The European Court of Human Rights and the Central and Eastern European States

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Abstract

At the time of its creation and during the following 30 years, the European Court of Human Rights was a Western European institution. It was not until the sweeping political changes in 1989-1990 that the Central and Eastern European countries could join the European system of individual human rights protection. The massive and relatively rapid movement of accession of the 'new states' to the European Convention on Human Rights had a twofold effect. On the one hand it led to a complete reform of the human rights machinery of the Council of Europe, changing the structure and the procedure. A new, permanent and more efficient system emerged. What is even more important, the Court has had to deal with not only the traditional questions of individual human rights but under the Convention new issues were coming to the Court from applicants of the former eastern-bloc countries. On the other hand, being part of the European human rights mechanism, these countries got a chance to establish or re-establish the rule of law, they got support, legal standards and guidance on how to respect and protect individual human rights. The article addresses some of these elements. It also points out that public hopes and expectations towards the Court – especially nowadays in respect of certain countries – are sometimes too high. The Court has its limits. It has been designed to remedy certain individual injustices of democratic states following common values but cannot alone substitute seriously weakened democratic statehood.

Keywords: Case law regarding Central and Eastern Europe, ECHR, human rights, reform, European system of Human Rights.

In light of the growing number of cases of the European Court of Human Rights (the Court), it is often mentioned that the Court has been the victim of its own success. Indeed, analysing these numbers in light of the operation of the Convention Organs, one must point out that the geographical, political and legal environment in which the Convention was originally designed to operate was quite different even from those of the 1990s. Since those years, especially during the 1990s, new member states have joined the Council of Europe. Consequently, the number of potential applicants gradually extended to 800 million.

Some changes have already been made to the system of European human rights protection during the first 35 years of its existence. The Convention has been amended on a number of points, the Rules of Procedure of the Court (and

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the European Commission of Human Rights) have been amended and rationalized a few times. For example, Protocol No. 8 (entered into force in 1990) provided for the introduction of a committee of three members of the Commission that could unanimously declare an application inadmissible without further examination. More importantly, Protocol No. 9 (entered into force in 1994) made it possible for individual petitioners – not only for the Commission and Member States, under certain conditions – to bring their case to the Court. These important but relatively minor modifications introduced several procedural changes that would speed up and improve the efficiency of the system.

During the early years of the Convention, there was no need for a more radical change to the system. Indeed, it only covered a limited number of contracting Western European democracies with a sophisticated protection of constitutional rights and fundamental freedoms; therefore, the relatively low number of cases did not immediately require any more changes to the system.

Throughout the first thirty-nine years of its existence until 1998, the so-called old, non-permanent Court delivered a total of 837 judgments.[1] The old Court only delivered 55 judgments concerning states of Central and Eastern Europe until 1 November 1998, when the reform under Protocol No. 11 entered into force.

The low number of judgments delivered by the Court during this period is partly explained by the fact that the European Convention on Human Rights was originally ratified only by 13 Western European states. The case law of the Court clearly shows that even democracies with the most sophisticated national protection of constitutional rights and fundamental freedoms could violate the Convention.

The low number of judgments could also be explained not only by the limited number of contracting states to the Convention but rather by the fact that sufficient time was necessary for Western European citizens and law professionals to know about the new human rights protection system. Legal education, necessary knowledge and time were needed to learn how the Convention system could be used efficiently. This process was helped by law schools with specialized courses, institutes with human rights research programmes, summer schools and seminars, etc. By the end of the 1980s, human rights education together with the improvements of the system resulted in a sophisticated mechanism that was the most efficient regional human rights protection system, ready to serve the European needs at that time.

1. Changing Political Environment in Eastern and Central Europe, Its Effects on the Human Rights System

The collapse of the Soviet Union, the dissolution of the Eastern bloc, and the regained independency of the Central and Eastern European states led to major

1 *See* Overview 1959-2016, ECtHR, available at: http://www.echr.coe.int/Documents/Overview_19592016_ENG.pdf (last accessed 28 March 2018).

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democratic changes in these countries. Multiparty systems were introduced, and the first democratic elections were followed by the establishment of multiparty parliaments. During this period, new constitutions were enacted or old constitutions were fundamentally modified by the new legislations. On these bases, constitutional courts and ombudsman offices were established, which were regarded vital for the new democratic systems. Furthermore, fundamental laws, freedoms and safeguards were enacted to guarantee constitutional rights.

It is not a surprise that these newly independent countries wanted to join international organizations in which participation and membership was impossible during the communist regime. The historical past, as well as the social and cultural backgrounds, were diverse, as were their values and democratic traditions of these countries. Consequently, their political motivations to join the Council of Europe and the Convention were also numerous: accepting the traditional values for better individual rights protection, being ready to participate in some kind of European integration, simply demonstrating their commitment to democracy and human rights, or just not being left behind by the others, etc. It is a common mistake to consider these countries as a unified, cohesive group of states acting the same way.

The accession of the 'new countries' to the Council of Europe and the ratification of the European Convention on Human Rights and Fundamental Freedoms was a rapid process. Between 1992 and 1998, sixteen Central and Eastern European countries ratified the Convention, including the overwhelming majority of the Central European states, all of the Baltic States, Russia and Ukraine.[2] Furthermore, six Central and Eastern European countries joined the Convention during the following years between 1999 and 2004.[3] The number of contracting states of the Council of Europe rose from 23 in 1990 to 47 in 2007.[4]

As a consequence of the large number of contracting states and the huge number of new potential applicants, the number of complaints to the Commission and the Court exploded. That was a fundamentally changed environment from the one in which the Convention was originally designed to operate. During the 1990s, the number of contracting states almost doubled, the number of applications multiplied, and the backlog of the Convention institutions alarmingly increased, calling for a radical legal answer to all of these problems.

Some would say that the massive accession of the Central and Eastern European countries to the Convention led to the drastic changes of the system. We can more or less agree with this view; however, beside the growing number of applications, there are other factors too. The growing number of contracting states alone does not explain why the process of the radically growing number of applications was so quick. If it took Western European applicants and lawyers 25-30 years to be aware of, and be able to use, this instrument of human rights

2 Council of Europe, Chart of signatures and ratifications of Treaty 005 (ECHR), available at: www.coe.int/en/web/conventions/full-list/-/conventions/treaty/005/signatures?p_auth=FOp1EiPZ (last accessed 28 March 2018).

3 Georgia, Azerbaijan, Armenia, Bosnia and Hercegovina, Serbia, Montenegro.

4 Annual Report, ECtHR 2008, p. 5.

protection, why could applicants from Central and Eastern Europe use it almost immediately?

