

The background of the entire page is a photograph of the European Court of Human Rights courtroom. At the top, a blue banner displays the court's name in both English and French: "EUROPEAN COURT OF HUMAN RIGHTS" and "COUR EUROPÉENNE DES DROITS DE L'HOMME". Below the banner, several blue chairs are arranged at a long wooden desk. In the center, a small monitor is visible. The wall behind the chairs features the court's logo and the European Union flag. The bottom of the page is decorated with a blue carpet and two yellow stars.

EUROPEAN COURT OF HUMAN RIGHTS COUR EUROPÉENNE DES DROITS DE L'HOMME

AZERBAIJAN'S IMPLEMENTATION OF EUROPEAN COURT JUDGEMENTS

A Report on Improving the Implementation of European
Court of Human Rights Judgments against Azerbaijan

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INTRODUCTION

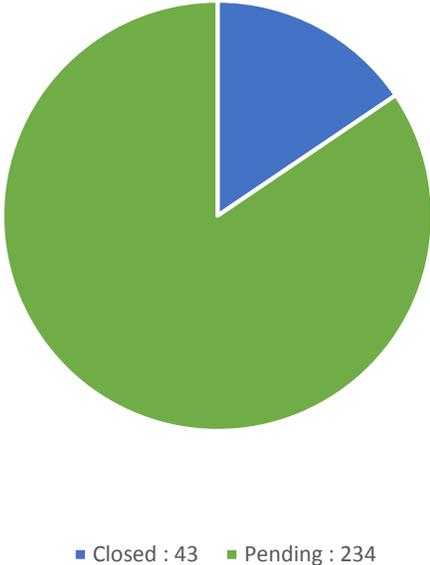
In 2007, the first judgment of the European Court of Human Rights against Azerbaijan (“European Court”) became final.ⁱ Between then and the beginning of February 2021, there have been 277 final judgments delivered against Azerbaijan.ⁱⁱ Unfortunately, Azerbaijan has failed to implement the overwhelming majority of these final judgments. Only 15% (43) of these cases have been considered implemented and closed, leaving 85% (234) still pending.ⁱⁱⁱ

Noncompliance with European Court judgements has been a prominent issue for Azerbaijan in the Council of Europe (“COE”), the institution under which the Court is constituted. In December 2017, the COE launched infringement proceedings for the first time in its history against Azerbaijan for the government’s failure to implement the decision in the case of *Ilgar Mammadov v. Azerbaijan*.^{iv} Although the infringement proceedings were dropped in September 2020 after Azerbaijan’s high court quashed Mammadov’s conviction and ordered reparations, this case remains a special one and Azerbaijan’s implementation remains poor.

This report provides an overview of the European Court and the COE’s judgment enforcement system and analyzes how Azerbaijan has implemented judgments. First, the report surveys Azerbaijan’s

progress in implementing judgments. Second, the report describes the Court’s general enforcement mechanism and procedures for stakeholder engagement in the process. Finally, it reviews how advocates and civil society have historically engaged in the implementation process, and it provides recommendations for how advocates and stakeholders can engage with the enforcement process in the future to promote better implementation of judgments

Unimplemented Judgments
Against Azerbaijan in the European Court



HOW THE EUROPEAN COURT TRACKS JUDGEMENTS

There are a substantial number of cases submitted to the European Court every year by petitioners from its 27-member states. The Council of Europe has developed a system for classifying and prioritizing different judgements. The primary categorization that the Council of Europe employs to track judgements is that of “leading” and “repetitive” cases.

Leading Cases

Leading cases are those with judgments finding violations that reflect a new significant or systemic problem in a member state. Each Leading judgment represents a persistent human rights issue that needs resolution beyond the facts of the individual case and the specific violation of human rights law made against the member state.

For a Leading case to be “closed”, meaning it has been considered sufficiently implemented, the State must both remedy the injuries of the applicant as ordered by the Court and make systemic changes to end the persistent or significant human rights abuses.

Repetitive Cases

Repetitive cases are those that address an issue either specific to the case of the petitioner or a case that reflects an issue that has already been raised in a Leading case previously considered.

For a repetitive case to be closed, the State need only remedy the injuries of the applicant as ordered by the Court.

In addition to leading and repetitive cases, another important type of case that the Court monitors is friendly settlements.

Friendly Settlements

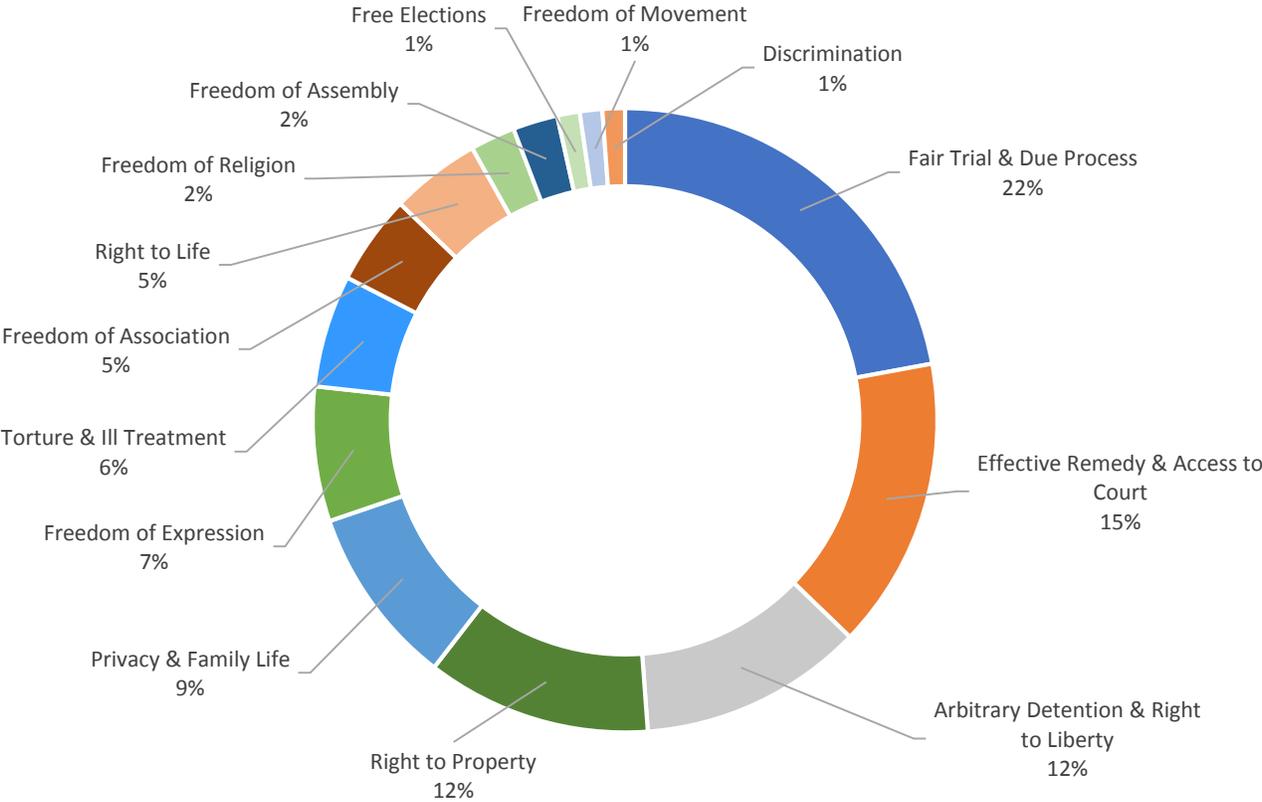
Friendly settlements are negotiated settlements between the parties who have a case pending before the European Court. If, prior to a case’s adjudication before the European Court, the parties seek to settle a case by agreeing on terms for resolution of the dispute, the European Court may employ its “friendly settlement” procedure which allows it to strike the case from its docket. The European Court may only strike out the case if the Court is satisfied that the agreement conforms to the principles of the European Convention of Human Rights, the treaty whose provisions under consideration by the Court.

