

# General information: Council of Europe's reaction in relation to the attack of Russia against Ukraine

<https://www.coe.int/en/web/portal/-/council-of-europe-suspends-russia-s-rights-of-representation>

Committee of Ministers in relation to the Russian Federation

- Condemnation (24.2.2022)
- Suspension of rights (25.2.2022)

# Condemnation (24.2.2022)

In a [decision](#) adopted today, at the end of an extraordinary meeting which brought together the representatives of the 47 Council of Europe member states, the **Committee of Ministers**:

- **condemned in the strongest terms** the armed attack on Ukraine by the Russian Federation in violation of international law;
- decided to **examine** without delay, and in close co-ordination with the Parliamentary Assembly and the Secretary General, the **measures to be taken** in response to the serious violation by the Russian Federation of its statutory obligations as a Council of Europe member State;
- urged the Russian Federation to immediately and unconditionally **cease its military operations** in Ukraine;
- **condemned the recognition** by the Russian Federation of the Ukrainian oblasts of Donetsk and Luhansk as independent entities;
- reiterated their unwavering commitment to the **independence, sovereignty and territorial integrity of Ukraine** within its internationally recognised borders;
- expressed their support to Ukraine and their solidarity with its people;

The Committee of Ministers also agreed to hold a **further extraordinary meeting on 25 February 2022** with a view to considering measures to be taken, including under Article 8 of the [Statute of the Council of Europe](#). <https://www.coe.int/en/web/portal/-/situation-in-ukraine-decisions-by-council-of-europe-s-committee-of-ministers>

# Suspension of rights (25.2.2022)

In line with the Statute of the Council of Europe, the Committee of Ministers has today decided to **suspend** the **Russian Federation** from its **rights of representation** in the Committee of Ministers and in the **Parliamentary Assembly** with immediate effect as a result of the Russian Federation's armed attack on **Ukraine**.

The decision adopted today means that

- the Russian Federation **remains** a **member** of the Council of Europe and **party to** the relevant Council of Europe **conventions**, including the European Convention on Human Rights.
- The **judge elected to the European Court of Human Rights** in respect of the Russian Federation also **remains** a member of the Court, and applications introduced against the Russian Federation will continue to be examined and decided by the Court.

**Suspension is not a final measure** but a temporary one, leaving channels of communication open.

# ECtHR - Recent developments

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25 February 2022 (online meeting)

# Overview

- **(Amending) Protocol No. 15**
- **Statistics**
- **Further developments**

# **(Amending) Protocol No. 15**

Reduction of time-limit to four months

Subsidiarity / margine of appreciation

Further amendments

# Entering into force

- Protocol No. 15 to the European Convention on Human Rights has been signed and **ratified by all 47 member States** of the Council of Europe.
- This text amending the Convention entered into force on **1 August 2021**, but provided for a **transition period** before the change of **time-limit** became effective.

# Reduction of time-limit to four months

- As of **1 February 2022** the time-limit for submitting an application to the European Court of Human Rights is **four months** following the final domestic judicial decision in the case, which is usually a judgment delivered by the highest court in the country concerned. The time-limit was **previously six months**.
- This **new time-limit is not retroactive**: it does not apply to applications in which the final domestic decision was taken prior to 1 February 2022. In other words, it will only apply to applications in which the final domestic decision is given from 1 February 2022 onwards.



# Subsidiarity / margin of appreciation

## - General -

- Of **principal** (and possibly dangerous) **nature**, this Protocol amends the **Preamble** to the Convention, which now includes a reference to
  - the **subsidiarity principle** and to
  - the **margin of appreciation** doctrine.
- **Wording** of new recital:
  - "Affirming that the High Contracting Parties,
  - in accordance with the **principle of subsidiarity**, have the **primary responsibility** to secure the rights and freedoms defined in this Convention and the Protocols thereto, and that in doing so they
  - enjoy a **margin of appreciation, subject to** the supervisory **jurisdiction of the European Court** of Human Rights established by this Convention,"
- In accordance with Article 8, paragraph 4 of the Protocol, no transitional provision relates to the modification in the Preamble, which **entered into force** in accordance with Article 7 of the Protocol. (**1.8.2021**)

# Subsidiarity / margin of appreciation

## - Explanatory report -

- 7. ... It is intended to enhance the transparency and accessibility of these characteristics of the Convention system and to be consistent with the doctrine of the margin of appreciation **as developed by the Court in its case law**. ...
- 8. [**provide an effective remedy before a national authority for everyone whose rights and freedoms are violated.**]
- 9. The **jurisprudence of the Court** makes clear that the **States Parties** enjoy a **margin of appreciation** in how they apply and implement the Convention, **depending** on the circumstances of the case and the rights and freedoms engaged.
- This reflects that the Convention **system is subsidiary** to the safeguarding of human rights at national level and that national authorities are in principle better placed than an international court to evaluate local needs and conditions.
- The **margin of appreciation goes hand in hand with supervision** under the Convention system. In this respect, **the role of the Court is to review whether decisions** taken by national authorities are **compatible with the Convention**, having due regard to the State's margin of appreciation.

