Cases were selected for their emblematic status, the variety of rights at issue, and the diversity of enforcement outcomes they illustrate.

[387] For further information see also Windridge O., *Assessing Rwexit: the impact and implications of Rwanda's withdrawal of its article 34(6) declaration before the African Court on Human and Peoples' Rights*, 2 African Human Rights Yearbook, 2018

[388] The principle of State accountability posits that States can be held answerable for their actions or omissions, particularly when these constitute a breach of their international legal obligations.
This principle underscores that States are not immune from scrutiny and potential consequences for failing to uphold international law, aiming to ensure that they do not act with impunity.

2.3.2 Institutional Contexts in Europe and Africa

The European Court of Human Rights operates within a dense institutional framework anchored by the Committee of Ministers of the Council of Europe, which monitors the execution of judgments, and by well-developed channels of dialogue[389] with national courts and parliaments.

Member States generally maintain robust domestic legal culture that absorbs and adapts Strasbourg jurisprudence, even if implementation is gradual or controversial.

Although the Court's dynamic interpretation of the Convention and systematic use of precedent underpin its normative authority[390], enforcement can be hampered by political obstruction[391], legislative inertia[392], and occasional reluctance[393] to align domestic practice with supranational mandates.

By contrast, the African Court on Human and Peoples' Rights operates in a more fragmented environment. Its jurisdiction derives from a treaty framework whose optional protocols limit individual access and whose enforcement relies heavily on the supervision of the African Commission and on the goodwill of the African Union Assembly of Heads of State.

Domestic follow-up mechanisms, whether parliamentary committees or empowered ombudspersons, remain underdeveloped or absent in many member States.

Nevertheless, the Court has demonstrated an ability to tailor its reasoning to post-colonial realities, issuing reparative and symbolic orders that resonate beyond the courtroom, even though systemic gaps in political commitment and institutional capacity continue to temper the practical impact of its judgments.

2.3.3 European Case Studies

In the case of *Ilgar Mammadov v. Azerbaijan*, the ECtHR offered a well-structured judgment condemning the arbitrary detention of the applicant and reaffirming the State's duty to uphold freedom of expression. However, despite the clarity of the legal argument, enforcement was initially protracted, revealing frictions between the Court's authority and Azerbaijan's reluctance.

Ultimately, sustained pressure from the Committee of Ministers contributed to Mr. Mammadov's release, making the case a benchmark for enforcement through coordinated supranational action.

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[389] Judicial dialogue denotes the communication and interaction between courts aimed at fostering mutual understanding of legal principles and promoting consistent interpretation of the law.

[390] The ECtHR frequently refers to its previous case law when deciding new cases, following established principles and interpretations to maintain a coherent body of human rights jurisprudence.

[391] *Loizidou v. Türkiye*, 18 December 1996

[392] *Hirst v. The United Kingdom (No. 2)*, 6 October 2005

[393] *Vereinigung Bildender Künstler* v. Austria, 25 April 2007

Similarly, in *Cordella and Others v. Italy*, the Court addressed the complex intersection between environmental degradation and human rights.

The judgment provided a meticulous doctrinal framework balancing economic imperatives with the right to health and procedural fairness. However, domestic implementation has remained partial and sluggish, with repeated delays in environmental remediation efforts and compliance monitoring.

This case illustrates how even sophisticated legal reasoning can be undermined by bureaucratic inertia and political reluctance, especially when powerful economic interests are involved.

The case of *Osman Kavala v. Türkiye* is a paradigmatic example of State defiance in politically sensitive contexts. The Court's opinion went beyond formalism to critically assess the misuse of the legal process to suppress dissent, qualifying the detention as politically motivated. Despite the rhetorical and legal strength of the judgment, its enforcement has been persistently obstructed by domestic courts and political authorities. This illustrates how the Court's authority, while normatively persuasive, can be systematically neutralised when it conflicts with entrenched political agendas.

2.3.4 African Case Studies

In *Beneficiaries of the Late Norbert Zongo and Others v. Burkina Faso*, the African Court took a pragmatic and reparative approach to addressing impunity for gross human rights violations. The judgment was notable not only for its legal reasoning, which linked procedural delays to a denial of justice, but also for its moral clarity.

Despite institutional constraints, the judgment was eventually implemented, marking a rare success in a context often characterised by a weak culture of compliance.

In *APDH v. Côte d'Ivoire*, the Court offered a balanced and context-sensitive interpretation of political rights in condemning the composition of the country's electoral commission.

The reasoning combined formal constitutional principles with an awareness of historical marginalisation. However, the enforcement process revealed persistent structural resistance: legislative amendments were introduced, but they failed to meet the Court's standards.

This partial compliance highlights the limits of legal authority in the absence of political will and coordinated follow-up mechanisms.

Lastly, the *Ingabire Victoire Umuhoza v. Rwanda* case highlights the tensions between judicial independence and executive dominance. The Court's reasoning was sharp and uncompromising, particularly in its assessment of fair trial and freedom of expression violations.

In this instance, the enforcement phase exposed structural fragility: Rwanda's political and institutional resistance significantly limited the practical impact of the judgment.

2.3.5 Comparative Synthesis & Lessons

In both the European and African regional systems, two interlocking dynamics emerge: the precision of judicial reasoning and the capacity (or willingness) of States to translate judgments into enforceable reforms. Although the majority of cases demonstrate commendable legal analysis, the gap between declaratory power and practical implementation is consistently shaped by domestic political and institutional environments.

On one hand, the European Court of Human Rights has repeatedly shown that a carefully reasoned decision can act as a catalyst for domestic change.
Landmark judgments such as *Ilgar Mammadov v. Azerbaijan* and *Osman Kavala v. Türkiye* illustrate how strong judicial mandates exert sustained pressure on national legislatures and judiciaries to review restrictive measures. Even when implementation is slow or incomplete, as in *Cordella & Others v. Italy*, the existence of a clear judicial mandate forces incremental legislative adjustments and keeps rights violations under scrutiny.

By contrast, the African Court on Human and Peoples' Rights operates in an environment where enforcement mechanisms are less institutionalised and political resistance is often more entrenched. While decisions such as *Beneficiaries of the Late Norbert Zongo v. Burkina Faso* and *APDH v. Côte d'Ivoire* affirm the Court's jurisprudential rigor, their practical impact depends almost entirely on the cooperation of domestic actors. In countries where civil society can mobilize around a decision and where follow-up mechanism exist, partial compliance is more achievable; where executive dominance prevails, even the clearest orders, such as those in *Ingabire v. Rwanda*, remain largely aspirational.

