Dynamics of Cases Litigated Against Georgia in the European Court of Human Rights through the Prism of Court's Institutional Evolution

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1. Introduction

European Court of Human Rights (from now on - European Court/Court) is the regional supervisory body established in 1959 on the bases of the European Convention for the Protection of Human Rights and Fundamental Freedoms (from now on – European Convention/Convention).[1] The Court is responsible for controlling the appropriate implementation of the obligations taken by the authorities of high contracting parties and ensuring the rights envisaged in the Convention.[2] Moreover, by dynamically interpreting the rights and answering the present-day challenges, the Court makes the Convention a Living Instrument.[3] Notably, "by its case law the Court has extended the rights set out in the Convention, such that its provisions may apply today to situations that were totally unforeseeable and unimaginable at the time it was first adopted."[4]

According to the original system established by the Convention, which functioned until October 31, 1998, ensuring the fulfilment of the obligations taken by the governments of the member states in terms of human rights protection was distributed among three institutions: the European Commission of Human Rights (founded in 1954), the Court of Human Rights (founded in 1959) and the Committee of Ministers of the Council of Europe (which consists of the ministers of foreign affairs of the member states).[5] From November 1, 1998, with the entry into force of Protocol No. 11, the first two institutions were replaced by one permanent institution - the European Court of Human Rights.[6] The latter supervises the alleged violation of civil and political rights protected by the Convention by examining individual or interstate complaints and making appropriate decisions on them. Moreover, due to the change, the Committee of Ministers was deprived of its quasi-judicial function. Instead, it was entrusted with enhanced supervision over implementing the judgements made by the Court.

From August 1, 2018, an advisory role was added to the Court. Namely, according to Protocol No. 16 of the Convention, the high courts and tribunals of the Contracting States[7] of the Protocol have the opportunity, in the context of the specific case pending before them, to apply to the European Court for an advisory opinion regarding the interpretation of the rights and freedoms reinforced by the Convention or any of its protocols.[8]

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[1] Under the auspices of the Council of Europe, it was signed in Rome on November 4, 1950, and entered into force on September 1953.

[2] "Convention for the Protection of Human Rights and Fundamental Freedoms," opened for signature November 4, 1950, European Treaty Series no.5, Article 19. https://www.echr.coe.int/Documents/Convention_ENG.pdf, Accessed: 30/04/2023.

[3] Council of Europe, "The European Convention on Human Rights - A Living Instrument," Public Relations Unit – Registry of the ECHR (2022), 7. https://www.echr.coe.int/Documents/Convention_Instrument_ENG.pdf, Accessed: 30/04/2023.

[4] Ibid.

[5] Council of Europe, "Survey: Forty years of activity 1959 -1998 of the European Court of Human Rights" (September 1998), 1. https://www.echr.coe.int/Documents/Survey_19591998_BIL.pdf, Accessed: 30/04/2023.

[6] Ibid.

[7] On August 1, 2018, Protocol No. 16 of the European Convention, entered into force for Georgia, along with nine other states (Albania, Armenia, Estonia, Finland, France, Lithuania, San Marino, Slovenia, and Ukraine). See Council of Europe, "Entry into force of Protocol No.16 to the European Convention on Human Rights," *Council of Europe Office in Georgia News* (Council of Europe, 2018), https://shorturl.at/ajxyN, Accessed: 30/04/2023.

[8] Council of Europe, Protocol No. 16 amending the Convention for the Protection of Human Rights and Fundamental Freedoms, *Council of Europe Treaty Series* - no. 214. 2.X.2013. https://shorturl.at/fzC69, Accessed: 30/04/2023.

The Court exercises the powers listed above in compliance with the *Principle of Subsidiarity*, which is the ground of the system of the protection of human rights and fundamental freedoms established by the European Convention. Protocol No. 15 of the Convention strengthened the significance of the principle of subsidiarity.[9] This resulted in the principle mentioned above's inclusion into the preamble of the Convention from August 1, 2021.[10] Under the principle of subsidiarity, the protection of the rights and freedoms established by the Convention and its protocols is primarily the responsibility of the Contracting States' political, administrative, and judicial bodies. Accordingly, the European Court should intervene only when national authorities fail to fulfil their obligations under the Convention.[11]

For its part, the complaint filed before the European Court is important not only for the author of the application, as an individual who demands an appropriate response to the violation of the right but also for the country as a whole and the Convention system in general,[12] as one decision may affect the entire population of the country. Specifically, the satisfaction of an individual's complaint by the European Court should not only end with the implementation of appropriate measures for the protection of the rights of this individual. Still, it should serve as a signal of at least refraining from similar violations to the authorities of the relevant country. Moreover, in some cases, a specific decision might become an obligatory mechanism for systemic changes (in the legislation or practice).[13]

Apart from those mentioned above, although those decisions have a binding effect on the country only if the latter was the respondent party in this case, it is necessary to consider the second crucial principle on which the Convention system stands – *the Principle of Solidarity*.[14] Namely, the latter implies that the precedent law of the Court is part of the Convention. Therefore, states must not only implement the Court judgements of the cases involving them but also take into account the possible effects that rulings in other cases may have on their legal systems and practices.[15] Thus, the decisions of the European Court are also crucial in this regard, as it may become an incentive for several changes at the national level, even without the existence of a direct obligation.[16]

Georgia became a contracting state to the Convention of the European Court of Human Rights in 1999. Since then, the jurisdiction of the European Court has been in effect over it[17] (from 1999 to 2022,

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[9] Council of Europe, Protocol No. 15 amending the Convention for the Protection of Human Rights and Fundamental Freedoms, Strasbourg, 24.VI.2013. *Council of Europe Treaty Series* - no. 213. https://shorturl.at/gnEFZ, Accessed: 30/04/2023.

[10] "Convention for the Protection of Human Rights and Fundamental Freedoms."

[11] Council of Europe Parliamentary Assembly, Resolution 1226 (2000) on Execution of Judgments of the European Court of Human Rights (Adopted by the Assembly on September 28, 2000 (30th Sitting), §2. https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=16834&lang=en, Accessed: 30/04/2023.

[12] David Kosar and Jan Petrov, "The Architecture of the Strasbourg System of Human Rights: The Crucial Role of the Domestic Level and the Constitutional Courts in Particular," *Zeitschrift Für Ausländisches Öffentliches Recht Und Völkerrecht 77,* no. 3 (2017): pp. 585-621, 590-593. https://www.zaoerv.de/77_2017/77_2017_3_a_585_621.pdf, Accessed: 30/04/2023.

[13] Ibid., at 592.

[14] Council of Europe Parliamentary Assembly, *"Resolution 1226 (2000)",* § 3.

[15] Ibid.

[16] Among other examples, the author cites Hirst v. United Kingdom (no. 2), a judgement concerning the right of prisoners to vote, according to which Ireland, Latvia and Cyprus have also changed their regulations on this issue. See Kosar and Petrov, The *Architecture of the Strasbourg System of Human Rights*, 593-595.

[17] Council of Europe European Court of Human Rights, "The ECHR And Georgia: Facts and Figures," May 2022. https://www.echr.coe.int/Documents/Facts_Figures_Georgia_ENG.pdf, Accessed: 30/04/2023. For the 2022 data, see European Court of Human Rights, "Press country Profile – Georgia," July 2022. https://echr.coe.int/Documents/CP_Georgia_ENG.pdf, Accessed: 30/04/2023.

the Court has delivered 143 judgments on the cases filed against Georgia.[18] The Court found at least one violation in 118 judgments).[19] The first judgement regarding Georgia was made in 2004 - *Asanidze v. Georgia*[20] - which became a precedent for Georgia and the Convention system as a whole.[21] This decision may have played an additional role in appealing against Georgia, characterized by an increasing trend from the first years.[22] Appeals against Georgia reached their peak in 2008 (3,594 applications). In the following year (2009), compared to 2008, a sharp decrease was observed. However, between 2009-2012, the appeal rate was consistently high compared to the period before 2008. An actual decrease[23] has been noticeable since 2013 (see Graph 7).[24] In addition, along with referrals, since 2013, the number of cases allocated to a judicial formation also decreased (see Graph 8). This trend was also characteristic of the number of pending cases (see Graph 9). At the same time, worth mentioning that these data, in many cases, are correlated with the general trends of the Court.

Such a perceptible change between the figures raises questions about its root causes and requires corresponding research. The rationale behind the decrease in these figures and its causes has yet to be analyzed regarding Georgia. The European Court of Human Rights does not conduct this kind of observation either. Considering the challenges, the Court faces, it may focus on changes that occurred with one or more specific data regarding the member state and its causes during a fixed period, in exceptional cases only.

Therefore, it is impossible to talk about the causal relationships regarding the change in the figures of Georgia in the European Court of Human Rights based on the existing knowledge. However, despite this, the cases of interpreting the numbers (in nominal) related to Georgia in the European Court are noticeable by policymakers in Georgia. In particular, these data are mainly used as evidence of their policy's effectiveness in terms of justice - improvement of the standard of human rights protection, the degree of independence of the Court, and the increase of public trust in the Court. Such an assertion is noticeable in the 2017-2019 activity report of the Supreme Council of Justice, which, in its turn, focuses only on numbers in nominal and does not offer an in-depth analysis. Namely, based on the number of applications[25] lodged against Georgia to the European Court or the number of applications allocated to the Court's judicial formations during the reporting period, despite the lack of proper reasoning, the

[18] As of October 31, 2022.
[19] Out of 143 judgments, only 21 did not establish a violation of any article of the Convention. See European Court of Human Rights, "Violations by Article and by State". https://www.echr.coe.int/Documents/Stats_violation_1959_2022_ENG.pdf, Accessed: 30/04/2023.
[20] *Asanidze v. Georgia* [GC], no.71503/01, 8 April 2004.
[21] In 2004, there was a noticeable trend for the Court to guide governments in providing just satisfaction to victims. In the case of Asanidze v. Georgia, the Court, which had always reiterated (until that time) that the state should be the one to choose the ways to implement the judgement, in this case, directly indicated in the ruling that "the respondent must secure the applicant's release [from illegal detention] at the earliest possible date." see Council of Europe, "Annual Report 2004 of the European Court of Human Rights," *Registry of the European Court of Human Rights* (Strasbourg, 2005), 57. https://echr.coe.int/Documents/Annual_report_2004_ENG.pdf, Accessed: 30/04/2023.
[22] 2000 - 13; 2001 - 29; 2002 - 42; 2003 - 44; 2004 - 60; 2005 - 97; 2006 - 117; 2007 - 219.
[23] In 2009, the decline compared to 2008 does not reflect the accurate picture, as the high rate recorded in 2008 is part of Russia's campaign, which will be discussed in detail below. Therefore, compared to the previous period of 2008, in 2009-2012, the growth is maintained. On the other hand, the actual decline started in 2013.
[24] 2009 - 377; 2010 - 428; 2011 - 401; 2012 - 418; 2013 - 141; 2014 - 199; 2015 - 119; 2016 - 108; 2017 - 89; 2018 - 99.
[25] Notably, the figure given in the report represents the number of applications allocated to a judicial formation in the reporting period. In this report, these data are mistakenly referred to as "applications lodged to the European Court". There is a big difference between applications lodged and applications allocated to a judicial formation. This error is standard when discussing this topic.

report makes a kind of conclusion: *"Thus, in terms of protection of human rights an unequivocal improvement is eminent, which means that the quality of the remedies for human rights infringement available at the national level has improved notably."*[26]

Among them, the evaluations of the corps of judges should be highlighted. In the joint statement[27] of a large number of judges of June 28, 2021, which was the response to the criticism of the Court developed by various actors (individual political parties, media, non-governmental organizations) and served to assert the independence of the judiciary, we read that the fundamental progress achieved in the field of justice is proven by the fact (among other data), that *"the number of complaints lodged to the European Court of Human Rights against Georgia has decreased drastically (for several times)".*

The quotations presented above, as well as the dozens of statements spread over the years by representatives of various branches of government or politicians in general, demonstrate that for the authors of such statements, the reduction of specific statistical indicators related to Georgia in the Court is an undeniably positive event, and this is due to the reforms implemented in the field of justice, which, according to them, is a significant improvement of the situation followed in terms of human rights in general and mainly - the right to a fair trial.[28]

To most of the audience, these are truly impressive figures.[29] However, it is interesting to understand what is meant behind these numbers. To do so, it is necessary to explore the reasons behind such a drastic change over the years. It is crucial to comprehensively study the causes, as asserting that the decline is necessarily a positive phenomenon is impossible. We can assume that the decrease is related to the loss of trust of individuals towards the European Court itself, not meeting the expectations, lengthy proceedings, and complicated procedures, or it may indeed be an indicator of the improvement of the existing situation in terms of human rights in the country, and the satisfaction of citizens with the effective work of the judicial system. Neither coexistence of these two factors nor the absence of any of them is excluded. At the same time, we should not exclude various circumstances from the discussion (procedural changes, changes in the Court's approach and priorities, global events, national context, and other factors). The latter may not have a significant impact solely but may dramatically change the picture in complexity.

Considering all this, this research aims to study the factors affecting the dynamics of cases litigated against Georgia in the European Court. In addition, it is essential to note that the purpose of the study

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[26] High Council of Justice of Georgia, "*Activity Report of the Judicial System: "Independent and Impartial, Effective and of High Quality, Transparent and Accountable Justice" 2017-2019*", (2022), 12-13. https://shorturl.at/bjopw, Accessed: 30/04/2023.

[27] "Appeal of the Judges of Common Courts in Georgia", High Council of Justice of Georgia. June 28, 2021. https://shorturl.at/dFQTX, Accessed: 30/04/2023.

[28] "We will not go into a detailed list of complex reforms that have been implemented in the judicial system during these years, and we are far from the opinion that everything is perfect. However, to illustrate what we have achieved as a result of these reforms, we present some statistical data to give you an accurate idea of where we were at the beginning of the journey and where we are now: "The number of lawsuits sent from Georgia to the European Court of Human Rights in Strasbourg decreased 11 times (from 4,453 to 415")."Georgian Dream's political council issues a statement," IPN InterpressNews, 05.02.2019. https://shorturl.at/jnwW8, Accessed: 30/04/2023.
"The number of lawsuits sent from Georgia to the European Court of Human Rights in Strasbourg decreased 11 times (from 4,453 to 415"), "Interview with Georgian Dream Chairman Bidzina Ivanishvili", Imedi, April 09, 2019. https://shorturl.at/uEPTU, Accessed: 30/04/2023.

[29] See Graph 7, Graph 8, Graph 9

is neither to explore the human rights protection quality in Georgia nor to measure the degree of independence and public trust in court.

The factors of change in the number of cases litigated against Georgia in the European Court are divided into two categories for research purposes - endogenous and exogenous. Endogenous refers to those factors that directly result from the actions/inactions of the branches of the Georgian government and the country's internal politics; Exogenous refers to all the others falling outside of internal politics, mainly the reforms carried out by the European Court itself.

The study relies on annual reports[30] published by the European Court of Human Rights, Court decisions relevant to the research topic, academic articles, and other publications to explore exogenous factors. Furthermore, to identify the endogenous factors, the report is primarily based on the information provided through in-depth interviews by the actors involved in the proceedings before the Court in different forms and periods.

As the Court's statistical data is analyzed in the framework of the studied factors, the main limitation of the research in this regard is the scarcity of the statistical data itself, which is especially noticeable regarding Georgia. Namely, as the European Court processes statistical data primarily to measure the effectiveness of the European Court itself, it does not provide all types of data, which, given the focus of the research, could have provided important information and would have allowed us to see the picture from a broader perspective.

Due to the factors mentioned above, this study will explore the European Convention system and its systemic evolution first, which will help us to determine what are the systemic factors which generally affect the number of applications and what are the contextual circumstances that cause the various factors' different influence on the outcome (Chapter 2).

After comprehensively studying the latter factor, the research report will provide an in-depth analysis of the reforms implemented in the judicial system on the one hand and the possible influence of political factors and contextual circumstances existing within the country on the cases against Georgia on the other (Chapter 3).

The study will provide a concluding discussion at the end. With the help of the knowledge gained from the previous chapters, it will address the main research question - **is the dynamics of cases in the European Court an appropriate measurement of the state of human rights protection at the national level and the change in the degree of trust in national courts?** – and tries to respond to it. Besides, it presents the topics that should be explored in future research to discuss further the issues raised in this study and comprehensively analyze them (Chapter 4).

[30] **Note:** There are minor errors in the annual reports. In such cases, the most recent reports and the figures presented in them are used for the research, as it is considered that the latter provides adjusted data from the previous years.

2. Procedures, reforms, and their impact on the Court functioning

"The European Court of Human Rights (ECtHR) has become a victim of its own success"[31] - This is a phrase that has been made in the direction of the European Court of Human Rights for years. Success was manifested in the growth of its reputation, given the increasing number of states subjected to its jurisdiction, hundreds of judgements delivered by the Court, and the extensive interpretation of the Convention. This resulted in an unprecedented number of individual applications. Considering the lack of a proper filter mechanism or sufficient resources and the increased repetitive complaints (primarily resulting from the enforcement-related issues of the Court decisions), hundreds of applications were lodged to the Court, and their number was increasing by tens of thousands year by year. All these circumstances put the Court on the verge of collapse. Furthermore, insufficient court resources to deal with ill-founded and hopeless complaints have resulted in prolonged arbitrary detention for applications related to severe violations of fundamental rights.

The Court's excessive caseload and inefficiency raised questions about its oversight function's proper realization and general reputation. As the former Council of Europe Commissioner for Human Rights, Thomas Hammarberg, said in his speech in 2012, he had met people who refused to take their urgent cases to Court because of protracted litigation. Thomas Hammarberg added that this is especially problematic in cases where applicants are experiencing pressure from their government officials for submitting a complaint to the European Court.[32]

Several fundamental reforms have been implemented in the system over the last two decades to maintain the effectiveness and viability of the European Court of Human Rights. For the most part, each aimed to reduce the number of lodged and pending applications. Although the reforms significantly changed the court functioning, relatively unburdened the Court and to a certain extent speeded up the process of proceedings, each reform was accompanied by sharp criticism since the unburdening of the Court was mostly done at the expense of limiting the individual's access to justice.[33]

Dependence on specific indicators was easily noticeable in the Court's annual reports since a large flow of applications and accumulated cases remained the main challenge, and the Court was mainly oriented on solving the caseload problem by preserving the individual right to petition. It was first announced in 2013 that the Court was no longer a victim of its success.[34]

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[31] Laurence R.Helfer, "Redesigning the European Court of Human Rights: Embeddedness as a Deep Structural Principle of the European Human Rights Regime," *The European Journal of International Law Vol.19 no.1,* (2008): 125-159, 126. https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=2591&context=faculty_scholarship, Accessed: 30/04/2023.

[32] Speech Given by Mr Thomas Hammarberg, Council of Europe Commissioner for Human Rights, on the occasion of the opening of the judicial year, 27 January 2012. in. Council of Europe, "Annual Report 2012 of the European Court of Human Rights," *Registry of the European Court of Human Rights* (Strasbourg, 2013), 48. https://www.echr.coe.int/Documents/Annual_report_2012_ENG.pdf, Accessed: 30/04/2023.

[33] Janneke H. Gerards and Lize R. Glas, "Access to justice in the European Convention on Human Rights system", *Netherlands Quarterly of Human Rights Vol. 35(I),* (2017): 11-30, 19. https://journals.sagepub.com/doi/pdf/10.1177/0924051917693988, Accessed: 30/04/2023.

[34] Speech Given by Mr Dean Spielmann, President of The European Court of Human Rights, on the occasion of the opening of the judicial year, 25 January 2013. in. Council of Europe, "Annual Report 2013 of the European Court of Human Rights," *Registry of the European Court of Human Rights* (Strasbourg, 2014), 26. https://www.echr.coe.int/Documents/Annual_report_2013_ENG.pdf, Accessed: 30/04/2023.

However, this was only the beginning, and the "progress" first needed to be maintained. Moreover, certain indicators were not the only issue. The problem was hidden deeper, which may have been neglected while thinking about these indicators. Namely, while the primary goal of the Convention introduction was to "establish an early warning system to sound the alarm in case Europe's fledgling democracies began to backslide toward totalitarianism",[35] the former President of the Court (2010-2019), Guido Raimondi, identified the real threat of the collapse of democracy not only regarding any specific state, but on a larger scale emphasizing the global character of the aforementioned in his speech in 2019.[36] According to Mr Raymond, this risk is significantly increased by violating the rights of the opposition and the judiciary independence, the suppression of media, and also cases of imprisoning opponents. The latter is relevant in the hands of those political leaders who dispense with the checks and balances and view the justice system, the press, and the opposition as "enemies of the people".[37]

In addition, according to Guido Raimondi, a good indicator of deep-seated problems and a decline in the rule of law is the increased number of judgments indicating Article 18 of the Convention violations[38] by the governments of member States. Namely, at the time of the announcement, the number of cases of Article 18 violation was 12, and 5 of them were recorded in 2018.[39] It is noteworthy that one of them was the case of *Merabishvili v. Georgia*, which also appeared to be the precedent-setting case by the Court.[40]

The former President of the European Court of Human Rights (2020-2022), Robert Spano, also drew attention to the issues of the rule of law and judicial independence in Europe in his speech in 2020 since the Court's recent decisions and the current trend allowed him to do so. According to him, the fact that the rule of law is under pressure in Europe is no longer a matter of dispute.[41] The current Commissioner for Human Rights of the Council of Europe, Dunja Miatović, was even more rigid on this issue in her speech in 2022. According to her, the rule of law is being eroded in more and more member states, which (erosion of the rule of law) *"manifests itself when governments refuse to abide by court decisions, undermine public confidence in the judiciary, violate judicial independence, weaken judicial bodies, pressure individual judges, and reduce parliaments to a rubber-stamp*".[42]

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[35] Helfer, *"Redesigning the European Court of Human Rights: Embeddedness as a Deep Structural Principle of the European Human Rights Regime*," 129.

[36] Speech Given by Mr Guido Raimondi, President of The European Court of Human Rights, on the occasion of the opening of the judicial year, 25 January 2019. in. Council of Europe, "Annual Report 2019 of the European Court of Human Rights," *Registry of the European Court of Human Rights* (Strasbourg, 2020), 15. https://echr.coe.int/Documents/Annual_report_2019_ENG.pdf, Accessed: 30/04/2023.

[37] Ibid.

[38] "The restrictions permitted under this Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed". See "Convention for the Protection of Human Rights and Fundamental Freedoms", Article 18.

[39] Speech Given by Mr Guido Raimondi, President of The European Court of Human Rights, on the occasion of the opening of the judicial year, 25 January 2019. in. Council of Europe, *"Annual Report 2019 of the European Court of Human Rights".*

[40] Merabishvili v. Georgia [GC], no. 72508/13, 28 November 2017.

[41] Speech Given by Mr Robert Spano, President of The European Court of Human Rights, on the occasion of the opening of the judicial year, 10 September 2021. in. Council of Europe, "Annual Report 2021 of the European Court of Human Rights," *Registry of the European Court of Human Rights* (Strasbourg, 2022), 16. https://www.echr.coe.int/Documents/Annual_report_2021_ENG.pdf, Accessed: 30/04/2023.

[42]Speech Given by Ms Dunja Mijatović, Council of Europe's Commissioner for Human Rights, on the Solemn Hearing, 25 June 2022. in. Council of Europe, "Annual Report 2022 of the European Court of Human Rights", *Registry of the European Court of*

By taking the existing challenges and real threats into account on the one hand and relieving the Court as much as possible on the other, the end of dependence on statistical indicators was announced by the end of 2020. Namely, Robert Spano spoke about the need for a paradigm shift and addressed the Committee of Ministers of the Council of Europe with the following words: *"The success of the Court will no longer be measured primarily by the total number of cases dealt with in a given period, but rather by the way it has dealt with the most important cases under our priority policy, those which are essential for applicants, each Member State and also for the wider European legal area."*[43] Therefore, these words serve as the officially announced future policy of the Court, and is another strong argument to stop the rigid counting of statistical data of the Court, "a numbers game"[44] and instead, focus more on content analysis.

This chapter reviews the reforms implemented in the Court. Besides, it also illustrates the possible impact of the reforms on the Court's statistical data through the data analysis and graphs we created based on it. Notably, the relevant annual reports of the European Court of Human Rights draw attention to most of these kinds of causal relationships. Besides, the 2010 Interlaken Declaration[45] is crucial in this regard. First, the document determined the Court's priorities for the next 10 years and has great political significance. The Interlaken Declaration turned out to be such a watershed for the Court that the Court work (the new Court) got divided into two periods "before and after Interlaken".[46] The end of Interlaken results was officially announced in 2020.[47]

It is noteworthy that the denunciation of the European Convention for the Protection of Human Rights and Fundamental Freedoms by the Russian Federation on March 16, 2022, may become one of the events with the greatest impact on the statistical indicators and the work of the Court in general.[48] The latter entered into force on September 16, 2022,[49] according to the European Court of Human Rights decision.[50] The denunciation that took place on March 16, 2022, its turn, represents an automatic

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Human Rights (Strasbourg, 2023), 23. https://www.echr.coe.int/Documents/Annual_report_2022_ENG.pdf, Accessed: 30/04/2023.

[43] European Court of human rights, "The European Court of Human Rights in launching a new case processing strategy," (ECHR 092(2021)), 17.03.2021.

[44] Speech Given by Mr Thomas Hammarberg, Council of Europe Commissioner for Human Rights, on the occasion of the opening of the judicial year, January 27, 2012. in. Council of Europe, "*Annual Report 2012 of the European Court of Human Rights"*, 49.

[45] High-Level Conference on the Future of the European Court of Human Rights – Interlaken Declaration, February 19, 2010. https://www.echr.coe.int/Documents/2010_Interlaken_FinalDeclaration_ENG.pdf Accessed: 30/04/2023.

[46] Council of Europe, "Annual Report 2010 of the European Court of Human Rights," *Registry of the European Court of Human Rights* (Strasbourg, 2011), foreword. https://www.echr.coe.int/Documents/Annual_report_2010_ENG.pdf, Accessed: 30/04/2023.

[47] Speech Given by Mr Robert Spano, President of The European Court of Human Rights, on the occasion of the opening of the judicial year, September 10 2021. in. Council of Europe, "*Annual Report 2021 of the European Court of Human Rights",* 14.

[48] Committee of Ministers, Resolution CM/Res (2022)2 on the cessation of the membership of the Russian Federation to the Council of Europe (Adopted on March 16 2022, at the 1428ter meeting of the Ministers' Deputies) https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680a5da51, Accessed: 30/04/2023.

[49] "A High Contracting Party may denounce the present Convention only after the expiry of five years from the date on which it became a party to it and after six months' notice contained in a notification addressed to the Secretary General of the Council of Europe…" see: "Convention for the Protection of Human Rights and Fundamental Freedoms", Article 58(1). Council of Europe – "Russia ceases to be party to the European Convention on Human Rights," September 16, 2022. https://shorturl.at/bjNOQ, Accessed: 30/04/2023.

[50] European Court of Human Rights, Resolution of the European Court of Human Rights on the consequences of the cessation of membership of the Russian Federation to the Council of Europe in light of Article 58 of the European Convention on Human Rights (Adopted by The European Court of Human Rights, sitting in the plenary session on 21 and 22 March). https://shorturl.at/gtN38, Accessed: 30/04/2023.

consequence[51] of Russia's Council membership termination in the context of Article 8 of the Council of Europe's Statute.[52] This happened due to the "military attack on Ukraine's sovereign territory and the breach of peace on the European continent on an unprecedented scale since the creation of the Council of Europe."[53] Since only a short period has passed since the denunciation, it will be difficult for us to talk about the results. However, taking into consideration that Russia, since its membership (1996), was among the countries against which the highest number of applications were lodged,[54] and, therefore, was distinguished by the number of pending cases, it can be assumed that this factor will be reflected at least on the statistical indicators related to the Court's work. Moreover, it may cause significant relief in the long-term perspective.[55] Nevertheless, it is difficult to talk about its short-term results. According to the Court's decision, it is possible to file a complaint against Russian Federation in relation to acts and omissions capable of constituting a violation of the Convention provided that they occurred until 16 September 2022.[56] This means that thousands of new complaints may be filed against Russia even after the denunciation. In addition, according to the data published by the Court, by the time the denunciation entered into force, there were 17,450 pending complaints against Russia. Their examination requires a lot of resources and time.[57] Moreover, the Committee of Ministers of the Council of Europe continues to supervise the implementation of the judgments establishing the violation of the Convention by the Russian government and other decisions, the number of which was 2,129 at the time of the denunciation.[58] Thus, while the Russian government's actions and subsequent relationship with the Court remain unknown, it will still take lots of time, finances and human-related

[51] On February 25, 2022, the day after the start of the war in Ukraine, the Committee of Ministers suspended Russia's right to represent. Council of Europe Committee of Ministers, - Situation in Ukraine – Measures to be taken, including under Article 8 of the Statute of the Council of Europe (Adopted by Ministers' Deputies on 1426er meeting, February 25, 2022). CM/Del/Dec (2022) 1426ter/2.3 https://shorturl.at/aBJX0, Accessed: 30/04/2023.
The decision was made under the framework of communication with the Parliamentary Assembly, taking into account the opinion received from the latter, according to which Russia could no longer be a member of the Council. See: Council of Europe Parliamentary Assembly, Consequences of the Russian Federation's aggression against Ukraine. Opinion 300(2022). https://shorturl.at/aBJX0, Accessed: 30/04/2023.The Russian Federation informed the Secretary General about its withdrawal from the Council. In the context of Article 8 of the Statute, Russia's membership in the Council of Europe ceased on March 16, 2022. (CM/Res(2022)2 on the cessation of the membership of the Russian Federation to the Council of Europe, March 16 2022. https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680a5da51, Accessed: 30/04/2023.

[52] "Any member of the Council of Europe which has seriously violated Article 3 may be suspended from its rights of representation and requested by the Committee of Ministers to withdraw under Article 7. If such member does not comply with this request, the Committee may decide that it has ceased to be a member of the Council as from such date as the Committee may determine." See: Statute of Council of Europe, 16/11/1999; https://rm.coe.int/1680306052, Accessed: 30/04/2023.

[53] Council of Europe Committee of Ministers, Consequences of the aggression of the Russian Federation against Ukraine (Adopted by Ministers' Deputies on 1428bis meeting, March 10, 2022). CM/Del/Dec(2022) 1428bis/2.3 https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a5c619, Accessed: 30/04/2023.

[54] According to the statistics of the applications lodged since 2006, Russia mostly occupied the first place among the member states. Namely, in 2006 - 21.5% of the total number (19,300) came from Russia, in 2007 – 20 300 (26.0%); in 2008 – 27 250 (28.0%); in 2009 – 33 550 (28.1%); in 2010 – 40 300 (28.9%); in 2011 - 40 250 (26.6%); in 2012 – 28 600 (22.3%); in 2013 – 16 800 (16.8%); in 2014 – 10 000 (14.3%); in 2015 – 9 200 (14.2%); in 2016 – 7 800 (9.8%); in 2017 – 7 750 (13.8%); in 2018 – 11 750 (20.9%); in 2019 – 15 050 (25.2%); in 2020 – 13 650 (22.0%); in 2021 – 17 000 (24.2%), in 2022 – 16 750 (22.4%).

[55] Tamar Ketsbaia, *"The beginning of the end" of the 24-year toxic relationship between the European Court of Human Rights and Russia".* Research Institute Gnomon Wise, November 21, 2021. https://gnomonwise.org/en/publications/researches/87, Accessed: 30/04/2023.

[56] "Such a denunciation shall not have the effect of releasing the High Contracting Party concerned from its obligations under this Convention in respect of any act which, being capable of constituting a violation of such obligations, may have been performed by it before the date at which the denunciation became effective." *"Convention for the Protection of Human Rights and Fundamental Freedoms"*, Article 58(2).

[57] Council of Europe, *"Russia ceases to be a party to the European Convention on Human Rights".*

[58] Ibid.

resources of the Court to eliminate the cases against Russia and ensure the proper execution of all decisions. At the very least, it is known so far that the Russian government does not intend to enforce the decisions of the European Court of Human Rights, which entered into force after March 15, 2022.[59]

Like the cases described above, many events caused fundamental changes throughout the Court's functioning history. This, in turn, greatly influenced the case trends in the Court. Therefore, it is crucial to highlight and consider those circumstances that might have impacted a specific indicator while discussing the statistical data (especially while trying to make a specific analysis). The present chapter will be devoted to exploring these circumstances.

Besides, our goal is not to discuss the procedures and reforms in detail but to present them at a level that makes it possible to illustrate the general image of the Court from year to year. Also, to analyze the statistical indicators related to Georgia and identify the possible causes of radical changes in the data (those directly dependent on the Court). Therefore, the reforms discussed below only represent a partial list of reforms implemented in the Court system.

2.1 Protocol No. 11 of the Convention – "New Court" and the mandatory character of the right of individual petition

2.1.1. Before Protocol No. 11 of the Convention

Since the creation of the Court, the CoE members have constantly been trying to increase the effectiveness of protecting human rights and fundamental freedoms and, therefore, to strengthen the supervisory mechanism of the Court. In this regard, the first meaningful reform was adopting Protocol No. 11 of the Convention.[60] With this move, since 1998, a two-tiered, rather complex system of complaints handling and supervision was replaced, which was in use for 40 years. Therefore, It is almost impossible to compare the existing system with the permanent Court established after the adoption of Protocol No. 11 to its antecedent. The main achievement of the new system was the recognition of the significance of the right of individual petition and the mandatory nature of its recognition by the member states, which, along with many other factors, created several "predicaments" for the Court in the future.