# Subsidiarity / margin of appreciation

## - First evaluation -

- As *Janneke Gerards* discusses in [her blog](#) in this series, there has been an interesting **academic debate** as to whether the Court's jurisprudence since the Brighton Declaration has in fact proved to be **more deferential** to states.
- She argues that there is **no particular evidence** of this, and that the development of the Court's case-law is much more nuanced and impacted by a range of different factors.
- For these reasons, it is **hard to see** that this aspect of Protocol 15 will have **much import for applicants**.
- <https://www.echrblog.com/2021/06/blog-symposium-on-protocol-15-echr-what.html>

# Subsidiarity / margin of appreciation

## - Further evaluation -

**Elements** which might influence the Court's approach

- It is not an operative provision within the corpus of the Convention, it is '**only**' a recital of the **Preamble**
- It is clear that the whole debate around the formulation of the recital referred to the fact that the Court had already **developed both concepts in its jurisprudence**
- According to the explanatory report it is aimed to 'enhance the **transparency and accessibility** of these characteristics'
- **Conclusion**: The **case law could** just **remain** as it stands (sufficiently problematic), but one never knows ...

# Further amendments

- Of **more technical nature**, there are further **changes to the Convention**:
  - concerning the admissibility criterion of “significant disadvantage”, the second condition, namely that a case which has **not been duly considered by a domestic tribunal** cannot be rejected, has been amended and this proviso is now **deleted**;
  - the parties to a case may **no longer object** to its **relinquishment** by a Chamber in favour of the Grand Chamber;
  - **candidates** for a post of **judge** at the Court **must be less than 65** years of age at the date by which the list of three candidates has been requested by the Parliamentary Assembly.

# Statistics 2021

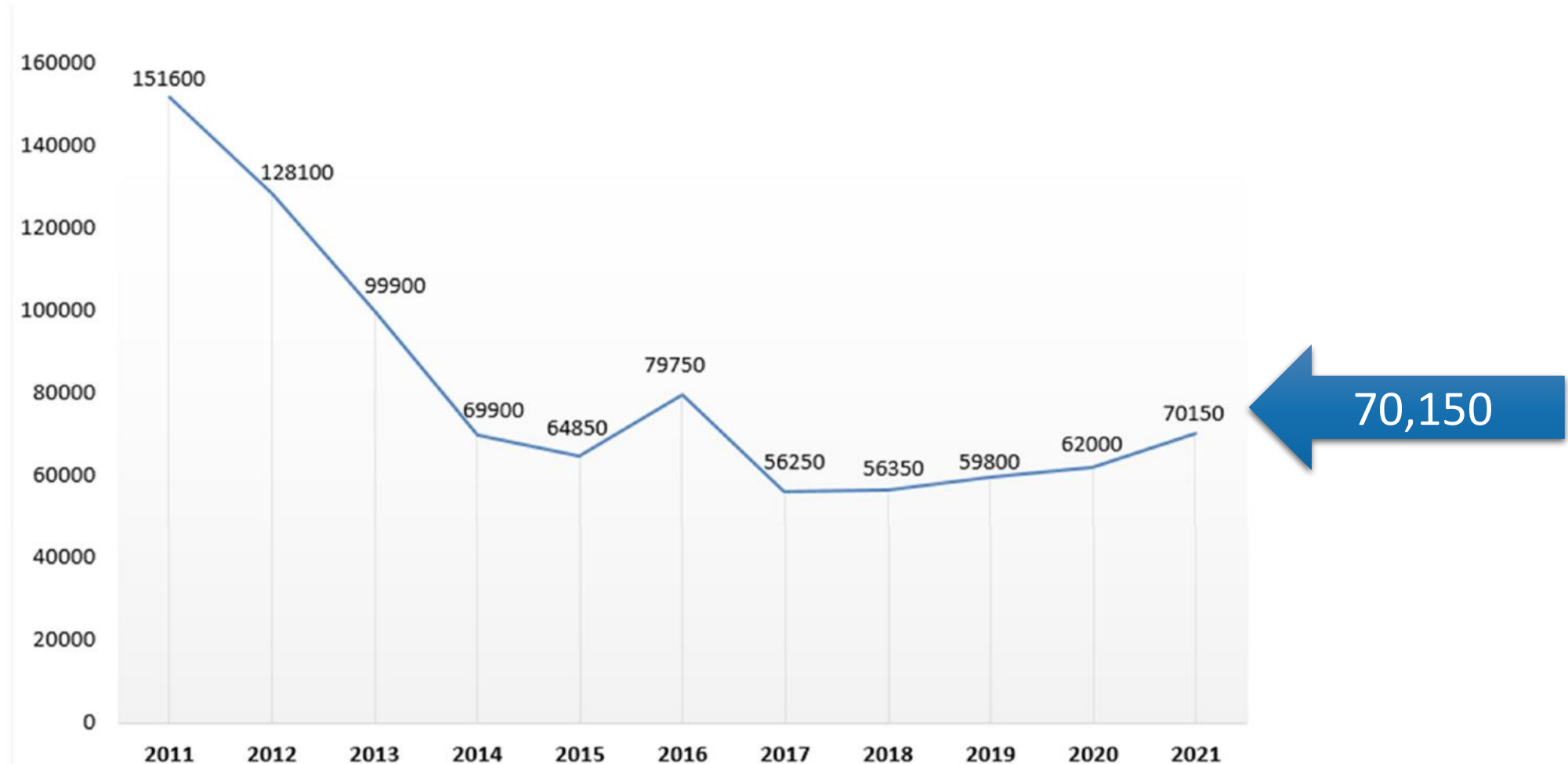
Applications pending (per year)