This comparative analysis shows that clear judicial mandates, while indispensable, cannot alone ensure the protection of human rights. Effective outcomes depend on a three-part ecosystem: genuine political commitment, structures that actively monitor and promote implementation, and an engaged public that keeps decisions alive in the national dialogue.

In Europe, these ingredients come together more easily, underpinned by the Court's well-entrenched dialogue with national courts and the monitoring mandate of the Committee of Ministers. In Africa, building similar structures, perhaps through formal protocols between the Court and national authorities, or by incentivising follow-up through technical assistance and peer review, could narrow the implementation gap.

Ultimately, robust judicial reasoning remains a necessary, but not sufficient, condition for human rights protection, but it does not always reveal adequate. A comparative lens underscores that only when legal clarity is paired with political will, systemic coordination, and civic vigilance, regional adjudication is able to fulfil its promise of concrete, rights-respecting reform.

Chapter 3: Current Trends and Future Directions in Enforcement

In Chapter 3, we now shift our focus from institutional design and case-law analysis to the living reality of enforcement, examining how binding judgments are translated (or fail to translate) into meaningful change.

This is where the effectiveness of regional human rights protection is tested.

By situating ourselves at the intersection of public accountability, political will, and procedural innovation, we seek to understand not only the current impact of enforcement process, but also the forces that drive reform and the obstacles that hinder progress.

By doing so, we will explore how two very different courts, in our instance the European Court of Human Rights and the African Court on Human and Peoples' Rights, negotiate compliance, adapt their tools to changing circumstances, and envisage new ways to strengthen the link between judgments and implementation.

3.1 Analysis of Recent Reports

In order to lay the groundwork for the discussion of enforcement practises in today's world, we will begin by analysing the 2024 Activity Reports of the regional courts under our examination.

These annual reports are much more than mere administrative summaries; they have evolved into indispensable instruments of transparency, accountability and policy learning.

They serve two functions: provide a factual account of case-management statistics, budgetary performance and institutional initiatives; and offer qualitative insights into emerging challenges, ranging from backlog management to political resistance, and highlight examples of best practice intended to inform future reforms.

In the following pages, we will first examine the European Court's 2024 Annual Report, paying close attention to its stated mandate, the methodology behind its data collection, and the evaluative criteria it uses to assess State compliance.

We will then turn to the African Court's 2024 Activity Report, exploring how a young institution conceptualises its accountability framework, how it interprets the uneven patterns of ratification and access that define its caseload, and the strategic objectives it pursues to improve judgments execution.

By reading these documents alongside each other within a shared conceptual framework (while remaining sensitive to their unique historical trajectories and regional constraints) we aim to reveal how each Court uses its report not only to document past performance, but also to shape the future of enforcement practice.

3.1.1 Annual Report 2024 of the European Court of Human Rights

In 2024, the European Court of Human Rights was confronted with a combination of extraordinary geopolitical turbulence, rising caseloads and institutional reform[394].

The Court processed 36,819 individual applications and delivered 10,829 judgments, marking a 56 % increase in judgments compared to the previous year. Meanwhile, it struck out or declared inadmissible 25,990 applications under its streamlined filtering mechanisms.

Although the number of pending applications decreased by 12 % from 68,450 at the end of 2023 to 60,350, nearly three-quarters of the caseload remained concentrated in five high-volume States—Türkiye (≈ 21 613), the Russian Federation (≈ 8 130), Ukraine (≈ 7,703), Romania (≈ 3,847) and Greece (≈ 2,613), which highlights both the resilience and structural pressures of the system.

This statistical profile reflects the "impact" strategy pursued since 2021, involving reallocating complex or precedent-setting cases to seven-judge Chambers and the Grand Chamber.

In 2024, the Grand Chamber delivered five judgments and two inadmissibility decisions, held seven oral hearings and had seventeen applications pending at the end of the year.

Meanwhile, single judges and three-judge Committees delivered over 22,210 inadmissibility decisions and 814 judgments. This preserved high-level judicial capacity for novel legal issues.

A considerable number of conflict-related cases remained, particularly those arising from the Russia–Ukraine, Russia–Georgia and Armenia–Azerbaijan disputes.

The Court managed 12 inter-State cases, including the *Georgia v. Russia (IV)*[395] Chamber judgment on 9 April and the *Ukraine v. Russia (re Crimea)*[396] Grand Chamber judgment on 25 June.

In both cases, questions of justiciability were reserved for later determination, reaffirming the Court's residual jurisdiction and its commitment to accountability even after Russia ceased to be a member.

The ECtHR has also placed increasing emphasis on operational modernisation.

In a system where accessibility and efficiency are paramount, technological innovation has become central to institutional resilience. This commitment is evident in the early development of an online application portal and the integration of neural machine translation into the Language Department's workflow, where 593 documents (approximately 2.26 million words) were translated from English into French, and 245 documents (around 726,000 words) were translated in the opposite direction.

[394] See European Court of Human Rights, *2024 Annual Report of the European Court of Human Rights* and European Court of Human Rights, *2023 Annual Report of the European Court of Human Rights* on which this paragraph is based

[395] *Georgia v. Russia (IV)*, 9 April 2024

[396] *Ukraine v. Russia (re Crimea),* 25 June 2024

This forms part of a broader digitalisation agenda aimed at accelerating case registration, enhancing linguistic consistency, and reducing the manual handling of the 102,659 letters and faxes processed by the Registry's mail office.

The year 2024 saw jurisprudential developments that further reinforced the adaptability of the Convention to contemporary challenges. The Grand Chamber's pilot judgment in *Wałęsa v. Poland*[397] addressed systemic deficiencies in judicial independence under Articles 6 and 8 ECHR.

The ongoing *Ukraine and the Netherlands v. Russia*[398] case promises to clarify the scope of State obligations in occupied territories.

Meanwhile, the landmark decision in *Verein KlimaSeniorinnen Schweiz v. Switzerland* [399] recognised positive-obligation breaches under Article 8 for the first time in the context of climate change mitigation, thereby extending the Convention's protective scope to emerging global threats.

Taken together, these developments illustrate a Court that is bound to guarantee human rights, while also being driven by a modernising vision that embraces procedural flexibility, technological tools, and thematic leadership in areas in diverse areas.

From the perspective of this thesis, these trends are particularly significant for understanding the effectiveness and challenges of the ECtHR's judgment execution control mechanisms.