The right of individual petition, which provides an individual with the right to apply to the Court and therefore gives individuals an indisputable right to take legal action at the international level,[61] is one of the fundamental guarantees of the Convention's effectiveness – "alleged violations that have not been effectively dealt with by national authorities can be brought before the Court [ECtHR]."[62] Thus, it

[59] "Подписаны законы о прекращении исполнения постановлений ЕСПЧ," СОВА информационно-аналитический центр, 14 июня 2022 года. https://www.sova-center.ru/misuse/news/lawmaking/2022/06/d46432/, Accessed: 30/04/2023.
[60] Council of Europe, "Protocol No. 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms, restructuring the control machinery established thereby," *European Treaty Series* - No. 155, (Strasbourg, 11.V.1994). https://rm.coe.int/168007cda9, Accessed: 30/04/2023.
[61] *Interlaken declaration.*
[62] Ibid. Interlaken declaration Action Plan, A. 1.

is "one of the main components of the human rights protection mechanism".[63] However, initially, recognition of this right was only optional for states. Only three out of ten states recognized this right when the Convention entered into force. By 1990, all Contracting States (22 at the time) had recognized it. Later, it was adopted by all states acceding to the Convention.[64]

Complaints submitted by an individual applicant (in the case of those countries that recognized this right) or by a Contracting State were subject to a preliminary examination by the European Commission of Human Rights, which determined their admissibility. Namely, the latter would declare the application admissible per case and, where a friendly settlement could not be reached, would establish the facts and express an opinion on the merits of the case (which was not mandatory to execute) in the form of a report. After this, the report would be transmitted to the Committee of Ministers.[65]

If the Contracting Party had recognized the compulsory jurisdiction of the Court, the Commission or the Government of the country concerned could refer the case to the European Court for a final and binding decision within three months of submitting the report to the Committee. Prior to the entry into force of Protocol No. 9 on October 1, 1994,[66] the applicant could not transfer the case to the Court individually. According to this Protocol, and in the case when the state ratified the latter,[67] individual applicants were allowed to apply to the Court themselves. However, only if the screening panel of three judges approved the transfer.[68]

In those cases, when the complaint would not be transferred to the Court, it would be finally decided by the Committee of Ministers. Namely, the Committee would determine whether there was a violation of the Convention and, if possible, would impose compensation to pay to the victims.[69] At the same time, the Committee of Ministers was responsible for supervising the execution of the Court's judgments.

2.1.2. After the Protocol No. 11

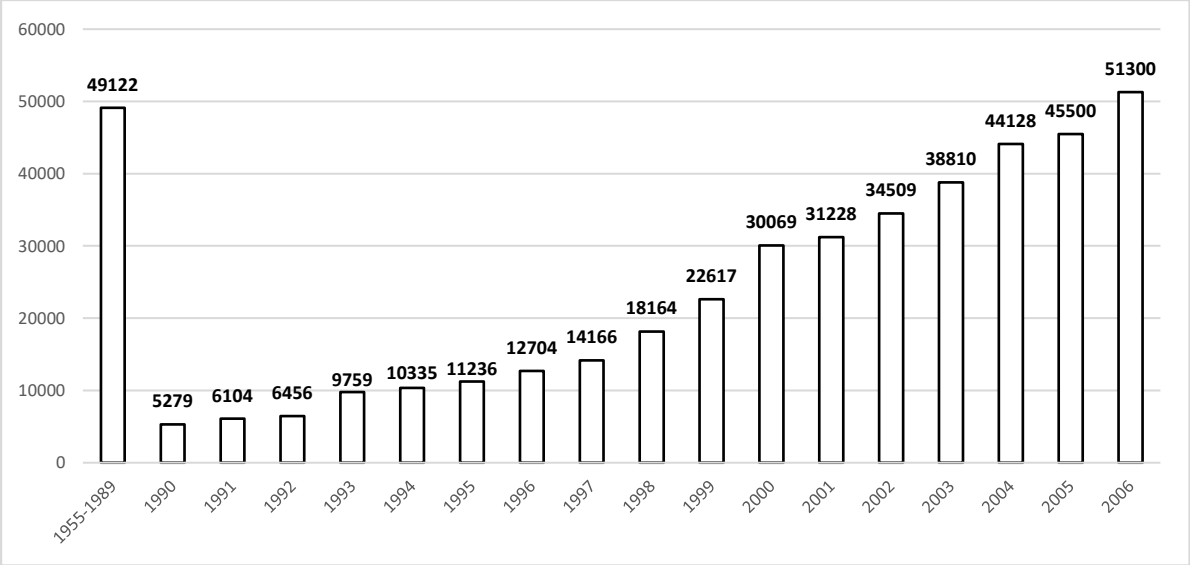
In 1998, when Protocol No. 11 entered into force, it became mandatory to recognize both the jurisdiction of the Court and the right of individual petition.[70] This right applies to any person, legal entity, group of individuals and non-governmental organizations. As a result of the changes, the complaint examination process, determined by the Convention, became entirely court-based, and the Commission's function as a preliminary reviewing panel was transferred to the Court. Moreover, the

[63] *Mamatkulov and Askarov v. Turkey* [GC], nos. 46827/99 and 46951/99, §§ 100, 122, 4 February 2005.
[64] Council of Europe, "Annual Report 2007 of the European Court of Human Rights," *Registry of the European Court of Human Rights* (Strasbourg, 2008), 11. https://www.echr.coe.int/Documents/Annual_report_2007_ENG.pdf, Accessed: 30/04/2023.
[65] Council of Europe, *"Survey: Forty years of activity 1959 -1998 of the European Court of Human Rights,"* 1.
[66] Council of Europe, "Protocol No. 9 to the Convention for the Protection of Human Rights and Fundamental Freedoms," European Treaty Series – No. 140 (Rome, 6.10.1990). https://www.coe.int/en/web/conventions/full-list?module=treaty-detail&treatynum=140, Accessed: 30/04/2023.
[67] As of December 31, 1998, Protocol No. 9 had been ratified by 24 states: Austria, Belgium, Cyprus, Czech Republic, Denmark, Estonia, Finland, Germany, Hungary, Ireland, Italy, Liechtenstein, Luxembourg, Netherlands, Norway, Poland, Portugal, Romania, Russia, San Marino, Slovakia, Slovenia, Sweden, and Switzerland. Council of Europe, "*Forty years of activity of the European Court of Human Rights".*
[68] Council of Europe, *"Protocol No. 9",* Article 5(2).
[69] Ibid.
[70] Council of Europe, *"Protocol No. 11".*

latter's jurisdiction became mandatory. The judicial function of the Committee of Ministers was abolished, and it stayed as a supervisory body of the judgments' execution under the framework of the reformed system.[71] In addition, according to the Protocol, the Committee of Ministers was authorized to review (until October 31, 1999) only those cases declared admissible before the Protocol came into force.[72]

Along with these fundamental changes, and in the background of the growing number of states subjected to jurisdiction, its reputational growth, the Court's broad interpretation of individual freedom, the growth of domestic judiciaries and human rights-related issues in some countries, and many other factors, a large number of individual applications began to flow to the Court.[73] These numbers grew year by year (see graph 1).

Graph 1: Number of applications lodged to the European Court of Human Rights, by years



Source: The graph was created by the author based on the ECtHR's annual reports

Graph 1 clearly illustrates the growing trend of court appeals. The number of complaints filed has almost doubled in the two years since Protocol No. 11 came into force.[74] The number of applications lodged in 2006 exceeded the total received in the 34 years (1955-1989). It is also significant that from 2007, the court stopped recording/publishing the number of lodged applications separately, considering that this figure is irrelevant for accurately evaluating the court's true judicial activity.[75] This fact additionally indicates that the number of lodged applications is methodologically useless for qualitative assessment.

[71] Ibid., Article 1.
[72] Ibid., Article 5(3).
[73] Helfer, *"Redesigning the European Court of Human Rights: Embeddedness as a Deep Structural Principle of the European Human Rights Regime,"* 126.
[74] Lodged Application – an application sent by the applicant to the court, which has not yet been officially registered and may not meet the criteria required for the Court to register the application. Accordingly, their number is not included in the "Applications pending before a judicial formation". This is because if the applicant cannot submit all the necessary information to the Secretariat in accordance with the requirements of Article 47 of the Rules of Court, they can be disposed of administratively. Instead, submitted complaints are collected in the "pre-Judicial files" data. The latter is not usually included in the official statistics on pending applications. See Council of Europe, "ECHR - Understanding the Court's Statistics", March 2019, 7. https://www.echr.coe.int/Documents/Stats_understanding_ENG.pdf, Accessed: 30/04/2023.
[75] Council of Europe, *"Annual report 2007 of the European Court of Human Rights",* 133.

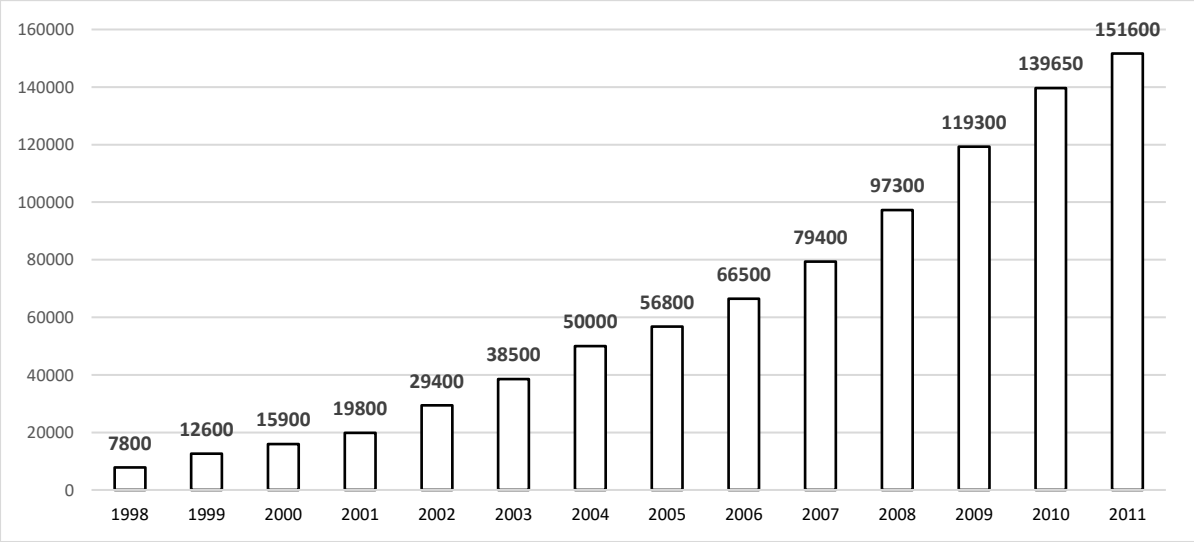
2.2. Adoption of Protocol No. 14 of the Convention – New Judicial Formations and Admissibility Criteria

The drastic and continuous increase in the number of applications (which, as already mentioned, was due to many factors, including the non-execution of the judgements already delivered[76] that, in turn, led to the influx of many repetitive complaints) caused the court to be overloaded.

Moreover, many applications were rejected by the court due to non-compliance with the admissibility criteria established by the Convention. Therefore, since the court was required to respond to each complaint, it could no longer resolve those cases, requiring a substantive examination within a reasonable time.[77] As a result, cases of serious violations remained unresponded for years.

Considering the tendency of the dramatic increase in applications and the dangers that this unprecedented rise would cause, the Committee of Ministers of the Council of Europe, as early as 2000, drew attention to the need to take appropriate measures.[78] Unfortunately, however, this negative outcome (overburdening and actual collapse of the court) could not be avoided (see Graph 2).

Graph 2: Number of pending applications[79] before the ECtHR's judicial formations at the end of each calendar year[80]



Source: The graph was created by the author based on the annual reports of the European Court of Human Rights

[76] Council of Europe, "Annual Report 2008, of the European Court of Human Rights," *Registry of the European Court of Human Rights* (Strasbourg, 2009), 5. https://www.echr.coe.int/Documents/Annual_report_2008_ENG.pdf, Accessed: 30/04/2023.

[77] European Court of Human Rights, "Practical Guide on Admissibility Criteria," Updated on 30 April 2022, 7. https://www.echr.coe.int/Documents/Admissibility_guide_ENG.pdf, Accessed: 30/04/2023.

[78] Council of Europe Committee of Ministers, European Ministerial Conference on Human Rights, Resolution I, Institutional and Functional Arrangements for the Protection of Human Rights at National and European Level, Rome, 3-4 Nov. 2000. CM (2000)172. https://rm.coe.int/16805e2eec, Accessed: 30/04/2023.

[79] Until January 1, 2008, pending applications included the following categories: 1. The number of applications allocated to a judicial formation; and 2. Applications at the pre-judicial stage. The latter refers to applications not complete enough to be allocated to a judicial formation. Since, their significant number were disposed of administratively, the Court decided that a more accurate record of the Court's activity would exist by removing these types of applications from the overall figure of the pending applications. As of January 1, 2008, the total number of pending applications does not include applications at the pre-judicial stage, and data about them are presented separately in "pre-judicial files". See Council of Europe, "*Annual Report 2007 of the European Court of Human Rights*", 133. In addition, it is noteworthy that the number of pending applications includes applications on which the Court may have already delivered a judgement, however, according to the Convention, it has not become final yet. Council of Europe, "*ECHR - Understanding the Court's Statistics,*" 7.

[80] **Note:** Taking into consideration the circumstances indicated in footnote 79, the data in Graph 2 have been adjusted according to the new accounting.

As Graph 2 illustrates, since 1998, the most significant number of complaints (151,600 applications) were allocated in 2011 to the Court's judicial formations (which, in turn, was supplemented by 22,600 applications at the pre-judicial stage).

Not to leave "the rosy picture of ECtHR's efficacy as a historical portrait only",[81] it was necessary to take some drastic steps. In this regard, one of the most significant actions was adopting[82] Protocol No. 14 of the Convention[83] in May 2004. The latter aimed to ensure the long-term efficiency of the Court. Among other things, it created a new judicial formation for handling simple cases and introduced new admissibility criteria. Namely, the issue of clearly inadmissible applications would be decided by one judge, assisted by a non-judicial reporter, instead of a commission consisting of three judges. And the three-judge committee, along with considering the admissibility issue, would be empowered to decide on the substantial part of the appeals, in which well-established case law existed on the issues raised. The principal purpose of this change was to free up the Court's time and resources for cases of greater legal importance or urgent cases. In addition, the Protocol defined a new admissibility criterion related to the degree of damage inflicted on the applicant, which aimed to prevent complaints from those who did not experience significant disadvantage.

Although high hopes were placed on Protocol No. 14, it was never considered a panacea that would be "the end of this story".[84] The 6-year postponement of its entry into force, due to Russia's extended ratification process, brought the Court into such a severe crisis that it was impossible to stay in the hope of this Protocol alone.

The first hurdle was overcome in Madrid on May 12 2009, when the Contracting Parties agreed by consensus[85] on the provisional application of certain provisions (establishing a single-judge formation and strengthening of the Committee) with respect to those countries that expressed their consent on Protocol No. 14 (certain provisions) in advance[86] or for those that were ratifying Protocol No. 14 bis (which was adopted in Madrid and entered into force on October 1, 2009).[87] As a result, in the case of 19 countries (including Georgia (01/01/2010), the above provisions entered into force before Protocol

[81] Helfer, "*Redesigning the European Court of Human Rights: Embeddedness as a Deep Structural Principle of the European Human Rights Regime,*" 127.

[82] By 2006, 46 of the 47 member-states had ratified Protocol No. 14. Russia was the only one that did not ratify, preventing its entry into force. Russia ratified the Protocol on February 18, 2010. See Council of Europe, "Chart of signatures and ratifications of Treaty 194." https://www.coe.int/en/web/conventions/full-list?module=signatures-by-treaty&treatynum=194, Accessed: 30/04/2023.

[83] Council of Europe, "Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the control system of the Convention," Council of Europe Treaty Series – No. 194, Strasbourg, 13.V.2004. https://rm.coe.int/1680083711, Accessed: 30/04/2023.

[84] Speech given by Mr Luzius Wildhaber, President of the European Court of Human Rights, on the occasion of the opening of the judicial Year, January 21, 2005. in Council of Europe, *"Annual Report 2004 of the European Court of Human Rights*", 32.

[85] Council of Europe, "Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the control system of the Convention: Agreement on the provisional application of certain provisions of Protocol No. 14 pending its entry into force" *Council of Europe Treaty Series* – no. 194, Madrid, 12.05.2009. https://rm.coe.int/1680083718, Accessed: 30/04/2023.

[86] Ibid., "List of the High Contracting Parties having accepted the provisional application of certain provisions of Protocol No. 14."

[87] Council of Europe, Protocol No. 14 bis to the Convention for the Protection of Human Rights and Fundamental Freedoms, *Council of Europe Treaty Series* – no. 204, Strasbourg, 27.05.2009. https://rm.coe.int/1680084825, Accessed: 30/04/2023. It was abolished on June 1, 2010, once Protocol No.14 entered into force.

No. 14.[88] Besides, the latter entered into force on June 1, 2010, after Russia finally ratified it. Therefore, the provisions of the Protocol became mandatory for all Contracting Countries of the Convention from this date.[89]

It was from 2009-2010 that several reforms carried out for the Court's effective functioning began. They could have an impact on the dynamics of the course of cases. Before analyzing the results of the steps mentioned earlier, it is necessary to discuss another vital reform (the policy of prioritization of cases) that was carried out at the same time when these provisions entered into force. These two aspects are so intertwined that they cannot be separated regarding the results. Moreover, the political agreement played a significant role along with these essential procedural changes. The latter was achieved by the CoE member states, initially, through the Interlaken declaration (April 19, 2010).[90] Other declarations (Izmir - April 27, 2011;[91] Brighton - April 20, 2012,[92] Brussels - March 27, 2015;[93] Copenhagen - April 13, 2018)[94] also resulted in effective steps and were based on and reiterated the spirit of the Interlaken Agreement.

2.3. Priority Policy (Part 1)

The Court placed hopes on the change in the policy of prioritizing the case, which involves determining the order of processing the cases, considering the importance of the issue and the necessity of its examination in an accelerated manner.

In June 2009, the Court made changes in its procedural component. Namely, these changes concerned the principle and order of case examination. Until now, the cases would be adjudicated chronologically. In other words, the cases were considered in the order in which they were allocated to the Court[95] (although the Chamber or its President could, by its own decision, give priority to a particular urgent case and, therefore, speed up its examination).

Considering increased complaints, this approach meant that some serious allegations of human rights violations remained unresolved for years, waiting for their turn. This is especially relevant in the case of those countries from which many applications were received. This was unsatisfactory not only

[88] Council of Europe - Chart of signatures and ratifications of Treaty 204. https://www.coe.int/en/web/conventions/full-list?module=signatures-by-treaty&treatynum=204, Accessed: 30/04/2023.
[89] Council of Europe, "Annual Report 2009 of the European Court of Human Rights," *Registry of the European Court of Human Rights* (Strasbourg, 2010), 12. https://www.echr.coe.int/Documents/Annual_report_2009_ENG.pdf, Accessed: 30/04/2023..
[90] *"Interlaken Declaration"*.
[91] High-Level Conference on the Future of the European Court of Human Rights (Izmir Declaration), Izmir, 26-27 April 2011, https://www.echr.coe.int/Documents/2011_Izmir_FinalDeclaration_ENG.pdf, Accessed: 30/04/2023.
[92] High-Level Conference on the Future of the European Court of Human Rights (Brighton Declaration), Brighton, 19-20 April 2012. https://www.echr.coe.int/Documents/2012_Brighton_FinalDeclaration_ENG.pdf, Accessed: 30/04/2023.
[93] High-level Conference on the "Implementation of the European Convention on Human Rights, our shared responsibility" (Brussels Declaration), Brussels, 26-27 March 2015. https://www.echr.coe.int/Documents/Brussels_Declaration_ENG.pdf, Accessed: 30/04/2023.
[94] Copenhagen Declaration, Copenhagen, 12-13 April 2018. https://rm.coe.int/copenhagen-declaration/16807b915c, Accessed: 30/04/2023.
[95] European Court of Human Rights, The Court's Priority Policy. https://shorturl.at/cotKZ, Accessed: 30/04/2023.

for the applicants but also meant that the violations and their causes went unidentified, creating more victims and potentially more claims before the Court.[96]

Considering these circumstances, the Court decided to develop a new policy expressed in the amended Rule 41 of the Rules of Court. According to this Rule, the Court "is to have regard to the importance and urgency of the issues raised in deciding the order in which cases are be dealt with". Namely, the complaints were categorized as follows:[97]

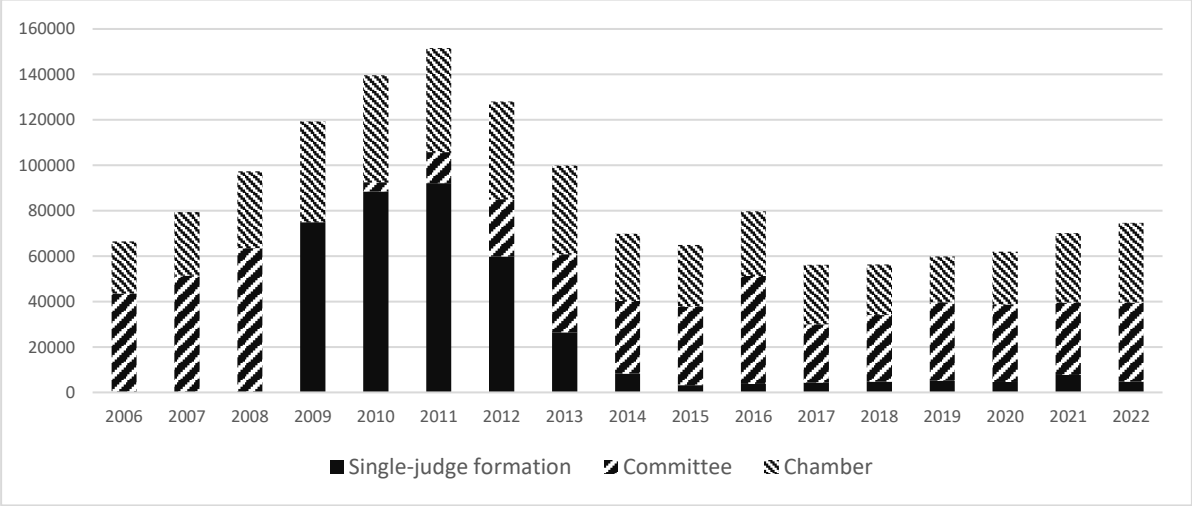
1. Urgent applications (in particular risk to the life or health of the applicant, other circumstances linked to the personal or family situation of the applicant, mainly where the well-being of a child is at issue, application of Rule 39 of the Rules of Court ("Interim Measure"));
2. Applications raising questions capable of having an impact on the effectiveness of the Convention system (namely, a structural or endemic situation that the Court has not yet examined, pilot-judgment procedure) or applications raising an essential question of general interest (in particular a severe question capable of having significant implications for domestic legal systems or the European system), inter-State cases;
3. Applications which, on their face, raise as main complaints issues under Article 2 (right to life), Article 3 (prohibition of torture), Article 4 (prohibition of slavery and forced labor) or Article 5 § 1 (right to liberty and security) of the Convention ("core rights"), irrespective of whether they are repetitive, and which have given rise to direct threats to the physical integrity and dignity of human beings;
4. Potentially well-founded applications based on other Articles;
5. Applications raising issues already dealt with in a pilot/leading judgment ("repetitive cases");
6. Applications identified as giving rise to a problem of admissibility;
7. Manifestly inadmissible applications.

"Under this scheme, in principle, a case in a higher category will be examined before a case in a lower category (though a Chamber or its President have the power to change the priority status of the case and treat it differently)."[98]

Besides, although according to the new priority policy, the cases of categories V-VII belong to the last cases to be processed according to the order, at the same time, the implementation of the changes provided for in Protocol No. 14 and the creation of separate formation for this type of cases led to the accelerated examinations of these cases. Noteworthily, they were the ones that constituted the largest share of pending applications (See Graph 3 and Graph 4).

[96] Ibid.
[97] Ibid.
[98] Ibid.

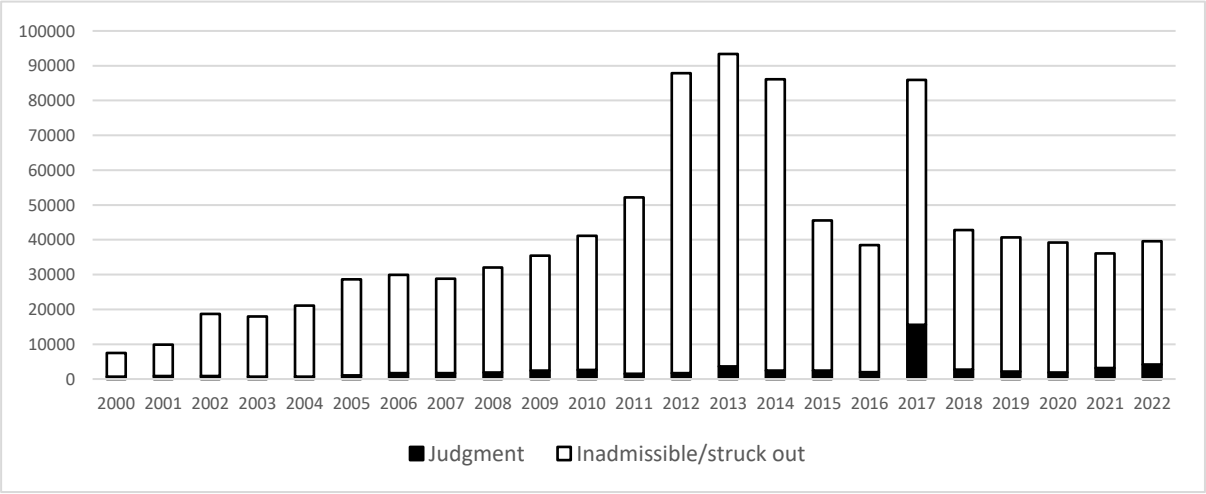
Graph 3: Pending applications before the Court's judicial formations (single-judge formation, Committee, Chambers) of the ECtHR at the end of each year



Source: The graph was created by the author based on the ECtHR's annual reports.
Note: In the 2009 data, the number of applications pending before a single-judge formation also includes applications pending before the Committee, as the statistics for this year does not separate these two figures.

Graph 3 illustrates that since 2006, the number of applications has been rising, reaching its peak in 2011. However, since 2012, the decrease in pending applications is becoming noticeable. In addition, it is significant that a large share of the pending complaints in 2010-2012 came from applications reviewed by a Single-judge formation that, according to the priority policy, have to review cases under category VII, i.e., manifestly inadmissible cases. Therefore, it is evident that the Court's caseload was primarily due to such appeals (only in 2011, about 100,000 applications were classified for the Single-judge formation's examination).[99] The relief was mainly caused by striking out many applications from the list or declaring them inadmissible by the Court in 2012-2014[100] (see Graph 4).

Graph 4: Number of applications decided by the judicial formations of the ECtHR (by judgment and by decision (inadmissible/struck out)) by year.



Source: The graph was created by the author based on the ECtHR's annual reports.

[99] Council of Europe, "Annual Report 2015 of the European Court of Human Rights," *Registry of the European Court of Human Rights* (Strasbourg, 2016), 5. https://www.echr.coe.int/Documents/Annual_Report_2015_ENG.pdf, Accessed: 30/04/2023.
[100] In 2010, 22 260 out of 38 576 decisions on inadmissibility and striking out of the list oc cases were made by a single-judge formation. In 2011, this figure was 46,930 (out of 50,677); in 2012 - 81,764 (out of 86,201); In 2013 - 80,583 (out of 89,739). In 2014 - 78,700 (out of 83,680). See: Franklin Dehousse and Benedetta Marsicola, "The Reform of the EU Courts (III): The Brilliant Alternative Approach of the European Court of Human Rights. "*Egmont Institute,* (2016): 33.

As Graph 3 and Graph 4 demonstrate, a Single-judge formation had to take an enormous burden, which led to the elimination of manifestly inadmissible applications. As a result, the Court was relatively relieved of such applications and freed up resources to examine essential cases.

At the same time, attention should be paid to the fact that according to Graph 3, both the pending applications before the Court and the share of applications before a Single-judge formation in the pending applications decreased in the following years. On the one hand, this may be due to a new, flexible mechanism that alleviated the burden of the already accumulated applications. However, on the other hand, it is interesting to explore to what extent this change independently prevented the influx of similar manifestly inadmissible complaints in the future. To do so, there are two factors to consider that we will discuss below: 1. The extent of reasoning for declaring as inadmissible by a single-judge formation and, as a result, increasing the level of awareness of applicants in this regard; 2. The way to be followed by the complaint before reaching the single-judge formation. In particular, in the case of the latter, it is acceptable to consider how strictly the applications were filtered before registration and what changes were made in this regard.

One of the main criticisms of the quick strikeout of applications from the list of cases by a single-judge formation was the unavailability of these decisions and, at the same time, the lack of appropriate reasoning case-by-case.[101] Critics suspected that the main work was done by registrars who did not have the competence of judges and that judges only had the function of rubber-stamp, which led to a quick relieving of the Court from the accumulated complaints.[102] An unreasoned denial on the admissibility of a complaint left unanswered and created a sense of injustice not only to the particular individual whose complaint was examined but also left unclear the standard used by a single-judge formation in deciding admissibility. This, on the one hand, would not have been able to prevent the influx of clearly inadmissible complaints due to the absence of relevant knowledge. However, on the other hand, a vague approach could deter those whose complaints could pass this stage without any obstacles. The lack of proper reasoning was named as one of the significant challenges of the Court in 2015-2016.[103] Namely, at the Brussels conference, the Contracting Countries directly requested the Court to ensure providing reasoning for single-judge decisions.[104] The request mentioned above was implemented in the following years. However, this happened after tens or hundreds of thousands of complaints had already been declared inadmissible.

Thus, in the first stage, the single-judge formation was not concentrated on preventing the inflow of inadmissible complaints but reducing the existing backlog.

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[101] Speech given by Mr Guido Raimondi, President of the European Court of Human Rights, on the occasion of the opening of the judicial year, 29 January 2016. in. Council of Europe, "Annual Report 2016 of the European Court of Human Rights," *Registry of the European Court of Human Rights* (Strasbourg, 2017), 18. https://echr.coe.int/Documents/Annual_report_2016_ENG.pdf, Accessed: 30/04/2023.

[102] Gerards and Glas, *"Access to justice in the European Convention on Human Rights system"*, 24.

[103] Council of Europe, *"Annual Report 2015 of the European Court of Human Rights";* Also, Speech given by Mr Guido Raimondi, President of the European Court of Human Rights, on the occasion of the opening of the judicial year, 29 January 2016. in. Council of Europe, *"Annual Report 2016 of the European Court of Human Rights",* 18.

[104] See footnote 93.

However, if we look at the statistics of the pending applications before the judicial formations, we will see that the number of applications pending at the level of single-judge formation was also decreasing from year to year. This, on the one hand, might create an impression that despite the need of proper reasoning in the decisions, the single-judge formation still managed to prevent the influx of hopeless appeals. Perhaps this assumption is valid and played a preventive role indeed, but before concluding so, we should not forget the actuality of other critical circumstances in the given period.

Specifically, as we know, the statistics of pending applications refer to those allocated to the judicial formations which managed to pass the first stage - admissibility according to the administrative procedure. Therefore, the number of appeals reached to the single-judge formation is also influenced by the existing filter at the stage of administrative examination. Therefore, we should also analyze and discuss this procedure.

2.4. Procedural Changes – Complicated procedure of lodging a complaint to the Court?

As mentioned above, the number of applications lodged to the Court since 2007 is not available to the public anymore. Until 2007, as Graph 1 shows, a growth trend was visible. Also, as the annual reports show, the trend was maintained in the following years. This is confirmed by the Interlaken declaration (2010) too, with an accent on excessive ill-founded and unpromising applications being submitted to the Court.[105]

In response to this problem, procedural changes were adopted to make it more difficult to appeal the case to Court (however, it was seen by many as a significant limitation of the right of individual petition).[106] Specifically, from January 1, 2014, according to Rule 47 of the Rules of Court, filing a complaint became more complicated.[107] From now on, the applicants were forced to submit a complaint in a distinct complicated form, which required more attentiveness and perhaps more knowledge on their part, as the failure to comply with the requirements defined by Rule 47 of the Rules of Court , failure to fill in any section of the form or incorrect filling, is the reason for leaving the complaint not examined by the Court.[108] Unless:[109]

a) The applicant has provided an adequate explanation for the failure to comply;[110]
b) The application concerns a request for an interim measure;

[105] See footnote 45.
[106] European Court of Human Rights, "Report on the implementation of the revised rule on the lodging of new applications," February 2015. https://www.echr.coe.int/Documents/Report_Rule_47_ENG.pdf, Accessed: 30/04/2023.
[107] European Court of Human Rights, "Rules of Court," *Registry of the Court,* Strasbourg, June 3, 2022, Article 47. https://www.echr.coe.int/documents/rules_court_eng.pdf?__cf_chl_managed_tk__=wOMOUb7b5syxlm62ocmFxQDqePJeV46PHaNXLV.5t9s-1642588533-0-gaNycGzNCVE, Accessed: 30/04/2023.
[108] Failure to meet the requirements does not necessarily mean a final rejection, as applicants may re-apply successfully if they are still within the time-limit set by the Convention.
[109] European Court of Human Rights, *"Rules of Court,"* Article 47 (5)(1).
[110] For example, such an exceptional case in practice was represented by prisoners or persons in detention without access to specific documents, where an alien in detention understanding what is required. Also, in respect of applications regarding the ongoing conflict in Ukraine since 2014, where applicants stated that the destruction of property and the disruption of public services affected accessibility to documents and information to be submitted to the Court. See footnote 106.

c) The Court otherwise directs its motion or at the request of an applicant.[111]

After the changes came into force, if we look at the data of 2014, we will see that 23% (12,191) of the applications (52,758) lodged to the European Court failed to comply with the revised Rule.[112] This, in turn, indicates that before these changes, the Secretariat spent a lot of resources in processing[113] incompletely submitted complaints.[114]

In addition, since January 1, 2014, the approach of the Court regarding the six-month period has been tightened. Namely, according to Article 35 of the Convention: "The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognized rules of international law, and within a period of four months from the date on which the final decision was taken."[115] Based on Protocol No. 15 of the Convention,[116] from February 2022, the six-month period was reduced to 4 months.[117]

The purpose of this term is primarily to ensure that the complaints raising problems under the Convention are examined within a reasonable time. Moreover, it aims to prevent authorities and other persons from being in a state of legal uncertainty for a long time. "Lastly, the rule is designed to facilitate the establishment of the facts of the case which, with the passage of time, would otherwise become increasingly difficult, and thus creating problems for a fair examination of the question raised under the Convention."[118]

According to the amendments, the general rule does not recognize the primary application and the possibility of extending the 6-month period by the Court based on it. The applicant is obliged to submit a full complaint within 6 months. Only in this case will the deadline be met.[119]

According to the Court itself, the result of the amendments implemented in Rule 47 of the Rules of Court was noticeable even in a one-year period, manifested in diminishing the overall backlog of cases and the accelerated process of receiving/considering applications. Namely, the number of correspondences was reduced, and the organization of complaints improved, facilitating the analysis and processing of incoming complaints. Most importantly, it freed up time for other complaints more likely to succeed.[120]

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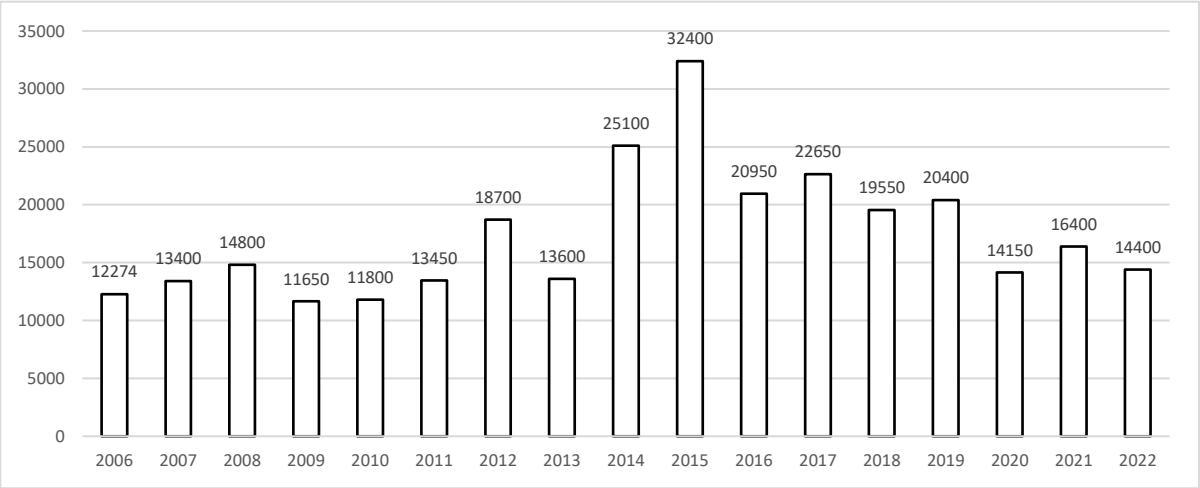
[111] "Very exceptional cases where an application raises important issues of interpretation of the Court's case-law or the Convention which are of a significance for the effective functioning of the Convention mechanism beyond the individual circumstances of the case". See note 106.
[112] See note 106.
[113] "The most common grounds of rejection have been failure to submit complaints on the application form; failure to provide documents concerning the decisions or measures of which the applicant is complaining of; failure to provide a statement of violations; lack of any statement of compliance with the admissibility criteria; and failure to provide documents showing that the applicant has complied with the obligation to exhaust available domestic remedies". See footnote 106.
[114] Ibid.
[115] *"Convention for the Protection of Human Rights and Fundamental Freedoms",* Article 35.
[116] Council of Europe, "Protocol No. 15".
[117] Council of Europe, "Time limit for ECHR applications reduced to four months", February 1, 2022. See https://www.coe.int/en/web/portal/-/time-limit-for-echr-applications-reduced-to-4-months, Accessed: 30/04/2023.
[118] *Mercier De Bettens v. Switzerland*, no. 12158/86, ECHR 1987.
[119] *Malysh And Ivanin v. Ukraine* (dec.), nos. 40139/14 and 41418/14, September 9, 2014.
[120] See fnote 106.