Answering the considerations above, first, we must emphasize that the mechanism of the European individual human rights protection – as we have already pointed out – was ready by the time the new states joined the system. The system was respected, well-known, ready, explained in detail in books, studies, case law information and publications of the Court. Learning materials, specialized courses, case studies, conferences and series of seminars were almost immediately available for legal professionals from the new member states, organized and provided by the Council of Europe, different professional organizations, universities and academic institutions.

Second, the Strasbourg mechanism was attractive for the applicants. Usually, the accession of a country to the Convention was highly publicized in the news and interviews, and background information was given to the public. Beyond the domestic remedies, accession gave another chance to the new applicants to win their case, not as a fourth instance, but in a special Convention-based legal environment. The legal procedure was ready to use, user friendly, widely open to receiving applications, even in its state at the beginning of the 1990s. There were no initial costs for the applicant, and the system was permissive concerning the use of national languages during the procedure.

The accession of the Central and Eastern European countries had a decisive effect on the Strasbourg system. However, the multiplied number of applications from these countries was not the only reason that led to the radical reform of the system. The number of complaints from the Western European states had also grown. It must be emphasized that an increasing awareness of fundamental rights and a much greater familiarity with the Convention system in some of the old contracting states also contributed significantly to the high number of new applications. In addition, there were structural problems relating mainly to Article 6, which refers to the length of domestic judicial proceedings and which caused an additional high number of complaints from certain countries.

The major reform of the European human rights mechanism was implemented by Protocol No. 11 and it entered into force in 1998. This reform was the legal answer to the changing environment described above, in which the Convention needed to operate. The creation of a single permanent Court with full-time judges, combined with the unconditional acceptance of the compulsory jurisdiction of the new Court, proved to be an adequate answer to the challenges caused by the great number of new member states. Protocol No. 11 successfully created an environment which met the actual needs at the end of the 1990s. The Court was capable of processing many more applications than in the old system, and the quality of judgments was maintained. At the same time, the reform Protocol prepared the Court for being able to handle future challenges.

The new Court itself has also done a lot to streamline its procedure during these early years. Based on the Report of its Working Party established in 1999, it changed the registration of the cases, introduced the rapid disposal of clearly inadmissible cases by a committee of three judges, eliminating the pre-judicial correspondence between the applicants and the Registry, introduced accelerated

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procedure for repetitive cases, standardization of letters, and a high computerization level of the judges' and the Registry's work.

The Court, with its new members, invoked a certain distrust and at times critique from lawyers and human rights professionals during the initial years. They examined the background and behaviour of the newly elected judges, their participation and votes in the cases, scrutinized their majority votes and separate opinions. The purpose of one of these examinations, for instance, was to clarify whether the new judges would change the institution and the case law, and whether their participation would constitute a 'regional monolith group' inside the Court.[5] Although the author of this study did conclude that the judges from Central and Eastern Europe "did not form a veritable monolithic regional group," on other points he criticized the contribution of the new judges. In my view, although it was written during the first years of the new judges being at the Court and there was insufficient case law available at that time, the study shows that this analysis was not thorough and well-founded enough. A similar examination with a more positive outcome could be found in another study later, concluding "that the judging process is not nation-bound; it is cross-cultural and has its own autonomy."[6]

In connection with some cases, there was also a fear expressed that the Court was developing a double standard in respect to certain countries. President Wildhaber rightly pointed out that

> [i]n the first years of the new Court, some critics expressed concern about what they called politically motivated double standards, reflected in a more flexible interpretation of the Convention in cases concerning the new member States. Remember that? There have been no double standards. The Court rightly showed understanding for the transitional period of consolidation of democracy in cases such as *Rekvényi v. Hungary*..., these cases did no more than express the need to confirm and consolidate democracy and the rule of law and to prevent them being undermined.[7]

2. Subject Matters in the Cases from the Central and Eastern European States

2.1. Length of Procedure

A lot of similar, repetitive complaints, the so-called clone cases mainly concerning the length of court procedure arrived at the Court every year, providing a great percentage of the Court's workload. It has been a traditionally acute problem not

5 J.-F. Flauss, 'Les Juges des Pays L'Europe Centrale et Orientale á la Cour Européenne des Droits de L'Homme', *in* L. E. Pettiti (Ed.), *Mélange en Hommage á Luis Edmond Petiti*, Bruxelles, Bruylant 1998, pp. 344-379.

6 F. J. Bruinsma, 'Judicial Identities in the ECHR', *in* A.Van Hoek (Ed.), *Multilevel Governance in Enforcement and Adjudication*, Antwerp, Intersentia 2006.

7 Speech given by Mr. Luzius Wildhaber, President of the European Court of Human Rights, on the occasion of the opening of the new judicial year, 20 January 2006. Annual Report 2006, p. 20.

only in former member states (for instance Italy, Turkey), but according to the jurisprudence of the Court it was a serious issue in Hungary, Poland, Slovakia, Slovenia, Croatia and Romania as well.[8] More than half of the total number of judgments delivered by the Court in 2001 and 2002 concerned the length of proceedings.

Although cases concerning the excessive length of judicial proceedings are of paramount importance for both the applicants and the efficiency of the national judiciaries, from a purely legal point of view, these cases are relatively simple. This is probably one of the reasons why even without a lawyer and knowing very little about the Strasbourg procedure an applicant could successfully win his or her case. This might give at least a technical explanation as to why the number of length of procedure cases was relatively high even shortly after the ratification of the Convention. It also explains why these cases were at a high percentage in the early applications from the newly joined Central and Eastern European states.

The Court had to react to this situation and in its *Kudla v. Poland* judgment, on the basis of "the continuing accumulation of applications before it," it examined the need to have effective domestic remedy available regarding an excessive length complaint. In this important case, the Court changed its existing case law and ruled that the correct interpretation of Article 13 necessitates an effective remedy available at the domestic level "for an alleged breach of the requirement under Article 6 § 1 to hear a case within a reasonable time."[9] Even if there was no 'prevailing pattern' to follow for the contracting states about the type of remedy, "it is not impossible to create such remedies and operate them effectively."[10] Under Article 13, a remedy is effective if it prevents or provides adequate redress for violation of the Convention.[11]

The Polish *Kudla* case had a significant effect on the contracting states to create an effective domestic remedy concerning length cases. While in 2001, the Pinto law in Italy was accepted as effective remedy by the Court,[12] other new member states like Bulgaria, the Czech Republic, Russia, Ukraine, Croatia and Slovakia and Poland had no such remedy available concerning Article 6. Soon Croatia and Slovakia were giving new competency to their Constitutional Court to serve as a domestic remedy to be exhausted before the length complaints could be sent to Strasbourg.[13] Other states, old and new members also adopted diverse domestic legal solutions.[14]

8 Out of 888 judgments delivered by the Court in 2001, 479 judgment concerned length of proceedings –Overview 1959-2016, ECtHR, pp. 8-9.