The high caseloads, the strategic handling of systemic violations through pilot judgments, and continuous operational modernization all directly impact the Court's capacity, and the Committee of Ministers' ability, to ensure States comply with final judgments.

This detailed overview of the European experience thus provides a critical benchmark for the comparative analysis of enforcement systems with the African Court on Human and Peoples' Rights.

3.1.2 African Court Activity Report 2024

In 2024, the African Court on Human and Peoples' Rights continued to consolidate its role as an emerging regional tribunal, navigating a growing caseload alongside persistent challenges related to limited resources and uneven State engagement, factors which directly impact its capacity for effective judgment enforcement.

The African Court's Activity Report remains the keystone of its accountability framework under Article 31 of the Protocol: it publicly records the "institutional health" of the Court, examining

[397] *Wałęsa v. Poland,* 23 November 2023
[398] *Ukraine and the Netherlands v. Russia* (*dec.*), 30 November 2022
[399] *Verein KlimaSeniorinnen Schweiz v. Switzerland, 9 April 2024*

the willingness of States to open the Court's doors to individuals and NGOs, and details judicial outcomes alongside outreach and capacity-building initiatives[400].

First adopted in 2006, the Court's Activity Report serves not only as administrative register, but also as a crucial policy feedback tool.

Like its 2023 predecessor, the 2024 Report[401] begins by reaffirming the Court's basic mandate and recalling the States' obligation to ratify the Protocol. It also highlights the possibility for States to deposit a declaration under Article 34(6) if they so choose, thus allowing direct access by individuals and NGOs.

In 2024, the number of States parties to the Protocol remained stable at thirty-four, but only eight have deposited the Article 34(6) declaration. This pool of eligible States corresponds with the Court's comparatively modest caseload of only 351 contentious applications[402] (alongside with 15 requests for advisory opinions) managed from its foundation until 2024.

During the reporting period, the Court concluded 246 contentious cases involving 12 African Union Member States and 4 non-State actors[403].

An additional 111 applications remain pending against 12 Member States.

In 91 of the concluded cases, at least one violation was established against 10 different States and within all judgments requiring remedial measures, only one State—Burkina Faso—has fully implemented two decisions, while 89 judgments against nine other Member States are still awaiting complete execution.

Notable among the 2024 judgments was the long-awaited merits ruling in *Deogratias Nicholaus Jeshi v. Tanzania*[404], which demonstrated the Court's ability to deal with complex backlogs. Provisional measures remained an important tool: in *Misozi Charles Chanthunya v. Malawi*[405], the Court again ordered provisional measures, underlining their protective function.

Moreover, for the first time, the Court held a compliance hearing in *African Commission v. Kenya*[406], compelling the respondent to report on a judgment more than a decade old.

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[400] See African Court on Human and Peoples' Rights, *Activity Report of the African Court on Human and Peoples' Rights – 1 January – 31 December 2024* and *Activity Report of the African Court on Human and Peoples' Rights – 1 January – 31 December 2023* on which this paragraph is based

[401] It is important to note that the data collected for the 2024 Activity Report of the African Court is as of the date of reporting, 11 November 2024.

[402] "Applications" can either mean an application to start a new contentious case or an application to review or interpret a judgment in existing contentious case.

[403] The non-State entities are: the African Union, the Pan-African Parliament, the African Commission on Human and Peoples' Rights and the Inter-African Conference on Insurance Markets.

[404] *Deogratias Nicholaus Jeshi v. Tanzania,* 13 February 2024

[405] *Misozi Charles Chanthunya v. Malawi* (Provisional measures), 24 January 2024

[406] *African Commission v. Kenya* (Adjournment of compliance hearing), 12 November 2024

On the administrative front, the 2024 budget of US $11,656,013 was executed at 97.6% —up from 93% in 2023—reflecting tighter financial management.

Conversely, in the legal aid programme[407], the number of applications reviewed fell from 20 to 7, and the number of grants awarded fell from 8 to 2, as the Court refined eligibility criteria to conserve scarce resources.

These shifts underscore the tension between the growing demand for remedies at the African level and the limits of institutional capacity. Crucially, the statistics on pending judgment executions, coupled with the introduction of compliance hearings highlight both the significant challenges faced by the Court in ensuring State compliance and its evolving strategies for strengthening the control over judgment execution. This makes the African Court's experience particularly valuable for a comparative analysis of enforcement mechanisms with the European system.

3.2 Current Situation of Enforcement Practices

Having set out the quantitative framework, which includes ratification rates, case-flow volumes and statistics on closed and pending cases, we will now turn to a more qualitative assessment of how enforcement actually unfolds in practice.

In the following pages, we identify and analyse the main trends shaping enforcement in the European system: from the refinement of policy dialogue forums and “enhanced procedures” to the growing reliance on pilot judgments.

We will then turn to the African context, where judicial remedies, provisional measures and nascent follow-up mechanisms are being tested in real time.

Finally, we provide a comparative overview, highlighting areas of convergence, such as innovative procedural tools, and areas of divergences, particularly the use of sanctions or incentives, the scope of direct access, and the balance between judicial and political models of supervision.

Together, these analyses shed the light on strengths and vulnerabilities of each system and the lessons that could be learned from a cross-regional dialogue on best enforcement practices.

[407] The AfCtHPR provides a legal aid programme to ensure fair access to justice. Article 10(2) of the Protocol states that "*Free legal representation may be provided where the interests of justice so require*" and Rule 31 of the Rules of Court allows the Court to offer free legal assistance within its financial limits. This assistance is generally available to individuals and groups of individuals who demonstrate indigence and when it is deemed in the interest of justice and for equality of arms. Applicants can request legal aid when filing their application or at any later stage.

3.2.1 European System Trends

In 2024, the execution machinery of the Convention system exhibited several clear turning points that signal both its increasing adaptability, as well as the emergence of new pressure points[408].

First, although the total number of pending cases rose only modestly—from 3,819 at the end of 2023 to 3,916 at the end of 2024—the composition of the backlog reveals deeper changes.
Leading cases, which often require wide-ranging structural or legislative reforms, increased from 1,088 to 1,149 in the same period—a growth rate nearly twice that of the overall caseload.
Within these leading cases, those subject to the enhanced procedure (reserved for systemic or particularly serious violations) increased from 325 to 345, while standard-procedure cases rose from 743 to 788. This pattern highlights an acceleration in the Court's production of "impact" judgments, decisions that by their very nature demand extensive policy or legislative change, and indicates that Member States will encounter more demands on their domestic reform capacities in the coming years.

