



The developing remedial practice of the European Court of Human Rights

Palais de l'Europe

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Judge Robert Spano

Mr Pavlo Pushkar

Ms Isabelle Niedlispacher

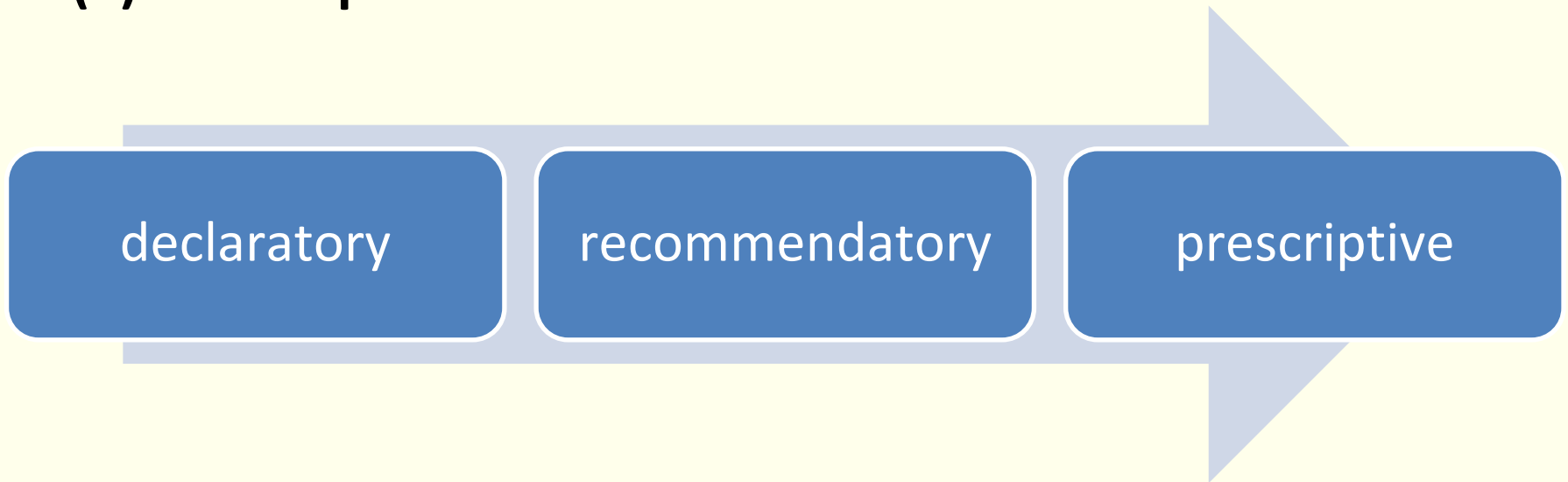