Leading cases, repetitive cases, and friendly settlements make up all of the judgements that the court issues against a State. The Council of Europe’s Committee of Ministers (“CM”), which is a body composed of the Ministers of Foreign Affairs from each member state, is responsible for tracking States’ progress in implementing all three of these types of judgments.

Overview of Violations Against Azerbaijan

Because leading cases concern matters of systemic human rights violation in a country, these cases collectively represent a relatively thorough cross-section of the prominent human rights issues prevalent in a country. Below is a chart identifying the relative frequency that various human rights violations appear in leading judgements against Azerbaijan.

Violations by Issue Area in Leading Judgements



Noticeably, violations stemming from the judiciary and criminal justice system, such as those concerning *Fair Trial & Due Process* and *Effective Remedies & Access to Courts*, account for 50% of the Court’s leading cases from Azerbaijan. Moreover, regarding issue area, there is a high frequency of violations concerning the rights to liberty and property, respectively.

Below are a selection of notable cases that raise many of the most frequent human rights issues but that appear not to have yet benefited from any stakeholder engagement.

Hajibeyli and Aliyev v. Azerbaijan (6477/08, 10414/08)

This case concerns Annagi Bahaduroglu Hajibeyli and Intigam Kamilougu Aliyev, who are Azerbaijani lawyers and civil society activists that were denied admission to the Azerbaijani Bar Association because, as the applicants alleged, they both publicly criticized the state of the legal profession in the country. In 2005 the applicants applied for admission to the Bar under a new law which aimed at reforming the legal profession. At the time they had been practicing as lawyers for a number of years on the basis of a special permit issued by the Ministry of Justice. As such, they were allowed under transitional provisions of the new law to be admitted to the Bar without passing a qualification examination, subject to their complying with the requirements to practice as legal counsel. However, the Presidium of the Bar dismissed their applications. They brought proceedings before the domestic courts in the following years, without success.

In April 2018, the European Court found that the applicants' allegations had merit and that the denial of bar admission on the basis of their public criticisms of the Government amounted to a violation of the right to freedom of expression. Furthermore, with respect to Mr. Hajibeyli, the European Court found that the Government's seizure of his application to petition the European Court from his office in Azerbaijan in the months leading up to his filing the petition amounted to a breach of his right of individual petition.

In term of just satisfaction, the European Court ordered that both

applicants be paid 7,000 and that Mr. Hajibeyli be paid an additional 2,500. Both individuals have received some compensation from the Government. However, it is unclear about whether full payment has been made. With respect to other measures, the European Court did not indicate any other individual or general measures, which leaves discretion to the Government and Committee of Ministers to determine the appropriate additional implementation measures. Because the Court found that the Bar Association's denial of membership to the applicants amounted to a violation of the right to freedom of expression, it follows that additional individual measures are in order, in terms of granting the applicants admission to the Bar Association, or at minimum, granting a reconsideration of the applicants' admission to the Bar.

In terms of additional general measures, the Court specifically calls the Government's attention Recommendation R (2000) 21 of the Council of Europe's Committee of Ministers to member States on the freedom of exercise of the profession of lawyer, which clearly stated that lawyers should enjoy freedom of expression and that decisions concerning access to the profession should be subject to review by an independent and impartial judicial authority.^v Accordingly, appropriate general measures would include further legislative reform of regulation of the practice of lawyers that complies with the above-mentioned recommendation, particularly with regard to freedom of expression and review by independent tribunals.

Mirgadirov v. Azerbaijan (No. 62775/14)

This case concerns Rauf Habibula oglu Mirgadirov who is a prominent Azerbaijani journalist that was tried and convicted of high treason for allegedly providing secret information to Armenian agents. He was held in detention pending trial from April 2014 until his conviction in December 2015 by the Baku Court of Serious Crimes, which sentenced him to six years' imprisonment. In March 2016 the Baku Court of Appeal suspended the sentence for five years and he was released the same day. While in pre-trial detention various restrictions were placed on the applicant, including the right to use the telephone, and to meet or correspond with anyone other than his lawyers. The domestic courts rejected his appeals against his pre-trial detention and the restrictions.

In reviewing this case, the European Court in September 2020 held that the government violated Mr. Mirgadirov's right to liberty for detaining him without reasonable suspicion of having committed a crime and for holding him for 16 hours without a court order, as well as for failing to provide adequate review of his detention by domestic courts. The European Court also found that press statements issued by the government during investigation of Mr. Mirgadirov's case violated his right to a presumption of innocence. Lastly, and most notably, the European Court found that the government's restriction on Mr. Mirgadirov's access to receive socio-political publications while in detention and on his access to have telephone calls, correspondence, and visits violated his rights to respect for his private and family life and correspondence.