Concurrently, the profile of new cases transmitted for supervision has shifted.
Following the Court's "impact strategy", which encouraged a focus on complex, precedent-setting matters, the number of judgments classified under the enhanced procedure has almost doubled since 2021, rising from 16 to 33 in 2024.
This growth reflects the Court's willingness to address emerging issues at the highest level, pushing States to develop remedial frameworks for new categories of violations.

Equally significant is the increase in the number of cases handled under the WECL[409] (Well-Established Case-Law) procedure, in which three-judge Committees deliver judgments on the merits in areas of settled Strasbourg jurisprudence. In 2024 alone, 532 WECL judgments addressed 10,241 joined applications, up from 477 and 4,168 applications in 2022 and 2023 respectively.
Although the WECL expedites the Chamber's docket, it transfers significant supervisory responsibilities to the Department for the Execution of Judgments[410] (DEJ) and the Committee of Ministers. Each judgment must be monitored to ensure that individual measures are taken for every applicant, even if only one out of dozens remains unresolved.

In terms of implementation, States' responsiveness to procedural deadlines remains uneven. The total number of action plans and follow-up reports submitted remained stable at around 833

[408] See Council of Europe – Committee of Ministers, *Supervision of the Execution of judgments and decisions of the European Court of Human Rights, 18th Annual Report of the Committee of Ministers 2024*, March 2025
on which this paragraph is based
[409] Well-established case law in the context of the European Court of Human Rights refers to a body of legal principles derived from the Court's previous judgments, which are consistently applied to similar cases.
It signifies that the Court has repeatedly ruled on a particular issue, creating a clear and predictable legal standard that States are expected to follow.
[410] The Department for the Execution of Judgments of the Council of Europe is the body that advises and support the Committee of Ministers in its role of supervising the implementation of judgments from the ECtHR

(compared to 835 in 2023), just like the timeliness of these submissions resulting in 82 formal reminder letters being sent in 2024, up from 80 the previous year.

Conversely, the number of cases of just satisfaction paid on time improved modestly, rising to 711 cases (from 696 in 2023), and the pool of overdue payments awaiting confirmation shrank from 690 to 634. This suggests that, while financial redress is gradually becoming more punctual, the broader procedural compliance, especially the submission of action plans still encounters delays.

A notable trend in 2024 was the intensification of bilateral and multilateral engagement aimed at strengthening domestic execution capacity.

The DEJ carried out a record 180 missions and technical meetings with national authorities, both in Strasbourg and in capitals, often involving Ministers and senior judges, to identify issues such as prison overcrowding, the excessive length of proceedings, and deficiencies in judicial independence. In parallel, the newly established Execution Coordinators Network (ExCN)[411] brought together national focal points from all Member States to share best practices and align inter-ministerial strategies. This reflects the acknowledgment that systemic compliance cannot be achieved through legal advice alone but requires sustained political and administrative engagement.

Civil society and National Human Rights Institutions[412] (NHRIs) also played an increasingly visible role in 2024. The number of communications from NHRIs reached a record high of 20 (up from 14 in 2023), while the number of communications from NGOs was of 229, this continued engagement indicates the maturation of a participatory supervision process.

Third-party contributions enhance transparency and frequently provide on the ground insights that would otherwise be missing from purely governmental reporting.

Finally, the distribution of leading case themes and their geographic concentration point to evolving fault lines. Between 2023 and 2024, “private and family life”, “actions of security forces”, and “protection against ill-treatment” remained the three largest single categories (together accounting for around 37 % under the enhanced procedure), while climate change litigation has carved out a distinct, emergent niche.

State by State, Ukraine (14 %), Türkiye (11 %), Romania (11 %) and Italy (9 %) accounted for nearly half of all leading cases under enhanced supervision, underscoring both the conflict-related increase from Ukraine and the post-reform scrutiny of longstanding systemic issues in other States.

[411] The Execution Coordinators Network is a collaborative platform established in 2024, comprising national coordinators from CoE Member States. Its primary purpose is to facilitate the exchange of information, experiences, and best practices related to the implementation of judgments from the ECtHR, thereby enhancing cooperation among Member States and with CoE bodies involved in the execution process.

[412] National Human Rights Institutions are State-mandated bodies, independent from the government, with a broad mandate to protect and promote human rights at the national level. They play a crucial role in monitoring, advising, and reporting on human rights situations within their respective countries.

Taken together, these trends reveal a supervisory ecosystem that is both more demanding, issuing a growing number of structurally focused enhanced procedure judgments, and more collaborative, with the Committee of Ministers, Member States and civil society deepening their dialogues and capacity-building initiatives.

However, the rising backlog of leading cases, the proliferation of WECL judgments and the ongoing delays in implementing action plans suggest that, without additional investment in domestic coordination and political commitment, the discrepancy between Strasbourg's reformist objectives and the practical situation may persist.

3.2.2 African System Trends

In 2024, the African Court on Human and Peoples' Rights continues to navigate a delicate balance between jurisprudential innovation and long-standing political resistance in its enforcement dynamics[413].

In recent years, the Court's revolutionary judgments are hindered by a pervasive phenomenon that scholars have labelled "litigation fatigue[414]", which is particularly evident in the case docket.

Since delivering its first merits judgment in 2013, Tanzania has accounted for the majority of applications, most of which challenge the guarantees of a fair trial within its criminal-justice system. This concentration of repetitive claims not only signals chronic deficiencies in domestic remedies, but also risks overwhelming the Court's procedural capacity, reducing its normative impact and discouraging new applicants from seeking redress.

Moreover, this is a broader pattern of State disengagement.

Several Member States have stopped the implementation process by withholding or delaying legislative amendments, ignoring provisional orders, or declining to report on progress, even when judicial pronouncements carry clear mandates for action. This "poor level of compliance" has prompted human-rights observers to express concern that the Court's very existence may be threatened unless renewed political will can be renewed.

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[413] See African Court on Human and Peoples' Rights, *2024 Status Report on Implementation of Decision Delivered by the African Court*; Tufa G. G., *The African Court on Human and Peoples' Rights: assessing its effectiveness*, 8 African Human Rights Yearbook, 2024; Zenda C., African Court on Human and People's Rights faces uncertain future, Fair Planet, 26 November 2022 and Adjolohoun S. H. and Nantulya P., Why the African Court on Human and Peoples' Rights Matter, Africa Center for Strategic Studies, 8 July 2024 (updated on 10 February 2025)
on which this paragraph is based.