Mr Kevin Steeves

**Middlesex University: Dr Alice Donald,
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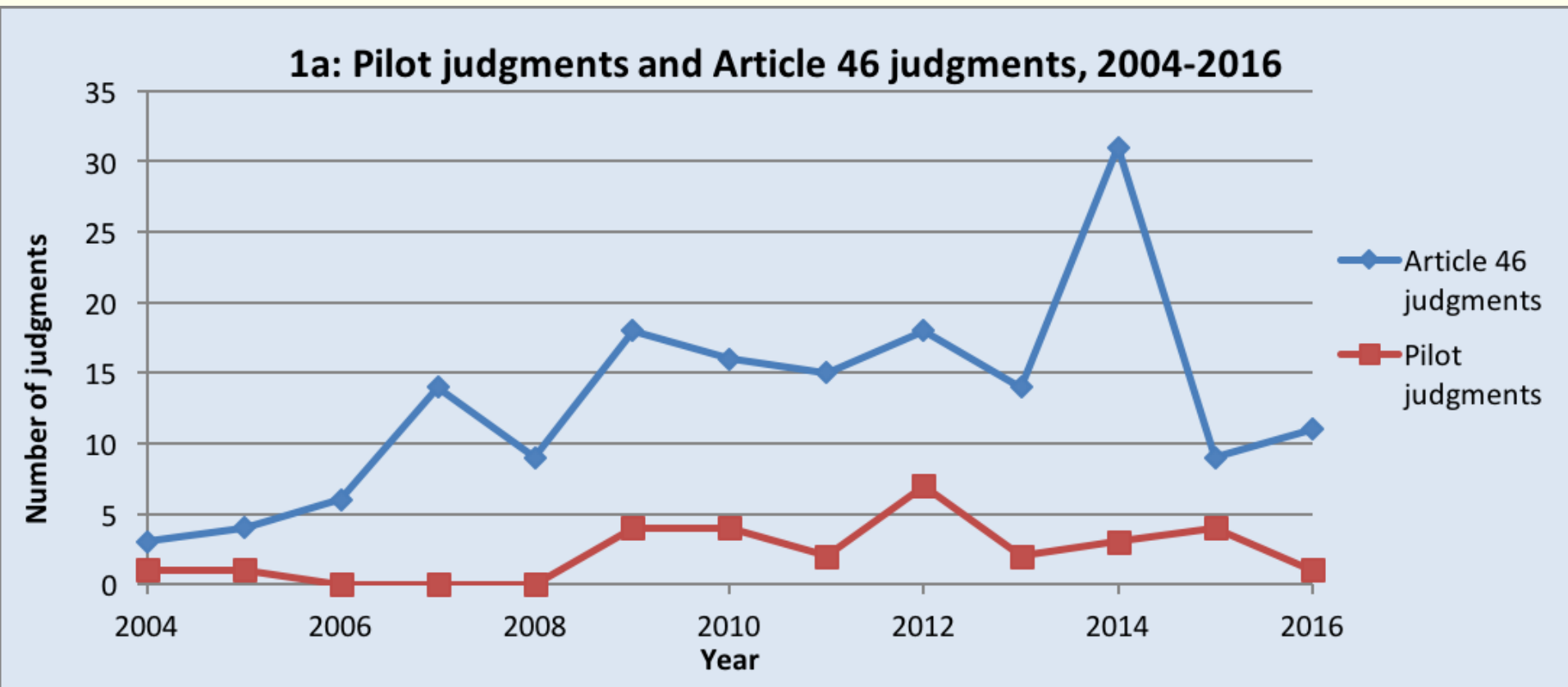
Specificity and prescriptiveness

(i) Specificity – indication of specific non-monetary individual or general measures