In terms of individual measures, the European Court ordered that Azerbaijan pay Mr. Mirgadirov 20,000 euros with respect to non-pecuniary damages. As Mr. Mirgadirov was released at the time of his judgement there was no additional individual measures mentioned.

In terms of general measures, the European Court did not identify or recommend specific general measures for Azerbaijan to take. As a result, it is incumbent upon the Committee of Ministers and the Government of Azerbaijan to determine the appropriate changes to prevent similar cases from occurring in the future.^{vi} The violations related to the right to liberty and pre-trial detention are repetitive of earlier violations found in Farhad Aliyev v. Azerbaijan (37128/06), and accordingly the general measures identified in that case would apply here. The general measures identified in that case involved, among others, implementing a new law on the rights of individuals kept in detention facilities, which occurred in February 2013. As Mr. Mirgadirov's case occurred after the purported implementation of measures intended to satisfy the general measures outlined in the Farhad Aliyev case, there is still space for improvement with respect to preventing similar pre-trial detention violations. Currently, the Committee of Ministers is awaiting an action plan that addresses the status of effect of the new law and its impacts on cases like Mr. Mirgadirov's. Accordingly, Mr. Mirgadirov's case is a good example of how progress in improving the rights of those held in pre-trial detention are still deficient in Azerbaijan and how the government has failed to adequately implement general measures on this issue.

Additionally, Mr. Mirgadirov's case is a leading case with respect to the violations raised concerning the right to privacy. As a result, Azerbaijan, in consultation with the Committee of Ministers, will be required to develop measures to improve access to information and family for those held in

detention. Although it is not clear what changes will be settled on by the Government, the changes will likely involve either legislative or prison policy changes that guarantee a certain baseline of access for detainees/

[Aslan Ismayilov v. Azerbaijan \(18498/15\)](#)

This case concerns Aslan Ziyaddin Oglu Ismayilov, who is an Azerbaijani lawyer who was disbarred following a complaint about his professional behavior. In February 2013, after a dispute in a judge's office, the judge requested that the Azerbaijan Bar Association examine the applicant's behavior. The judge said the applicant had unlawfully requested the return of documents submitted to the court after the end of a court hearing, had unlawfully entered his office, and had insulted and threatened him. The Bar Association Disciplinary Commission referred the complaint to the Association's Presidium, finding, among other things, that he had unlawfully entered the judge's office to ask for the return of the documents submitted to the court and had insulted and threatened the judge. At the trial proceedings on the matter of his disbarment, the trial court decided that disbarment was appropriate, despite the testimony of the only third-party eye witness, who claimed that the applicant did not insult or threaten the judge who filed the complaint.

evidence and, moreover, failed to provide adequate justification for not considering the evidence. The European Court did not order any just satisfaction in the case due to a filing error by the application. With respect to general measures, the Azerbaijan has yet to settle on appropriate measures to ensure violations like Mr. Ismayilov's do not occur in the future. The adopted measures will likely involve circulation of the European Court decision among lawyers and judges in Azerbaijan and potentially reform of the disbarment procedure for lawyers. The Committee of Ministers has identified Mr. Ismayilov's case as a leading case with respect to the matter of the right to a fair trial in disbarment proceedings, which makes this case a key judgment concerning the disbarment of lawyers in Azerbaijan.

For the purposes of monitoring, the Committee of Minister has grouped Mr. Ismayilov's case together with two other cases concerning wrongful disbarment, namely *Namazov v. Azerbaijan (74354/13)* and *Bagirov v. Azerbaijan (81024/12)*.

In March 2020, the European Court held that the Government violated Mr. Ismayilov's right to a fair trial when the trial court failed to consider the applicant's

Assessing Implementation by Judgment Type

To better understand the Azerbaijan government's progress in implementing judgments, we can separate the closed and pending cases by type (Leading, Repetitive, or Friendly Settlement), as done in the graphic below. Of the 43 closed cases, 23 are friendly settlements—a friendly settlement may be closed following the fulfillment of negotiated terms between parties rather than the fulfillment of a Court-imposed judgment.^{vii} Consequently, only 20 cases with typical Court-imposed judgments have been closed. Of the fully executed judgments, only 5 are leading cases, while 15 are repetitive cases.

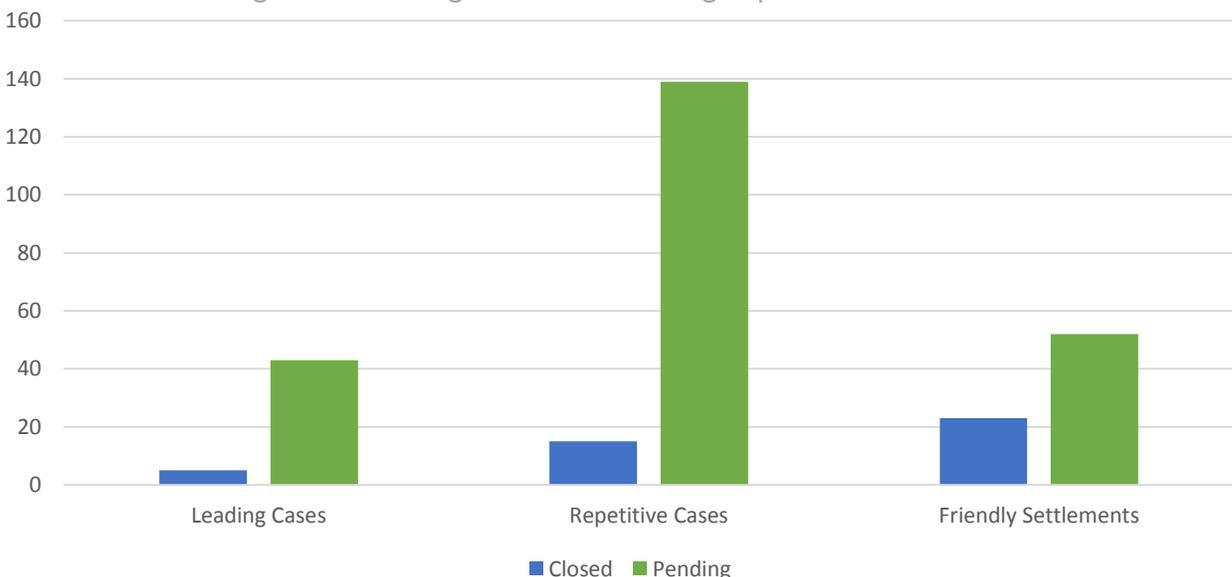
Of the 234 pending cases, 52 are friendly settlements, leaving a total of 182 judgements issued by the European Court without any satisfaction. Of those 182, leading cases make up 43 of those

judgements, and repetitive cases make up the remaining 139. The following chart illustrates Azerbaijan's progress in implementing each type of case.