[414] Del Rivero R., Del J. A., & Calcáneo Sánchez A., African human rights system in crisis? Causes and effects of the withdrawal of the declarations that allow individuals and NGOS to submit communications to the african court on human and peoples' rights. *Derecho global. Estudios sobre derecho y justicia*, *9*(27), 2024

The Court's establishment of a dedicated Compliance Monitoring Unit and the launch of an online human-rights training programme for national judges represent efforts to build domestic capacity, framing implementation as a collaborative exercise rather than a coercive imposition.

Civil-society actors and national human-rights institutions have emerged as indispensable partners in this enforcement ecosystem. In contexts where State commitment is half-hearted, NGOs have filed implementation observations, mobilised public awareness and leveraged media scrutiny to pressure reluctant governments. However, the uneven strength and organisation of civil society across the continent means that such bottom-up enforcement varies from one jurisdiction to another, thereby contributing to the Court's combination of compliance success stories and blatant failures.

Technological innovation offers a promising yet under-realised pathway to boost enforcement. While discussions are underway regarding the creation of an interoperable compliance platform that could automate State reporting and flag overdue measures in real time, these remain largely conceptual. In the absence of a unified digital infrastructure, the implementation of monitoring continues to rely on manual reminders and *ad hoc* follow-up missions, which struggle to keep pace with the Court's growing workload.

The Court's current exploration of new areas of jurisprudence, such as environmental protection[415] and the rights of indigenous communities[416], pose acute enforcement challenges. Decisions recognising positive obligations, such as the duty to enact pollution-control measures or guarantee community-land tenure, require comprehensive policy overhauls and sustained inter-ministerial coordination.

However, remedial orders remain are often unimplemented or only partially complied with, in the vast majority of cases, languishing amid competing fiscal priorities and institutional inertia.

Looking ahead, the long-term effectiveness of the Court will depend on its ability to foster a culture of rights compliance within AU Member States.

Incorporating implementation obligations into legislative drafting cycles and national budgeting processes so that continental judgements become regular government commitments rather than exceptional weights will require sustained advocacy across executive, parliamentary, and judicial spheres. Furthermore, the African Union's policy bodies could play a more decisive role in convening regular implementation reviews, linking compliance with political incentives and exploring calibrated sanction-and-incentive frameworks.

[415] *The Matter of Ligue Ivorienne des droits de l'homme (LIDHO) and Others v. Cote d'Ivoire*, 5 September 2023
[416] *African Commission on Human and Peoples' Rights v Republic of Kenya (*Adjournment of compliance hearing*),* 12 November 2024

Without such multi-stakeholder governance arrangements, the Court risks its most ambitious pronouncements vanishing into a catalogue of unmet obligations, which would undermine both its credibility and the broader project of regional human rights protection.

While 2024 finds the African Court more creative and responsive than ever, it also exposes the enduring fragility of the enforcement process in a system where uneven political will and resource constraints continue to impede the translation of judicial mandates into tangible change.

3.2.3 Comparative Overview

A comparative overview of the current enforcement landscapes in the European and African regional human rights systems invites a reflection that goes beyond institutional form and procedural innovation, touching instead the deeper structural, political, and normative peculiarities that shape each system's trajectory.

The increasing procedural sophistication of the European Court of Human Rights, as evidenced by the expansion of enhanced procedures, the formalization of new channels of supervision, and the growing integration of civil society actors, suggests a maturing system that is consciously navigating the tension between legal idealism and bureaucratic pragmatism.

However, despite all its technical refinements, this evolution reveals a paradox: the more the system innovates to manage complexity and scale, the more it risks diluting the intensity of judicial engagement and deferring substantive accountability to diffuse mechanisms of political supervision.

The move from individualized adjudication to managerial justice, while arguably necessary in light of mounting caseloads and systemic violations, it raises important normative questions: to what extent can the authority of a human rights court be preserved when enforcement becomes primarily a matter of compliance metrics, diplomatic dialogue, and institutional coordination?

By contrast, the African Court on Human and Peoples' Rights operates within a more volatile and fragmented legal-political space, where enforcement is less a question of systemic optimization than of existential viability.

The Court's recent emphasis on structural remedies and compliance monitoring tools, including the creation of dedicated units and training platforms, reflects not only a commitment to deepen the impact of its judgments but also an implicit recognition of the fragility of its operating environment.

The very asymmetry between its jurisprudential ambition and its limited institutional reach may explain the selective, often inconsistent patterns of compliance.

But rather than attributing this just to a lack of political will, one might ask whether the African Court's transformative agenda exceeds the capacity of the domestic systems it seeks to influence.

In this sense, the divergence between Strasbourg and Arusha may be less about procedural design than about the underlying political economies of legitimacy and authority: the European system, for all its imperfections, has long benefited from a shared normative consensus around the rule of law and supranational adjudication; the African system, by contrast, operates in a context where sovereignty remains a contested and jealously guarded principle, and where regional cooperation is often critical and fragile.

This divergence invites broader questions about the conditions under which regional human rights systems can meaningfully evolve. Is procedural innovation a function of institutional maturity, or can it be a driving force for structural reform even in less consolidated environments?
Can courts foster compliance through legal creativity and normative persuasion, or does enforcement ultimately depend on the configuration of domestic political incentives?
And above all, what role can and should civil society play in bridging the enforcement gap, not merely as a passive recipient of rights, but as an active agent of legal accountability and institutional transformation?

The European experience suggests that procedural experimentation can reinforce legitimacy when coupled with inclusive dialogue and credible follow-up mechanisms.

The African trajectory, by contrast, suggests that without firm political anchoring, even the most normatively rich jurisprudence risks dissipating into abstraction.

Yet this contrast should not be read as a binary of success and failure, but as a spectrum of institutional experimentation shaped by different historical legacies and governance challenges.

In the final analysis, the comparison between the European and African models underscores a shared conceptual tension: regional human rights courts are called not only to adjudicate violations, but to imagine and construct the normative frameworks within which their authority is accepted, internalized, and reproduced.

The future of enforcement, in both contexts, may depend less on the design of formal procedures than on the ability of these institutions to navigate the changing terrain of legitimacy, to recalibrate their roles in response to political resistance, and to foster a culture of compliance that is not imposed from above, but emerges from inside.

If human rights law wants to remain a meaningful force in an increasingly polarized world, its regional guardians must find ways to reconcile institutional aspiration with contextual realism, to ensure that their judgments are not only heard, but seriously taken in consideration.