While discussing about the possible result, it is worth drawing attention to the rise in the number of the applications disposed of administratively immediately after these changes. Specifically, in 2014-2015, sharply increased (See Graph 5).

Graph 5: Number of the applications disposed of administratively according to Rule 47 of the Rules of Court by year.



Source: The graph was created by the author based on the ECtHR's annual reports

As Graph 5 illustrates, this indicator starts to decrease from 2016 compared to 2014-2015. However, this figure is still high compared to previous years (before 2014). It is only in 2020 that it returns to the old level. This may be explained by the fact that the applicants learned about and understood the specifics of the toughened policy.[121] It can be assumed, considering that the latter process was successfully facilitated and communicated by the Court-led campaign,[122] including the experience gained during this period. Furthermore, the implemented policy may have deterred those applicants who would apply to the Court with completely hopeless and ill-founded complaints before. Unfortunately, it is also possible that those applicants have also changed their minds about filing a complaint to the Court, whose appeal could have a higher probability of success.

Therefore, to get back to the issue raised above and to summarize the results of the changes, the sharp decrease in complaints transferred to the judicial formations of the Court in 2014-2015 and a significant decrease in the number of cases transferred to the single-judge formation might be due to the fact that many complaints were disposed of administratively during this period. This, in turn, is connected to some procedural changes - starting with purely procedural issues, which means submitting a complaint with a complicated form and filling this form meticulously, with a strict policy of observing the submission deadline for a full and completed application and tightening the admissibility criteria. In addition, the decrease in the number of applications was presumably influenced by the frequent removal of applications by a single-judge formation. Additionally, the fact that the latter decisions were not properly reasoned at the first stage, and therefore, the applicants were not informed about the specific reasons, it could have been a factor (along with the complicated procedures for potential applicants) in changing applicants' minds about filing a complaint.

[121] Ibid.
[122] Ibid.

Several countries also share the trend of decreasing the number of applications allocated to judicial formations and pending before them. An excellent example is Russia (which has always been in the leading position by the number of pending applications).[123] It is hard to claim the same regarding some other states. Moreover, in some instances, the reverse result (the increase in the number of applications) is visible, where the context is highlighted, which clearly explains it. The downward trend is also shared by Georgia, which will be discussed in more detail below. However, it should be noted that the primary goal of the Convention is not to strike out as many applications as possible and leave them unreviewed but rather to ensure adequate protection of human rights throughout the member States as much as possible.[124]

It is noteworthy that along with the decreasing number of applications allocated to a single-judge formation, both the absolute rate of applications for Committee review (increase or maintaining a high rate) and the increase of its share in the applications allocated to the judicial formations in total (see graph 3) is visible. Considering the nature of applications which are under the revision of the Committee, the increase in the number of applications allocated to the Committee, to a large extent, is related to the improper enforcement of the Court judgements. Therefore, it is crucial to focus on this issue and the steps taken to solve it.

2.5. Response to the issue of non-implementation of judgements

Since the year 2000, one of the main challenges facing the Court was the issue of the non-implementation of the Court judgements. This, in turn, was one of the main reasons for the Court's overload.

Proper implementation of the judgements is one of the primary mechanisms for functioning the Convention system. "Indeed, a judgement of the Court is by no means the end of the story",[125] as it is a beginning of an equally important stage. As the former Commissioner for Human Rights of the Council of Europe, Thomas Hammarberg, points out: *"The non-implementation of the judgement is another injustice against the individual whose rights had been endorsed by the Court. Moreover, it undermines the credibility of the protection system as such."*[126] Thus, implementing the Court judgements is crucial for the legitimacy of the Court and the functioning of the Convention system in general.

The scale of the problem caused by non-implementation of the judgements can be seen in statistical data. Namely, for example, considering the fact that since 2012, the number of applications pending before the judicial formations have been characterized by a decreasing trend (see graph 3), the number of applications pending before the Committee, both in relative and absolute terms, has been noticeably

[123] See note 54.
[124] Speech given by Mr Luzius Wildhaber, President of the European Court of Human Rights, on the occasion of the opening of the judicial Year, 21 January 2005. in. Council of Europe, *"Annual Report 2004 of the European Court of Human Rights"*, 32.
[125] Council of Europe Committee of Ministers, *"CM (2000)172"*.
[126] Speech Given by Mr Thomas Hammarberg, Council of Europe Commissioner for Human Rights, on the occasion of the opening of the judicial year, 27 January 2012. in. Council of Europe, *"Annual Report 2012 of the European Court of Human Rights"*, 47.

increasing. The peak was reached in 2016 when 60% of the pending applications (79,750 complaints) were those pending before the Committee (47,500 complaints). As it is known, the Committee examines the cases raising issues Court has already dealt with, and there is a well-established practice. Therefore, the Committee mainly faced repetitive complaints, which indicates the problem of non-implementation.

According to the Convention, the implementation procedure begins after the final judgement is known, and it is supervised by the Committee of Ministers of the Council of Europe.[127] However, it is interesting to understand what is meant by supervision and what part of the implementation does the Court have to do with. Initially, the Court determined only the fact of violation of the Convention and, at most, determined the issue of payment of appropriate compensation (deadline, recipient, currency, etc.). It refrained from referring to other measures (which should be carried out in parallel with compensation to ensure the effective implementation of the judgement). In general, according to the Court's explanation, it is up to the respondent country, under the supervision of the Committee of Ministers, to determine these measures (both individual and general ones).

Such a limitation by the Court was consistent with the intention of the Convention authors to create a "sovereignty shield" which would limit the intervention of the Court, and reparation of the damaged party would be made only to the extent possible under the framework of the domestic legal order.[128] However, this kind of freedom and non-interference on behalf of the Court frequently became the cause of non-implementation, as the Contracting Parties applied only minimal measures or left the judgement completely unanswered. The situation has improved slightly since, in response to the reform process initiated by the Council of Europe in 2000, the Court began guiding its judgements on how just satisfaction can be achieved for victims. In this regard, as we mentioned, the Court ruling in 2004 in the case of *Asanidze v. Georgia* was particular and precedential, in which the Court urged the government to release the applicant immediately by directly referring to the resolution part.[129]

In addition to the fact that the role of the Court itself is the most important to facilitate enforcement, with unambiguous judgements and, in many cases, to directly indicate the ways of implementation, the role of the body responsible for the implementation supervision - the Committee of Ministers and, most importantly, the member state itself - is also crucial in this process. However, if the Court only intervenes legally, the Committee of Ministers resorts to political measures based on the judgement. It has such a powerful tool in its hands as it is the expulsion of a Contracting Party from the Council of Europe. The latter is an extreme measure preceded by many procedurally necessary steps and which (based explicitly on non-implementation) has not been implemented against any country,[130] as it represents an interest of neither any member state nor the Committee of Ministers.

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[127] *"Convention for the Protection of Human Rights and Fundamental Freedoms",* Article 46.

[128] Helfer, *"Redesigning the European Court of Human Rights: Embeddedness as a Deep Structural Principle of the European Human Rights Regime,"* 147.

[129] Council of Europe, *"Annual Report 2004 of the European Court of Human Rights",* 57.

[130] For example, Azerbaijan was in danger of being excluded on this basis due to the non-implementation of the judgement in *Ilgar Mammadov v. Azerbaijan* case. Namely, after 3 years of fruitless efforts, the Committee of Ministers made an unprecedented decision in September 2017, giving Azerbaijan a one-month deadline. After its expiration, it finally referred to the Court with the question provided for in Article 46, whether Azerbaijan has complied with the Court's ruling. In case of a positive answer, the Committee of Ministers would close the examination of the case. If Court finds a violation of an obligation,

Based on the Interlaken agreement, a new supervision system was launched over the implementation of European Court judgements in January 2011[131] to ensure more efficiency and transparency of the process. This made the Committee of Ministers more flexible and gave it a more powerful means of influence. Specifically, according to the new system, the Committee of Ministers supervises the implementation per two types of procedures (twin-track supervision system). These are standard and enhanced supervision procedures.

As a rule, all cases are subject to the standard supervision procedure, within which the participation of the Committee of Ministers is quite limited.[132] The latter is entitled to determine the deadlines for the submission of the implementation plan and the action report, and their introduction. As for the enhanced procedure, it is used only in exceptional cases - when the Committee of Ministers considers[133] that the case, due to its specific nature, requires the Committee's more active involvement and priority consideration.

A case warrants consideration under the enhanced procedure if it is specific. The types of cases that should be followed under the enhanced procedure are the following:

1. A judgement that requires urgent individual measures;
2. So-called pilot judgements;
3. Judgements that raise structural and/or complex problems as identified by the Court or the Committee of Ministers;
4. Judgments delivered on Interstate cases

Apart from that, any case may be examined under the enhanced procedure upon a member State's or the Secretariat's request.

Under the framework of the enhanced supervision procedure, the more extensive involvement of the Committee of Ministers in the implementation process and utmost support of the implementation is ensured. This can manifest in adopting extraordinary decisions or interim resolutions (which can

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it shall refer back to the Committee for consideration of the measures to be taken, including initiating the process of the country's expulsion from the Council of Europe. Notably, this issue finally ended with the release of Ilgar Mammadov from prison by Azerbaijan and the Supreme Court of Azerbaijan awarding compensation for non-pecuniary damage resulting from the illegal arrest and imprisonment of the applicant, cancelling the conviction. Therefore, European Court's judgement was considered fulfilled, and the enforcement procedure was terminated. See Council of Europe Committee of Ministers, Resolution CM/RESDH (2020)178 on implementation of the judgments of the European Court of Human Rights (Adopted by the Committee of Ministers on 3 September 2020 at the 1377bis meeting of the Ministers' Deputies).
The Committee of Ministers applied a similar procedure against Turkey in the case of *Kavala v. Turkey* for non-implementation of the judgement delivered by the Court. See Council of Europe Committee Of Ministers – Supervision Of The Execution Of Judgments And Decisions Of The European Court Of Human Rights 2021, March 2022, 17. https://rm.coe.int/2021-cm-annual-report-en/1680a60140, Accessed: 30/04/2023. However, due to the non-implementation of the Court's judgement, finding a violation of the obligation under Article 46(1) of the Convention by the Turkish Government, referring the case back to the Committee to take measures, and despite the great efforts made by the latter, the applicant was still not released. See Council of Europe Committee of Ministers, Notes and decisions adopted by the Committee of Ministers on 06-08 December at the 1451st CM-DH Meeting. https://hudoc.exec.coe.int/FRE#{"EXECIdentifier":["004-55161"]}, Accessed: 30/04/2023.

[131] Council of Europe Committee of Ministers, Supervision of the execution of judgments and decisions of the European Court of Human Rights: implementation of the Interlaken Action Plan – Modalities for a twin-track supervision system, Ministers' Deputies Information Documents, 6 September 2010. CM/Inf/DH(2010)37, https://shorturl.at/cdpyB, Accessed: 30/04/2023.

[132] Council of Europe Committee Of Ministers, Supervision Of The Execution Of Judgments And Decisions of The European Court Of Human Rights 2017, March 2018, 254. https://rm.coe.int/annual-report-2017/16807af92b, Accessed: 30/04/2023.

[133] Council of Europe Committee of Ministers, *"CM/Inf/DH (2010)37"*.

express satisfaction, concern, or suggestion) and in issuing recommendations regarding implementation measures.

The Committee's involvement can be expressed in different forms. Namely, the Committee may require the Secretariat to ensure more intensive cooperation with the representatives of the State.[134] The latter may be expressed in the preparation of action plans and/or assistance at the implementation stage, holding bilateral or multilateral meetings (e.g., seminars, round tables), consulting visits and legislative expertise.

In recent years, there has been a noticeable trend of decreasing cases before the Committee of Ministers. For example, if in 2012 their number was 11,099 (the highest figure in this period), it has started decreasing since 2012, and in the last three years (2019-2021) it has halved.[135] The downward trend can depend on many factors. These may be both a declined number of complaints, judgements made regarding them, and the judgements handed over for implementation (a downward trend also characterizes the latter, although in 2021, compared to the previous year, it has increased),[136] and the improved effectiveness of the Committee work and/or other factors.

As mentioned above, implementing the Court judgements plays a decisive role in the dynamics of the appeals' flow before the Court. However, it is not easy to define its specific role. Specifically, if, on the one hand, judgements' non-implementation for years may cause the Court's overburdening with the applications on the same issues, on the other hand, judgements' non-implementation for years may influence potential applicants to give up. Therefore, on the one hand, non-impementation may lead to a large number of complaints, as well as a reluctance to file them. On the other hand, accelerated process and implementation of judgements may protect the Court from receiving many similar complaints but incentivize applicants to take their cases before the Court.

2.6. Unilateral Declarations and Friendly Settlements

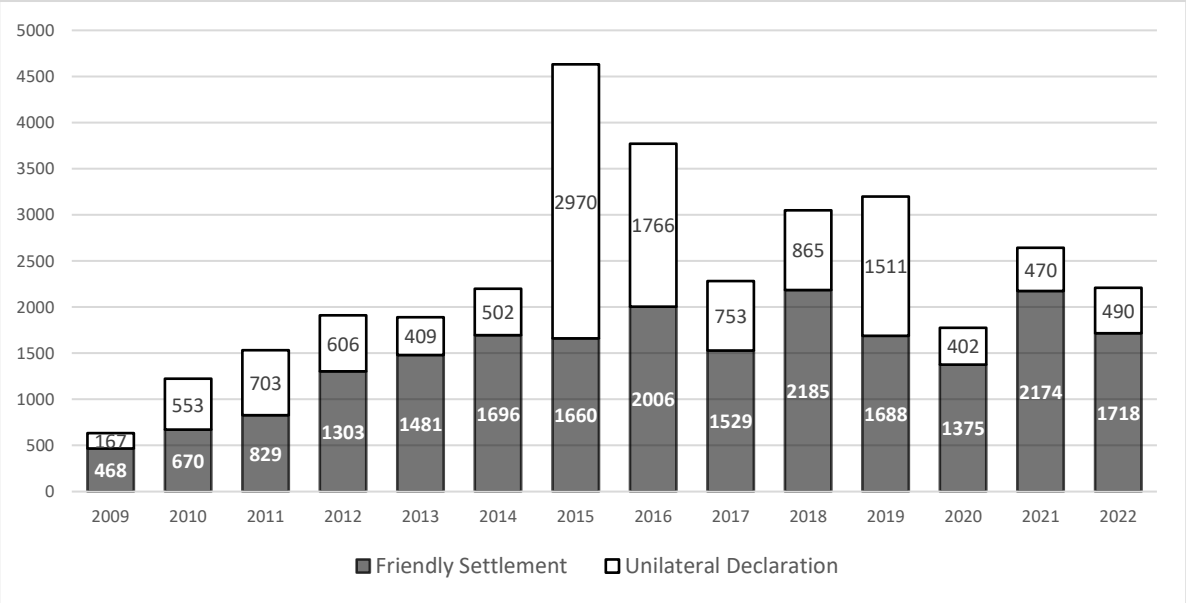
To combat repetitive complaints and increase the Court's efficiency in general, the European Court of Human Rights applied different forms of alternative dispute resolution - unilateral declarations and friendly settlements. Namely, it may be deemed alternative as at the end of the process, the dispute between parties gets closed,[137] and the application is striked out of the list of Court's cases.[138] However, unlike other types of Court rulings, which can end up utterly fruitless for the plaintiff, both of these

[134] Council of Europe Committee of Ministers, *"CM/Inf/DH (2010)37",* §20.
[135] Council of Europe Committee of Ministers, Supervision of The Execution Of Judgments And Decisions of The European Court Of Human Rights 2021, March 2022. https://rm.coe.int/2021-cm-annual-report-en/1680a60140, Accessed: 30/04/2023.
[136] Ibid.
[137] However, "the Court may decide to restore an application to its list of cases if it considers that the circumstances justify such a course", *"Convention for the Protection of Human Rights and Fundamental Freedoms"*, Article 37(2).
[138] "The Court may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that: a) the applicant does not intend to pursue his application; or b) the matter has been resolved; or c) for any other reason established by the Court, it is no longer justified to continue the examination of the application". "Convention for the Protection of Human Rights and Fundamental Freedoms", Article 37(1).

mechanisms obligate respondent governments to take remedial actions that are binding under international law.[139] In practice, these actions include compensating the plaintiff at a minimum. However, the obligation to take individual or other general measures may also be considered.[140]

Special attention was paid to the significance of friendly settlements and unilateral declarations at the Interlaken meeting, followed by corresponding procedural changes from the Court and active use of these mechanisms. This becomes obvious by observing statistical data too. Namely, in 2010, more than 1,200 decisions (almost two times more than in 2009) were made regarding striking out the complaints on the aforementioned grounds (both unilateral declaration and friendly settlement), reaching a peak in 2015 and dominated by unilateral declarations (see graph 6).

Graph 6: Decisions on striking out applications on the grounds of friendly settlements and unilateral declarations by the ECtHR formations by year.



Source: The graph was created by the author based on the ECtHR's annual reports

Despite the similarities, there are significant differences between these two mechanisms. Moreover, there are some critical positions regarding their use by the Court. Therefore, to interpret and analyze the data presented in the graph accurately, it is essential to mark out each mechanism's characteristics and briefly describe them.

2.6.1. Friendly Settlement

At any stage of the proceedings before the Court (before the judgement is delivered), the disputing parties can secure a friendly settlement. This means the closing of the case without further substantive examination by the Court in exchange for the terms of the settlement agreement acceptable to the parties. A necessary component of a friendly settlement is the parties' voluntary agreement on the terms, undertaking a responsibility by a respondent state to compensate a damaged party and/or take certain measures, and its approval by a Court in the form of a decision. The latter's prerequisite is the

[139] Nino Jomarjidze and Philip Leach, "What Future for Settlements And Undertakings In International Human Rights Resolution?" *Strasbourg Observes,* (Strasbourg Observers, April 15, 2019). https://shorturl.at/iyUV1, Accessed: 30/04/2023.
[140] Nino Jomarjidze, "Tsalmkhrivi deklaratsia da morigeba – davis mogvarebis martivi da epektiani gza?!", adamianis uplebata datsva da sakhelmtipos demokratiuli transportmatsia, ED. KONSTANTINE KORKELIA (TBILISI: statiata avtorebi, 2020): 347-382, 349.

Court's conviction that the agreement was achieved on the basis of respect for human rights enshrined in the Convention and its additional protocols.[141] If the Court considers that the respect for human rights test was not satisfied,[142] or cannot be convinced that the applicant agrees to end the dispute,[143] then it will continue examining the case.

Confidentiality is also another crucial feature of a friendly settlement. Specifically, it is not allowed to refer to or rely on any oral or written offer or concession made during the attempts to secure the friendly settlement in the contentious proceedings.[144] Violation of this principle, on the part of the plaintiff, can be considered as an abuse of the right to appeal.[145]

As for the implementation of the terms of the friendly settlement, it is supervised by the Committee of Ministers.[146]

2.6.2. Unilateral Declaration

The Court has been providing for a unilateral declaration mechanism since 1990 to achieve greater efficiency and combat repetitive complaints.[147] Under a unilateral declaration, the government clearly acknowledges that it has violated the Convention regarding the applicant and takes a responsibility to provide adequate redress or take other remedial measures in favor of the applicant.[148] In contrast to a friendly settlement, a unilateral declaration does not require the applicant's consent to its conditions or its signing in general. Moreover, in this case, in this process, the applicant is mostly in the position of denial, as mainly unilateral declaration appears on the agenda when a friendly settlement cannot be achieved.[149] However, the Court's filter is critical during a unilateral declaration, since only with its consent and approval, it is possible to sign the declaration and entirely or partially strike out the complaint from the list of Court's cases.[150]

The Court should carefully examine the adequacy of the future response to the violation and check the guarantees provided by the government. Namely, the Court should pay great attention to the government's desire to make a unilateral declaration and ensure that the government's willingness to use a unilateral declaration mechanism, therefore acknowledging the violation and offering the compensation to a particular applicant, is not dictated by the desire to avoid responsibility to improve a general situation.

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[141] European Court of Human Rights, *"Rules of Court,"* Article, 62(3).
[142] In practice, however, the respect for human rights test has only been exceptionally used by the ECtHR to continue examining a case. The European Human Rights Advocacy Centre, "Guide to Friendly Settlements and Unilateral Declarations Before The European Court Of Human Rights," Middlesex University, London, August 2018, 8. https://shorturl.at/mzJZ0, Accessed: 30/04/2023.
[143] *Paladi v. Moldova*, no. 39806/05, §§ 51-53,10 July 2007.
[144] European Court of Human Rights, *"Rules of Court,"* Article, 62(2).
[145] Nino Jomarjidze, *"Tsalmkhrivi deklaratsia da morigeba – davis mogvarebis martivi da epektiani gza?!"*,354.
[146] *"Convention for the Protection of Human Rights and Fundamental Freedoms",* Article 39(4).
[147] Council of Europe, Protocol No.8 to the Convention for the Protection of Human Rights and Fundamental Freedoms, European Treaty Series no - 118, Vienna, 19.03.1985, Article 6. https://rm.coe.int/168007a083, Accessed: 30/04/2023.
[148] European Court of Human Rights, "*Rules of Court*," Article, 62A(1)(b), Adopted on April 2, 2012.
[149] Lize R Glas, "Unilateral declarations and the European Court of Human Rights: Between efficiency and the interests of the applicant," *Maastricht Journal of European and Comparative Law,* Vol. 25(5), (2018): 607-630, 613
[150] European Court of Human Rights, *"Rules of Court,"* Article, 62A(3), Adopted on April 2, 2012

According to the approach established by the Court, a unilateral declaration must meet the following non-exhaustive criteria:[151]

1. Existence of sufficiently well-established case-law in the matter raised by the application;
2. An explicit acknowledgement of a violation of the Convention in respect of the applicant – with an explicit indication of the nature of the violation;
3. Adequate redress, in line with the Court's case-law on just satisfaction;
4. Where appropriate, undertakings of a general nature (amendment of legislation or administrative practice, the introduction of a new policy, etc.);
5. Respect for human rights - the unilateral declaration must provide a sufficient basis for the Court to find that respect for human rights does not require continued examination of the application.

The Committee of Ministers is not empowered to supervise the fulfilment of unilateral declarations and undertakings endorsed by the Court in its decision.[152] If the government does not implement individual measures, the Court may restore the application to its list. However, this may happen only on the grounds of the plaintiff's appeal rather than its discretion since neither the Committee of Ministers carries out supervision nor the respondent government is accountable to the Court in this regard. Therefore, the Court is not eligible to monitor whether the obligations imposed by the declaration are being fulfilled.[153] Moreover, according to experts' observation, in the case of restoring the case, the Court is limited to checking the fulfilment of the obligatory individual measures and not general measures. This circumstance raises questions about the effectiveness of the Court's control mechanism, specifically on cases that ended with a unilateral declaration.[154]

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"The fact that an individual can appeal to an international court when he or she feels let down by the domestic justice system and that governments will have to listen to the response of this body – on the case itself and on the system at the origin of the case – has a broader psychological effect."[155] Perhaps both instruments, be it a friendly settlement or a unilateral declaration, at first glance, make the Court more effective as it provides a faster resolution of the dispute between the parties, but in this case, this mentioned psychological effect could be excluded a large extent. The latter is especially relevant during friendly settlements, as the dispute may end where the injured party cannot even get official recognition that their rights have been violated. In this case, we may face a process somehow like

[151] European Court of Human Rights, "Unilateral Declarations: Policy and practice," September 2012. https://www.echr.coe.int/Documents/Unilateral_declarations_ENG.pdf, Accessed: 30/04/2023.

[152] Supervises only if the unilateral Declaration is incorporated into the judgement of the Court and not into the judgement regarding the strike out on the ground of the unilateral declaration. See: Jomarjidze and Leach, *"What Future for Settlements and Undertakings In International Human Rights Resolution*?".

[153] Nino Jomarjidze, *"Tsalmkhrivi deklaratsia da morigeba – davis mogvarebis martivi da epektiani gza?!"*,369

[154] Ibid.

[155] Speech Given by Mr Thomas Hammarberg, Council of Europe Commisioner for Human Rights, on the occasion of the opening of the judicial year, 27 January 2012. In. Council of Europe, "*Annual Report 2012 of the European Court of Human Rights",* 41-50, 42.

trading, where, to a certain extent, for the respondent government the decisive factor is not the identification, recognition, or correction of the more global problem that caused this case and, therefore, protection of the convention system, but the fastest possible termination of the dispute by “satisfying" the applicant.

Unlike a friendly settlement, a unilateral declaration requires the government to recognize that it has violated the Convention. However, a unilateral declaration mainly appears on the agenda once a friendly settlement cannot be achieved. In such a case, it is evident that the plaintiff would disagree with the settlement conditions and might be interested in considering a case on the merits. Therefore, the latter would not agree to end their application examination despite the government's recognition. This might be dictated by the psychological factor discussed above. Terminating an application's examination and striking it out of cases is particularly problematic when "these cases are clearly admissible and is very likely that the Court would have found a violation of the Convention, had it considered the case on the merits."[156] According to some authors, this practice is problematic from the perspective of procedural access to justice. However, *"such criticism is less easy to give if a substantive perspective is taken, since the main objective of the Convention system is to provide for effective protection of human rights. When such protection has been lacking, redress should be offered to the individual. In dealing with unilateral declarations, the Court aims to do just that: it obliges the State to recognize that it has wronged the individual and to provide for compensation. The result thus achieved is not very different, substantially, from that which would follow from a judgment by the Court”.*[157] Nevertheless, the Court should exercise due diligence in its judgment to accept the unilateral declaration and reject it if it determines that respect for human rights necessitates an examination of the case. We should also consider the Court's weak mechanism of the unilateral declaration's implementation supervision. This is caused, on the one hand, by the exclusion of the Committee of Ministers from this process and, on the other hand, by the lack of accountability of the respondent State.

All the above factors, which raise questions about these two mechanisms' effectiveness and compliance with the Conventional objectives, may even serve as a ground for reluctance for many potential applicants to address the Court. The latter is especially relevant when these mechanisms are actively used to maintain the Court's effectiveness and relieve it from a great flow of complaints. A Contracting State may use this dishonestly if the latter is an officially declared priority of the Court.

2.7. Pilot-Judgement

Along with the reforms discussed above, the Court also revised its working methods to increase efficiency and optimal use of resources. One of the important steps in this regard was the development of the pilot-judgment procedure. The latter can be initiated and adopted "where the facts of an

[156] Gerards and Glas, *"Access to justice in the European Convention on Human Rights system",* 26.
[157] Ibid.

application reveal in the Contracting Party concerned the existence of a structural or systemic problem or other similar dysfunction which has given rise or may give rise to similar applications."[158] Therefore, in response to the pilot-judgement, the state governments must implement changes in the legislation or take specific measures to change the administrative practice. It is noteworthy that the Court determines the general measures in the pilot-judgements and, thus, determines which measures should be implemented by the government of a particular state in a mandatory manner. This, in turn, expands the influence of the Court on the implementation process and leaves governments less leeway.[159] In addition, the Court has the power to suspend the examination of all such judgments until the governments of respective States take remedial measures.[160] Therefore, the pilot-judgement saves significant resources on the one hand, as long as the Court does not have to examine repetitive cases. But, on the other hand, it is a suitable mechanism for solving structural and systemic problems.[161]

However, this factor, a crucial element of a pilot judgement, plays a significant role in saving Court resources, can be used to criticize a pilot-judgement itself. Namely, it is perceived that due to this authority of the Court, the pilot judgement hinders the realization of the right of individual complaint and individual access to justice.[162] The latter is because the examination of such applications gets suspended while waiting for the implementation of the necessary changes by the Contracting State, and this period may get prolonged. And once the Court gets back to consider these complaints, it may refuse to examine them since the problem of a general nature might have been resolved already.[163]

Moreover, although the issue of giving governments less freedom to decide what specific measures to address the problem raised in the judgement is expected to be criticized, it is on the contrary in practice - the Court shows a lenient attitude towards the measures taken by the governments, which is manifested in the granting of a wider margin of aprreciation in the cases following the pilot-judgements and lowering the standards for Convention compliance.[164]

2.8. The Principle of Subsidiarity

In the convention system, the principle of subsidiarity developed gradually and was always a subject of discussion from different angles.[165] First of all, it was developed by the long-standing case law of the European Court. However, it has repeatedly become the subject of political discussion, including at

[158] European Court of Human Rights, "*Rules of Court,"* Article, 61(1).
[159] Lize R. Glas, "Changes in the Procedural Practice of the European Court of Human Rights: Consequences for the Convention System and Lessons to be Drawn," *Human Rights Law Review*, 14(4), (2014): 671-699, 682.
[160] European Court of Human Rights, *"Rules of Court,"* Article, 61(6).
[161] Gerards and Glas, *"Access to justice in the European Convention on Human Rights system*", 27.
[162] Ibid.
[163] Glas, *"Changes in the Procedural Practice of the European Court of Human Rights: Consequences for the Convention System and Lessons to be Drawn",* 676.
[164] Gerards and Glas, *"Access to justice in the European Convention on Human Rights system",* 28.
[165] European Court of Human Rights, "Subsidiarity: From Roots to its Essence, Speech by judge Julia Laffranques, president of the Organising Committee of the seminar traditionally held to mark the opening of the judicial year of the European Court of Human Rights." https://www.echr.coe.int/documents/speech_20150130_seminar_laffranque_2015_bil.pdf, Accessed: 30/04/2023.

intergovernmental conferences.[166] Finally, partly in response to the large number of cases submitted to the Court and partly due to the political significance,[167] the principle of subsidiarity, together with the doctrine of the Margin of Appreciation, with the adoption of Protocol No. 15 of the Convention,[168] was written into the preamble of the Convention from August 1, 2021.[169] This emphasized the importance of the principle.