The chart below reveals that friendly settlements, despite representing a small proportion of total cases, are the largest type of closed case against Azerbaijan. The disproportionate implementation of friendly settlements might be explained, in part, by Azerbaijan playing a role in negotiating the remedial terms of friendly settlements, while the remedial terms of other types of judgements are imposed unilaterally, without negotiation, by the European Court. In other words, the government of Azerbaijan is more willing or able to comply with remedies for human rights violations that the government itself plays a role in negotiating. Nevertheless, if the

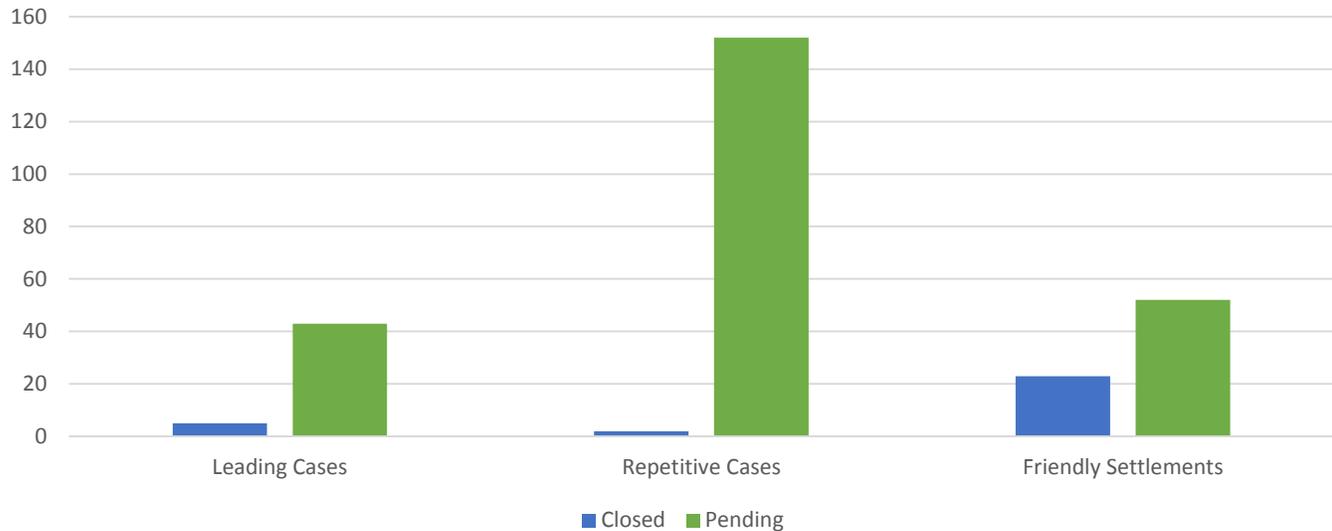
Closed Versus Pending Cases by Type

Using CM's Counting Method for Closing Repetitive Cases



Closed Versus Pending Cases by Type

Adjusted for Repetive Cases with Unimplemented General Measures



government’s engagement in the process of negotiating terms does contribute to the likelihood of implementation, that contribution must be limited, when considered alongside the number of unimplemented friendly settlements, which is more than double in number.

The Council of Europe’s data shows that Azerbaijan implements leading and repetitive cases at approximately the same rate. The above indicates that Azerbaijan has fully implemented around 11.6% of the leading cases and about 10.8% of repetitive cases. However, the Council of Europe’s methods for counting closed cases have come under criticism for failing to provide a complete picture of case implementation.^{viii} As described above, the conditions that the Council of Europe applies to determine whether a judgment has been satisfied—and consequently whether a case should be closed—depends upon whether the case is classified as leading or repetitive. For the CM to close a leading case, all aspects of the

judgement must be satisfied, including payment of any monetary reparations, implementation of individual measures specific to the petitioners, and implementation of any general measures relating to structural changes. However, the CM may close repetitive cases when individual measures and just satisfaction have been executed, even when the general measures identified in the case have not been addressed. The CM will hold only the leading case open until the general measures have been resolved. Thus, even though the CM has closed these cases, there are still outstanding general measures in connection to these cases that have yet to be implemented.

If repetitive cases were held open until the general measures identified in those petitions were satisfied—*i.e.* until the corresponding general measures in the leading case were satisfied—there would be significantly fewer closed repetitive cases. Indeed, only 2 of the 15 closed repetitive

cases have had the general measures identified in those cases satisfied.^{ix} The remaining 13 cases have been closed without Azerbaijan addressing the underlying human rights issue that the Court ordered Azerbaijan to remedy. If those 13 cases were treated as still pending due the lack of implementation of the general measures, the above chart would look like the following.

Under the chart on the preceding page, only a total of 7 judgements, excluding friendly settlements, have been fully implemented by Azerbaijan. Although this is a very small number to extrapolate from, a

large majority of closed cases (5 of the 7) are leading cases. This is a surprising result partly because there is more than three times as many repetitive cases as there are leading ones. One possible explanation for this discrepancy is that because leading cases are usually the first and most prominent case to be decided on an issue, there is more political pressure on Azerbaijan to close these cases as compared to repetitive cases. If this is correct, it would demonstrate that political and public relations pressure is a factor in achieving implementation of European Court judgments against Azerbaijan.