3.3. Future Prospects and Challenges

As the European Court of Human Rights and the African Court on Human and Peoples' Rights work towards their shared goal of ensuring respect for human rights, the foundations of their authority are facing new challenges from rising nationalist sentiment and a decline of collective commitment[417].

In Europe, populist movements have exploited migration crises and concerns about sovereignty to portray the Strasbourg Court as an external arbiter that is out of touch with domestic issues[418]. This has inspired Members of Parliament in several States to call for a "reassessment" or even an outright exit from the European Convention on Human Rights[419].

Such debates have real-world consequences: proposals in the UK Parliament[420] and in the German Bundestag[421] suggest that withdrawal, once considered unthinkable, could soon be instrumentally used to regain political control over asylum, security, and criminal justice policy.

However, withdrawing from the Convention would mean abandoning the normative anchor that binds different legal traditions together in a common human-rights framework.

Half-hearted membership, whereby States only accept rulings only they deem satisfactory, would be a Pyrrhic victory as it would erode the Court's broad impact and render it ineffective where it is needed most.

Across Africa, a parallel strain of disillusionment has emerged.

Some Member States, charged with structural execution orders and periodic compliance reporting, have begun to question the value of their Protocol commitments.

The spectre of "dual sovereignty" arguments—that the African Court's mandates infringe upon constitutional prerogatives—has found sympathetic ears in legislative bodies tired of external oversight. Tunisia's[422] limitation of citizens' direct access under Article 34(6) serves as an example of growing impatience with what some political figures dismiss as a supranational interference.

Such moves risk making the Court's jurisdiction illusory in the very jurisdictions where the human-rights violations are most severe.

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[417] Raimondi G., *La Convention européenne des droits de l'homme a 70 ans. C'est l'heure d'une retraite honorable ou d'une nouvelle jeunesse?,* Revue québécoise de droit international, June 2021

[418] Burgorgue Larsen L., *Populism and Human Rights: From Disenchantment to Democratic Riposte*, iCourts Working Paper Series No. 156, 25 February 2019

[419] On 22 May 2025, nine European countries, led by Italy and Denmark, have expressed frustration with how the European Court of Human Rights uses the European Convention on Human Rights to block deportations and they want to see it revised.

[420] McKiernan J. and Francis S., "*UK may have to leave human rights treaty, says Badenoch*", BBC, 25 February 2025

[421] Kottász Z., "German CDU Considers Leaving European Convention on Human Rights", the European, the European Conservative, 10 December 2024

[422] Bassel J. and Ikechukwu, " *#TunisiaExit – Unpacking Tunisia's Restriction on Citizens' Access to the African Court*", Robert F. Kennedy Human Rights, 14 May 2025

Ultimately, the enduring relevance of regional human-rights adjudication depends on its ability to reconcile State sovereignty with collective accountability.

In an era of resurgent nationalism, the notion that all individuals possess inalienable rights is fundamental to the legitimacy of supranational courts.

In order to safeguard these institutions, Member States must reaffirm their commitment, not as act of concession to an external authority, but as a strategic investment in stability and rule of law. Only by resisting the temptation to withdraw, guarding against procedural abuse and reimagining enforcement for the complex twenty-first century can the European and African Courts secure their place as indispensable guardians of human dignity in the decades to come.

3.3.1 Potential Developments in Enforcement Mechanisms and Recommendation

The execution of judgments remains the most fragile point in the architecture of regional human rights adjudication. As this thesis tried to demonstrate, both the European Court of Human Rights and the African Court on Human and Peoples' Rights struggle, yet in different ways and for different reasons, to ensure that their judgments lead to meaningful and timely change at domestic level[423].

In Europe, non-compliance often takes the form of delayed or partial implementation, particularly in sensitive political cases or those requiring structural reforms.

In Africa, the problem is more acute: a large number of judgments are either ignored or openly opposed, especially by States that reject supranational oversight as an intrusion into their sovereignty.

These challenges point to a shared imperative for innovation.

Reinforcing the enforceability of judgments is not merely a technical issue, it is a matter of legitimacy, both for the courts themselves and for the broader regional systems they inhabit.

In the European context, the execution of judgments is formally entrusted to the Committee of Ministers, but the efficacy of this system is increasingly being disputed.

The Committee of Ministers often refrains from adopting coercive measures due to concerns about political backlash, thereby leaving enforcement to moral persuasion and peer pressure. Proposals for financial sanctions, such as daily fines for persistent non-compliance, have been discussed for decades but never fully implemented.

However, the principle underpinning these suggestions remains valid: in cases of systematic obstruction or unreasonable delay, the European system must consider a calibrated shift from

[423] See Gryazin N., *Four ways to strengthen the enforcement of the judgments of the European Court of Human Rights*, European Leadership Network, 11 May 2023 and Sibanda E., *An Analysis of the Execution of Judgments and Follow-up Mechanism Under the African Court on Human and Peoples' Rights: Lessons from the European Human Rights System*, South African Yearbook of International Law Vol.44, 2019 on which this paragraph is based

dialogue to deterrence. One way forward could involve empowering the Court itself, rather than the Committee of Ministers, to order financial penalties in exceptional cases. This would reduce the perception of politicisation and ensure that such sanctions remain grounded in judicial authority.

Another path for reform lies in reconceptualising certain Convention rights as belonging to the category of *jus cogens* norms. If interpreted as peremptory standards of international law, core rights (such as the prohibition of torture, slavery, or arbitrary detention) would no longer be subordinated to domestic constitutional arrangements or claims of sovereign discretion.

This would have the legal effect of elevating ECtHR judgments on these issues above ordinary treaty obligations, thereby increasing pressure on States to comply.

While this move raises delicate questions of legal hierarchy, it would affirm that certain fundamental rights must be respected without exception, and that failure to execute judgments on these points constitutes a breach not only of the Convention but of the international legal order itself.

Public pressure also remains a valuable, but underutilised, enforcement tool.

While the Council of Europe has made progress in encouraging parliamentary scrutiny and civil society engagement, the system lacks the visibility and resonance necessary to mobilise domestic constituencies. Strengthening the practice of "naming and shaming" through interim resolutions, thematic compliance reports, and public hearings within the Committee of Ministers (especially for recalcitrant States) could generate internal political costs that governments are less willing to bear.

Moreover, enhancing civic education about enforcement mechanisms would allow national populations to hold their governments accountable not only for human rights violations but for failures in implementing supranational decisions.

Turning to the African Court, potential developments in enforcement mechanisms must contend with a radically different institutional and political landscape.