9 *Kudla v. Poland* [GC], Application no. 30210/96, judgment of 26 October 2000, paras. 148 and 156.

10 *Ibid*., paras. 154-156.

11 The effect of Article 13 is thus 'to require the provision of a domestic remedy to deal with the substance of an "arguable complaint" under the Convention and to grant appropriate relief.' – *Ibid*., p. 157.

12 *Brusco v. Italy* (dec.), no. 69789/01, decision of 6 September 2001.

13 *See Horvat v. Croatia* (dec.), no. 51585/99, decision of 26 July 2001; *Andrášik and Others v. Slovakia* (dec.), nos. 57984/00, 60237/00, 60242/00, 60679/00, 60680/00 and 68563/01, 60226/00, decision of 22 October 2002.

14 *See also Charzyński v. Poland* (dec.), no. 15212/03, decision of 1 March 2005.

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The *Kudla* case law, however, had a crucial effect on the caseload of the Court. On the one hand, the length complaints had to be addressed first within the national legal system, and a great number of cases were declared inadmissible in Strasbourg, leaving them to be dealt with first by the national jurisdictions. On the other hand, due to the remedies created at the domestic level, substantial valuable resources of the Court could be reorganized to deal with more meritorious cases.

2.2. Injustices of the Past. Cases Rooted in the Communist History of the New Member States

Together with the excessive length complaints, new types of cases started coming to the Court from the Central and Eastern European countries. The only common element of these cases was that they raised issues related to the former communist regime. They invoked alleged injustices committed during the communist period, therefore, the factual situation of the cases originated in the past or the change of the regime, state borders, or population caused grievances to individuals or groups of individuals.

The high number of these cases clearly shows the bitter feelings and dissatisfaction of the Eastern European applicants with the solutions of the new national governments trying to remedy past injustices. A great percentage of these complaints were declared inadmissible *rationae temporis* by the Court, while the new governments ratifying the Convention normally did not take any responsibility for injustices committed under the previous regime. This shows, not surprisingly – at least shortly after the ratification – the insufficient legal expertise available in these countries to file complaints in more complex cases under the Convention.

2.2.1. Property Cases

One of the most painful issues for citizens of Central and Eastern European states was their previously confiscated or nationalized property. Following the ratification of the Convention by these states, a great number of property complaints under Article 1 of Protocol No. 1 arrived at the Court.[15] These applications could only be declared admissible if the national governments did not fulfil their new, freely undertaken obligations to fully or partly remedy the former nationalization of properties.

Among those cases, it is worth mentioning the *Brumărescu v. Romania* case.[16] This was a leading case that served as model for a series of similar Romanian property cases (Brumărescu-type). The Court found a violation, as far as Article 1 of Protocol No. 1 was concerned and ruled that the state should provide redress to the applicant. It stated that "in the circumstances of the present case the return of the property in issue" would be an adequate solution, but if the state

15 *See Strän and Others v. Romania*, no. 57001/00, judgement of 21 July 2005; *Păduraru v. Romania*, Application no. 63252/2005, judgement of 1 December 2005; *Jahn and Others v. Germany*, [GC] nos. 46720/99, 72203/01, 72552/01, judgment of 30 June 2005.

16 *Brumărescu v. Romania*, [GC] Application no. 28342/95, judgment of 28 October 1999.

failed to do so, the Court ordered specified financial compensation.[17] (Here the Court used the formula that has been frequently applied – offering alternative solutions for compensation of nationalized or expropriated immoveable property, for the first time in the *Papamichalopoulos and Others v. Greece* case.[18])

The unanimous finding of violation of Article 1 of Protocol No. 1 in the *Broniowski v. Poland* case led to the first 'pilot judgment' procedure based on the Resolution of the Committee of Ministers of the Council of Europe, adopted on 12 May 2004 (Res (2004)3).[19] The Court not only ruled that the Polish state failed to honour its obligation to the individual applicant and compensated them for their losses, but it also recognized that approximately 80,000 other individuals – the Bug River people – were in the same position as the applicant. The Court found that

> the violation of the applicants' right guaranteed by Article 1 of Protocol No. 1 originated in a widespread problem which resulted from a malfunctioning of Polish legislation and administrative practice and which has affected and remains capable of affecting a large number of persons.

Recognizing the underlying systemic problem and delivering a pilot judgment for the first time in the history of the Court, it ruled that

> as regards general measures to be taken, the Court considers that the respondent State must, primarily, either remove any hindrance to the implementation of the right of the numerous persons affected by the situation found, in respect of the applicant, to have been in breach of the Convention, or provide equivalent redress in lieu.[20]

The pilot judgment procedure resulted in a satisfactory outcome for a great number of Bug River complainants when the parties (J. Broniowski and the Polish government) came to a friendly settlement in conclusion. In this friendly settlement, the government offered a solution not only for the individual applicant of the case, but by setting up a legal scheme it offered satisfactory pecuniary and non-pecuniary redress for all the 80,000 Bug River claimants for their losses.[21]

The general measure adopted in the present case and the readiness of the Polish government to fully cooperate with the Court underlines the advantages of this new procedure. It serves not only the interest of an individual applicant, but by setting up new legal schemes and adopting general measures it also offers redress to numerous other claimants, who are in the same legal position. These

17 *Brumărescu v. Romania*, [GC] Application no. 28342/95, judgment (Just satisfaction) of 23 January 2001, paras. 22-23.

18 *Papamichalopoulos and Others v. Greece*, Application no. 15556/89, judgment (Article 50) of 31 October 1995, paras. 38-39.

19 *Broniowski v. Poland*, [GC] Application no. 31443/96, judgment of 22 June 2004, paras. 190-191.

20 *Ibid*., paras. 189 and 194.

21 *See Broniowski v. Poland*, (Friendly settlement), [GC] Application no. 31443/96, judgment of 28 September 2005.

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types of instruments (the 'pilot judgment procedure' and the also the 'Kudla-type' of rulings) helped the Court in reducing its heavy caseload. These legal instruments have mutual benefits for both the applicants and the Court but also require from the governments a willingness to cooperate and be in full compliance with the Court's judgment, which has not always been the case.