A direct request to include the principle of subsidiarity in the preamble of the Convention to limit the Court's supervisory power[170] was voiced back in 2012 by the United Kingdom at the Brighton conference.[171] The United Kingdom's initiative, in turn, was preceded by dissatisfaction with "judicial activism", culminating in 2005.[172] The latter related to the judgement made by the European Court in the case of *Hirst v. The UK.* In this case, a blanket ban on the right to vote for prisoners was declared inconsistent with the Convention,[173] which caused heated debates in British society itself.[174] Despite the European Court's judgement, the Parliament refused to repeal this ban and left it in force, resulting in the lodging of applications by more than a thousand prisoners to the European Court. The Court also responded similarly to these (*McHugh and Others v. The United Kingdom*).[175]

Nevertheless, the Court's approach to the case of prisoners' voting rights was not the only reason causing the British displeasure.[176] The following case concerned the deportation of Abu Qatada, suspected of terrorism. Considering the factual circumstances of the case (*Othman v. The UK*), the European Court ruled in 2012 that in the case of Qatada's deportation, the Convention would be violated.[177] Regardless of the Court's ruling, the United Kingdom still carried out the deportation, and accused the Court in "crazy interpretation of human rights laws". This was followed by talks about the withdrawal of the United Kingdom from the Convention ("Another Brexit").[178]

The field experts supposed that the UK's "anti-Strasbourg" rhetoric and non-implementation of judgments could have a spill-over effect on other member states[179] and could be a strong signal that

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[166] Ibid.
[167] Marisa Iglesias Vila, "Subsidiarity, margin of appreciation and international adjudication within a cooperative conception of human rights," I•CON 15 (2017): 393–413, 394.
[168] *"Protocol No. 15"*
[169] *"Convention for the Protection of Human Rights and Fundamental Freedoms".*
[170] Ralf Alleweldt, "Avoiding another Brexit: the subsidiarity principle, the European Convention on Human Rights and The United Kingdom," Commonwealth & Comparative Politics, 57:2, (2019): 223-241, 224.
[171] *"Brighton Declaration"*
[172] Commission On a Bill Of Rights, "A UK Bill Of Rights? The Choice Before Us," Volume 1, December 2012, 182.: https://shorturl.at/dgsv4, Accessed: 30/04/2023.
[173] *Hirst v. The United Kingdom* (no.2) [GC], no.74025/01, §82, October 6, 2005.
[174] Alleweldt, "*Avoiding another Brexit: the subsidiarity principle, the European Convention on Human Rights and The United Kingdom,"* 227.
[175] *McHugh And Others v. The United Kingdom* [Committee], no.51987/08 and 1,1014 others, February 10, 2015.
[176] Alleweldt, *"Avoiding another Brexit: the subsidiarity principle, the European Convention on Human Rights and The United Kingdom,"* 227.
[177] *Othman (Abu Qatada) v. The United Kingdom,* § 287, no. 8139/09, January 17, 2012
[178] Alleweldt, *"Avoiding another Brexit: the subsidiarity principle, the European Convention on Human Rights and The United Kingdom,"* 227
[179] Phillip Leach and Alice Donald, "Russia Defies Strasbourg: Is Contagion Spreading?" *EJIL: Talk,* December 19, 2015. https://www.ejiltalk.org/russia-defies-strasbourg-is-contagion-spreading/, Accessed: 30/04/2023.

implementation may not be possible, necessary, or expedient, which would probably be "the beginning of the end of the Convention system".[180]

An amendment to the Law on the Constitutional Court of Russia from December 14, 2015, can be considered a supporting fact of the above-mentioned assumption. The latter gave authority to the Constitutional Court to declare the "impossibility of implementation" of judgements made by human rights protection bodies if this ruling conflicts with the Constitution of Russia.[181] As a result, for the first time in modern history, the Constitutional Court discussed the issue of the implementation of the European Court of Human Rights judgement. Specifically, on April 19, 2016, the Russian Constitutional Court determined that the European Court's judgement could not be implemented since it contradicts the Russian Constitution.[182] This case (*Anchugov and Gladkov v. Russia*) concerned the blanket ban on convicted prisoners' voting rights under the Russian Constitution, which in 2013, the European Court recognized as a violation of the Convention and ordered the Russian Federation to interpret the disputed constitutional provisions in a new way that would ensure the protection of the electoral right of prisoners.[183]

It should be noted that the Russian Federation, through constitutional amendments, approved the authority of the Russian Constitutional Court to decide on the non-implementation of international bodies' judgements, including the European Court of Human Rights, in the Russian Constitution from 2020.[184] While discussing the amendments and their possible risks that implied the non-implementation of the Court's judgements, it was probably unlikely that the Russian Federation would ultimately leave the convention system shortly after the changes.[185] At the same time, the United Kingdom, which was more expected to terminate its membership of the Convention, remains a signatory to the Convention. However, significant changes regarding the European Court of Human Rights are undergoing. Namely, the initiative to replace the Human Rights Act[186] with the British Bill of Rights was submitted to the Parliament by the government. It aims to "clarify and re-balance the relationship between courts in the United Kingdom, the European Court of Human Rights and Parliament and to give primacy to decision-making by Parliament, rather than any court, in instances where competing rights and interests are at stake".[187]

Due to the developments mentioned above and considering the current debate regarding the state's free action scope, the European Court has become more inclined to give too much freedom to the

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[180] Ibid.

[181] Natalia Chaeva, "The Russian Constitutional Court and its Actual Control over the ECtHR Judgement in Anchugov and Gladkov," *EJIL: Talk*, April 26, 2016. https://shorturl.at/dosDX, Accessed: 30/04/2023.

[182] "Russian Federation: Constitutional Court Allows Country to Ignore ECHR Rulings," Library of Congress, https://shorturl.at/ioQ28, Accessed: 30/04/2023.

[183] *Anchugov and Gladkov v. Russia,* nos. 11157/04 and 15162/05, July 4, 2013.

[184] European Commission for Democracy Through Law, "Opinion No. 981/2020 On the Draft Amendments to The Constitution Related To The Execution In The Russian Federation Of Decisions By The European Court Of Human Rights," Strasbourg, June 18 2020. CDL-AD (2020)009. https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2020)009-e Accessed: 30/04/2023.

[185] Committee of Ministers, *"Resolution CM/Res (2022)2 on the cessation of the membership of the Russian Federation to the Council of Europe".*

[186] The Act adopted in 1998 that enacts the human rights and freedoms set out in the European Convention on Human Rights into UK law.

[187] Alice Donald, *"What is the Bill of Rights Bill?"* UK In A Changing Europe, July 11 2022. https://ukandeu.ac.uk/explainers/the-bill-of-rights-bill/, Accessed: 30/04/2023.

member states. The latter has repeatedly become the subject of criticism. Granting this kind of freedom to states and refusing to consider cases by stressing the principle of subsidiarity may not always serve the purposes of the Convention. Still, on the other hand, it is an excellent way to relieve the Court of a large number of complaints. Events of 2017 can serve as an example of this - when many complaints were filed by imprisoned journalists and judges regarding the measures taken after the coup attempt in Turkey. Since the beginning of this crisis, the Court has considered that the principle of subsidiarity should be fully respected and that the applicants should have exhausted all domestic legal remedies before bringing the case to the European Court. As a result, more than 27,000 applications filed in this context were declared inadmissible for failure to exhaust domestic legal remedies. Specifically, because the complaints were not appealed to the Constitutional Court, and there was no attempt of these cases to be examined by the ad hoc commission created in January 2017.[188]

In addition, 6,000 cases related to prison overcrowding in Hungary were struck out on the same grounds.[189] In this case, the Court noted that the new law providing legal remedies came into force after a pilot-judgement in 2015, *Varga and Others v. Hungary*,[190] where the Court found a general problem regarding the Hungarian prisons' functioning. Thus, the Court considered that, due to the prison overcrowding, it is premature to file new applications before the exhaustion of this legal remedy. In turn, as the former president of the European Court of Human Rights, Guido Raimondi stressed, both in the case of Turkey and Hungary, those new remedies must still prove to be effective and that the time would demonstrate it.[191]

According to the analysis presented above, we can conclude that the principle of subsidiarity, on which the Convention system stands, has become a "rope bridge" for the Court, as any approach taken by the latter regarding the principle has always been met with severe critics. Moreover, even in the conditions when in recent years, the Court has sharply turned towards strict observance of the principle of subsidiarity, granting more freedom to the states and announcing the "age of subsidiarity" in the future,[192] the restoration of the reputation of the Court in the eyes of some countries is still under a question mark. The latter can be expressed in the non-implementation of the Court's judgements in the future, or the worst case, in the refusal to extend the Court's jurisdiction on the State.

2.9. Priority Policy (Part 2)

As already mentioned above, at the beginning of 2021, the former president of the Court, Robert Spano, drew his attention to the need to change the Court's paradigm and named the priorities for the

[188] Council of Europe, "Annual Report 2017 of the European Court of Human Rights," Registry of the European Court of Human Rights (Strasbourg, 2018), 8. https://www.echr.coe.int/Documents/Annual_report_2017_ENG.pdf, Accessed: 30/04/2023.
[189] Speech given by Mr Guido Raimondi, President of the European Court of Human Rights, on the occasion of the opening of the judicial Year, January 27, 2017. in. Council of Europe, "Annual Report 2018 of the European Court of Human Rights," *Registry of the European Court of Human Rights* (Strasbourg, 2019), 15.
https://www.echr.coe.int/Documents/Annual_report_2018_ENG.pdf, Accessed: 30/04/2023.
[190] *Varga and Others v. Hungary,* nos. 14097/12 and 5 others, 10 March 2015.
[191] Speech given by Mr Guido Raimondi, President of the European Court of Human Rights, on the occasion of the opening of the judicial Year, January 27, 2017. in. Council of Europe, "*Annual Report 2018 of the European Court of Human Rights*," 15-16.
[192] Robert Spano, "Universality or Diversity of Human Rights? Strasbourg in the Age of Subsidiarity," *Human Rights Law Review*, (2014): 1-16, 5.

future: strengthening the policy of cases' prioritization, rapid identification of "impact cases" and cases of relevance for applicants and Member States, and rapid response to them.[193]

Thus, the subsequent changes in the priority policy for case examination were made. It took place in June 2021 and aimed to accelerate the examination of the most crucial, severe, and urgent cases as much as possible. Namely, the categories defined on May 22, 2017, were revised. As a result, inter-State cases, in category II were placed outside the priority policy due to their unique character and need for procedural treatment.[194] In addition, the definition of category I cases was expanded to include cases where "the applicant is deprived of liberty as a direct consequence of the alleged violation of his or her Convention rights".[195] A new subcategory (IV-High) was added to the IV category, which includes "impact" cases, i.e. cases that are potentially well-founded, do not concern core rights, and which the Court takes an average of 5-6 years to process, while they raise issues important to the applicant and the State in question or the Convention system in general and require prompt examination.[196] Special criteria have been developed to identify cases of this category: "the conclusion of the case might lead to a change or clarification of international or domestic legislation or practice; the case touches upon moral or social issues; the case deals with an emerging or otherwise significant human rights issue. If any of these criteria are met, the Court might consider whether the case has had significant media coverage domestically and/or is politically sensitive".[197]

The change in the priority policy and the Court's approach, in general, may affect the dynamics of case proceedings. Yet, it will be difficult to talk about its influence on statistical data, at least in advance. At first glance, the amended policy is more focused not on correcting the picture in terms of statistical indicators but on speeding up the examination of significant, serious, and urgent cases as much as possible.

2.10. Summary and Results of the Reforms

This chapter presents the reforms implemented to deal with the caseload caused by the sharp increase in the complaints submitted to the Court. It is not an exaggeration to say that, compared to previous years, it, in many aspects, complicated and significantly limited individual access (to the minimum procedurally, and according to some critics, it even limited substantive access) to the Court.

Each reform had a corresponding effect on the number of cases submitted to the Court. However, given that the reforms were carried out in all directions and often simultaneously, it is difficult to measure each of these reforms' contributions with an absolute accuracy. Moreover, along with the

[193] European Court of Human Rights, "The European Court of Human Rights in launching a new case processing strategy," ECHR 092(2021), 17.03.2021
[194] European Court of Human Rights, "The Court's Priority Policy" https://echr.coe.int/Documents/priority_policy_ENG.pdf, Accessed: 30/04/2023.
[195] Ibid.
[196] European Court of Human Rights, "A Court that matters/Une Cour qui compte" A strategy for more targeted and effective case-processing," March 17 2021, https://echr.coe.int/Documents/Court_that_matters_ENG.PDF, Accessed: 30/04/2023.
[197] Ibid.

reforms, it is necessary to consider the processes taking place in the world or in any member states, which might influence the overall annual statistical data and make it even more challenging to see the reform's direct result. Finally, the consequences of Russia's denunciation of the Convention must also be considered. The latter will further complicate the discussion regarding statistical data and may, at least in the short term, put the Court in great trouble again, as the number of pending cases against Russia, as well as number of judgments to be implemented by the Russian government remains high. On top of this are the complaints against Russia submitted directly after the denunciation, which Russia has officially refused to implement.

The analysis presented above demonstrates that the policies implemented in the European Court of Human Rights in different periods have affected the dynamics of the cases litigated in the Court. Unfortunately, these kinds of interventions were so frequent and numerous that it is difficult to assess how the situation changed regarding human rights protection based on this kind of statistical data.

If we only look at the dynamics of the cases submitted to the European Court of Human Rights and analyze them and make conclusions based only on "figures", we can even conclude that human rights were less violated over the years - the flow of cases increased in the 90s, reaching a peak in 2011. Then the situation radically improved, and nowadays, human rights violations have become increasingly rare in Europe. Let us look at the member States individually. We will see that this trend is shared in most cases, partly including Russia (a sharp decrease characterized it for several years from 2013, but it started increasing shortly after it again).

This is the picture illustrated by observing the figures only. However, relying on these indicators solely, leaving the range of factors and contexts behind can be not only ineffective in assessing the state of human rights protection and determining future policies in this regard but also potentially harmful, as satisfaction with indicators ("figures") may divert us from the focus.

The next chapter will discuss the possible influence of the factors mentioned above on Georgia and those circumstances that took place regarding Georgia, and, therefore, could impact the Court’s statistical indicators related specifically to this country.

3. Georgia in the European Court of Human Rights

3.1. Introduction

The European Convention entered into force for Georgia on May 20, 1999, after its ratification by the Parliament of Georgia. This means that Georgia's membership of the Convention coincided with one of the most extensive reforms in the Court – a creation of a so-called "new Court" and the beginning of the crisis (caseload and overburdening). On the other hand, for Georgia and most post-Soviet countries, this period coincides with the initial phase of a democratic transition. Therefore, although membership in the Council of Europe was preceded by the fulfilment of the mandatory requirements established by the union, at the time of membership, the legislation and practice of these states were still very far from democratic values. In addition, it should be considered that in the case of Georgia, the status of a post-Soviet country was accompanied by a civil war and military conflicts related to the violation of territorial unity, which caused a deviation from the focus of the country and, therefore, significantly hindered rapid progress towards democratization.

Therefore, for Georgia, the Council of Europe and the Convention membership was primarily not the result of the already carried out reforms but rather the beginning of the reforms themselves. Both sides (the Council of Europe and Georgia) realized this adequately. Therefore, in the first stage, the submission of many complaints against Georgia was not unexpected.

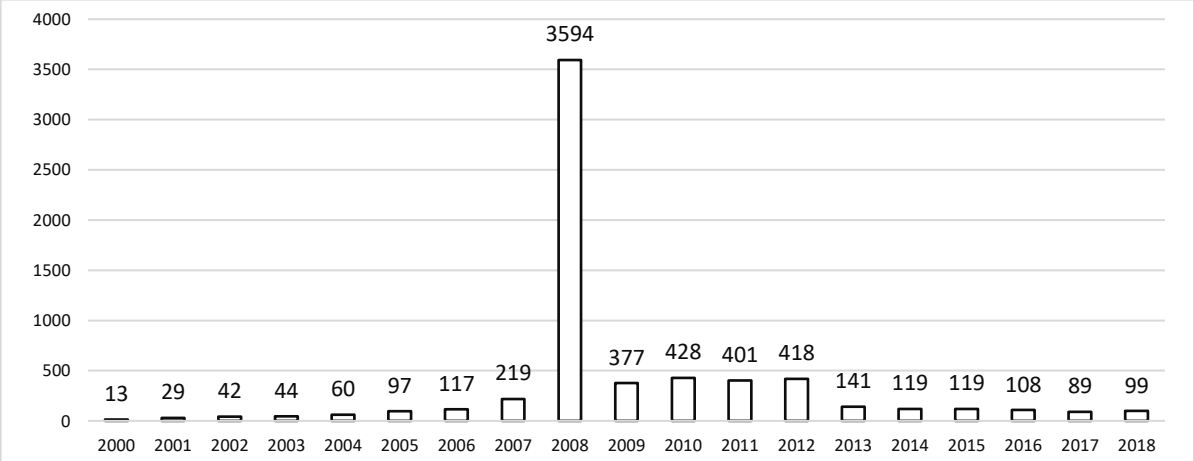
As mentioned above, to get closer to democratic values, the judgement made by the European Court in each case and then the procedures for their implementation have a vital role in the process of democratic transition. Even the failure of Georgia as a respondent in a specific case was the primary tool for achieving a good outcome for the country because of the Court's ruling (including its motivational part) and the Committee of Ministers' involvement in the next stage that highlighted the crucial issues for policymakers and the necessity of their solution. Besides, the Committee showed the path how to solve the problems. As the document prepared by the Court regarding Georgia demonstrates, as a result of the decisions implemented by the Georgian government, some improvements have been made at the national level in terms of the fairness of judicial proceedings, conditions of imprisonment and the mechanism for reviewing detentions. Also, according to the assessment, the freedom of expression has strengthened, which is the result of amending relevant legislation and harmonizing it with the European Convention.[198]

Thus, the role of the Court as a supervisory body was crucial and significant in promoting democratization and ensuring the rule of law in Georgia. However, considering that Georgia was not the only state needing such a comprehensive approach and quick response, accompanied by the recognition of the individual right to petition and the growing reputation of the Court, resulted in the unprecedented increase in individual complaints and the Court's supervisory function got jeopardized. In this regard, the possibility of the latter's effective assistance to Georgia was also hindered in the most crucial period for the country.

[198] Council of Europe, *"European Court of Human Rights, "The ECHR And Georgia: Facts and Figures."*

On the other hand, the number of applications lodged against Georgia to the European Court has been increasing since the ratification of the Convention, and the growing trend is characteristic until 2013. This is followed by the decreasing number of applications filed against Georgia in the following years (See Graph 7).

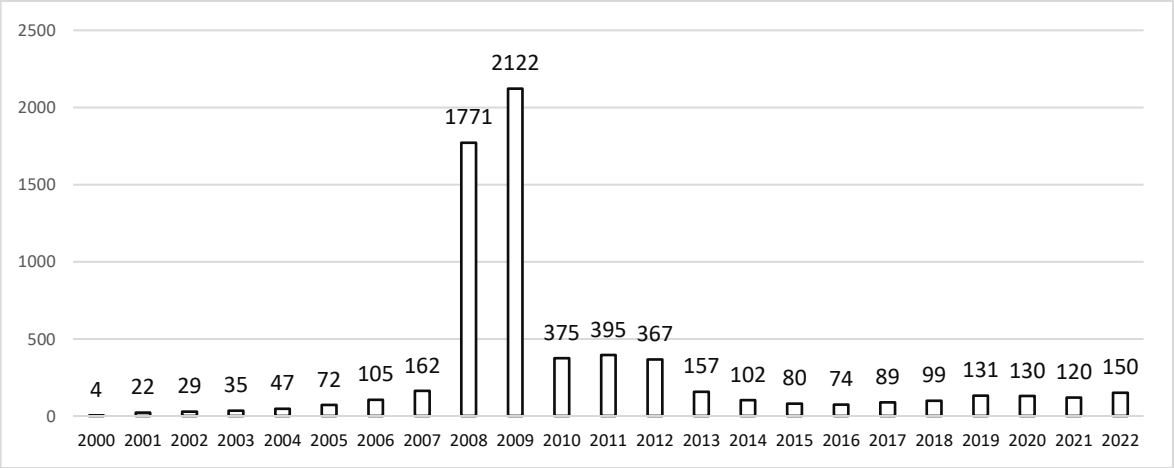
Graph 7: Number of applications lodged against Georgia to the European Court of Human Rights by years



Source: Annual reports published by the ECtHR (2000-2006); former representative of Georgia in the ECtHR– judge Nona Tsotsoria[199]

Moreover, the decreasing trend is also characteristic of the number of applications against Georgia allocated to the judicial formations (see Graph 8). Albeit the downward tendency is evident only until 2016, and in the following years, the rising number is recorded again.

Graph 8: Applications against Georgia allocated to the judicial formations by years.

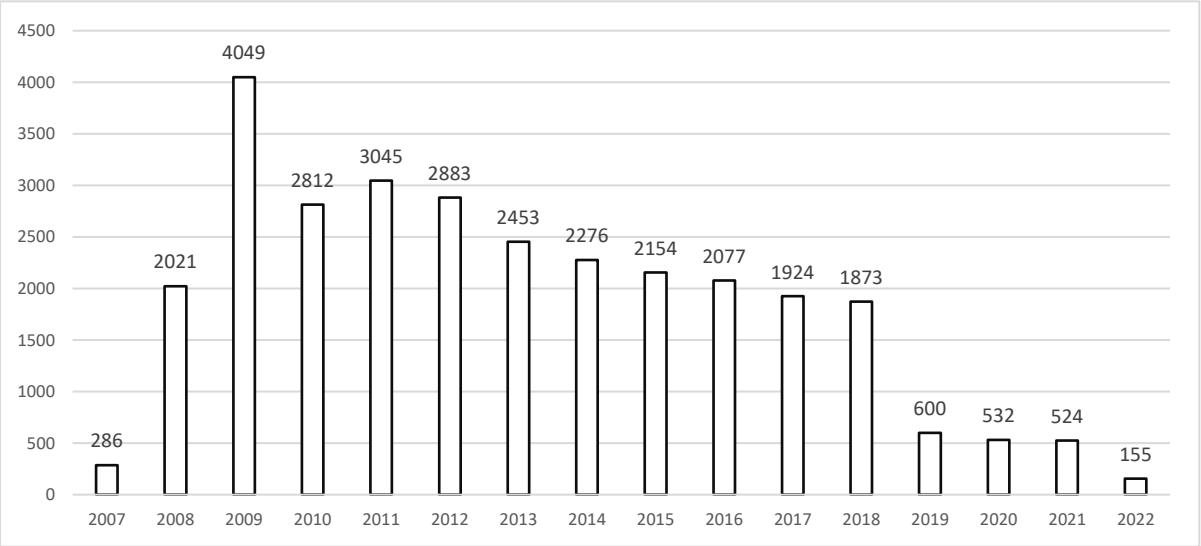


Source: The graph was created by the author based on the ECtHR's annual reports

As for the number of applications pending before the judicial formations (pending applications)[200], which clearly shows the overburdening of the judicial formations, a decreasing trend has been observed since 2013 in this regard (see Graph 9). It follows the general trend of the European Court.

[199] "Statistics of the cases against Georgia at the European Court of Human Rights: problems and challenges", Nona Tsotsoria, Facebook post, March 14, 2021. https://www.facebook.com/notes/398387994491547/, accessed: 30/04/2023.
Note: the cited data may not be accurate. We lack the possibility to verify it, as this kind of data is not available. Namely, since 2006, the court has not been publishing the data on filed appeals. Therefore, this kind of data is not officially available regarding Georgia after 2006. Therefore, given data is used in the research because this is the only source.
[200] Graph 9 demonstrates that compared to previous years, in 2019, the number of pending applications dramatically decreased. This is due to the simultaneous decisions on (struck out/declared inadmissible) 1,390 applications in 2019.

Graph 9: The number of applications against Georgia pending before the judicial formations of the ECtHR (pending applications) at the end of the reporting period.



Source: The graph was created by the author based on the EctHR's annual reports

As the analysis of exogenous factors discussed in the second chapter demonstrates, the relative relief of the Court in recent years results from several reforms aimed at increasing the Court's effectiveness (mainly after the Interlaken Agreement). Therefore, the pre-Interlaken (before 2010) and post-Interlaken (after 2010) periods are often compared to measure the Court reforms' results. It should be noted that the post-Interlaken period coincides with the change of government in 2012 through elections in Georgia. The latter factor is frequently considered a watershed for the authors to make conclusions based on the statistical indicators related to Georgia in the European Court at the national level. Therefore, the comparable periods of the statistical indicators are often divided into periods before 2013 and after 2013. Thus, in the case of Georgia, the selection of comparable periods by various actors at the national level is related to the ongoing political processes within the country itself, and it coincides (to a large extent) with the processes in the European Court. Therefore, it is interesting to explore how much the latter has influenced the statistical indicators related to Georgia and how these processes can determine the comparable periods of the indicators.

This chapter aims to portray all the factual circumstances that took place directly concerning Georgia (from the ratification of the Convention to the present) and which may have had at least a negligible impact on the number of applications lodged against Georgia to the European Court. In addition, these circumstances will be presented under the exogenous factors discussed in the second chapter. This will reveal the possible influence of the changes implemented by the Court on Georgia.

However, it is impossible to provide direct evidence of a drastic decrease in struck-out and inadmissible applications based on publicly available sources. The Ministry of Justice of Georgia has no information regarding this. Their response to our question N 13342 of September 28, 2022, states that: "...the European Court does not publish information on the content of individual complaints and the majority of applications are declared inadmissible by the Strasbourg Court at the initial stage, without sending a notification to the government (respondent party) and without requiring the position submission. Thus, the exact reasons for striking out 1,390 applications from the list of pending applications in 2019 are unknown to the Ministry." However, based on the assumptions supported by the reasoning developed in subsection 3.2.1 and the facts presented, this is due to the striking out of the list a significant part of about 3,300 applications which were lodged to the Court in 2008 related to the 2008 war (these applications were part of the Russian Campaign against Georgia).

Regarding Georgia, the factors that should be considered will be identified by analyzing the European Court reports, Court decisions and other relevant documents, as well as the in-depth interviews conducted to obtain information from the respondents, who, in different periods and forms, were involved in the litigation before the European Court.

Given the desire of the majority of respondents to remain anonymous, we are restricted from disclosing any personally identifiable information about them in the research, including references to their positions. Therefore, in the study, their responses are generalized, and in some cases, their opinions on specific issues are quoted without reference to the corresponding author. An exception is a non-governmental organization participating in the interview - "Georgia's Young Lawyers Association" (GYLA). The latter is and has been a representative of hundreds of applicants in the European Court and is one of the most significant contributors to the accumulation of knowledge about the European Court proceedings in the country. Since the organization agreed to disclose the data and share opinions without anonymity, the information received from them is presented in the research with appropriate references.

It is also noteworthy that, unfortunately, the Department of State Representation in International Courts of the Ministry of Justice did not desire to participate in the in-depth research. Instead, the head of the department referred us only to the Ministry's publicly disseminated official positions regarding our research topic.

3.2. Factors influencing the statistical indicators related to Georgia in the European Court

A number of crucial reforms have been discussed above that were carried out by the European Court of Human Rights to achieve more effective functioning. The latter also significantly impacted the possibility of the realization of the individual right to petition. Therefore, it is not unreasonable to assume that the implemented changes and, in many cases, some additional barriers imposed on the applicant impacted the ones disputing against Georgia. However, even an attempt to study the effect of these influences has yet to be made so far. Moreover, even if desired, it is only possible to express logical links and assumptions and not to reveal an authentic casualty.

This is accompanied by several circumstances at the national level, which affect the dynamics of cases litigated against Georgia in the European Court. During the interviews conducted within the framework of the research, the respondents who were directly involved in proceedings in the European Court at different times and in different ways focused on several main circumstances while talking about the possible influencing factors on the statistical indicators related to Georgia: the time of Georgia's accession to the Council of Europe; lack of knowledge and experience related to the European Court and corresponding procedures (especially at the initial stage); the number of prisoners and existing conditions in the penitentiary institutions of Georgia; the problem of accessibility to the European Court, especially under the complicated procedures, and finally - the change of the government through elections in 2012, which created different expectations in many directions.

In addition, all respondents participating in the study drew particular attention to the factor of the war of August 2008 - the filing of thousands of complaints against Georgia in the European Court due to the war. These applications dramatically increase the statistical data related to Georgia, both in terms of the number of lodged applications (see Graph 7), as well as the applications allocated to the judicial formations (see Graph 8) and pending ones (see Graph 9). Though, they cannot serve as indicators of the human rights situation in the country or the Court's effectiveness, which will be discussed below. Therefore, it is expedient to discuss this factor (which is exogenous) separately and foremost.

3.2.1. The impact of the 2008 Russia-Georgia war on statistical data

After the war waged by Russia against Georgia in 2008, on August 11, 2008, Georgia applied to the European Court of Human Rights with an interstate complaint against Russia (Georgia v. Russia (II)), which ended with a significant victory for Georgia by the Grand Chamber's judgment on January 21, 2021. Namely, the Court found a violation of the Convention by Russia in all the main parts.[201]

In response to the complaint submitted by Georgia to the Court in 2008, about 3,300 individual applications were lodged to the Court against Georgia[202] under the organization of the Russian government due to the hostilities in Samachablo.[203] It should be noted that in most of these applications, which were submitted to the Court individually and then consolidated into one case, the representatives of the applicants were the same people, lawyers working in Vladikavkaz.

Lodging thousands of applications was part of Russia's strategy - first, to paint the worst possible picture of Georgia's actions and try to use it for its benefit. Secondly, the strategy intended to overload the Court even more, which actually happened.[204] Case-loading the Court, as has been mentioned many times, leads to diverting attention from the main topic and reduces the ability of the Court to respond to it on time.

The lack of Russia's interest in the applications content-wise is confirmed by the fact that the Court failed its numerous attempts to establish procedurally stipulated communication with the applicants. As a result, in 2010, five communicated cases *(Abayeva and Others v. Georgia)*[205] and 1,549 new complaints *(Khetagurova and Others v. Georgia)*[206] belonging to this group were struck out from the list of cases pending before the Court. Due to the absence of the communication, the Court concluded that the applicants no longer intended to pursue their complaints under Article 37 § 1 (a) of the Convention.[207]

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[201] *Georgia v. Russia (II),* [GC], no. 38263/08, January 21, 2021.
[202] Apart from this, 20 applications were lodged against both Georgia and the Russian Federation, in which the applicants (citizens of Georgia) claimed that as a result of the war in August 2008, their Conventional rights were violated, and no adequate investigation was conducted in either of the States.
[203] **Note:** The decision refers to "South Ossetia" with the following reference: "The term South Ossetia refers to the region of Georgia that is out of the de facto control of the Government of Georgia." *Abayeva And Others v. Georgia* (striking out), nos. 52196/08, 52200/08, 49671/08, 46657/08 and 53894/08, March 23, 2010.
[204] Council of Europe, "*Annual Report 2008, of the European Court of Human Rights,*" 12.
[205] "*Abayeva And Others v. Georgia,* (striking out)".
[206] *Khetagurova and Others v. Georgia* (striking out), nos. 43253/08 and 1548 others, December 14, 2010.
[207] See note 140.

On March 24, 2022, the Court struck out 370 identical individual complaints from the pending applications related to the August war in the case of *Tskhovrebova and 369 others v. Georgia* on the ground of inadmissibility.[208] Specifically, in the aforementioned complaints, the applicants claimed that during the active phase of the international armed conflict (including the period from August 7-12), the military actions of the Georgian Armed Forces put their lives, as well as those of their other family members, in real and immediate danger and forced them to spend several days in fear and anxiety, limited their physical freedom and destroyed their property.[209] The Court relied on the reasoning developed in the critical decision of October 5, 2021, on inadmissibility *(Bekoyeva and 3 others v. Georgia*;[210] *Shavlokhova and others v. Georgia*)[211] and explained that since the restriction of the regular exercise of Georgia's territorial jurisdiction (over its war-stricken territories) was only temporary, as a matter of principle and according to the Convention, it was expected from the Georgian side to take diplomatic, economic, judicial and other positive measures. However, considering the ongoing massive armed conflict, positive measures of a public order nature were, on the one hand, impossible to implement and, on the other, of no real value, as they could not have meaningfully contributed to the protection of the applicants' rights in times of war. Thus, the responsibility of the respondent state could not be imposed for the acts that were carried out in the active phase of the relevant hostilities in Samachablo.[212]

The Minister of Justice of Georgia, Rati Bregadze, responded to the Court ruling and assessed it as another victory for Georgia, which, according to him, put an end to the examination of more than 3,300 complaints against Georgia organized by Russia. "*The Court's today's decision ended the complaints submitted against Georgia by the population living in the Tskhinvali region related to the active hostilities during the war of August 2008, and all the disputes around this issue are ended too,"* said Rati Bregadze.[213]

Considering the above-presented discussion, it becomes evident that these specific complaints (more than 3,300 complaints, which, in turn, are about 50% of the total applications lodged against Georgia to the ECtHR since the ratification of the Convention) are part of the Russian government's strategy and cannot be used to measure the situation inside the country. Therefore, using these specific complaints while evaluating the state of human rights in the country at the national level, or measuring the degree of trust in the Court, is an obvious manipulation with the statistical indicators.

Although we are well aware of the impact of complaints made by Russia on the statistical data, on the one hand, we are deprived of the possibility to "correct" the statistical data by subtracting such complaints as their exact number and the impact on the annual data is unknown to us, since the relevant Court reports do not provide it. In addition, the Ministry of Justice does not have accurate data

[208] *Tskhovrebova and 369 others v. Georgia* (dec.) [Committee], no. 43733/08, March 3, 2022.
[209] Ibid.
[210] *Bekoyeva and 3 others v. Georgia (dec.),* no.48347/08, §§ 32-40, October 5, 2021.
[211] *Shavlokhova and 4 others v. Georgia (dec.),* no. 45431/08, §§ 27-35, 5 October 2021.
[212] "*Tskhovrebova and 369 others v. Georgia* (dec.) [Committee]."
[213] "The Strasbourg court recognized the complaints submitted by the residents of the Tskhinvali region with the coordination of Russia as inadmissible", Pirveli Arkhi 24.03.2022. https://shorturl.at/cDLPV, Accessed: 30/04/2023.

either because the Government of Georgia, as a party, receives information about a specific complaint only after the communication of the case.

On the other hand, even if it were possible to make corrections, this would erase the relevant context for Georgia - overloading the Court, which, in turn, significantly impacts the course of cases' examination. This context explains why the number of applications pending before the Court against Georgia was high until 2021.[214] As the Minister of Justice explains, only in 2022 did the examination of complaints organized by Russia against Georgia come to an end. From this time, we can see a relatively "clean picture". According to this picture, as Rati Bregadze points out*: "Only 154 complaints against Georgia are being examined by the Court, which is the best figure for Georgia since its membership of the Council of Europe"*.[215] As the focus of the study is to identify the factors that may have influenced the formation of the "best figures",[216] we should continue to discuss other critical contextual circumstances with the disclaimer that it is wrong to consider the complaints organized by Russia in assessing the situation at the national level. As mentioned, these conditions were named by the respondents during the interviews. However, we had to increase the scale of the research to verify and elaborate more on them. Thus, the information provided by the respondents will be investigated and analyzed one by one.

3.2.2. Court as a new institution and lack of relevant knowledge

According to one of the respondents, after the ratification of the European Convention on Human Rights (1999), the growing trend of complaints against Georgia (see Graph 7) is the effect of the new institution and is logical. However, the respondent also clarifies that concluding whether this coincided with increased human rights violations, reforms, or other circumstances is complicated.

Under this opinion, namely, under the framework of the effect of the new institution, it is essential to note that the first judgement against Georgia - *Asanidze v. Georgia* - was made by the Court in 2004. As mentioned, the latter was a precedent for the Convention system itself, as the Court, for the first time in its history, indicated a specific measure of the judgement implementation (the immediate release of a person in illegal detention) in the resolution part of the ruling. This is not typical for the Court.[217] Thus, we can assume that this judgement increased the awareness about the ECtHR in Georgia and set the expectations of its rigid response to violations. Moreover, it increased expectations of making the executive authority obliged to take specific steps, making the words “I will go to Strasbourg” more popular.