OVERVIEW OF IMPLEMENTATION PROCEDURE FOR EUROPEAN COURT JUDGMENTS

When the European Court renders a judgement on a case, the case is then transferred to the Committee of Ministers (“CM”), which supervises the implementation of the judgment. The CM meet four times per year to review implementation of the Court’s judgments, and its work is supported by its own Secretariat in addition to the COE’s Department of Execution of Judgments (“DEJ”). The DEJ directly oversees the execution of judgments, both advising and assisting the CM and supporting member states to achieve effective and prompt execution of judgments.^x

Standard Versus Enhanced Supervision

Cases transferred to the CM for supervision are classified for review under either “standard supervision” or “enhanced supervision.” The difference between standard and enhanced supervision is the level of involvement necessitated by the CM. The CM actively monitors cases under enhanced supervision by reviewing them at quarterly CM Human Rights Meetings. In contrast, cases under standard supervision

are primarily monitored by the DEJ. Enhanced supervision is usually recommended for cases requiring urgent individual measures, pilot judgments,^{xi} judgments disclosing major structural or complex problems, and interstate cases.^{xii} At any time during this process, the CM may reclassify a case from standard supervision to enhanced supervision at the request of member states or the DEJ. Injured parties,

NGOs, and National Human Rights Institutions (“NHRIs”) may also request that

Action Plans

As soon as possible and no later than six months after a judgment becomes final, the respondent state is required to provide the CM with an action plan describing how it intends to implement the judgment. Action plans are expected to include the specific

Closing Cases

When a respondent state has completed all the measures in their action plan, the respondent state may submit an Action Report to the CM, requesting that it close the case. If the CM determines that the judgment has been fully executed, it will close the case by issuing a final resolution.^{xiv}

Alternatively, if a respondent state refuses to abide by a final judgment, the CM is empowered to instigate infringement proceedings against the respondent state under Article 46(4) of the Convention.^{xv} Infringement proceedings allow the CM to refer to the Court the question of whether the respondent state has failed to fulfill its obligation to execute a judgment. To initiate infringement proceedings, the CM must adopt an interim resolution to refer the case by a two-thirds majority vote and formally notify the respondent state of the referral six months in advance.^{xvi} If the Court finds that the respondent state has failed to execute the judgement, it will refer the case back to the CM for consideration of the measures to

a case be subject to enhanced supervision procedures.^{xiii}

steps that a respondent state will take as well as a timeline for when those actions will be completed. Action plans are not intended to be static documents, but rather regularly updated by respondent states, especially in the event of developments.

be taken.^{xvii} These measures could include interim resolutions, suspension of the respondent state’s voting rights, or expulsion from the Council of Europe.^{xviii}

Notably, the COE launched infringement proceedings for the first time in its history in December 2017 in a case against Azerbaijan, *Ilgar Mammadov v. Azerbaijan*.^{xix} After referring the case to the European Court, the Court found in May 2019 that Azerbaijan failed to comply with its obligation to abide by the judgement in Mammadov’s case. Following the European Court’s decision concerning Azerbaijan’s failure to implement the case, Azerbaijan’s high court reexamined Mammadov’s case, quashed his conviction, and ordered reparations. As a result, the COE closed its infringement proceedings against Azerbaijan without the need to take additional punitive measures, such as suspension of Azerbaijan’s voting rights, or similar action.

STAKEHOLDER PARTICIPATION IN COUNCIL OF EUROPE IMPLEMENTATION MONITORING

Stakeholders, including injured parties and their legal advisers, NGOs, NHRIs, and international organizations, can engage in the Council of Europe Implementation and monitoring process in multiple ways. The most direct procedure for stakeholder intervention is established under Rule 9 of the CM Rules, which allows stakeholders to submit formal, written communications to the CM.^{xx} Rule 9 lays out separate conditions for intervention depending on the stakeholder making the intervention. The various stakeholders and their right to submission are described in the following sections.

Injured Parties (Rule 9.1)

Injured parties may only submit communications concerning the implementation of individual measures and the payment of just satisfaction. Communications concerning the payment of just satisfaction must be submitted to the CM within two months of the respondent state notifying the DEJ of payment; otherwise, the issue of payment is considered closed.^{xxi} There is no time limit for written communications relating to individual measures. Communications from injured parties need not follow any specific format, and there is great variety in the content and quality of these communications. However, they typically contain a mixture of the following components:

- a brief overview of the case,
- a description of the measures that the respondent state must take according to the final judgment,
- an explanation of what measures the respondent state has or has not taken,
- an assessment of how those measures fail to provide the required relief,
- and requests or recommendations.

The requests and recommendations vary broadly but often request the CMs to refrain from closing the case, to pass an interim resolution, or to review their case again at the next Human Rights Meeting. There appears to be no limit on the number of communications that injured parties may submit.^{xxii}

NGOs, NHRIs, and International Organizations (Rule 9.2-9.3)

NGOs, NHRIs, and international organizations are subject to fewer limitations. They may submit written communications at any time in the supervision process concerning the implementation of any matter. These communications usually serve one or a combination of purposes: to convey recommendations for strengthening the supervision process; to communicate new information; or to make procedural proposals.^{xxiii} Like communications from injured parties, there is no particular format for 9.2 or 9.3 communications. However, it is advisable that they be clear, concise, and a maximum of five pages in length.^{xxiv} The most impactful submissions typically respond directly to a respondent state's Action Plan or Report and tend to include the following elements: a short description of the case or group of cases; a paragraph briefly describing the NGO and its qualifications for submission; a paragraph summarizing key recommendations; the status of implementation of individual measures; the status of implementation of general measures; recommendations for how the CM can encourage the respondent state to comply.^{xxv}

Although there are no time restrictions for communications, there are some important strategic timing considerations.^{xxvi} If, for instance, a case falls

under enhanced supervision, an intervening NGO might want to submit a communication to coincide with the case review at the CM's Human Rights Meeting.^{xxvii} To that end, the DEJ recommends that NGOs submit communications at least six weeks before a meeting.^{xxviii} There are no strategic timing considerations for cases under standard supervision, though it is often best to wait until the respondent state has submitted an action plan. There appears to be no limit to the number of submissions that an NGO can make. However, it is recommended that NGOs consistently monitor implementation and submit communications about once a year.^{xxix}

When the CM receives a communication, the Secretariat immediately brings the communication to the attention of the respondent state.^{xxx} The respondent state has a right to reply to any information received in communications from NGOs, NHRIs, and international organizations.^{xxxi} The respondent state is given five working days to respond. After five days, the communication and any response are submitted to the CM.^{xxxii} Ten days after the notification, the communication and any response are made public by the CM.^{xxxiii} Responses from the respondent state received after this ten-day timeframe are submitted to the CM and published separately.^{xxxiv}