Applications 2021 compared to 2020

Applications pending (31/12/2021( – (high case-count) States

# Applications pending (per year)

Chart 2 Applications pending before a judicial formation per year



[Analysis of statistics 2021](#)

K. Lörcher

# Applications 2021 compared to 2020

1. Applications allocated to a judicial formation [round figures (50)]	2021	2020	+/-
Applications allocated	44250	41700	6%

3. Applications decided	2021	2020	+/-
By decision or judgment	36092	39190	-8%
- by judgment delivered	3131	1901	65%
- by decision (inadmissible or struck out)	32961	37289	-12%

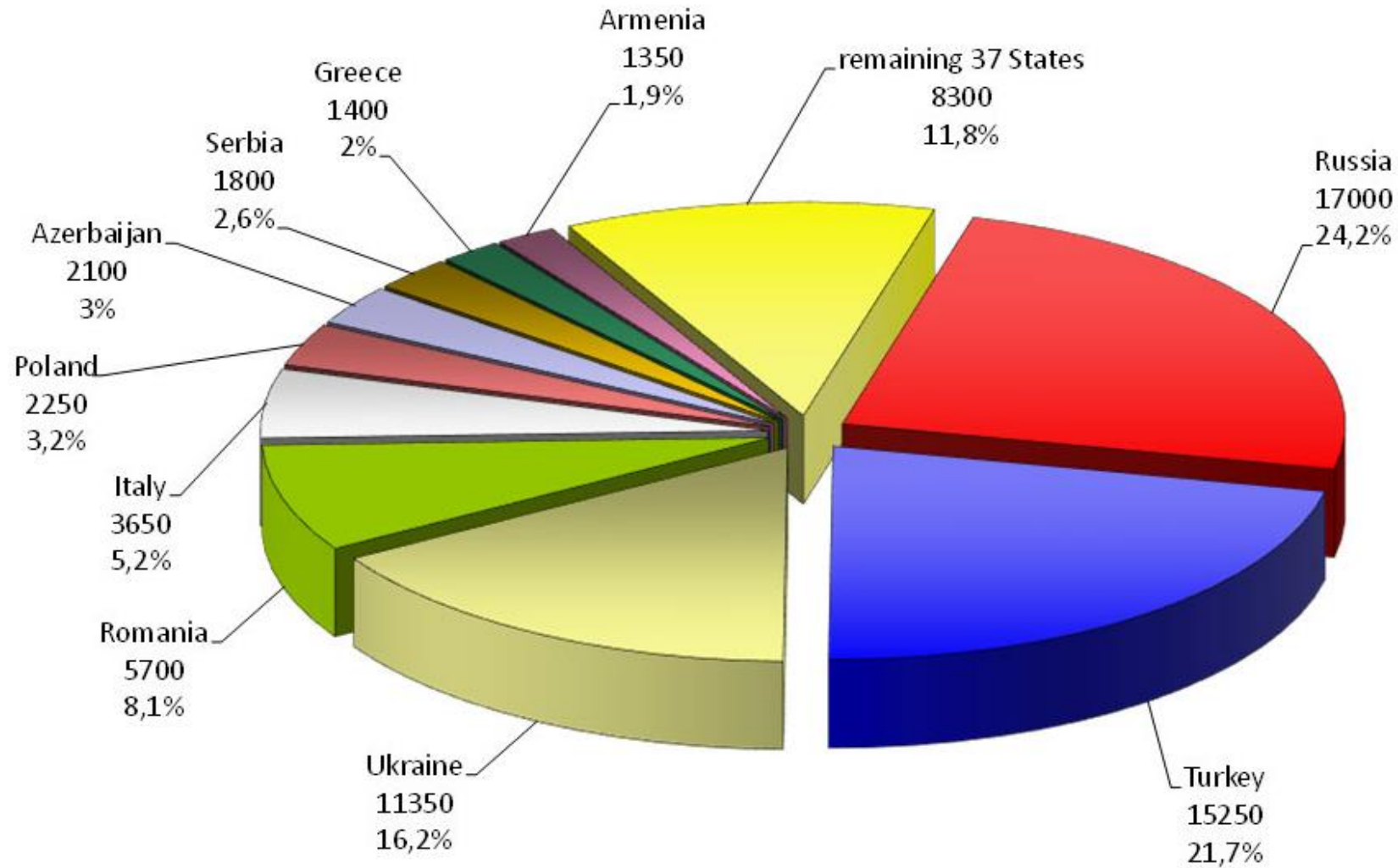
+ 65 %

4. Pending applications [round figures (50)]	31/12/2021	1/1/2021	+/-
Applications pending before a judicial formation	70150	62000	13%
- Chamber and Grand Chamber	30600	23300	31%
- Committee	31850	34100	-7%
- Single-Judge formation	7700	4600	67%

+ 31 %



# Pending applications – High case-count States



For more information see: [Analysis of statistics 2021](#)

# Pending applications – High case-count States

- A preliminary evaluation (by Kushtrim Istrefi; <https://www.echrblog.com/2022/02/the-court-in-2021-worrying-facts-and.html>) It is worrying that, just like in the previous years (see [here](#) and [here](#)) more than **75 % of applications were brought against 5 states** only. These facts and figures suggest that the number of cases before the Court cannot be reduced only by reforming the 'machinery'. A more **meaningful and holistic analysis is needed to look at the causes and types of violations**, and how to ensure that all States, and in particular the 'usual suspects' that top the number of applications, take seriously the obligation to respect human rights, as enshrined in Article 1 ECHR.
- For an analysis of root causes in relation to the **articles concerned** the statistics in the period from 1959 – 2021 show that out of the 345 ECtHR's judgments finding violations in relation to **Article 11 ECHR** the Court found violations in relation to 5 States as follows: Russia: 79; Turkey 111, Ukraine 10; Romania 6; Italy 3 [Violations by Article and by State 1959-2021](#)

# Further developments

# New case processing (“impact”) strategy

- A **prioritisation policy** has been pursued to speed up processing times and to dispose of the most important, most serious and most urgent cases. The Court has established **seven categories**, ranging from urgent applications to those that are manifestly inadmissible.