However, even though the Court was more open to individual applicants at the first stage and placed fewer obstacles in their way of filing a complaint, these barriers still existed, and it was impossible to "go to Strasbourg" for all cases. Moreover, knowledge about the latter was very scarce, taking into

[214] Moreover, this number explains why (in 2009, 2013, 2014, 2015, 2016, 2017, 2018) Georgia was among the Member States (in the top ten) against which the biggest number of applications were lodged to the Court for examination.
[215] See Graph 9.
[216] The words "best figures" are enclosed in quotation marks, as it indicates the impossibility of making an analysis based on absolute figures, which is the main line of this study.
[217] *“Asanidze v. Georgia”*.

account the fact that the European Court of Human Rights was a new institution for Georgia, the lawyers were not specifically trained, and the Court itself was in the process of changing priorities and admissibility criteria in the wake of reforms, especially after the overloading of the Court, when the latter faced the fundamental need to introduce a strict filter.

Therefore, it is essential to draw attention to the factors as the following: 1. The issue of lack of relevant knowledge about the central role of the European Court in Georgia, its functioning and procedures; and 2. Abuse of the right to appeal to the Court, which in turn caused the Court caseload in general, and more specifically, in the part of dispute examination regarding Georgia.

3.2.2.1. The absence of a relevant knowledge

During the interview, while talking about the reasons that may have caused a rapid increase in complaints at the first stage, the representative of Georgia's Young Lawyers Association (GYLA), Tamar Oniani, focused on the wrong expectations and lack of relevant knowledge regarding the new institution:

> "One of the reasons may have been that the Strasbourg mechanism was new in the first years. Lawyers did not know what priorities they could be guided by, and all cases were sent to the Court. Among them, the Court was seen as a kind of fourth instance. As knowledge grew at the national level and people learned how to litigate and what criteria they had to meet, they found that their cases had no prospects. Also, they saw that Strasbourg does not make decisions easily, and the process is rather prolonged. There were no such expectations before. Before, they wanted it to be soon... Before, questions could arise, but today, when the judicial practice is more firmly established, it is relatively easier to identify the grounds on which the complaint will be declared inadmissible."

Therefore, GYLA's observation reinforces the opinion expressed by the previous respondent that the rapid increase was the effect of the new institution and was caused by its attractiveness on the one hand and the lack of relevant knowledge about the proceedings on the other.

Analysis of the decisions to exclude cases on the grounds of inadmissibility (see Annex 2), demonstrates that 97% of them are complaints filed before 2013. Among them, the grounds of violating the deadline and non-exhaustion of domestic legal remedies prevail, as well as complaints that are ill-founded or incompatible with the Convention. As for the complaints filed after 2013, there are only 5 decisions on inadmissibility. However, due to the workload of the European Court, which does not allow an immediate response to each complaint, we cannot assume with certainty that the complaints filed after this period (the number of which is also low compared to previous years (see Figure 7)) primarily meet the admissibility criteria, until a final decision is made on them. The reduction was most likely due to the creation of a Single-Judge Formation tasked with examining manifestly inadmissible appeals. The latter's decisions are not included in cases listed in Annex 2.

It is also noteworthy that the lack of knowledge regarding the European Court of Human Rights proceedings and the large number of complaints caused by it was one of the main challenges of the European Court of Human Rights in general (and not only concerning Georgia). The president of the Court (acting in 2009-2010), Jean-Paul Costa, drew attention to this and called on the bar associations,

the academy and non-governmental organizations of the Contracting States to assist the applicants and the Court in avoiding frivolous and hopeless complaints.[218]

> "While everyone has the right to individual complaint, it cannot meet everyone's expectations and cover all activities and all aspects of life that we as human beings strive to protect" - Jean-Paul Costa.[219]

The idea of providing potential applicants with complete and objective information about the application procedures and eligibility criteria is also emphasized in paragraphs G-6 (a) and (b) of the Interlaken Declaration.[220] As citizens' awareness raising is one of the effective ways to decrease the number of inadmissible applications, many relevant campaigns were carried out in this regard. Since Georgia was considered to be a country from which a large number of complaints were received (although this was due to complaints organized by Russia), the guidelines were also translated into Georgian.[221]

3.2.2.2. Abuse of the right of application

During the interview conducted within the research framework, the respondents pointed out the facts of the abuse of the right of application by the lawyers at the initial stage. This, in some cases, was manifested in the frequent, unsubstantiated, and frivolous appeals to the Court and in not notifying the Court regarding important changes and circumstances in their cases. The latter factor can be viewed in connection with the new institution effect. Specifically, due to the lack of relevant knowledge or simply intentional actions (which in turn may also be related to lack of knowledge and experience), there were frequent actions by Georgian lawyers that were assessed as an abuse of the right of appeal by the Court. Moreover, the Court issued a stringent response to several of them.

Bekauri v. Georgia can be considered one of the most high-profile cases, in which, according to the Court's assessment, the lawyers demonstrated "a vexing irresponsibility".[222] In this case, the author of the complaint disputed the incompatibility of his life imprisonment with Article 3 of the Convention. In 2010, the Court recognized the appeal as admissible in regard with Article 3. However, the Court found that many irresponsible actions were taken on the part of the lawyers between the periods of filing the complaint (March 31, 2002) to 2010 (at the first stage, there was only one lawyer involved in the case, who in a later stage was replaced by two new lawyers). The irresponsibility mentioned above included the cases of procedural errors or violations, improper communication with the Court, violation of established deadlines, losing the case materials two times, and, most importantly, failure to notify the Court regarding the changes in the Criminal Code that implied changing the applicant's life imprisonment to a term of 16 years. The latter was directly related to the essence of the complaint. The Court assessed the indifferent attitude of the first lawyer as an unfortunate fact and the actions of

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[218] Speech Given by Mr Jean-Paul Costa, President of The European Court of Human Rights, on the occasion of the opening of the judicial year, 30 January 2009. in. Council of Europe, *"Annual Report 2009 of the European Court of Human Rights"*, 37.
[219] Ibid., at 39.
[220] *"Interlaken Declaration"*.
[221] European Court of Human Rights, "Practical Guide on Admissibility Criteria", 2011. https://www.echr.coe.int/Documents/Admissibility_guide_KAT.pdf, accessed: 30/04/2023.
Note: This is not an updated version of the document.
[222] *Bekauri v. Georgia* (preliminary objection), no. 14102/02, § 24, 10 April 2012.

all three of them together as "vexing manifestations of irresponsibility".[223] The Court further noted that the lawyers' mistakes caused the Court's administrative caseload[224] and strictly reminded the parties that *"it cannot be its task to deal with a succession of ill-founded and querulous complaints or with otherwise manifestly abusive conduct of applicants or their authorized representatives, which creates gratuitous work for the Court, incompatible with its real functions under the Convention".*

Although the abuse of the right to appeal to the Court was found against the lawyers of this case, the Court did not prohibit them from working in the European Court of Human Rights, as it did later (by the decision of October 22, 2013) in the case of lawyer Mamuka Nozadze. He was banned from representing or otherwise assisting applicants not only in pending 25 applications but also in any future cases brought before the Court.[225]

Moreover, these cases are not a complete list of the ones where the Court pointed out lawyers for improper actions and found abuse of the right to appeal to the Court.[226] It is noteworthy that in the first years, the lawyers mentioned above, whom the Court repeatedly warned, were the ones who represented the plaintiffs in not one but dozens of cases.

Although these cases are significant considering the scale of the violations, it is wrong to generalize these cases and conclude that gross violations of procedures characterized most lawyers. However, the latter is not excluded either. Nevertheless, as mentioned above, many of our respondents drew attention to the low competence of lawyers (regarding the litigation in the ECtHR) and the frequency of gross violations from their side at the initial stage. Thus, considering the misunderstanding of the role of the European Court of Human Rights and the lack of knowledge regarding the procedures, this can be an additional factor, while discussing the caseload of the Court with hopeless appeals.

3.2.3. Cases on disputes related to conditions in penitentiary institutions.

According to the respondents, the increasing trend in the number of complaints filed against Georgia between 2011-2012 may have been caused, on the one hand, by the problematic situation in the penitentiary institutions and, on the other hand, by the possibility of applying directly to the European Court regarding the conditions. Therefore, it is crucial to explore this factor in a detailed manner.

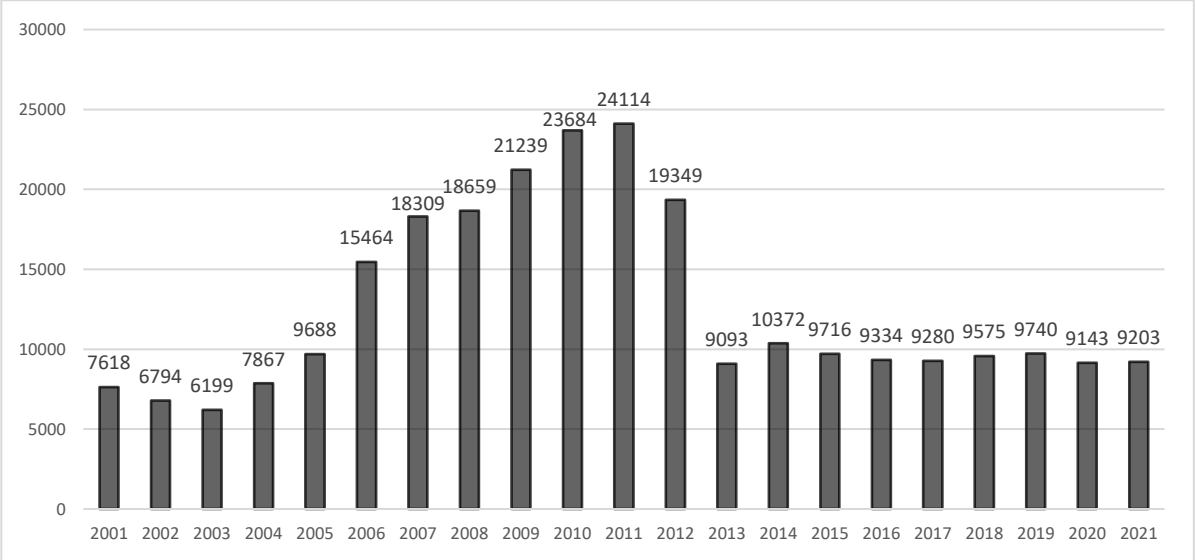
Although there are no publicly available official statistics on the share of the applications against Georgia lodged to the ECtHR that were and are directly related to the violation of rights in the penitentiary institutions (health care/ill-treatment/torture), according to various data[227] and the

[223] Ibid., §§ 22,24.
[224] Ibid., § 22.
[225] *Mazanashvili v. Georgia* (dec.), no. 19882/07, §27, 28 January 2014.
[226] See also, *Keretchashvili v. Georgia* (dec.), no. 5667/02, 2 May 2006; *Khvichia and others v. Georgia* (dec.), no.26446/06, 23 June 2009; *Pirtskhalaishvili v. Georgia* (dec.), 44329/905, 29 April 2010.
[227] It is noteworthy that Archil Talakvadze, the former Deputy Minister of the Penitentiary and Probation of Georgia, talked about the statistics of the European Court on his Facebook page on February 15, 2014. He highlighted the share of the cases pending before the Court related to violations in the penitentiary system. According to the data presented by him, in 2009-2013, their share was 70-80%. Namely, in 2009, approximately 62% of (communicated) complaints were related to the penitentiary system; in 2010 - 81%; 2011 – 89%, 2012 – 81%. https://shorturl.at/uFUX9, accessed: 30/04/2023.

respondents interviewed within the framework of this research, this figure exceeded 60-70% as of 2010. Moreover, if we look at the decisions taken on the strike out of pending cases (see Annex 1), we will see that 46% refer to the conditions in penitentiary institutions. The share of such applications in the decisions on inadmissibility is also significant (see Annex 2).

First, such an image was caused by the harsh conditions in the penitentiary institutions, which was emphasized in many local and international reports[228] and was to some extent caused and primarily aggravated by a large number of prisoners (see Graph 10).

Graph 10: The number of prisoners in Georgia by years



Source: The graph was created by the author based on the data of the National Statistics Office of Georgia

On the other hand, the submission of a large number of complaints of this kind to the European Court in a short period can also be explained by other objective circumstances. Namely, this circumstance can be fewer obstacles for prisoners to apply to the European Court. The latter was based on the Court rulings issued regarding the developments before 2010, where the Court explained and guided the fact that no effective domestic remedy existed to respond to violations of rights in the penitentiary institutions.[229] Thus, accepted the case for examination at the stage of the complaint admissibility, in case it met other criteria (at least, the refusal would not be issued to the applicant on the grounds of non-exhaustion of domestic remedies). For these kinds of disputes, the Court established only a minimum requirement - the existence of the fact of alerting a representative government body - and did not oblige the applicant to exhaust all domestic legal remedies. The latter

[228] See Parliamentary Reports of the Public Defender of Georgia on protecting human rights and freedoms in Georgia. https://www.ombudsman.ge/geo/saparlamento-angarishebi, accessed: 30/04/2023. Also, Council of Europe, "Collection of Reports of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment on the Visits to Georgia." https://rm.coe.int/1680081270, Accessed: 30/04/2023. Thomas Hammarberg, "Georgia in Transition, Report in the Field of Human Rights: History, Steps Taken and Current Challenges," September 2013. https://myrights.gov.ge/uploads/files/docs/8987288_38635_607369_Hammarbergreport-getm.pdf, accessed: 30/04/2023.

[229] "The Court reiterates that prior to October 1, 2010, Georgian law and practice did not provide for an effective legal remedy allowing a claimant to obtain injunctive relief in a situation concerning a lack of medical care in prison. Consequently, it was sufficient for an ill detainee, who wished to complain to the Court of a lack of adequate medical care, to have alerted the relevant domestic authorities about his or her state of health." See: *Jashi v. Georgia,* no. 10799/06, § 51, January 8 2013; *Goginashvili v. Georgia*, no. 47729/08, § 54, October 4 2011.

is also evident in the 2017 decision to strike out the case of *Nozadze v. Georgia*. Specifically, in the Court reasoning, we read the following:

> "Referring to its relevant case-law in respect of the conditions of detention in a Georgian prison, even such complaints did not call for the full and meticulous exhaustion of any specific criminal or civil remedies, it was still required, at the very minimum, **that at least one of the responsible State agencies be informed of the applicant's subjective assessment** that the conditions of detention in question constituted a lack of respect for, or diminished, his or her human dignity."[230]

As a result, to put it bluntly, as one of our respondents pointed out, *"[before 2010] if someone had a headache in the penitentiary institutions, they went to Strasbourg, and they had the right to do so."* The right to apply to the Court directly with only a minimum prerequisite, considering the huge number of prisoners and the reality of protecting their rights, led to the increased number of complaints filed against Georgia before the European Court.

On the other hand, referencing the period before 2010 is not accidental regarding this practice. This period is known for the radical changes in the criminal justice policy by Georgia's executive and legislative authorities. In the case of *Goginashvili v. Georgia* (October 4, 2011), in which the violation of Article 3 of the Convention (prohibition of torture) was disputed due to the lack of adequate medical care in prison, the European Court positively assessed the changes implemented in the Prison Code on October 1, 2010:

> "The new Code, which entered into force on October 1, 2010, clearly provided for a detainee's right to healthcare in prison (Article 24 of the Code). The Code then described in a precise manner the procedure for submitting complaints, in the event a detainee felt that his or her right, including that to health care, was not duly respected by the prison authority. The Court notes that this procedure is accompanied by important procedural guarantees..."[231]

Therefore, the Court considered the complaint examination mechanism (developed due to these changes) effective and rejected its earlier practice.

Moreover, in the case of Goginashvili, the Court marked off the developments before October 1, 2010, and after October 1, 2010, and explained its different approach due to the legislative changes. In particular, at the admissibility stage, when considering whether the applicant had exhausted domestic legal remedies, the Court in one part (which covered the period when the new prison code had not yet entered into force) recognized the complaint as admissible and did not consider justified to reject it under Article 35 (1 and 4) of the Convention[232]; And in the second part (regarding the period after the new Code entered the into force) decided that the paragraph 1 of Article 35 of the Convention should be enforced and, therefore, recognized as inadmissible in this regard (with the argument that domestic legal remedies were not exhausted).

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[230] *Nozadze v. Georgia* (dec.) [Committee], no. 41541/05, § 30, May 9, 2017.
[231] *Goginashvili v. Georgia, §55.*
[232] The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognized rules of international law, and within a period of 4 months from the date on which the final decision was taken. *"Convention for the Protection of Human Rights and Fundamental Freedoms",* Article 35(1).

After creating such a precedent, all the cases filed after October 1, 2010, where the issue of violation of the rights of the person in custody by the prison administration was disputed, and domestic legal remedies were not exhausted per the new legislation, were declared inadmissible based on the Goginashvili case.

In addition, one of the respondents pointed out the impact that the Court's changed policy might have had on further appeals. Namely, the obligation of using an appeal mechanism (taking into account the caseload of the common courts and the deadlines for examining cases) may have prolonged the process at the national level and, thus, delayed the possibility of applying to the European Court for years; the European Court, also considering its caseload, could have extended the process of the application's examination and issuing the final judgement even more. Realizing this not only demotivated the victim but also practically made the prosecution meaningless, as the applicant might not even be in the penitentiary institution anymore at the time of the hearing of their case. Therefore, this opinion expressed by the respondent suggests that changes of this kind (that turned out to be a significant barrier in the way of filing a complaint in the European Court), may affect some applicants to deter from using the Strasbourg mechanism.

Regarding the impact of the Court's decisions on Georgia, the Court emphasizes the measures taken by Georgia's executive branches and legislative authorities to protect prisoners' rights. These are the changes made in the Law on Prisons and the Code of Criminal Procedure in 2010, as well as the health care measures implemented in the penitentiary system in 2011-2013 (better infrastructure, more qualified medical personnel, regular medical examinations and proper treatment of prisoners).[233] Specifically, the Court drew attention to the positive trends of improvements in prison conditions, related to healthcare and other conditions, back in the 2011 decision, where it emphasized that: *"The court cannot leave unnoted the main reform of prison system, which Georgian State undertook, after communication on this case, when it enacted the new Prison Code".*[234] It is notable that the latter excerpt, as well as the information about positive trends and the assessment of their influence, was drawn up in the report submitted in 2014 by the Government of Georgia itself,[235] regarding the implementation of the judgements on significant complaints related to structural problems in prison institutions, the cases of the so-called Ghavatadze group.[236] This is significant, that even the current government does not resist the fact that the correction of the situation in the penitentiary institutions, which became the ground for the decreasing trend of this type of complaint in the European Court, began as early as 2010, the result of which became tangible in the subsequent period.

Thus, the measures mentioned above were considered an outstanding achievement of the State and an essential step for bringing them within the framework of the Convention system. This means that, to a more considerable extent, these decisions became the ground for recognizing the complaints

[233] Council of Europe, *"European Court of Human Rights, "The ECHR And Georgia: Facts and Figures".*
[234] Council of Europe Committee of Ministers, Communication from Georgia concerning the Ghavtadze group of cases against Georgia (Application No. 23204/07) ", Secretariat of The Committee of Ministers, 10 October 2014, 6. DH-DD (2014)1198. https://shorturl.at/jvCI3, Accessed: 30/04/2023.
[235] Council of Europe Committee of Ministers, *"DH-DD (2014)1198".*
[236] *Ghavtadze v. Georgia*, no. 23204/07, 3 March 2009; *Poghosyan v. Georgia,* no. 9870/07, 24 February 2009; *Mindadze v. Georgia*, no.17012/09, 11 December 2012; *Jeladze v. Georgia*, no. 1871/08, 18 December 2012; *Ildani v. Georgia*, no.65391/09, 23 April 2013.

submitted after these changes on similar issues as inadmissible or giving them a lower priority. This was due to the fact that the Court considered the systemic problem to be solved in this regard.

Therefore, considering all the above, the opinions expressed by our respondents may reflect the reality and the radical decrease in complaints regarding the conditions in the penitentiary institutions in a short period is related to these factors. However, we should also consider the political aspect, which the respondents highlighted: *"If we consider that the change of the government was related to the developments taking place at prisons, the political interest of the prison has been lost,"* – one of the respondent's notes. They also named several circumstances that may have had an impact on the attitudes of the prisoners, including the unprecedented amnesty implemented immediately after the change of the government, which, according to the legislators, was aimed at restoring justice and releasing political prisoners, and which at the same time was expedient for reducing the number of prisoners.[237] Indeed, the amnesty affected thousands of people. Some had their prison terms reduced, and some were released outright. As a result, the number of prisoners in 2013 was halved compared to 2012 (see Graph 10).

In terms of political interest, it is also interesting to observe the attitude and actions of the Georgian government on complaints related to the violation of rights in penitentiary institutions. Specifically, analysis of the applications struck out from the list of pending cases makes it evident that the practice existing before 2013 differs from the practice existing in the following years, which is most likely due to the change in the government's approach. However, it has yet to be discovered what caused the latter change.

Before 2013, it was common for penitentiary complaints to be struck-out on the grounds of the applicant losing interest in continuing the dispute, as the government had responded adequately to their claims in Court and there was no reason to continue the dispute.[238] Striking out of the case was either requested by the government and the applicant agreed, or the applicant requested the cancellation of the complaint without requesting or receiving any compensation because their condition in prison had improved. Moreover, according to the Court's decisions on striking out of the applications, in such cases, the government would present the relevant evidence, which proved its appropriate response and the improvement of the applicant's situation.

However, disputes have not been resolved in this way since 2013. Instead, the new government authorities settled the disputes related to the health conditions in the penitentiary institution submitted before 2013, primarily by signing a friendly settlement, which meant the formal recognition of the violation of the Convention and the payment of compensation to the applicant (mainly within the range of 2,000 - 5,000 euros). In some cases, the dispute settlement and payment of compensation were also preceded by the release of the applicant (including through amnesty or presidential

[237] "Law of Georgia on amnesty". Legislative Herald of Georgia, 202-RS. 28/12/2012. https://matsne.gov.ge/ka/document/view/1819020?publication=0, Accessed: 30/04/2023.

[238] For example, see *Sanamashvili v. Georgia* (striking out) [Committee], no. 26173/10, December 14 2010; *Gabedava v. Georgia* (striking out) [Committee], no. 65063/09, January 28 2011, etc.

pardon).[239] Moreover, in some cases, the government expressed its desire to end the dispute not by a usual friendly settlement but by signing a unilateral declaration. However, the agreement of the other party on the terms of the declaration turned it into a friendly settlement.[240]

In establishing a different approach from the practice existing before 2013, the case of *Barbakadze v. Georgia* is particularly noteworthy. In this case, although the government had submitted evidence as early as 2011, proving that they started treatment for the applicant, the government still initiated a friendly settlement procedure in 2014, according to which, in exchange for the complaint withdrawal, the government offered the applicant 2,500 euros as compensation.[241] The decision of the Court on striking out of the case does not include any reasoning regarding the effectiveness of the steps taken by the government at the time, whether the government was facing the need to recognize the violation of the Convention and why it was not possible, according to the old practice, to strike out the complaint from the list of pending cases without settling. A similar case occurred in *Kobulidze v. Georgia*[242] and *Bakuridze v. Georgia*[243] cases, where, on the one hand, the government submitted evidence of treatment in 2010, and additionally, the applicant was released on the ground of amnesty in 2013, but the government still initiated settling and offered 3,500 euros as compensation to the applicants.[244]

As already mentioned, it is unknown what led to disputes ending with different results and striking them out from the list of pending cases. Namely, is this the result of a change in the government's approach or the applicants themselves - who in previous cases declared their desire to close the case in the European Court as a result of solving the problem, but under the new government, they started refusing to close the case, hoping to receive standard compensation? Moreover, the change in the government's approach can be seen as a desire to admit violations in as many complaints as possible or even to compensate the applicants for the harm (even though the government itself took steps to remedy it).

While talking about the changes in the government's approach, it is no less important to identify the factors determining the applicants' behaviour, which in turn may explain the different practices. Namely, lawyer Mamuka Nozadze, whose activity was repeatedly assessed as an abuse of the right to appeal to the Court, was criticized by the Court for demanding the continuation of the case, although clients desired to settle with the government. According to the lawyer himself, he acted against the wishes of the trustee because he questioned the latter's freedom of will in custody and claimed that they were being influenced by the executive authorities (which the trustees themselves denied).[245] The extent to which similar practices took place under the previous government, as well as the research of

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[239] e.g. In the case of Gujedjiani v. Georgia, the applicant was released on December 31, 2012, instead of March 22, 2020, see *Gujejiani v. Georgia* (striking out) [Committee], no. 40123/10, May 14 2013; Also, *Kekelia v. Georgia* (striking out) [Committee], no. 32997/10, May 14 2013; *Kikvadze v. Georgia* (striking out) [Committee], no. 5456/09, May 14 2013; *Abashidze v. Georgia* (friendly settlement) [Committee], no. 51437/10, June 18 2013.

[240] *Bakradze v. Georgia* (friendly settlement) [Committee], no. 3658/10, May 20 2014.

[241] *Barbakadze v. Georgia* (striking out) [Committee], no 13008/11, 11 March 2014.

[242] *Kobulidze v. Georgia* (striking out) [Committee], no. 30385/10, 11 March 2014.

[243] *Bakuridze v. Georgia* (striking out) [Committee], no. 26538/10, 11 March 2014.

[244] The applicant of the following case was also released from prison for amnesty: *Sarukhanyan v. Georgia* (striking out), no. 56161/09, March 11 2014.

[245] E.g. see *Kotchlamazashvili v. Georgia* (striking out), no. 42270/10, April 3 2012; *Aladashvili v. Georgia* (striking out), no. 17491/09, April 3 2012.

the motives determining the behaviorsur of the applicants or government representatives, is beyond the scope of this study and requires additional in-depth study.

3.2.4. Change of the government in 2012 and related expectations

The respondents noted the change in the government in 2012 and the related impact of the changed expectations and perceptions as a possible reason for the sharp decrease in the number of complaints after 2012. Therefore, this sub-chapter will explore the latter factor.

Even the 2012 election program of the "Georgian Dream" provided for the institutional reform of the court system, which in turn meant fundamental changes, both in the system of common courts and in the Constitutional Court.[246] Namely, the program envisioned the creation of an effective internal legal protection mechanism for the protection of human rights by expanding the powers of the Constitutional Court, which meant giving the Constitutional Court the authority to check the constitutionality of decisions of general courts.

> "The Constitutional Court will perform a filter function regarding the European Court of Human Rights. It will become the so-called "Little Strasbourg" for the protection of human rights, and, in turn, it will act based on the European Convention on Human Rights and the case law of the Strasbourg Court" - we read in the election program.[247]

According to the "Georgian Dream" party, the new model developed by them would significantly reduce the number of appeals filed from Georgia in the European Court.[248]

Moreover, shortly after taking the post of the Minister of Justice, Tea Tsulukiani came up with the initiative to create a commission to determine the shortcomings of justice and developed a corresponding draft law.[249] The latter aimed at revising court verdicts in criminal cases from January 1, 2004, to November 1, 2012, and restoring law and justice to those persons, who were illegally and/or unjustly convicted. Perhaps this very promise, which was actively promoted in society, had an additional impact on individuals' expectations that justice would be achieved at the national level.

However, at the end of 2013, the Minister of Justice temporarily and, as it turned out later, permanently refused the initiative mentioned above.[250] The official reason for the refusal was the lack of sufficient resources. The idea of creating a "little Strasbourg" was not implemented either.

According to one of the respondents, these expectations, which were not justified in some cases, left many complaints without the prospect of examination in the European Court.

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[246] Saarchevno bloki "Bidzina Ivanishvili – Kartuli Otsneba" – 2012 tslis saparlamento archevnebis saarchevno programa, Tbilisi, 2012. http://www.ivote.ge/images/doc/pdfs/ocnebis%20saarchevno%20programa.pdf, Accessed: 30/04/2023.
[247] Ibid., at 10.
[248] Ibid., at 9-10.
[249] "Martlmsajulebis kharvezebis shemstsavleli droebiti sakhelmtsipo komisiis taobaze" sakartvelos kanonis proekti, Sakartvelos sakanonmdeblo matsne, 20/05/2013. https://matsne.gov.ge/ka/document/view/1924705?publication=0, Accessed: 30/04/2023.
[250] "Tsulukianis tkmit, martlmsajulebis kharvezebis damdgeni komisiis shekmna shecherda," Civil.ge, 28 November 2013. https://old.civil.ge/geo/article.php?id=27613, Accessed: 30/04/2023.

"In 2012, the number of dissatisfied people decreased. Arrests and referrals were reduced, and people were given the hope that if they were arrested, the prosecutor's office would investigate the case accordingly, and the court would issue a reasonable decision. They refrained from appealing to Strasbourg in this context. This tendency continued for several years… for about 4-5 years. After this time, it was already too late to appeal to the Court... even if the grounds for the appeal were substantial, the problem of admissibility would appear, and it would make no sense to submit at the Court anymore."

In addition, the respondent explained why the appeal was too late to be submitted to the Court in such a case. Specifically, the latter pointed to the practice established by the Court. According to it, when applying for an ineffective investigation, the Court considers the moment when the complainant discovered that the investigation was ineffective, and the 6-month period is counted from that point. Also, as the GYLA representative clarified regarding the effective investigation:

"In this kind of cases, the plaintiff must follow the case and control the prosecutor's office as timely and adequately as possible. In one of the cases, in the part of the exhaustion of domestic legal remedies, the Court considered the fact that the applicant did not request an information regarding the case for a year (despite the fact that the investigation was ongoing), as the reason for leaving it unexamined. This means that the applicant should have realized earlier that the means of protection of the right were ineffective."

Therefore, if we go back to the argument suggested by the previous respondent, people started thinking about the European Court after getting disappointed and realizing after 5 years that the prosecutor's office was ineffective in investigating their cases. However, from the procedural point of view, it was already too late to apply to the Court. *"This led to the fact that almost no complaints were sent about the ineffectiveness of the investigation."*

While discussing the expectations, we should also mention the factor of the Constitutional Court of Georgia, named by several respondents. The latter implies the rising awareness about the Constitutional Court of Georgia since 2012, connected to the many resonant and restrictive decisions of the political authorities issued by it and increased institutional trust towards it, and the emergence of the feeling that it was possible to reach adequate protection of rights at the national level without applying to the European Court. *"The Constitutional Court is also important, as it still made breakthroughs and issued crucial rulings. In any case, this was happening until 2016,"* said one of the respondents.

However, questions of when this trust in the Constitutional Court started forming, what caused it or when and why it finished are the subject of a separate in-depth study, which is beyond the scope of this research. In addition, although in the recent academic literature, constitutional courts have been named as an important institution promoting the implementation of the practice of the European Court at the national level (which in turn can become a way to relieve the European Court in an ideal scenario),[251] we must not forget that the Constitutional Court is not the institution to which the European Court's appeal or failure to apply would have affected the admissibility stage when considering the exhaustion of domestic remedies.[252]

[251] Kosar and Petrov, *"The Architecture of the Strasbourg System of Human Rights: The Crucial Role of the Domestic Level and the Constitutional Courts in Particular."*
[252] *Apostol v. Georgia*, no. 40765/02, § 46, November 28, 2006.

Therefore, elaborating more on the opinion mentioned above by the respondents does not have a practical significance under the framework of this study. Moreover, considering the research's limited focus, it is impossible to support or invalidate it with facts.

3.2.5. Complicated procedures in the Court and the deterrent effect

The second chapter comprehensively discusses all those reforms and the complicated procedures resulting from them, which created barriers for individual applicants to apply to the European Court of Human Rights. On the one hand, the Court's extreme caseload and, therefore, the loss of the ability to respond effectively to human rights violations had a deterrent effect on those applicants whose expectations were not met and who were disappointed by the Court. However, on the other hand, the Court's response to this problem created many obstacles for applicants and made it so difficult for them to apply to the Court that many of these factors may have had a deterrent effect too. These are the influences that our respondents also emphasized during the interviews conducted in this study.

Namely, based on practical experience, the respondents singled out the following procedural changes among the ones that had a significant impact on the number of cases submitted to the Court: **1. creation of a Single-Judge Formation and the practice of declaring complaints as inadmissible; 2. complicated form of filing complaint; 3. a stricter approach regarding the term for appealing to the Court.** Therefore, it is necessary to analyze each of them separately.

3.2.5.1. Creation of a Single Judge Formation

As discussed in the sub-chapter 2.2., a Single-judge formation was established based on Protocol No. 14 of the Convention, and It aimed to deal with clearly inadmissible complaints. This change entered into force on October 1, 2009, regarding Georgia. However, as there are no exact statistics of what share of inadmissible complaints come from the appeals declared as inadmissible by a Single-judge formation and the decisions made by the latter are not uploaded into the Court judgements database, it is impossible to say precisely how many appeals were recognized as inadmissible by a Single-judge formation.[253]

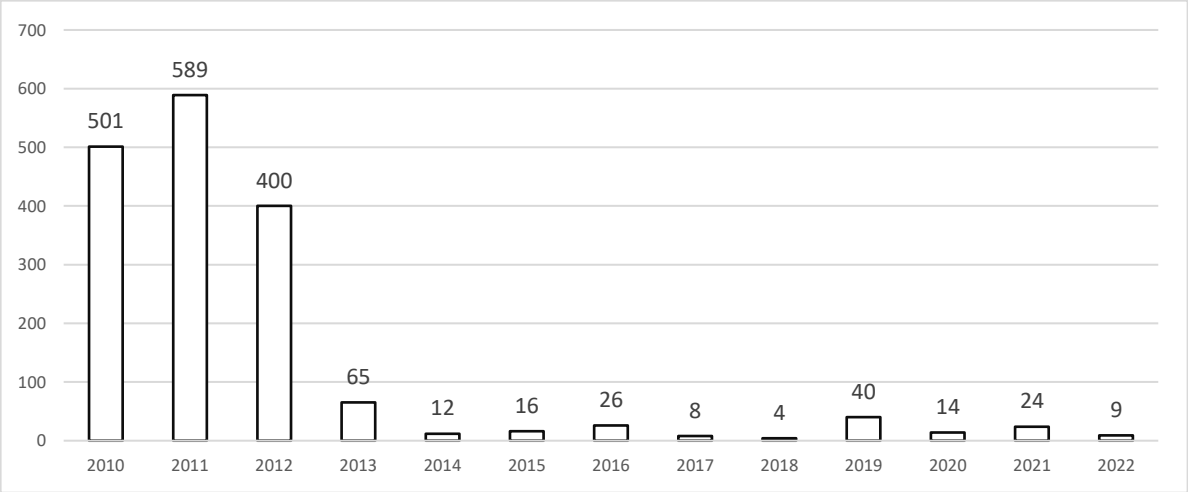
This data is crucial in the context where the examination of the case by a Single-judge formation caused quite a lot of worries for applicants at the first stage. Critics viewed the change that aimed to relieve the Court from the caseload as suspicious. Especially in the circumstances when the Court's reasoning in such a case was patterned and poor and did not provide, on the one hand, answers to the applicant on what grounds they were refused further consideration of the complaint, and on the other hand, it was a hindrance to other applicants as it left the Court's approach and the standard unclear. According to one respondent, this led to ambiguity about whether the same type of complaint should be filed.