Other Means of Engagement

In addition to Rule 9 procedures, NGOs can engage in several other meaningful ways in the implementation process. Two weeks prior to the quarterly CM Human Rights meetings, the CM organizes informal briefings in which civil society organizations are invited to provide input on cases. NGOs can also meet with relevant COE staff, officials, and member state delegations, for

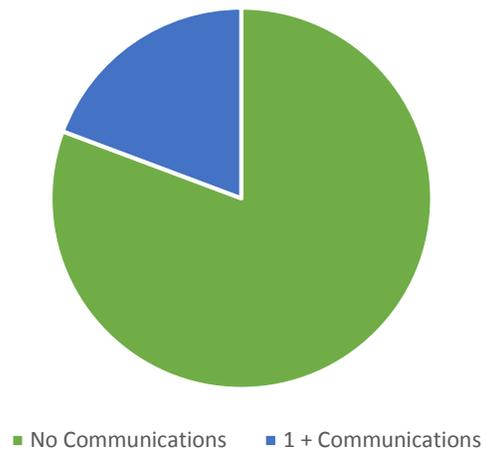
example the DEJ, the Office of the Commissioner for Human Rights, the Parliamentary Assembly of the Council of Europe (“PACE”) Committee on Legal Affairs and Human Rights, and the PACE Rapporteur on Implementation of European Court Judgments, all of which can raise implementation issues to the CM in various ways.^{xxxv}

ASSESSMENT OF IMPLEMENTATION PROCESS & STAKEHOLDER PARTICIPATION

Using the Rule 9 communication procedure, 143 third-party entities (including applicants and NGOs) have submitted under Rule 9 on cases concerning Azerbaijan.

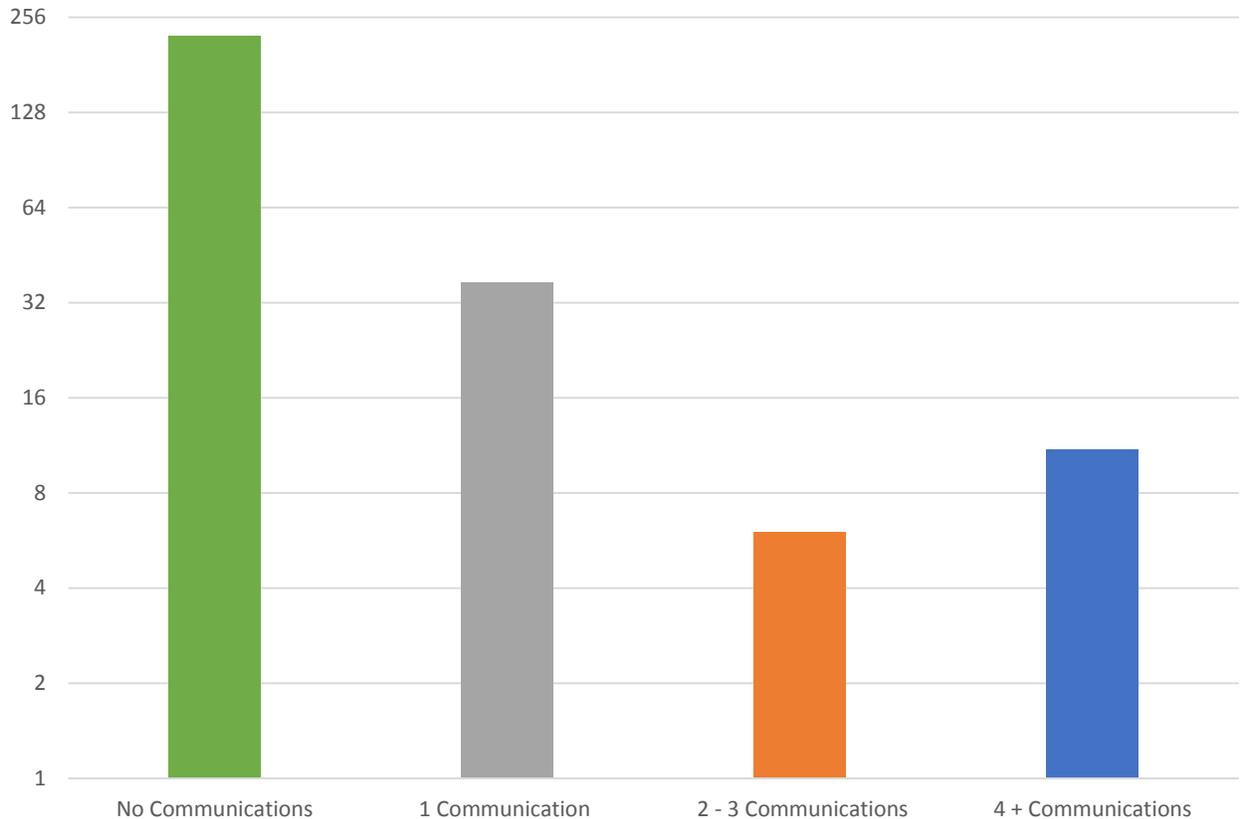
Despite the significant number of communications submitted, the overwhelming majority of cases have received no stakeholder intervention under the Rule 9 communication procedure. For approximately 80% (226) of cases, no Rule 9 communication has been received. And in most of the 20% of cases for which there has been Rule 9 communications, there has been only one. Furthermore, several cases have received more than 4 communications. The chart below maps the cases by the amount of engagement each case receives under Rule 9.

Cases Without Stakeholder Engagement
via the Rule 9 Communication Procedure



Distribution of Cases in Terms of Number of Communications Received

Scaled Logarithmically



Although there are a number of cases with one or two communications, most of the communications are directed towards just a handful of cases. Six cases have received more than 50% of all Rule 9 communications submitted to the CM. Furthermore, one case alone, *Mammadov v. Azerbaijan*, has had a total of 28 communications submitted under Rule 9.