The pilot judgment procedure has been extensively used by the Court since *Broniowski*, covering very different kinds of situations concerning both old and new member states. It was used in other property cases, for instance, to prevent landlords from hiking up rent, in cases concerning length of judicial procedure, or prison conditions in cases coming from Central and Eastern European applicants.[22] While this procedure was introduced originally by the Grand Chamber, it has later been more frequently used by the seven member-chambers of the Court.[23]

2.2.2. Crimes Committed under the Previous Regime, Crimes against Humanity, Questions of War Crimes, Genocide

Some of the most typical complaints from the new member states were related to criminal convictions for crimes committed under the previous regime. The factual background and the domestic qualification of these offences were very different. In the *Streletz, Kessler and Krenz v. Germany* case, the four applicants were convicted after the German unification for causing the death of people who were trying to cross the German Democratic Republic (hereinafter GDR) border to flee to West Berlin during the communist period. They were high-ranking officials of the regime, responsible for the border control officers that participated in the killings, and one soldier who used a firearm and caused a death.

The main task of the Court was

> to consider, from the standpoint of Article 7 § 1 of the Convention, whether the applicants' acts, at the time when they were committed, constituted offences defined with sufficient accessibility and foreseeability by the law of the GDR or international law.[24]

The Court ruled that both the GDR law of the relevant time and the international human rights rules defined the offence with the required accessibility and fore-

22 *See* among others: *Maria Atanasiu and Others v. Romania*, Application no. 30767/05 and 33800/06, judgment of 12 October 2010; *Hutten-Chapska v. Poland*, [GC] Application no. 35014/97, judgment of 19 June 2006; *Burdov v. Russia (No. 2)*, Application no. 33509/04, judgement of 15 January 2009; Prison conditions: *Neshkov and Others v. Bulgaria*, Application no. 36925/10, 21487/12, 72893/12, 73196/12, 77718/12 9717/13, judgment of 25 January 2015; *Varga and Others v. Hungary*, Application no. 14097/12, judgment of 10 March 2015; Length: *Gazsó v. Hungary*, Application no. 48322/12, judgment of 16 July 2015; *Rutkowski and Others v. Poland*, Application no. 72287/10, judgment of 7 July 2015.

23 About the early application of the pilot judgment procedure, *see* A. Buyse, 'The Pilot Judgment Procedure at the European Court of Human Rights: Possibilities and Challenges', 2009, available at: http://ssrn.com/abstract=1514441 (last accessed 28 March 2018).

24 *Streletz, Kessler and Krenz v. Germany* [GC], no. 34044/96, 35532/97 and 44801/98, judgement of 22 March 2001, para. 51.

seeability; consequently, the applicants' conviction by the German courts did not breach the Convention.

In other cases, the legal qualification of the offence committed under the communist regime was at stake. The underlying issue in these cases was that certain serious political crimes, such as disappearances, killings and homicides committed during this period, could remain unpunished and they became barred by statutes after the change of the regime. New politicians and governments had a moral obligation to look for legal ways to convict the offenders of those crimes, applying terms of international law such as 'crime against humanity' or 'genocide' where no prescription applied. The Court had to decide whether these categories of the international law were applicable to the factual situation of these cases. It was the Court's task to determine the precise content of the international law at the time when those crimes were committed and whether those international law categories were foreseeable to the convicted persons.

One of these cases was the *Korbely v. Hungary* case.[25] The applicant, a former military officer, was ordered to command a squad of soldiers to take back a police station from insurgents in 1956. During the events, he ordered his men to open fire and several civilians died in the incident. In 1994, he was charged with homicide and incitement to homicide, but finally he was convicted exclusively "under Article 3(1) of the Geneva Convention of 1949 of a crime against humanity through multiple homicide and sentenced to five years' imprisonment."[26]

The task of the Court was to clarify the content of the crime against humanity under the Geneva Convention as it was applicable in 1956 and define whether these rules were accessible and foreseeable to the applicant. Taking into account the special circumstances of the case, including the armed victim's behaviour, the Court found a violation of Article 7 § 1 of the Convention. It ruled that it had not been shown that it was foreseeable that the applicant's act constituted a crime against humanity under international law.

The Korbely case showed some similarities with the *Vasiliauskas v. Lithuania* case.[27] In this case, the Court again had to determine if genocide was applicable at the relevant time, in 1953. Since the applicant participated together with the Soviet authorities in the killing of two Lithuanian partisans, the Court had to decide whether his subsequent conviction in 2004 for committing genocide had been foreseeable in 1953.

The Court's answer was negative, stating that

> the Court is not persuaded that the applicant's conviction for the crime of genocide could be regarded as consistent with the essence of that offence as defined in international law at the material time and thus could reasonably have been foreseen by him in 1953.[28]

25 *Korbely*, [GC] Application no. 9174/02, judgment of 19 September 2008.
26 *See* Case Law Report, August-September 2008.
27 *Vasiliauskas v. Lithuania*, [GC] Application no. 35343/05, judgement of 20 October 2005.
28 *Ibid*., para. 185.

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Consequently, there has been a violation of Article 7 § of the Convention.

The judgments in the *Korbely* and the *Vasiliauskas* cases provoked harsh political reactions, showing certain disagreement with the Court's findings in both countries. These cases often put the Court in a delicate position, with a difficult task of finding the correct legal solution to convict criminals of the past dictatorial regimes and, thus, meet the moral urgings of the broader public to punish them. The two judgments demonstrate that those legal attempts to use international law categories to requalify past offences in order to sidestep statutory regulations are debatable exercises. It requires extremely careful scrutiny of the facts of these sensitive cases and the norms of the international law relevant at the time.[29]

2.2.3. Other Cases with Elements of the Past. Elections, Employment, Deportation, Symbols of the Communist Regime

The Court's jurisprudence clearly shows that there were other complaints coming from the Central and Eastern European countries that referred back to the past communist regime. A common element of these cases is that new laws had been enacted to restrict a defined group of the past regime (office holders, communist party members or army officials) from carrying on certain activities, professions, to order their deportation or to prohibit the use of symbols of the totalitarian regimes. On the one hand, these restrictions are understandable for the protection of the new, democratic systems. They usually take into account the general feeling of the society and are led by legitimate motivations after the changes of the regime. On the other hand, these regulations are sometimes too general or rigid and very often highly motivated by emotions; therefore, these laws do not leave space for individualization or the consideration of special legitimate private interests and circumstances.

The *Ždanoka v. Latvia* case relates to a relatively rare situation, where not a group but an individual is disqualified from running for parliamentary elections. In this case, the applicant, a former leading member of the Communist Party, was not allowed to stand for parliamentary elections due to a statutory restriction, since she actively participated in the CPL (the Communist Party of Latvia) after 13 January 1991.