[253] Moreover, decisions made by a Single-judge formation are not published on the HUDOC database either. https://www.echr.coe.int/Pages/home.aspx?p=caselaw/HUDOC&c=, Accessed: 30/04/2023.

Since 2016, after the Court started viewing this issue as a central problem and responding to it was named as one of the main tasks at the Brussels conference,[254] the situation has improved in this regard.[255] The obligation of proper reasoning made it easier for the applicants to understand what exactly caused their complaints to be declared inadmissible. Thus, it became more or less possible to predict the prospects of the complaints. However, it is a fact that during this period, the Court was "cleansed" of thousands of complaints without any reasoning for the refusals, which might not only have a deterrent effect on potential applicants but also negatively affect the trust in the Court.

Observing the statistical data only allows us to see that the number of appeals examined by a Single-judge formation and the Committee, in cases of categories VI-VII, started declining in 2013, while by 2010, their number was 501, 589 - in 2011, and 400 - in 2012 (see Graph 11).

Graph 11: The number of applications against Georgia in categories VI-VII pending before a Single-judge formation and the Committee at the end of the reporting period.



Source: The graph was created by the author based on the ECtHR's annual reports

Graph 11 demonstrates that since the end of 2013, the number of appeals pending before a Single-judge formation and the Committee in VI-VII category cases has decreased. Although the decisions on the inadmissibility of the appeals made by the Single-judge formation are not public, the decisions made by the Committee are available and are presented in Annex 2. Therefore, considering their number, it can be assumed that the image presented in Graph 11, which implies a sharp reduction in the number of VI-VII category appeals before the Single-judge formation and the Committee since 2013, is the result of the work performed by Single-judge formation.

3.2.5.2. Special (complicated) form of complaint

As discussed in sub-chapter 2.4, the application process has been complicated since January 1, 2014, according to Rule 47 of the Rules of Court. Specifically, an obligation to submit a complaint in a unique form was established. The latter required more caution and perhaps more knowledge on the part of

[254] *"Brussels Declaration"*

[255] Speech given by Mr Guido Raimondi, President of the European Court of Human Rights, on the occasion of the opening of the judicial Year, January 29, 2016. in. Council of Europe, *"Annual Report 2016 of the European Court of Human Rights"*, 18.

the applicants, as a failure to fill in any part of the form or fill it incorrectly would automatically lead to not accepting the complaint.

As one of the respondents explained, the new form raised many questions at the first stage. Despite the existence of relevant guidelines, many nuances had to be considered, and in the end, they still had to "test in practice" how the new form worked. Unsurprisingly, the form became a significant obstacle for those who did not have a competent representative when there were many ambiguities, even for people experienced in Court proceedings. The respondent recalled cases when, due to this form (which the applicants had to fill out themselves) and the accompanying difficulties, people changed their minds about applying to the Court.

If we look at the Court performance and statistics, we will see that in 2014-2015, the number of administratively disposed applications was high compared to other years (see Graph 5), which is connected to the complicated form. However, this number started stabilizing in 2016. The latter tendency suggests that the complexity of the form did not have a long-term effect, which the Court also emphasized; however, what is not visible in the statistics is the number of those people for whom this fact turned out to be the reason for deterrence. Unfortunately, the statistical reports do not include information regarding the number of complaints submitted against Georgia that failed to pass administrative approval.

3.2.5.3. Changed policy regarding the time limits for appealing to the Court.

According to the respondents, the changed policy regarding the deadline for applying to the Court also impacted those who wished to litigate against Georgia in the European Court of Human Rights. Namely, as discussed in sub-chapter 2.4, the lenient approach of the Court, where it was enough for the applicant to establish even simple communication with the Court (submitting the additional documentation in full only after the initial submission of the application and its brief content) to protect and extend the appeal deadline, was replaced by a strict rule that entered into force on January 1, 2014. The new rule does not provide this possibility and obliges the applicant to submit the complaint in full within 6 months. Otherwise, the complaint will not be examined. However, it should be noted that the 6 months-period was reduced to 4 months in 2022, which makes it even more difficult for the applicant to apply in the context of all other complicated procedures.

As mentioned in the section regarding the form change, perhaps in the case of appropriate data analysis, we can see how many applicants were negatively affected by the changed policy. However, the statistics will not include those who could not prepare and file a complaint on time or refused to protect their human rights in the European Court due to these and other difficulties.

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To sum up - based on the analysis of the number of cases submitted to and examined by the Court, we can argue that the policy pursued by the Court in the procedural part impacted the litigation against Georgia after 2012 (although we lack the ability to accurately assess this impact and display it in numbers). Namely, this is evident, on the one hand, regarding the appeals filed to the European Court, and on the other hand, regarding the decrease in the number of applications allocated to the judicial formations. This was expected because the Court's policy - the creation of the administrative-bureaucratic barriers – aimed at complicating the procedure for receiving cases, as well as reducing the case flow at the Court.

3.2.6. Friendly settlements and unilateral declarations

As discussed in sub-chapter 2.6, ending a dispute with a friendly settlement or unilateral declaration has advantages and disadvantages. However, considering the current situation in the Court, striking applications out of the list of pending cases through an alternative way of litigation as quickly as possible and with the least expenditure of resources was encouraged and supported by the Court itself. Accordingly, the trend of increasing friendly settlements and unilateral declarations over the years is significant, which was also shared in the case of Georgia.

One of the respondents drew attention to this fact too. Namely, they linked the tendency to end the dispute through these mechanisms to the political interest of the Georgian government, which, according to their explanation, also coincided with the European Court's interest:

> "Practically, in the context of settlement, the Court's and the government's political interests coincided. The Court was interested in striking out the cases on time and getting some relief, and the government had its interest to recognize and settle the facts of violations that occurred during the previous government in as many cases as possible."

According to this opinion, settling the dispute without a substantive hearing, with or without recognition of a violation of the Convention, was in the interest of the new ruling party that came to power after the 2012 elections. The latter approach would benefit the process of acknowledging that the Convention and human rights had been violated under their predecessor's government. And these violations had a massive character. However, as a unilateral declaration or friendly settlement does not require the undertaking of general measures, the government would avoid such obligations and, for the most part, limit itself to the payment of compensation or the obligation to conduct an effective investigation. The fact that the use of these mechanisms was in the interest of the Court itself creates the ground to assume that perhaps, considering the Court's priority to end the dispute in a timely and accessible manner, it would set fewer barriers for the government and pass each case with less scrutiny where it saw the desire for a friendly settlement.

The second respondent interviewed during the research did not see any issue with the increasing trend of using the abovementioned mechanism. However, according to them, rather than focusing on

the frequency of the government's use of the mechanism, the study should explore how much this practice is maintained and how consistent the government's actions are.

In addition, although most respondents focus on the positive sides of this mechanism, based on practice, they also point to some problematic issues. In the context of the Court's encouragement and an eventually increased trend of these tools' use, the issues named by our respondents become even more relevant and noteworthy. It can be argued that it is becoming thought-provoking for a potential applicant if it is worth appealing the case in the European Court when there is a high probability of it ending with the abovementioned mechanisms.

Therefore, although at first glance, this way should be beneficial for both the Court and the parties themselves, some details require a more in-depth analysis to see a more accurate picture. Apart from that, some nuances appear in practice and affect a general image too.

In this sub-chapter, the use of each of these mechanisms regarding Georgia and the problematic issues identified in practice will be discussed separately. This will be followed by a summary of all these factors and an analysis of the abovementioned mechanisms from the respondents' perspective.

3.2.6.1. Friendly Settlements Practice Regarding Georgia

a) Striking out an application out of the list of cases when a friendly settlement is reached (in accordance with Article 39 of the Convention)

The European Convention (Article 39) explicitly regulates striking an application out of the list of cases through a Court decision when a friendly settlement is reached between the parties. This ground for striking out has its specificity and is distinguished from other grounds (stipulated by Article 37) by the fact that the procedure before the Court is confidential and, most importantly, the implementation of the settlement terms is supervised by the Committee of Ministers.[256]

The analysis[257] of Court decisions[258] on striking out the applications against Georgia from the list of pending cases on the ground of a friendly settlement shows that 48 decisions have been issued[259] by the Court in accordance with Article 39[260] (see Annex 1).

[256] *"Convention for the Protection of Human Rights and Fundamental Freedoms",* Article 39.

[257] It is noteworthy that the data available in the HUDOC database regarding the number of Court decisions on striking the applications out of its list following friendly settlements issued in 2012-2022 (in accordance with Article 39 of the Convention), slightly (by 2 decisions) differs from the corresponding figures illustrated in the statistical documents published by the ECtHR (specific reasons could not be determined). Namely, based on the latter, a total of 50 cases ended with a friendly settlement, of which: 2012 - 4; 2013 - 11; 2014 - 15; 2015 - 12; 2016 - 4; 2017 - 1; 2018 - 1; 2019 - 1; 2020 - 1. 2021 -0; 2022 -0. See: European Court of Human Rights, *"Analysis of statistics"* (2012-2022). https://shorturl.at/uwNW1, Accessed: 30/04/2023.

[258] It should be noted that the number of decisions may not match the number of applications since each decision may include several applications.

[259] Number of friendly settlements made explicitly in accordance with Article 39 of the Convention: in 2012 - 4 friendly settlements, 2013 - 9; 2014 - 15; 2015 - 12; 2016 - 4; 2017 - 1; 2018 - 1; 2019 - 1; 2020 – 1, 2021 - 0, 2022 - 0.

[260] It is significant that the annual reports on statistical analysis published by the ECtHR, include only the Court decisions on striking the applications out of its list, following a friendly settlement, in accordance with Article 39 of the Convention. However, there are cases in practice when the strikeout occurs on other grounds despite a friendly settlement (these grounds will be discussed later). Therefore, only the complaints struck out by Article 39 will be discussed in this part. When referring to the data, the word "explicitly" is used because of this fact.

Observing the dynamics of decisions on striking applications out of the Court's list, following a friendly settlement (in accordance with Article 39 of the Convention) (see Annex 1) makes clear that until 2012, the Georgian government almost did not resort to this kind of practice (settling with the applicant).[261] The growing trend can be observed since 2012 (2012 – 4). It peaked in 2014 (15 decisions), and since 2015 it has been relatively decreasing. This picture demonstrates that, regarding Georgia, the increase in striking complaints out of list under Article 39 generally coincides with the activation of this practice by the Court itself (see graph 6) and that, including 2015, Georgia fully shared the general trend of the ECtHR in this regard.

A dramatic decrease is noticeable in regard with Georgia from 2016 to 2022. This is because th Government of Georgia either did not set a friendly settlement during the reporting period or, at most, one settlement was recorded yearly. In addition, it should be noted that out of 48 friendly settlements, only two refer to complaints filed after 2012 (*Tedliashvili v. Georgia* and *Ilashvili v. Georgia*).[262]

If we analyze the content, out of 48 decisions,[263] 29 specifically refer to the dispute related to the conditions of imprisonment, and in 50% of them, the government recognized the violation of the articles of the Convention. The latter offered to pay money to compensate for the damage in all cases, in relatively few cases offered to ensure an effective investigation of the case, and only in rare cases - to conduct a general measure.

The remaining 19 decisions, among others, included cases involving excessive force on the part of the police, which in some cases even resulted in the death of an individual. Compared to other cases, all the decisions of this type (in which the death of the victim accompanied the violation by the executive authority) are characterized by the recognition of the violation of the Convention by Georgian authorities, the payment of high compensation (mainly for 10,000 Euros) and the promise of an effective investigation,[264] which, as the Court itself emphasizes, is the most critical and, therefore, is subject to strict control.

It should be noted that the exceptional case in the disputes related to the excessive use of force by the police, where the Government had not acknowledged the violation of the Convention and/or

[261] According to the analysis of decisions on striking out based on a friendly settlement in 2008 - 1; In 2009 - 2, and 2011 - 2 cases were struck out. However, none of them indicates the specific Article of the Convention under which the strikeout happened (see Annex 1).

[262] Among them, in only one case - *Ilashvili v. Georgia* – we find that Government's actions being disputed before the Court entirely took place after 2012.

[263] Although, according to the documents on statistical analysis, 50 friendly settlements were made, only 48 decisions are publicly available. Therefore, only this data is used for content analysis.

[264] It is significant that even though the violation of the Convention against the applicant happened years ago, in most such cases, friendly settlements included the obligation of the Government to conduct an effective investigation. For example, the decision of March 18, 2014, in the case of *Baghashvili v. Georgia* (friendly settlement) [Committee], no. 5168/06, March 18 2014, refers to actions carried out in 1999. Also, the decision of March 11, 2014, in the case of *Kiziria v. Georgia* (friendly settlement) [Committee], no. 4728/08, March 11 2014 - actions are taken in 2006 and others. Therefore, such settlements have not been implemented yet (see Tsintsabadze group cases). Moreover, according to the Georgian government, they may have to stop the investigation in some cases, as it is objectively impossible to conduct an effective investigation. See Council of Europe Committee of Ministers, "Communication from Georgia concerning the case of Tsintsabadze Group v. Georgia (Application no. 35403/06)," Secretariat Of The Committee Of Ministers, 16.10.2020. DH-DD (2020)889. https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680a003a0 , Accessed: 30/04/2023.

promised to investigate, is one of the most recent cases, *Ilashvili v. Georgia*,[265] which, unlike all other similar cases, refers to the events developed in 2019.[266]

In this case, the applicant Ucha Ilashvili's complaint refers to the incident that happened on March 23, 2019, as a result of which the latter was detained administratively. As his advocate explained, the police forced him to testify against his friend through physical violence that took place all night long.[267] After an unsuccessful attempt, Ilashvili was criminally charged for a failure to report a particularly serious crime.[268] In the European Court, the applicant disputed the inappropriate treatment by the police and the lack of an effective investigation regarding this fact.[269] Later, the parties submitted declarations of a friendly settlement to the Court, according to which the applicant refused to continue the dispute against Georgia regarding these facts. In exchange, he demanded the termination of the criminal proceedings against him at the national level and the payment of 10,000 Euros. The settlement does not say anything about the existence or denial of police misconduct or whether such investigations will be conducted in the future.[270] However, the applicant's advocate considers the government's acceptance of this kind of agreement as an indirect recognition of the violation and expresses the opinion that in this way the government avoided being found violater by means of a judgment and paying more in compensation for caused damages.[271] Finally, this case was closed according to the resolution of the Committee of Ministers,[272] as the documents presented by the Government showed that the criminal prosecution against Ilashvili was terminated. In addition, the Government paid 10,000 Euros to the applicant within the specified period.[273] It is unknown what the reaction to the alleged violence against Ilashvili was and how the related investigation ended.

For comparison, in the case *Mzekalishvili v. Georgia*, the applicant also disputed the excessive force and inhumane treatment by the police on April 6, 2010. Hence the lack of an effective investigation regarding this fact.[274] However, in this case, the Government's declaration to the Court emphasized the violation of Article 3 of the Convention and the Government's willingness to carry out all investigative actions and pay 4,500 euros as compensation to the applicant.[275] Therefore, unlike Ilashvili's case, in Mzekalishvili's case:

1. The Government directly admitted the fact of violation of the Convention;

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[265] *Ilashvili v. Georgia* (friendly settlement) [Committee], no. 62866/19, September 29, 2020.
[266] The reference to 2019 aims to emphasize the fact that the friendly settlements are mostly related to the actions that took place under the previous ("United National Movement") Government (actions before 2013), while this particular case represents the exception as it is the first friendly settlement regarding the actions which took place after 2013.
[267] "Politsielebs dzaladobashi, garemos damtsvel inspektors ki, mkvlelobis mtsdelobashi adanashauleben", Netgazeti.ge, April 4, 2019. https://netgazeti.ge/news/353864/, Accessed: 30/04/2023.
[268] Ibid.
[269] *"Ilashvili v. Georgia (friendly settlement) [Committee]".*
[270] Ibid.
[271] "Kats, romelits politsielebs tsemashi adanashaulebda, 10 atas evros gadaukhdis sakartvelo", Batumelebi, October 23, 2020. https://batumelebi.netgazeti.ge/news/307759/ Accessed: 30/04/2023.
[272] Council of Europe Committee of Ministers, Execution of the European Court of Human Rights decision Ucha Ilashvili against Georgia (Adopted by the Committee of Ministers on March 9, 2022, at the 1428th meeting of the Ministers' Deputies). CM/ResDH(2022)57, https://hudoc.echr.coe.int/eng#{"itemid":["001-216608"]}, Accessed: 30/04/2023.
[273] Council of Europe Committee of Ministers, Communication from Georgia concerning the case of Ilashvili v. Georgia (Application no. 62866/19) (Adopted by the Committee of Ministers on December 16, 2020, at the 1398th meeting). DH-DD (2020)1168. https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680a0bf7e, Accessed: 30/04/2023.
[274] *Mzekalishvili v. Georgia* (friendly settlement) [Committee], no.8177/12, February 10, 2015.
[275] Ibid.

2. Promised to renew investigative activities;
3. Despite recognizing the violation, the Government offered the applicant compensation of 4,500 Euros, while in the case of Ilashvili, there was no such recognition, but the Georgian Government offered much more to pay (10,000 Euros). The analysis of the decisions issued against Georgia significantly demonstrates that EUR 10,000 is an amount that is rarely offered by the authorities. To a greater extent,[276] this happens in those cases when the factual circumstances demonstrate that the person against whom the Government's action or inaction violated the Convention died.[277]
4. Finally, unlike Ilashvili's case (friendly settlement - 29/09/2020), the friendly settlement reached on February 10, 2015, in Mzekalishvili's case has not been implemented until now.[278]

Considering those mentioned above, a logical question arises on the Government's consistency regarding the friendly settlements. However, before discussing the Government, it is interesting to consider the consistency of the European Court of Human Rights itself, which is no less critical, as the inconsistency of the Court itself can determine the Government's actions. Besides, most importantly, the Court has the ability to control the inconsistency of the Government, and, therefore, the practice established by the Court can be decisive for an individual, on the one hand, to use this mechanism to resolve a dispute, and on the other hand, in the context of applying to the European Court in general.

b) Striking an application out of the list of cases when a friendly settlement is reached (in accordance with Article 37(1)(b) of the Convention)

Although in the official Court statistics, only cases struck out under Article 39 of the Convention are counted as friendly settlements, studying the Court decisions on the striking applications out of pending cases demonstrates that in practice, in the context of a friendly settlement, this is exercised not only under Article 39 of the Convention but also under Article 37(1)(b).[279] In this kind of decision, it is directly indicated that *"the Court takes note of the friendly settlement reached between the parties. It is satisfied that the settlement is based on respect for human rights as defined in the Convention and its Protocols and finds no reasons to justify a continued examination of the application (Article 37(1) in fine of the*

[276] It is noteworthy that the cases in which the Georgian government offers to pay compensation through friendly settlements usually do not exceed 10,000 Euros, except in cases where the friendly settlement involves the payment of the debt accumulated due to the non-enforcement of a decision taken at the national level, which means that the government is not free at least when determining the lower limit of compensation. e.g. *JSC Vaziani v. Georgia* (friendly settlement) [Committee], no.19377/09, September 13 2016, where the Government offered to pay 360,000 GEL to the applicant through a friendly settlement. Also, the exceptional case where the Government itself offered to pay 20,000 euros to the applicant should be noted. This happened in the only case and that too in a high-profile case - *Molashvili v. Georgia* (friendly settlement) [Committee], no. 39726/04, September 30 2014.

[277] *Chkotua And Arkania v. Georgia* (friendly settlement) [Committee], no.60909/08, May 20 2014; *Kiziria v. Georgia* (friendly settlement) [Committee], no.4728/08, March 11 2014; *Baghashvili v. Georgia* (friendly settlement) [Committee], no.5168/06, March 18 2014; *Surmanidze And Artmelidze v. Georgia* (friendly settlement) [Committee], no.11323/08, June 24 2014.

[278] As the communication of the Government of Georgia with the Committee of Ministers demonstrates, not only was it not executed, but this case does not have any prospect of execution. Therefore, the investigation started on it should be terminated. Council of Europe Committee of Ministers, *"DH-DD (2020)889"*, §§. 69-70.

[279] *"The Court may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that the matter has been resolved", "Convention for the Protection of Human Rights and Fundamental Freedoms",* Article 37(1)(b).

Convention).". Regarding Georgia, 14 similar cases were recorded (see Annex I), where the parties directly indicated that they wanted to end the dispute with a friendly settlement and submitted a consequent declaration signed by both parties to the Court to approve the terms of the settlement. In several cases, the parties indicated in the settlement declaration that they desired the Court to strike out the complaint from the pending cases in accordance with Article 39 of the Convention.[280]

Also, the in-depth study of the Court decisions demonstrates that there are cases where the dispute is settled by a friendly settlement and an agreement signed by both parties is also presented; despite this, the Court does not strike the complaint out in accordance with Article 39, nor does it indicate in the resolution part that a friendly settlement reached by the parties was considered during the decision-making process. Instead, it only emphasizes that the dispute was resolved under Article 37(1)(b).[281] 20 similar cases were identified under the in-depth research of the Court decisions in regard with Georgia (see Annex I). However, the Court approach is so different in each of them that it will be difficult to find any standard criteria in this case. Here, the decision on the *Gogichaishvili v. Georgia* case is interesting. While talking about the facts and the procedural part, the Court focused on the fact that "the Court received a friendly settlement agreement, reached directly between the parties without the Court's involvement and duly signed by both of them" and because of this, the complaint was struck out of the list of pending cases under the Article 37(1)(b).[282] This explanation gives us a reason to assume that perhaps, striking out under Article 39 happens only in those cases, where the Court fully managed the settlement process. The wording used in the first part of Article 39 of the Conventions also indicates that "the Court may place itself at the disposal of the parties concerned with a view to securing a friendly settlement…". This can be perceived as an indication that under this Article, only those cases get struck out on which the settlement agreement was reached through the Court's involvement, and the principle of confidentiality applies only to the cases examined through this procedure. However, let's look at other decisions of strike out on the ground of Article 37(1)(b). We will see that while making a decision on strikeout under the same Article (37(1), there are also cases where the government first submits a declaration of a friendly settlement, followed by the Court asking the opinion of the applicant regarding this and, in case of the latter's consent, decides on a strikeout.[283] Therefore, Court's approach towards other cases puts the assumption arising from the explanation proposed by the Court in the case of Gogichaishvili (that strike out happens under Article 39 only if the case on settlement procedure is managed by the Court) under question.

Finally, it is also necessary to consider eight other cases regarding Georgia (see Annex I). Here, although the Court directly says it considers a friendly settlement between the parties in the case of

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[280] *Gujejiani v. Georgia* (striking out) [Committee], no.40123/10, 14 May 2013; *Kekelia v. Georgia* (striking out) [Committee], no.32997/10, 14 May 2013; *Kikvadze v. Georgia* (striking out) [Committee], no.5456/09, 14 May 2013.

[281] *"The Court considers that the matter has been resolved within the meaning of Article 37 1(b) of the Convention and that respect for human rights as defined in the Convention and its Protocols does not require it to continue the examination of the application under Article 37 1 in fine*". E.g., see *Purtskhvanidze v. Georgia* (striking out) [Committee], no. 26056/11, 4 March 2014.

[282] *Gogichaishvili v. Georgia* (striking out) [Committee], no. 229/10, 29 August 2017.

[283] For example, *Ogbaidze and others v. Georgia* (striking out) [Committee], no.36298/12, 19 September 2017, where the Government's friendly settlement offer was submitted to the Court, the Court handed it over to the applicants and invited them to submit their comments on the Government's offer. In response, several applicants informed the Court that they would accept the Government's offer. As a result, the Court struck their applications out of pending cases in accordance with Article 37 (1)(b). §§ 5-8, 10, 14.

striking out, no specific ground is specified. It is only emphasized that the Court does not see the need to continue the examination of the case and referred generally to Article 37(1) (for example, in the cases of *Kobakhidze and Ninua v. Georgia, Tchanturia v. Georgia).*[284] This circumstance created an opinion that the appeal was not struck out on the ground of Article 39. However, the resolution of the Committee of Ministers on these specific cases[285] (only 2 out of 8 decisions were given to the Committee of Ministers) shows the opposite. The latter makes it evident that the Court struck out the complaints mentioned above under Article 39 and then transferred them to the Committee of Ministers to supervise the implementation according to Section 4 of the same Article.[286]

All of the above-mentioned is significant since, as it turns out, the Court has a different approach in case of a friendly settlement. Even if we suppose that the different approach has any explanation, in that case, it cannot be seen only through a logical analysis of the decisions, as they do not develop any clear criteria, nor does the Court give any clear explanation. Therefore, in this regard, there is ambiguity, which is also emphasized in the relevant literature. The problematic nature of ambiguity is demonstrated by emphasizing the critical fact that, in general, unlike Article 39 of the Convention, cases stuck out under Article 37(1)(b) are not subject to the supervision of the Committee of Ministers.[287]

As for the content analysis of the friendly settlements struck out under Article 37(1)(b) of the Convention (34 settlements + 8 decisions without reference to a specific Article), like the majority of complaints struck out under Article 39 of the Convention, complaints related to the conditions in penitentiary institutions prevail (about 55%). In most of them, the disputed issues were resolved at the national level. Among them were cases when the grounds for termination of the dispute were 1. measures already taken by the Georgian government or 2. the Government's promise to pay compensation to the applicant, or 3. both abovementioned together.

In addition, analyzing the Court decisions makes it evident that in case of striking out under Article 37(1)(b) of the Convention, there are only a limited number of cases that include a government's promise to conduct an effective investigation, and none of them promises to take a general measure. As for the recognition of the violation, in contrast to the friendly settlements struck out on the grounds of Article 39, we meet the recognition of the violation of the Convention by the Government only in isolated cases struck out under Article 37(1)(b), in some of them, the Government even avoided to say it clearly. Namely, instead of pointing to the violation of a specific Article of the Convention, it limited itself to acknowledging that there were failures and defects on the part of the Government.[288]

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[284] *"The Court takes note of the friendly settlement reached between the parties, and in particular of the Government's undertaking to secure the applicants' early release from prison. It is satisfied that the settlement is based on respect for human rights as defined in the Convention and its Protocols and finds no reasons to justify a continued examination of the application (Article 37(1) in fine of the Convention).* See: *Kobakhidze And Ninua v. Georgia* (striking out), no. 14929/09, 11 October 2011; *Tchanturia v. Georgia* (striking out), no.2225/08, 18 October 2011.

[285] Council of Europe Committee of Ministers, Resolution CM/ResDH (2012)29 on Execution of the decisions of the European Court of Human Rights 2 cases against Georgia, 8 March 2012. https://hudoc.echr.coe.int/eng?i=001-109771, Accessed: 30/04/2023.

[286] Ibid.

[287] Jomarjidze, *"Tsalmkhrivi deklaratsia da morigeba – davis mogvarebis martivi da epektiani gza?!"*

[288] *Kasradze v. Georgia* (striking out) [Committee], no.21300/09, 18 June 2013; *Badagadze v. Georgia* (striking out) [Committee], no.23846/08, 17 September 2013; *Siradze v. Georgia* (striking out) [Committee], no.56825/08, 12 November 2013.

It is significant that the list of struck-out cases under Article 37(1)(b) also includes 12 decisions, where the reason for striking out was the dispute settlement at the national level, without reaching a friendly settlement between the parties (see Annex I). As the analysis of these decisions demonstrates, the Court was persuaded that the Government had taken effective measures to resolve the dispute by receiving the information submitted by the parties describing the steps the Government took. However, the latter analysis also illustrates those cases where the applicant although claims the dispute was resolved at the national level, still, none of the parties submitted any proof for this.[289] In addition, although the struck out happened due to the settlement of the dispute at the national level, it was based not on Article 37 1(b), but on Article 37 1(a). The latter occurs when the Court concludes that "the plaintiff no longer intends to pursue their complaint."

Among this type of case (where the ground for striking out is the resolution of the dispute at the national level and Article 37(1)(a) is used as the legal basis), it is interesting to highlight one decision - *Khoperia v. Georgia* – which, on the one hand, is essential as it is one of the most recent decisions regarding the applications lodged on 2019. On the other hand, it is crucial considering its content, as like the case of *Ilashvili*, the dispute here also concerns improper treatment by the police. At the same time, this case was also publicized at the national level.

In the case of *Khoperia v. Georgia*, the applicant claimed that on February 16, 2017, he was abused by law enforcement officers at the police station.[290] As Khoperia's representatives stated, the applicant was subjected to torture, and the injuries on his body were confirmed by the medical examination conducted at the request of family.[291] Thus, Khoperia disputed the improper treatment (torture) by the police and the ineffective investigation of this fact in the European Court of Human Rights.[292] On May 20, 2019, the ECtHR started examining Khoperia's case and gave the parties a deadline until September 16, 2019, for a friendly settlement, but the parties could not achieve it.[293] On February 19, 2021, the applicant informed the Secretariat that he wanted to withdraw the complaint from the Court, as the case was resolved at the national level. Considering the abovementioned, the Court stopped the proceedings and struck the application out of its list of pending cases.[294]

As already mentioned, the settlement details were not disclosed in the decision. However, according to reports at the national level, the General Prosecutor's Office of Georgia filed charges against three police officers in the case of the torture of Khoperia on July 28, 2020. On July 29, the Tbilisi City Court sentenced all three of them to be taken into custody.[295] Information on how the further examination of this case end is not accessible to the public. Moreover, in the decision of the European Court (on

[289] *Javakhishvili v. Georgia* (striking out), no.42065/04, 2 October 2007; *Diasamidze v. Georgia* (striking out) [Committee], no.67857/11, 3 July 2018; *Khoperia v. Georgia* (striking out) [Committee], no.24736/19, 22 April 2021.
[290] "Saiam Irakli Khoperias sakmestan dakavshirebit preskonperentsia", Sakartvelos Akhalgazrda Iuristta Asotsiatsia, April 13, 2017. https://shorturl.at/xIN45, Accessed: 30/04/2023.
[291] Ibid.
[292] Saiam Irakli Khoperias tsamebis sakme adamianis uplebata evropul sasamartloshi gaasachivra", Sakartvelos Akhalgazrda Iuristta Asotsiatsia. April 25, 2019. https://shorturl.at/oAHL3, Accessed: 30/04/2023.
[293] "Saiam Irakli Khoperias tsamebis sakmeze evropul sasamartloshi tserilobiti argumentatsia tsaradgina", Sakartvelos Akhalgazrda Iuristta Asotsiatsia. March 11, 2020. https://shorturl.at/gETVW, Accessed: 30/04/2023.
[294] *Khoperia v. Georgia* (striking out) [Committee], no.24736/19, April 22, 2021.
[295] "Irakli Khoperias tsamebis sakmeze 3 politsiels brali tsaredgina", Sakartvelos Akhalgazrda Iuristta Asotsiatsia. July 30, 2020. https://shorturl.at/berE7, Accessed: 30/04/2023.

striking out of the complaint), there is no information indicating not only about the outcome of the case examination but even the about the initiation of this process. Thus, it is unknown: 1. Whether the Court was informed about initiating the case examination at the national level when deciding to strike out; 2. Was it informed about the outcome (if this process achieved any outcome), and 3. What was the basis for striking out. Specifically, according to the Convention, regardless of the applicant's desire and acceptance of striking the complaint out of the list, the Court acts so only if it is ensured that the respect for human rights test is satisfied, which is not reflected in the discussed decision.[296]

Along with the questions arising regarding the Court's decision on this case, it is also interesting to observe the position of the Georgian Government in the European Court and its actions. Analyzing the decisions on striking out, the Khoperia case differs not only from those cases where the violation by the Government took place before 2013 but also from the case that concerns the events developed after 2013 (*Ilashvili v. Georgia*).

In the case of Ilashvili, although the Government did not recognize the violation, it reached a friendly settlement with the applicant. In the case of Khoperia, a friendly settlement could not be reached (it is not known to the public which party was prevented from settling, as the settlement procedure is confidential). However, according to practice, when the Georgian Government is ready to admit a violation of the Convention and thereby close the case, it submits a unilateral declaration. As we can see, in this case, the Government made no such offer.

Moreover, according to practice,[297] in most of the cases when the applicant requests to close the complaint and cites the resolution of the dispute at the national level as the ground, the Government of Georgia provides the Court with detailed information about the steps taken by it to satisfy the applicant, which gets reflected in the corresponding decision.[298] The lack of information in the Court's decision on this particular case (*Khoperia v. Georgia*) makes it challenging to determine what steps the Government, the applicant, or the Court did take. However, at least one thing evident in this case is that it does not follow the practice developed regarding Georgia.

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[296] In the decision, it is emphasized that the Court does not see any special circumstances in respect of human rights that would require the continuation of the application examination.

[297] There are only a few exceptions to this practice. In the case *Diasamidze v. Georgia*, (striking out) [Committee], no.67857/11, July 3 2018, the applicant disputed the restoration of the ownership right to the land plot and informed the Court that they wanted to withdraw the case without providing explanations. The government did not comment on this fact, and the Court struck it out without asking for additional evidence. *Javakhishvili v. Georgia* is another exception. Georgia (striking out), no.42065/04, October 2 2007, where the applicant was a former parliamentarian and disputed that his pre-trial detention was unlawful. In this case, the Court drew attention to the fact that the applicant did not provide any additional details when applying for the withdrawal of the complaint and only stated that "the matter had been resolved". Despite this note, the Court did not consider it necessary to further investigate the circumstances, though, while deciding to strike out, the Court was aware that the applicant was released from arrest by the Tbilisi City Court. And lastly, the 2012 decision in the case of *Saria v. Georgia* (striking out) [Committee], no. 44984/07, September 11 2012, where although the applicant stated a specific reason for withdrawing a complaint, it was not directly related to the correction of his situation and the elimination of the alleged violation, but to the fact that the government released the applicant's mother ahead of time, who was also serving a prison sentence for a number of unidentified offences.

[298] E.g. in cases of: *Seidova v. Georgia* (striking out), no.16956/09, November 24 2009; *Elizbarashvili v. Georgia* (striking out), no.28263/07, November 9 2010; *Sanamasgvili v. Georgia* (striking out) [Committee], no.26173/10, December 14 2010; *Archaia v. Georgia* (striking out), no.6643/10, December 14 2010; *Gabedava v. Georgia* (striking out) [Committee], no.65063/09, January 28 2011; *Nizharadze v. Georgia* (striking out) [Committee], no.34361/10, March 8 2011; *Kurkhuli v. Georgia* (striking out) [Committee], no.65103/10, September 6 2011; *Karseladze v. Georgia* (striking out) [Committee], no.25391/08, January 10 2012; *Edigarashvili v. Georgia* (striking out) [Committee], no.22325/10, July 10 2012.