- Some important cases may, however, be found in the **intermediate categories**, for which processing may take between five and six years. These are Chamber cases
  - of **particular importance** for the development of the human rights protection system and
  - which raise **new questions** concerning the interpretation and application of the European Convention on Human Rights.
- These “impact” cases, are at the heart of the Court’s new strategy and will be identified on the basis of certain predefined criteria.
- The processing of all the other cases (which are neither priority nor “impact” cases) will in future be dealt with by three-judge Committees rather than seven-judge Chambers.

# Specific procedures

## Interim measures in the case of Polish Supreme Court judge's immunity:

- The Court asked that the Government ensure that the proceedings concerning the lifting of Mr Wróbel's – a **Supreme Court judge** – judicial immunity comply with the requirements of a “fair trial” as guaranteed by Article 6 § 1 of the European Convention on Human Rights, in particular the requirement of an “independent and impartial tribunal established by law”, and that **no decision in respect of his immunity be taken** by the Disciplinary Chamber of the Supreme Court until the final determination of his complaints by the European Court. (08.02.2022, (application no. 6904/22))

## Protocol No. 16 (request for advisory opinion):

- **Request** for an advisory opinion under Article 29 of the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine **rejected** as not within its competence (15.09.2021)

# Thank you very much for your attention.

For further information about individual cases before the ECtHR, see

[https://www.hugo-sinzheimer-institut.de/faust-detail.htm?sync\\_id=HBS-008205](https://www.hugo-sinzheimer-institut.de/faust-detail.htm?sync_id=HBS-008205)

at the moment, only until 30.9.2021; for the current situation the general homepage is available

[https://hudoc.echr.coe.int/eng#{%22documentcollectionid2%22:\[%22GRANDCHAMBER%22,%22CHAMBER%22\]}](https://hudoc.echr.coe.int/eng#{%22documentcollectionid2%22:[%22GRANDCHAMBER%22,%22CHAMBER%22]})