The high concentration of communications directed towards a small

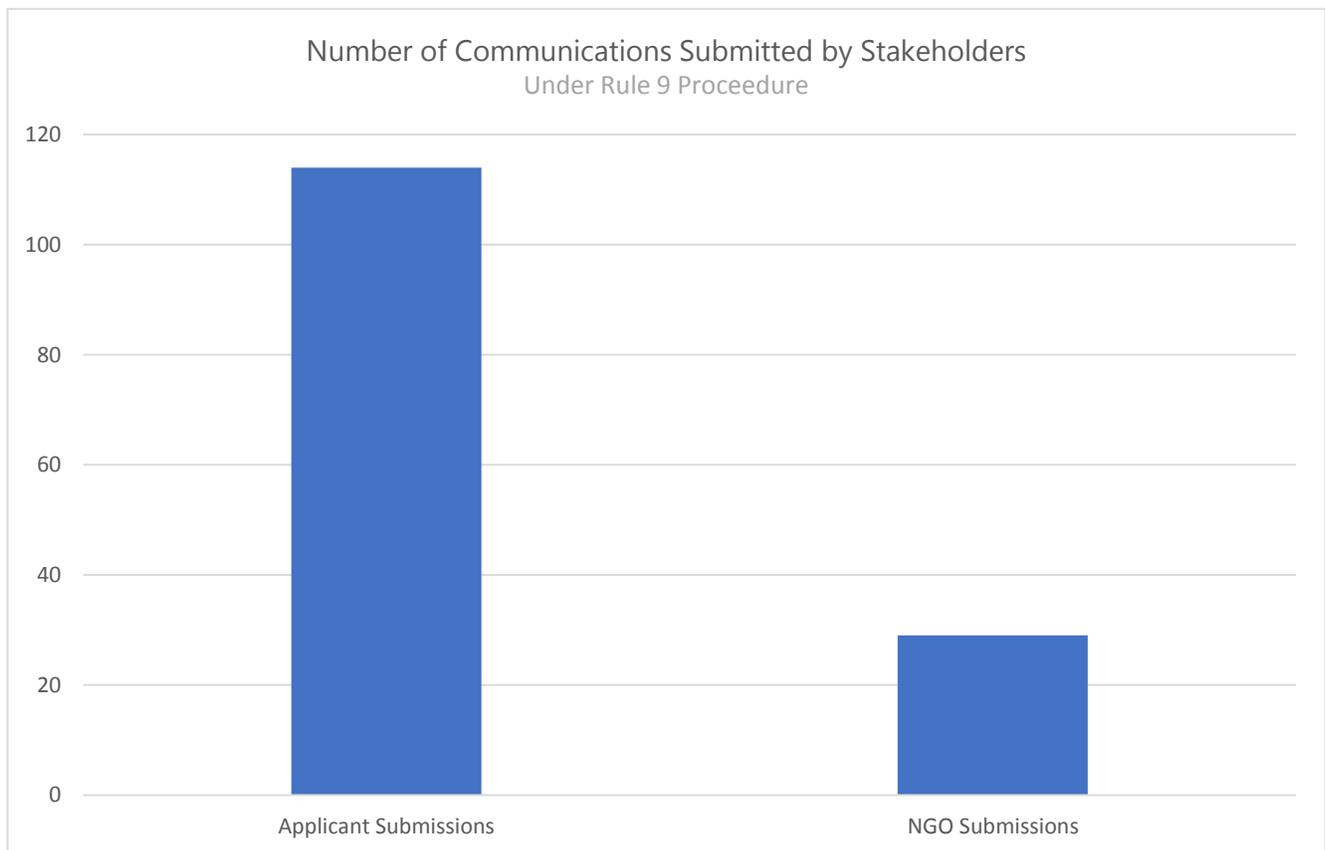
number of cases indicates a concerning disparity in the attention of European Court cases. There may be several explanations for this. It might be that relevant stakeholders with the standing to pursue communications lack awareness of the procedure. It is also possible that relevant parties have the funding to make submissions to the European Court but lack funding to engage in sustained advocacy, via communications, to see those judgements enforced. Also, it may be the case that stakeholders do not view the communication procedure as a valuable means to secure implementation.

Which Stakeholders Engage the Most

All Rule 9 communications submitted on cases against Azerbaijan came from either applicants or NGOs; there were no communications submitted on behalf of NHRIs or international intergovernmental organizations.^{xxxvi} Applicants submitted the most communications, a total of 114; while NGOs only submitted 29 communications, making up 25% of total Rule 9 communications.

In a case-by-case review, 23 cases had at least one communication from an NGO, and 36 cases had at least one communication from an applicant. Accordingly, NGOs submitted a Rule 9 communication in 8% of total cases, while applicants have submitted Rule 9 communications in 13% of total cases.

Currently, applicants have submitted Rule 9 communications over 50% more than NGOs. Out of the 23 cases that had communications from an NGO, 17 of those cases only had communications from an NGO and none from an applicant. Of the 36 cases that had communications from an applicant, 30 only had communications from applicants and none from NGOs. Accordingly, only six cases had communications from both NGOs and applicants. As such, applicants and NGOs seem to offer their communications largely independent of each other and in different cases.



RECOMMENDATIONS FOR IMPROVING STAKEHOLDER ENGAGEMENT & IMPLEMENTATION

In light of the large number of unimplemented cases with few to no stakeholder communications, there is significant need for stakeholders to provide information to the CM on the implementation of judgements. As noted above, such information may be communicated to the CM either by the parties to the judgement or by NGOs, NHRIs or international organization. However, apart from a select few cases, stakeholders have not sought to comprehensively address the issue of unimplemented judgements against Azerbaijan. Below are several recommendations to increase engagement with an eye towards promoting better implementation by Azerbaijan.

- ***Provide pro bono legal support to parties with outstanding judgments for the purposes of submitting Rule 9 communications.*** In light of the large number of cases with no engagement from applicants regarding implementation, there is significant room to increase engagement from applicants. Providing *pro bono* legal support for applicants can assist in ensuring that applicants do not face barriers to communicating with the CM about their cases.
- ***Provide technical and financial support for NGOs to submit Rule 9 communications on behalf of parties with outstanding judgements.*** Because NGOs occupy a unique position in terms of their ability to submit communications regarding the implementation of general measures concerning systemic human rights violations in Azerbaijan, NGO communications are key to the CM implementation monitoring process. Increasing technical and financial capacity of NGOs to engage with the CM will tend to improve the CM's implementation process.
- ***Increase coordination between NGOs and applicants regarding implementation on cases.*** Due to the very small number of cases that have received Rule 9 engagement both from applicants and NGOs, NGOs generally appear to be targeting cases that receive no applicant engagement. By increasing overlap between NGO and applicant engagement with the CM, the efforts of both stakeholders can serve to enhance one another.
- ***Raise awareness of avenues for engagement.*** To ensure that victims and civil society are taking advantage of the full scope of advocacy opportunities available, it is important to increase awareness of the various means for applicant and NGO engagement, including briefings and individual meeting with COE officials, with the CM regarding the promotion of implementation of judgments of the European Court.