Examining the statutory limitation in the present case, the Court found that

> [w]hile such a measure may scarcely be considered acceptable in the context of one political system, for example in a country that has an established framework of democratic institutions going back many decades or centuries, it may nonetheless be considered acceptable in Latvia in view of the historico-political context which led to its adoption and given the threat to the new democratic order posed by the resurgence of ideas which, if allowed to gain ground, might appear capable of restoring the former regime. The Court

29 Applicability of the Convention to certain previous crimes under international law was at stake in the Katyn massacre case. *See Janowiec and Others v. Russia*, [GC] Application no. 55508/07 and 29520/09, judgment of 21 October 2013.

> therefore accepts in the present case that the national authorities of Latvia, both legislative and judicial, are better placed to assess the difficulties faced in establishing and safeguarding the democratic order.[30]

Since the restriction could be regarded as neither arbitrary nor disproportionate and was subject to periodic review, the Court found no violation of Article 3 of Protocol No. 1.

The *Ždanoka* case shows similarities with the Hungarian *Rekvényi* case. In both cases, the Court took into account the transitional period necessary to strengthen democracy in those countries. Both cases refer to the special historical circumstances of the two countries at the relevant time, and the Court made it absolutely clear that the restrictions imposed were only acceptable if they are temporary in nature and subject to periodic reviews.[31]

In line with the findings above, the Court found a violation of Article 8, taken in conjunction with Article 14, in the *Sidabras and Džiautas v. Lithuania* case. This employment-related case was introduced to the Court by former political agents and communist party members from different countries after the change of regime. The two Lithuanian applicants in this case previously worked for the KGB and, thus, their employment fell under the KGB Act, which imposed serious restrictions on them in finding a job in both the public and private sector. The Court concluded

> that the ban on the applicants seeking employment in various branches of the private sector, in application of section 2 of the KGB Act, constituted a disproportionate measure, even having regard to the legitimacy of the aims pursued by that ban.[32]

The Court found a breach of private life under Article 8 of the Convention in the *Slivenko* case.[33] The applicants were family members of a retired former soviet army officer and were obliged to leave Latvia on the basis of a treaty on the withdrawal of Russian troops, concluded between Latvia and Russia, which required all soldiers, both active and discharged members of the Russian army and their family members to leave the country. The Court evaluating the case under Article 8 (private and family life) accepted the domestic courts' finding that the applicants' removal was reasonably foreseeable for the applicant, so it was in accordance with the law. The Court also underlined that the treaty on the withdrawal of Russian troops after Latvia regained independence was concluded to protect the interest of national security and, as such, served a legitimate aim.

However, examining whether the deportation order of the applicants was necessary in a democratic society, the Court took into account the very special cir-

30 *Ždanoka v. Latvia*, [GC] Application no. 58278/00, judgment of 16 March 2006, paragraphs 133-134.

31 *See also* President Wildhaber's speech of 20 January 2006, *supra* note 7.

32 *Sidabras and Džiautas v. Lithuania*, Application no. 55480/00 and 59330/00, judgment of 27 July 2004, para. 61.

33 *Slivenko v. Latvia*, [GC] Application no. 48321/99, judgment of 9 October 2003.

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cumstances of the case. On the basis of their language knowledge and integration into the Latvian society, and the fact that the first applicant's father retired from the army already in 1986 and presented no danger to national security, the Court came to the conclusion "that the applicants' removal from Latvian territory was not necessary in a democratic society."[34]

The *Vajnai v. Hungary*[35] is an informative case in many respects. It concerns – with some exceptions – a general ban on the use of totalitarian symbols.[36] The applicant Mr Vajnai was the vice-president of a 'registered left-wing political party', and he wore a red star symbol while speaking during a lawful party demonstration.[37] He was convicted of the offence of using a totalitarian symbol and a criminal fine was imposed on him, suspended for a probationary period of one year by the Hungarian courts.

On the basis of the applicant's complaint, the Court examined the case from the standpoint of freedom of expression under Article 10. According to the judgment, the restriction on freedom of expression was prescribed by law and had a legitimate aim, protecting the rights of others. Analysing whether the restriction was necessary in a democratic society, the Court pointed out important differences between the Rekvényi case and the present one. In Rekvényi, the restriction of freedom of expression concerned a police officer, while in the present case a politician. A restriction on political speeches requires more justification, especially when it 'involves symbols which have multiple meanings', the red star is the symbol of 'international workers' movements, lawful political parties',[38] countries, flags, companies and products (as Heineken, Milky Way), etc.

The Court pointed out, on the one hand, that the ban on using totalitarian symbols, such as the red star, was prescribed by Hungarian law; nevertheless, the Court also rightfully criticized the excessively broad formulation of the prohibition, regardless of the different meanings of the symbol. On the other hand, the Court also underlined that a long time has elapsed since the change of the regime in Hungary. Therefore, while the Court accepted the transitional period arguments in the *Rekvényi* (and in the *Zdanoka v. Latvia*) cases,[39] it found that more than twenty years after the changes it is difficult to argue that the applicant's behaviour of wearing a red cross would be a real threat to democracy. This reinforces the previously expressed view of the Court that any restriction on the different protected rights of the Convention on the basis of the change of the regime could be accepted shortly after the transformation and only as temporary measures subject to periodic review.

34 *Ibid*., paras. 124-129.

35 *Vajnai v. Hungary*, Application no. 33629/06, judgment of 8 July 2008.

36 Article 269/B of the Hungarian Criminal Code: '1. A person who (a) disseminates, (b) uses in public, or (c) exhibits a swastika, an SS-badge, an arrow-cross, a symbol of the sickle and hammer or a red star, or a symbol depicting any of them, commits a misdemeanour – unless a more serious crime is committed – and shall be sentenced to a criminal fine'.

37 *Vajnai v. Hungary*, para. 6.

38 *Ibid*., paras. 51-52.

39 *See* section 'Other cases with elements of the past. Elections, employment, deportation, symbols of the communist regime' above.

We must emphasize here that even if in the cases above the facts originated in the past and they point back to the period of the communist regime, the decisions of the Court are based on its established case law. If not, this is because the Convention-based case law of the Court is a living instrument, it has been able to develop and give answers to new challenges. "The 'living instrument' doctrine is one of the best-known principles of Strasbourg case-law, the principle that the Convention is interpreted 'in the light of present day conditions', that it evolves, through the interpretation of the Court."[40]

3. Central and Eastern European Countries in Light of the Statistics of the ECtHR

The above-mentioned cases have been qualified as distinctive for the Central and Eastern European complaints. Their categorization was based on their special subject matters. We must also examine whether on the basis of the statistical data of the Court it would be possible to define other characteristic cases.