Currently, the AfCtHPR existing follow-up system lacks coherence, predictability, and institutional backing. Reports of non-compliance are submitted to the African Union's Executive Council, but no automatic consequences follow. In practice, enforcement depends on the goodwill of political actors who often share a disinclination to criticise their peers.

The doctrine of non-interference, still strong in AU institutions, reinforces this inertia.

Any effort to improve the African Court's effectiveness must therefore begin with the political organs of the African Union. One concrete proposal would be to amend the Protocol establishing the Court to introduce a clear system of sanctions for non-compliance, including the possibility of financial penalties, suspension of AU voting rights, or ineligibility for AU leadership positions.

In parallel, a shift in institutional culture is needed.

The African Court could borrow from the ECtHR's use of pilot judgments to address systemic problems. By grouping repetitive cases under a single leading decision and ordering structural remedies with clear timelines, the Court could reduce its caseload while increasing its influence over national policy. Furthermore, the issuance of second judgments against states that fail to comply with earlier rulings would underscore that non-execution is not without legal consequences.

To this end, the African Court must also develop a stronger jurisprudence on remedial measures, explicitly defining what compliance entails and which domestic actors bear responsibility for its implementation.

A digital compliance platform, shared across regional and sub-regional African mechanisms, could also play a catalytic role. Modelled on emerging systems in Strasbourg, such a platform could track the status of judgment execution, highlight best practices, and allow real-time updates on national action plans. Crucially, it could be integrated with domestic ministries and national human rights institutions, thereby lowering bureaucratic friction and enhancing coordination.

This would also permit civil society organisations to monitor and advocate for implementation based on accessible, reliable data.

Finally, deeper trans-regional cooperation holds significant promise.

Regular exchanges between registries, coordinated judicial trainings, and the publication of comparative enforcement guidelines could foster cross-fertilisation of strategies. As both the ECtHR and AfCtHPR confront similar challenges—although in distinct forms—there is much to be gained from a deliberate dialogue between the two institutions.

A joint framework for enforcement innovation, endorsed by both the Council of Europe and the African Union, could signal a shared commitment to the idea that human rights courts must be not only interpretive bodies but engines of real-world transformation.

These reflections on potential developments in enforcement mechanisms bring to a close the broader inquiry carried out in this chapter.

From the gradual evolution of procedural reforms to the more ambitious propositions for digital monitoring, judicial sanctioning, and trans-regional cooperation, what emerges is a shared struggle to bridge the normative ambitions of regional human rights courts with the realities of domestic political inertia.

The comparison has highlighted how Strasbourg and Arusha, though operating under distinct historical and institutional conditions, face common structural impediments when it comes to transforming legal judgments into concrete change.

It has also demonstrated that enforcement cannot be understood merely as a matter of follow-up, but must be seen as a continuous and politically embedded process of negotiation between supranational authority and national sovereignty.

If these courts are to remain credible and effective actors in the protection of human rights, they must cultivate not only stronger tools of supervision, but also deeper legitimacy and broader societal engagement. This chapter has argued that while the enforcement gap is a persistent challenge, it is not a static one. It is open to creative, institutional responses that can draw from mutual learning and from a more integrated approach to regional human rights governance.

The road ahead will be neither short nor smooth, but the imperative is clear: without a serious commitment to closing the gap between judgment and implementation, the transformative promise of regional human rights courts risks being undermined at its most crucial point—where principles are meant to meet the lived experience of individuals.

Conclusion

This thesis's goal is to examine how regional human rights courts translate legal norms into enforceable obligations, and what determines the effectiveness of their judgments.

Through a comparative inquiry into the European Court of Human Rights and the African Court on Human and Peoples' Rights, it has demonstrated that while both institutions share a foundational mandate to protect human dignity and fundamental freedoms, their respective enforcement capacities are shaped by a combination of institutional architecture, procedural design, and political context.

The research has shown that although the ECtHR benefits from a well-developed monitoring mechanism anchored in the Committee of Ministers of the Council of Europe, it nevertheless fights with persistent compliance gaps, especially in politically sensitive or structurally complex cases.

Conversely, the AfCtHPR, despite its progressive and ambitious jurisprudence, remains significantly constrained by limited State ratification, narrow access under Article 34(6) of its Protocol, and the absence of an enforcement body with coercive authority.

The thesis has engaged with these dynamics through a three-way methodology.

First, it reconstructed the historical and legal contexts in which the two Courts emerged and operate, highlighting their procedural frameworks and supervisory mechanisms.

Second, it conducted a detailed analysis of six landmark cases—three per Court—to assess how implementation is influenced by institutional practices and national receptiveness.

Finally, it integrated current trends, including recent activity reports and evolving enforcement challenges, to critically assess each Court's trajectory and capacity for reform.

The comparative lens adopted has underscored not only the divergences between the two systems but also their potential complementarity. While the ECtHR illustrates the strengths of institutional maturity and procedural efficiency, the AfCtHPR exemplifies an integrated vision of civil, political, economic, and collective rights that well resonates with the different realities in Africa.

This research could be relevant not only as a contribution to the comparative literature on regional human rights systems but also as a critical reflection on the normative and practical underpinnings of legal effectiveness.

By focusing on enforcement—the often-overlooked final phase of the adjudication cycle—it reaffirms that the legitimacy and impact of regional courts cannot be measured merely by the volume or quality of their jurisprudence, but by their ability to catalyse compliance, redress harm, and influence States behaviour.

The empirical findings, while limited to six case studies, point to a broader reality: legal decisions, however sound, risk remaining symbolic unless States internalise their obligations and adopt concrete measures in response.

At the same time, enforcement does not occur in a void; it is mediated by political will, civil society mobilisation, judicial dialogue, and regional diplomatic incentives.

A purely legalistic approach cannot fully account for these variables, and this thesis acknowledges its limitations in that respect. The absence of empirical interviews with practitioners, for instance, may have left certain practical dimensions underexplored. Nevertheless, by triangulating legal analysis with institutional reports and a cross-jurisdictional reading of case law, this work offers a comprehensive and coherent account of how regional enforcement operates—and why it sometimes vacillates.

Future research could meaningfully extend this inquiry in several directions.

Comparative analysis involving the Inter-American Court of Human Rights could illuminate additional strategies for promoting compliance, such as the practice of holding public compliance hearings or issuing detailed orders for reparation.