ENDNOTES

ⁱ Azerbaijan, Country Fact Sheet, Department for the Execution of Judgments, Council of Europe (June 5, 2020), <https://rm.coe.int/168070973e>.

ⁱⁱ Data from the HUDOC-EXEC Database, available at [https://hudoc.exec.coe.int/eng#{"EXECDocumentTypeCollection":\["CEC"\]}](https://hudoc.exec.coe.int/eng#{), retrieved on Feb. 19, 2021.

ⁱⁱⁱ *Id.*

^{iv} Council of Europe, *Implementing ECHR Judgments: Council of Europe Closes Infringement Procedure Against Azerbaijan* (Sep. 4, 2020), <https://www.coe.int/en/web/portal/-/implementing-echr-judgments-council-of-europe-closes-infringement-procedure-against-azerbaijan>.

^v ECtHR, *Hajibeyli and Aliyev v. Azerbaijan*, nos. 6477/08, 10414/08, Judgment (Merits and Just Satisfaction), para. 60 (April 19, 2018), available at <http://hudoc.echr.coe.int/eng?i=001-182173>.

^{vi} When the European Court finds a violation of the European Convention, Governments maintain an obligation to prevent similar violations from occurring in the future. Although the European Court has increasingly tended to provide guidance on such general measures, it is often incumbent upon the State Party, in consultation with the Committee of Ministers, to determine the appropriate means to be employed to meet their obligations under the Convention. See Council of Europe, *The Conscience of Europe: 50 Years of the European Court of Human Rights*, Chapter 5: Execution of Judgments, at 90 (2010), https://www.echr.coe.int/Documents/Anni_Book_Chapter05_ENG.pdf.

^{vii} *Id.*

^{viii} George Stafford, *The Implementation of Judgments of the European Court of Human Rights: Worse Than You Think – Part 1: Grade Inflation*, EJIL: Talk! (Oct. 7, 2019), <https://www.ejiltalk.org/the-implementation-of-judgments-of-the-european-court-of-human-rights-worse-than-you-think-part-1-grade-inflation/>.

^{ix} See, ECtHR, *Mammadov v. Azerbaijan* (No. 2), App No. 919/15 (Nov. 16, 2017), <http://hudoc.exec.coe.int/eng?i=004-49189>; ECtHR, *Jafrov v. Azerbaijan*, App No. 69981/14 (Mar. 17, 2021), <http://hudoc.exec.coe.int/eng?i=004-1605>.

^x Presentation of the Department, [WWW.COE.INT](https://www.coe.int/en/web/execution/presentation-of-the-department), Council of Europe, <https://www.coe.int/en/web/execution/presentation-of-the-department>.

^{xi} The pilot judgement procedure is a process that allows the European Court, when it receives a large number of cases concerning a specific issue in a country, to take a small number of representative cases from the larger collection and decide those cases while “freezing” all of the other cases on the docket relating to that issue. The Court will issue the State clear instructions for the type of remedy necessary to address the underlying issues and provide a time-frame for doing so. If the State complies with the Court-prescribed remedy, the Court is allowed to strike the remaining frozen cases from the docket and require them to pursue the domestic remedies in light of the structural changes made.

^{xii} Presentation of the Department, [WWW.COE.INT](https://www.coe.int/en/web/execution/presentation-of-the-department), Council of Europe, <https://www.coe.int/en/web/execution/presentation-of-the-department>.

^{xiii} *Id.*

^{xiv} Rule 17, Rules of the Committee of Ministers for the Supervision of the Execution of Judgments and of the Terms of Friendly Settlements (2017) [hereinafter “Rules of Committee of Ministers”].

^{xv} Rule 11, Rules of Committee of Ministers.

^{xvi} Article 46, Convention for the Protection of Human Rights (Protocol No. 14), 13.V.2004.

^{xvii} *Id.*

^{xviii} It is important to note that suspension of voting and expulsion from the COE may take place without a finding of non-compliance under Article 8 of the Statute of the Council of Europe.

^{xix} Council of Europe, *Implementing ECHR Judgments: Council of Europe Closes Infringement Procedure Against Azerbaijan* (Sep. 4, 2020), <https://www.coe.int/en/web/portal/-/implementing-echr-judgments-council-of-europe-closes-infringement-procedure-against-azerbaijan>.

^{xx} Rule 9, Rules of Committee of Ministers.

^{xxi} Implementation of Judgments of the European Court of Human Rights: A Handbook for NGOs, injured parties and their legal advisers, EUROPEAN IMPLEMENTATION NETWORK HANDBOOK (2018) at 9 [hereinafter EIN Handbook].

^{xxi} Presentation of the Department, WWW.COE.INT, Council of Europe, <https://www.coe.int/en/web/execution/presentation-of-the-department>

^{xxii} Nothing in Rule 9 provides any limitations to the number of 9.1 communications that an injured party may submit. Moreover, an examination of individual communications submitted in different cases showed injured parties submitting many communications. For example, the applicant in *Ilgar Mammadov v. Azerbaijan* has submitted multiple communications per year since 2015.

^{xxiii} Brief Guide to Rule 9 Submissions, European Implementation Network (2019) at 2.

^{xxiv} Brief Guide to Rule 9 Submissions, European Implementation Network (2019) at 2.

^{xxv} EIN Handbook at 12.

^{xxvi} EIN Handbook at 13.

^{xxvii} *Id.*

^{xxviii} *Id.* at 14.

^{xxix} *Id.*

^{xxx} Rule 9, Rules of Committee of Ministers.

^{xxxi} *Id.*

^{xxxii} *Id.*

^{xxxiii} Rule 8, Rules of Committee of Ministers.

^{xxxiv} Rule 9, Rules of Committee of Ministers.

^{xxxv} *Id.*

^{xxxvi} Notably, the ability for intergovernmental organizations to submit communications has only been in force since 2017. See Committee of Ministers, *Securing the long-term effectiveness of the system of the European Convention on Human Rights – Implementation of the Brussels Declaration*, Dec. CM/Del/Dec(2017)1275/4.1 (Jan. 18, 2017), <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806dda95>.