It goes far beyond the scope of this study to thoroughly analyse the Court's statistics in order to reach a definite conclusion about the most characteristic cases to the Central and Eastern European countries. It is difficult to say that this or that state notoriously violates a particular article of the Convention. It is probably safer to define certain groups of subject matters under the Convention that are more typical of these states than others. The different statistics of the Court can give us some indication about the number of complaints *vis-à-vis* the size of the population of the given state, and it is also possible to compare the number of judgments of the old and the new member states regarding certain articles of the Convention. A further important indicator is the percentage of the number of judgments delivered by the Court concerning a new member state and the number of cases in which the Court found at least one violation of the Convention. These 'success rates' can provide us with some interesting findings on the number of successful complaints coming from the new member states compared to those of the old ones.

The Court statistics also show the dynamics of the caseload of a particular state. While the average number of complaints was 0.64 per 10,000 inhabitants in the member states in 2016,[41] it is interesting to see that in certain states this percentage is much higher than that or multiplies within a relatively short period.[42]

Even a quick look at the statistics can convince us that the applications from the Central and Eastern European states cover all of the articles of the Convention. There are, however, articles of the Convention that are more frequently

40 Speech given by Mr Luzius Wildhaber, President of the European Court of Human Rights, on the occasion of the opening of the new judicial year, 23 January 2003. Annual Report, ECHR 2002, p. 22.

41 ECtHR, Analysis of Statistic 2016, p. 10.

42 One of the most striking examples is Hungary, where in 2013 the number of complaints was 1.00/10,000 inhabitants, while this percentage rose to 5.67 by 2016. *Ibid.*, p. 11.

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invoked by the Central and Eastern European applicants than by the applicants from the old member states.

3.1. Non-enforcement of Binding Judicial Decisions

One of the most frequent complaints from the Central and Eastern European countries is the non-enforcement of a binding court decision, which constitutes a breach of the right to a fair trial, as defined in Article 6 of the Convention. This is a significant difference between Western and Eastern countries, since the non-enforcement of a court judgment is a practically non-existent category of breach in old member states.[43] The leading states in this category of cases have been Russia and Ukraine, but the Court has also found numerous violations in Romania, Moldova, Serbia.[44] The reasoning behind the non-enforcement is varied. Usually, national authorities mention a lack of resources, insufficient legal certainty, etc., but no excuse is good enough not to honour a binding judicial decision when the credibility of the judiciary and the public's trust in democratic institutions are at stake. Often, I believe, behind those pretexts probably stands the lack of respect for the courts and the eagerness of political forces to dominate the judiciary, which is an undeniable real phenomenon to this day in certain Central and Eastern European countries. Needless to say, this alarming tendency heavily endangers the legal stability and the rule of law.

A special category of non-enforcement of binding court decisions occurred in those Central and Eastern European states, where there was a legal possibility to reopen already closed, final judgments. That was the case in Russia with the so-called 'supervisory review'[45] procedure under the Code of Civil Procedure of Russia, but a similar procedure existed in Romania and some other countries too. In the practice, this meant not complying with binding court decisions. One of the typical cases followed by a great number of similar clone cases was the *Brumarescu v. Romania* case, where the Prosecutor-General of Romania had the power on certain grounds to quash a final judgment without any time limitation.[46] The Court decided that this procedure infringed legal certainty because a final ruling 'should not be called into question', therefore, there has been a breach of the right to a fair trial.[47]

The non-enforcement of a binding judicial decision is a serious matter that could easily undermine the power of the courts, the system of checks and balances and, as we have already pointed out, the rule of law. Not implementing the final judicial decisions of the courts means disregarding the work of the judges, the role of the courts and the separation of the third branch of powers. This is why the Court takes these cases extremely seriously.

43 Violations by Articles and by States (1959-2016), available at: www.echr.coe.int/Documents/Stats_violation_1959_2016_ENG.pdf (last accessed 28 March 2018).

44 *See Fociac v. Romania*, Application no. 2577/02, judgment of 3 February 2005; *Turczanik v. Poland*, Application no. 38064/97, judgment of 5 July 2005; *Amat-G Ltd Meghabishvili v. Georgia*, Application no. 2507/03, judgment of 15 February 2006, etc.

45 *Ryabykh v. Russia*, Application no. 52854/99, judgment of 24 July 2003, paras. 31-42 and 51-58.

46 *Brumarescu*, Application no. 28342/95, judgment of 28 October 1999, para. 52.

47 *Ibid*., paras. 61-62.

3.2. Prison Conditions, Prison Facilities, Treatment of Detainees, Police Brutality

While statistics show that more than half of the serious right to life cases under Article 2 come from Russia, the statistics of the Court also reveal that Article 3 prohibiting torture has been repeatedly violated by different states even during the early years of the Convention. The Court already defined the term 'torture' as 'inhuman and degrading treatment' in its judgment of the plenary in 1978.[48] While this article has been also violated by other former member states, today the majority of these complaints are coming from Russia, Ukraine and some of the other Central and Eastern European states.

The subject matters of these complaints are various, ranging from prison conditions, overcrowded prisons, insufficient cell space, to the ill-treatment of prisoners, body searches and unsatisfactory medical and hygienic conditions. Applicants from Central and Eastern Europe are complaining about both the violations under Article 3 and the ineffectiveness of their national investigations. In these cases, the Court follows its traditional method and examines both the alleged violations and their domestic investigations.[49] If the Court is able to establish the alleged violation, it finds a breach under the substantive head of Article 3. It is possible, however, that the Court finds that the investigations of the national authorities were ineffective and declares a procedural violation of the same article too.

For example, the Court found violations on the basis of both ill-treatment and inadequacy of investigation in a Russian case, where two Chechen brothers were subjected to serious and cruel ill-treatment.[50] Similar serious double violations were found in the *Mammadov (Jalaloglu) v. Azerbaijan* case.[51] In another case, the examination of the circumstances by the Court led to finding a violation of Article 3 on the ineffectiveness of the investigation of police brutality.[52] The court frequently ruled on prison conditions[53] and applied pilot-judgment procedure in these cases too.[54]

The use of 'metal cages' in the courtrooms is an issue that does not strictly affect prison conditions, but it has a serious effect on certain detainees and, therefore, falls under Article 3 of the Convention. The use of this equipment in the courtrooms is intended to keep the accused or suspects isolated as a reinforced security measure. Nowadays, the use of cages has disappeared from West-

48 *Ireland v. the United Kingdom*, Application no. 5310/71, judgment of 18 January 1978; *see also Yalloh v. Germany*, [GC] Application no. 54810/00, judgment of 11 July 2006.