Longitudinal studies would be particularly valuable in tracking whether either Court introduces reforms to enhance the effectiveness of its judgments in response to geopolitical, technological, or normative shifts. More importantly, a practice-oriented approach—through interviews, fieldwork, or collaboration with domestic implementing actors—could shed light on how judgments are received, contested, or translated at the national level, thereby bridging the gap between institutional design and lived experience.

Ultimately, while this thesis does not offer a concrete solution to the enforcement puzzle, it affirms that the authority of regional human rights courts rests on more than their interpretative

excellence: it depends on their capacity to inspire trust and adapt to the evolving terrain of global human rights.

In a world where the normative consensus around human rights is increasingly contested, regional courts remain among the most powerful instruments for ensuring that legal commitments translate into real protections. Their resilience will depend not only on doctrinal clarity, but on their readiness to innovate, engage, and assert that justice is not an abstract promise, but a tangible right—meant to be realized, not merely proclaimed.

Conclusion

L'objectif de ce mémoire est d'examiner comment les cours régionales des droits de l'homme traduisent les normes juridiques en obligations exécutoires, et quels sont les facteurs qui déterminent l'efficacité de leurs arrêts.

À travers une analyse comparative de la Cour européenne des droits de l'homme (CEDH) et de la Cour africaine des droits de l'homme et des peuples (CADHP), il a été démontré que, bien que les deux institutions partagent un mandat fondamental de protection de la dignité humaine et des libertés fondamentales, leurs capacités respectives d'exécution sont façonnées par une combinaison d'architecture institutionnelle, de conception procédurale et de contexte politique.

La recherche a révélé que, malgré un mécanisme de suivi bien développé ancré dans le Comité des Ministres du Conseil de l'Europe, la CEDH continue de faire face à des lacunes persistantes en matière de conformité, en particulier dans les affaires politiquement sensibles ou structurellement complexes.

À l'inverse, la CADHP, malgré une jurisprudence ambitieuse et novatrice, demeure considérablement limitée par un faible taux de ratification étatique, un accès restreint en vertu de l'article 34(6) de son Protocole, et l'absence d'un organe d'exécution doté d'un pouvoir contraignant.

Le mémoire a abordé ces dynamiques selon une méthodologie en trois volets. Premièrement, il a reconstruit les contextes historiques et juridiques dans lesquels les deux cours ont émergé et opèrent, en mettant en lumière leurs cadres procéduraux et leurs mécanismes de supervision.

Deuxièmement, il a conduit une analyse détaillée de six arrêts emblématiques — trois pour chaque cour — afin d'évaluer dans quelle mesure l'exécution est influencée par les pratiques institutionnelles et la réceptivité nationale.

Enfin, il a intégré les tendances actuelles, y compris les rapports d'activité récents et les défis émergents en matière d'exécution, pour évaluer de manière critique la trajectoire de chaque cour et sa capacité de réforme.

L'approche comparative adoptée a mis en évidence non seulement les divergences entre les deux systèmes, mais aussi leur complémentarité potentielle.

Tandis que la CEDH illustre les atouts d'une maturité institutionnelle et d'une efficacité procédurale éprouvées, la CADHP incarne une vision intégrée des droits civils, politiques, économiques et collectifs, qui résonne fortement avec les réalités sociétales africaines.

Cette recherche peut s'avérer pertinente non seulement en tant que contribution à la littérature comparative sur les systèmes régionaux de protection des droits de l'homme, mais aussi comme réflexion critique sur les fondements normatifs et pratiques de l'efficacité juridique.

En mettant l'accent sur l'exécution — phase finale souvent négligée du cycle juridictionnel — elle réaffirme que la légitimité et l'impact des cours régionales ne peuvent être mesurés uniquement à l'aune du volume ou de la qualité de leur jurisprudence, mais bien à travers leur capacité à susciter la conformité, à réparer les préjudices et à influencer le comportement des États.

Les résultats empiriques, bien que limités à six études de cas, pointent vers une réalité plus large : les décisions de justice, aussi bien fondées soient-elles, risquent de demeurer symboliques si les États ne s'approprient pas leurs obligations et ne prennent pas de mesures concrètes en réponse.

En même temps, l'exécution ne se produit pas dans un vide ; elle est médiée par la volonté politique, la mobilisation de la société civile, le dialogue judiciaire et les incitations diplomatiques régionales.

Une approche strictement légaliste ne saurait rendre pleinement compte de ces variables, et ce mémoire reconnaît ses limites à cet égard. L'absence d'entretiens empiriques avec des praticiens, par exemple, a pu laisser certaines dimensions pratiques sous-explorées.

Néanmoins, en croisant l'analyse juridique, les rapports institutionnels et une lecture inter-juridictionnelle de la jurisprudence, ce travail propose un tableau à la fois cohérent et approfondi de la manière dont s'opère l'exécution régionale — et des raisons pour lesquelles elle vacille parfois.

Les recherches futures pourraient prolonger utilement cette enquête selon plusieurs axes. Une analyse comparative intégrant la Cour interaméricaine des droits de l'homme permettrait d'éclairer d'autres stratégies de promotion de la conformité, telles que la tenue d'audiences publiques de suivi ou l'émission d'ordres de réparation détaillés.

Des études longitudinales seraient particulièrement précieuses pour observer si l'une ou l'autre des deux cours introduit des réformes destinées à renforcer l'effectivité de ses arrêts face à des évolutions géopolitiques, technologiques ou normatives.

Plus encore, une approche orientée vers la pratique — à travers des entretiens, du travail de terrain, ou des partenariats avec les acteurs nationaux chargés de la mise en œuvre — pourrait éclairer la

manière dont les arrêts sont reçus, contestés ou traduits dans les pratiques nationales, comblant ainsi l'écart entre conception institutionnelle et expérience vécue.

En définitive, bien que ce mémoire ne propose pas de solution préétablie au défi de l'exécution, il affirme que l'autorité des cours régionales des droits de l'homme repose sur bien plus que leur excellence interprétative : elle dépend de leur capacité à inspirer la confiance et à s'adapter à l'évolution du paysage mondial des droits humains.

Dans un monde où le consensus normatif sur les droits de l'homme est de plus en plus contesté, les cours régionales demeurent parmi les instruments les plus puissants pour garantir que les engagements juridiques se traduisent en protections effectives.

Leur résilience dépendra non seulement de leur clarté doctrinale, mais aussi de leur volonté d'innover, de dialoguer, et d'affirmer que la justice n'est pas une promesse abstraite, mais un droit concret — destiné à être réalisé, et non simplement proclamé.

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