As the cases discussed above demonstrate, inconsistency characterizes both the Court and the Government (which is proven by several examples discussed above). It is difficult to determine precisely in which case a friendly settlement takes place, according to which principle the terms of the settlement are determined, and what is the principle that determines according to which Article should the case strike out happen; the latter is particularly crucial, as it impacts on the implementation of decisions at a later stage.

To learn more about the Government's approach, it is crucial to discuss unilateral declarations - this mechanism demonstrates better in what cases the Georgian government tries to avoid substantive consideration of the application and to end the dispute despite the applicant's will. Also, in the case of unilateral declarations, as its necessary condition is the recognition of the violation, it will be seen in which cases the government use this mechanism and how consistent it is in this regard. Finally, after analyzing unilateral declarations and the related practice, it will be possible to assess the opinions expressed by the respondents on these two mechanisms - consolidate, deny them, or outline the issues that need to be answered by further research.

3.2.6.2. Cases struck out under unilateral declarations.

The analysis[299] of the decisions taken[300] on striking the applications against Georgia out of the list of pending cases on the ground of unilateral declaration demonstrates that 43 such decisions were issued by the Court [301] (see Annex 1).

The dynamics of these decisions show that this kind of practice regarding Georgia began in 2012 and is characterized by an increasing trend until 2015 (peak - in 2015 - 15 decisions). Then, in the following years, it decreases; in 2019-2022, it is not declared at all. This image shows that like friendly settlements, the increase in the application of unilateral declarations by the Georgian Government and the termination of disputes based on them by the Court coincides with the instigation of this practice by the ECtHR (see Graph 6). Moreover, it demonstrates that the ECtHR's general tendency is widely shared by Georgia (which, in turn, also implies an increasing trend until 2015 (a drop in 2013), and a peak in 2015, followed by another wave of decrease (a drop in 2017) and even zeroed in 2019-2022).

In addition, as in the case of friendly settlements, many unilateral declarations (19 out of 43) are reached on disputes concerning the conditions in penitentiary institutions. Moreover, if we look at the dynamics of this kind of decision (decisions on striking out under unilateral declarations regarding the

[299] It is noteworthy that the data available in the HUDOC database regarding the number of Court decisions on striking the applications out of its list of cases following unilateral declaration issued in 2012-2022 slightly (by 2 decisions) differs from the corresponding figures illustrated in the documents published by the European Court of Human Rights (specific reasons could not be determined). Based on the latter, a total of 45 cases ended with a unilateral declaration. Including: 2012 - 1; 2013 - 3; 2014 - 14; 2015 - 14; 2016 - 1; 2017 - 7; 2018 - 5; 2019 - 0; 2020 - 0; 2021 – 0; 2022 - 0. See: European Court of Human Rights, "Analysis of statistics" (2012-2022.)

[300] Notably, the number of decisions may not match the number of applications, as each decision may include several, in some cases even thousands of applications.

[301] Decisions on striking the applications out of pending cases following a unilateral declaration: in 2012 - 1; 2013 - 2; 2014 - 14; 2015 -15; 2016 - 1; 2017 - 7; 2018 - 3; 2019 - 0; 2020 – 0, 2021 – 0; 2022 -0.

conditions in penitentiary institutions), it was most common in 2014-2015; there is only one decision in 2016-2017, and none of the decisions is reported under this indicator in the following years.

In 29 out of 43 cases, the government's request for a strikeout under a unilateral declaration was preceded by an unsuccessful attempt to reach a friendly settlement. And in 14 cases, the government directly addressed the Court with a request to secure a unilateral declaration. Because submitting a unilateral declaration without having tried to reach a friendly settlement first occurs only in exceptional cases,[302] it is crucial to draw special attention to it. However, from the specifics of the cases and the Court's reasoning, it is difficult to see any criteria and determine the logic behind the decision by analyzing the decisions issued regarding Georgia.

Moreover, if we analyze specifically the cases that ended with friendly settlements, we will see that in many of them, the government directly expressed its desire to end the dispute with a unilateral declaration and applied to the Court with a corresponding statement. However, since the applicant had agreed to the terms of the unilateral declaration, the Court decided to consider these cases and treat them as friendly settlements. Therefore, such cases were struck out under Article 39 of the Convention.[303]

These figures highlight the government's desire to settle as many disputes as possible using the alternative mechanism - unilateral declaration. However, it is unknown what was the motif of the government's desire. Namely, it is unknown whether this is dictated by the timely and easy settlement of the dispute or by the desire to declare a violation of the Convention without taking additional obligations and avoiding the Committee of Ministers' supervision. The latter, in turn, may be derived from the interests of the applicants or, if we consider one of the respondents' opinions, may be dictated by the policy of the “new Government” after the change of power in 2012, which aimed to paint as grim picture as possible on their predecessors' actions.

Although the government's desire to end the case with a unilateral declaration might be well-intentioned and serves the applicant's interests, the fact that it directly applies to the Court to strike the case out without even giving a try to a friendly settlement is, to some extent, a disregard for the applicant's interest. This is because the government does not communicate with the applicant but directly to the Court and makes the applicant face the fact. Moreover, ending the dispute with a unilateral declaration in 43 cases implies that the applicant did not agree to end the dispute with the conditional offer made by the government. Applicants’ position, in some cases, is construed by an inappropriate amount of compensation, the absence of explicit acknowledgement of the fact of violation from the government and/or the absence of a response to all disputable issues.

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[302] European Court of Human Rights, "*Rules of Court,*" Article 62A (2).

[303] E.g. *Bakradze v. Georgia* (friendly settlement) [Committee], no. 3658/10, 20 May 2014; *Tibilashvili v. Georgia* (friendly settlement) [Committee], no. 16516/10, 27 May 2014; *Abzianidze v. Georgia* (friendly settlement) [Committee], no. 23715/09, 27 May 2014; *Lanchava v. Georgia* (friendly settlement) [Committee], no. 28103/11, 23 Junee 2015); *Batilashvilebi v. Georgia* (friendly settlement) [Committee], no. 75737/11; 30 June 2015; *Bekauri And Others v. Georgia* (friendly settlement) [Committee], no. 312/10, 15 September 2015; *Chantladze v. Georgia* (friendly settlement) [Committee], no. 60864/10, 30 June 2015.

Procedurally, in case of a unilateral declaration, the applicant can express their opinion regarding the terms of the declaration and refuse to sign it. However, as the practice demonstrates, the applicant's wish to continue the substantive discussion is not decisive. In this case, the decision is made by the Court, which verifies: 1. the existence of precedent law of the Court on the disputed issue raised in the complaint; 2. recognition of the fact of violation of the Convention by the government; 3. the compensation of the damage caused to the applicant and the adequacy of the compensation; 4. that respect for human rights does not require the continuation of the examination of the application. Existing practice regarding Georgia shows that the Court refused to satisfy a unilateral declaration in only one case, but it did not explain the reason for the refusal.[304]

In addition, while discussing the issue of striking out complaints under unilateral declaration, it should be considered that the execution of this type of decision is not subject to the supervision of the Committee of Ministers or the Court[305] and only the applicant remains to be a monitor of the implementation. However, even in this case, the applicant is limited to restoring the complaint by the will of the Court. Considering the existing practice regarding Georgia, the Court has not demonstrated such will yet.

The specifics of unilateral declarations as a mechanism are also noteworthy while analyzing relevant statistical data. Namely, it does not provide for the government's commitment to take a general measure, but it does not exclude such measures either. According to the analysis of the unilateral declarations-related data, the Government of Georgia has never undertaken this kind of commitment. Moreover, even regarding a specific applicant, the government limited itself to offering compensation and not any other individual measures introduced in most cases. Besides, in only 7 out of 43 cases, we find the commitment to conduct the investigation, which, as already mentioned, is subject to the applicant's further supervision and not the Committee of Ministers. Although the Court considers that there must be relevant Court practice on the issue raised in the complaint while discussing if the respect for human rights test is satisfied. Still considering the implementation-related issues of the European Court's judgements, referring to some years ago established practice may not be sufficient. Therefore, it might be crucial for the Court to discuss the raised issue again and look at it from a new perspective.

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The analysis of the decisions on striking out complaints under friendly settlements and unilateral declarations proves that the use of these mechanisms since 2013 has been a widespread practice regarding Georgia and shared the general trends of the European Court. However, the analysis also demonstrates that these mechanisms are hardly used in recent years.

Indeed, the figures related to Georgia are correlated with the Court's general data on the use of these mechanisms. In written or verbal communication, it has been repeatedly stated that the European Court of Human Rights applies alternative dispute resolution mechanisms primarily to relieve the Court, which echoes the respondents' opinion that active use of these mechanisms was in the

[304] *Goguadze v. Georgia* [Committee], no. 40009/12, § 5, 27 June 2019.
[305] A complaint struck out under a unilateral declaration is subject to the supervision of the Committee of Ministers only if the strikeout happened by a Court judgment and not by a decision.

Court's interest. However, discussing the respondents' view that the large number of friendly settlements and declarations regarding Georgia was due to the government's interest in recognizing facts of violations that took place during the previous government in as many cases as possible is impossible only based on statistical data.

In this regard, despite the few possible clues in the content analysis of the decisions that support this opinion, we are still limited in making conclusions. This is because the decision content only includes "template texts" regarding the willingness of the government to sign a friendly settlement or a unilateral declaration and their conditions, and not the justification of what led to this decision on their part and whether the government could end the dispute in favour of the country in case of appropriate positioning.

In this regard, the reference of another respondent is also essential. The latter does not see an issue in a large number of friendly settlements and unilateral declarations but considers it important to observe to what extent the government maintains this trend. Considering the available data, the government has currently given up on this kind of practice. Until now, only one friendly settlement has been recorded for the complaints submitted regarding the facts that occurred after the change of government. However, if we consider the specifics of the ECtHR proceedings, it may not be appropriate to make such a conclusion based on the study period. On the other hand, a radical decrease may not necessarily mean that the Georgian government gave up on this mechanism, as the high number recorded in previous years was primarily a response to the accumulated cases against Georgia that have not been examined for years. Nevertheless, such a low number is noteworthy in the context of the changes in the Court's policy, which from 2019 sets a 12-week period for the parties to discuss the possibility of a friendly settlement in the test mode, and only after the expiration of this date will it move to the stage of exchanging written arguments.

The content analysis of the decision regarding the use of this mechanism illustrates many ambiguities and inconsistencies both from the government's and the Court's side. The latter is particularly striking. Namely, it is unclear when and on what basis the Court will strike out complaints in the case of agreement between the parties. As one of our respondents also pointed out, while it is not an attractive solution for plaintiffs to end a dispute with friendly settlements or unilateral declarations, these ambiguities and inconsistent approaches further hinders applicants from referring to the Court. Therefore, this practice has a deterrent effect on potential applicants. The latter assumption is also confirmed by the respondent's statement, which, to its end, comes from their practical experience. This effect is especially noteworthy, considering the Court's changed policy that prioritizes dispute resolution in alternative ways.

In a dispute before the European Court of Human Rights, the prospect of receiving financial compensation may not be attractive to a potential applicant, as a monetary equivalent for the damages suffered by people whose rights were violated frequently does not exist. Moreover, due to the impossibility of finding justice at the national level, the opportunity for their voices and truth to be heard is often decisive for the victims addressing the European Court. However, this may be less achievable through a unilateral or confidential settlement process.

Ending a dispute with only an offer of compensation and a vague acknowledgement of a violation is an easy and convenient way for the government to turn a blind eye to systemic problems. To put it bluntly, given the increasing frequency of this practice, this makes the European Court not the main guarantor of the protection of human rights but a "compensation withdrawer" instrument from a national government.

Considering all those mentioned above, it is not groundless to assume that the activation of these mechanisms played a negative role on the persons who intended to continue the dispute and find justice in the European Court.

3.2.7. Accessibility and the factor of non-governmental organizations

Access to the Court is one of the main challenges, given the reforms implemented by the institution, a large number of introduced barriers and generally complicated proceedings. The respondents focused on this problem regarding Georgia as well. However, it is significant that this problem was relevant even when the Court was relatively loyal and set fewer barriers for individuals to apply. And this, as we have already mentioned, was caused by the general lack of knowledge about the new institution and, as the respondents also state, the lack of professionals with relevant qualifications. If we look at the decisions on the inadmissibility of appeals, we will see that the same representatives appear in dozens of cases, some of whom, unfortunately, were severely reprimanded by the Court for their irresponsible behaviors, thereby firstly harming their own clients, and then - the Court.

Although, over time, lawyers have been retrained and deepened their qualifications, as one of our respondents pointed out, the service in this direction is still not developed, and there is a lack of professionals. The lack of qualified personnel and the lack of development of the relevant service directly affects the accessibility of citizens. Besides, as presented in the second chapter, the procedural changes introduced by the Court create such significant barriers for individual applicants that it is necessary to involve a professional in this process.

As a fact of the matter, in case of Georgia, non-govermental organizations are core players in the litigation before the European Court and the relevant knowledge is mostly accumulated in this sector. Furthermore, their activities are not limited to the preparation of a complaint but also to the presentation of relevant arguments at the communication stage (increased communication on the part of the Court coincides with the period of reduction in the number of complaints), as well as the monitoring of each decision or judgment's implementation (which remains a serious problem) and preparing relevant reports, which requires additional time and human resources. As our respondent points out, the latter effort (ensuring the implementation) is no less critical, as, on the one hand, it can benefit not only one specific applicant whose case was decided but also many other people who are in a similar situation, and on the other hand, the role of prevention can be fulfilled. Ensuring that others do not fall into the same situation reduces the number of similar complaints in the future.

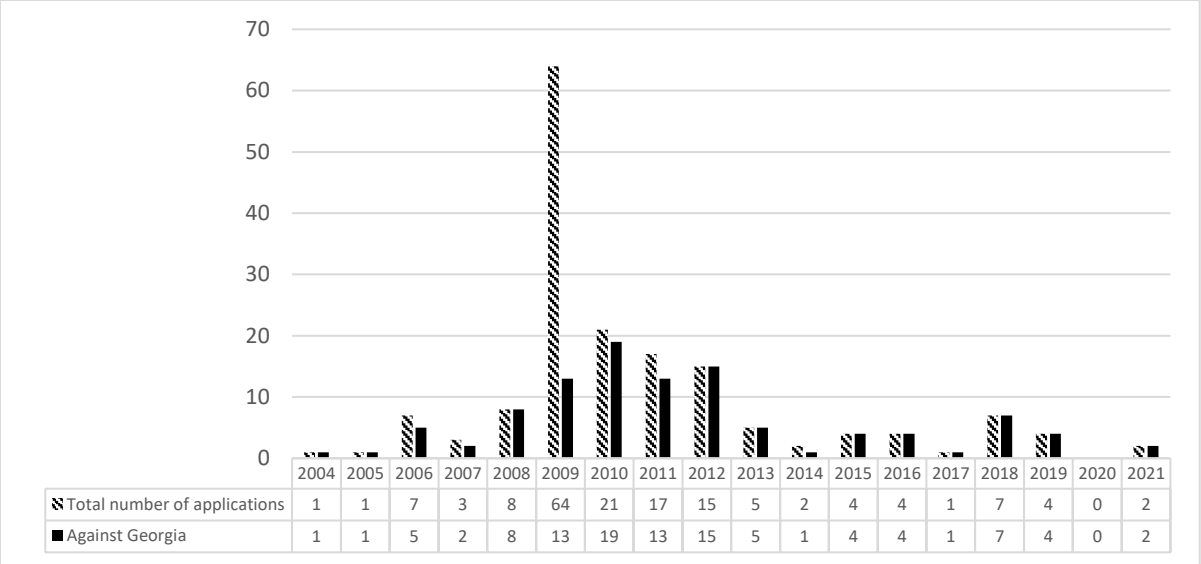
Therefore, access to the Court is not only a matter of formally filling in a complaint and sending it to the Court, which also requires considering many details. It is only the beginning of this process, which

requires meticulously following the relevant phases established by the Court. In addition, it is not limited to ending the dispute in favour of the applicant since the Court judgement's implementation is necessary for the whole effort to maintain meaning. The latter also represents another significant challenge.

The complexity, difficulty, and lack of appropriate service of the litigation process, in turn, can affect the number and prospects of cases sent to the Court. As we mentioned earlier, this kind of knowledge is primarily accumulated in the non-governmental sector, associated with many successfully completed cases and hundreds of filed complaints (the number of which has decreased in recent years). Therefore, according to one of our respondents, the non-governmental sector can explain the reason behind the reduced number of appeals in the best way.

For the purposes of this research, the non-governmental organization "Georgia's Young Lawyers Association" helped us clarify this issue in the format of an in-depth interview. The latter has been actively involved in the European Court of Human Rights proceedings since 2004. Namely, from 2004-2021, 166 applications were sent to the European Court with their participation (see Graph 12).

Chart 12: Number of complaints filed in the European Court of Human Rights with the involvement of the non-governmental organization, Georgia's Young Lawyers Association (GYLA) (2004-2021)



	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
Total number of applications	1	1	7	3	8	64	21	17	15	5	2	4	4	1	7	4	0	2
Against Georgia	1	1	5	2	8	13	19	13	15	5	1	4	4	1	7	4	0	2

Source: The Graph was created by the author based the data provided by GYLA

Graph 12 illustrates that 105 of the applications filed by GYLA during this period were directed against Georgia, and the remaining 61 were filed against Russia. The latter number is crucial as it gives a good representation of the organization's workload over the years.[306] Moreover, it should be noted that the number of applications is not equivalent to the number of applicants. The latter may even significantly exceed the number of applications (each application may be in the name of group of applicants). This is significant because investigating circumstances in each applicant's case individually requires additional time and resources. Therefore, referring only to the number of applications may not accurately illustrate the organization's workload.

[306] Additionally, + 2 applications were sent to the UN Human Rights Committee in 2017 and 2020.

If we look only at the number of applications filed against Georgia since 2004 (the organization has been working on representation in the European Court since 2004), no trend can be observed until 2008, as a steadily small number of complaints were submitted annually. However, there was a significant increase from 2008 to 2012. Since 2013, the decrease can be observed compared to previous years, and from 2013 to 2021, a total number of applications filed in the Court (28 applications) is smaller than, for example, the total number of complaints sent in 2009 and 2010 (32 applications).

Before discussing the reasons for the decline in the number of complaints filed since 2013, it is interesting to see the subsequent development of events regarding the complaints submitted by the GYLA. According to the information provided by the organization, a judgement was made on 16 complaints sent from 2004 to 2021,[307] and 37 complaints were declared inadmissible.[308] We were also interested in which year complaints were mostly declared inadmissible and for what kind of cases. The organization analyzed this information and shared it with us. As the data demonstrates, the most significant number of cases were declared inadmissible in 2009-2012 (6 cases in 2009, 7 cases in 2010, 7 cases in 2011 and 8 cases in 2012).[309] As Graph 12 illustrates, it was in these years when the organization filed the biggest number of complaints.

As the highest number of complaints were filed from 2009 to 2012, we were interested to learn what kind of disputes the submitted complaints were about. We also wondered whether they were mostly related to disputes regarding human rights violations in penitentiary institutions. According to the content analysis of the cases the organization's representative conducted, the response to this question is negative. *"In response to your first question,[310] the analysis of these cases demonstrates that most of them were not related to prisoners' rights in the named years,"* the respondent explained. Besides, when asked about what types of complaints were mainly declared inadmissible, she clarified that *"it concerns those rights that are less promising in the European Court (eg: property rights disputes, labor disputes, disputes regarding Article 6 of the Convention, mainly about the issues on the justification of the courts' decisions, etc.)"* - said Tamar Oniani.

Indeed, when asked what could be the reason for the decrease in the number of complaints filed by them to the European Court, GYLA's representative responded during the interview that according to her observation, one of the main reasons is the practice development and gained experience.

> "When I analyzed the reason for submitting so many complaints, I saw a frequent dispute over such rights that we no longer file a complaint on them. This is because the practice has already been established, and it is well known that the Court gives a lower priority to such cases and does not find a violation. This is

[307] Among them, 2010 - 1 judgement. (on the application lodged in 2006); 2011 - 1 (on the case of 2006); 2012 - 1 (on the case of 2007); 2015 - 1 (on the case of 2012); 2016 - 3(1 against Georgia on the case of 2012; 2 against Russia on the case of 2007); 2017 - 1 (on the case of 2005); 2018 - 2 (on the cases of 2008 and 2009); 2019 - 2 (on the cases of 2007 and 2012); 2020 - 1 (on the case of 2009); 2021 - 3 (2 cases of 2010 and 1 case of 2012).

[308] As the respondent explained, additionally 8 complaints were found inadmissible, but clarifying the data during the interview was impossible.

[309] Including: 2010 - 1 (on the case of 2006); 2012 6 (on the case of 2-2009; 2-2010; 2-2010); 2013 - 5 (1- on the case of 2008; 1-2010; 3-2011); 2014 – 3 (1-2008; 1-2011; 1-2012); 2015 - 2 (1-2008; 2-2010); 2017 – 5 (1-2009; 3 – 2012; 1 – 2017); 2018 - 7 (1 - 2008; 1 - 2009; 2 - 2010; 3 - 2018); 2019 – 1 (on the case of 2009); 2021 – 6 (1-2009; 3 – 2011; 2 – 2012).

[310] After the interview, an additional follow-up question was asked via e-mail to the respondent: "What caused the high number of complaints from 2009 to 2012? Were these complaints mainly about prisoners' rights?"

because of the fact that ECtHR's task is not to act as a Court of Fourth Instance, also based on the principle of subsidiarity and on the content of rights…

Therefore, based on our cases found inadmissible, we started identifying from which perspective we should file the complaint and start the dispute… When our institutional memory dictates that this complaint will be found inadmissible, we do not file it to avoid the same result and not to create false expectations for our beneficiaries. We emphasize this during the consultations as well, when they tell us that they want to dispute regarding the labor rights, for example."

In addition, according to GYLA's representative, although the organization's unchanging priority is the cases of improper treatment, considering the experience and complicated proceedings, those types of cases that they did not administer at the national level may turn out to be unpromising, as such cases may face problems at the stage of admissibility.

"A case that comes to us and was not disputed by us at a national level may have the problem of exhaustion of domestic legal remedies. Firstly, we administer cases at the national level, but in other cases, when a beneficiary comes to us and tells us that s/he has been mistreated and nothing has been done so far, we may realize that this case is not promising because s/he has not taken the steps that should have been taken. We do not file such cases to Strasbourg, obviously, to consider our resources and not disappoint the beneficiaries and their expectations."

Regarding the question of how much the number of complaints depends on the donor's priorities, in particular, how much do the donor's interests and funding determine the filing of a complaint in the European Court, GYLA's representative explained to us that the proceedings in the European Court of Human Rights are not explicitly tied to any donor, as different projects always provided for it.[311] In response to this question, GYLA's representative once again clarified and explained that in their case, the reason for the reduction of complaints is not the factor of donor's priorities but the institutional experience.

3.3. Summary

Ratification of the European Convention on Human Rights by Georgia, in the context of the ongoing situation in the country at the time of its accession, in case of the existing political will, could provide the best opportunity for the country to take appropriate steps and develop the European standards for the protection of human rights if not in the short term, in the long term at least. And on the other hand, it allowed each individual to fight for their rights since it was almost impossible at the national level then.

It is not surprising that soon after the accession, the words "I will go to Strasbourg" a warning message to the branches of the Georgian government - became popular. Perhaps the growth of trust in the European Court and the hope that "Strasbourg" would give a proper answer to the government

[311] The litigation conducted by GYLA under the framework of cooperation with its strategic partner, the European Human Rights Advocacy Center (EHRAC), within which GYLA and (EHRAC) jointly file a complaint on a case related explicitly to actions committed by a law enforcement body, is an exception.

was also reinforced by the first judgment delivered by the Court against Georgia in 2004, where the latter directly indicated the steps that had to be taken immediately by the country's government (this approach is not typical for Court judgements in general). It is from this period that the increase in appeals against Georgia can be noticed.

Despite the Court's loyal policy regarding the reception of individual applications at the first stage, "going to Strasbourg", as mentioned above, was not as easy as it might seem at first glance. As the research demonstrated, despite the increased awareness of the Court itself, knowledge regarding the proceedings was scarce at the national level. This was caused, on the one hand, by the lack of professionals with relevant competence in the country and, on the other hand, by the lengthy proceedings and frequent vague answers from the Court. Moreover, the lack of knowledge caused overburdening an already overloaded Court as there were frequent cases of unpromising, clearly groundless appeals and abuse of the right to appeal by the applicants. The latter was often manifested in failure to provide important information to the Court, which caused the closure of the complaint examination.

Getting practical experience and "learning from mistakes" turned out quite difficult due to the Court's late responses and the lack of opportunities to keep up with a large number of reforms and complicated procedures implemented in the Court. Moreover, due to the Court’s failure to respond promptly, many unpromising complaints accumulated on the one hand and left the cases arising critical issues regarding human rights neglected on the other. Regarding Georgia, the number of lodged applications reached the highest level in the reporting period of 2008. This was due to Russia's "response" to the application submitted by the Georgian government against the latter in relation to the war in 2008. Under Russia’s campaign, around 3 300 individual but identical applications were lodged against Georgia in total. Russia's strategy implied, on the one hand, an attempt to paint the worst possible image of Georgia and, on the other hand, to overload the Court as much as possible. The latter would lead to the destruction of the possibility of a timely response from the already overburdened Court. Even though half of these applications were struck out of the list of pending cases in 2010, this strategy left a significant mark on the processes developed in the Court in regard with Georgia. Mainly, it defined the environment that affected the course of the case hearing for the next 11 years. Moreover, it caused "pollution" of the statistical data in regard with Georgia.

Due to their nature, we should not consider the 3 300 applications lodged by the coordination of Russia while discussing the number of applications filed against Georgia. Yet, the increased number of applications is still noticeable from 2008 to 2012, even in the case of excluding the aforementioned 3 300 applications from the analysis. However, a downward trend is evident from 2013. The Court being a new institution, was accompanied by the government's "zero tolerance" policy, which, along with a number of human rights concerns, led to prison overcrowding and further exacerbated the harsh conditions in the penitentiary institutions. As a result, due to the conditions in the penitentiary institutions, dozens (if not hundreds) of complaints were submitted to the European Court. This, in turn, was facilitated by the practice established by the European Court regarding Georgia. According to this practice, at the stage of admissibility, in case of meeting all other criteria, the applications regarding the conditions in the penitentiary institutions had to meet only minimal prerequisites for the domestic

legal remedies to be deemed exhausted. By 2010, as a result of radical changes in the criminal justice policy by Georgia's executive and legislative authorities, the Court considered that an effective domestic remedy at the national level was established and gave up its practice. Therefore, a significant barrier was set for the persons in the penitentiary system as an obligation to exhaust the domestic legal remedy before applying to the European Court with a complaint regarding the existing conditions. This change in practice had a corresponding effect on the dynamics of similar complaints in the following years. However, decreasing these types of complaints was also influenced by several reforms carried out in penitentiary institutions and improved conditions - especially the unprecedented amnesty implemented by the new ruling power after the elections in 2012, which halved the number of prisoners (see Graph 10).

With the change of the government through the elections, in the first stage, expectations arose in the society about the possibility of improving the human rights-related situation and solving "problems" within the country. The new government made these relevant promises very frequently itself. Significantly, the period of change of government and expectations within the country coincides with the time when the "after the Interlaken period" entered the active phase at the Court, followed by the successive changes in the European Court, the main goal of which was to rapidly unload the Court, and resulted in some procedural barriers in terms of procedural access of individuals.

As the research demonstrated, the relative unloading of the Court (regarding Georgia, as well as generally) is related to the categorization of cases, the introduction of the new priority policy and the reformation of the Court, especially the creation of a single-judge formation and granting it the authority to examine clearly inadmissible applications. The latter, in turn, from 2010 to 2016, filtered a large number of complaints providing the applicants with vague arguments. Although ambiguity does not necessarily mean that these decisions were wrongly made, they raise doubts about their fairness. Moreover, the absence of clear criteria does not ensure protection from similar complaints from the Court in the future, and/or, most importantly, it may cause individuals to deter from applying to the Court. Although no statistical data would allow us to analyze the extent of the impact on potential applicants aiming to lodge an application against Georgia, the respondents interviewed within the framework of this study drew attention to this type of resistance based on their practical experience.

Some procedural changes are also crucial in terms of the deterrence effect, including the introduction of a complicated form for submitting a complaint and the difficulties associated with its thorough filling, tightening the admissibility criteria, a stricter policy of compliance with the deadline for submitting a complaint, and a shortened deadline itself. The prioritization of the alternative dispute resolution mechanisms from the Court should also be mentioned here. The latter implies encouraging friendly settlements or unilateral declarations as much as possible. Even though these mechanisms are not problematic, the ambiguity and inconsistency of the existing practice regarding them are questionable, which was also emphasized in corresponding decisions on the applications submitted against Georgia. Along with the possible deterrence effect on the potential applicant, in the context of the existing question marks with these mechanisms, their frequent use may also put the question of these tools' compliance with the spirit of the Convention on the agenda.

Considering all of these changes and barriers imposed, the main challenge is the issue of procedural accessibility, which can be especially problematic in the context of Georgia, as this kind of service has not been appropriately developed even throughout the two decades. Namely, interest in this field, motivation, and/or competence is rarely observed in the private sector, and defining the determining factors of the policy of the non-governmental sector in this direction requires a separate study. However, as the research demonstrates, in the case of one of the most significant contributors, the Young Lawyers' Association, the decrease in complaints is caused not so much by the changes in donor's policy but by their experience accumulated over the years and by the efforts to exhaust internal legal remedies as much as possible, at the same time.

4.Concluding discussion

Over the past two decades, the European Court of Human Rights has been particularly sensitive to the "numbers", as the main problem was the uncontrolled increase in applications. Therefore, the main task was to solve the Court caseload problem by preserving a right to individual petition. Thus, in the Court's annual reports, the most significant attention was paid to the statistical figures, which, first of all, represented a measurement of the effectiveness of the Court's work and was analyzed in a way that would make it possible to directly obtain information on the Court's caseload or its unload, for planning the subsequent reforms to ensure effectiveness and evaluate the already implemented ones.

Dependence on statistical data and emphasis on them is not unfamiliar to the Georgian context either. Namely, especially since 2015, the representatives of both the executive and legislative, as well as the judicial authorities, periodically make statements regarding the changes in the statistical figures related to Georgia in the European Court (mainly about the reduction of the number of applications lodged to the Court, allocated to a judicial formation for examination and pending ones). According to their interpretation, the above figures reflect the situation regarding human rights protection in the country, including the judiciary's work and the level of trust towards it. Specifically, as mentioned in some statements, compared to the period before 2013, from 2013, the number of applications lodged against Georgia to the European Court has decreased by 11 times. These reports also underline that this tendency, on the one hand, is due to the sharp improvement of the state of human rights protection in the country and the increase of public trust in national courts, on the other (therefore, it implies that in case of violation of rights, citizens appeal to national courts and are satisfied with the resolution of the dispute).

Therefore, the main goal of the present research was to study the exogenous and endogenous factors influencing the dynamics of cases litigated against Georgia in the European Court. Also to determine to what extent the change in the number of complaints filed against Georgia in the European Court, cases allocated to the Court's judicial formations and pending cases, are accurate indicators to measure the state of human rights and the degree of the trust in the judiciary, at the national level.

Both regarding the Court in general and Georgia in particular, the research identified those circumstances that demonstrate the impossibility of making such conclusions only by comparing the available data according to the reporting periods.

One of such obvious conditions is the thousands of complaints filed against Georgia following the 2008 war, which demonstrated how a campaign orchestrated by another country could radically change the statistical picture of another state. Only in the context of the war, more than 3,300 identical individual complaints were registered against Georgia, which affected not only the statistical data of 2008 but also the course of consideration of cases in the following years. Certainly, bearing in mind these complaints, assessing the situation regarding human rights protection in the country is not allowed due to their nature and obvious groundlessness. We often discover such mistakes or attempt to deliberately manipulate with the figures in the statements made by government representatives. Stressing the 11-fold reduction of complaints against Georgia from their side makes it clear that they do not exclude the abovementioned 3,300 complaints from the analysis and use them to assess the human rights-related situation in the country.

Moreover, in addition to this obvious circumstance, the study revealed the influence of the processes taking place in the European Court (which are referred to as exogenous factors within the scope of the research), both before the Court as a whole and specifically on the dynamics of the cases against Georgia. Namely, the result of a number of reforms, be it judicial formations, change of priority policy, the introduction of barriers in terms of procedural access, popularization of alternative dispute resolution mechanisms, enhanced supervision over the implementation of judgements, and a variety of mechanisms adopted to fight inadmissible or repetitive complaints, is evident and well portrayed in terms of fighting the Court caseload. The knowledge and experience accumulated regarding the proceedings in the European Court, which gives the opportunity to primarily determine the perspective of a specific complaint in the Court, as well as some barriers created from a procedural point of view, significantly filtered the Court from hopeless and inadmissible appeals against Georgia, which were especially characteristic of the first years of membership.

Along with the listed exogenous factors, the changes in the dynamics of cases submitted against Georgia were also influenced by the processes taking place at the national level (which are referred to as endogenous factors within the scope of the study). In this direction, particularly striking are the results of policies aimed at improving conditions in penitentiary institutions to reduce the number of repetitive complaints and an unprecedented amnesty that instantly halved the number of prisoners. Regarding domestic legal remedies for human rights protection, at least *de jure* improvements created an additional barrier to appeal to the European Court. The decrease in the number of applications against Georgia in the European Court is particularly noticeable from 2013 after the change in the government and related public expectations. However, we should not forget that this period coincides with the post-Interlaken period and the numerous barriers imposed by the Court on the individual applicants, which, in general, significantly reduced the number of lodged applications before the Court.

Therefore, although we cannot exclude the argument of improving the situation in terms of human rights protection at the national level while talking about the causes of the decreased number of complaints, it is not accurate to claim that this statistical change was driven exclusively by this factor. Moreover, the influence of many exogenous factors is noticeable in this regard. Besides, based solely on statistical data, it is hard to establish a causal relationship between the decreased number of complaints and the level of trust in national courts.