49 This method was frequently applied by the Court in Turkish cases concerning the events of the first half of the 1990s.

50 *Chitayev and Chitayev v. Russia*, no. 59334/00, judgement of 18 January 2007, paras. 154-160 and 163-166.

51 Application no. 34445/04, judgment of 11 April 2007.

52 *See Kmetty v. Hungary*, Application no. 57967/00, judgement of 16 December 2003.

53 *Neshkov and Others v. Bulgaria*; *Varga and Others v. Hungary*.

54 Pilot-judgment procedure concerning overcrowded prisons, *see Varga and Others*, *Ibid*., paras. 98-116.

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ern Europe but is still frequently used in the courtrooms of some Central and Eastern European member states of the Council of Europe.[55] The Court ruled that

> holding a person in a metal cage during a trial constitutes in itself – considering its objectively degrading nature, which is incompatible with the standards of civilised behaviour that are the hallmarks of a democratic society – an affront to human dignity in breach of Article 3.[56]

4. The Consequences of the Court's Judgments in Central and Eastern Europe

We have tried to clarify areas where the new member states are somehow distinguishable from the older member states to the Convention, based first on subject matters and then on statistics. We will now see that the judgments of the Court have important individual effects, serve justice for a great number of applicants, provide sometimes long-awaited moral support and just satisfaction under Article 41 of the Convention. This may include, if appropriate, compensation for pecuniary and non-pecuniary damages and the reimbursement of reasonable incurred costs and expenses.

In a few cases with exceptional circumstances, the Court delivered consequential decisions. Indeed, in the *Assanidze v. Georgia* case, for the first time in its jurisprudence, the Court ordered the respondent state to secure the applicant's release at the earliest possible date.[57] The applicant Mr Assanidze was a well-known politician of the opposition in Georgia, who had been acquitted by the Supreme Court. Nevertheless, not complying with the final Supreme Court's decision for more than 3 years, he was continued to be kept in prison by the authorities of the Ajarian Autonomous Republic. Since Georgian authorities had limited possibility to act in Ajaria, all the efforts of the government to set the applicant free had failed.

The Court emphasized that its judgments are "essentially declaratory in nature" and "it is primarily for the State concerned to choose the means to be used" to fulfil its Conventional obligations. However, under the very special circumstances of the case, where there was no other means to put an end to a violation, the Court ordered implementing a particular measure.[58] As a consequence of this, the applicant was released on the very day of the delivery of the judgment.

Since the Assanidze case, the Court has ordered the implementation of concrete measures under exceptional circumstances in other cases too.[59] These rare

55 They were used in 2010 in Russia, Ukraine, Albania, Azerbaijan, Moldova, Georgia, Serbia. *Svinarenko and Slyadned v. Russia*, [GC] Application no. 32541/08 and 43441/08, judgment of 17 July 2014, paras. 75-76.

56 *Ibid*., para. 138.

57 *Assanidze v. Georgia*, [GC] Application no. 71503/01, judgment of 8 April 2004, para. 203.

58 *Ibid*., para. 202.

59 *Ilaşcu and Others v. Moldova and Russia*, [GC] Application no. 48787/99, judgment of 8 July 2004, para. 490 and *Oleksandr Volkov v. Ukraine*, Application no. 21722/11, judgment of 9 January 2013, para. 208.

consequential decisions are additional individual measures in favour of the applicants and very efficient means to put an end to a serious violation of the Convention, especially in situations where there is an urgent need for remedy and no other option is available.

In addition to the individual remedies, the rulings of the Court have general effects on the respondent state to comply with the judgment finding violation. It is normally up to the defendant state to choose the appropriate means to remedy the situation to avoid the Court finding further violation in another similar case. In order to do that, the defendant states usually have to change relevant material or procedural legal rules, invite the state organs to change legal practices, change the competencies and procedures of state organs, introduce alternative punishments or build up new prisons and provide more resources to improve prison conditions, etc. The general consequences of the judgments are diverse, but their common purpose is to remedy the situation that led to a breach of the Convention.

The effects of the general nature of a judgment are not restricted to the respondent state only. Other contracting states may also take similar measures to comply with the rulings of the Court. A typical example was the above-mentioned *Kudla* case, where the judgment had a direct effect on Poland, but on the basis of the finding of the Court other states were also under the obligation to create effective domestic remedy in respect of the length of complaints.[60]

Since the Convention entered into force in the first two countries from the post-soviet bloc 25 years ago,[61] the Court has dealt with a great number of applications coming from the Central and Eastern European states. The individual and general effects of the Court's judgments made a huge impact on the new members' national legal system by reinforcing the protection of basic rights on their territory. Furthermore, they benefited from the international legal standards and guidance that the case law of the Court provided to safeguard individual human rights.

While the influence of the judgments of the Court in the Eastern countries has been decisive, it is hard to deny that the great number and the huge variety of the subject matters of the new complaints coming from these countries have also had a huge influence on the evolution of the case law of the Court. These applications significantly contributed to the enhancement of the jurisprudence in many areas. They further clarified matters like the term of 'no significant disadvantage' under Protocol No. 14, facilitating the Court to speed up their procedure or assisting in enriching the concept of 'state jurisdiction'.[62]

On the basis of the numerous Eastern European complaints under Article 3 of Protocol No. 1 on the right to free elections, the Court delivered judgments in concerning several Eastern European states.[63] Under this article, there were

60 *See* section 'B. Injustices of the past. Cases rooted in the communist history of the new member states' above.

61 Bulgaria and Hungary in 1992.

62 Cases *Assanidze*, *Ilaşcu*.

63 Ukraine, Moldova, Georgia. *See* Annual Report 2008, p. 78.

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important rulings concerning the necessity to have a system to review the result of the elections by courts[64] or emphasizing the need to avoid arbitrariness and last-minute legislative changes in electoral matters.[65]

The Court delivered important judgments in cases from the new countries dealing with different essential aspects of the freedom of expression under Article 10 of the Convention. They have always had paramount importance in Europe, especially Eastern Europe, where even today there are some worrying developments in this respect. These cases concerned, for instance, the criminal conviction of a journalist, the dissolution of a spontaneous demonstration, the role of a non-governmental organization in acting as public watchdog and the freedom of expression of a judge.[66]

Even these few examples prove, supported by thousands of other judgments during the last twenty-five years, that Central and Eastern European states became integral parts of the Strasbourg mechanism and the case law of the Court and also important contributors to this treasure of European legal thinking.