(ii) Prescriptiveness

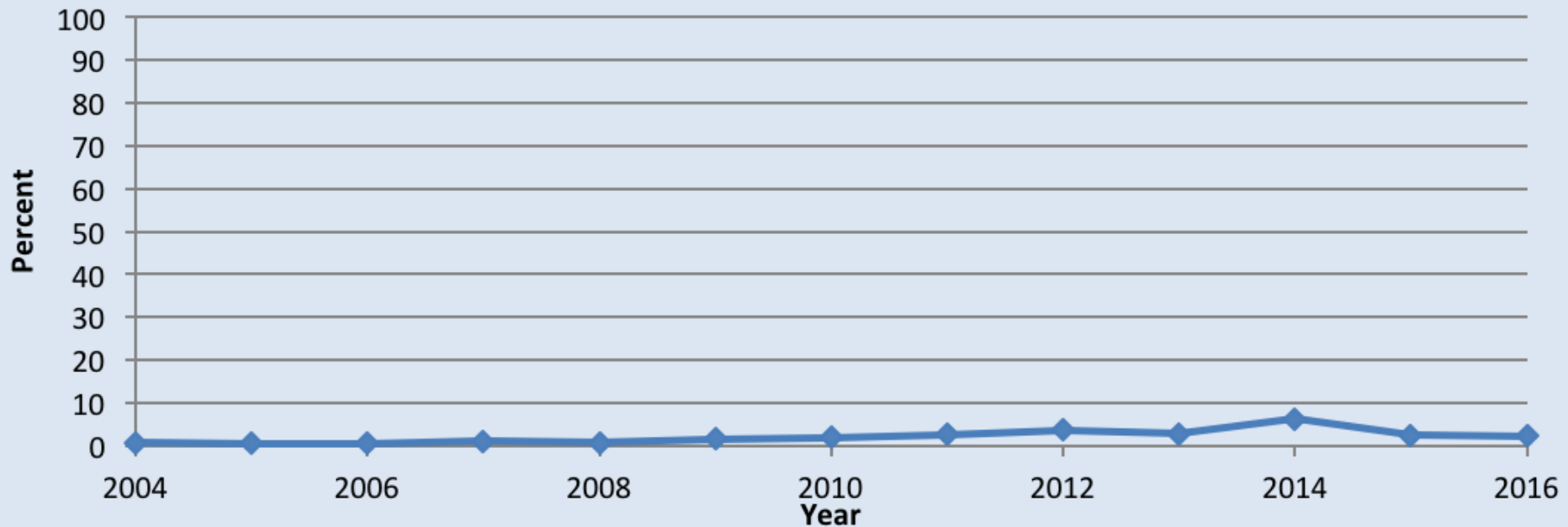


Number of judgments specifying remedial measures has not increased in recent years



Judgments specifying remedial measures are a small fraction of the Court's case law

1b: Indicative (Article 46 and pilot) judgments as percentage of all adverse judgments, 2004-2016



Other findings of statistical analysis

- The Court indicates general measures more often than individual measures in both Article 46 and pilot judgments.
- The use of the operative part of Article 46 judgments to specify remedies is low – and perhaps declining.
- The Grand Chamber is proportionately more likely than Chambers of the Court to indicate specific remedial measures.
- While pilot judgments almost invariably include deadlines, the use of deadlines in Article 46 judgments is rare and declining.

Consistency of the Court's remedial practice?

“Ideally, it would have been better of course to have a more coherent and coordinated approach. But I think that this is normal as it stands now. It is timid steps in this direction that are being taken by the Court. ... I think the Court is exploring this field, and for the time being, this is positively assessed and has not created any tensions.”

Official at the CoE's Directorate General
Human Rights and Rule of Law, April 2017

Possible reasons for inconsistency

- Case-by-case and / or state-by-state decision-making
- Different judicial approaches to specificity and prescriptiveness

Institutional roles of the ECtHR and the CM

“I think here there is a strange kind of echo effect in the sense that almost everyone *beyond* the Court would welcome specificity.”

Academic, May 2017

“[W]e hear from the Execution Department that they want us to give as specific indications concerning the implementation as possible.”

Judge at the ECtHR, June 2017

→ Committee of Ministers seems not to be unduly concerned about potential encroachment by Court onto its role under Article 46(1) ECHR

Impact of specificity / prescriptiveness on the supervision of the implementation of judgments

Potential benefits:

- Facilitates measuring and monitoring of implementation
- Reduces the risk of slow or minimalist implementation
- Heightens scrutiny in conjunction with enhanced supervision
- Provides framework to share solutions to common problems

Potential risks:

- “Heightens the stakes”
- Renders failure to implement more visible
- Loss of flexibility on part of CM, especially if remedy based on incorrect or outdated assumptions

How do states view specificity / prescriptiveness?

Pushback?

- Little evidence of pushback on the *principle* of the Court specifying remedies or on remedial measures in *specific judgments* → too technical an issue to inflame opinion?

Empowering willing actors

- May help willing actors – executive, parliament, judiciary
- May help NGOs / NHRIs to apply more pressure
- Can be especially useful in positivist states

Questions for debate

- Consistency of the Court's current approach to remedies?
- Opportunities and risks of the Court being specific and/or prescriptive
 - at the Strasbourg level?
 - at the domestic level?
- How is the Court's remedial practice likely to develop, and how should it?