Suppose we only observe the Court's absolute indicators and, for example, make assumptions by the number of applications allocated to a judicial formation by year. In that case, we will see that similar to Georgia, even Russia (which is not a contracting party to the Convention anymore and to mention among other things it has proven its lack of desire to protect human rights, with a decision on the non-implementation of the Court's judgement) is characterized by an increasing trend in the first years of membership, reaching its peak in 2010, followed by a sharp decline for several years from 2014.

Discussing the state of human rights requires an individual approach. Therefore, for decision-makers, the most important is considering the cases at the individual level, rather than the aggregated dynamics of complaints against the country. Thus, regarding human rights, the qualitative perspective of complaints is more important than the quantitative one. Moreover, a complaint filed against a country, notwithstanding its impact on statistical data, is essential for individuals in realizing their right to petition, as well as the country itself. Thus, instead of seeing each complaint as a "spoiler" of statistical data, perceiving it as a tool would have been the right policy for the country. The appropriate response to it and, most importantly, implementation of the decision made by the Court itself will be reflected in the decreased number of complaints in the following period, as it excludes the influx of other complaints on a similar and already resolved issue.

The former president of the European Court also emphasized the need for substantive analysis instead of "playing with numbers". Thus, from now on, the method of measuring the Court's success according to the total number of cases examined in a given period was rejected. Instead, a new indicator was defined, which evaluates how the Court examines the most crucial cases, considering the policy priority.

Instead of being satisfied with statistical data, more in-depth and substantive analysis is critical regarding Georgia. The latter is cruicial because Georgia is among the exceptional countries found responsible for violating Article 18 of the Convention by the Court. Additionally, it is significant that the Georgian government informed the Court about using the right of derogation as early as March 23, 2020. But, unlike other countries, the latter lasted for almost two years for Georgia, and it was only December 31, 2022, when it was officially withdrawn.[312] It is noteworthy because, even if this circumstance does not become an obstacle in the way of protecting the right of an individual, this statement is important to determine how crucial it is for the country to protect human rights even in the most critical situation.

[312] Notification – jj9436C Tr./005-302 – December 31, 2022 – Withdrawal of a Derogation related to the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No.5). See. https://rm.coe.int/notification-jj9436c-tr-005-302-georgia-withdrawal-of-a-derogation-rel/1680a9991b, Accessed: 30/04/2023.

Annex 1: Decisions on striking the applications out of the list of pending cases issued by the ECtHR's judicial formations, in accordance with Articles 37 and 39 of the Convention, on complaints against Georgia (as of 31.12.2022)

	Case	Case Number	Date	Friendly Settlement		37 1 (c)		37 1 (a)	37 1(b)
				39	37 1 (b)	Unillateral declaration	For any other reason established by the Court, it is no longer justified to continue the examination of the application	The applicant does not intend to pursue his application	The matter has been resolved
				(48 +8)	(14)	(43)	(7)	(94)	(32)
1	Khutsurauli v. Georgia	7268/05	12.04.07				✓		
2	Laziashvili v. Georgia	23155/05	27.06.07				✓		
3	Javakhishvili v. Georgia	42065/04	02.10.07					✓	
4	Pularia v. Georgia	25079/05	12.02.08				✓		
5	Mikeladze and others v. Georgia	21121/03	24.06.08					✓	
6	Chakvetadze v. Georgia	269/07	21.10.08	✓?	✓?				
7	Khmiadashvili v. Georgia	26920/07	27.01.09	✓?	✓?				
8	Induashvili v. Georgia	16299/07	12.05.09					✓	✓
9	Komarov v. Georgia	18619/06	07.07.09					✓	
10	Avetisyan v. Georgia	19358/09	17.11.09	✓?	✓?				
11	Berishvili v. Georgia	14127/05	24.11.09					✓	
12	Seidova v. Georgia	16956/09	24.11.09					✓	
13	Khubulava and others v. Georgia	32553/04	24.11.09					✓	
14	Abayeva and others v. Georgia (regarding tha War of 2008)	52196/08; 52200/08 49671/08; 46657/08; 53894/08	23.03.10					✓	
15	Elizbarashvili v. Georgia	28263/07	09.11.10					✓	
16	Todua v. Georgia	6024/10	09.11.10					✓	
17	Samiev v. Georgia	9934/10	16.11.10						✓
18	Sanamashvili v. Georgia	26173/10	14.12.10					✓	
19	Khetagurova and Others v. Georgia (1549 applicantions regarding the War of 2008)	43253/08	14.12.10					✓	
20	Archaia v. Georgia	6643/10	14.12.10					✓	
21	Gabedava v. Georgia	65063/09	28.01.11					✓	
22	Nizharadze v. Georgia	34361/10	08.03.11					✓	
23	Kakabadze v. Georgia	7791/08	08.03.11					✓	
24	Kurkhuli v. Georgia	65103/10	06.09.11					✓	
25	Poklonov v. Georgia	63856/10	06.09.11						✓
26	Gamrekelashvili v. Georgia	6439/10	06.09.11					✓	
27	Chkhikvishvili v. Georgia	47551/09	11.10.11					✓	✓
28	Kobakhidze and Ninua v. Georgia	14929/09	11.10.11	✓?	✓?				

29	Tsetskhladze v. Georgia	50613/06	18.10.11					✓	✓
30	Tchanturia v. Georgia	2225/08	18.10.11	✓?	✓?				
31	Parastayev v. Russia and Georgia	50514/06	13.12.11					✓	
32	Karseladze v. Georgia	25391/08	10.01.12					✓	
33	Mtchedlidze v. Georgia	4276/06	24.01.12					✓	
34	Chkheidze v. Georgia	10547/06	24.01.12					✓	✓
35	Beniashvili v. Russia and Georgia	39549/02	13.03.12					✓	
36	Aladashvili v. Georgia	17491/09	03.04.12					✓	
37	Kotchlamazashvili v. Georgia	42270/10	03.04.12					✓	
38	Ivanov v. Georgia	8708/07	10.04.12					✓	
39	Musaev v. Georgia	10076/10	10.05.12					✓	
40	Edigarashvili v. Georgia	22325/10	10.07.12					✓	
41	Motsonelidze v. Georgia	73250/10	10.07.12					✓	
42	Saria v. Georgia	44984/07	11.09.12					✓	
43	Natchkebia v. Georgia	55486/10	02.10.12	✓					
44	Taktakishvili v. Georgia	46055/06	16.10.12			✓			
45	Kakulia and Buliskeria v. Georgia	3484/06	06.11.12	✓					
46	Tskhoidze v. Georgia	51767/09	27.11.12	✓					
47	Maya Okroshidze and Giorgi Okroshidze v. Georgia	60596/09	11.12.12	✓					
48	Karakhmazli v. Georgia	49627/09	12.03.13					✓	
49	Jintcharadze v. Georgia	38277/10	12.03.13					✓	
50	Tchanturia v. Georgia	50817/06	12.03.13				✓		
51	Oniani v. Georgia	29180/10	09.04.13	✓					
52	Beridze v. Georgia	16206/06	30.04.13			✓			
53	Gujejiani v. Georgia	40123/10	14.05.13		✓				
54	Kekelia v. Georgia	32997/10	14.05.13		✓				
55	Nemsadze v. Georgia	49506/08	14.05.13						✓
56	Kikvadze v. Georgia	5456/09	14.05.13		✓				
57	Khardziani v. Georgia	4584/11	04.06.13	✓					
58	Maisuradze v. Georgia	39830/11	04.06.13	✓					
59	Z. v. Georgia	44706/10	04.06.13	✓					
60	Shubladze v. Georgia	63875/10	04.06.13	✓					
61	Zedelashvili v. Georgia	34782/09	04.06.13	✓					
62	Melikishvili v. Georgia	35424/09	04.06.13	✓					
63	Tabagari v. Georgia	70820/10; 60870/11	18.06.13			✓			
64	Jghamadze v. Georgia	50049/08	18.06.13		✓				
65	Kasradze v. Georgia	21300/09	18.06.13		✓				
66	Guldedava v. Georgia	61370/09	18.06.13	✓					
67	Abashidze v. Georgia	51437/10	18.06.13	✓					
68	Alimonaki v. Georgia	51086/09	17.09.13		✓				

69	Khvedelidze v. Georgia	23920/07	17.09.13					✓	
70	Badagadze v. Georgia	23846/08	17.09.13		✓				
71	Mukbaniani v. Georgia	44697/09	17.09.13					✓	
72	Razmadze v. Georgia	5478/09	01.10.13		✓				
73	Siradze v. Georgia	56825/08	12.11.13		✓				
74	Pataraia v. Georgia	64006/10	22.10.13					✓	
75	Mazanashvili v. Georgia	19882/07	28.01.14			✓			
76	Vashakidze v. Georgia	41359/08	28.01.14	✓					
77	Vashakidze and Gogberashvili v. Georgia	25120/07	28.01.14		✓				
78	Evgeni Baratashvili and Zaal Baratashvili v. Georgia	30968/08	04.03.14			✓			
79	Purtskhvanidze v. Georgia	26056/11	04.03.14						✓?
80	Parghalava v. Georgia	3980/06	04.03.14		✓				
81	Merabishvili v. Georgia	26315/10	04.03.14					✓	
82	Samsiani v. Georgia	2012/08	04.03.14	✓?	✓?				
83	Sartania v. Georgia	2177/08	04.03.14		✓				
84	Barbakadze v. Georgia	13008/11	11.03.14						✓?
85	Bakuridze v. Georgia	26538/10	11.03.14						✓?
86	Kobulidze v. Georgia	30385/10	11.03.14						✓?
87	Kiziria v. Georgia	4728/08	11.03.14	✓					
88	Sarukhanyan v. Georgia	516161/09	11.03.14						✓?
89	Baghashvili v. Georgia	5168/06	18.03.14	✓					
90	Gamtsemlidze v. Georgia	2228/10	01.04.14			✓			
91	Sanadiradze v. Georgia	64566/09	08.04.14	✓					
92	Marakvelidze v. Georgia	17295/09	08.04.14			✓			
93	Modebadze v. Georgia	43111/10	08.04.14	✓					
94	Kikilashvili and Gurashvili v. Georgia	37701/08	14.04.14					✓	
95	Tsiklauri v. Georgia	17775/09	06.05.14			✓			
96	Khokhiashvili v. Georgia	65594/09	06.05.14	✓					
97	Mamulashvili v. Georgia	71672/10	06.05.14			✓			
98	Bakradze v. Georgia	3658/10	20.05.14	✓					
99	Petriashvili v. Georgia	44953/09	20.05.14					✓	
100	Savostina v. Georgia	25300/10	20.05.14					✓	
101	Chkotua and Arkania v. Georgia	60909/08	20.05.14	✓					
102	Tibilashvili v. Georgia	16516/10	27.05.14	✓					
103	Okropiridze v. Georgia	15583/11	27.05.14	✓?	✓?				
104	Japaridze v. Georgia	35199/10	27.05.14			✓			
105	Basilashvili v. Georgia	51603/09	27.05.14			✓			
106	Laliashvili v. Georgia	54110/09	27.05.14	✓?	✓?				
107	Abzianidze v. Georgia	23715/09	27.05.14	✓					
108	Mazmishvili v. Georgia	35220/09	24.06.14	✓					

109	Koiava v. Georgia	44654/08	24.06.14	✓					
110	Miminoshvili v. Georgia	10300/07	24.06.14			✓			
111	Surmanidze and others v. Georgia	11323/08	24.06.14	✓					
112	Kavteladze v. Georgia	31420/10	24.06.14			✓			
113	Tchaghiashvili v. Georgia	19312/07	02.09.14			✓			
114	Dimitri Kasradze and Tornike Kasradze v. Georgia	46780/07	04.09.14			✓			
115	Kviriashvili v. Georgia	13906/10	09.09.14			✓			
116	Dzebniauri v. Georgia	67813/11	09.09.14	✓					
117	Mtchedlishvili v. Georgia	43174/08	23.09.14			✓			
118	Molashvili v. Georgia	39726/04	30.09.14	✓					
119	Mzekalishvili v. Georgia	8177/12	10.02.15	✓					
120	Kopadze v. Georgia	58228/09	10.03.15	✓					
121	Oboladze and Lobzhanidze v. Georgia	31197/06	24.03.15			✓			
122	Shalva and Vladimer Dolidze v. Georgia	40207/05	24.03.15			✓			
123	Union of Jehovah's Witnesses and others v. Georgia	72874/01	21.04.15			✓			
124	O.K. v. Georgia	44851/09	21.04.15					✓	
125	Jakeli v. Georgia	51247/10	12.05.15	✓					
126	De Pita v. Georgia	22958/11	19.05.15	✓					
127	Bregadze v. Georgia	21785/10	01.06.15			✓			
128	Gogia v. Georgia	2274/10	09.06.15					✓	
129	Tchitava v. Georgia	7130/11	09.06.15					✓	
130	Kvarelashvili v. Georgia	28987/08	16.06.15			✓			
131	Bulia and Kvinikadze v. Georgia	5609/08	23.06.15			✓			
132	Lanchava v. Georgia	28103/11	23.06.15	✓					
133	Chantladze v. Georgia	60864/10	30.06.15	✓					
134	Mariam and Irina Batiashvili v. Georgia	75737/11	30.06.15	✓					
135	Studio Maestro LTD and others v. Georgia	22318/10	30.06.15	✓					
136	Dzidziguri v. Georgia	60814/10	30.06.15						✓?
137	Tchikashvili and others v. Georgia	61783/11	30.06.15			✓			
138	Chkhartishvili v. Georgia	2204/12	30.06.15			✓			
139	Botchorishvili v. Georgia	652/10	30.06.15			✓			
140	Shanidze v. Georgia	56080/10	30.06.15				✓		
141	Mirtskhulava v. Georgia	18372/04	02.07.15	✓					
142	Khergiani v. Georgia	12928/10	25.08.15		✓				
143	Khachirov v. Georgia	4769/10	25.08.15					✓	
144	Assatiani v. Georgia	29845/07	14.09.15					✓	
145	LLC Keramos v. Georgia	41504/06	15.09.15					✓	

146	Gamsakhurdia v. Georgia	59835/12	15.09.15	✓					
147	Bekauri and others v. Georgia	312/10	15.09.15	✓		✓			
148	Tsaguria v. Georgia	65969/09	15.09.15			✓			
149	Beridze v. Georgia	28297/10	15.09.15			✓			
150	Menabde v. Georgia	4731/10	13.10.15			✓			
151	Gegenava and others v. Georgia	65128/10	20.10.15	✓					
152	Egiazaryan v. Georgia	40085/09	24.11.15			✓			
153	Tedliashvili and others v. Georgia	64987/14	24.11.15			✓			
154	Manukian v. Georgia	49448/08	03.05.16			✓			
155	Zhorzholiani and others v. Georgia	1838/08	28.06.16	✓					
156	Abashidze v. Georgia	6926/10	13.09.16						✓?
157	Kharadze v. Georgia	19419/12	13.09.16						✓?
158	JSC Vaziani v. Georgia	19377/09	13.09.16	✓					
159	Tchumburidze v. Georgia	9605/09	13.09.16					✓	
160	Ninidze v. Georgia	15556/11	13.09.16						✓
161	Sharashenidze v. Georgia	542/11	08.11.16	✓					
162	X v. Georgia	30030/07	06.12.16						✓?
163	Dvali v. Georgia	64260/09	06.12.16	✓					
164	Mikeladze v. Georgia	25759/08	06.12.16						✓?
165	Nikolashvili v. Georgia	16716/10	06.12.16						✓?
166	Gelashvili v. Georgia	21098/09	24.01.17			✓			
167	Javakhadze v. Georgia	17847/10	24.01.17			✓			
168	Nurbegian v. Georgia	9593/09	07.02.17			✓			
169	Ghogheliani v. Georgia	44674/07	21.02.17					✓	
170	Dumbadze and others v. Georgia	74113/11	07.03.17						✓?
171	Basiladze v. Georgia	4013/07	07.03.17						✓?(
172	Kbiltsetskhlashvili v. Georgia	29873/07	07.03.17					✓	
173	Kholuashvili v. Georgia	27926/10	07.03.17					✓	
174	Getiashvili and Khachidze v. Georgia	28405/11	07.03.17					✓	
175	Beradze v. Georgia	933/12	07.03.17					✓	
176	Tsulaia v. Georgia	17398/10	21.03.17			✓			
177	Asatiani and others v. Georgia	42174/11	04.04.17						✓?
178	Kvaratskhelia v. Georgia	12309/09	04.04.17					✓	
179	Khurtsidze v. Georgia	5787/08	06.06.17					✓	
180	Tevzadze v. Georgia	33695/09	06.06.17					✓	
181	Surmanidze v. Georgia	915/12	27.06.17					✓	
182	Kokashvili v. Georgia	51902/10	27.06.17						✓?
183	Kotrikadze v. Georgia	43398/09	27.06.17						✓?
184	Lagvilava v. Georgia	65879/10	21.07.17		✓				
185	Gogichaishvili v. Georgia	2291/10	29.08.17						✓?
186	Darsalia v. Georgia	3693/13	19.09.17					✓	

187	Arkania v. Georgia	26344/13	19.09.17					✓	
188	Otiashvili v. Georgia	10145/08	19.09.17					✓	
189	Zlobini v. Georgia	10057/09	19.09.17					✓	
190	Georgia Red Cross Society v. Georgia	56006/11	19.09.17						✓
191	Ghviniashvili v. Georgia	2692/12	19.09.17					✓	
192	Zurashvili v. Georgia	52168/12	19.09.17			✓			
193	Pataridze and others v. Georgia	43655/09	19.09.17			✓			✓?
194	Gabunia and others v. Georgia	37276/05	19.09.17	✓					
195	Ogbaidze and others v. Georgia	36298/12	19.09.17					✓	✓?
196	Chichua v. Georgia	65150/14	10.10.17			✓			
197	Gobejishvili v. Georgia	51158/08	07.11.17					✓	
198	Mikeladze v. Georgia	70753/10	07.11.17					✓	
199	Javakhishvili and others v. Georgia	57437/12	07.11.17					✓	
200	Zoidze v. Georgia	34989/12	28.11.17					✓	
201	Naria and Akaki Urushadze v. Georgia	37395/09	13.02.18	✓					
202	Khaduri v. Georgia	52282/10	13.02.18					✓	
203	Tsiklauri v. Georgia	377/11	13.02.18					✓	
204	Tcholadze v. Georgia	35852/11	13.02.18					✓	
205	Khalilovi v. Georgia	26083/12	13.02.18					✓	
206	Khimshiashvili v. Georgia	43983/12	13.02.18					✓	
207	Diasamidze v. Georgia	67857/11	13.02.18					✓	
208	Beria v. Georgia	43302/08	12.06.18				✓		
209	Botchorishvili v. Georgia	42293/09; 8443/12	12.06.18						✓?
210	Gorgodze v. Georgia	16446/09	10.07.18					✓	
211	Dudashvili v. Georgia	13533/10	11.09.18					✓	
212	Tsivtsivadze v. Georgia	43098/10	11.09.18					✓	
213	Kharebava v. Georgia	64831/12	11.09.18					✓	
214	FC Mretebi v. Georgia	22523/09	18.09.18					✓	
215	Y v. Georgia	44331/10	18.09.18					✓	
216	Iliashvili v. Georgia	22715/07	09.10.18			✓			
217	Alasania and Bardavelidze v. Georgia	12611/08; 25500/08	09.10.18			✓			
218	Oragvelidze and others v. Georgia	65517/09	06.11.18					✓	
219	Danelia v. Georgia	56610/11	06.11.18					✓	
220	Turava and others v. Georgia and Laliashvili v. Georgia	7607/07; 8710/07	27.11.18			✓		✓	✓
221	Manukian v. Georgia	2146/10	31.01.19	✓					
222	Zakaradze v. Georgia	71880/12	20.06.19					✓	
223	Begiashvili v. Georgia	2661/12	29.08.19					✓	
224	Beridze v. Georgia	34998/12	29.08.19					✓	

225	Jakeli v. Georgia	35020/12	29.08.19					✓	
226	Veliadze v. Georgia	35038/12	29.08.19					✓	
227	Dumbadze v. Georgia	61414/12	29.08.19					✓	
228	Avaliani v. Georgia	7220/11	12.12.19					✓	
229	Kulumbegov v. Georgia	15213/09	30.04.20					✓	
230	Ilashvili v. Georgia	62866/19	29.09.20	✓					
231	Shavadze v. Georgia and 2 other	31315/12	13.10.20						✓
232	Kighuradze v. Georgia	9013/12	12.11.20						✓
233	Baliashvili v. Georgia	27842/11	21.01.21					✓	
234	Gorgoshadze v. Georgia	65070/10	08.04.21					✓	
235	Khoperia v. Georgia	24736/19	22.04.21					✓	
236	Tkhelidze v. Georgia	72475/10	02.09.21				✓		
237	Grigalashvili v. Georgia	9808/19	05.05.22					✓	
238	Tavadze v. Georgia	49947/21	08.12.22					✓	

Note:

*Decisions related to the cases concerning the conditions in the penitentiary institutions are underlined.

**Committee decisions appear in the HUDOC decision database only after April 2010. Therefore, the table may not include decisions issued prior to this period.

*** The following notation "✓?" used in the table indicates that the striking out actually happened based on a friendly settlement between the parties, but there are questions regarding the legal grounds.

Annex 2: Decisions on declaring applications lodged against Georgia inadmissible in accordance with Article 35 of the Convention, issued by the ECtHR's judicial formations (as of 31.12.2022)

	Case	Number	Date	35 (1)	35 (2)(b)	35 (3)	Inadmissible/struck out	
				Not within a period; non-exhausion of domestic remedies	Substantially the same	(a)abuse of the right of individual application; incompatible with the Convention and the Protocols; manifestly ill-founded. (b) – significant disadvantage	Partly admissible, Partly inadmissible	Partly inadmissible, Struck out
1	Absandze v. Georgia	57861/00	15.10.02			✓	✓	
2	Assanidze v. Georgia	71503/01	12.11.02			✓	✓	
3	Case of Members of the Gldani Congregation of Jehovah's Witnesses and others v. Georgia	71156/01	06/07/04			✓	✓	
4	Donadze v. Georgia	74644/01	25.05.05			✓	✓	
5	Danelia v. Georgia	68622/01	06.09.05			✓	✓	
6	Sarkisova v. Georgia	73239/01	06/09.05			✓		
7	Iosseliani v. Georgia	64803/01	06.09.05			✓		
8	Davtian v. Georgia	73241/01	06.09.05	✓		✓	✓	
9	Kidzinidze v. Georgia	69852/01	13.09.05	✓		✓	✓	
10.	Gurgenidze v. Georgia	71678/01	05.01.06	✓		✓	✓	
11	Katamadze v. Georgia	69857/01	14.02.06			✓		
12	Kerechashvili v. Georgia	5667/02	02.05.06			✓ abuse		
13	The Georgian Labour Party v. Georgia	9103/04	20.06.06			✓	✓	
14	Pandjikidze and others v. Georgia	30323/02	20.06.06	✓		✓	✓	
15	Galuashvili v. Georgia	40008/04	24.10.06	✓		✓		
16	Ramishvili and Kokhreidze v. Georgia	1706/06	27.06.07			✓	✓	
17	Jgarkava v. Georgia	7932/03	19.07.07			✓	✓	
18	Ghvaladze v. Georgia	42047/06	11.09.07	✓		✓	✓	
19	Kikolashvili v. Georgia	37341/04	03.02.09			✓		
20	Beygo v. 46 member States of the Council of Europe	36099/06	16.06.09					
21	The Mrevli Foundation v. Georgia	25491/04	05.05.09			✓		
22	Davitashvili v. Georgia	22433/05	12.05.09			✓		
23	Khvichia and others v. Georgia	26446/06	23.06.09			✓ abuse		
24	Nazaretian v. Georgia	13909/06	07.06.09	✓		✓		
25	Nikolaishvili v. Georgia	30272/04	07.06.09			✓		
26	Mindadze and Nemsitsveridze v. Georgia	21571/05	17.11.09	✓		✓	✓	

27	Katcheishvili v. Georgia	55793/09	24.11.09			✓		
28	Pirtskhalaishvili v. Georgia	44328/05	29.04.10			✓ abuse		
29	Sultanishvili v. Georgia	40091/04	04.05.10			✓		
30	Andronikashvili v. Georgia	9297/08	22.06.10			✓		
31	Bekauri v. Georgia	14102/02	29.06.10			✓	✓	
32	Shavishviili v. Georgia	21519/05	09.11.10	✓				
33	Baghaturia v. Georgia	46365/06	16.11.10			✓		
34	Archaia v. Georgia	6643/10	14.12.10			✓		
35	Lanchava and 47 others v. Georgia	25678/09	07.02.12			✓		
36	Akhvlediani and 9 others v. Georgia	22026/10	06.03.12			✓		
37	Beniashvili v. Russia and Georgia	39549/02	13.03.12	✓ (in regard with Georgia)				
38	Napishvili v. Georgia	44303/05	13.03.12	✓		✓		
39	Abashidze v. Georgia	47974/07	04.09.12	✓				
40	Kokhreidze and Ramishvili v. Georgia	17092/07; 22032/07	25.09.12	✓				
41	Manukyan v. Georgia	53073/07	09.10.12			✓		
42	Taktakishvili v. Georgia	46055/06	16.10.12	✓		✓		✓
43	Shamatava v. Georgia	4484/07	27.11.12			✓		
44	Talakhadze v. Georgia and 2 other applications	40969/06; 14001/07; 14694/07	27.11.12			✓		
45	Bakradze v. Georgia and 2 other applications	1700/08	08.01.13			✓		
46	Beridze v. Georgia	16206/06	30.04.13			✓		✓
47	Aprasidze v. Georgia	32220/07	21.05.13	✓		✓		
48	Tabagari v. Georgia	70820/10; 60870/11	18.06.13	✓		✓		✓
49	Natshvlishvili and Togonidze v. Georgia	9043/05	25.06.13	✓		✓	✓	
50	Mazanashvili v. Georgia	19882/07	28.01.14	✓		✓		✓
51	Parghalava v. Georgia	3980/06	04.03.14				✓	
52	Baratashvilebi v. Georgia	30968/08	04.03.14	✓		✓		✓
53	Gamtsemlidze and others v. Georgia	2228/10	01.04.14			✓		✓
54	Marakvelidze v. Georgia	17295/09	08.04.14			✓		✓
55	Mamulashvili v. Georgia	71672/10	06.05.14	✓		✓		✓
56	Inasaridze and others v. Georgia	2101/09	27.05.14	✓				
57	Basilashvili v. Georgia	51603/09	27.05.14	✓		✓		✓
58	Subari and Kobidze v. Georgia	37678/10; 37789/10	27.05.14	✓				
59	Miminoshvili v. Georgia	10300/07	24.06.14			✓		✓
60	Kavteladze v. Georgia	31420/10	24.06.14	✓		✓		✓
61	Gorgadze v. Georgia	57990/10	02.09.14			✓ abuse		
62	Tchaghiashvili v. Georgia	19312/07	02.09.14			✓		✓

63	Kasradzeebi v. Georgia	46780/07	04.09.14			✓		✓
64	X and Y v. Georgia	5358/14	09.09.14	✓		✓		
65	Kviriashvili v. Georgia	13906/10	09.09.14	✓				✓
66	Sidiani-Aprasidze v. Georgia	32220/07	10.03.15	✓				
67	Oboladze and Lobzhanidze v. Georgia	31197/06	24.03.15			✓		✓
68	Dolidze v. Georgia	40207/05	24.03.15		✓	✓		✓
69	Union of Jehovah;s Witnesses and others v. Georgia	72874/01	21.04.15			✓		✓
70	De Pita v. Georgia	22958/11	19.05.15	✓				✓
71	Kvarelashvili v. Georgia	28987/08	16.06.15	✓		✓		✓
72	Bregadze v. Georgia	21785/10	16.06.15	✓				✓
73	Bekauri and 9 others v. Georgia	312/10	15.09.15			✓		✓
74	D.T. v. The Netherlands and Georgia	28199/12	15.09.15			✓		
75	Fomkin v. Georgia	21004/02	20.10.15			✓		
76	Egiazaryan v. Georgia	40085/09	24.11.15			✓		✓
77	Tedliashvili and others v. Georgia	64987/14	24.11.15			✓		✓
78	Kokashvili v. Georgia	21110/03	01.12.15			✓		
79	Davitashvili v. Georgia	11182/10	01.12.15	✓				
80	Bolkvadze v. Georgia	37051/05	19.01.16			✓ sig. disadvantage		
81	Akademikosi-7 v. Georgia	8075/05	26.01.16			✓		
82	Giorgadze v. Georgia	25177/05	26.01.16			✓		
83	Schradze v. Georgia	9289/08	02.02.16	✓		✓		
84	Rolf Schradze v. Georgia	52240/07	26.04.16			✓ sig. disadvantage		
85	Manukian v. Georgia	49448/08	03.05.16	✓				✓
86	Kvantaliani v. Georgia	38736/05	27.09.16	✓		✓		
87	Devadze and others v. Georgia and 3 other applications	21727/05	11.10.16			✓		
88	Kiknadze v. Georgia	33953/05	11.10.16			✓		
89	Jikia v. Georgia	37302/05	11.10.16			✓		
90	Nurbegian v. Georgia	9593/09	07.02.17	✓				✓
91	Tsulaia v. Georgia	17398/10	21.03.17	✓				✓
92	Burdiashvili and others v. Georgia	26290/12	04.04.17			✓		
93	Nozadze v. Georgia	41541/05	09.05.17	✓				
94	Tortladze v. Georgia	28739/06	06.06.17	✓		✓		
95	Mariamidze v. Georgia	9154/06	19.09.17	✓		✓		
96	Diakonidze v. Georgia	33201/07	19.09.17			✓ abuse		
97	Sharadzenidze v. Georgia	43486/07	19.09.17			✓ abuse		
98	Topuria v. Georgia	56283/08	19.09.17	✓				
99	Elbakidze v. Georgia	5137/09	19.09.17			✓		
100	Datunashvili v. Georgia	40099/09	19.09.17			✓ abuse		
101	Chichua v. Georgia	65150/14	10.10.17			✓		✓

102	Ghvaladze v. Georgia	42047/06	10.10.17			✓		
103	Ronly Holdings LTD v. Georgia	41444/05	07.11.17			✓ abuse		
104	Shanidze v. Georgia	60867/08	07.11.17			✓		
105	Kavkasioni LTD v. Georgia	60249/09	07.11.17			✓ abuse		
106	Burjanadze v. Georgia	50365/09	05.12.17	✓		✓		
107	Parjiani v. Georgia	57047/08	15.05.18	✓				
108	Tchrelashvili v. Georgia	23919/09	15.05.18	✓		✓		
109	Ali v. Georgia	41710/05	12.06.18	✓		✓		
110	Beria v. Georgia	43302/08	12.06.18			✓		✓
111	Kerdikoshvili v. Georgia	35868/10	12.06.18			✓ abuse		
112	Burjanadze v. Georgia	2155/09	28.08.18			✓		
113	Katcheishvili v. Georgia	55793/09	11.09.18			✓		
114	Shavlokhova v. Georgia	4800/10	18.09.18	✓				
115	Meladze v. Georgia	30635/09	02.10.18	✓		✓		
116	Metreveli and others v. Georgia	64540/12	02.10.18			✓		
117	Khutsishvili and LLC Kartu Mshenebeli v. Georgia and Georgian Dream v. Georgia	64623/12; 64819/12	02.10.18			✓ abuse		
118	Iliashvili v. Georgia	22715/07	09.10.18			✓		✓
119	Alasania v. Georgia and Bardavelidze v. Georgia	12611/08; 25500/08	09.10.18			✓		✓
120	Chiteishvili v. Georgia	42281/10	23.10.18	✓		✓		
121	Baduashvili v. Georgia	18720/08	06.11.18			✓		
122	Naniyeva and Bagayev v. Georgia	2256/09; 2260/09	20.11.18			✓		
123	Kudukhova v. Georgia	8274/09; 8275/09	20.11.18			✓		
124	Dzhioyeva and others v. Georgia	24964/09	20.11.18			✓	✓	
125	Turava and others v. Georgia and Laliashvili v. Georgia	7607/07; 8710/07	27.11.18			✓ abuse		✓
126	Topaloglu v. Georgia	25406/08	11.12.18			✓		
127	Peikrishvili and Basiladze v. Georgia	53191/10	05.02.19			✓		
128	Turex LTD v Georgia	22398/10	26.02.19			✓		
129	Dzasokhov v. Georgia	70243/11	19.03.19			✓		
130	Shanidze v. Georgia	7156/11	17.09.19			✓		
131	Tsion v. Georgia	7720/12	16.06.20	✓		✓		
132	LTD Sony Tsentri Tbilisi and LTD Lazeri-2 Tbilisi v. Georgia	17959/11	13.10.20			✓ abuse		
133	Kekelashvili v. Georgia	35861/11	17.11.20	✓		✓		
134	Jgharkava v. Georgia	72006/12	14.01.21			✓		
135	Georgian Young Lawyers' Association v. Georgia	2703/12	19.01.21			✓		
136	Mikiashvili v. Georgia and Studio Reportiori and Komakhidze v. Georgia	18865/11; 51865/11	19.01.21			✓		

137	Diasamidze and Batumelebi v. Georgia	49071/12; 51940/12	25.03.21			✓		
138	Eliauri and others v. Georgia	74019/12	22.04.21	✓				
139	Bostoghanashvili v. Georgia	26072/11	27.05.21			✓		
140	Tsutsashvili v. Georgia	59329/16	27.05.21			✓		
141	Shavlokhova v. Georgia and 4 other applications	45431/08	05.10.21	✓		✓		
142	Bekoyeva v. Georgia and 3 other applications	48347/08	05.10.21	✓		✓		
143	Toradze v. Georgia	12699/18	02.12.21	✓				
144	Sakhvadze and Zurabishvili v. Georgia	70619/11	02.12.21			✓		
145	Tskhovrebova v. Georgia and 369 other applications	43733/08	03.03.22			✓		
146	Dolidze v. Georgia	37662/11	10.03.22			✓		
147	Akhalaia v. Georgia	30464/13; 19068/14	07.06.22			✓		
148	Gvantseladze v. Georgia	32545/20	22.09.22	✓		✓		
149	Bolkvadze and others v. Georgia	17354/19	10.11.22	✓				
150	Janelidze v. Georgia	25395/11	10.11.22			✓		

Note:

*Decisions related to the cases concerning the conditions in the penitentiary institutions are underlined.

**Committee decisions appear in the HUDOC decision database only after April 2010; therefore, the table may not include decisions issued prior to this period.

*** Decisions made by a Single-judge formation are not public and they are not published in the HUDOC decision database. Therefore, the table does not include such decisions.