5. Recent Challenges, Future Prospects

Lengthy theoretical discussions on the notions of democracy, rule of law and human rights are not the aim of this study, but we cannot avoid briefly mentioning the relationship and importance of human rights and the rule of law in European democracies.

In Europe today, the notion of the rule of law not only involves the presence of detailed material and procedural legal rules but it also requires the existence of separation of powers and their guarantees, the constitutional protection of civil and political liberties and the protection of human rights. According to Tom Bingen, "[t]he rule of law requires compliance by the state with its obligation in international law as in national law."[67] He goes even further, mentioning the growing recognition of "the closeness of the relationship between international protection of human rights and the rule of law," pointing out, among other references, a number of judgments of the ECtHR with similar conclusions.[68]

The Court regards the rule of law as a principle inherent in the whole Convention. Behind the expectations of the applications coming from Central and Eastern Europe, there has always been this broader notion of the rule of law in a great number of cases. In highly over-politicized societies – as most of these countries

64 *Grosaru v. Romania*, Application no. 78039/01, judgment of 2 March 2010. The case concerns also the political representation of national minorities.

65 *Podkolzina v. Latvia*, Application no. 46726/99, judgment of 9 April 2002; *Melnychenko v. Ukraine*, Application no. 17707/02, judgment of 19 October 2004; *Kovach v. Ukraine*, Application no. 39424/02, judgment of 7 February 2008.

66 *See* among others: *Cumpăna and Măsăre v. Romania*, [GC] Application no. 33348/96, judgment of 17 December 2004; *Bukta and Others v.* Hungary, Application no. 25691/04, judgement of 17 July 2007; *Társaság a Szabadságjogokért v. Hungary*, Application no. 37374/05, judgement of 14 April 2009; *Baka v. Hungary*, [GC] Application no. 20261/12, judgement of 23 June 2016.

67 T. Bingen, *The Rule of Law*, Penguin Books, London 2011, p. 110.

68 *Ibid*., p. 117.

have been since their regime changed – individual human rights injustices very often go hand in hand with the frequent abuses of the rule of law. Due to the effects of the past communist regime on the society, the political dominance over state powers, the deficiency of checks and balances, and the weaknesses of the democratic institutions, the general consequences of the judgments are of paramount importance. Through the protection of individual application and individual human rights, the Strasbourg Court undeniably protects the rule of law, which is fundamentally linked to the notion of democracy.

The protection of the rule of law in a broader sense, of course, has its importance regarding some of the old member states to the Convention too. However, as a whole, Western European countries are domestically better prepared, with some hundred years of democracy to protect the rule of law, than the Central and Eastern European states. It is not known yet how Brexit will affect Britain's membership to the Convention, but with its Human Rights Act and democratic institutions we should not worry about the status of the rule of law there.[69] This might not be the case with any of the Central and Eastern European member states in the same situation.

It is not our task to analyse the current European situation, but in my view, due to the far-reaching social effects of the economic crisis of 2008 and the recent developments in other parts of the world, there is instability in Europe. The conflicts between Russia and Ukraine and tensions between certain other Eastern European states, the social anxieties, migration and individual uncertainties make Europe more unpredictable and vulnerable today. The spreading populism gained certain positions even in the political life of Western Europe, but – in addition to the traditionally autocratic regimes of the east – new populist governments emerged in Central Europe.

These regimes, in the name of the supremacy of the elected political majority, keep attacking the traditional components of the rule of law, state and place under political control of the institutions of checks and balances. The process normally starts with the Constitutional Courts and the judiciary,[70] subsequently extending to other institutions, while even the weak organizations of the civil society have been placed under pressure.

These developments have a clear effect on the applications to the Court. The applicants seek remedy for their alleged individual human rights violations and also want to restore the rule of law in their countries. Numerous cases show that the expectations behind the Central and Eastern European applications are high, to get a judgment not only with individual but also general consequences. While applications do not immediately point to the main legal deficiencies of a state, repeated applications on the same subjects or numerous applications covering

69 To avoid any misunderstanding, I am strongly of the opinion that this membership has been fruitful for the British applicants, Britain and through the British cases, for the entire Europe.

70 G. Borkowski (Ed.), *The Limits of Judicial Independence?*, Krajowa Rada Sadownictwa, Warsaw-Torun 2016 and *Baka v. Hungary* [GC] cited, paras. 15-22.

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almost all the articles of the Convention within a relative short period of time are more revealing about the 'human rights–rule of law' situation of a country.[71]

Most of the time the judgments of the Court meet these expectations, but the Court has its own limits too. I have already pointed out that the Court, beyond awarding financial compensation, never tells governments what to do to remedy to a human rights violation. The rare exceptions are the few consequential decisions. The governments are free to choose the available means, the Court only invites governments to find the appropriate solution to the problem. The Court also has its limits in cases concerning legislation, taxation, civil service and civil servants, organization of the Constitutional Court and the judiciary, etc.

Despite the inherent limits of the Court, it has provided protection of the minimum standards of human rights since its establishment. The protection has been extended to the Central and Eastern European member states since the beginning of the 1990s. In the current situation, when the Court is often subject to heavy criticism, when certain states are, on the basis of a misinterpreted notion of state sovereignty, attacking European institutions, it is more crucial than ever to preserve it – for the benefit of Europe as a whole and even more so for Central and Eastern Europe.

The purpose of this study was to give a broad overview on the relationship between the ECHR and the Central and Eastern European states. We pointed out that the accession of these countries had a decisive effect on the human rights system, we tried to present some of the most common types of cases coming from this region. This was done on the basis of the subject matters of the cases and the official statistical data of the Court. It is obvious that the Court has played an important role to protect individual human rights in Europe as a whole, but through the general consequences of its judgment it manifestly defends the rule of law as well. We certainly do not claim that the general human rights situation is better in the old member states than in the new ones. We just emphasize that due to the different past and recent historical circumstances, Central and Eastern European countries share some particularities.

The study also pointed out that in the new member states there is often a clearly expressed request in the applications to protect the rule of law through the judgment of the Court. The Court acknowledged this in its rulings, but it has inherent limitations to meet all expectations in this respect. The Court could essentially provide guidance, but it is primarily up to the citizens to protect or restore the rule of law in their countries. And, unfortunately, there is a long way to go in achieving this.

71 Great number of Article 2 and 3 hard-core cases from Russia and Ukraine, series of non-enforcement cases from Ukraine; Hungary is the third as far as the number of pending allocated applications is concerned in 2016, *see* www.echr.coe.int/Documents/Facts_Figures_2016_ENG.pdf (last accessed 28 March 2018).